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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 PAMELA BUTTERY, TRUSTEE OF THE  
11 PAMELA BUTTERY 1990 TRUST; PAULA  
12 B. PRETLOW, TRUSTEE OF THE PAULA  
13 B. PRETLOW TRUST; VINITI NARAIN  
14 MAHLBUBANI; HELENA GENG; THE  
15 HELENA H. GENG LIVING TRUST;  
16 JOANNE FOX; JEFFREY A. SAAL AND  
17 JEANNETTE C. SAAL, TRUSTEES OF THE  
18 SAAL REVOCABLE LIVING TRUST;  
19 ELAINE LUM MACDONALD; EVA LUM  
20 CAMP; JACKSON LUM, JR., EVONNE  
21 LUM; NINA AGABIAN; GIOVANNI AND  
22 VANESSA COLELLA; FRANK H.  
23 JERNIGAN, TRUSTEE OF THE FRANK H.  
24 JERNIGAN FAMILY TRUST; GERALD  
25 AND PATRICIA DODSON, TTEE LIVING  
26 TRUST DATED 2/2/95; CATHERINE  
FARRELL; THERESA STRICKLAND;  
TYRONE STRICKLAND; ANDREA D.  
REID, INDIVIDUALLY AND AS TRUSTEE  
UNDER THE JAMES H. AND ANDREA D.  
REID LIVING TRUST; HERBERT I.  
FINKELMAN, TTEE, LIVING TRUST DTD  
6/13/96; STIRLING SPENCER; GARY  
DEMASI; JEROLD ROSENBERG; PHYLLIS  
ROSENBERG; SEUNG KIM; JOYCE  
RATNER; JOEL AND RITA CHOIT ADLER,

Case No.: \_\_\_\_\_

**COMPLAINT FOR:**

**1) VIOLATION OF CALIFORNIA CIVIL  
CODE SEC. 1102 ET SEQ; 2) UNFAIR  
BUSINESS PRACTICES; 3)  
FRAUDULENT CONCEALMENT; 4)  
FRAUDULENT MISREPRESENTATION;  
5) NEGLIGENT  
MISREPRESENTATION; 6) DAMAGES  
FOR CONSPIRACY TO COMMIT  
FRAUD BY CONCEALMENT; 7)  
CONSPIRACY TO COMMIT FRAUD BY  
CONCEALMENT AND DECEIT; 8)  
DAMAGES FOR INVERSE  
CONDEMNATION; 9) FOR NUISANCE;  
10) TRESPASS, BREACH OF  
EASEMENT AGREEMENTS; AND 11)  
BREACH OF FIDUCIARY DUTY.**

JURY TRIAL DEMANDED

1 TRUSTEES OF THE ADLER TRUST,

2 Plaintiffs,

3 vs.

4 SEAN JEFFRIES; MILLENNIUM  
5 PARTNERS I, INC.; MILLENNIUM  
6 PARTERS MANAGEMENT, LLC; MISSION  
7 STREET DEVELOPMENT, LLC; JOHN  
8 LUCIANO; TRANSBAY JOINT POWERS  
9 AUTHORITY; SAN FRANCISCO  
10 DEPARTMENT OF BUILDING  
11 INSPECTION; AND SAN FRANCISCO  
12 CITY ATTORNEY'S OFFICE

13 Defendants

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1 design.

2 8. Millennium Partners I, Inc. ("MPI") is a New York corporation doing business in  
3 California also as "New York SF Millennium Partners I, Inc." Millennium Partners I, Inc.,  
4 acting in part through its alter egos, constructed, designed, and developed the Millennium  
5 Tower and is responsible for its defective design.

6 9. Plaintiffs are informed and believe that Mission Street Development, LLC, and  
7 Millennium Partners Management, LLC, were at all times relevant alter egos of Millennium  
8 Partners I, Inc., by reason of the following allegations:

- 9 **A.** Among Millennium Partners I, Inc., MSD, and MPM (collectively the  
10 "Developers") there was a unity of interest in developing the Millennium Tower.
- 11 **B.** Developers' assets were commingled in the development of the Millennium  
12 Tower.
- 13 **C.** MSD and MPM are mere conduits or adjuncts for Millennium Partners I, Inc.'s  
14 interests in the Millennium Tower.
- 15 **D.** MSD and MPM are undercapitalized and potentially incapable of satisfying their  
16 liabilities should Plaintiffs prevail in the underlying actions.
- 17 **E.** Developers share employees.
- 18 **F.** Developers share a business address at 1995 Broadway, New York, New York.
- 19 **G.** Injustice to Plaintiffs would be promoted by adherence to the fiction of a separate  
20 existence of MSD and MPM from Millennium Partners I, Inc., and by treating  
21 MSD/MPM's acts with respect to the Millennium Tower as theirs alone.

22 10. TJPA is a joint powers agency and a government agency created under 27 California  
23 Government Code section 6500 *et seq.* The TJPA bears sole responsibility for developing the  
24 Transbay project, which includes construction of a five-story transit center adjacent to the  
25 Millennium Tower. TJPA is solely responsible for any adverse impacts therefrom on the  
26 Millennium Tower.

27 11. The Millennium Tower Association ("MTA") is a California nonprofit mutual benefit  
28 corporation. The MTA is the condominium association for the Millennium Tower, and its  
governing body the "Center Board" is the manager of the underlying real property at 301

1 Mission Street, including the foundation for the Millennium Tower, and is responsible for  
2 inspection, maintenance, and repair of the foundation for the Millennium Tower.

3 12. The San Francisco Department of Building Inspection is the regulatory building safety  
4 agency responsible for overseeing the City and County Building Code, and the responsible  
5 agency for the flawed inspecting and permitting of the Millennium Tower.

6 13. The City Attorney of San Francisco is the legal representative for the Department of  
7 Building Inspection, and TJPA was a signatory on confidentiality agreements among MSD,  
8 Jeffries, TJPA, and the City Attorney's Office.

9 14. Defendant Sean Jeffries, Vice President of Millennium Partners and Mission Street  
10 Development, LLC. ("Jeffries") is the lead individual who was responsible for The Millennium  
11 Tower's defective design, and was the designated contact and recipient for the Millennium  
12 Tower Association for submission of monitoring data from TJPA related to the sinking and  
13 tilting of the building. In his capacity as the contact for receipt of monitoring data from TJPA  
14 on behalf of the Millennium Tower Association, Jeffries owed a fiduciary duty to Plaintiffs to  
15 keep them informed as to the status of the building.

16 15. Defendant John Luciano, is Vice President of Millennium Partners Management, LLC  
17 ("Mr. Luciano"), was a member of the Millennium Tower Association from 2009-2012.  
18 During this period, Defendant Luciano owed a fiduciary duty to Plaintiffs to keep them  
19 informed as to the status of the building.

20 16. Plaintiffs do not know the true names or capacities of Defendants sued in this complaint  
21 as Does 1 through 5, inclusive, and who are sued by such fictitious names. Plaintiffs will  
22 amend this complaint to allege said names and capacities when the information has been  
23 ascertained. Plaintiff is informed and believes and on that basis alleges that each of the  
24 fictitiously named Defendants is legally responsible in some manner for the acts or omissions  
25 alleged and the injuries and damages claimed in this complaint.

