

ENDORSED
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Superior Court of California
County of San Francisco

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11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

13 **DENNIS and ALEXANDRA LENEHAN,**
14 **Individually and as Trustees of THE**
15 **LENEHAN 1990 REVOCABLE TRUST,**

16 Plaintiffs,

17 v.

18 **MILLENNIUM PARTNERS I, INC.,** a
19 **New York corporation d/b/a New York SF**
20 **MILLENNIUM PARTNERS I, Inc.; MILLENNIUM**
21 **PARTNERS MANAGMENT, LLC,** a New
22 **York limited liability company; MISSION**
23 **STREET DEVELOPMENT LLC,** a
24 **Delaware limited liability company;**
25 **MISSION STREET HOLDINGS LLC,** a
26 **Delaware limited liability company;**
27 **TRANSBAY JOINT POWERS**
28 **AUTHORITY,** a public entity; and **DOES 1**
through 100, inclusive,

Defendants.

Case No.:

CGC-17-557038

COMPLAINT FOR DAMAGES BASED ON:

1. **FRAUD**
2. **NEGLIGENT MISREPRESENTATION**
3. **NUISANCE**
4. **INVERSE CONDEMNATION**

JURY TRIAL DEMANDED

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1 **DENNIS LENEHAN** and **ALEXANDRA LENEHAN**, individually and as trustees for
2 **THE LENEHAN 1990 REVOCABLE TRUST ("PLAINTIFFS")**, hereby complain of the
3 Defendants named herein as follows, based on information and belief, other than the allegations in
4 paragraphs 5 and 9, for which they have personal knowledge.

5 **I. INTRODUCTION**

6 1. The Millennium Tower is a massive, 58-story condominium building in San
7 Francisco. Even before units were sold to residents, the skyscraper began sinking into the soil
8 below and leaning precariously. The building had already sunk more than 8 inches by the time
9 construction was completed in 2009. Despite knowledge of the extraordinary settlement, the
10 developer sold the building's 419 units to unsuspecting residents without any mention of the fact
11 that the building had sunk at a rate greater than designers originally forecast.

12 2. Today, the Millennium Tower building has **sunk at least 16 inches** and is **leaning 2**
13 **inches sideways**.¹ By some estimates, the building eventually could sink as much as 31 inches,
14 with the angle of the tilt increasing.²



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Wikimedia Commons

¹ J.K. Dineen, "Sinking Millennium Tower under stress in 2014, engineers found," *San Francisco Chronicle* (Sept. 30, 2016), available at: <http://www.sfgate.com/bayarea/article/Sinking-Millennium-Tower-under-stress-in-14-9476271.php>

² J.K. Dineen, "As charges fly in SF, tests begin on sinking Millennium Tower," *San Francisco Chronicle* (Sept. 27, 2016), available at: <http://www.sfchronicle.com/bayarea/article/As-charges-fly-in-SF-tests-begin-on-sinking-9289898.php>

1 3. The building's movement is so pronounced, it is detectible in satellite imagery taken
2 by the European Space Agency.³ For residents, the predicament spells an uncertain and frightening
3 future:

4 One prominent architect suggested that you **might have to lop 20**
5 **stories off the top** of the 58-story building to make it light enough
6 so that it will stop descending into the landfill... Another
7 suggested to me that **they might have to take the whole building**
8 **apart and put it back together** with a new foundation... And
9 they were both serious.

10 -- Former San Francisco Mayor Willie Brown (emphasis added).⁴

11 4. There is plenty of finger-pointing among those who contributed to and concealed
12 the ongoing movement of the building from Millennium Tower homeowners. The developers,
13 engineers, architects, and builders of the Millennium Tower acknowledge that the skyscraper sank
14 during the course of its construction.⁵ However, they now contend that the land beneath it was
15 further compromised by construction of the new Transbay Terminal transit center.

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24 ³ Associated Press, "San Francisco's leaning Millennium Tower seen sinking from space" (Nov. 28, 2016), available
25 at: <http://www.cbsnews.com/news/san-franciscos-leaning-millennium-tower-seen-sinking-from-space/>

26 ⁴ Willie Brown, "Trump, Clinton are playing to the same crowd," *San Francisco Chronicle* (Aug. 27, 2016), available
27 at: <http://www.sfchronicle.com/bayarea/williesworld/article/Trump-Clinton-are-playing-to-the-same-crowd-9187904.php>

28 ⁵ Jonathan Bloom, "Luxury Skyscraper Millennium Tower Sinking in Downtown San Francisco," KGO-TV (Aug. 1,
2016), available at: <http://abc7news.com/realestate/luxury-skyscraper-millennium-tower-sinking-in-downtown-sf/1452701/>



Source: Mike Chino for *Inhabitat*⁶

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10 5. **PLAINTIFFS** are owners of a condominium unit in the Millennium Tower. They
11 would not have purchased their unit and/or paid substantially less, had material information
12 concerning the building's movement been properly disclosed. As a result of being misled, the value
13 of their unit has precipitously fallen to a level where lenders are no longer willing to finance the
14 sale of units to potential buyers. Furthermore, the destabilization of the building, cracks to the
15 foundation, and public perception of the property as a hazard, due to the actions of the **TJPA**,
16 amount to a taking of their property.

17 **II. JURISDICTION AND VENUE**

18 6. This Court has jurisdiction over this matter pursuant to Section 395 of the Code of
19 Civil Procedure. At all relevant times, **DEFENDANTS**, and each of them, have resided in, been
20 incorporated in, or done significant business in the state of California so as to render the exercise
21 of jurisdiction over **DEFENDANTS**, and each of them, by California Courts consistent with
22 traditional notions of fair play and justice. A substantial part of the events that caused
23 **PLAINTIFFS'** damages occurred in the County of San Francisco and in the State of California.

24 7. Venue is proper in this Court because the real property that is the focus of the
25 litigation – the Millennium Tower at 301 Mission Street – was built and is located in the County of
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28 ⁶ Source: Mike Chino for *Inhabitat*, <http://inhabitat.com/photos-san-francisco-is-building-the-future-of-public-transportation-beneath-a-5-4-acre-rooftop-park/san-francisco-transbay-center-construction-2014-8/>

1 San Francisco. Thus, a substantial part of the events, acts, omissions, and transactions complained
2 of herein occurred in and/or originated from the County of San Francisco.

3 8. The amount in controversy exceeds the jurisdictional minimum of this Court.

4 **III. THE PARTIES**

5 **A. PLAINTIFFS**

6 9. Plaintiffs **DENNIS and ALEXANDRA LENEHAN**, individually and as Trustees
7 of the Lenehan 1990 Revocable Trust, own and live in the condominium located at 301 Mission
8 Street, Unit 49C, San Francisco, California 94105, which they purchased on or about March 24,
9 2014.

10 **B. DEFENDANTS**

11 **1. Millennium Defendants**

12 10. **MILLENNIUM PARTNERS I, INC.** is a New York corporation, d/b/a New York
13 SF Millennium Partners I, Inc., with its principal place of business at 1995 Broadway, 3rd Floor,
14 New York, New York 10023.

15 11. **MILLENNIUM PARTNERS MANAGEMENT, LLC** is a New York limited
16 liability company with its principal place of business at 1995 Broadway, 3rd Floor, New York,
17 New York 10023. **MILLENNIUM PARTNERS MANAGEMENT, LLC** is a real estate
18 developer of luxury residential, urban, and mixed use properties, including the Millennium Tower
19 located at 301 Mission Street, San Francisco, California.

20 12. **MISSION STREET DEVELOPMENT LLC** is a Delaware limited liability
21 company with its principal place of business at 1995 Broadway, 3rd Floor, New York, New York
22 10023. **MISSION STREET DEVELOPMENT LLC** is the developer of the luxury residential
23 high rise condominium building located at 301 Mission Street, San Francisco, California 94105.

24 13. **MISSION STREET HOLDINGS LLC** is a limited liability company organized
25 under the laws of Delaware with its principal place of business at 1995 Broadway, 3rd Floor, New
26 York, New York 10023. **MISSION STREET HOLDINGS LLC** is the sole member of Defendant
27 **MISSION STREET DEVELOPMENT LLC**.

1 14. Defendants **MILLENNIUM PARTNERS I, INC., MILLENNIUM PARTNERS**
2 **MANAGEMENT, LLC, MISSION STREET DEVELOPMENT LLC, and MISSION**
3 **STREET HOLDINGS LLC** are collectively referred to herein as the "**MILLENNIUM**
4 **DEFENDANTS.**" The **MILLENNIUM DEFENDANTS** were the developers for the property at
5 301 Mission Street, San Francisco, California 94105, which is known as the Millennium Tower.

6 15. Each of the **MILLENNIUM DEFENDANTS** is the alter ego of each of the other
7 **MILLENNIUM DEFENDANTS.** At all times herein mentioned, there existed a unity of interest
8 and ownership among the **MILLENNIUM DEFENDANTS** such that any individuality and
9 separateness among them have ceased.

10 16. Defendants **MILLENNIUM PARTNERS I, INC., MILLENNIUM PARTNERS**
11 **MANAGEMENT, LLC, and MISSION STREET DEVELOPMENT LLC** are defendants in
12 the cross-complaint filed by Transbay Joint Powers Authority in San Francisco Superior Court
13 Case No. CGC-16-553758. The allegations in that action arise from the same transactions or series
14 of transactions alleged herein and involve common issues of law and fact.

15 **2. Transbay Joint Powers Authority**

16 17. **TRANSBAY JOINT POWERS AUTHORITY ("TJPA")** is a public entity with
17 its principal office located at 201 Mission Street, Suite 2100, San Francisco, California 94105. The
18 **TJPA** was created by a Joint Powers Agreement dated as of April 2, 2001 among the City and
19 County of San Francisco, the Alameda-Contra Costa Transit District, and the Peninsula Corridor
20 Joint Powers Board.

21 18. **TJPA** has received claims pursuant to Section 910 of the Government Code from
22 several parties with interests in this matter. In the Joint Status Conference Statement filed in
23 *Lehman, et al. v. Transbay Joint Powers Authority, et al.*, San Francisco Superior Court Case No.
24 CGC-16-553758, and related cross-actions, filed January 9, 2017, **TJPA** stated that:

25 The TJPA and the City have received Government Code claims
26 from a number of other parties who have asserted claims arising
27 from the excessive settlement and tilt of the Millennium Tower
28 that will likely result in additional related lawsuits being filed in
the near future. A list of Government Code claims received by the
TJPA or the City to date (from persons other than Plaintiffs) is

1 attached as Exhibit 1. **The TJPA and the City believe that all**
2 **related cases should be assigned to this Court to coordinate**
3 **and manage discovery and, if necessary, that consolidated**
4 **trials should be held on common issues of law and fact.**

5 Joint Status Conference Statement, at p. 42 (emphasis added). The Joint Status Conference
6 statement indicates that Government Code claims were made by: multiple condominium
7 owners/plaintiffs in the *Lehman* action; the Millennium Tower Association on August 23, 2016;
8 Mission Street Development LLC, Millennium Partners I, Inc. on September 26, 2016;
9 condominium owners David Bowen and Barbara Simons on October 13, 2016; condominium
10 owners Joseph Clifford Montana Jr. and Jennifer S. Montana, individually and as Trustees of the
11 Montana 1990 Family Trust on October 27, 2016; and condominium owners Gerald and Patricia
12 Dodson, Pamela Buttery, Viniti Narain Mahbubani, Paula B. Pretlow, Helena Geng, Joanne Fox,
13 Jeffrey A. and Jeanette C. Saal, Elaine MacDonald, Eva Lum Camp, Nina Abagian, Giovanni and
14 Vanessa Colella, Frank J. Jernigan, Joel D. & Rita Choit Alder, Stirling Spencer, Gary Demasi,
15 Tyrone & Theresa Strickland, Catherine Farrell, Andrea Reid, Herbert & Edda Finkelman, Seung
16 P. Kim, Joyce Ratner, Jerold B. & Phyllis A. Rosenberg between the dates of November 15, 2016
17 and December 16, 2016.

18 19. **PLAINTIFFS** herein served their claim on Defendant **TJPA** pursuant to Section
19 910 of the Government Code on February 10, 2017. **PLAINTIFFS** are informed and believe, and
20 thereon allege, that the prior claims discussed in paragraph 18 above gave Defendant **TJPA** fair
21 and adequate notice of the claims asserted herein. As noted above, **TJPA** stated in the Joint Status
22 Conference Statement filed in the *Lehman* action that it "believe[s] that all related cases should be
23 assigned to this Court to coordinate and manage discovery and, if necessary that coordinated trials
24 should be held on common issues of law and fact" indicating that **TJPA** has rejected and/or
25 refused to resolve the claims of the condominium owners who made Government Code claims
26 previously. Furthermore, Defendant **TJPA** has publicly denied responsibility for the conduct
27 complained of by **PLAINTIFFS** herein through statements made to the media and in press
28 releases, including the following:

- 1 • **TJPA** press release dated October 4, 2016, titled "Claims Regarding the Impact of
2 Dewatering and Other Underground Work at Transbay Transit Center Construction Site
3 Are Not Accurate;"
- 4 • **TJPA** press release dated September 20, 2016, titled "Evidence does not support
5 Millennium Partners' claim that the TJPA's dewatering is the cause of the excessive
6 vertical settlement and tilting of the Millennium Tower;"
- 7 • **TJPA** press release dated September 13, 2016, titled "Transbay Joint Powers Authority
8 Denies Withholding Reports of Tilting and Excessive Settlement of the Millennium
9 Tower;" and
- 10 • **TJPA** press release dated August 1, 2016, titled "Transbay Joint Powers Authority Denies
11 Responsibility for Tilting and Excessive Settlement of the Millennium Tower."

12 20. Accordingly, the claims served on Defendant **TJPA** pursuant to Section 910 of the
13 Government Code by the **PLAINTIFFS** herein are subject to the same treatment -- rejection.

14 **C. OTHER DEFENDANTS**

15 21. The true names and capacities, whether individual, corporate, associate or otherwise
16 of the Defendants **DOES 1 through DOES 100**, inclusive, are unknown to **PLAINTIFFS** who
17 therefore sue said Defendants by such fictitious names pursuant to Code of Civil Procedure § 474;
18 **PLAINTIFFS** further allege that each of said fictitious Defendants is in some manner responsible
19 for the acts and occurrences hereinafter set forth. **PLAINTIFFS** will amend this Complaint to
20 show their true names and capacities when the same are ascertained, as well as the manner in
21 which each fictitious Defendant is responsible.

22 **D. AGENCY AND CONCERT OF ACTION**

23 22. At all times herein mentioned, **DEFENDANTS** and each of them, were the agents,
24 servants, employees, partners, aiders and abettors, co-conspirators, and/or joint venturers of each
25 of the other **DEFENDANTS** named herein and were at all times operating and acting within the
26 purpose and scope of said agency, service, employment, partnership, enterprise, conspiracy, and/or
27 joint venture, and each **DEFENDANT** has ratified and approved the acts of each of the remaining
28 **DEFENDANTS**. Each of the **DEFENDANTS** aided and abetted, encouraged, and rendered

1 substantial assistance to the other **DEFENDANTS** in breaching their obligations to **PLAINTIFF**,
2 as alleged herein. In taking action to aid and abet and substantially assist the commission of these
3 wrongful acts and other wrongdoings complained of, as alleged herein, each of the
4 **DEFENDANTS** acted with an awareness of its primary wrongdoing and realized that its conduct
5 would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and
6 wrongdoing.

7 **IV. FACTUAL BASIS FOR CLAIMS**

8 **A. THE CONDOS WERE SOLD AS NEWLY BUILT HOMES FOR PLAINTIFFS TO ENJOY**

9 23. Construction of the Millennium Tower was completed in early 2009, with the
10 building's grand opening on April 23, 2009. The 645 foot skyscraper was, at the time of its
11 completion, the tallest and most expensive residential building west of the Mississippi⁷ and among
12 San Francisco's tallest high rise buildings.



21 Photo: Michael Noble Jr., The Chronicle

22 24. The **MILLENNIUM DEFENDANTS** are well known for building luxurious
23 residences in urban settings. In 2001, the **MILLENNIUM DEFENDANTS** completed the Four
24 Seasons Hotel and Residences at 757 Market Street in San Francisco. This set high expectations
25 for the equally grand Millennium Tower, located just five blocks away.

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28 ⁷ J.K. Dineen, "Millennium Tower soars to new heights," San Francisco Business Times (Mar. 28, 2010), available at:
<http://www.bizjournals.com/sanfrancisco/stories/2010/03/29/focus3.html>

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25. Construction of the Millennium Tower was completed in early 2009. All 419 condominium units were sold by 2013. Even today, the **MILLENNIUM DEFENDANTS** boast that the Millennium Tower was "[i]nspired by the very essence of San Francisco, in form and in function, this is an address like no other" with condominiums that are "canvases where owners create their own unique San Francisco lifestyle. Streetwise and close to the city's energy. Comfortably situated in a welcoming, open aerie... Here, urban luxury living is elevated to an art form."⁸ The "luxury living" includes a 20,000 square foot "Club Level," which includes a wine cellar, a tasting room, an outdoor terrace, a state-of-the-art fitness center, and a movie screening room.

B. THE MILLENNIUM TOWER WAS BUILT ON MUD AND SAND, NOT THE BEDROCK DEEPER BELOW

26. The location of the Millennium Tower has not always been the dense urban area as we know it today. In fact, the area was part of the San Francisco shoreline in the 1840s.⁹ The land

⁸ Website for the Millennium Tower, located at: <http://millenniumtowersf.com/>

⁹ Transbay Transit Center Excavation Facts, available at: <http://transbaycenter.org/uploads/2014/02/Transbay-Transit-Center-Excavation-Fact-Sheet-2.10.14.pdf>

1 was filled using various materials to push the shoreline out approximately six blocks, to where it
2 now exists along the Embarcadero.¹⁰

3 27. Even below the levels of landfill, the ground contains different layers of soil, sand,
4 and mud before solid bedrock is reached.

5

6 **Soil Layers at the Millennium Tower Site¹¹**

Type of Material	Depth	Age of Material
Fill, including debris from the 1906 earthquake	Street level down to 10 feet deep	1906 to present
Dune Sand	10 to 20 feet deep	1849-1906
Bay Mud	> 20 feet deep	6,000 B.C. to 1849
Marine Sand	> 30 feet deep	12,000 B.C. to 6,000 B.C.
Colma Sand	> 40 feet deep	100,000 B.C. (Ice Age) to 12,000 B.C.
Old Bay Clay	> 95 feet deep	130,000 (before the last Ice Age) to 100,000 B.C.
Bedrock	≈ 200 feet deep and deeper	

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19 28. The characteristics of the soil are important considerations when designing a
20 building. The soil must be able to withstand the weight of the completed building. To that end, the
21 type and design of a building's foundation is critical.

22 29. The foundation for the Millennium Tower is a 10-foot thick slab of reinforced
23 concrete laid on top of 900 "friction piles." Friction piles distribute and transfer some of the
24 pressure to the soil surrounding the surface of the pile.¹²

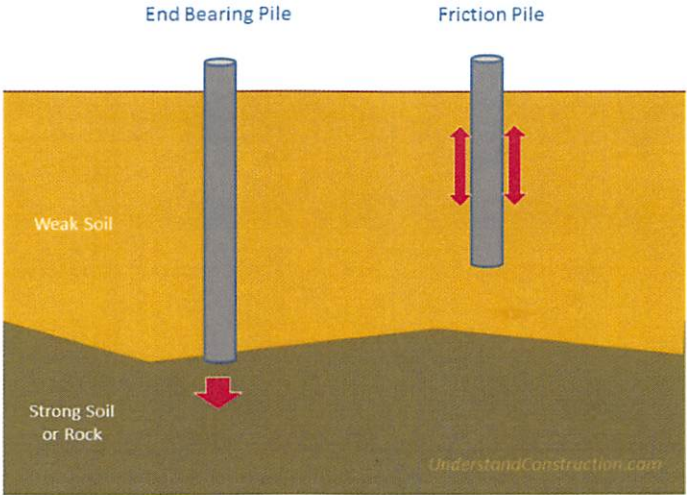
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27 ¹⁰ Transbay Transit Center Excavation Facts, available at: <http://transbaycenter.org/uploads/2014/02/Transbay-Transit-Center-Excavation-Fact-Sheet-2.10.14.pdf>

28 ¹¹ Adapted from Transbay Transit Center Excavation Facts, available at:
<http://transbaycenter.org/uploads/2014/02/Transbay-Transit-Center-Excavation-Fact-Sheet-2.10.14.pdf>

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Source: <http://www.understandconstruction.com/pile-foundations.html>

30. The friction piles beneath the Millennium Tower were driven down 60 to 90 feet into compacted sand and soil beneath the building, *i.e.*, they went through the dune sand, bay mud, marine mud, and Colma sand. However, the friction piles did not extend sufficiently far to reach the sturdier old bay clay or bedrock.

31. By comparison, the foundations for buildings neighboring the Millennium Tower use end-bearing piles, which go significantly deeper into the ground and rest on the bedrock below. Piles for the 70-story, 802-foot-tall skyscraper at 181 Fremont Street, San Francisco, extend downward more than 260 feet and are drilled into bedrock.¹³ Similarly, the foundation for the 61-story, 1,070 foot tall Salesforce Tower, located adjacent to the Transbay Terminal, has piles that descend downward 265 feet into bedrock.¹⁴

C. THE MILLENNIUM DEFENDANTS KNEW OF THE EXCESSIVE SINKING AND LEANING LONG BEFORE THE CONDOS WERE SOLD TO RESIDENTS

32. Before construction began in 2005, the **MILLENNIUM DEFENDANTS** communicated with DeSimone Consulting Engineers (the structural engineering firm), Treadway

¹² Soil Mechanics, *Encyclopedia Britannica*, available at <https://www.britannica.com/science/soil-mechanics#ref77725>

¹³ Scott Lucas, "181 Fremont goes beyond code, a selling point in wake of Millennium Tower mess," *San Francisco Business Times* (Oct. 26, 2016), available at: <http://www.bizjournals.com/sanfrancisco/blog/real-estate/2016/10/creq-181-fremont-millennium-towers-structural-code.html>

¹⁴ <https://www.clarkconstruction.com/our-work/projects/salesforce-tower>

1 & Rollo (the geotechnical engineer), and Webcor Builders (the general contractor) about matters
2 essential to the proper design of the Millennium Tower.

3 33. Building the Millennium Tower required temporary "dewatering." Dewatering is
4 the process of pumping and removing groundwater from the area in which construction is to occur.
5 Dewatering was necessary to facilitate excavation of the site for the underground parking garage
6 and to lay the foundation for the Millennium Tower. Evaluating and monitoring the effects of
7 dewatering are a critical part of the construction process because it compresses the underground
8 sand and soil. Therefore, the effects of dewatering are highly relevant to analyzing the amount by
9 which a building's foundation will sink and whether any sinking would be uniform or uneven.

10 34. Treadway & Rollo prepared a geotechnical report in January 2005 in which it
11 described the depths and types of soil at the Millennium Tower site. The report recommended
12 driving the friction piles into the Colma sand, *i.e.*, the layer of earth immediately above the old bay
13 clay. Treadwell & Rollo's January 2005 report indicated that the temporary dewatering, along with
14 the weight of the building, would result in the Millennium Tower settling by a small, measurable
15 amount.

16 35. In a memorandum dated February 14, 2005, Treadwell & Rollo provided settlement
17 estimates at five milestones during construction and before the condominiums would be sold to
18 residents, as well as projections for 3, 5, 10, and 20 years after completion (the "Treadwell
19 Memo").

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MEMORANDUM

TO: Steve Patterson – Millennium Partners
FROM: Christopher A. Ridley
 Ramin Golezorkhi
CC: Derrick Roorda – DeSimone Consulting Engineers
 Chuck Trepinski – Webcor Builders
DATE: 14 February 2005
PROJECT: 3157.02
SUBJECT: Rate of Settlement at Boundary Between Tower and Podium Structures
 301 Mission Street
 San Francisco, California
 Number of Pages: 2

36. The Treadwell Memo states, in relevant part:

We understand these estimates are required for design decisions with regard to whether hinge slabs or cantilevered slabs should be used to transition between the two structures at ground level. We provided our estimates of settlements due to the consolidation of Old Bay Clay under the Tower load in our report dated 15 January 2005. It should be noted that rate of consolidation settlement is difficult to predict because it depends on a number of factors some of which may be unknown. Because of this, our rate of settlement estimates should be viewed as having a ± 50 percent uncertainty associated with them. **If this level of uncertainty is not acceptable, then other designs should be considered.** (Emphasis added.)