26 17. Plaintiffs filed Notices of Claims with the San Francisco City Controller and TJPA as  
27 required under the California Tort Claims Act from mid-November through mid-December  
28 2016. Both the Office of the City Attorney and TJPA rejected as untimely the Plaintiffs claims  
in late December 2016. As more fully alleged below, Defendants acted in a concerted fashion

1 to conceal the facts from Plaintiffs for seven years. Plaintiffs did not discover and did not know  
2 of the facts that would cause a reasonable person to suspect that they had suffered harm as a  
3 result of Defendants conduct until May 10, 2016, when P. Shires, a consultant for the MTA,  
4 disclosed for the first time to Plaintiffs and other homeowners that the building had sunk 16  
5 inches, had tilted 2 inches at the base and 15 inches at the tip, and was continuing to sink and  
6 tilt at a constant rate over time.

7 18. On or about the purchase dates indicated in Exhibit A and attached hereto, Plaintiffs  
8 entered into written agreements entitled “Residential Purchase Agreements and Escrow  
9 Instructions, for Grand Residences, Residences and City Residences at Millennium Tower,”  
10 referred to in this complaint as “Agreements,” under which Plaintiffs proposed to buy the units  
11 from MSD or from sellers who purchased from MSD. Said Agreements required MSD to  
12 provide copies of all pertinent property management documents, including but not limited to  
13 disclosure statements as required by law prior to the close of escrow. Specifically, Plaintiffs  
14 include so-called remote purchasers who lack privity between themselves and Defendants  
15 Jeffries, MPI, MPM, and MSD but claim liability and damages under the “indirect deception  
16 doctrine.”

17 19. Plaintiffs’ purchase agreements with MSD include a procedure for resolving disputes  
18 pursuant to California Civil Code §§ 910-938, but Defendant MSD is the only party that  
19 acknowledged the claims for fraud and other matters that certain Plaintiffs who purchased  
20 directly from MSD filed. Correspondence between certain Plaintiffs’ attorney and Defendants’  
21 attorneys confirms that according to Defendants’ attorneys, the additional defendants named  
22 here, Millennium Partners I, Inc., Millennium Partners Management, LLC, and John Luciano,  
23 are not covered by the procedure of Civil Code § 911(a) because they are not the “Developer”  
24 according to MSD’s attorneys.<sup>1</sup> Since Plaintiffs believe that the other Defendants are also liable  
25 for fraud and other violations of law as well, whether they are called developers or not by MSD,  
26 including not only the Millennium Partner entities but also TJPA, the City Department of

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27 <sup>1</sup> Two letters from P. Meier to G. Dodson (August 30, 2016) and (October 6, 2016).



1 Building Inspection and the City Attorney’s office, Plaintiffs have filed this complaint with the  
2 Court. Jurisdiction is proper for purposes of resolution of complex litigation which will  
3 necessarily include extensive multiparty discovery and motion practice involving these parties.  
4 In addition, on information and belief, the one entity that Defendants’ attorneys state is covered  
5 by California Civil Code §§ 910-938, MSD, does not have an agent for service in California or  
6 New York as required by § 912(e) of the Civil Code, and is not sufficiently capitalized to pay  
7 out a judgment of damages of the magnitude contemplated by this suit. On information and  
8 belief, MSD is simply a conduit for the movement of funds, including Plaintiffs’ funds from the  
9 purchase of their units from it to Millennium Partners I, Inc. On information and belief, MSD  
10 has little or no assets and is judgment proof.

11 **CAUSE OF ACTION ONE: Damages for Violation of California Civil Code § 1102 et seq.**  
12 **against Defendants MPI, MPM, MSD, Jeffries, and Does 1 through 5**

13 20. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
14 1 through 18, inclusive, as if fully set forth in this cause of action.

15 21. California Civil Code Article 1.5 Disclosures upon Transfer of Residential Property §  
16 1102 et seq. applies to the Defendant MSD transfer of units to Plaintiffs at the Millennium  
17 Tower.

18 22. Section 1102.3 provides that “[t]he transferor of any real property subject to this article  
19 shall deliver to the prospective transferee the written statement required by this article . . .”

20 23. Section 1102.6 sets forth the full disclosure required by Article 1.5. That section  
21 includes disclosure of whether there is “[a]ny settling from any cause, or slipping sliding or  
22 other soil problems.”

23 24. Defendants MPI, MSD, MPM, and Jeffries failed to disclose to Plaintiffs that there was  
24 settlement from any cause, or slippage, sliding or other soil problems as required by § 1102.6.  
25 Vertical and differential settlement had occurred as early as January 2009 and prior to any  
26 closing dates. Defendant MSD failed to disclose that the Millennium Tower had sunk by 8.3

1 inches by early 2009 and was tilting to the northwest prior to the issuance of a certificate of  
2 occupancy in August 2009.<sup>2</sup>

3 25. Section 1102.7 Good Faith Required mandates that each disclosure shall be made in  
4 “good faith,” which means “honesty in fact in the conduct of the transaction.”

5 By failing to disclose the sinking and tilting of the Millennium Tower to Plaintiffs, Defendants  
6 MSD, MPI, MPM, and Jeffries failed to comply with and violated § 1102.7.

7 26. Section 1102.13 states that “[a]ny person who willfully or negligently violates or fails to  
8 perform any duty prescribed by any provision of this article shall be liable in an amount of  
9 actual damages by a transferee.” The disclosure information required by the Code was not  
10 passed on to subsequent purchasers.

11 27. Plaintiffs have been damaged as a result of Defendants willfully or negligently violating  
12 their duty to disclose the sinking and tilting of the Millennium Tower prior to purchase and  
13 prior to final closing of escrow for each unit.

14 WHEREFORE, Plaintiffs pray judgment as set forth below.

15 **CAUSE OF ACTION TWO: Damages for Unfair Business Practices, Violation of**  
16 **Business & Professions Code § 17200, et seq. against Defendants MPI, MSD, MPM,**  
17 **Jeffries, and Does 1 through 5**

18 28. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
19 1 through 27, inclusive, as if fully set forth in this cause of action.

20 29. Business & Professions Code § 17200 prohibits any unfair competition, including any  
21 unlawful, unfair or fraudulent business act or practice.

22 30. The conduct of Defendants MSD, MPI, MPM, and Jeffries constitutes unlawful, unfair  
23 or fraudulent business acts or practices.

24 31. Defendants’ unlawful, unfair and fraudulent business act or practice included a pattern  
25 of violations of California Civil Code § 1102 et seq. Defendants failed to disclose the sinking

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26  
27 <sup>2</sup> Letter from Treadwell & Rollo to DeSimone (February 18, 2009).

1 and tilting of the Millennium Tower to Plaintiffs when they first discovered it and prior to  
2 closing of escrow on Plaintiffs units.

3 32. Defendants' unlawful conduct includes but is not limited to violations of California  
4 Civil Code § 896 et seq. Specifically, the building code standards set forth in § 896 were  
5 violated by Defendants in the design and/or construction of the Millennium Tower foundation.

6 33. Section 896(a) (7) Foundation systems and slabs shall not allow water or vapor to enter  
7 the structure so as to cause damage to another building component.

8 34. Section 896(b) (1) Foundation, load bearing components, and slabs, shall not contain  
9 significant cracks or significant vertical displacement.

10 35. Section 896(b) (2) Foundations, load bearing components, and slabs, shall not cause the  
11 structure, in whole or part, to be structurally unsafe.

12 36. Section 896(b)(4) A structure shall be constructed so as to materially comply with the  
13 design criteria for earthquake and wind load resistance, as set forth in the applicable  
14 government building codes, regulations, and ordinances in effect at the time of the original  
15 construction.