37. The Treadwell Memo does not address the likelihood or possible effects of "differential" (*i.e.*, uneven) settlement of the building. It only provides estimates for the extremely small incremental increases in vertical settlement that should be expected:

Construction Milestone	Estimated Date of Milestone	Settlement
Mat concrete pour	March 15, 2006 *	≈ 0 to 0.4 inches
Tower structure at 33 floors, Podium at ground floor	January 26, 2007 *	≈ 0.4 to 1.2 inches
Tower structure topped out	August 31, 2007 *	≈ 1.1 to 1.9 inches
Podium structure topped out	October 4, 2007 *	≈ 1.2 to 2.0 inches
Project completed	August 1, 2008	≈ 1.8 to 2.6 inches
3 years after completion	August 1, 2011	≈ 2.5 to 3.5 inches
5 years after completion	August 1, 2013	≈ 3 to 4 inches
10 years after completion	August 1, 2018	≈ 3.75 to 4.75 inches
20 years after completion	August 1, 2028	≈ 4.5 to 5.5 inches

* Dates occurring before condominiums were sold to residents beginning in April 2009.

1 38. The Treadwell Memo identifies several assumptions underlying the estimated
2 amounts of settlement:

3 The magnitude of consolidation settlement at different time [sic]
4 during construction will depend on a number of different highly
5 variable factors. They include: **1) consolidation characteristics of
6 the clay layer, 2) drainage boundaries for the clay layer, 3) rate
7 of construction, and 4) dewatering.** We used results of our
8 laboratory tests to estimate the consolidation characteristics of the
9 Old Bay Clay. We assumed drainage boundaries at the tops and
bottom of Old Bay Clay (double drainage) which is conventional.
We used the construction schedule of WEBCOR Builders as the
basis to establish the time lapsed prior to different milestones
occurring. (Emphasis added.)

10 39. Thus, the **MILLENNIUM DEFENDANTS** knew that the actual amount of
11 settlement may differ if any of the underlying assumptions changed during the construction
12 process.

13 40. The dewatering process beneath the Millennium Tower continued until February
14 2008, *i.e.*, approximately one year before construction of the building was completed.

15 41. The Treadwell Memo stated that, by August 1, 2008, the estimated amount by
16 which the Millennium Tower was anticipated to settle was approximately 1.8 to 2.6 inches. In
17 reality, the Millennium Tower had already sunk more than 7 inches as of that date – more than
18 double or triple the amount previously estimated. Furthermore, the building continued to sink at an
19 alarming rate. The Millennium Tower had sunk more than 8 inches by the beginning of 2009.

20 42. The Millennium Tower building had vertical settlement of 8.3 inches by February
21 2009. In a letter dated February 2, 2009, the San Francisco Department of Building Inspection
22 ("SF DBI") demanded that DeSimone Consulting Engineers provide additional information about
23 the extent of the problems.

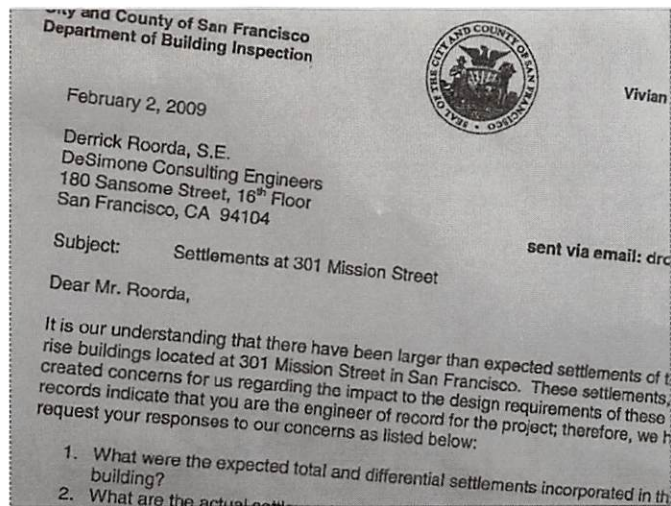
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Source: KGO-TV¹⁵

43. In a letter dated February 18, 2009, Handel Architects (the Millennium Tower architect) sent a letter to DeSimone Consulting Engineers discussing modifications needed due to the excessive and differential (*i.e.*, uneven) sinking of the building. The differential sinking posed new problems because the leaning creates additional stress to the structure. The types of modifications recommended by Handel Architects demonstrate the magnitude and dramatic effect, such as raising the floor level at certain entrances and exists to the building so water will drain in the proper direction. Handel Architects also recommended re-routing certain utilities and using flexible connections for utility lines in certain locations.

44. In early 2009, construction of the Millennium Tower was completed, with the condominiums ready for residents beginning in April 2009.

D. DEFENDANTS CONTINUED TO MONITOR, AND BECOME INCREASINGLY AWARE, OF THE BUILDING'S MOVEMENT DURING CONSTRUCTION OF THE NEW TRANSBAY TERMINAL

45. As construction of the Millennium Tower was nearing completion, work on several neighboring projects was beginning. Such projects included the new Transbay Terminal, which runs along the southern side of the Millennium Tower. The new Transbay Terminal involved deep

¹⁵ Source: KGO-TV, <http://abc7news.com/realestate/developer-knew-about-millennium-tower-sinking/1510465/>

1 excavation because, among other things, it would include an underground train tunnel. Given the
2 proximity of the projects, this required extensive communications and coordination between the
3 **MILLENNIUM DEFENDANTS** and **TJPA**.



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11 Source: <http://www.businessinsider.com/san-francisco-sues-millennium-tower-developers-2016-11>

12 46. On October 10, 2008, the **MILLENNIUM DEFENDANTS** and **TJPA** entered into
13 an easement agreement. The **MILLENNIUM DEFENDANTS** granted **TJPA** a temporary
14 easement "for the sole purpose of monitoring the structural condition of the [Millennium]
15 Development, and any effects on the Development of TJPA's construction" of the new Transbay
16 Terminal. See **Exhibit A**, Easement Agreement between the Transbay Joint Powers Authority and
17 Mission Street Development LLC, entered into October 10, 2008 ("Easement Agreement"), at p. 2.
18 The Easement Agreement stated that Defendant **TJPA** would design and submit a monitoring plan
19 for the **MILLENNIUM DEFENDANTS'** review, stating in pertinent part:

20 2. Initial Survey, Monitoring Plan.

21 (a) Monitoring Plan. Within a reasonable time following the
22 execution of this Agreement, TJPA shall design and submit to
23 MSD for its review and comment a detailed Monitoring Plan to
24 evaluate the structural condition of the Development at the
25 Construction Easement Commencement Date, and to monitor any
changes in such structural condition that occur during the course of
the TJPA's Construction Activities . . .

26 (b) Initial Survey. The Monitoring Plan shall include
27 provisions for a structural survey of the Development, including
28 photographs (the "Initial Survey"). The Initial Survey will be the
baseline for monitoring any changes to the structural condition of

1 the Development that occur during construction of the Transit
2 Center and prior to the Construction Easement Expiration Date. . . .

3 (c) Inspections. The Monitoring Plan shall also specify the
4 proposed monitoring equipment to be installed by TJPA and the
number and location of proposed reading points. . . .

* * *

5 (d) General. All surveys, installations, inspections and readings
6 conducted in connection with the Monitoring Plan shall be
7 performed by one or more California licensed civil engineers or
land surveyors.

8 Easement Agreement at p. 5

9 47. In addition, Defendant **TJPA** retained the geotechnical engineering firm Arup to
10 monitor the amount of settlement at the Millennium Tower as **TJPA's** Transbay Terminal project
11 was underway. Arup began its monitoring in April 2009, by which time the Millennium Tower's
12 vertical sinking was at or near 9 inches.

13 48. Construction of the new Transbay Terminal began in August 2010, at which time
14 existing transit lines were re-routed and surface-level demolition activity took place. In Spring
15 2011, pre-trenching and other preparation was done for the work to occur below street level. In
16 Summer 2011, construction of the Transbay Terminal's foundation and a shoring wall began.
17 Excavation for the underground portion of the Transbay Terminal started in early 2013.

18 49. The Transbay Terminal transit center required excavating approximately 57 feet
19 downward. Given the close proximity of the Transbay Terminal and completed Millennium Tower
20 building, **TJPA** added a shoring wall and buttress piles into the ground south of and adjacent to the
21 Millennium Tower. The concrete buttress piles extended down into the bedrock, approximately
22 240 feet below the ground.

23 50. The geotechnical engineering firm retained by Defendant **TJPA** estimated that
24 dewatering and excavation for the new Transbay Terminal would increase sinking at the
25 Millennium Tower by 3 inches in addition to the movement that had already occurred. The fact
26 that construction of the Transbay Terminal would -- by design -- add to the excessive sinking
27 already plaguing the Millennium Tower was not disclosed to **PLAINTIFFS**.

1 **E. THE DISCLOSURES TO BUYERS FAIL TO IDENTIFY EXISTING, AND WORSENING, SINKING**
2 **AND LEANING**

3 51. The **MILLENNIUM DEFENDANTS** provided prospective condominium
4 purchasers with a "Property Disclosure and Information Statement," an example of which is
5 attached as **Exhibit B**.

6 52. The Disclosure Statement informs prospective residents of a variety of matters
7 affecting the use, enjoyment, and value of the condominiums. For example, the Disclosure
8 Statement provides detailed information about the parking garage (pp. 9-11), utilities (pp. 11-14),
9 and even the possibility that wood cabinets and doors may discolor with age (p. 17, noting that
10 "Color change may be the result of exposure to sunlight or weather, or simply the consequence of
11 aging.").

12 53. In the section addressing "Neighborhood Conditions," the Disclosure Statement
13 characterizes the new Transbay Terminal as providing many benefits to Millennium Tower
14 residents. Benefits of the "state of the art, environmentally friendly Transit Hub" would include a
15 5.4 acre park, world class shopping and dining, and access to several transit systems.

16 54. The Disclosure Statement also addresses the construction phase of the Transbay
17 Terminal project, explaining that:

18 Seller has entered into an underground easement agreement with
19 the Transbay Joint Powers Authority (TJPA) to provide both a
20 permanent and temporary easement on the Property. This
21 permanent agreement encroaches 5 feet onto the Property at the
22 South Eastern property line. This easement is underground and is
23 designed to allow for a shoring wall to be installed for the TJPA's
24 proposed new terminal. In addition, Seller has granted a temporary
25 easement across a portion of the Property located at the South
26 Western property line of the Property which will allow the TJPA
27 the right to demolish and re-build the existing temporary wall five
28 feet closer to the Porte Cochere. This temporary easement may
affect the operation of the Porte Cochere as the driveway may be
congested with construction activity while the new construction
wall is being built. Upon completion of the new Transbay
Terminal, the TJPA is obligated to demolish the existing
construction wall and re-build a permanent wall in the original
location at TJPA's sole expense. (Disclosure Statement, p. 4.)

1 55. As for negative long term effects of the Transbay Terminal, the Disclosure
2 Statement only identifies the potential for "noise and vibrations." (Disclosure Statement, p. 4.)

3 56. The Disclosure Statement makes no mention of the Transbay Terminal project
4 potentially causing, contributing to, or exacerbating, the Millennium Tower's sinking and tilting.
5 To the contrary, it suggests that proactive steps would be taken to protect the Millennium Tower:

6 ...**Seller has granted TJPA with the right to install vibration**
7 **monitoring equipment on the B1 level of the Project to monitor**
8 **any impact the Terminal construction may have on the Project.**
9 Seller has agreed to allow the TJPA representatives access to the
 B1 level to review monitoring data that is recorded... (Disclosure
 Statement at 4, emphasis added.)

10 57. As a result of their ongoing monitoring of the Millennium Tower and the conditions
11 in the surrounding areas, the Defendants, and each of them, had unique advance knowledge of the
12 sinking and tilting. This information was concealed from condominium buyers, including

13 **PLAINTIFFS.**

14 **F. THE MILLENNIUM TOWER AND ITS RESIDENTS HAVE BEEN HARMED AND CONTINUE TO**
15 **FACE AN UNCERTAIN FUTURE**

16 58. Regrettably, the sinking and tilting to date are only the beginning of the nightmare.
17 It is unknown how much more the building will continue to move over time. The more unevenly
18 the building sinks, the angle at which the building leans increases.

19 59. On August 1, 2016, after the sinking and leaning became publicly known, the San
20 Francisco Association of Realtors issued an advisory notice stating that:

21 **Buyers are urged to carefully review all such information and**
22 **conduct their own investigation before the purchase of any unit**
23 **in the Millennium Tower, preferably during Buyers' inspection**
 contingency, if any. (Emphasis added.)

24 A copy of the advisory notice from the SF Association of Realtors is attached as **Exhibit C**.

25 60. Following inspections conducted in December 2016 and January 2017, inspectors
26 for the City and County of San Francisco reportedly observed "visual evidence of the effect of

1 settlement on some electrical wiring support systems."¹⁶ Inspectors also found "evidence of water
2 intrusion" that was "affecting installed electrical wiring and electrical components" in at least one
3 location in the basement.¹⁷ The inspectors reportedly concluded that the problems they identified
4 required "an engineering solution to the building settlement issues."¹⁸

5 61. Given the unprecedented nature of the problem, structural experts have yet to
6 develop a solution. The uncertainty over how the building will be stabilized is a source of anxiety
7 and concern for **PLAINTIFFS** regarding the future habitability of the building, since the
8 misalignment presents an increasingly real threat to the elevators, sewer connections, and other
9 building systems.

10 **V. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**
12 **FRAUD**

13 **(Against the MILLENNIUM DEFENDANTS and DOES 1-50, inclusive)**

14 62. **PLAINTIFFS** incorporate and re-allege each of the allegations set forth in
15 paragraphs 1-61 above as though fully set forth herein.

16 63. The **MILLENNIUM DEFENDANTS** represented to **PLAINTIFFS** that the
17 Millennium Tower was a highly desirable condominium building that was structurally sound
18 where they could enjoy their homes and the amenities of the building. The disclosures made to
19 **PLAINTIFFS** when they purchased their condominium unit did not indicate the building had
20 already experienced significantly greater than anticipated sinking and tilting. In addition, the
21 disclosures made to **PLAINTIFFS** when they purchased their condominium unit did not indicate
22 that construction of the new Transbay Terminal project would cause, contribute to, or exacerbate,
23 the Millennium Tower's sinking and tilting.

25 ¹⁶ J.K. Dineen, "Sinking Millennium Tower safe to live in, city report concludes," *San Francisco Chronicle* (Jan. 27,
26 2017), available at: <http://www.sfgate.com/bayarea/article/Sinking-Millennium-Tower-safe-to-live-in-city-10890276.php>

27 ¹⁷ *Id.*

28 ¹⁸ *Id.*

1 64. The **MILLENNIUM DEFENDANTS'** representations regarding the desirability
2 and structural soundness were untrue. The massive building is sinking and tilting. The amount of
3 sinking and tilting continues without any proposal to remedy the problem or to prevent further
4 deterioration of the stability of the building. As a result of their ongoing monitoring of the
5 Millennium Tower and the conditions in the surrounding areas, the **MILLENNIUM**
6 **DEFENDANTS** knew or should have known the building was excessively sinking and
7 experiencing differential settlement, which continued to worsen.

8 65. The **MILLENNIUM DEFENDANTS** knew that their representations were false
9 when making them, or made the representations recklessly and without regard for their truth, in
10 light of the differential settlement and excessive sinking the building was already experiencing as
11 set forth in detail above. As a result of their ongoing monitoring of the Millennium Tower and the
12 conditions in the surrounding areas, the **MILLENNIUM DEFENDANTS** had unique advance
13 knowledge of the sinking and tilting and that the degree of the differential settlement exceeded
14 design parameters, and continued to worsen.

15 66. This information was concealed from buyers, including **PLAINTIFFS**. Material
16 information regarding the sinking and tilting of the building was not disclosed in the disclosure
17 documents or other materials provided to **PLAINTIFFS** at the time they purchased their
18 condominium. The sinking and tilting of the building is not within design standards, as
19 demonstrated by the **MILLENNIUM DEFENDANTS'** revisions to the building plans throughout
20 the construction process and the **MILLENNIUM DEFENDANTS'** failure to make this
21 information known to **PLAINTIFFS** even after it was clear that there was a problem without a
22 solution. Therefore, the **MILLENNIUM DEFENDANTS** swept the matter under the rug and
23 concealed the information from **PLAINTIFFS** at the time of purchase.

24 67. The **MILLENNIUM DEFENDANTS** intended that **PLAINTIFFS** rely on the
25 representations, knowing that **PLAINTIFFS** did not have access to material facts concerning the
26 building's sinking and differential settlement. Had the truth been known, condominiums in the
27 Millennium Tower never would have commanded the premium prices paid by **PLAINTIFFS**.
28

1 68. **PLAINTIFFS** reasonably relied on the **MILLENNIUM DEFENDANTS'**
2 representations. **PLAINTIFFS** would not have purchased their unit and/or paid substantially less,
3 had the building's material problems been properly disclosed. **PLAINTIFFS'** reliance on the
4 **MILLENNIUM DEFENDANTS'** representations was a substantial factor in causing
5 **PLAINTIFFS'** harm. By not disclosing the extent of the building's sinking and leaning problems,
6 the **MILLENNIUM DEFENDANTS** deprived **PLAINTIFFS** of their freedom not to purchase a
7 condominium unit in that building, or to pay a substantially discounted price reflecting the extent
8 of sinking and tilting the building was experiencing, which was known to the **MILLENNIUM**
9 **DEFENDANTS** but not to **PLAINTIFFS** at the time of their purchase.

10 69. As a direct and legal result of the deception hereinabove alleged against the
11 **MILLENNIUM DEFENDANTS**, and each of them, **PLAINTIFFS** paid a premium price for a
12 luxury condominium whose actual fair market value was significantly impaired, or worthless, had
13 the true facts regarding the building's experience with sinking and tilting been revealed at the time
14 of purchase.

15 70. As a further direct and legal result of the wrongful acts of the **MILLENNIUM**
16 **DEFENDANTS**, and each of them, **PLAINTIFFS** have been damaged in the expenditure of funds
17 to improve their property, which would not have been incurred if the true facts were disclosed.
18 Such amounts to be established according to proof at trial.

19 71. As a further direct and legal result of the wrongful acts of the **MILLENNIUM**
20 **DEFENDANTS**, and each of them, **PLAINTIFFS** have suffered consequential economic losses,
21 including but not limited to, increased homeowners' association and maintenance fees, increased
22 insurance premiums, and increased costs of financing. Such amounts to be established according to
23 proof at trial.

24 72. The wrongful acts of the **MILLENNIUM DEFENDANTS** were done with a
25 conscious intent to harm **PLAINTIFFS**, such conduct being despicable and subjecting them to
26 oppression and to cruel and unjust hardship, in knowing disregard of their right to safely occupy
27 their condominium unit. As a result, **PLAINTIFFS** seek punitive damages sufficient to punish and
28 deter the **MILLENNIUM DEFENDANTS** from engaging in the same conduct in the future. Such

1 amount of punitive damages is to be determined according to proof at trial, in a sum that is
2 appropriate given the **MILLENNIUM DEFENDANTS'** financial condition.

3
4 **SECOND CAUSE OF ACTION**
5 **NEGLIGENT MISREPRESENTATION**
6 **(Against the MILLENNIUM DEFENDANTS and DOES 1-50, inclusive)**

7 73. **PLAINTIFFS** incorporate and re-allege each of the allegations set forth in
8 paragraphs 1-61 above as though fully set forth herein.

9 74. The **MILLENNIUM DEFENDANTS** represented to **PLAINTIFFS** that the
10 Millennium Tower was a highly desirable condominium building that was structurally sound and
11 where they could enjoy their homes and the amenities of the building. The disclosures made to
12 **PLAINTIFFS** when they purchased their condominium unit did not indicate the building had
13 already experienced significantly greater than anticipated sinking and tilting. In addition, the
14 disclosures made to **PLAINTIFFS** when they purchased their condominium unit did not indicate
15 that construction of the new Transbay Terminal project would cause, contribute to, or exacerbate,
16 the Millennium Tower's sinking and tilting.

17 75. The **MILLENNIUM DEFENDANTS'** representations regarding the desirability
18 and structural soundness were untrue. The massive building is sinking and tilting. The amount of
19 sinking and tilting continues without any proposal to remedy the problem or to prevent further
20 deterioration of the stability of the building. As a result of their ongoing monitoring of the
21 Millennium Tower and the conditions in the surrounding areas, the **MILLENNIUM**
22 **DEFENDANTS** knew or should have known the building was excessively sinking and
23 experiencing differential settlement, which continued to worsen.

24 76. The **MILLENNIUM DEFENDANTS** had no reasonable grounds for believing the
25 representation was true when making it, in light of the differential settlement and excessive sinking
26 the building was already experiencing, as set forth in detail above.

27 77. The **MILLENNIUM DEFENDANTS** intended that **PLAINTIFFS** rely on their
28 representations, knowing that **PLAINTIFFS** did not have access to material facts concerning the

1 building's sinking and differential settlement. Had the truth been known, condominiums in the
2 Millennium Tower never would have commanded the premium prices paid by **PLAINTIFFS**.

3 78. **PLAINTIFFS** reasonably relied on the **MILLENNIUM DEFENDANTS'**
4 representation. **PLAINTIFFS** would not have purchased their unit and/or paid substantially less,
5 had the building's material problems been properly disclosed. **PLAINTIFFS'** reliance on the
6 **MILLENNIUM DEFENDANTS'** representations was a substantial factor in causing
7 **PLAINTIFFS'** harm. By not disclosing the extent of the building's sinking and leaning problems,
8 the **MILLENNIUM DEFENDANTS** deprived **PLAINTIFFS** of their freedom not to purchase a
9 condominium unit in that building, or to pay a substantially discounted price reflecting the extent
10 of sinking and tilting the building was experiencing, which was known to the **MILLENNIUM**
11 **DEFENDANTS** but not to **PLAINTIFFS** at the time of their purchase.

12 79. As a direct and legal result of the wrongful acts of the **MILLENNIUM**
13 **DEFENDANTS**, and each of them, **PLAINTIFFS** suffered the damages hereinabove set forth in
14 paragraphs 69-71, inclusive.

15
16 **THIRD CAUSE OF ACTION**

17 **NUISANCE**

18 **(Against TJPA and DOES 50-100, inclusive)**

19 80. **PLAINTIFFS** incorporate and re-allege each of the allegations set forth in
20 paragraphs 1-61 above as though fully set forth herein.

21 81. **PLAINTIFFS** owned and occupied a condominium in the Millennium Tower.
22 **PLAINTIFFS** possess the inalienable right to own, enjoy, and use their property without
23 interference by Defendant **TJPA's** conduct.

24 82. Defendant **TJPA**, by reason of its acts heretofore alleged above, created a condition
25 or permitted a condition to exist that was, and continues to be, a substantial and unreasonable
26 obstruction to the free use of **PLAINTIFFS'** property, so as to interfere with their comfortable
27 enjoyment of life or property.
28

1 83. This condition interfered with, and continues to interfere with, **PLAINTIFFS'** free
2 use and enjoyment of their property, in the form of a home that is unstable, unsafe, sinking, and
3 tilting.

4 84. **PLAINTIFFS** did not consent to Defendant **TJPA's** conduct. To the extent
5 **PLAINTIFFS** gave any express or implied permission for the construction of the Transbay
6 Terminal project adjacent to the Millennium Tower, such permission only extended to
7 professionally executed, structurally sound, and safe construction. Defendant **TJPA** exceeded the
8 scope of any such consent by destabilizing the soil beneath the Millennium Tower's foundation
9 and eroding the Millennium Tower's lateral and subjacent support.

10 85. An ordinary person would be reasonably annoyed and/or disturbed by Defendant
11 **TJPA's** conduct in destabilizing the ground beneath **PLAINTIFFS'** home.

12 86. Defendant **TJPA's** conduct was a substantial factor in causing **PLAINTIFFS'**
13 harm.

14 87. The seriousness of the harm caused to **PLAINTIFFS** outweighs the public benefit
15 of Defendant **TJPA's** conduct, as Defendant **TJPA** can and should have constructed the Transbay
16 Terminal project without destabilizing neighboring buildings.

17 88. As a direct and legal result of the wrongful acts and/or omissions of Defendant
18 **TJPA**, **PLAINTIFFS** suffered damages as described above and in an amount according to proof
19 at trial.