16 37. Section 896(c) (1) Soils, and engineered retaining walls shall not cause, in whole or in  
17 part, damage to the structure built upon the soil or engineered retaining wall.

18 38. Section 896(c) (2) Soils, and engineered retaining walls shall not cause the structure, in  
19 whole or in part, to be structurally unsafe.

20 39. Section 896(g) (1) Exterior pathways, driveways, sidewalks, installed by the original  
21 builder shall not contain cracks that display significant vertical settlement or that are excessive.

22 40. As a direct and proximate result of Defendants' unlawful conduct described, Plaintiffs  
23 have suffered actual injury and economic loss in the form of diminution in value of their units  
24 and a greater risk to their safety from earthquakes as a result of faulty design and the sinking  
25 and tilting of the Millennium Tower.

26 41. Plaintiffs request the Court order that Defendants be required to disgorge the profits  
27 they have wrongfully obtained through the use of these unlawful practices, and provide  
28 restitution.

1 WHEREFORE, Plaintiffs pray judgment as set forth below.

2 **CAUSE OF ACTION THREE: Damages for Fraudulent Concealment and Deceit against**  
3 **Defendants MPI, MSD, MPM, Jeffries, and Does 1 through 5**

4 42. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
5 1 through 41, inclusive, as if fully set forth in this cause of action.

6  
7 **A. Defendants had a duty to disclose material facts to Plaintiffs**

8 43. At the time Plaintiffs entered into the Agreements to purchase their units, Defendants  
9 MSD, MPI, MPM, Jeffries, and Does 1 through 5 had a duty to disclose to Plaintiffs the  
10 conditions of the Millennium Tower and any material facts that would affect the value of  
11 purchased units.

12 **B. Defendants concealed material facts**

13 44. The Defendants’ “Property Disclosure and Information Statement for the Millennium  
14 Tower,” dated April 2009, a 21-page document, discusses issues including but not limited to  
15 neighborhood conditions, external lighting, views, residence amenity floor, concrete, walls,  
16 window washing, parking garages, toilets, outdoor furniture, building noise, odors, construction  
17 activity, building condition, seismic potential and a host of other issues. *Nowhere do*  
18 *Defendants’ Disclosure Statements disclose* that the Defendant’s projection in 2005 was from  
19 4-6 inches of total vertical settlement for the life of the Millennium Tower, but it already had  
20 8.3 inches of vertical settlement by January 2009, which was prior to close of escrow for any  
21 units. Nor do Defendants disclose that their projected settlement in their foundation permit  
22 submittal to the DBI called for only 1-2 inches of settlement upon the building’s completion  
23 and 4-6 inches over the lifetime of the building. A true and correct copy of the April 2009  
24 Disclosure Statement is attached as Exhibit B. None of the subsequent disclosure statements  
25 which were updated by Defendant MSD included any disclosure of the sinking and tilting of  
26 the Millennium Tower either.

1 45. As quoted in the *San Francisco Chronicle* on June 17, 2007, Defendant Sean Jeffries, a  
2 principal with MPI and MSD, said the pricing of the units at the Millennium Tower had not  
3 been finalized, but that it would represent "the highest price per square foot in the  
4 marketplace."

5 46. The Defendants pushed up their sales schedule on the Millennium Tower in 2008 seeing  
6 heavy demand at the highest echelon of the condo market, while at the same time the Tower  
7 was "sinking like a stone" and there was no disclosure of it to Plaintiffs or other owners.

8 47. While bragging publicly about the pricing of units at the Millennium Tower, Defendant  
9 Jeffries failed to disclose that the building was sinking and tilting beyond the 1-2 inches  
10 projected by Developers' engineers after completion of construction in 2008.<sup>3</sup>

11 48. From 2008 through 2010, the Defendants were accepting and publicizing awards from  
12 several engineering and architectural organizations accentuating the falsehood that the Tower  
13 was safely designed with the purpose of misleading potential buyers. At the same time the  
14 Tower was sinking and tilting beyond design standards. Upon information and belief, those  
15 awards included:

16 2008: American Concrete Institute Award, Northern California – Construction

17 2008: Concrete Industry Board – Roger H. CIB Award of Merit

18 2008: American Society of Civil Engineers, San Francisco Section – Outstanding Structural  
19 Engineering Project

20 2009: American Society of Civil Engineers, Region 9 – Structural Engineering Project of the  
21 Year

22 2009: Metal Architecture Magazine – April 2009 edition Top Honor

23 2009: California Construction – Outstanding Project Management

24 2009: California Construction – Multi-family/Residential Award of Merit

25 2010: San Francisco Business Times – Deal of the Year Award

26 2010: San Francisco Chamber of Commerce Excellence in Business Awards – Building San

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27 <sup>3</sup> DeSimone Foundation Submittal, Vol. I, Project Overview, p.2.1-1 (May 24, 2005).

1 Francisco Award.

2 49. The Defendants MSD, MPI, MSD, and Jeffries failed to disclose to Plaintiffs that  
3 Defendants had adjusted the acceptable design range for vertical settlement for the Millennium  
4 Tower in early 2009, after learning that the acceptable design range of 4-6 inches of vertical  
5 settlement for the life of the building had been exceeded shortly after completion of  
6 construction.<sup>4</sup>

7 50. The Defendants intentionally concealed the facts and information from Plaintiffs about  
8 the building's vertical settlement prior to close of escrow. The Defendants had reason to expect  
9 that their failure to disclose information about the vertical settlement and tilting would not by  
10 its nature be disclosed to subsequent purchasers.

11 51. The Defendants knew that its representations at the time of close of escrow to Plaintiffs  
12 about the Millennium Tower's construction stability were false.

13 **C. Defendants intentionally concealed true facts with intent to defraud**

14 52. The Defendants intended to induce reliance on the part of each Plaintiff on  
15 representations about Millennium Tower's construction stability to consummate the sale of  
16 units.

17 53. The Defendants intentionally changed the acceptable design range from 4-6 inches to  
18 10.3-12.3 inches in early 2009 to evade their duty to disclose that vertical settlement at the  
19 Millennium Tower had exceeded the original acceptable design range of 4-6 inches established  
20 by the Defendants for the Millennium Tower in the foundation permit in 2005.

21 54. The Defendants' concealment of the fact that the Millennium Tower had sunk by 8.3  
22 inches by January 2009 deceived unit owners into believing that the building had not sunk  
23 beyond the acceptable design range of 4-6 inches.

24  
25  
26  
27 <sup>4</sup> P. Shires, slide presentation before MTA homeowners, (May 10, 2016).

1 55. The Defendants' failure to disclose to Plaintiffs the facts of the vertical settlement  
2 beyond the acceptable range of 4-6 inches was a fraud on all successive buyers who purchased  
3 units from unit owners who re-sold their units without any disclosure from the Defendants.

4 56. Prior to Plaintiffs' close of escrow, the Defendants failed to disclose to Plaintiffs that  
5 the vertical settlement of 8.3 inches that had occurred by January 2009 may have caused or  
6 would possibly cause different parts of the building to settle at different rates, thereby causing  
7 differential settlement and further damage unit owners' property value.

8 57. Prior to Plaintiffs' close of escrow, the Defendants failed to disclose to unit buyers that  
9 differential settlement could cause the frame of the building to distort, floors to slope, walls and  
10 glass to crack, and doors and windows to malfunction.