20 89. As a further direct and legal result of the **TJPA's** unlawful interference with
21 **PLAINTIFFS'** free use of their property, **PLAINTIFFS** have suffered damages in the form of
22 annoyance and discomfort, including but not limited to physical discomfort, irritation, and
23 inconvenience, caused by the injury to their peaceful enjoyment of their property, in an amount
24 according to proof at trial.

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FOURTH CAUSE OF ACTION
INVERSE CONDEMNATION
(Against TJPA and DOES 50-100, inclusive)

1
2
3 90. **PLAINTIFFS** incorporate and re-allege each of the allegations set forth in
4 paragraphs 1-61 above as though fully set forth herein.

5 91. Defendant **TJPA** is a public entity created by a Joint Powers Agreement dated as of
6 April 2, 2001 among the City and County of San Francisco, the Alameda-Contra Costa Transit
7 District, and the Peninsula Corridor Joint Powers Board.

8 92. Defendant **TJPA** owns and controls the land adjacent to, and southeast of, the
9 Millennium Tower where the new Transbay Terminal is being constructed.

10 93. The new Transbay Terminal is a transportation project intended for the public's use
11 and benefit.

12 94. Defendant **TJPA** substantially participated in the planning, approval, construction,
13 management, and operation of the Transbay Terminal project. Defendant **TJPA** has primary
14 jurisdiction with respect to all matters concerning the financing, design, development,
15 construction, and operation of the Transbay Terminal project.

16 95. Defendant **TJPA's** management and control of the Transbay Terminal project has
17 impacted the structural integrity of the Millennium Tower. The excavation, dewatering, and other
18 construction activities for the Transbay Terminal have caused and/or contributed to the excessive
19 vertical settlement and tilting of the Millennium Tower.

20 96. Defendant **TJPA's** activities have placed a burden on **PLAINTIFFS'** property that
21 is direct, substantial, and peculiar to the property itself.

22 97. As a direct and legal result of Defendant **TJPA's** activities for the Transbay
23 Terminal project, **PLAINTIFFS** have suffered a diminution in property value, in an amount
24 according to proof at trial.

25 98. As further direct and legal result of Defendant **TJPA's** activities, **PLAINTIFFS**
26 have incurred and will continue to incur attorneys' fees, appraisal fees, and/or engineering fees,
27 which are recoverable under Code of Civil Procedure § 1036.
28

1 99. **PLAINTIFFS'** damages are directly and legally caused by the public
2 improvements at the Transbay Terminal as deliberately designed, constructed, and operated by
3 Defendant **TJPA**.

4 100. **PLAINTIFFS** have not received adequate compensation for the damage to and/or
5 destruction of their property, thus constituting a taking for which they are entitled to receive just
6 compensation.

7 **VI. PRAYER FOR RELIEF**

8 WHEREFORE, **PLAINTIFFS** pray judgment against Defendants, and each of them, as
9 hereinafter set forth:

- 10 1. For compensatory, economic, and general damages, in an amount according to
11 proof at trial, under the specific claims hereinbefore alleged;
- 12 2. For attorney's fees under applicable law;
- 13 3. For expert costs under applicable law;
- 14 4. For diminution in property value according to proof;
- 15 5. For damages related to interference with the comfortable enjoyment of life or
16 property, according to proof;
- 17 6. For punitive damages under applicable law;
- 18 7. For costs of suit under applicable law;
- 19 8. For prejudgment interest; and
- 20 9. For such other and further relief as the Court shall deem proper.

21 Dated: February 10, 2017

COTCHETT, PITRE & McCARTHY, LLP

22
23 By:



24 **FRANK M. PITRE**
25 *Attorneys for Plaintiffs*
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VII. JURY DEMAND

PLAINTIFFS demand trial by jury on all issues so triable.

Dated: February 10, 2017

COTCHETT, PITRE & McCARTHY, LLP

By: 

FRANK M. PITRE
Attorneys for Plaintiffs

EXHIBIT A



RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO

Transbay Joint Powers Authority
c/o Andrew W. Schwartz, Esq.
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

San Francisco Assessor-Recorder
Phil Ting, Assessor-Recorder
DOC- 2009-1739852-00
Recst 25-NO CHARGE DOCUMENT
Thursday, MAR 26, 2009 13:56:38
Ttl Pd \$0.00 Rcpt # 0003540416
REEL J856 IMAGE 0523
eJ1/GG/1-32

Recording Fee \$0.00 (Government Code Section 27383)
Document Transfer Tax \$0.00 (Revenue and Taxation Code Section 11922)

(A portion of Block 3719, Lot 19)

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is entered into this 10th day of October, 2008, by and between the Transbay Joint Powers Authority, a joint powers agency created under California Government Code sections 6500 et seq. ("TJPA"), and Mission Street Development LLC, a Delaware limited liability company ("MSD") (each individually a "Party," and collectively, the "Parties"). The Agreement shall become effective when a duly executed and acknowledged original of this Agreement has been recorded in the Official Records of the City and County of San Francisco, California (the "Effective Date").

RECITALS

A. The TJPA owns or will acquire certain real property in the City and County of San Francisco, more specifically described in Exhibit A attached hereto and incorporated herein, on which Caltrans currently operates the existing Transbay Terminal (the "TJPA Property") TJPA has proposed to design, build, develop, operate and maintain a new transit terminal that will include an above-ground bus station and a below-ground rail station (the "Transit Center") to replace the existing Transbay Terminal. The Transit Center is also expected to serve as the San Francisco terminus of the proposed high speed rail service to be designed, constructed and operated by the California High Speed Rail Authority. The City and County of San Francisco, Peninsula Corridor Joint Powers Board, and Federal Transit Administration published a final Environmental Impact Statement/Environmental Impact Report (the "EIS/EIR") describing and analyzing the potential environmental impacts of the Transbay Transit Center Program (the "Program"), which includes, among other things, the new Transit Center, new bus ramps, a new bus storage facility, and an extension of Caltrans commuter rail service from the existing terminus at Fourth and Townsend Streets to the new Transit Center

B. MSD owns certain real property in the City and County of San Francisco, more specifically described in Exhibit B attached hereto and incorporated herein, commonly known as 301 Mission Street (the "MSD Property").

C. MSD has developed and is presently constructing a 58-story mixed use development on the MSD Property, which is expected to contain 420 residential condominium units and 8 commercial units (the "Development"). Construction of TJPA's Program is expected to occur in phases, the first phase of which, including construction of the Transit Center, is not expected to begin until sometime after completion of construction of the Development. Construction of the Transit Center will require excavation of, and construction on and under, portions of the MSD Property, and will necessitate the installation and construction of the Support System (as defined in Section II.A.1), in part beneath the surface of the MSD Property. At the request of TJPA, the Development has been designed, and is being constructed, with certain of the Development's underground structures set back five feet from the southern boundary of the MSD Property to accommodate construction of the Transit Center and the use by TJPA of such setback area in accordance with the terms of the easements contained herein.

D. In connection with its preparations for construction of the Transit Center, TJPA has requested, and MSD has agreed to grant to TJPA, the Monitoring, Construction, and Permanent Easements as defined, respectively, in Sections I.A.1, I.B.1, I.C.1 below, on the terms and subject to the provisions of this Agreement.

E. In connection with its marketing and sale of residential and commercial condominium units within the Development, MSD intends to transfer all of its right, title, and interest in the Common Areas (as hereinafter defined) within the Development to the Owners' Association (as defined in Section VIII.A below).

F. On 17 day of October, 2008, by Resolution No. ~~08-045~~, the TJPA Board of Directors authorized the Executive Director to execute this Agreement.

NOW, THEREFORE, in consideration of the foregoing, TJPA and MSD agree as follows:

AGREEMENT

I. GRANT OF EASEMENTS.

A. Temporary Easement for Monitoring.

1. Grant. MSD hereby grants to TJPA a non-exclusive temporary easement (the "Monitoring Easement") for TJPA, and TJPA's consultants, contractors, subcontractors and agents, and its and their respective employees (collectively, "TJPA's Representatives"), to enter from time to time upon the Development's common areas, as defined in California Civil Code Section 1351(b) ("Common Areas"), other than any exclusive use common areas, as defined in California Civil Code Section 1351(i) ("Exclusive Use Common Areas"), during ordinary business hours and upon reasonable prior notice, and in each instance subject to the rights of tenants and other occupants, for the sole purpose of monitoring the structural condition of the Development, and any effects on the Development of TJPA's construction, in accordance with the Monitoring Plan as defined in Section I.A.2. TJPA's right of entry pursuant to the Monitoring Easement will begin at a time to be hereafter agreed to by MSD and TJPA, but not later than the Construction Easement Commencement Date as defined in Section I.B.2(a), and continuing thereafter until the Construction Easement Expiration Date as defined in Section


I.B.2(a) The Monitoring Easement shall include a right to install, operate, and maintain equipment, as more particularly specified in Section I.A.2.(c), to monitor the structural condition of the Development. TJPA agrees to design and implement the Monitoring Plan in accordance with the provisions of this Agreement.

2. Initial Survey, Monitoring Plan.

(a) Monitoring Plan. Within a reasonable time following the execution of this Agreement, TJPA shall design and submit to MSD for its review and comment a detailed Monitoring Plan to evaluate the structural condition of the Development at the Construction Easement Commencement Date, and to monitor any changes in such structural condition that occur during the course of the TJPA's Construction Activities, as defined in Section I.B.3 (the "Monitoring Plan"). A floor plan indicating a preliminary layout of the recommended monitoring locations and equipment is included in Exhibit E attached hereto. "Changes in structural condition" shall include damage, cracking, settlement, subsidence, or other movement.

(b) Initial Survey. The Monitoring Plan shall include provisions for a structural survey of the Development, including photographs (the "Initial Survey"). The Initial Survey will be the baseline for monitoring any changes to the structural condition of the Development that occur during construction of the Transit Center and prior to the Construction Easement Expiration Date. The Initial Survey shall be conducted after TJPA delivers the Notice to Begin Construction as defined in Section I.B.2(a), but before the Construction Easement Commencement Date. A copy of the report of the Initial Survey shall be delivered to MSD and/or the Owners' Association, as applicable, prior to the Construction Easement Commencement Date.

(c) Inspections The Monitoring Plan shall also specify the proposed monitoring equipment to be installed by TJPA and the number and location of proposed reading points. Monitoring equipment shall be located (i) only within areas that are Common Areas, but not Exclusive Use Common Areas, of the Development, (ii) so as to minimize interference with the day-to-day use, operation, maintenance and similar activities within the Development. The proposed locations of all monitoring equipment sited within the Development will be subject to approval of MSD or the Owners' Association, as the case may be, such approval not to be unreasonably withheld or delayed. Monitoring equipment will be installed and maintained by TJPA at no cost to MSD or the Owners' Association. TJPA acknowledges that there are a limited number of electrical outlets within the parking garage, and agrees that (1) any additional wiring must be installed in conduit, for aesthetic as well as reliability reasons, and (2) TJPA will reimburse MSD or the Owners' Association, as the case may be, for the cost of electrical power used by the monitoring equipment, as reasonably estimated by MSD or the Owners' Association (or as shown by a submeter, if TJPA elects, at its expense, to install a submeter). During the TJPA's construction of the subterranean improvements within the Permanent Easement Area, the Monitoring Plan shall require at least the following inspections and measurements to monitor changes, if any, in the structural condition of the Development: (i) visual inspections of the Temporary Easement Area and the Permanent Easement Area (collectively, the "Easement Areas") and adjacent exterior conditions, including open excavation areas and exposed below-grade improvements performed each weekday except holidays, (ii) such additional visual



inspection within the Development as MSD or the Owners' Association may reasonably request, and (iii) settlement survey readings (horizontal and vertical) to monitor the structural condition of the Development, including, but not limited to, the footing and foundations thereof, performed at least weekly until all foundations and other subterranean improvements within the Permanent Easement Area have been completed. TJPA shall promptly notify MSD if any measurable change in structural condition of the Development is detected. The TJPA shall have no obligation to continue to monitor changes in the structural condition of the Development after the Construction Easement Expiration Date. TJPA shall remove all monitoring equipment installed in connection with the Monitoring Plan promptly following the Construction Easement Expiration Date, at no cost to MSD or the Owners' Association.

(d) General. All surveys, installations, inspections and readings conducted in connection with the Monitoring Plan shall be performed by one or more California licensed civil engineers or land surveyors.

(e) No Liability. TJPA acknowledges and agrees that review by MSD of the Monitoring Plan, or any proposed revision thereto, is solely for the purpose of coordination of the Monitoring Plan, and the proposed locations of monitoring equipment, with other uses and activities within the Development. No such review shall be deemed to create any liability of any kind on the part of MSD, or to waive any rights on the part of MSD hereunder, or to constitute a representation on the part of MSD or any person consulted by MSD in connection with such review that the Monitoring Plan is or will be adequate or appropriate for any purpose, or that the Monitoring Plan satisfies the requirements of this Agreement or complies with applicable Legal Requirements (as defined in Section II.B.1(b)). No estoppel shall be deemed to arise out of any such review. The Parties acknowledge and agree that this Agreement imposes no duty on TJPA or the TJPA's Representatives with respect to the design of the Monitoring Plan, nor shall the TJPA's design of the Monitoring Plan constitute a representation on the part of the TJPA or the TJPA's Representatives that the Monitoring Plan is or will be adequate or appropriate for any purpose, or that the Monitoring Plan satisfies the requirements of this Agreement or complies with applicable Legal Requirements. MSD and the Owners' Association shall have no remedy for money damages for the TJPA's alleged violation of any obligation under Section I.A. of this Agreement. MSD's remedies for breach of any obligation under Section I.A. of this Agreement shall be solely equitable. Nothing contained in this paragraph, however, shall be deemed to modify, discharge or otherwise affect any liability that TJPA may have under applicable law for damages caused (i) by TJPA's construction activities, whether conducted within or outside the Easement Areas, or (ii) by failure on the part of TJPA to provide lateral or subjacent support to the MSD Property or the Development, or any portion thereof, to the extent required by law.

B. Temporary Easement for Construction.

1. Grant. MSD hereby grants to TJPA, solely for the uses specified in Section I.B.3 below, and otherwise on the terms and subject to the provisions of this Agreement, a temporary non-exclusive easement (the "Construction Easement") in, on, and over the portion of the MSD Property more particularly described in Exhibit C attached hereto and incorporated herein (the "Temporary Easement Area").

2. Term.

(a) TJPA may use the Temporary Easement Area only during the period that begins on the Construction Easement Commencement Date, as hereinafter defined, and ends on the Construction Easement Expiration Date, as hereinafter defined. For purposes hereof, the term "Construction Easement Commencement Date" means the date six (6) months after the date TJPA gives written notice to MSD ("Notice to Begin Construction") of its intent to enter the Temporary Easement Area to engage in the Construction Activities, and the term "Construction Easement Expiration Date" means the first to occur of (i) the date thirty (30) days after the date of completion of construction of the TJPA Improvements, as defined in Section I C.1, or (ii) the date five (5) years after the Construction Easement Commencement Date. Notwithstanding the giving of a Notice to Begin Construction, however, TJPA may not actually make use of the Temporary Easement Area until the following conditions have been satisfied:

(i) MSD has received for review and comment, not later than the date of the Notice to Begin Construction the Monitoring Plan; the Air Quality Plan described in Section II.A.2; the Vibration and Noise Monitoring and Response Plan described in Section II.A.2; and the Drawings and Specifications (as defined in Section II A.1(b)), it being understood and agreed by the Parties, however, that such review and comment by MSD is solely for MSD's purposes, and no such comment shall be deemed to create any liability of any kind on the part of MSD, waive any rights on the part of MSD hereunder or give rise to an estoppel with respect to any matter, or constitute a representation on the part of MSD or any person consulted by MSD in connection with such review, that the proposal reviewed is adequate or appropriate for any purpose, satisfies the requirements of this Agreement, or complies with applicable Legal Requirements

(ii) The TJPA Board of Directors has determined that the TJPA has received funding sufficient to construct the Transit Center, including funds to perform its obligations hereunder; and

(iii) The TJPA Board of Directors has determined that the TJPA has received all Approvals, as defined in Section II.B.1(a), to construct the Transit Center.

(b) Termination for Non-use. If TJPA does not provide Notice to Begin Construction and satisfy the conditions listed in Section I.B.2(a) within seven (7) years following the Effective Date of this Agreement, then the Construction Easement shall terminate. The Construction Easement shall not otherwise terminate prior to the Construction Easement Expiration Date, except by the written agreement of MSD and TJPA.

3. Uses. TJPA shall have the right to use, and to authorize TJPA's Representatives to use, the Temporary Easement Area, but only for the following activities relating to the construction of the Transit Center (collectively, "Construction Activities"), all of which Construction Activities shall be performed at TJPA's sole cost and expense:

(a) excavation, including removal of the existing soil mix or shoring wall installed by MSD in connection with the Development, provided that the foregoing shall not

modify TJPA's duty to provide lateral and subjacent support to the Development in accordance with law (and further provided, that MSD does not, by entering into this Agreement or granting TJPA the easements and licenses described herein, authorize TJPA to cause damage of any kind or character to the Development, or waive any right to be indemnified against any damages caused by TJPA's construction and other activities to the Development). TJPA shall stabilize the soils northwesterly of the Temporary Easement Area and beneath the foundations of the Development by installing the Support System in accordance with the requirements described in Section II.A.1 below. If TJPA concludes that stabilizing such soils requires that it access, or install additional stabilizing improvements within, areas northwesterly of the Temporary Easement Area and beneath the existing foundations of the Development, it shall so advise MSD and consult with MSD and its engineers regarding such conclusion, and MSD shall not unreasonably withhold consent to such access by TJPA or to TJPA installing such additional stabilizing improvements as TJPA concludes are reasonably necessary. TJPA shall pay or reimburse MSD for costs and expenses reasonably incurred by MSD in connection with any such review, including, but not limited to, fees of construction consultants and structural and consulting engineers, as set forth in Section II A.3.

(b) installation and maintenance of a shoring wall, soil mix wall, or other improvements comprising the Support System, to protect the foundation and assure the structural integrity of the Development, and provide lateral and subjacent support to the Development during the excavation for, and construction of, the Transit Center structure and improvements.

(c) construction of the TJPA Improvements within the Permanent Easement Area,

(d) demolition of the Temporary Wall Improvements, as defined by, and in accordance with Section II.B.2, and construction of the Permanent Wall Improvements, as defined by and in accordance with Section II.B.6;

(e) use of construction materials and equipment, provided that no storage or staging of construction materials or equipment shall be permitted on the Temporary Easement Area;

(f) installation, maintenance and use of scaffolding, security fencing, safety barriers, and other above-ground temporary improvements; and

(g) other construction activities reasonably incidental to the foregoing, including the right to overswing the airspace within the Temporary Easement Area; provided that TJPA shall maintain at all times a minimum horizontal clearance of twenty-five (25) feet between the boom of any construction crane and any above-grade improvements located on the MSD Property.

(h) "Construction Activities" shall exclude demolition of the existing Transbay Terminal.

4. Quitclaim. Upon the expiration or termination of the Construction Easement, TJPA shall, upon MSD's written request, cause to be executed, acknowledged and

delivered on behalf of TJPA a quitclaim deed, in form reasonably satisfactory to MSD, evidencing such expiration or termination.

C. Permanent Easement for TJPA Improvements

1. Grant MSD hereby grants to TJPA, on the terms and subject to the provisions of this Agreement, a perpetual easement (the "Permanent Easement"), within the portion of the MSD Property more particularly described in Exhibit D attached hereto and incorporated herein (the "Permanent Easement Area"), to excavate for, construct, install, access, replace, remove, maintain and use foundations, including shoring walls, caissons, structural walls and slabs, footings and piles, and other subterranean improvements and facilities related to or forming a part of the Transit Center, including portions of the exterior structural walls of the Transit Center (collectively, the "TJPA Improvements"). TJPA shall make no additional use of the Permanent Easement Area without the written consent of MSD (or the Owners' Association, as the case may be).

2. Quitclaim. Once TJPA has constructed and installed all of the TJPA Improvements within the Permanent Easement Area, TJPA shall, upon MSD's written request, cause to be executed, acknowledged and delivered on behalf of TJPA a quitclaim deed, in form reasonably satisfactory to MSD, terminating the Permanent Easement with respect to any portion or portions of the Permanent Easement Area that are neither occupied by the TJPA Improvements, nor reasonably necessary to provide access to them under the terms hereof.

3. Termination for Non-use. If TJPA does not provide Notice to Begin Construction and satisfy the conditions listed in Section I.B.2(a) within seven (7) years following the Effective Date of this Agreement, then the Permanent Easement shall terminate. The Permanent Easement shall not otherwise terminate, except as provided in Section I.C.2, or by the written agreement of MSD and TJPA.

D. Minor Encroachments

1. Minor Encroachment by TJPA. MSD agrees that if TJPA's construction of the Support System or the exterior walls of the Transit Center is off vertical due to construction error by TJPA, and the Transit Center encroaches incidentally into the subterranean levels of the MSD Property to the northwest of the Permanent Easement Area, up to a maximum of 12 inches ("Minor Encroachment by TJPA"), TJPA shall not be liable in trespass for such encroachment, and MSD shall, and hereby does, grant to TJPA a perpetual non-exclusive easement for, and to the extent of, such Minor Encroachment by TJPA.

2. Minor Encroachment by MSD. TJPA agrees that if MSD's construction of the Development's soil mix wall is off vertical due to construction error by MSD, and as a result the Development encroaches, up to a maximum of 12 inches, into the Permanent Easement Area ("Minor Encroachment by MSD"), MSD shall not be liable in trespass for such encroachment, and TJPA shall, and hereby does, grant to MSD a perpetual non-exclusive easement for, and to the extent of, such Minor Encroachment by MSD over the TJPA Property and/or the Permanent Easement Area, and agrees to a reduction of the Permanent Easement Area for, and to the extent of, such Minor Encroachment by MSD.



II. TJPA COVENANTS.

TJPA covenants and agrees as follows:

A. Design.

I. Support System.

(a) TJPA shall design and construct a system to provide lateral and subjacent support to the Development as required by subparagraph 4 of Section 832 of the California Civil Code (the "Support System"). TJPA acknowledges that portions of the Development, including portions of the Development's parking garage, will be located at and above grade above the Permanent Easement Area. The Support System and the Transit Center shall be designed and constructed to stabilize the soil beneath the Development, prevent the material movement and/or settlement of the Development and provide for the structural support, integrity and safety of the Development during and after TJPA's construction of the Transit Center, notwithstanding TJPA's removal of the pre-existing soil mix wall installed by MSD.

(b) At the completion of each design phase (Schematic Design, Design Development and Construction Documents (90% complete)), the TJPA shall submit a complete set of drawings, specifications and design calculations for the Support System (the "Drawings and Specifications"), to the extent that the amount of detail is appropriate for the phase of design at the time of presentation, to MSD (or the Owners' Association, as applicable) for its review and comment. TJPA shall respond promptly to requests by MSD for additional information and the MSD shall comment promptly on each set of documents so as not to delay ongoing design. The "Construction Document (100% complete)" set of Drawings and Specifications will be provided to MSD (or the Owners' Association, as applicable) concurrent with giving Notice to Begin Construction, for its final review and comment. TJPA shall respond promptly to requests by MSD for additional information. Any comments by MSD on the adequacy of the Support System shall be in writing and shall include a description, with reasonable specificity, of the reasons for any concerns and may propose modifications that will satisfy MSD's objections. TJPA shall consider any comments from MSD in good faith, but MSD shall not have any right of approval with respect to the design of the Support System. The review by MSD of the Drawings and Specifications or any revisions thereto shall not constitute a representation or warranty by MSD that the Drawings and Specifications or any such revisions (i) are sufficient to satisfy TJPA's obligations under this Agreement, or (ii) comply with applicable governmental laws, regulations, rules and standards, nor shall MSD's review thereof diminish or otherwise affect TJPA's obligations under this Agreement. MSD does not represent or warrant the accuracy of any plans or drawings for the Development or any other information made available by MSD to TJPA. TJPA shall have the full, complete and exclusive responsibility for the design, construction and installation of the Transit Center and the Support System in all respects including, without limitation, compliance with all applicable Legal Requirements, subparagraph 4 of Section 832 of the California Civil Code, governmental laws, regulations, rules and standards and industry standards and for the support, integrity, and safety of the Development and the MSD Property to the extent affected by the construction of the Transit Center and the Support System.

(c) The Support System shall be designed and constructed consistent with the professional standard of care prevailing in San Francisco, California for projects of similar size and complexity. The Drawings and Specifications shall: (A) be signed by a licensed California structural engineer; (B) comply with all applicable laws of the State of California and the City and County of San Francisco, and (C) be approved by the Department of Building Inspection of the City and County of San Francisco ("DBI").

2. Air Quality Controls; Vibration and Noise Monitoring and Response Requirements.

(a) As part of the preparation of Construction Documents for the Transit Center and Support System, TJPA shall:

(i) Establish measures for controlling any dust, monitoring air quality, and mitigating any dust intrusion into the Development during construction of the Transit Center (the "Air Quality Controls");

(ii) Establish limits for vibration and construction noise and requirements for monitoring vibration and construction noise during the construction of the Transit Center and Support System, including specifying vibration and noise limits, monitoring locations within and outside the Development and the frequency of such monitoring (the "Vibration and Noise Monitoring and Response Requirements"). The Vibration and Noise Monitoring and Response Requirements will establish: (1) a maximum level of vibration (2) maximum noise levels, by time of day, and (3) procedures for (A) monitoring whether vibrations or noise exceed such maximum levels, and (B) modifying the Contractor's construction procedures if such maximum levels are exceeded.

(iii) Require the general contractor hired by TJPA to construct the Transit Center (the "Contractor") to (A) agree, and to require all subcontractors working on the Transit Center to agree, to comply with the Air Quality Controls and the Vibration and Noise Monitoring and Response Requirements, and (B) prepare and submit for TJPA approval a plan (the "Air Quality Plan") and a plan (the "Vibration and Noise Monitoring and Response Plan") specifying the means and methods to be employed to monitor and control air quality, noise, and vibration during the construction of the Transit Center and Support System, so as to comply with the Air Quality Controls and the Vibration and Noise Monitoring and Response Requirements, and

(iv) Establish penalties, up to and including termination, for the Contractor's failure to comply with the submitted and approved Air Quality Plan and Vibration and Noise Monitoring and Response Plan.

(b) The Air Quality Plan and the Vibration and Noise Monitoring and Response Plan shall comply with all applicable Legal Requirements, and be consistent with any mitigation requirements or conditions imposed in connection with the approval of the Transit Center and the EIS/EIR. The Transit Center, including installation of the Support System, shall be constructed so as not to exceed the maximum thresholds set forth in the Air Quality Plan and the Vibration and Noise Monitoring and Response Plan.

(c) When reviewing the Construction Documents, any concerns that MSD may have with regard to the Air Quality Controls or the Vibration and Noise Monitoring and Response Requirements shall be submitted in writing and shall include a description, with reasonable specificity, of the reasons for MSD's concerns thereof. Review by MSD of the Air Quality Controls and the Vibration and Noise Monitoring and Response Requirements, or any modifications thereto, shall not constitute a representation or warranty by MSD that the Air Quality Controls or the Vibration and Noise Monitoring and Response Requirements, or any such modifications: (i) are sufficient to satisfy TJPA's obligations under this Agreement, or (ii) comply with applicable governmental laws, regulations, rules and standards, nor shall MSD's review thereof diminish or otherwise affect TJPA's obligations under this Agreement. No amendments or revisions of the Air Quality Controls and the Vibration and Noise Monitoring and Response Requirements shall be made without the prior written submittal to MSD.

3 MSD's Expenses. TJPA shall pay or reimburse MSD (or, as applicable, the Owners' Association) for all costs and expenses reasonably incurred, including, but not limited to, fees of construction consultants and structural and consulting engineers, for:

(a) review of and comment on TJPA's geotechnical information, Drawings and Specifications for the Support System;

(b) monitoring construction of the Support System, TJPA's Construction Activities and construction of the Transit Center; and

(c) review and monitoring of the Monitoring Plan, the Contractor's Air Quality Plan and Vibration and Noise Monitoring and Response Plan by MSD's construction consultants or structural or other engineers.

The TJPA's responsibility to reimburse MSD for its expenses for the above review, comment, and monitoring (collectively "Review and Monitoring Expenses") shall not exceed \$150,000 for Review and Monitoring Expenses incurred during the period ending thirty (30) days after completion of construction of the TJPA Improvements. The foregoing shall not limit MSD's claims for reimbursement of expenses incurred in connection with the remediation of Hazardous Substances pursuant to Section II.B.1(c), or to repair damage caused by TJPA's Construction Activities as specified in Section II.B.1(h). The above limitation on Review and Monitoring Expenses of \$150,000 is based on scheduled reviews roughly at 30%, 70% and 100%. If the TJPA re-submits a set of drawings with material changes, the costs of subsequent review of such changes would be reimbursed without being counted against the \$150,000 limit of reimbursement. If the TJPA or its contractor chooses to build something that differs materially from the design previously reviewed by MSD, the TJPA shall submit, or cause to be submitted, for review by MSD, Drawings and Specifications showing the proposed changes. The subsequent review(s) would also be reimbursed without counting against the \$150,000 limit of reimbursement. To obtain reimbursement for Review and Monitoring Expenses, MSD shall deliver to TJPA, on or before the 15th day of each month, a summary ("MSD Cost Report") of the Review and Monitoring Expenses for which reimbursement is being sought. The summary shall include a general description of the services performed (excluding any privileged information), the hours worked and rates charged. MSD shall provide such supporting documentation as TJPA may reasonably request to verify that the Review and Monitoring

Expenses were incurred MSD and TJPA shall cooperate with one another to develop a summary format that satisfies the reasonable informational needs of TJPA to verify expenditures for the Review and Monitoring Expenses in accordance with this Agreement. TJPA will make payment of Review and Monitoring Expenses within forty-five (45) days following submittal of each MSD Cost Report. MSD shall maintain records, in reasonable detail, with respect to any Review and Monitoring Expenses reimbursed by TJPA during the period ending six (6) months after the Construction Easement Expiration Date, and, upon written request of TJPA, will make such records available for inspection, copying and audit by TJPA.

4. Location of Monitoring Equipment. Instruments and equipment installed pursuant to this Agreement shall be located so as not to interfere with the operation of the Development. In no event shall any such instruments or equipment be located so as to occupy (or prevent the use of) parking spaces within the Development.

B. Construction.

1. Generally.

(a) Construction of Improvements. All Construction Activities performed by TJPA or TJPA's Representatives shall be performed in a safe, prudent and professional manner in accordance with best construction practices, and shall comply with all Legal Requirements as defined in Section 11.B.1(b). All Construction Activities within the Easement Areas shall be performed in accordance with detailed plans and specifications ("Plans") previously submitted to MSD for review. Before commencing any Construction Activities within the Easement Areas, TJPA shall obtain all permits, authorizations, and other approvals (collectively, "Approvals"), at its sole expense, as may be necessary to commence such Construction Activities. Without limiting the generality of the foregoing, TJPA shall be responsible for complying with any and all applicable requirements of the California Environmental Quality Act ("CEQA") and satisfying, at TJPA's sole expense, any and all mitigation measures under CEQA that may apply to TJPA's proposed occupancy and use of the Easement Areas, and to the construction, maintenance, and use of the Transit Center and any other proposed improvements and facilities. TJPA acknowledges and agrees that MSD's review of TJPA's Plans is solely for the purpose of protecting MSD's interests, and shall not be deemed to create any liability of any kind on the part of MSD, or to constitute a representation on the part of MSD or any person consulted by MSD in connection with such review that the Plans or the improvements contemplated by such Plans are adequate or appropriate for any purpose, or comply with applicable Legal Requirements.

(b) Compliance with Laws. TJPA shall, at its sole cost and expense, insofar as they relate to the Construction Activities or the use or occupancy of the Easement Areas, promptly comply with (i) all laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, including, but not limited to, those relating to the generation, use, storage, handling, treatment, transportation or disposal of Hazardous Substances, as defined herein, or to health, safety, noise, environmental protection, air quality or water quality; (ii) the conditions of any permit, occupancy certificate, license or other approval issued by public officers; and (iii) with any liens, encumbrances, easements, covenants, conditions, restrictions and servitudes (if any) of record, or

of which TJPA has notice (collectively, "Legal Requirements"), regardless of when they become effective. TJPA shall furnish satisfactory evidence of such compliance upon request by MSD. The judgment of any court of competent jurisdiction, or the admission of TJPA in any action or proceeding against TJPA, whether or not MSD is a party in such action or proceeding, that TJPA has violated any Legal Requirement relating to the use or occupancy of the Easement Areas, shall be conclusive of that fact as between MSD and TJPA. Without limiting the generality of the foregoing, TJPA's Construction Activities will comply with the San Francisco Building Code and will be approved by DBI. MSD and the Owners' Association shall have no remedy for money damages for the TJPA's alleged violation of any obligation under this subsection. MSD's remedies for breach of any obligation under this subsection shall be solely equitable.

(c) Dangerous Activities, Hazardous Substances. TJPA acknowledges that the primary contemplated use of the Development is residential occupancy. TJPA agrees to conduct its activities and operations within the Easement Areas in such a manner so as not to endanger the Development, the environment and human health and safety. TJPA shall not cause or permit any Hazardous Substances, as defined herein, to be brought upon, produced, stored, used, released, discharged or disposed of on the Development, except in compliance with all applicable Legal Requirements. TJPA shall be responsible for the cost of remediating any discharge or release of Hazardous Substances (including, without limiting the generality of the foregoing, any disturbance, discharge or release of pre-existing Hazardous Substances) within the Easement Areas, and shall immediately notify MSD and the appropriate regulatory authorities where required by law, of any such release. For purposes of this Agreement, the term "Hazardous Substances" means any hazardous or toxic substances, materials or waste which are or become regulated by any local government authority, the State of California or the United States government, including those substances described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any other applicable federal, state or local law, and the regulations adopted under these laws;

(d) Insurance. TJPA shall require its contractors and subcontractors to obtain and maintain the insurance coverages and amounts required by Section II.C;

(e) Minimize Impacts. TJPA shall use commercially reasonable efforts to minimize interference with the operation of, and with access to, the Development during construction of the Transit Center and the Support System. TJPA shall comply (and cause the Contractor and its subcontractors to comply) with the Air Quality Controls and the Vibration and Noise Monitoring and Response Requirements during construction of the Transit Center and the Support System (provided, however, that TJPA's compliance with the foregoing provisions shall not excuse or constitute a waiver of any Claim for damage or injury that may be caused by TJPA's Construction Activities, or by vibration or other cause relating to such construction). During TJPA's final design phase for the Transit Center, TJPA shall solicit comment from MSD and MSD's consulting engineers, consistent with II.A.2 above, regarding TJPA's proposed noise mitigation measures under the EIS/EIR Mitigation Monitoring and Reporting Program, prior to submitting its proposed noise mitigation program to the San Francisco Department of Public Works or seeking waivers of any requirements of the San Francisco noise ordinance.

(f) Construction Schedule. TJPA shall provide MSD with a detailed construction schedule of TJPA's Construction Activities within the Easement Areas. TJPA will update the construction schedule whenever material changes are made, and at least quarterly during the course of construction within the Easement Areas

(g) Hours of Construction in the Easement Areas. TJPA shall be authorized to perform Construction Activities in the Easement Areas during those hours specified in the EIS/EIR only.

(h) Repairs. TJPA agrees to repair, at its own cost and expense, or pay the reasonable cost of repairing at its discretion, any damage to the Development substantially caused by TJPA's Construction Activities. TJPA acknowledges that its obligation to repair damage to the Development substantially caused by its Construction Activities is not dependent on the existence of negligence on the part of TJPA. In particular, the TJPA shall repair damage to waterproofing or cracks in the foundations or walls of the Development resulting from settlement or movement substantially caused by the Construction Activities. TJPA shall not be responsible for cracking or settlement that occurs prior to the commencement of construction of the Transit Center or the Support System (as evidenced by photographic evidence collected as part of the Initial Survey), or that is not substantially caused by TJPA's Construction Activities.

(i) Completion and Restoration. Prior to the Construction Easement Expiration Date, TJPA shall complete construction of the TJPA Improvements (or so much thereof as requires access by way of the Temporary Easement Area), construct the Permanent Wall Improvements in accordance with Section II.B.6, remove all of its equipment, unused materials, rubbish and debris, and otherwise repair and restore the Temporary Easement Area to its condition prior to the Effective Date (except as otherwise provided with respect to the Permanent Wall Improvements). If TJPA fails to do so, MSD (or the Owners' Association, as the case may be) may perform such work at TJPA's expense, and TJPA shall reimburse all costs reasonably incurred in connection therewith within forty-five (45) days following delivery of an invoice therefor

(j) Inspection of the Permanent Wall Improvements. MSD shall have the right (but not an obligation) to inspect the construction work of the Permanent Wall Improvements within the Temporary Easement Area during the progress thereof, and to draw to the TJPA's attention any faulty construction or any material deviation of any improvements constructed from the plans and specifications therefor previously approved by MSD; provided, however, that no such inspection shall be deemed to create any liability on the part of MSD, or constitute a representation that the work inspected conforms with such plans or complies with any Legal Requirements.

(k) Right to Cure Default. All of TJPA's Construction Activities and all of the covenants and obligations to be performed by TJPA under any of the terms of this Agreement shall be at its sole cost and expense. If TJPA shall fail to pay any sum of money required on its part to be paid hereunder, and such failure is not cured within the applicable cure period provided for herein, if any, then MSD (or the Owners' Association, as the case may be) may, without waiving or releasing TJPA from any obligation hereunder, make any such payment (although neither MSD nor the Owners' Association shall have any obligation to do so). All

sums so paid by MSD (or the Owners' Association, as the case may be) shall be payable to MSD (or the Owners' Association, as the case may be) by TJPA within thirty (30) days after demand.

2. Relocation of Temporary Wall. TJPA acknowledges that MSD has constructed, approximately on the boundary line between the MSD Property and the TJPA Property, a temporary wall (the "Temporary Wall") and other improvements (including, but not limited to, a driveway and planter boxes) (the "Temporary Wall Improvements"). In addition, MSD and TJPA have jointly agreed on the design of a temporary wall at grade that will be installed by TJPA and will be on the boundary between (and will separate) the Development from the Temporary Easement Area (the "Interim Wall"), and a Permanent Wall (as defined in Section II B.6) that will be installed to replace the Temporary Wall. The Temporary Wall has been constructed, and the Interim Wall and Permanent Wall will be constructed, as more particularly shown in the following drawings and specifications for 301 Mission Street:

(a) those certain Lightgauge Stud Framing drawings of 301 Mission Street prepared by Ficcadenti, Wagoner & Castle, Consulting Structural Engineers, Pages W0.1, W2.1, W3.5, W4.3 and W5.1 (revision date 11/21/07);

(b) those certain drawings for 301 Mission Street prepared by Handcl Architects / Desimone Consulting Engineers, Project No. 4069, Pages S1.0, S0-0.10, S0-0.11, S3-3.13, Transbay Wall – Exhibit G Pages G0-0, PERM 3-1.58, PERM 3.1-63 and PERM 3-4.05, K-Line Wall Page S1.0 (revision date 9/12/2008), Transbay Wall – Exhibit F Pages G0-0, A 3-1.58 and A 3-4.16, and Transbay Wall – Exhibit E Pages G0-0, A 3.158 and 3-4.16 (all bearing revision date 7/25/2008, except as indicated), and Superstructure Sections and Details Page S3-3.13 (revision date 11/21/2007);

(c) the following specifications for 301 Mission Street prepared by Handcl Architects:

(i) Section 09210, Exterior Lath and Plaster, dated April 22, 2005, pages 09210-1 through 09210-5;

(ii) Section 08900, Curtain Walls, Skylights, Storefronts, and Entrances, dated January 20, 2006, pages 08900-1 through 08900-48;

(iii) Section 07560 Hot Fluid-Applied Waterproofing, dated September 6, 2007, pages 07560-1 through 07560-6;

(iv) Section 05400, Cold Formed Metal Framing, dated August 10, 2007, Pages 05400-1 through 05400-8;

(v) Section 04400, Exterior Stone Cladding, dated May 16, 2006, Pages 04400-1 through 04400-19;

(vi) Section 03480, Precast Concrete Specialties, dated June 1, 2007, Pages 03480-1 through 03480-9;

(vii) Section 03300, Cast-In-Place Concrete, dated March 9, 2005, Pages 03300-1 through 03300-40;

(viii) Section 02785, Asphalt Pavers on Bituminous Bed, dated December 14, 2007, Pages 02785-1 through 02785-4, and

(ix) Section 02750, Concrete Walks and Curbs, dated December 14, 2007, Pages 02750-1 through 02750-8;

as any of the foregoing may be subsequently revised with the approval of both TJPA and MSD. TJPA and MSD have agreed, subject to the terms and provisions of this Section II.B.2, that: (i) the Temporary Wall and Temporary Wall Improvements will be removed to facilitate access by TJPA to the above-grade portions of the Temporary Easement Area, and replaced, prior to expiration or termination of the Construction Easement, with the Permanent Wall Improvements (as hereinafter defined), and (ii) during the term of the Construction Easement, TJPA will install and maintain the Interim Wall to separate the above-grade portion of the Temporary Easement Area from the remainder of the Development. Before otherwise commencing Construction Activities in the Temporary Easement Area, TJPA will, at TJPA's sole cost and expense, (a) remove the Temporary Wall and Temporary Wall Improvements located within the Temporary Easement Area, and (b) install the Interim Wall. Without limiting the generality of the foregoing, TJPA shall comply with any reasonable requirements imposed by PG&E in connection with its approval of the design of temporary venting for PG&E's utility vault located within the Development, and any reasonable requirements imposed by any other utility provider in connection with the temporary relocation, redesign, or similar temporary or permanent accommodation necessitated by TJPA's Construction Activities. In addition to the Notice to Begin Construction, TJPA shall give written notice to MSD (or the Owners' Association, as the case may be) of its intention to begin demolition of the Temporary Wall Improvements at least 90 days before commencing to do so. The notice to MSD shall specify the amount the TJPA then anticipates, in good faith, it will spend to demolish the Temporary Wall Improvements (the "Cost Estimate"). Within such 90 day period, MSD, at its option, may elect to waive the requirement that TJPA demolish the Temporary Wall Improvements and to perform the work itself, in which case TJPA shall pay MSD an amount equal to the Cost Estimate

3. Support System. TJPA shall install the Support System in accordance with the Drawings and Specifications submitted to MSD and approved by DBI.

4. Structural Integrity of the Development. The Support System shall be designed and constructed to avoid subsidence (in excess of tolerances contemplated by the Monitoring Plan) of or damage to any part of the MSD Property or the Development, and to avoid cracking (other than minor settlement cracks) or misalignment of walls which would have any adverse effect on the use of the Development or subsidence to any improvements on the MSD Property. TJPA's Construction Activities shall be undertaken in a manner that will not lessen the structural integrity or support of the Development.

5. Coordination of Activities. If both Parties are engaged in construction in or around the Temporary Easement Area, TJPA shall coordinate its Construction Activities with MSD's construction activities related to the Development

6. Installation of Permanent Wall Improvements. Prior to the Construction Easement Expiration Date, TJPA shall restore the above-grade portion of the Temporary Easement Area to its condition prior to the giving of the Notice to Begin Construction, and as part of such restoration, shall install a permanent wall on the boundary line between the TJPA Property and the MSD Property and restore any ancillary improvements demolished by TJPA, including the driveway and planter boxes (said permanent wall and ancillary improvements are referred to collectively as the "Permanent Wall Improvements," and are shown in the drawings referenced in Section II B.2 above), at TJPA's sole cost and expense; provided, however, that at least 30 days before commencing to do so, TJPA shall provide MSD with a Cost Estimate specifying the amount it then anticipates, in good faith, it will spend to construct the Permanent Wall Improvements and otherwise restore the Temporary Easement Area. Within such 30 day period, MSD, at its option, may elect to waive the requirement that TJPA restore the Temporary Easement Area and construct the Permanent Wall Improvements, in which case TJPA shall pay MSD an amount equal to such Cost Estimate. The Permanent Wall Improvements shall be constructed by TJPA to be consistent with the first-class character and aesthetics of the Development. TJPA shall coordinate with MSD the scheduling of its construction of the Permanent Wall Improvements and its restoration of the Temporary Easement Area so as (i) to minimize interference with the operation of the Development and the activities of its occupants, and (ii) to expedite and prioritize construction of the Permanent Wall Improvements so as to cause them to be completed as soon as is practicable. TJPA acknowledges that the goal of minimizing interference with the activities of the occupants will be advanced by the early completion of the Permanent Wall Improvements and the resulting termination of the Construction Easement, provided, however, that MSD and the Owners' Association shall have no remedy for money damages or equitable relief against the TJPA for the TJPA's failure to complete the Permanent Wall Improvements until after the deadline provided in this subsection.

C. Insurance.

1. Generally. TJPA shall obtain and maintain (or cause to be obtained and maintained), at no cost to MSD, with respect to all Construction Activities to be performed hereunder, the insurance described in this Section. Unless doing so is prohibited by applicable laws, TJPA shall name MSD and the Owners' Association as additional insureds on each such policy, other than Workers' Compensation and Employer's Liability policies. All such insurance shall be provided by insurers that are licensed or are authorized insurers in the State of California and have minimum Best's ratings of A-VIII.

2. Coverages Required. Prior to commencing any work within the Temporary Easement Area, TJPA shall obtain and provide to MSD evidence of insurance (consisting of a certificate or certificates of insurance in form reasonably satisfactory to MSD identifying the policy, limits and coverages included, or at the request of MSD, a certified copy of the policy or policies) for the following insurance coverages:

(a) Commercial General Liability insurance, including coverage for contractual liability, on an occurrence basis, and broad form property damage insurance covering damages to the Development and the MSD Property, including coverage for underground, collapse and explosion hazards, independent contractors, and premises and operations coverages included; with a combined single limit of not less than \$10,000,000.00 per occurrence. The

policy shall include completed operations coverage for not less than ten (10) years following completion of the Transit Center, and such coverage shall be written to apply solely to the Program, and such limits shall not be reduced by claims incurred in connection with other projects. Umbrella and/or excess liability policies may be used to supplement primary coverage to meet the required limits set forth above. The liability insurance policy shall include an endorsement stating that such coverage shall neither be diminished nor canceled without the carrier having given thirty (30) days' prior written notice to MSD. The required coverage limits stated above shall be increased from time to time to remain consistent with then-prevailing commercial practices of prudent property owners in the vicinity of the Transit Center.

(b) Workers' Compensation insurance providing statutory benefits in the State of California either through an insurer licensed to provide such insurance or through a combination of qualified self insurance in combination with excess insurance provided by an insurer licensed to provide such excess insurance and Employer's Liability insurance with minimum limits in accordance with statutory requirements. The foregoing Employer's Liability insurance limits may be met by using an excess or umbrella policy.

D. Release.

MSD makes no representations or warranties with respect to the current physical condition of the Easement Areas, and MSD shall have no responsibility under this Agreement with respect thereto. TJPA agrees that the rights granted herein are made in contemplation of the Easement Areas in their existing "as is" physical condition. TJPA hereby waives and releases any and all Claims against MSD arising from, out of or in connection with the physical condition of the MSD Property, including any foreseen or unforeseen difficulty or unsuitability of the Easement Areas or the MSD Property for the uses contemplated by this Agreement. TJPA waives and releases MSD and each of the other Indemnitees from all liability for Claims, losses or damage on account of injury or damage to persons or property that may result from TJPA's entry on or use of the Easement Areas, except, with respect to any Indemnitee, to the extent of Claims arising solely and entirely from the gross negligence or willful misconduct of such Indemnitee or one or more other Indemnitees, including MSD, or such Indemnitee's members, officers, managers, directors, representatives, agents, employees, contractors, subcontractors, architects, engineers or consultants. TJPA hereby assumes all risk of loss, damage, injury, or death that may result from TJPA's entry on or use of the Easement Areas, except to the extent resulting solely from the gross negligence or willful misconduct of one or more Indemnitees, including MSD, or such Indemnitee's members, officers, managers, directors, representatives, agents, employees, contractors, subcontractors, architects, engineers or consultants. TJPA hereby waives its rights under California Civil Code Section 1542 with regard to the foregoing release of MSD, as well as under any similar statutory provision or common law rule, and agrees and acknowledges that it has read and fully understands and knowingly waives the protections of Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

TJPA acknowledges that claims or facts in addition to or different from those now known or believed to exist may later be discovered with respect to Claims that TJPA is hereby releasing, but TJPA nevertheless intends the release set forth herein to be effective as a full and unconditional release of all the claims described above.