11 58. Prior to Plaintiffs' close of escrow, the Defendants failed to disclose that differential  
12 settlement could tilt the building, thereby raising the risk of further tilting as differential  
13 settlement increased and further damaging unit owners' property value.

14 59. The Defendants have never disclosed to Plaintiffs that the building has sunk 16 inches  
15 from when it was first constructed and is tilting 2 inches at the base and 15 inches to the  
16 northwest at its highest point.<sup>5</sup>

17 60. The Defendants have never disclosed to unit owners that the building is continuing to  
18 sink at a constant or accelerated rate over time.

19 61. The original geotechnical studies for the Millennium Tower identified that strong  
20 shaking of the earth during an earthquake could result in ground failure under the Millennium  
21 Tower such as that associated with ground rupture, liquefaction and differential compaction.<sup>6</sup>

22 62. The Defendants failed to disclose to Plaintiffs the greater risk from an earthquake due to  
23 their decision not to go to bedrock.  
24

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25 <sup>5</sup> Id.

26 <sup>6</sup> Treadwell & Rollo, Geotechnical Investigation 301 Mission San Francisco, 7.2.1, Seismic Conditions, p. 8  
27 (August 4, 2001); Treadwell & Rollo Revised Geotechnical Investigation 301 Mission San Francisco, 7.2.1, p. 12  
28 (January 13, 2005).

1 63. The failure to disclose to Plaintiffs that the Defendants had ignored the original  
2 settlement assessment of the design engineers has resulted in a diminution of property values  
3 and may result in irreparable harm to Plaintiffs should there be an earthquake of moderate to  
4 strong magnitude.

5 64. Said Defendants, and each of them, had knowledge of the true facts as set forth above  
6 and deliberately concealed and failed to disclose said facts.

7 **D. Plaintiffs were unaware of the facts and would not have acted if the facts were**  
8 **disclosed**

9 65. The Defendants' failure to disclose the vertical settlement of the building prior to close  
10 of escrow lulled the unit buyers into a false sense of security.

11 66. The Plaintiffs would have been alerted that something was wrong with the Millennium  
12 Tower if the Defendants had informed them that the Tower had sunk in excess of the original  
13 acceptable design range of 4-6 inches by January 2009, and was continuing to sink and tilt over  
14 time at a constant or accelerated rate.

15 67. Plaintiffs would not have purchased their units if they had known that the Millennium  
16 Tower was sinking in excess of the original design parameters of 4-6 inches.

17 **E. Plaintiffs have been damaged as a result of concealment**

18 68. The Defendants' failure to disclose that vertical settlement had exceeded the acceptable  
19 design range of 4-6 inches and had in fact vertically settled 8.3 inches by January 2009 has  
20 damaged unit owners.

21 69. Plaintiffs have been damaged as a result of the Defendants' intentional concealment and  
22 failure to disclose the vertical and differential settlement that occurred prior to each unit  
23 owner's close of escrow.

24 WHEREFORE, Plaintiffs pray judgment as set forth below.

25 **CAUSE OF ACTION FOUR: Damages for Fraudulent Misrepresentation against**  
26 **Defendants MPI, MSD, MPM, Jeffries, and Does 1 through 5**



1 70. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
2 1 through 69, inclusive, as if fully set forth in this cause of action.

3 71. The Defendants intentionally changed the acceptable design range from 4-6 inches to  
4 10.3-12.3 inches in early 2009 to evade their duty to disclose that vertical settlement at  
5 Millennium Tower had exceeded the original acceptable design range of 4-6 inches established  
6 by the Defendants for the Millennium Tower in 2005.

7 72. The Defendants' intentional change of the acceptable design range from 4-6 inches to  
8 10.3-12.3 inches was intended to deceive unit owners into believing that the Millennium Tower  
9 was not sinking beyond its original design range.

10 73. The Plaintiffs would have been alerted that something was wrong with the Millennium  
11 Tower if the Defendants had informed them that the Tower had already sunk in excess of the  
12 original acceptable design range of 1-2 inches by January 2009.

13 74. Defendants had knowledge of the true facts. The intentional misrepresentations  
14 described above were made by Defendants with the intent to induce Plaintiffs to enter into the  
15 Agreements to purchase the units, and to take other acts described herein, ultimately closing  
16 escrow to complete the transaction, and in many cases making substantial improvements to the  
17 units after the escrow closing date.

18 75. Plaintiffs, at the time of Defendants' misrepresentations and failure to disclose the true  
19 facts, and at the time Plaintiffs took the actions alleged herein, were ignorant of the existence of  
20 those facts that said Defendants, and each of them, suppressed and failed to disclose. Had  
21 Plaintiffs known the true facts, they would not have entered into the Agreements to purchase  
22 the units. Plaintiffs' reliance was justified in that Plaintiffs were misled by false  
23 misrepresentations and even after reasonable inquiry did not have knowledge of those facts that  
24 were suppressed.

25 76. As a proximate result of the misrepresentations and the failure to disclose the true facts,  
26 Plaintiffs have been damaged in that the values of their units are far less than the sales price.  
27 The exact amount by which Plaintiffs have been damaged is unknown at this time, but it is at  
28 least the difference between what Plaintiffs paid for the units and its true value, or other  
damages, according to proof at trial.

1 77. In doing the things alleged in this complaint, said Defendants, MSD, MPM, Jeffries,  
2 and Does 1-5 acted with oppression, fraud, and malice, and said acts were approved and/or  
3 ratified by Defendant Millennium Partners I Inc. Plaintiff is therefore entitled to punitive  
4 damages in a sum according to proof.

5 WHEREFORE, Plaintiffs pray judgment as set forth below.

6  
7 **CAUSE OF ACTION FIVE: In the Alternative, Damages for Negligent**  
8 **Misrepresentation against Defendants MPI, MSD, MPM, Jeffries, DBI, and Does 1**  
9 **through 5**

10 78. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
11 1 through 77, inclusive, as if fully set forth herein, except for Paragraphs 50, 52, 53, and 72  
12 alleging intent.

13 79. At the time Defendants failed to disclose relevant information and made the  
14 misrepresentations to the Plaintiffs as set forth above, Defendants should have known that the  
15 nondisclosure of relevant information and misrepresentations was negligence. Defendants  
16 further should have discovered the true facts by a reasonable inquiry and diligence, even if said  
17 facts were not known to Defendants at the time of making the misrepresentations and  
18 nondisclosure of relevant information. Said Defendants intended for Plaintiffs to rely on the  
19 representations and nondisclosure of relevant information when they were made.

20 80. The above-described acts of said Defendants constitute negligent misrepresentation to  
21 the Plaintiffs, and these misrepresentations and nondisclosures were intended to and did induce  
22 the Plaintiffs to act in the manner as alleged in Paragraph 17 and were a substantial cause of the  
23 damage and injury to the Plaintiffs.

24 81. As a proximate result of said negligence, Plaintiffs have been damaged as alleged in  
25 Paragraphs 26, 39, 69, and 76 which is hereby incorporated by reference and for purposes of  
26 this Fifth Cause of Action shall refer to acts that constitute negligent misrepresentation.

27 WHEREFORE, Plaintiffs pray judgment as set forth below.

1 **CAUSE OF ACTION SIX: Damages for Conspiracy to Commit Fraud by Concealment**  
2 **against Defendants MPI, MSD, MPM, Jeffries, TJPA, City Attorney, and Does 1 through**  
3 **5**

4 82. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
5 1 through 80, inclusive, as if fully set forth in this cause of action, except for Paragraphs 79-81.