III. INDEMNITY.

TJPA shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless MSD, its members, officers, managers, directors, representatives, agents, employees, transferees, successors (including, without limitation, the Owners' Association) and assigns (each, an "Indemnitee" and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), which arise from the occupancy or use of the Easement Areas by TJPA or TJPA's Representatives, or the exercise by TJPA of its rights hereunder, or the performance of, or failure to perform, TJPA's duties under this Agreement, including, but not limited to, Claims arising out of: (1) injury to or death of persons, including but not limited to employees of MSD, TJPA or their respective agents, contractors and invitees; (2) injury to property or interests in property of MSD, TJPA or any third party; (3) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault, excepting only with respect to any Indemnitee, to the extent of any Claim arising solely from the gross negligence or the willful misconduct of such Indemnitee or its members, officers, managers, directors, representatives, agents, employees, contractors, subcontractors, architects, engineers or consultants, and provided further with respect to any Indemnitee that if TJPA is precluded by applicable law from indemnifying such Indemnitee against Claims arising from such Indemnitee's negligence, to the extent such law requires. Without limiting the generality of the foregoing, TJPA shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless from and against Claims arising out of any work of improvement constructed or installed at or on, labor performed on, or materials delivered to, or incorporated in any improvements constructed on, the Easement Areas by, or at the request or for the benefit of, TJPA. In the event any action or proceeding is brought against any Indemnitee for any Claim against which TJPA is obligated to indemnify or provide a defense hereunder, TJPA upon written notice from MSD shall defend such action or proceeding at TJPA's sole expense by counsel approved by MSD, which approval shall not be unreasonably withheld, conditioned or delayed.

TJPA shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless against Claims resulting from the failure of TJPA, or any of its contractors or subcontractors, to comply with the insurance requirements set forth in Section II.C of this Agreement.

IV. MECHANICS' LIENS.

TJPA shall keep the MSD Property free and clear of liens or claims of liens arising or alleged to arise in connection with any work performed, labor or materials supplied or delivered,

or similar activities performed by TJPA or at its request or for its benefit. If any mechanics' liens are placed on or filed against the MSD Property in connection with TJPA's Construction Activities, the TJPA Improvements, or TJPA's exercise of rights granted in this Agreement, TJPA shall promptly cause such liens to be released and removed from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 3143 or any successor statute.

V. TRANSFERABILITY.

This Agreement and the easements and other rights granted to TJPA hereunder are appurtenant to the TJPA Property, and may not be separately assigned, transferred, conveyed or encumbered by TJPA. Any purported assignment, transfer, conveyance or encumbrance violating the foregoing shall be void and of no effect. In addition, the rights granted to TJPA pursuant to this Agreement are not transferable to another project of TJPA or any other entity, including a successor to TJPA, with the sole exception of a successor entity constructing the Transit Center.

VI. ABANDONMENT.

If TJPA does not provide Notice to Begin Construction within seven (7) years following the Effective Date of this Agreement, then TJPA shall be deemed to have abandoned its rights under this Agreement, whereupon this Agreement shall terminate and all of the easements and other rights of TJPA hereunder shall revert to MSD. In addition, if TJPA or a successor entity abandons its use of the Transit Center for a continuous period of five (5) years, this Agreement shall terminate and all of the easements and other rights of TJPA hereunder shall revert to MSD. Upon any termination of this Agreement, TJPA shall remove, at no cost to MSD, such of TJPA's facilities and equipment installed pursuant to this Agreement as MSD may specify, to the extent removal is feasible without causing substantial damage to the Transit Center. Upon any termination of this Agreement, TJPA shall execute, acknowledge and deliver to MSD a quitclaim deed or such other documents or instruments, in a form reasonably acceptable to MSD, as may be reasonably necessary to eliminate this Agreement as an encumbrance on title to the MSD Property.

VII. NOTICES.

Any notice, consent or approval required or permitted to be given under this Agreement shall be effective only if given in writing to the addressee Party at its address or addresses listed below, or to such other address or addresses for a Party as such Party may from time to time designate by notice to the other Party. Notices shall be deemed given upon the date personal delivery is made, or three (3) business days after the date of mailing if sent by first class, certified or registered mail, postage prepaid, or one (1) business day after the date deposited with a nationally-recognized overnight courier that provides confirmation of delivery, with charges prepaid for next business day delivery. As of the Effective Date, the addresses of the Parties for notice are as follows:

TJPA: Muria Ayerdi
Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 1960
San Francisco, California 94105
Fax: (415) 597-4615

Copy to: Andrew W. Schwartz
(which copy shall
not constitute notice.) Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Fax: (415) 552-5816

MSD. Mission Street Development LLC
c/o Millennium Partners
735 Market Street, 4th Floor
San Francisco, CA 94103
Attention: John Luciano

Copy to: Coblenz, Patch, Duffy & Bass LLP
(which copy shall
not constitute notice.) One Ferry Building, Suite 200
San Francisco, California 94111
Attention: Jeffrey B. Maso, Esq.

VIII. GENERAL PROVISIONS.

A. Amendments. This Agreement may be amended or modified only by a writing^{*} signed by an officer or other authorized representative of TJPA and MSD; provided, however, that if a common interest development, within the meaning of California Civil Code Section 1351(c), is created to own or operate any portion of the Development, then the Association, as defined in Civil Code Section 1351(a), created with respect to such common interest development (or if more than one such Association is created, the master Association whose members are the other Associations or all of the separate interests, as defined in Civil Code Section 1351(l), in the Development) (the "Owners' Association") shall be the successor to MSD for purposes of approving and executing amendments, and not the individual owners of condominium units or other separate interests.

B. No Waiver. No waiver by TJPA or MSD of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative of the Party against whom it is asserted. Such waiver shall only be effective to the extent expressly provided in the waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Agreement.

C. Entire Agreement. This Agreement, including the attached Exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all previous oral and written agreements between, and representations by or on behalf of, the Parties, all of which are merged herein.

D Binding Effect. This Agreement and the covenants and agreements contained herein shall run with the land, and be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns (subject to the provisions of Section V). No assignment or delegation by TJPA, whether by operation of law or otherwise, shall relieve TJPA of any of its duties, obligations or liabilities hereunder, in whole or in part. Except as otherwise provided in the previous sentence, a party (or a successor to a party) shall be liable hereunder only to the extent of obligations accruing during the period of such party's ownership. If a common interest development, within the meaning of California Civil Code Section 1351(c), is created to own or operate any portion of the Development, then, effective as of the date the Owners' Association (as defined in Section VIII.A) begins its activities in such capacity, and thereafter: (i) the Owners' Association shall be MSD's successor for purposes of granting any consents, approvals, waivers, or the like, enforcing this Agreement, and performing any obligations to be performed by MSD, and not the individual owners of condominium units or similar interests, and (ii) only those units or parcels within such common interest development that contain or own, at any relevant point in time, portions of the Easement Areas shall be bound hereby. References to MSD in this Agreement shall, as appropriate, include and refer to Owners' Association.

E No Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of (or an offer to dedicate) land or rights to the general public. The use by the public or by any person, including TJPA, of any portion of the Easement Areas, other than as expressly permitted herein or as expressly allowed by a recorded map, agreement, deed or dedication, is by permission and is subject to the control of MSD in its sole discretion.

F No Third Party Beneficiary. This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns, including the Owners' Association, and except for the Indemnitees, who are intended third-party beneficiaries of the release and indemnity provisions hereof, does not confer any rights or remedies on any other person or entity.

G Captions. The sections and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

H. Time. Except as otherwise expressly provided herein, the Parties agree that as to any obligation to be performed or action to be taken hereunder, time is of the essence.

I Attorneys' Fees. In any action in any court of competent jurisdiction, brought by either Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory relief, or any action to quiet title against the other Party, the Party prevailing in such action or proceeding shall be entitled, in addition to any other recovery or relief, to recover its reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action or proceeding, including the costs of reasonable investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing Party. Attorneys' fees shall include, without limitation, fees incurred in discovery, contempt proceedings and bankruptcy litigation, and in any appellate proceeding. The non-prevailing Party shall also pay the attorney's fees and costs incurred by the prevailing Party in any post-judgment proceedings.

to collect and enforce the judgment or decree. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this Agreement.

J. Governing Law. This Agreement shall be interpreted and enforced under and governed by the laws of the State of California.

K. Severability. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

L. Counterparts. This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.


M. Other Documents Each party agrees to execute, acknowledge and deliver such additional documents or instruments as may reasonably be required to effectuate the purpose of this Agreement; provided, however, that MSD will not be required to take any action or execute any instrument that would result in any cost, expense or liability to MSD.


N. No Partnership This Agreement is not intended to create and shall not be construed to form a partnership, joint venture or similar relationship between TJPA and MSD

In witness whereof, TJPA and MSD have executed this Agreement on the date set forth below, effective as of the date of execution.


TJPA


MSD:


Maria Ayerdi-Kaplan
Executive Director
Dated: 11/11/08


Its Authorized Representative
Dated: 10-9-08

APPROVED AS TO FORM:

By: 
Andrew W. Schwartz
Shut, Mihaly & Weinberger LLP
Attorneys for TJPA

By: 
Jeffrey B. Maso
Coblentz, Patch, Duffy & Bass LLP
Attorneys for MSD

Dated: 10-14-08

Dated: 10/9/2008

EXHIBIT A

Legal Description of TJPA Property

All that certain real property located in the County of San Francisco, State of California, described as follows:

Parcel 1:

Beginning at a point on the southwesterly line of Beale Street, distant thereon 183 feet and 4 inches southeasterly from the southeasterly line of Mission Street; running thence southeasterly along said line of Beale Street, 45 feet and 10 inches; thence at a right angle southwesterly 137 feet and 6 inches; thence at a right angle northwesterly 45 feet and 10 inches; thence at a right angle northeasterly 137 feet and 6 inches to the point of beginning.

Being part of 100 Vara Block no. 335.

Parcel 2:

Commencing at a point on the northeasterly line of Fremont Street, distant thereon 229 feet, 2 inches southeasterly from the southeasterly line of Mission Street; running thence southeasterly and along said line of Fremont Street, 137 feet, 6 inches; thence at a right angle northeasterly 137 feet, 6 inches; thence at a right angle northwesterly 137 feet, 6 inches; thence at a right angle southwesterly 137 feet, 6 inches to the point of commencement.

Being Beach & Water Lots nos. 364, 369 and 374 in 100 Vara Block no. 335

Parcel 3:

Beginning at a point on the southwesterly line of Beale Street, distant thereon 229 feet and 2 inches southeasterly from the southeasterly line of Mission Street; and running thence southeasterly along said southwesterly line of Beale Street, 137 feet and 6 inches; thence at a right angle southwesterly 137 feet and 6 inches; thence at a right angle northeasterly 137 feet and 6 inches to the point of beginning.

Being part of 100 Vara Block no. 335

Parcel 4:

Commencing at a point on the northeasterly line of Fremont Street, distant thereon 183 feet, 4 inches southeasterly from the southeasterly line of Mission Street; running thence southeasterly and along said line of Fremont Street, 45 feet, 10 inches; thence at a right angle northeasterly 137 feet, 6 inches; thence at a right angle northwesterly 45 feet, 10 inches; thence at a right angle southwesterly 137 feet, 6 inches to the point of commencement.

Being Beach & Water Lot no. 359 in 100 Vara Block no. 335.

Parcel 5:

Commencing at a point on the southwesterly line of Beale Street, distant thereon 163 feet, 4 inches northwesterly from the northwesterly line of Howard Street; running thence northwesterly, along said line of Beale Street, 20 feet, thence at a right angle southwesterly 10 feet, thence southeasterly, in a direct line, 22 feet, 4-3/8 inches to the point of commencement.

Being part of Beach & Water Lot no. 380 in 100 Vara Block no. 335.

Lot 003, Block 3719



EXHIBIT B

Legal Description of MSD Property

All that certain land situated in the City and County of San Francisco, State of California, and described as follows:

Parcel A, as shown on the map entitled, "Final Map 4146, a 420 Residential Unit and 8 Commercial Unit Mixed-Use Condominium Project," filed May 15, 2008, in the Office of the County Recorder of the City and County of San Francisco, State of California, in Book 105 of Maps, at Pages 146 and 147.

Being a portion of 100 Vara Block 335

Assessor's Lot 019, Block 3719

EXHIBIT C

Temporary Easement Area Description

All that certain real property located in the County of San Francisco, State of California, described as follows:

Parcel 1. A portion of the following described parcel, bounded above by a horizontal plane at grade (elevation 2.85 feet, City of San Francisco Datum), and bounded below by a horizontal plane two hundred fifty (250) feet below grade (elevation -247.15 feet, City of San Francisco Datum):

The southeasterly five feet of Parcel A, as shown on the map entitled, "Final Map 4146, a 420 Residential Unit and 8 Commercial Unit Mixed-Use Condominium Project," filed May 15, 2008, in the Office of the County Recorder of the City and County of San Francisco, State of California, in Book 105 of Maps, at Pages 146 and 147.

Parcel 2. A portion of the following described parcel, bounded below by a horizontal plane at grade (elevation 2.85 feet, San Francisco Datum), and bounded above by a horizontal plane one hundred fifty (150) feet above grade (elevation 152.85 feet, San Francisco Datum).

Beginning at a point on the northeasterly line of Fremont Street, distant thereon 178 feet and 4 inches southeasterly from the southeasterly line of Mission Street; running thence southeasterly along said line of Fremont Street 5 feet; thence at a right angle northeasterly 102 feet 5 inches; thence at a right angle northwesterly 5 feet; thence at a right angle southwesterly 102 feet 5 inches to the point of beginning.

Being a portion of 100 Vara Block 335

Portions of Lot 19, Block 3719



EXHIBIT D

Permanent Easement Area Description

That certain real property located in the County of San Francisco, State of California, described as follows:

A portion of the following described parcel located between two horizontal planes, one at grade (elevation 2.85 feet, San Francisco Datum), and the other two hundred fifty (250) feet below grade (elevation -247.15 feet, San Francisco Datum):

The southeasterly five feet of Parcel A, as shown on the map entitled, "Final Map 4146, a 420 Residential Unit and 8 Commercial Unit Mixed-Use Condominium Project," filed May 15, 2008, in the Office of the County Recorder of the City and County of San Francisco, State of California, in Book 105 of Maps, at Pages 146 and 147.

Being a portion of 100 Vara Block 335

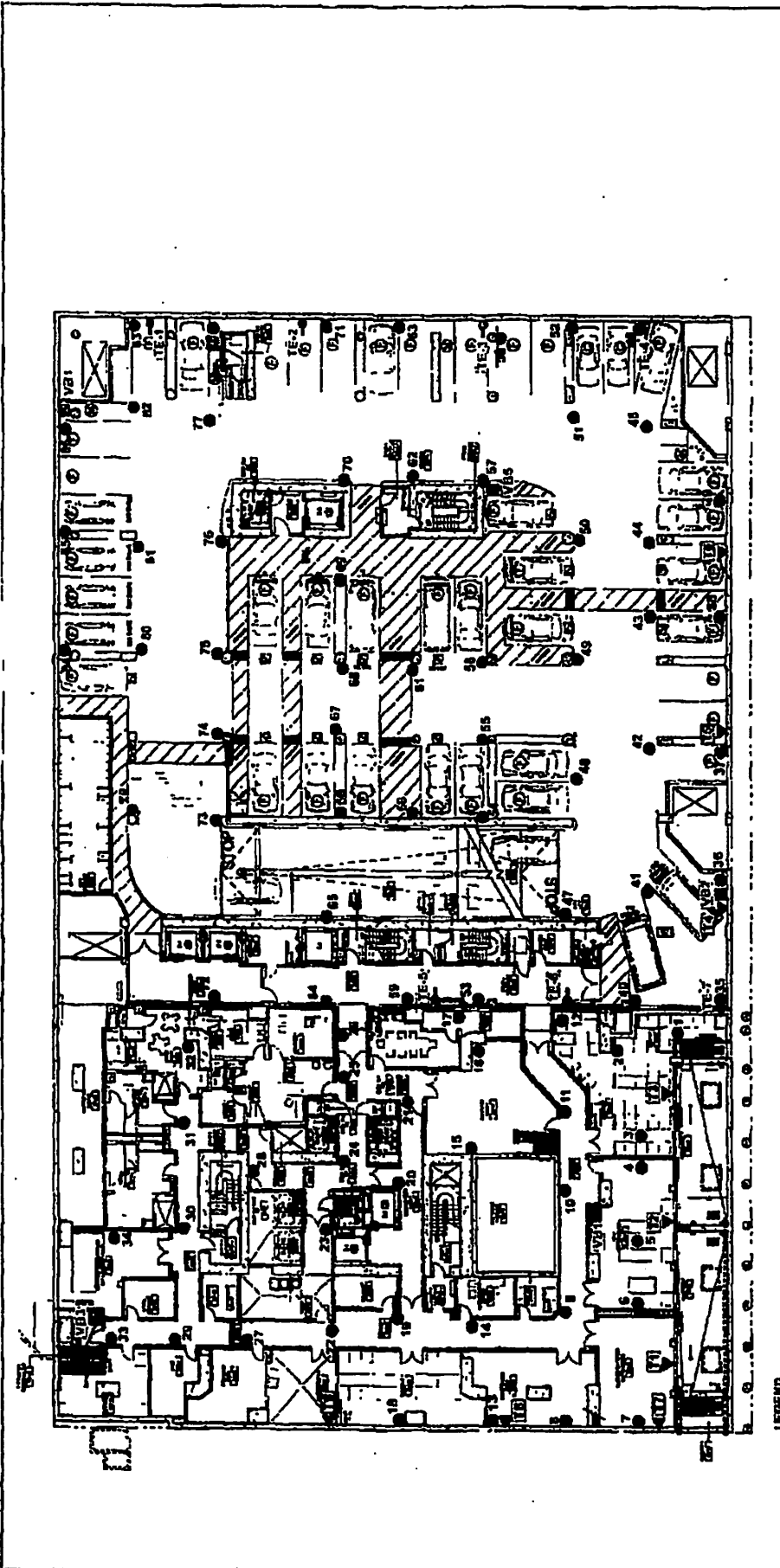
a portion of Lot 19, Block 3719



EXHIBIT E

Floor Plan of Preliminary Geotechnical Monitoring Locations

[INCLUDE FIGURES PREPARED BY ARUP]



PROPOSED INSTRUMENTATION PLAN -
 301 MILLIKEN STREET
 Transbay Transit Center
 Transbay Joint Powers Authority
 San Francisco California
 September 2008

ARUP
 PLATE 1

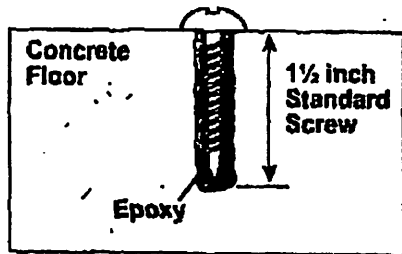
NOTES (1) CRACK MONITORING GAUGES WILL BE INSTALLED AT LOCATIONS WHERE CRACKS MAY BE PRESENT (2) INSTRUMENT LOCATIONS ARE APPROXIMATE AND COULD BE RELOCATED AS NECESSARY FOR CONVENIENCE OF ACCESS AND TO AVOID INTERFERENCE WITH BUILDING OPERATIONS

LEGEND

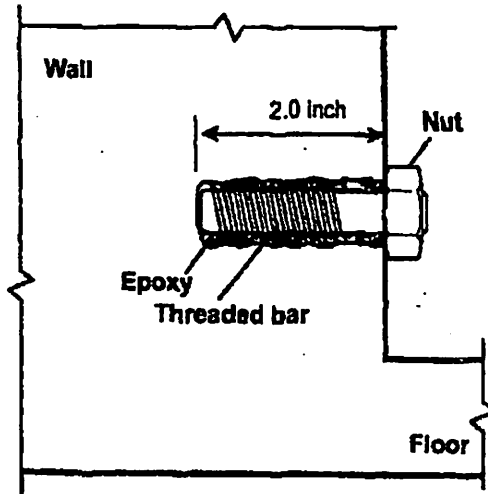
- Settlement Markers (SM)
Set on the floor, on columns or walls
- Vibration Monitoring Station (VMS)
Sensors fixed to the floor and monitoring base set on the floor
- ▼ Transmitters at Data Loggers (TL)
Mounted on walls
- Trip Extension
- Hoses installed on columns or walls

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TYPICAL SETTLEMENT MARKER INSTALLATIONS

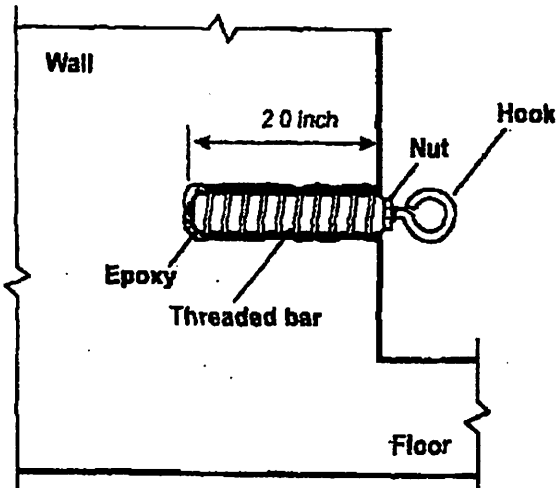


(a) Floor Installation



(b) Wall Installation

TYPICAL TAPE EXTENSOMETER HOOK INSTALLATION



TYPICAL INSTALLATION OF SETTLEMENT MARKERS AND EXTENSOMETER HOOKS

Transbay Transit Center

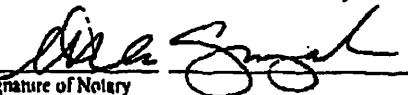
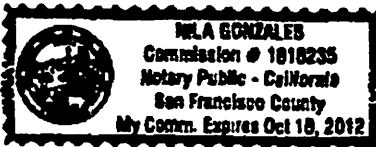
Transbay Joint Powers Authority
San Francisco, California

September 2008

ARUP

PLATE 2

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF <u>California</u> COUNTY OF <u>San Francisco</u> On <u>Nov. 6, 2008</u> before me, <u>Nila Gonzalez</u> a notary public in and for such State, personally appeared <u>Maria Ayardi-Kaplan</u> who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct WITNESS my hand and official seal  Signature of Notary 	<p align="center">OPTIONAL SECTION</p> <hr/> <p>CAPACITY CLAIMED BY SIGNER</p> Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER(S) TITLES <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER <hr/> <p>SIGNER IS REPRESENTING: Name of Person(s) or entity(ies)</p> <hr/> <hr/>
<p>UNUSUAL SECTIONS:</p> TITLE OR TYPE OF DOCUMENT: _____ NUMBER OF PAGES _____ DATE _____ SIGNERS OTHER THAN NAMED ABOVE _____ DATA REQUESTED HEREIN IS NOT REQUIRED BY LAW.	

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within document, the provisions of which are incorporated by this reference as though fully set forth in this Certification, to the Transbay Joint Powers Authority, is hereby accepted by the undersigned


 Maria Ayardi-Kaplan
 Executive Director

Date 11/6/08

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of CALIFORNIA)

County of SAN FRANCISCO)

On OCT 10TH, 2008 before me, ANUSHA RAJASEKHARAN
(here insert name and title of the officer)

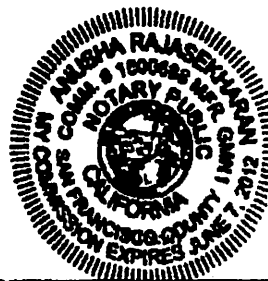
personally appeared SEAN JEFFRIES

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages ___ Document Date ___

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

An acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public)
- Print the name(s) of document signer(s) who personally appear at the time of notarization
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudged, re-seal if a sufficient area permits. Otherwise complete a different acknowledgment form
- Signature of the notary public must match the signature on file with the office of the county clerk
 - ✦ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document
 - ✦ Indicate title or type of attached document, number of pages and date
 - ✦ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary)
- Securely attach this document to the signed document

EXHIBIT B

**MILLENNIUM TOWER
301 MISSION STREET
SAN FRANCISCO, CA
PROPERTY DISCLOSURE AND INFORMATION STATEMENT
APRIL 2009**

Welcome to Millennium Tower located at 301 Mission Street (the "Property"). Mission Street Development LLC, a Delaware limited liability company ("Seller"), wishes to bring to your attention several facts and circumstances regarding the Millennium Tower. This Property Disclosure and Information Statement ("Statement") is intended to provide useful information to all prospective owners regarding the surrounding neighborhood, the Property, and the individual condominium units within the Property. Much of the information included in this Statement has been obtained from other sources (e.g., governmental and other public agencies, public records, etc.). The information is subject to change for reasons beyond our control. We cannot guarantee the accuracy or completeness of any information disclosed. Further, we do not undertake any obligation to advise you of any changes. You should independently verify the information regarding any matter of concern to you regarding this purchase. We also strongly recommend that you visit the Property and drive around the surrounding general vicinity on several occasions on different days and at different times to familiarize yourself with physical and other conditions to determine whether there are material factors that might affect your decision to purchase a Unit at Millennium Tower. Since we cannot predict every circumstance that may be material to you as a Buyer, it is imperative that you satisfy yourself about the decision to purchase by investigating matters of concern to you. Any questions regarding this Statement should be directed to Seller's authorized marketing representatives.