6 83. MSD, MPM, MPI, and Jeffries had a duty pursuant to § 1102 et seq. of the California  
7 Civil Code to disclose construction defects to Plaintiffs including the sinking and tilting of the  
8 Millennium Tower immediately after completion of construction in early 2009 or even earlier if  
9 they had knowledge that the Tower was sinking and tilting after the pouring of the foundation.  
10 MSD, MPI, MPM, and Jeffries were marketing units in 2008 and should have disclosed the  
11 sinking and tilting of the Tower to potential purchasers then if they were in possession of such  
12 information which on information and belief they knew as a result of their monitoring activities  
13 in 2008 and early 2009.<sup>7</sup>

14 84. At all relevant times, MPI, MSD, MPM, and Jeffries failed to disclose the sinking and  
15 tilting of the Tower to Plaintiffs and purchasers as required by state law. This failure to  
16 disclose was willful and intentional to deceive Plaintiffs to purchase their units without  
17 knowing about the construction defects including the sinking and tilting of the Tower.

18 85. The purchase agreements for the units, including disclosure statements, did not disclose  
19 certain material facts, all known to MSD, MPI, MPM, and Jeffries, including that: (a) the  
20 Millennium Tower had sunk by 8.3 inches by early 2009 when the Tower was designed to sink  
21 only 1 to 2 inches by the end of construction in early 2009; (b) having sunk by 8.3 inches in  
22 early 2009, the Tower had already sunk beyond the design standard of 4-6 inches for the 40  
23 year life of the building; (c) the Millennium Tower had differential settlement by early 2009;  
24 (d) the Millennium Tower was continuing to sink and differentially settle during 2009; and (e)  
25 throughout the MSD sales of every unit which ended in 2013, the Millennium Tower had  
26 differential settlement of 5.6 inches from southeast to northwest at Basement 1 of the Tower by

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27 <sup>7</sup> Letter from R. Golesorkhi, Treadwell & Rollo, to D. Roorda, DeSimone Consulting Engineers, Tower  
28 Settlement, p. 3 (February 18, 2009).

1 November 2009.<sup>8</sup> MSD, MPI, MPM, and Jeffries had no knowledge as to when the Tower was  
2 going to stop sinking or no longer differentially settle in early 2009 and do not have that  
3 knowledge even today. None of these material facts were disclosed to Plaintiffs in any  
4 documents provided to Plaintiffs prior to close of escrow.

5 86. MSD, MPI, MPM, and Jeffries, who had clear statutory duties to disclose the  
6 construction defects, including the sinking and tilting of the building, conspired with TJPA and  
7 the City Attorney to conceal and not disclose to Plaintiffs the construction defects including the  
8 sinking and tilting of the Tower and the fact that it was continuing to sink and tilt from  
9 completion of construction.

10 87. The California Supreme Court has stated, “[c]onspiracy is not a cause of action, but a  
11 legal doctrine that imposes liability on persons who, although not actually committing a tort  
12 themselves, share with the immediate tortfeasors a common plan or design in its perpetration.  
13 By participation in a civil conspiracy, a coconspirator effectively adopts as his or her own the  
14 torts of other coconspirators within the ambit of the conspiracy. In this way, a coconspirator  
15 incurs tort liability co-equal with the immediate tortfeasors.” *Applied Equipment Corp. v.*  
16 *Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 510 (1994) (internal citations omitted). MSD, MPI,  
17 MPM, Jeffries, TJPA, and the City Attorney are joint tortfeasors under this doctrine in  
18 concealing the construction defects from purchasers and Plaintiffs.

19 88. The MSD disclosure statement to purchasers stated that MSD had entered into an  
20 underground easement agreement with TJPA to provide both a permanent and temporary  
21 easement on the property. MSD’s disclosure statement mentioned that there was to be a  
22 permanent easement to allow for a 5-foot encroachment onto MSD’s property to construct a  
23 shoring wall to be installed for TJPA’s new terminal. It mentioned that the temporary easement  
24 may affect traffic in the driveway and the Millennium Tower’s porte cochere and an assortment  
25 of other effects designed to conceal the damage that was likely to occur from construction of  
26 the shoring wall. There was no mention that the construction of the shoring wall could cause

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27 <sup>8</sup> Memorandum from B. Dykes, Transbay, to S. Hood, Plate 2 (March 15, 2010).

1 the Tower to settle 3 inches and the podium to settle 1/2 inch, thereby causing differential  
2 settlement between them.<sup>9</sup> The disclosure statement was intended as a “head fake” to deceive  
3 buyers into believing that the easement was a typical easement and not one that was going to  
4 result in vertical and differential settlement of the Tower. At the same time that MSD provided  
5 this disclosure statement to purchasers, it knew that the Tower had already sunk and tilted  
6 beyond design standards for the life of the building. MPI, MSD, MPM, and Jeffries  
7 deliberately concealed the potential impact of the Transit Center construction by informing  
8 Plaintiffs in the April 2009 Property Disclosure Statement that Plaintiffs should expect  
9 increased congestion, traffic and noise level in the neighborhood that may have a negative  
10 impact on available parking. Plaintiffs were also alerted that the development could last for  
11 years and create noise, dust, fumes and odors, but there was no mention of the construction  
12 defects including the sinking and tilting of the Tower. (Exhibit B)

13 89. MSD entered into an easement agreement (“easement agreement”) on October 10,  
14 2008, with TJPA; the easement agreement was signed by Sean Jeffries as MSD’s authorized  
15 agent and Maria Ayerdi, Executive Director on behalf of TJPA and not recorded until March of  
16 2009. The easement contemplated a system to provide lateral and adjacent support for the  
17 Millennium Tower because of its proximity to the Tower and the need for TJPA to work  
18 adjacent to if not underneath the Tower. The agreement included extensive monitoring,  
19 including baseline studies. The baseline studies along with the monitoring were never shared  
20 with Plaintiffs even though they documented both vertical and differential settlement of the  
21 Millennium Tower. The easement agreement contains covenants which grandfathered the  
22 “cracking or settlement” of the Tower prior to commencement of construction of the Transit  
23 Center. On information and belief, there is photographic evidence of cracking and settling that  
24 occurred prior to TJPA’s construction activities. On information and belief, MSD, Jeffries, and  
25 TJPA knew at the time of entering the easement agreement in 2008 that the Millennium Tower  
26 had already sunk and differentially settled. MSD, TJPA, and Jeffries failed to disclose to

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27 <sup>9</sup> Letter from R. Golesorkhi, Treadwell & Rollo to S. Hood, Millennium Partners re ARUP analyses of Transbay  
28 terminal effect (October 11, 2010).

1 Plaintiffs that they had entered into an easement agreement on October 10, 2008, between  
2 TJPA and MSD that acknowledged that damage to the Millennium Tower was likely to occur  
3 as a result of construction of the Transbay Transit Center. At no time did MSD or TJPA notify  
4 Plaintiffs of these material facts before the escrow closing dates on their units.

5 90. On February 26, 2010, the Millennium Partners, TJPA and the San Francisco City  
6 Attorneys signed a confidentiality agreement to prevent the Plaintiffs, potential buyers, and  
7 others, from knowing about their discussion about the Millennium Tower. On information and  
8 belief, those present discussed the 2008 easement agreement and issues related to the sinking  
9 and tilting of the Tower. On information and belief, the topics of the discussion included the  
10 October 10, 2008, easement agreement and that the sinking and tilting of the Millennium  
11 Tower were to be kept secret from Plaintiffs and potential buyers. TJPA was trying to escape  
12 the broad language in the easement agreement in which it accepted liability under the  
13 agreement for any damage that TJPA might do to the Tower during construction of the shoring  
14 wall. TJPA had offered money to MSD and Jeffries to escape the broad language in the  
15 easement agreement. As part of the negotiations, TJPA agreed to keep secret from Plaintiffs,  
16 potential buyers, and owners that the Tower which had sunk and tilted and was continuing to  
17 sink and tilt at a constant rate. The confidentiality agreement states that the parties agreed to  
18 keep any evidence of such discussion inadmissible and out of evidence in any court of law. All  
19 the parties agreed to keep this discussion confidential when two of the parties, MSD, and  
20 Jeffries, had a duty to disclose the sinking and tilting of the Tower to, among others, the  
21 Plaintiffs, other owners and potential purchasers. In particular, there were three attorneys at  
22 that meeting, Andrew Schwartz, representing TJPA, and Sheryl Bregman and George A.  
23 Wong, two attorneys representing the City Attorney's office; at least one of them should have  
24 told Jeffries that he had a duty to disclose the sinking and tilting of the building to owners and  
25 purchasers. At this point, the attorneys for the City and TJPA had that same duty to disclose  
26 the sinking and tilting because that is what the law requires. As members of the California state  
27 bar they had an obligation and duty not to knowingly and intentionally participate in a fraud.  
28 Instead, they became joint tortfeasors along with everyone else at this meeting and defrauded  
by concealment the homeowners and the eventual homeowners at the Millennium Tower.

1 Plaintiffs have been badly damaged by these attorneys' conspiracy to conceal the tilting and  
2 sinking of the Millennium Tower with Jeffries, MSD, MPM, and MPI, not only by diminution  
3 of their property value, but because failing to disclose what was required by law has  
4 jeopardized the safety and well-being of everyone in the building since subsequent reports have  
5 identified a heightened risk from an earthquake as a result of the sinking and tilting of the  
6 Millennium Tower. To date, not one of these entities or individuals has stepped forward  
7 publicly and taken responsibility for what they failed to do. A true and correct copy of the first  
8 Confidentiality Agreement is attached as Exhibit C. At no time did MSD, MPI, MPM, Jeffries,  
9 TJPA, or the City Attorney notify Plaintiffs of these material facts before the closing dates on  
10 their units.

11 91. On March 15, 2010, Brian Dykes, TJPA's Principal Engineer, sent confidential  
12 monitoring information expressly identified as not for public release to signatories on the  
13 confidentiality agreement that documented a differential settlement of 5.8 inches under the  
14 Tower and a settlement of 2 inches under the podium.<sup>10</sup>

15 92. There are other such confidentiality agreements between MSD, TJPA, and Jeffries. On  
16 March 17, 2010, MSD, TJPA, and Jeffries entered into another confidentiality agreement that  
17 was designed to cover up the duty to disclose the information exchanged in the first  
18 confidentiality agreement. The second confidentiality agreement required either party to give a  
19 10-day notice before any confidential information was disclosed under the first agreement.  
20 But, on information and belief, that 10-day notice was never exercised by either party. TJPA  
21 knew that MSD and Jeffries had not disclosed to owners that the Tower was sinking and tilting,  
22 and therefore TJPA was not relieved of their duty to disclose once TJPA became a participant  
23 in the fraud scheme. The 10-day notice in the second confidentiality agreement was a mere  
24 "fig leaf" to further conceal the sinking and tilting of the Tower from Plaintiffs, other owners  
25 and purchasers. Only on July 8, 2016, TJPA finally provided notice that it was going to be

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26 <sup>10</sup> Memorandum from B. Dykes, Transbay Principal Engineer, to S. Jeffries, S. Hood, R. Golesorkhi, D. Roorda,  
27 R. Beck, A. Schwartz, and S. Bregman, all signatories of the February 26, 2010, Confidentiality Agreement, Ex. C  
(March 15, 2010).

1 disclosing information on July 18, 2016 that had been discussed under the confidentiality  
2 agreement in 2010, but held secret from Plaintiffs and other purchasers for 6 years.

3 93. The TJPA buttress to be constructed on the southern border of the Millennium Tower  
4 was intended to stabilize the building from the impacts of TJPA construction activities. But, the  
5 TJPA buttress, shoring and excavation did cause ground settlement and lateral deformation  
6 adjacent to the excavation. According to ARUP, TJPA's consultant, the excavation-induced  
7 ground movements would cause settlement and lateral movement of the Tower and podium  
8 structure of about 3 inches and 1/2 inch, respectively.<sup>11</sup> None of this information was ever  
disclosed to Plaintiffs by Transbay or MPI, MSD and Jeffries.

9 94. Correspondence from MSD and Jeffries and its consultants commenting on TJPA's  
10 buttress, shoring and excavation bid package confirmed that according to TJPA's consultant,  
11 ARUP, the excavation induced ground movements would cause settlement and lateral  
12 movement at the Tower of about 3 inches and the podium structure of about 1/2 inch. In  
13 addition to the movement of the two structures separately, the seismic joint between them  
14 necessary for performance during an earthquake would also experience differential  
15 movement.<sup>12</sup> None of this information was ever disclosed to Plaintiffs by TJPA, MSD, or  
Jeffries as required by law.

16 95. On September 1, 2011, Maria Ayerdi, TJPA Executive Director, and Jeffries on behalf  
17 of the Millennium Tower Association as "owner," entered into an amendment to the first  
18 easement agreement dated October 8, 2008. In the amended agreement, TJPA agreed to  
19 provide to authorized representatives of MSD and MTA the real-time data from the monitoring  
20 that had confirmed that the Tower had sunk and tilted and was continuing to sink and tilt.  
21 Although Jeffries had a fiduciary duty to Plaintiffs and other owners, Jeffries never provided  
22 the monitoring data to the MTA which would have disclosed that the Tower was sinking and  
23 tilting. TJPA knew that Jeffries had failed to disclose the sinking and tilting of the Millennium  
24 Tower but pursuant to the confidentiality agreements it had entered, it kept that information

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26 <sup>11</sup> Letter from Treadwell & Rollo to S. Hood, Millennium Partners (October 11, 2010).

27 <sup>12</sup> Letter from D. Gibbons and K. Klein, Simpson Gumpertz & Hager, to S. Hood, MSD (October 14, 2010).



1 secret from Plaintiffs and other owners even though they had a duty to disclose it as a matter of  
2 law.

3 96. Once TJPA participated in the tortious fraud scheme to mislead homeowners and  
4 purchasers along with MSD and Jeffries, all of them had the ongoing duty to disclose that the  
5 building was sinking and tilting and all of them were participating in an ongoing tort of fraud.  
6 TJPA, MSD, and Jeffries participated in a fraud by concealment to keep homeowners and  
7 potential purchasers in the dark about the sinking and tilting of the building, which they were  
8 required to disclose as a matter of law.

9 97. Sean Jeffries, Vice President of Millennium Partners acted as the contact for the MTA  
10 with TJPA for purposes of receiving monitoring data and information about the stability of the  
11 building as related to the easement through October of 2016. Jeffries' role on behalf of the  
12 MTA continued after the ownership of the Millennium Tower was conveyed to the MTA. In  
13 his position as recipient of monitoring data from TJPA, Sean Jeffries had a fiduciary duty to  
14 disclose this information to Plaintiffs because of their right to know about their safety and  
15 property value. At no time did Jeffries disclose this information to Plaintiffs.