The information stated in this Statement is supplemental to information that you will receive or that may be contained within other materials and documents pertaining to the Millennium Tower, which are referred to in this Statement as the Property Documents. The Property Documents include: the State of California Department of Real Estate's Conditional Public Report, the State of California Department of Real Estate's Final Public Report, a Preliminary Title Report, The Millennium Tower Declaration of Covenants and Restrictions and Reciprocal Easement Agreement (the "Center Declaration"), the Center Association Articles of Incorporation and Bylaws, the Center Association Budget, the Residential Project Declaration of Covenants and Restrictions, the Residential Project Association Articles of Incorporation and Bylaws and the Residential Association Budget. Seller will provide Buyer with a copy of the Property Documents at the time you are provided with the Purchase Contract and final versions of such Property Documents prior to the close of escrow. This Statement is not intended as a substitute for your review of the Property Documents, nor does it amend, modify or supersede the Property Documents. If there is an inconsistency between the Property Documents and this Statement, unless otherwise expressly provided in the Property Documents, the Property Documents will control.

BUYER SHOULD REVIEW AND BECOME FAMILIAR WITH ALL OF THESE PROPERTY DOCUMENTS AS THEY CONTAIN IMPORTANT INFORMATION REGARDING THE PROPERTY AND YOUR UNIT.

MILLENNIUM TOWER – AN OVERVIEW:

Millennium Tower is a mixed use residential development that consists of three separate residential condominium projects in the three separate residential components: the Grand Residences at Millennium Tower, The Residences at Millennium Tower and The City Residences at Millennium Tower. There are also two commercial components on the first level of Millennium Tower.

The Grand Residences at Millennium Tower will consist of the 175 unit residential project located on the floors designated on the Center Condominium Plan as 26 – 60 of the Tower Building; the Residences at Millennium Tower will consist of the 191 unit residential project located on the floors designated on the Center Condominium Plan as 3-25 of the Tower Building; and the City Residences at Millennium Tower will consist of the 53 unit residential project located on floors designated as 3-11 of the Mid-Rise Building. Each Residential Project will contain Residential Units and Residential Common Area.

The Declarations: The Millennium Tower Declaration of Covenants and Restrictions and Reciprocal Easement Agreement (the "Center Declaration") is a document that provides for the overall governance to The Millennium Tower as a private residential community with its two commercial components. In addition to this Center Declaration, each of the Residential Projects will be subject to a residential condominium declaration of covenants ("Residential Declaration") and shall be governed, operated, managed and maintained by a separate Residential Association.

The Associations: The Millennium Tower Association, a California nonprofit mutual benefit corporation, described in the Center Declaration as the "Center Association" will operate and manage the Center Common Elements and provide for general operational and management of the Center. The three Residential Projects will have separate Residential Associations. These Residential Associations and the commercial component owners will be the members of the Center Association. The Residential Associations for the three Residential Projects will be responsible for the operations and management of the Residential Common Areas of the Residential Project. The owners of the Residential Units will be members of the Residential Association for their Residential Project.

The Residence Amenity Floor: The Center Common Area of Millennium Tower includes the Residence Amenity Floor (Club Level) on the second level of the Center. The Residence Amenity Floor is a Joint Use Easement Area of the Center and comprises the entire second floor of the Center. Use of the Residence Amenity Floor is restricted and limited to Residential Owners, their tenants and authorized and permitted invitees. The Residence Amenity Floor (Club Level) is planned to include the following facilities and amenities, subject to such changes as may be made in the future: the swimming pool, spa pool, sun deck, locker rooms, exercise and training facilities and areas, lounge and dining areas, media room, children's playroom, and wine storage room. Additional discussion regarding Residence Amenity Floor (Club Level) is provided in Section 10 of this Disclosure.

Parking Garage: The Center Common Area includes the Parking Garage which is located under the Mid-Rise Component of the Project. The Declarant has reserved the right to sell, license, assign and transfer the use of Parking Spaces in the Parking Garage to Residential Owners and to the two Commercial Component Owners on such terms, extent and duration that Declarant, in its discretion, determines to be appropriate. Additional discussion regarding Parking Licenses is provided in Section 15 of this Disclosure.

DISCLOSURES CONCERNING THE PROPERTY

1. Use. In accordance with the applicable regulations and requirements of the City of San Francisco and the Center Declaration and Residential Declarations, the Residential Units in the Property shall be used for residential purposes. The Commercial Components in the Property are to be used for commercial purposes, subject to conditions contained in the Center Declaration.

2. Neighborhood Noise. The Property is located within an urban, city environment. Some of the adjacent streets and near by streets are main arteries of the City and may be congested and noisy. The Property has been designed and built to meet the design standards for noise reduction applicable to the Property at the time the building permit for the Property was issued. These design specifications do not guarantee that the Units will be soundproof or that noise will not be heard from a variety of sources including, but not limited to, other Units and their owners and/or visitors, employees, delivery persons and vehicles, street traffic, hallways, trash collection systems, gardens, terraces, balconies, roof fans, and other such noises. In addition, trucks, buses and other large vehicles on city streets can cause noises and vibrations within the Units. The Commercial Units will contain uses which will generate pedestrian and vehicular traffic. Seller cannot predict whether there will be, or provide assurances that there will not be, changes in noise levels, temporary or permanent, in the neighborhood. Seller also cannot provide predictions or assurances that historic traffic patterns in the neighborhood will not be altered in the future. All Units are purchased on an "as is" basis with respect to noise levels.

3. Neighborhood Conditions.

(a) Zoning. The neighborhood surrounding the Property contains residential, commercial, retail, and nighttime entertainment uses, which may operate seven (7) days a week, twenty-four hours a day, and generate noise, dust, fumes and traffic.

(b) Transbay Terminal. The existing Transbay bus Terminal is located in the adjacent vicinity of the Property. The Transbay Terminal currently provides bus services throughout the City and commuter bus service to the East Bay, the North Bay and South Bay locations as well as connections to the City's Municipal Railway lines. The Transbay Joint Powers Authority (TJPA) is in the process of studying and redesigning the Terminal and the underlying transit services for the Bay Area. The TJPA development plan includes the creation of a state of the art, environmentally friendly Transit Hub located in the center of downtown San Francisco. The proposed new 40 acre development site will be designed to centralize the region's transportation systems by placing nine transportation systems under one roof. The TJPA plans to operate the following transportation systems from the new proposed Terminal; AC Transit, Caltrain, Muni, Golden Gate Transit, SamTrans, Greyhound, BART, WestCAT and future California High-Speed rail, a proposed high speed rail system designed to stretch from San Francisco to Oakland and Sacramento in the North and Los Angeles and San Diego in the South. To further its vision for bringing new transit to a newly constructed Terminal, the TJPA recently held an architectural design competition for the development rights to (a) construct a tower on the site and (b) construct the new Terminal. TJPA proposed selecting a design for a seventy foot high, multi-level terminal with a 5.4 acre City Park located at the top of the terminal and a proposed 80 Story-1,200 foot tall Tower on the North West corner of the site. The Tower is initially expected to consist of office space with retail shops on the ground level. The new

terminal is expected to provide world class shopping and dining for Bay Area residents. The current plans for the Transbay Terminal are preliminary and may be changed over time.

Transbay Temporary Terminal (Phase 1): Prior to commencement of any future development of the Terminal, the TJPA proposes to demolish the existing terminal located between 1st Street and Fremont Street in late 2009. With this demolition, a new temporary terminal is being planned to be located on Howard Street between Beale and Main Street for an approximate five (5) year time frame to operate the existing relocated bus lines.

TJPA Phase 2: TJPA plans to start development at the new Terminal even though funding for the underground rail service has not been identified. Phase 2 of the TJPA program includes plans for 1.3 miles of underground tunneling from Mission Bay to the Mission Street for the creation of the High Speed Rail. Seller has worked with the TJPA and its consultants to minimize the impact of any underground construction by entering into an understanding that may provide TJPA with rights to approximately 5 feet of underground space located on the Southwest property line to both construct and maintain the underground tunnel. Seller has in turn set back the location of the Property garage to accommodate future potential tunneling. Please note, if the planned underground tunneling occurs it may have impacts on the Center, including potential noise and vibrations. Seller has not reviewed nor has TJPA finalized its design and construction plans at this time. Seller has entered into an underground easement agreement with the Transbay Joint Powers Authority (TJPA) to provide both a permanent and temporary easement on the Property. This permanent easement encroaches 5 feet onto the Property at the South Eastern property line. This easement is underground and is designed to allow for a shoring wall to be installed for the TJPA's proposed new terminal. In addition, Seller has granted a temporary easement across a portion of the Property located at the South Western property line of the Property which will allow the TJPA the right to demolish and re-build the existing temporary wall five feet closer to the project's Porte Cochere. This temporary easement may affect the operation of the Porte Cochere as the driveway may be congested with construction activity while the new construction wall is being built. Upon completion of the new Transbay Terminal, the TJPA is obligated to demolish the existing construction wall and re-build a permanent wall in its original location at TJPA's sole expense. In addition, Seller has granted TJPA with the right to install vibration monitoring equipment on the B1 level of the Project to monitor any impact the Terminal construction may have on the Project. Seller has agreed to allow the TJPA representatives access to the B1 level to review the monitoring data that is recorded. This easement will be assigned to the Millennium Tower Association upon formation of the Condominium. This easement agreement has been recorded at the San Francisco Recorders office.

FURTHER INFORMATION ON THE TRANSBAY TERMINAL DEVELOPMENT MAY BE OBTAINED BY VISITING THE TJPA WEB SITE AT WWW.TJPA.COM. YOU ARE ENCOURAGED TO REVIEW THIS WEBSITE FOR DETAILS CONCERNING PROGRESS AND TIMELINES OF ANTICIPATED CONSTRUCTION. THE TRANSBAY TERMINAL DEVELOPMENT AND THE FRUITION OF THE PLANNED TRANSPORTATION PROGRAMS IS DEPENDENT UPON COMPLETION OF GOVERNMENT FUNDING FOR THESE PROJECTS.

(c) **Potential Future Construction.** Buyers are advised that there may be construction of future developments in the vicinity of the Property. If such developments occur, they can be expected to increase the congestion, traffic and noise level to the neighborhood and may have a negative impact on available neighborhood parking. Buyers should understand that

the construction of such future developments may last for years and may create significant noise, dust, dirt, fumes and/or odors which could be considered noxious or offensive. For further information Buyers are encouraged to consult the Port of San Francisco, the Redevelopment Agency and the City of San Francisco Planning and Building Departments.

(d) **Agency Plans.** The Property is currently located in a redevelopment area of the City of San Francisco subject to redevelopment plans created, implemented, and overseen by the City's Redevelopment Agency. There may be additional construction in the redevelopment area. For further information and copies of current redevelopment plans for the area, Buyer is encouraged to consult the San Francisco Redevelopment Agency. Public streets and rights-of-way in the vicinity may be modified.

4. **Views.** Seller makes no representation or warranty and does not guarantee the future presence or existence of any current or future view from any Unit or Common Area (including, without limitation, views from windows, balconies, decks, patios or yards). Future urban developments or activities, both on lands in the near vicinity of the Property or those located at some distance, may block, interfere with or deteriorate current views.

5. **External Lighting.** There are numerous external wall mounted building floodlights on the facade of the Property and streetlights lining the neighboring streets. The positioning and light reflection has been designed to minimize impact within the Residential Units; however, light, which may be on for varying times of the day or night, from these fixtures diffuses, penetrates and flickers into some of the Units. In addition, some of the adjacent buildings have external wall mounted lights and neon-lit signs that may shine or reflect into some of the Units. The lights at Pacific Bell Park during night games and concerts will be clearly visible from the Property. Lights from various construction cranes will be visible from the Property. Buyers are encouraged to personally make sure that this will not be or become a cause for inconvenience to the enjoyment of the Unit.

6. **Development and Floor Plans.** All construction plans and sales materials contain dimensions which are approximate. They are not intended to be precise representations of exact dimensions with regard to the Unit, and therefore, Buyer should not rely on these approximate dimensions in making the decision to purchase the Unit. Seller reserves the right, without notice, to alter floor plans, materials, features, exterior elevations, prices, available optional items and the design of the Units. Seller may sell all or any of the buildings or of the Units in the Property to another builder who may change the floor plans, elevations, features, materials or designs of the building or Units to be constructed.

In interpreting plans and deeds, the then existing physical boundaries of a Unit shall be conclusively presumed to be its boundaries, rather than the boundaries expressed in the plans or deed, regardless of minor variance between the boundaries shown on the plans or deed, and those of the condominium building. Square footage dimensions that are stated in various printed materials may vary as different measurement protocols may be used for different purposes.

THE UNITS ARE NOT BEING PRICED OR SOLD BASED ON SQUARE FOOTAGE CALCULATIONS OR STATEMENTS, AND VARIATIONS IN STATEMENTS OR CALCULATIONS OF SQUARE FOOTAGE OF A UNIT SHALL NOT BE GROUNDS FOR ANY CLAIMS AS TO REPRESENTATIONS BEING MADE BY THE SELLER OR ITS AGENTS.

FOR MARKETING PURPOSES, SELLER HAS CHOSEN TO OMIT THE NUMBERING OF THE 13TH FLOOR AND THE 44TH FLOOR OF THE TOWER ON THE CONDOMINIUM PLAN AND OTHER PROPERTY DOCUMENTS. THE TOWER CONTAINS 58 ACTUAL FLOOR NOTWITHSTANDING THE FLOOR NUMBERING STATED IN THE CONDOMINIUM PLAN AND OTHER PROPERTY DOCUMENTS.

7. **No Guarantee on Prices or Value.** Seller and its agents (Seller's sales representatives) and Seller, its employees and representatives make no representations that the value of Buyer's Unit will at any time in the future either remain equal to or be higher than its value at the time of purchase. Buyer hereby acknowledges that at no time has Seller or any of its sales associates, employees or representatives made any representations or warranties regarding tax benefits, value, price appreciation or depreciation, or future pricing adjustments with respect to the Property. In addition, Unit premiums are added to the purchase price of the Unit based on the size and location of the Unit. It is the Buyer's responsibility to evaluate the size and location of any Unit for which a premium is being charged. Seller reserves the right to increase or decrease Unit premiums at any time.

8. **Supplemental Real Estate Property Tax.** Buyer is aware that the purchase of this Unit constitutes a "change in ownership" for real property tax assessment purposes, which will trigger a reassessment of this residence by the County Tax Assessor. The result will be a real property tax bill, also known as a supplemental assessment, covering the property tax increase attributable to and payable by Buyer for the period from close of escrow through the current tax period.

9. **Residence Amenity Floor (Club Level):** Located on the second floor of Millennium Tower, as part of the Center Common Elements, are the facilities of the Residence Amenity Floor (Club Level) which are restricted to use by all unit occupants in Millennium Tower, and their authorized and permitted invitees. The costs of maintenance and operation of the Residence Amenity Floor (Club Level) are included in the Center Association Budget and are allocated to each of the Residential Projects as part of the common expenses under the association budgets for each of the Residential Associations. There are certain activities and facilities that will be available to Residential Owners for additional costs on a usage basis, such as private dinners or private training sessions. The Residence Amenity Floor (Club Level) will initially include a Club Concierge. The exercise and training facilities will initially be operated by The Sports Club L.A. The Residence Amenity Floor (Club Level) includes an indoor lap pool and soaking hot tub with adjacent pool deck opening out to an outside terrace. The Residence Amenity Floor (Club Level) will have a dining room, Owner's lounge and tasting room, which may be operated by a restaurant operator. Owners will be billed directly for food and drinks that they consume. There will also be a wine cellar with wine storage lockers for Owner's use. Other amenities on the Residence Amenity Floor (Club Level) for use by Owners are a screening room and the children's playroom.

The Center Association will provide for the management and operations of the Residence Amenity Floor (Club Level) and will adopt rules and regulations for the use and operations of the facilities by the Owners and their guests. The nature and availability of the various facilities and activities within the Residence Amenity Floor (Club Level) is subject to modifications and revisions at the discretion of Seller and the Center Association. The amenities, services, staffing, operators, and facilities on the Club Level may change over time.

10. **The Associations.** The Center Association will operate and manage the Center Common Elements and provide for general operational and management of the Center. The three Residential Projects will have separate Residential Associations. The Residential Associations for the three Residential Projects will be responsible for the operations and management of the Residential Common Areas of the Residential Project. The owners of the Residential Units will be members of the Residential Association for their Residential Project. Seller intends to provide management services to the Center Association and the Residential Associations. Each Association will have the right to ultimately select its own management services provider.

11. **Floor Covering.** Buyer is aware each room (excluding kitchens and bathrooms) in all Units situated above other Units shall have carpeting or rugs covering at least seventy-five percent (75%) of its square footage in order to reduce noise and maximize quiet enjoyment of those owners whose Units are situated beneath other Units, unless expressly approved by the Association. Buyer must take all reasonable precautions to lower noise transference between Units and to abide by the Declarations and the Center Association Rules and Residence Association Rules regarding floor coverings. Any mitigation of noise transference which is required of an owner by the Association shall be the sole responsibility of said owner.

12. **Maintenance.** Various building elements and materials within each Unit require routine maintenance by the Unit owner. Details on the care and use limitations of all of the various elements and materials are discussed in the Maintenance Manual to be provided to Buyer prior to the close of escrow and in the various manuals provided by the manufacturers of such building elements and materials within each Unit. In addition, the Seller will be providing to the Center Association and the Residence Associations Maintenance Manuals regarding the appropriate maintenance procedures for the improvements, equipment and facilities in the Center Common Elements and the Residential Project Common Areas.

(a) **Concrete and Walls.** Because concrete expands and contracts under certain temperature and other conditions, it is the nature of concrete to experience minor non-structural cracking. Such cracking will likely be caused by stress due to moisture evaporating from the concrete curing, and is not an indication of structural damage. Further, located within the Unit is a joint where drywall meets the ceiling and concrete walls. This joint has been designed to be caulked, and it is common and normal to experience cracking in the paint along this area. In addition, painted drywalls and baseboards of a Unit may be subject to minor cracking, which is not structural in nature and may need on-going touch up maintenance by the Owner.

(b) **Marble/Granite.** The color and veining of marble/granite cannot be controlled, as it can vary significantly in its natural state. Therefore, marble/granite floors, countertops and tile may not be completely uniform. For the same reason, it may be difficult to obtain marble/granite that exactly matches the color and characteristics of the sample shown to Buyer.

Due to the natural characteristics of marble, the cut tiles may not be exactly equal in size and thickness. It will be impossible, to obtain a "glass-like" smooth surface which would resemble a slab.

Marble is a relatively soft stone subject to staining, abrasion, cracking and scratching. Minor abrasions will be present in the product and do not constitute a defect.

(c) **Transition.** Hard surface materials such as hardwood, tile and marble vary in thickness. Though all possible measures are taken to minimize the transition between two adjacent dissimilar materials, a perfectly level transition is not always achievable. In case of a slight elevation change between two hard surface floor materials, a transition strip will be used. The floors are designed to be smooth with a reasonable transition of no more than 1/2" from room to room. None of the floors are designed to be perfectly level even within the same room; the floors have been constructed with allowable variations to level which may impact the installation of hardwood floors.

(d) **Windows and Washing.** Exterior windows will be cleaned periodically by the Association. Owners of Units with Terraces must provide access through their Units to their respective Terraces for such cleaning of windows that require such access for cleaning. Owners of Units with doors, including sliding glass doors, to their Terraces will be responsible for the cleaning of the windows on such doors. To open the operable window, residents must turn the handle clockwise 90 degrees which will release the locking mechanism. Residents shall then push the window outward until the hinge locks the window in the open position. To properly close the window, resident must push the window outward to the fullest extent possible which will release the locking mechanism. Once released, the resident shall slowly pull the window inward to the fully closed position and turn the handle 90 degrees counter clockwise to lock the window in place. Residents cannot drill into any of the curtain wall mullions when installing window coverings as it may cause leaks and void the manufacturer's warranty. Buyer should also note that the window glass does not block out all Ultra Violet Light and therefore leaving windows uncovered may cause fading to furniture fixtures and flooring.

(e) **Post Tension and other Concrete Construction.** No Buyer shall drill, penetrate or otherwise tamper with the concrete or other structural components of the Property, including slabs, floors, walls, ceilings and balconies. These areas have been constructed based upon the Post-Tension and other concrete construction design and any penetration or tampering will cause structural damage to such areas and may result in personal injury. By accepting a condominium grant deed in the Property, each Buyer covenants and agrees that: (i) Buyer will not cut into or otherwise tamper with the Post-Tension or other concrete; (ii) Buyer will not knowingly permit or allow any person to cut into or tamper with the Post-Tension or other concrete; (iii) Buyer will disclose the existence of the Post-Tension and other concrete to any tenant, lessee, or subsequent Buyer of the Condominium; and (iv) Buyer will indemnify, protect, defend and hold Seller and its respective agents, officers, directors, employees, and contractors free and harmless from and against any and all claims, damages, losses or other liability (including, without limitation, attorneys' fees) arising from any breach of this section.

(f) **Window and Door Weatherstripping.** The Unit contains operable and fixed-pane openings and door openings. These openings are insulated and glazed with a variety of fibrous, vinyl, rubber, and/or neoprene/petrochemical-based materials. All of these materials have a limited life and will deteriorate, wear down or wear out over time, starting with the first day after installation. This deterioration and wear will cause an increase in the amount of air infiltration and cause heat or cooling losses, thereby raising the cost of heating or cooling of the Unit. The rate at which these materials deteriorate or wear will depend on a variety of factors which are outside of Seller's control, such as frequency of use, cleaning or abuse. The completed window or door installation, including the sills, jambs, thresholds, glass and glazing and these insulating materials are warranted to meet the requirements of the Uniform Building Code and the State of California Title 24 for air infiltration upon the initial installation (per Section 116-17, Part 6, California Title 24). The amount of air infiltration (and therefore, heat

gain or loss to the interior of the living space) will increase with use, age, lack of care, or lack of replacement by the owner, and is hereby agreed to be outside of the control or responsibility of Seller.

(g) **Drains.** Units with Terraces may contain drains which the Owner will be obligated to keep clean and maintain.

13. **Alterations to Units.** Buyer is aware that all alterations and/or additions to Buyer's Unit must be in compliance with the Declarations including, without limitation, Section 7.8 of the Residential Declarations and the provisions of Article 6 of the Center Declaration. Buyer is aware the Property has been constructed utilizing internal steel framing components. Sheet metal screws must be attached to a steel stud in order to hang or affix heavy objects such as pictures or mirrors on a wall. It is recommended that Buyers affix proper backing to the steel wall studs prior to installing heavy televisions or other items to the framing. Not adhering to this guideline may result in an improperly mounted item to fall from a wall. The use of nails is not recommended. In the event of construction remodeling or additions to the Unit, Buyer is advised to hire a contractor who is familiar with steel-framed construction. Buyer acknowledges that alterations or additions to the Units made by owners or their contractors, such as room modifications, sometimes may give rise to water leaks, cracking, and other damages to the Unit, Common Areas, or other Units. Seller is not responsible for any damages resulting from any additions or alterations to the Unit as originally constructed by Seller.

14. **Parking Garage.** The Center's Parking Garage is located beneath the Mid-Rise Component of the Center. There are 339 striped parking spaces within the Parking Garage. The Parking Garage can serve more vehicles through valet parking services. There are not sufficient Parking Spaces in the Parking Garage to provide parking spaces or parking rights to all Owners. Seller has reserved the right to sell, license, assign and transfer the use of Parking Spaces and valet parking rights in the Parking Garage by Parking License Agreements to Residential Owners and Commercial Owners on such terms, extent and duration that the Seller, in its discretion, determines to be appropriate. The Seller may assign or license Parking Spaces as designated parking space assignments, as single spaces or tandem spaces, or as undesignated, valet assisted parking rights. In addition, the Seller has the right to provide for temporary or interim parking rights to Unit Owners. Under the Center Declaration, the Parking Garage is to be operated by the Seller by and through a professional parking garage operator, until such time as Seller either (1) relinquishes such operational responsibilities to the Center Association, or (2) the Seller no longer owns any Residential Unit or any Commercial Unit in the Center, after which time such operational responsibilities for the Parking Garage shall be undertaken by the Center Association. The Seller, or the Center Association, after such time as such operational responsibilities for the Parking Garage are undertaken by the Center Association, are to enter into parking garage operational and management agreements with parking garage operators to manage and operate the Parking Garage. Seller intends to initially hire City Park as the parking operator. As long as Seller has the right of making Parking Licenses under the Center Declaration, Seller shall have the right to approve such parking garage manager.

(h) **Allocation of Parking Garage Common Expenses:** The costs and expenses of the Parking Garage maintenance, repair and operations, including valet services, including any reserves for Parking Garage improvements and equipment and those expenses incurred under any parking management agreement ("Parking Garage Common Expenses") are allocated to the Parking Garage for calculation of the Parking Charges to be paid by the Residential Owners, Commercial Owners and others that are provided rights to park in the

Parking Garage. The Parking Garage Common Expenses shall be divided and allocated among the Parking Licenses as the Parking Charges as provided in the Center Declaration. The prorated allocation of the Parking Garage Common Expenses to the Seller or to an Owner who has been provided a Parking License shall be charged by the Center Association to the Seller or such Owner as a Parking Charge. Until such time as Seller provides a Parking License to a Residential Owner or Commercial Owner for the use a Parking Space, Seller shall be responsible for prorated Parking Garage Common Expenses allocated to that Parking Space. Seller may enter into temporary or interim parking arrangements to park in the Parking Garage or use Parking Spaces until such time as Seller has licensed or assigned non-exclusive and exclusive rights for the use of such Parking Spaces to Residential Owners or Commercial Owners. An Owner who has been provided with a Parking License Agreement must pay the Parking Charges that are stated in the Parking License Agreement.

(b) Rights Appurtenant: Except for temporary or interim parking rights, the rights of the Owner under a Parking License Agreement shall be deemed to appurtenant to the Owner's Residential Unit, and such Residential Owner shall entitled to transfer or assign his or her rights of use under the Parking License Agreement to a tenant or other occupant of his or her Residential Unit, in accordance with the provisions of the Parking License Agreement. Upon the sale or transfer of a Residential Unit by a Residential Owner who has been provided rights under a Parking License Agreement, the Residential Owner shall be deemed to have transferred or assigned his or her rights of use under the Parking License Agreement to the person or persons who acquired the Residential Unit in accordance with the provisions of the Parking License Agreement.

(c) City CarShare Parking Spaces: Four (4) Undesignated Parking Spaces shall be available for use by Persons who have entered into agreements for use of a vehicle under the City's City CarShare Program. Such Persons shall pay the then current market parking rates (hourly or monthly) for the Parking Garage as established by the Center Association. The users of the City CarShare Parking Spaces shall park using the Parking Garage's valet parking service.

(d) Commercial Parking Spaces: Under the terms of the Center Declaration, fifteen (15) undesignated valet served Parking Spaces may be made available by Seller for use by the Owners of the Commercial Components for the customers or other invitees of the businesses in the Commercial Components and for the vehicles of Persons providing maintenance services to Commercial Owners or Residential Owners during such time as such services are being provided. Such customers or other invitees of such businesses or such Persons providing such maintenance services shall pay the then current parking rates (hourly or monthly) for the Parking Garage as established by the Center Association. The users of the Commercial Parking Spaces shall park using the Parking Garage's valet parking service.

(e) **Size of Parking Spaces.** Buyers are notified that some parking spaces are compact sized and will not accommodate larger vehicles. Buyers of Units with two (2) parking spaces should be aware that such spaces may be tandem spaces.

(f) **Garage Security.** Cameras located in the vicinity of the Parking Garage are not intended to provide security for persons, property or any particular space. Buyer should be aware that the cameras do not, and are not designed to, survey 100% of the garage spaces, nor are they monitored 100% of the time. Seller makes no representation that Buyer's parking space will be surveyed by a camera.

(g) **Seller and Marketing Team Parking.** Seller hereby notifies Buyer that Seller's sales agents, Seller's authorized representatives and guests visiting the sales office will use parking spaces located in the garage until close of escrow of the last Residential Unit, or sooner if deemed appropriate by Seller. Such parking will not interfere with Buyer's use or access to/from their assigned parking space(s).

15. **Loading/Unloading Spaces.** Buyer is aware there are no loading/unloading spaces along the streets bordering the Property and there is only a limited amount of loading/unloading spaces located within the Property. If Buyer requires a larger loading/unloading space to accommodate a large moving van or similarly large truck, Buyer shall have the right to use the loading dock located in the vicinity of the Porte Cochere. Buyer is aware that the access to such loading area is limited in size and will be difficult to maneuver in and out of with trucks and other vehicles. Buyer is further aware that access to and from the loading/unloading facility at the Property must be scheduled with building management. Once deliveries are made residents and or their contractors, vendors, etc. must walk the delivery through the basement level of the Property to the appropriate elevator service cab serving the particular component. Buyer should be aware this may cause additional moving expenses for the Buyer. Buyer is further aware the loading/unloading facility may not always be available, especially during construction of remaining units, which will also cause significant difficulty with moving belongings into or out of a Unit and may also generate added moving expenses for Buyer. All large deliveries and moves must be scheduled with the Association. All Buyers must comply with any and all moving procedures set forth in the Rules and Regulations.

16. **Bike Storage.** Bike storage areas will be provided for use by Unit Owners and/or occupants of the Property. The rights and limits on the use of the bike storage areas will be set forth in the Center Association's Rules. Neither Seller nor the Center Association will be responsible for any equipment that may be damaged or stolen from the bike storage areas. There may not be sufficient bike storage areas to accommodate all Owners and occupants of the Center.

17. **Storage.** Storage lockers or areas may be provided within the Center Common Elements by the Seller or the Center Association as set forth in the Center Declaration. Rules regarding the use of any storage areas will be set forth in the Center Association's Rules. No animals, perishable items or flammable or hazardous materials shall be stored in any such storage lockers. Buyer will be expected to keep the storage locker neat and orderly at all times. Nothing kept in any storage locker shall be permitted to project or protrude whatsoever outside of the locker. Seller and Association are not responsible for loss, damage or theft of items stored in the storage lockers.

18. **Mechanical Equipment on Roof.** There is mechanical and/or plumbing equipment providing service to the Property located on its roof. These may cause noise or

vibration within some Units. Further, Seller cannot guarantee Buyer that these devices will not be changed, replaced, or extended in size or capacity from time to time as the commercial uses change from time to time. Seller can neither guarantee the precise roof location nor proximity to the roof decks or Units of such equipment now or in the future. Seller advises Buyer that upper levels/Units of both the Tower and Mid Rise Components are located near such equipment.

19. **Earthquake Insurance.** Earthquake insurance is NOT included in the initial operating budgets for the Millennium Tower Association or the Residential Associations approved by the Department of Real Estate for the Property. There are no existing plans to purchase earthquake insurance for the Property by any of the Associations. In the event that an Association does obtain earthquake insurance, the premiums and costs will be paid by the Association which will affect Buyer's assessments.

20. **Property and Liability Insurance.** The Center Association and the Residential Association insurance policies do NOT cover losses to the interiors or the contents of the Residential Units or liability claims against an Owner. Buyers should consult with an insurance professional to be sure that they are obtaining adequate and appropriate insurance coverage for property losses in their Units and for liability coverage.

21. **Cable Television.** The Property will be provided with cable television services and satellite television services. The Buyer is responsible to set up and maintain their own television service connections and accounts for service to his or her Unit and for wiring and cabling inside their Units to their television and other equipment. Exterior antennas and reception dishes are not allowed in the Center.

22. **Telephone Connections.** The Buyer is responsible to set up and maintain their own telephone service connections and accounts for service to his or her Unit and for wiring and cabling inside their Units necessary for telephone service.

23. **Utility Charges.** Each Buyer is responsible for his or her own Pacific Gas & Electric ("PG&E") (or other utility) accounts. The Seller currently holds accounts on all Units. Within twenty-four (24) hours of each escrow closing, that particular account will be canceled. Buyers must call PG&E (or other utility) and set up and maintain their own accounts.

24. **Heating/Air Conditioning.** Units will contain heat pumps within the Unit to heat and cool residences. These heat pumps will contain an access panel equipped with louvers for proper air circulation. Each buyer is responsible for keeping these access panels clear of any and all obstructions so air circulates according to design. Blocking the air circulation will result in improper operation of the heat pump. All heat pumps will be controlled by digital thermostat. The thermostats will not be able to hold the programmed temperature throughout the unit.

25. **Toilets.** The Water Department of the City requires that the entire Property be outfitted with low-flow toilets for water conservation reasons. These toilets are fully functional, but do not flush with high pressure, and often require two flushes for normal use. No item other than those specifically meant for toilet disposal should be flushed. Tampons, dental floss and kitty litter, for example, will clog toilets.

26. **Outdoor Furniture/Terraces.** Buyer is aware that all outdoor furniture intended for any Terrace of a Unit must be pre-approved by the Association. The use of Terraces,

including plants and storage, is limited under the Residence Declarations and any Residential Association Rules.

27. Building Noise and Odors.

(a) **General.** The Property is a mixed use, multi-unit condominium project in which neighbors will live either adjacent to, above or below other owners. The Property has been designed and built to meet all requirements of California State Building Code and the Building Code of the City, including those for noise. Prior to purchase, Buyer should determine that the noise levels within the Unit meet their personal noise standards. Rolling garage doors, early morning garbage (and related) pickup, garbage compactors, garbage chutes, may cause temporary yet-noticeable noise.

(b) **Elevators.** Buyers of Units located adjacent to elevators can expect that the usual noise generated by elevator use will be heard inside the Units and that such elevator use can occur at any time of the day or night. In addition, certain Units are adjacent to the hydraulic elevator equipment room, which separately could generate periodic noise for such Units.

(c) **Shafts and Fans.** There are exhaust shafts and fans in and around the property which may generate noise from their internal motors. In particular, garage emergency exhaust ventilation fans/louvers are in the parking structure and are located at the southwest corner of the Brannan Building. During normal ventilation operation, the fans are very quiet, but during an emergency mode, the fans are loud. The triggering of these emergency modes is not possible to predict, but can be expected to occur generally during the periods of extensive traffic activity in the garage. Buyers of Units located near garage exhaust shafts are advised of the noises generated by such exhaust shafts and fans.

(d) **Walls.** The common walls between Units have been designed to meet the standards for minimal sound transmission as set by the California State Building Code and the Building Code of the City; however, such walls will not alleviate all noise between the Units and from the Common Areas.

(e) **Toilets.** Due to the vertical plumbing stacks connecting some toilet waste pipes there may be occasion when the sound of a toilet flushing and other noise may be heard above, below, and near a Unit. Buyer is advised that all such plumbing penetrations through roof slabs have been acoustically isolated and sealed to current Building Code standards.

(f) **Kitchen and Bathroom Exhaust Fans.** Buyer is aware that the kitchen and bathroom exhaust fans are manually operated and the bathroom exhaust fans have automatic time-delay settings. The common exhaust risers that the individual kitchen and bathroom exhausts connect to are, however, on continuously, which may generate some noise.

(g) **Stair Shafts.** Buyers of Units located adjacent to stair shafts may be affected by noise generated by their use.

(h) **Fire Alarm, Life Safety System Testing.** Regular testing and commissioning of the fire alarm, life safety system will take place throughout the Property and within each Unit as required by law. Buyer acknowledges and accepts that these alarm tests may cause inconvenience to their quiet enjoyment of their Unit during these tests.

(i) **Metal Stairs.** Use of the metal stairs in the stair shafts may generate impact sounds which may be noticeable.

(j) **Trash Chutes.** Buyer is aware that the building has been constructed with trash chutes for the disposal of trash and garbage and that possible noise and smells may emanate from such trash chutes. Buyers of Units near garbage chutes may be affected by their operation.

(k) **Janitor and Utility Closets.** Buyers of Units located near janitor and utility closets may be subject to noise generated by authorized persons accessing such closets.

(l) **Fire Pump Room.** Buyers of Units located near the fire pump room may be subject to noise generated by such fire pumps.

(m) **Booster Pump Room/Irrigation Pump.** Buyers of Units located near the booster pump room and the irrigation pump may be subject to noise generated by such booster pump and irrigation pump.

28. **Tinting of Windows.** Windows are not engineered for tinting and applying tinting will void the warranty. Tinting may cause cracking. WINDOW TINTING IS NOT PERMITTED.

29. **Construction Activity.** Some inconvenience may occur (such as noise and dust from traffic) in connection with construction activity and the operation of a sales office, until such time that the Property has been completed. Please be aware that ongoing construction will continue throughout the overall projected development of the Property, and including in your building. You may be inconvenienced by road improvements, dust, noise and other nuisances associated with such ongoing development. For example, street renovation activities may take place. Dust which is created by these construction activities may also settle in the garage and on vehicles parked there. Common amenities may not be fully constructed or available until the Property is complete. The completion of these amenities may involve the use of machinery and may cause inconvenience in the form of noise, dust and temporary restriction of access through or into the area.

30. **Elevators.** There are separate elevators for the two towers of the Property. Access to the elevators may be restricted by a card key system. The ability to move furniture or other items in and out of the Units is limited by the elevator and stair dimensions and may be limited to certain freight elevators. Owners may experience long waits for the elevator if it is being used by others.

31. **Access Control System.** There will be an electronic access control system which allows residents entry into the Residence Component in which their Unit is located. Access by guests will be subject to the Unit occupant's authorization to the Center's security or concierge services for the Residence Component. The access control systems may not be fully installed and functional until the entire Property is completed. Owners are responsible for restricting entry to only authorized persons. Entry by unauthorized third parties may occur when the door is opened by authorized entrants. The property is located in an urban environment. All residential doors must be kept locked. If desired, Owners may independently contract to have alarm systems installed within their respective Units.

32. **Window Coverings.** Buyer is aware that Owners will be required to follow any and all guidelines in the Rules and Regulations and in this Property Disclosure (or otherwise

promulgated by the Center or Residential Associations) regarding the installation of window coverings (and restrictions on concrete penetration and penetrations of or connections to window mullions). As disclosed in Section 12 above, Buyer is aware that drilling, penetrating or otherwise tampering with concrete ceilings may cause structural damage and may result in personal injury. It is important to note that the MDF trim installed on the ceilings of all units approximately 6 inches from the window glass is not structurally supported and can bear minimal weight. Residents installing window coverings should drill through the MDF decorative trim and penetrate the concrete by no more than 5/8th of an inch. All window coverings installed shall have an exterior color of white or off white to create a uniform appearance from the exterior of the building and to prevent unnecessary heat buildup. Residents installing window coverings must adhere to the following guidelines: Draperies, Venetian blinds or other interior shading devices must be hung so as to provide space at the top and bottom or one side and bottom to permit natural air movement over the room side of the glass. The following criteria must be met to avoid formation of a heat trap:

1. Minimum 1- 1/2" (38mm) clearance required top and bottom or one side and bottom between shading device and surrounding construction.
2. Minimum 2" (50mm) clearance between glass and shading device.

If Venetian blinds are being used and these clearances cannot be provided, a two-direction positive stop or lockout that limits the movement of the blinds should be incorporated. For horizontal blinds, the lockout should limit the rotation of the blinds in both directions so that they are in a position 60 degrees off the horizontal when in the most-closed position. For vertical blinds, the lockout should limit movement in both directions so that 1/2" (12mm) spacing exists between the blinds when in the most closed position.

33. Marketing Banners or Signs. Buyer is aware that marketing banners or signs will most likely be fixed on the facades of the Property, and understands that these banners or signs will remain installed for a period of time. Seller agrees that all costs to remove these banners or signs, including any repairs required to the walls, will be borne by the Seller in a timely fashion. Reasonable access to the Units adjacent to the banners or signs will also be granted to Seller by Buyers of such adjacent Units to enable Seller to implement and complete such removal and repair.

34. Building Condition. The condominium plan, building plans and various other engineering and structural plans relating to the Property contain dimensions and other specifications which Seller reserves the right to revise in the actual construction of the Property. The as-built conditions shall control in the event of any conflict between any such plans, exhibit or similar matter, and the actual as-built condition.

35. Access. Upon not less than twenty-four (24) hours prior notice, the Associations may access any Unit in order to perform the repairs and maintenance described in the Declaration and for which an Association is responsible. Maintenance shall be understood to include, without limitation, maintenance of Terraces outside the Units, as well as general building maintenance and/or repair.

36. Lobbies and Atrium. The Atrium of Millennium Center consists of approximately 2,600 square feet of space located on the ground floor adjacent to the main entry

of the Center on Mission Street. The Atrium is a Common Element of the Center and is required to be open to public access and use between 8 a.m. and 6 p.m. Monday through Friday. A portion of the Atrium will be established for the exclusive use of the Mid-Rise Commercial Component that will be used as a restaurant.

37. **Encroachments.** Bay windows, fire escapes and other encroachments (if any shown on the Condominium Map, that exist, or that may be constructed) onto or over Mission, Beale or Fremont Streets are permitted through and are subject to the restrictions set forth in the building code and planning code of the City and County of San Francisco. The Condominium Map does not convey any ownership interest in such encroachment areas to the Condominium Unit Owner.

38. **Landscaping.** Landscaping of the common areas is subject to change in both the type and size of plantings (depending on availability and species issues) by the Seller until such time as the entire development is complete and thereafter at the discretion of the Center Association. Some landscaping may not be completed at the time of the sale of the first Units.

39. **Streetscape.** Certain street trees located on streets that surround the Center will owned and maintained by the Association, and are subject to the regulations and ordinances of the City regarding street trees.

40. **Pets.** Buyer is instructed to refer to the Center Declaration, the Residential Declaration and the Center Rules for additional covenants, conditions, restrictions and disclosures regarding the keeping of pets by Buyers.

41. **Upper Floor Load Limits.** The Units are designed to support weight limits as outlined in the Maintenance Manual. Buyer is responsible for confirming with the manufacturer of any pool table or other heavy furniture that the weight introduced by these items does not exceed these weight limits. The Buyer is responsible for damage caused by placing anything in the Unit which exceeds such weight limits.

42. **Severe Weather Conditions.** Although the Units, and the Property as a whole, have been constructed with quality components, and while the building is weatherproofed, during severe weather conditions you may experience minor leaks around sliding and pocket doors, windows and roof vents. These are acts of nature for which Seller is not responsible.

43. **Proximity to Pacific Ocean and Bay.** The Property is located in proximity to both the Pacific Ocean and the San Francisco Bay. Consequently, the building may be expected to experience conditions normally resulting from proximity to large bodies of water, such as fog, dampness, rust, sea gulls, and similar conditions; furthermore, because of this situation, the Property may also be expected to age more rapidly and differently when compared to other developments.

44. **Seismic Potential.** California is subject to a wide range of earthquake activity. California has many known faults as well as yet undiscovered faults. For additional information, a soils and geologic report is on file with the City. A major earthquake, which some have predicted will occur in our lifetimes, could cause very serious damage to building located even many miles from the epicenter of the earthquake. A more moderate earthquake occurring on a more minor fault, or on an as yet undiscovered fault, could also cause substantial damage. Seller makes no representations or warranties as to the degree of earthquake risk within the Property. You are advised to consult with the City, other public agencies, and appropriate experts to

evaluate the potential risk. Neither the Center Association nor the Residential Condominium Project Associations have obtained earthquake insurance, and the budgets for these associations do not provide funds for obtaining earthquake insurance.

45. Changes in Development Plan. The residential real estate market continually fluctuates due to changes in economic, social and political conditions that directly affect the supply of and demand for housing. As a result, the development plan for the Property, Unit prices as well as the terms and conditions of sale are also subject to change. Therefore:

With the exception of Buyer's Unit, Seller reserves the right at any time prior to or after the Close of Escrow for the sale of a Unit and without notice, (i) to increase or decrease the sale price, adjust incentives and/or otherwise adjust the terms and conditions of sale for Units in the Property (or in the vicinity thereof), and (ii) change the number, size, location, and design of Units constructed in current or future phases of development of the Property;

Seller is not obligated to offer you the same price, incentives and/or other terms and conditions of sale that Seller has previously offered or may subsequently offer to another buyer;

Seller has neither offered nor agreed to any price protection or other similar commitment to you regarding the value or resale value of your Unit (or any other property), and Seller shall not have any obligation or liability whatsoever to you in the event any price changes directly or indirectly affect the value of your Unit; and

When you entered into the Purchase Documents, Seller may have owned other properties which may have been off the market and may not have been shown to or otherwise made available for purchase by you. Seller does not have any obligation to notify you if any of such properties come on the market or are otherwise available for purchase or any obligation to notify you of any future properties Seller may develop and make available for purchase.

46. Move-In Dates. The completion date for Buyer's Unit is only an estimate. As construction progresses, the completion date may be adjusted. The estimated completion date is not meant to be a commitment to Buyer for a move-in date. Your actual moving date should be scheduled to take place at your convenience after your escrow closes. Moving date plans made prior to close of escrow are constantly subject to change. Seller is not obligated to reimburse Buyer for any costs associated with any adjustment made to the completion date and resulting move-in date.

47. Buyer's Rights Prior to Close of Escrow. Buyer is aware that Buyer may not occupy the Unit or institute construction activity, place personal property in the Unit, or cause to be installed floor or window coverings, prior to close of escrow.

48. Stain Grade Material Discoloration. Natural hardwoods used for cabinets, doors, stair systems, moldings, etc., are finished with stain and lacquer finish products which will change color over time. Color change may be the result of exposure to sunlight or weather, or simply the consequence of aging. Discoloration is not a defect.

49. Paint Discoloration. Certain portions of your Unit, such as paint-grade cabinets, casework, moldings and interior doors, may be painted with latex-based enamel paint. Yellowing is common with latex-based enamel paints. Additionally, if your Unit has white latex-based enamel paint-grade cabinets, yellowing will occur.

50. **Variations in Natural Materials.** Your Unit may include various natural materials (e.g., wood, marble and/or other stone products). Wood products vary in dimension, grain, color, moisture content, and performance when subjected to high moisture environments and humidity/temperature variation. Some of the natural characteristics of wood will show through the painted or stained finish. Grain patterns or texture will vary from even to irregular throughout your cabinetry. Similarly, granite and natural stone products will vary in appearance. Marble is less dense and more porous than granite. Great care must be taken to prevent damage to marble and other stone products. You must follow the manufacturers' recommendations for cleaning and maintenance. Because these are natural products, they are subject to variation in color, patina, pattern, texture, veining, spotting, holes, cloudiness, cupping, flexing, buckling, creaking and cracking. Some may vary significantly in filler and sheen. The samples in the sales office are actual pieces of natural stone which indicate general color and character; however, no two pieces can be expected to match, even when taken from the same box. You should view the stone prior to purchase, and any questions regarding these materials must be resolved prior to installation. If replacement of natural material tile or carpet is required, you understand and agree that a match with existing material cannot be guaranteed.

51. **Brass Plumbing/Light Fixtures/Hardware.** Brass, bronze or other finishes have their limitations. In time, the protective lacquer may deteriorate from exposure to weather, perspiration, cleaning agents, frequency of use and other factors. Tarnishing or excessive wear of these finishes is, therefore, not a defect, but a normal process that is unavoidable. Under the circumstances, these finishes cannot be guaranteed and products will not be repaired or replaced under the manufacturer's warranties for tarnishing or wear of finishes.

52. **Drywall Panels and Finishes.** Drywall panels are placed over the wall studs, joists, rafters and beams. Drywall is typically used to finish window openings. Drywall panels may not completely eliminate variations in the dimension and plane of framing members. Metal trim (i.e., corner bead) may be used at corners, window edges, soffits and ceilings. They are designed to be filled with finish compounds. These trim metals provide a durable finish but cause the wall plane to "flare" at the metal edge. Panel joints and seams are taped and coated with finish compounds. Fasteners are coated with finish compounds to cover the small "dimple" in the surface of the drywall panel. Progressive applications of finish compounds are required to cover the joints, fasteners, and seams. In some cases, the normal finishing of these joints, fasteners, and seams will cause a subtle "bulge". In certain lighting conditions (up-lights placed close to the walls), irregularities and variations in the wall plane or intersection of vertical and horizontal panels may be evident. These variations are normal. Dry wall installations may be subject to normal minor, non-structural, cosmetic cracking that may require touch up by the Unit Owner over time.