16 98. The Plaintiffs have been badly damaged as a result of the failure to disclose the nature  
17 and scope of the easement between MSD and TJPA prior to Plaintiffs' close of escrow.  
18 Plaintiffs are informed and believe and on that basis allege that each of them did the acts herein  
19 alleged with the intent to deceive and defraud Plaintiffs.

20 99. Plaintiffs in fact placed confidence in TJPA, particularly as a public agency with a  
21 mission of safety, and were not aware of any facts challenging the veracity of representations  
22 by them or the danger to Plaintiffs' interests until or about May 10, 2016, when Plaintiffs were  
23 informed in a special meeting of the homeowners' association that MSD, Jeffries, and TJPA  
24 had failed to disclose material facts concerning the Millennium Tower, had asserted their own  
25 and others' pecuniary interests above those of Plaintiffs, and had failed to properly represent  
26 Plaintiffs in the manner alleged.

27 100. If Plaintiffs would have known that MSD and Jeffries had entered into an easement  
28 agreement with TJPA that anticipated damage of an unknown degree to be determined only

1 with ongoing monitoring of the stability of the building, they would never have purchased their  
2 units.

3 WHEREFORE, Plaintiffs pray judgment as set forth below.

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5 **CAUSE OF ACTION SEVEN: Conspiracy to Commit Fraud by Concealment and Deceit**  
6 **against Defendants DBI, MPI, MSD, MPM, Jeffries, and Does 1 through 5**

7 101. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
8 1 through 100, inclusive, as if fully set forth in this cause of action.

9 102. The Department of Building Inspection knew or should have known that the  
10 Millennium Tower, if built as described in its permit application, would sink and tilt and be in  
11 danger of failing during an earthquake because only one year earlier a very similar structure,  
12 referred to as 80 Natoma, was denied a building permit. In 2004, this multi-story concrete  
13 building whose foundation would not have been anchored in bedrock and whose cap and piles  
14 were designed to go down 80 feet into dense sand was denied a permit after two independent  
15 geotechnical engineers, Charles Ladd and Andrew Whittle, professors at MIT, determined that  
16 80 Natoma would have 9 inches of vertical subsidence, twice the amount predicted by the  
17 developer's soil engineers, would sink differentially, and would be more susceptible to failure  
18 in a moderate earthquake.<sup>13</sup> The Millennium Tower had sunk 8.3 inches upon completion.

19 103. The issuance of a permit by DBI to MSD for a building which was taller and heavier  
20 than 80 Natoma, on worse soil, and with the same cap and pile foundation going down only 80  
21 feet into dense sand was indefensible, and DBI's decision to issue that permit was gross  
22 negligence. The Millennium Tower would be the largest and heaviest building in San  
23 Francisco, equivalent to a 150-story steel structure yet DBI allowed MP, MSD, MPM, and  
24 Jeffries to proceed using minimum building code standards. DBI states that the Millennium  
25 Tower had a peer review but that is false. A peer review would have required three reviewers  
26 and one would have to be a geotechnical engineer. DBI did not require that the Developers hire

27 <sup>13</sup> J. Van DerBeken, Investigative Report, NBC Bay Area News (August 26, 2016).

1 an independent geotechnical engineer to study the adequacy of the foundation. DBI did not  
2 require that the two structural engineers who reviewed the plans be independent reviewers.  
3 One of the reviewers, Jack Moehle, worked for DeSimone Consulting Engineers – the principal  
4 engineer for the Millennium Partners since its application for the Tower’s building permit  
5 (“DeSimone”). DBI did not require the engineers reviewing the Millennium Tower to consider  
6 the impact of the soon-to be-constructed Transbay Terminal which would be an enormous  
7 construction project on the southern border of the Millennium Tower. The only independent  
8 member of the review team, Hardip Pannu, stated that, “[w]e were not asked to review the  
9 effects of the Transbay Terminal project on this project.”<sup>14</sup> It was gross negligence for DBI to  
10 exclude the potential impacts of the Transbay construction project on the Millennium Tower.

104. Given the similarities between 80 Natoma and the plans for the Millennium Tower, it  
11 was misconduct for DBI not to have required a peer review of the Millennium Tower. A peer  
12 review of the plans would have determined that: the Millennium Tower was too heavy for the  
13 soil conditions and its cap and pile foundation, the soil reclaimed from the bay was subject to  
14 liquefaction in an earthquake, and the location of the Millennium Tower between two major  
15 fault lines and close to five other faults imperiled a structure that did not have a foundation  
16 anchored in bedrock. All reason was pushed aside in DBI’s effort to get the Millennium Tower  
17 built. The Plaintiffs do not know at this time what pressures were exerted on DBI or stemmed  
18 from within DBI but its actions are completely contrary to its mission as the one agency in San  
19 Francisco responsible for the construction of sound buildings. The above facts were all known  
20 to DBI and it was misconduct for DBI to ignore them.

105. In February 2009, after the Millennium Tower was completed but prior to any units  
21 being sold, Raymond Lui, the DBI Deputy Director for Plan Services, wrote to the engineer in  
22 charge of the Millennium Tower project stating that he was aware the building was sinking  
23 more than anticipated.<sup>15</sup> Based on Mr. Lui’s questions, he was also aware that the building was  
24 sinking differentially. In the letter, Mr. Lui asks 8 multi-part questions about the building’s

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26 <sup>14</sup> Letter from H. Pannu, Middlebrook & Louie, to H. Tom, DBI (August 30, 2005).

27 <sup>15</sup> Letter from R. Lui, DBI, to D. Roorda, DeSimone Consulting Engineers (February 2, 2009).

1 structure and safety. The responses to his letter from the architect, soils engineers, and  
2 engineer in charge of the project confirmed that the Millennium Tower had sunk 8.3 inches  
3 vertically.<sup>16</sup> The foundation permit only anticipated the building sinking of 1-2 inches upon  
4 completion of the building and 4-6 inches of settlement over the lifetime of the building. The  
5 Developer's letters confirm that the building was continuing to sink at a rate of .003 inches a  
6 day. Almost all the answers to Mr. Lui's questions were cursory. Three of the most important  
7 questions remained unanswered: If the settlement continues, how would this affect the  
8 building? How will this affect life-safety issues including accessibility compliance? What  
9 remedial measures are required to mitigate these problems? DBI took no follow-up action  
10 after the receipt of the three letters with their troubling responses and unanswered questions.  
11 DBI had a duty to follow up on and disclose this information to potential purchasers and  
12 homeowners and not participate in the ongoing fraud being perpetrated by Millennium  
13 Partners. DBI breached its duty by continuing to cover up such alarming information from  
14 homeowners and purchasers.

14 106. The California Supreme Court has stated, “[c]onspiracy is not a cause of action, but a  
15 legal doctrine that imposes liability on persons who, although not actually committing a tort  
16 themselves, share with the immediate tortfeasors a common plan or design in its perpetration.  
17 By participation in a civil conspiracy, a coconspirator effectively adopts as his or her own the  
18 torts of other coconspirators within the ambit of the conspiracy. In this way, a coconspirator  
19 incurs tort liability co-equal with the immediate tortfeasors.” *Applied Equipment Corp. v.*  
20 *Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 510 (1994). MPI, MSD, MP, Jeffries, and DBI are  
21 joint tortfeasors under this doctrine by intentionally concealing the construction defects from  
22 purchasers and Plaintiffs.