53. **Water Pipes.** Units in the Property may feature copper and/or aquapex pipes for the water system. Copper pipes are generally corrosion-resistant and easy to repair. However, over time, the copper pipes in your Unit may be affected by pitting corrosion leading to pinhole leaks. Pitting is generally caused by exposure to well waters with high dissolved solids including sulfates and chlorides, a pH between 7.2 and 7.8 and high carbon dioxide content. By accepting and recording a deed to a Unit in the Property, you represent that you understand and acknowledge that Seller has no control over the quality or characteristics of the water supplied to your Unit. If you have further questions concerning water quality in the Property, you should contact the local water authority or a water treatment expert. A qualified water treatment expert can specify a treatment for aggressive water to make it non-aggressive to plumbing materials.

54. No Contractor; Possession; Occupancy. Seller is not acting as a contractor for Buyer. Prior to close of escrow, Buyer has no right or interest in the Unit except the right and obligation to purchase the Unit in accordance with the Purchase Documents. Buyer shall not be entitled to possess, occupy or enter upon the Unit prior to the date on which the deed conveying the Unit to Buyer is recorded. Until the Unit closes escrow and the deed is recorded, Buyer is not allowed in the construction area except for scheduled meetings accompanied by Seller's representative. In the event Buyer enters the construction area prior to the Close of Escrow (except for a walk through conducted with Seller's representative), Buyer hereby agrees to indemnify, protect, defend and hold harmless Seller and its successors and assigns and its and their respective officers, directors, shareholders, members, partners, employees, contractors, representatives and agents from and against all liability, loss, cost, damage, injury, death and claim to any person or property (including, but not limited to, the person or property of the Buyer) resulting from or in connection with any such entry on the Property prior to close of escrow, such indemnification to extend to and include reasonable attorneys' costs and fees incurred by Seller or the other indemnified parties.

55. Right of Substitution. From time to time due to unavailability and other production considerations, it is necessary for Seller to make substitutions of materials and other items used in construction of the Units from those materials and items displayed in the models. Therefore, Seller reserves the right to make any changes or substitutions as Seller deems necessary or desirable to the color schemes, building materials, fixtures, appliances and other components of the Units. The foregoing substitutions may include, without limitation, kitchen appliances, household fixtures, electrical outlets and switches, hardware, wall surfaces, painting and other similar items. Seller shall have the right to make the substitutions described above without adjustment to the purchase price of your Unit.

56. Proposition 65. The State of California requires Seller to inform you of the potential hazards associated with exposure to certain chemicals in the environment. Buyer hereby acknowledges and agrees that Buyer has read the posted warning relating to exposure to chemicals known to cause cancer, birth defects or reproductive harm.

57. Assumption of Risk and Liability. By acceptance of this Statement, you assume all risk and liability for injuries to persons and property that may be sustained by you, members of your family and your guests and invitees by reason of all conditions or circumstances disclosed in this Statement.

58. Financing. Seller or its sales representatives may provide to Buyer the names of lenders who may be interested in providing financing in connection with the purchase of Units. The availability, terms and condition of any such financing is strictly between Buyer and any such lender. No guarantees, representations or warranties have been made by Seller with respect to the availability or terms of any financing.

59. Hazardous Substance/Soils Disclosure. Buyer is advised that the soil under the Property (the "Property"), as with most of the South of Market area, consists of non-engineered fills over soft bay mud of loose to medium dense sand and contains debris from the 1906 earthquake and fire. This fill poses soil management and potential health and safety concerns. Fill material underlying the Property may contain elevated metals and petroleum hydrocarbon contamination. Exposure to these contaminants can occur through skin contact, inhalation of particulates, and ingestion of the soil. Mitigation measures, when completed, will reduce and/or eliminate environmental or health and safety hazards caused by or likely to be caused by

hazardous constituents in the soil. These measures include capping the entire Property with a concrete floor slab. Ongoing procedures must be followed to maintain the integrity of this cap.

60. **Option Selections from Third-Party Vendor.** Seller, at Seller's discretion, may provide Buyer with the opportunity to purchase options and upgrades for the Unit through specified third-party vendors. Buyer acknowledges and agrees that (i) any such purchase of options and/or upgrades for the Unit from third-party vendors shall be made pursuant to a separate contract between Buyer and such third-party vendors; (ii) all amounts payable by Buyer pursuant to such contract shall be paid by Buyer directly to such third-party vendors; and (iii) Seller shall have no obligations to Buyer under or in connection with such contract between Buyer and the third-party vendors, including, but not limited to, any obligation to refund to Buyer any of the amounts paid by Buyer to such third-party vendors if Escrow fails to close for any reason. The complete payment of the price of all options being purchased will be required by the deadline set by Seller, even if the cost is to be applied to your loan. If the complete payment is not received prior to the deadline, then the pre-selected standard items will be installed. If you desire to add the cost of your options to your loan, and this is acceptable to the lender, the full amount of your deposit will be credited to you at Close of Escrow.

Each custom choice is an individual selection and may have more value to one Buyer than to another. THEREFORE, IN THE EVENT OF A SALE CANCELLATION, CUSTOM CHOICE PAYMENTS ARE NON-REFUNDABLE. Seller reserves the right, without notice or obligation, to revise pricing and terms of the design options. Seller reserves the right, without notice or obligations, to substitute product and/or design due to changes in material availability or builder preferences.

61. **Non-Standard Construction Options.** Unless documented by a separate Unit Modification Addendum signed by the Seller and the Buyer, no changes of any kind may be made or allowed to the Unit prior to close of escrow except for those options on the "Options" price list offered by Seller. No work of any type may be performed on the Unit by anyone other than Seller, Seller's general contractor or subcontractors prior to close of escrow. Unless agreed upon in writing by Seller, installations by outside flooring subcontractors or other third-party contractors engaged by Buyer must be made after the close of escrow.

62. **Visiting the Property Before You Move In.** Seller, in Seller's discretion, may permit you to enter your Unit and the construction area surrounding your Unit before final completion provided that you are fully aware of the risks and dangers of such entry and are willing to comply with the procedures and requirements imposed on such visit by Seller. Such entry can only be allowed after the Center is adequately complete under City requirements, regulations and permits. If any such entry is allowed, you must be accompanied by a representative of Seller on any and all visits to your Unit at such time as Seller authorizes. By signing this Statement, you acknowledge that there are numerous risks and dangers associated with visiting your Unit during construction including without limitation, open trenches, construction traffic, potential falling debris, exposed nails and electrical wiring, incomplete construction and certain other potential hazards. You further agree to use due care while visiting your Unit. In addition, prior to visiting any construction area, you must execute the waiver and release form provided by Seller, entitled "Waiver and Release of Claims and Indemnity Agreement" ("Waiver") and comply with its requirements. By signing this Statement and the Waiver, you agree that you shall proceed at your own risk and you release and waive any claims against Seller and all of its affiliates, parent and subsidiary companies, officers, directors, employees, attorneys, assigns and any and all other persons or entities that could be potentially

liable to you as a result of an injury which may occur during your visit to your Unit or to any portion of the Property.

63. Addendums to Disclosures; No Representations. Additional information addendums may be added to this Statement prior to close of escrow. Neither Seller nor its sales representatives, nor any broker or salesperson or other agent of Seller shall be responsible for, or bound by, any representation, agreement, or statement, by any sales person or agent unless such representation, agreement, or statement is in writing and signed by Seller.

64. Water Heater Certification. Seller certifies that the water heater in your Unit has been anchored, braced or strapped in accordance with the requirements of Health and Safety Code Section 19211."

65. Terminology: Unless defined herein, capitalized words and phrases used in this Statement shall have the meanings given them in the Center Declaration. Where the Center Declaration gives the same capitalized word or phrase a different meaning than this Statement, the meaning given in the Center Declarations shall apply.

EXHIBIT C



**This form is intended *solely* for use with listings and sales
of units in the Millennium Tower in San Francisco.**

Two newspaper articles regarding a condominium high-rise building in San Francisco known as the “Millennium Tower” came to the attention of the San Francisco Association of REALTORS® (“SFAR”) on August 1, 2016. The first, entitled “*S.F. tower for rich, famous is sinking,*” was in the San Francisco Chronicle; the second, entitled “*Finger pointing begins in Millennium luxury tower mess,*” was in the San Francisco Business Times. Copies of both of these articles are attached and they can also be accessed presently at the following links: <http://tinyurl.com/MTChronicle080116> and <http://tinyurl.com/MTBusTimes080116>. Other articles or sources of information in this regard may be available.

Buyers are urged to carefully review all such information and conduct their own investigation before the purchase of any unit in the Millennium Tower, preferably during Buyers’ inspection contingency, if any. This includes, without limitation, by (a) contacting all potential sources of relevant information and documents, such as the Millennium HOA (Telephone No. 415/874-4700) and (b) engaging independent qualified experts, such as a structural engineer, an attorney, or an appraiser, to answer any questions, provide advice and otherwise aid in investigating these matters to Buyers’ satisfaction.

Brokers/Agents (and SFAR) have not investigated or verified, and will not be investigating, verifying or updating, any of the information in the above-referenced or any other articles, or the issues they raise. No obligation is undertaken by providing this advisory to provide similar advisories now or in the future regarding the Millennium Tower or any other property.

The undersigned acknowledge receipt of this Advisory and the attached August 1, 2016 articles from the San Francisco Chronicle and the San Francisco Business Times.

Seller _____ **Date** _____

Seller _____ **Date** _____

Buyer _____ **Date** _____

Buyer _____ **Date** _____

BROKERS/AGENTS CAN ADVISE ON REAL ESTATE TRANSACTIONS ONLY. FOR LEGAL OR TAX ADVICE, CONSULT A QUALIFIED ATTORNEY OR CPA.



SF's landmark tower for rich and famous is sinking and tilting

By [Matier & Ross](#)

Updated 10:23 am, Monday, August 1, 2016

The Millennium Tower, a leading symbol of San Francisco's new high-rise and high-end living, is sinking — setting the stage for what could be one of the most contentious and costly real estate legal battles the city has ever seen.

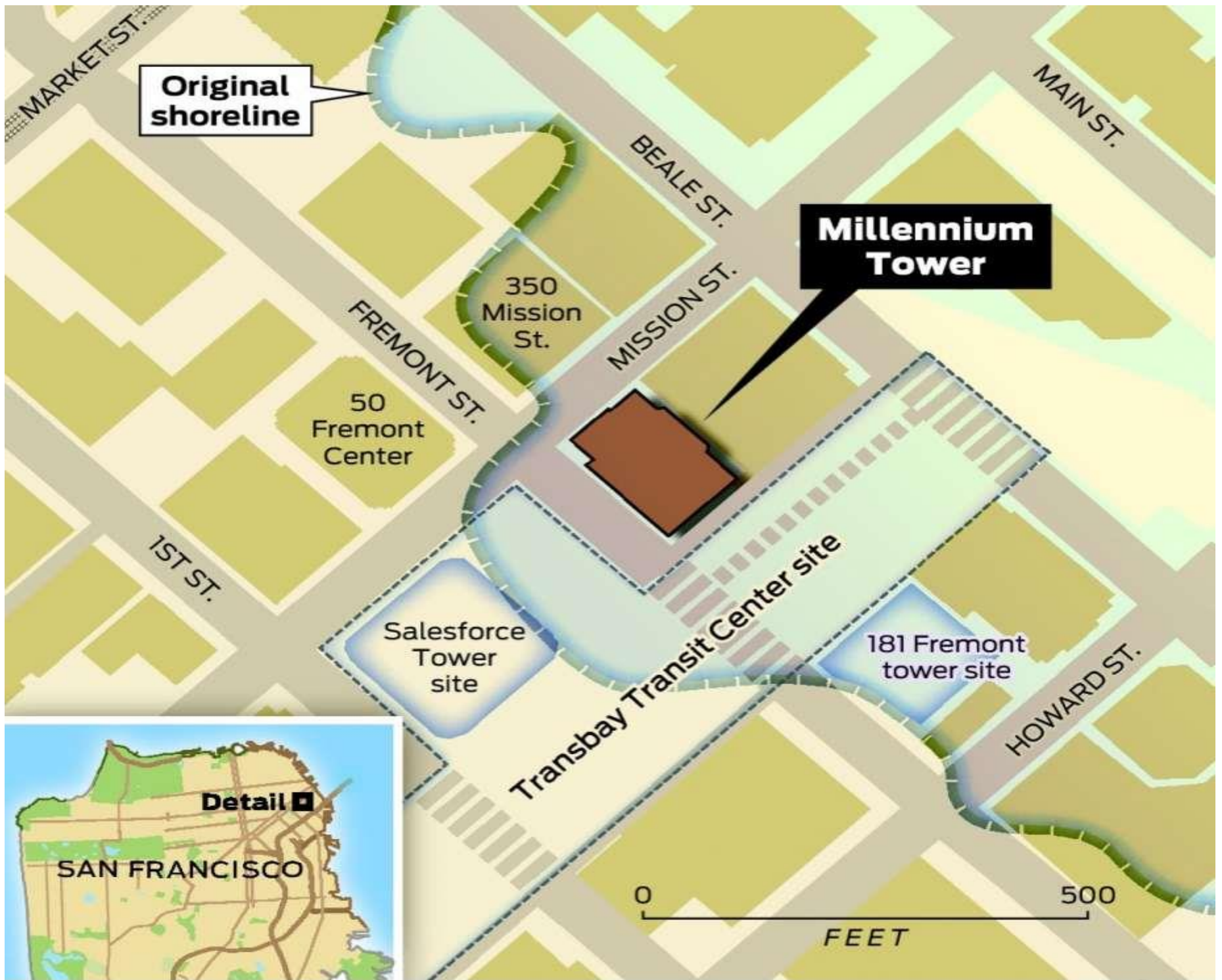
Rated by [Worth magazine](#) as one of the top 10 residential buildings in the world, the Millennium at 301 Mission St. is home to such A-listers as [Joe Montana](#) and [Hunter Pence](#). Until his recent death, it's where venture capitalist [Tom Perkins](#) owned a penthouse. Condos sell for anywhere from \$1.6 million to north of \$10 million.

However, since its completion in 2008, the 58-story building has sunk 16 inches, according to an independent consultant hired to monitor the problem. It has also tilted 2 inches to the northwest.

“That's significant ... and of concern,” said Professor [Greg Deierlein](#), director of the [John A. Blume Earthquake Engineering Center](#) at [Stanford University](#), who has been called in to evaluate the designs of a couple of San Francisco's newer downtown high-rises.

Deierlein noted that the 88-story Petronas Twin Towers in Malaysia — which were the world's tallest buildings when they opened in 1998 — have sunk less than 3 inches. Their tilt, or “differential settlement,” is less than half an inch.

This isn't just an issue for the Millennium's owners and wealthy inhabitants: It could be a headache for taxpayers as well. There are potentially big public dollars at stake, with the owners alleging that the massive hole dug next door for the new [Transbay Transit Center](#) is to blame for the building's issues.



The problem first came to light in 2010 when the [Transbay Joint Powers Authority](#), the public agency constructing the transit center, hired the consulting firm [Arup](#) to gauge how the excavation could affect the tower.

According to the consultant's initial report, by the time excavation began — two years after the \$350 million Millennium was completed — the tower had already settled 10 inches. That was 4 inches more than its builders had predicted for the life of the high-rise.

Since then, “the building has continued to settle vertically, now 16 inches,” representatives of the Transbay Joint Powers Authority said in a statement in response to questions from The Chronicle.

At the same time, geotechnical reports show that since 2009, the settling has been uneven — resulting in the 2-inch tilt.

And while Stanford's Deierlein doesn't consider the sink or tilt a safety issue, he did say, “I would be concerned for my investment.” That's because a shifting building can cause walls to crack, elevators to malfunction and all manner of other annoyances.

[P.J. Johnston](#), spokesman for tower builder [Millennium Partners](#) and its principal owner, [Sean Jeffries](#), said a nine-month, independent structural safety review in 2014 “determined the settlement has not significantly affected the seismic performance of the building, and does not represent a safety risk.”

An attorney for the Millennium homeowners association's board, [John Gill](#), recently sent a confidential letter to some of the more than 400 residents saying the board was “actively engaged in negotiations with Millennium Partners to resolve building settlement issues.” The letter also said the association was “sensitive to the concerns of everyone about any issue which could impact the value of their units.”

In a statement Friday, homeowner representatives said they had “retained a number of engineering consultants to investigate the causes and long-term impact of these settlement conditions” and were evaluating their legal options. They cited any number of parties that could be held “legally accountable” — including the developer, the high-rise's designers, the contractors and the Transbay Joint Powers Authority, which is run by San Francisco, [AC Transit](#), Caltrans and the agency that operates [Caltrain](#).

For his part, Millennium spokesman Johnston wasted no time blaming the transit center authority. He insisted that the tower's settling had been within normal range until excavation began on the bus and rail center next door.

“They built a half-mile tunnel 60 feet underground and next to our building, and they were supposed to (protect the Millennium) — and they didn't,” Johnston said.

The authority also signed an agreement with the Millennium developer in 2008 “to repair, at its own cost and expense ... any damage to the development substantially caused by TJPA's construction activities,” according a copy of the agreement on file at San Francisco City Hall.

Records show the Transbay Joint Powers Authority pumped more than \$58 million into an underground buttressing system to shore up the Millennium before beginning excavation in 2010. That's one of the many reasons for the new transit center's spiraling costs, which are now at \$2.4 billion and counting.

In its statement, the transit center authority said it "bears no responsibility for the tilt and excessive settlement."

Unlike some downtown high-rises, the Millennium isn't steel-framed. Instead, the developer chose a concrete design more common to residential buildings. It relies on huge columns, shear walls and beams, and it's much heavier than steel. What's more, the building is located on unstable mud-fill, just off the bay's original shoreline.

The Millennium's engineers anchored the building over a thick concrete slab with piles driven roughly 80 feet into dense sand. "To cut costs, Millennium did not drill piles to bedrock," or 200 feet down, the transit center authority said in its statement. Had it done so, the agency said, "the tower would not be tilting today."

Johnston countered that "virtually all other buildings in that part of the city have their foundations at the same subterranean level," citing skyscrapers that include the St. Regis and Intercontinental hotels.

He added that the Millennium's design was state of the art for residential buildings and that concrete can be preferable to steel for several reasons, including sound insulation.

"In any case, this was not a cost-saving decision, but the preferred design," Johnston said.

While there have been reports of cracks appearing in the Millennium's underground garage, there's no word of residents complaining about damage to their condos. Instead, the shifting and sinking of the concrete platform beneath the building has necessitated what Johnston called "minor repairs to sidewalks and connections at the ground level."

Experts tell us it's uncertain exactly what, if anything, can be done to fix the problem or straighten the tower. There has been talk of pumping cement underneath the base and drilling new piles — complicated and expensive undertakings.

An assessment, no doubt, that offers little comfort to those living in the building.

San Francisco Chronicle columnists [Phillip Matier](#) and Andrew Ross appear Sundays, Mondays and Wednesdays. Matier can be seen on the KPIX TV morning and evening news. He can also be heard on KCBS radio Monday through Friday at 7:50 a.m. and 5:50 p.m. Got a tip? Call (415) 777-8815, or email matierandross@sfchronicle.com. Twitter: [@matierandross](#)

From the San Francisco Business Times:

<http://www.bizjournals.com/sanfrancisco/blog/real-estate/2016/08/fingerpointing-begins-millennium-luxury-tower-mess.html>

Finger pointing begins in Millennium luxury tower mess

Aug 1, 2016, 2:53pm PDT

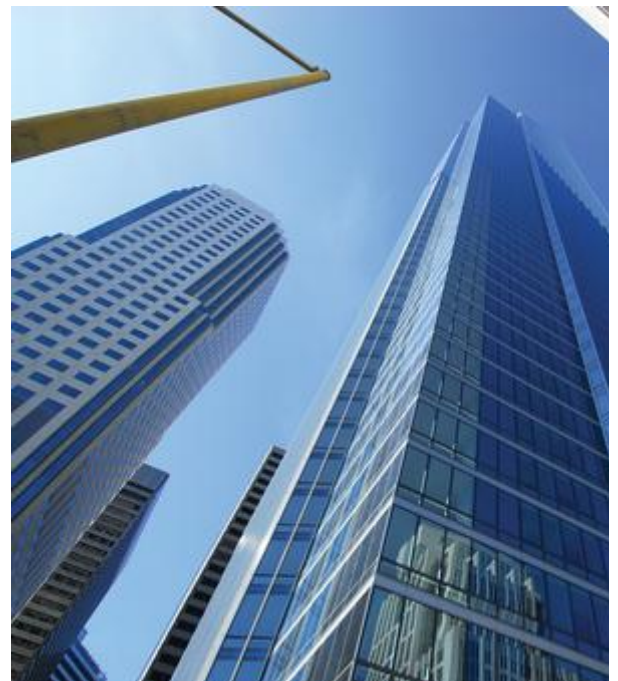
Finger-pointing is in full force over who is to blame for the 60-story Millennium Tower condo building sinking and tilting.

Developer **Millennium Partners** said the sinking at the \$600 million tower is the fault of the **Transbay Joint Powers Authority** for not protecting the condo tower during construction of a subterranean train tunnel as part of the nearby Transbay Terminal project. The tower was completed in 2009.

“301 Mission exists in a location where major underground construction work was subsequently performed by others, who were obligated to monitor and protect existing structures, and to mitigate any impacts of their work,” the developer said in a statement.

Meanwhile, the TJPA, which revealed this afternoon that it has received claims for damages from some Millennium condo owners, deflected responsibility back toward the developer.

“The residents’ claims against the TJPA are misplaced; as demonstrated by data



SPENCER A BROWN

Millennium Tower is now at the center of a dispute over who is at fault for the building's excessive settlement.

collected over more than seven years, full responsibility for the tilting and excessive settlement of the building lies with Millennium Partners, the developer of the Tower," the TJPA stated. "Millennium Partners' poor design decision is the cause of the tilt and excessive vertical settlement of the Millennium Tower."

The building's homeowners' association said in a statement that the developer informed the group that the building has settled more than is expected. The group has brought on consultants to determine what repairs the building might need and is also evaluating who could be held legally liable for the building's condition.

You can read the full statement from the homeowners association here.

According to the homeowners' association, the list of responsible parties could include: "the developer, the original design professionals, the original contractors, and the Transbay Joint Powers Authority (as a result of the construction of the neighboring Transbay Transit Center). The Transbay Joint Powers Authority has acknowledged, in a recorded easement, that its significant construction activities could have negative impacts on surrounding structures and properties."

The tower is built in an area where the bay was filled in with sand, as is much of the South of Market district. Buildings on infill land are constructed with piles or poles that reach down to bedrock so that the buildings won't sink into compressible soil.

That type of construction has been used for many decades, said Tom Holzer, a Menlo Park-based research geologist with the earthquake hazards team of U.S. Geological Survey.

"Unless there's some miscalculation, the building should be really stable," he said speaking in general about buildings built on infill. "With piles, you shouldn't have any sinking, not if it's done properly."

According to the San Francisco Chronicle, which first reported the story, the building has sunk 16 inches and has tilted 2 inches to one side in less than a decade. It had been expected to sink a maximum of 6 inches over its lifetime.

Millennium Tower was originally built with a concrete slab foundation that is supported by piles that do not reach bedrock. The building's "foundation is inadequate to prevent settlement of a building with the weight of the Tower. In

contrast, the Salesforce Tower and 181 Fremont Tower, also adjacent to the Transit Center, are supported on piles drilled down to bedrock,” the TJPA said.

The agency also spent \$58 million to add support between the building and the future transit center site, which it called an “extraordinary step.”

“The TJPA completed the buttress and excavation of the Transit Center several years ago, yet the Millennium Tower has continued to settle at a steady rate due to the Tower’s own improper foundation,” the agency stated. “The TJPA’s monitoring of other nearby tower developments confirms that no other neighboring towers are experiencing excessive settlement like the Millennium Tower.”

The building’s homeowners’ association said it is working with engineering consultants to determine how and when the building can be repaired and how much it will cost.

Blanca Torres

Reporter

San Francisco Business Times