22 107. On May 10, 2016, the Plaintiffs first learned from Pat Shires, MTA's geotechnical  
23 consultant, that the building in which they lived had sunk 16 inches vertically and was tilting 2

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26 <sup>16</sup> Letters from D Roorda, DeSimone, to R. Lui, DBI (February 25, 2009); R. Golesorkhi, Treadwell & Rollo, to D.  
27 Roorda, DeSimone (February 18, 2009) and G. Sams, Handel Architects to D. Roorda, DeSimone (February 18,  
28 2009).

1 inches at its base and 15 inches at its highest point. In an attempt to understand why this was  
2 happening, requests were made for documents from DBI and independent searches were made.  
3 Mr. Lui's letter identifying the vertical settlement and asking for answers to very serious  
4 questions about the structure and safety of the Millennium Tower was not in any of the DBI  
5 files. None of the letters from the engineers or architect in response to Mr. Lui were in the DBI  
6 files. In their place are two very short and factually barren letters. One from the lead engineer  
7 DeSimone states that the work on the Millennium Tower is in conformance with the building  
8 code, and based on their very limited observation, the observed work was performed in  
9 accordance with industry standards and practices and the approved plans and specifications.  
10 The second letter from Treadwell & Rollo, the soils engineers, states that based on their  
11 observations and tests performed, the work was in conformance with plans and code.<sup>17</sup> There  
12 were no documents in the DBI files reflecting the serious problems referred to by Mr. Lui's  
13 letters or the responses provided by the Developer. This intentional scheme of deceit shows  
14 DBI's intent to cover up the sinking and tilting of the Millennium Tower to mislead  
15 homeowners who were entitled as a matter of law to know about the sinking and tilting of the  
16 building once DBI knew about it.

17 108. DBI argued in multiple hearings before San Francisco Supervisor Aaron Peskin's  
18 Government Audit & Oversight Committee that important written documents were not in the  
19 files because the rules did not require that they be retained. However, the documents that were  
20 discarded all pertain to the sinking and potential dangers of the structure while the documents  
21 retained in the files cover up the sinking and potential hazards of the building. To destroy the  
22 relevant documents had to be intentional. The DBI's destruction of documents does not  
23 destroy DBI's duty to not commit an intentional tort by conspiring with MPI, MPM, MSD, and  
24 Jeffries to conceal from purchasers and Plaintiffs that the Millennium Tower was sinking and  
25 tilting beyond design standards in early 2009. The Millennium Tower has continued to sink

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26 <sup>17</sup> Letters from D. Roorda, DeSimone, to R. Lui, DBI (February 25, 2009), and R. Goleskhi, Treadwell & Rollo,  
27 to Whom It May Concern at DBI (March 4, 2009).

1 and tilt to this day at a constant or accelerated rate without DBI even requiring any mitigative  
2 steps to stabilize the building.

3 109. DBI was clearly aware that the Millennium Tower was sinking in 2009 and continuing  
4 to sink. DBI knew that they had not received sufficient answers to its life-safety questions, yet  
5 it took no further action to ensure that the Millennium Tower was safe. The department's  
6 failure to require a full and complete responses to its requests is unfathomable. DBI's complete  
7 disregard of its responsibilities and duties to the citizens of San Francisco proves that they bear  
8 enormous culpability for the problems faced by the 1,200 residents of the building today.

9 110. There were numerous points before, during, and after construction was completed that  
10 DBI had the knowledge and authority to step in and require MPI, MSD, MPM, and Jeffries to  
11 alter their plans and ensure the building was structurally sound. DBI was clearly aware that the  
12 Millennium Tower had exceeded the acceptable design range for vertical settlement by January  
13 2009. DBI also knew based on the building's similarity to 80 Natoma that it was sinking  
14 differentially. These points were intentionally ignored by DBI while it had full knowledge and  
15 appreciation of the fact that the Tower's tilting and sinking put the building at risk for  
16 ultimately failing. The MPI could not have perpetrated their fraud against the Plaintiffs and  
17 other owners without the intentional misconduct and explicit help of DBI. DBI had to know  
18 about the fraud because units at the Millennium Tower were selling for millions of dollars and  
19 that would never have happened if the buyers were aware of the construction defects in the  
20 building. DBI never disclosed the settlement to owners and potential buyers when they were  
21 working in concert with MPI,, MSD, MPM, and Jeffries who all had duties to disclose to  
22 Plaintiffs that the Tower was sinking and tilting. To ensure safety, DBI had the duty and  
23 authority to deny a certificate of occupancy since it knew that the sinking and tilting presented  
24 a danger to occupants and the public if there were to be even a moderate earthquake.

25 111. DBI should hold a developer to the highest standards when constructing a first-of-its-  
26 kind building in the middle of the heavily populated downtown San Francisco. Based on the  
27 work of Ladd and Whittle, in a moderate earthquake it is highly probable that this building will  
28 be damaged and cause harm to those who live here or are in the vicinity. DBI was aware of all

1 the above facts. Its decisions in light of the facts are unreasonable and dangerous and there is a  
2 strong likelihood of harm as a result. This is nothing short of intentional misconduct.

3 112. The harm done to the Plaintiffs and other owners and occupants of the building are  
4 numerous. The first and most egregious is the stress that comes from living in a building that  
5 has serious construction defects which are continuing to worsen over time coupled with the  
6 knowledge that they live in an area of high seismic activity accentuates their fears. The other  
7 damage stems from the fact that neither the MPI, MSD, MPM, Jeffries nor any city agency has  
8 stepped up to begin even remedial mitigations. In addition, no one knows whether the building  
9 can be fixed. Other harm stems from the fact that Plaintiffs and other owners can neither sell  
10 nor rent their units because once disclosures of the construction defects were made, virtually no  
11 one wants to buy or even rent a unit. In the 9 months since the construction defects were  
12 known, only two units have been sold and both purchases were made by persons already living  
13 in the Millennium Tower. Plaintiffs have suffered harm and damages as a result.

14 WHEREFORE, Plaintiffs pray judgment as set forth below.

15 **CAUSE OF ACTION EIGHT: Damages for Inverse Condemnation against Defendant**  
16 **TJPA**

17 113. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
18 1 through 112, inclusive, as if fully set forth in this cause of action.

19 114. Inverse condemnation claims arise under Article I, section 19 of the California  
20 Constitution, which provides that “[p]rivate property may be taken or damaged for a public use  
21 and only when just compensation . . . has first been paid to . . . the owner.” (Cal. Const. art. I, §  
22 19).

23 115. TJPA’s construction activities at the site of the Transbay Transit Center and adjacent to  
24 the Millennium Tower have caused vertical and differential settlement of the Millennium  
25 Tower.

26 116. TJPA’s construction of the Transbay Transit Center is a substantial cause of the vertical  
27 and differential settlement of the Millennium Tower which proximately caused damage to  
28 Plaintiffs.

1 117. Based upon monitoring by ARUP, TJPA's consultant, the Millennium Tower has sunk  
2 16 inches to date and tilts 15 inches at the top to the northwest. On information and belief, the  
3 Plaintiffs allege that the sinking and tilting is presently greater than the figures provided by  
4 DBI at a hearing before the Government Audit and Oversight Committee of the Board of  
5 Supervisors, and further allege that that sinking is increasing based on satellite data from the  
6 European Space Agency reported in December 2016.

7 118. Plaintiffs have suffered a taking by TJPA of their private property entitling them to just  
8 compensation under Article I, Section 19 of the California Constitution and the Fifth and  
9 Fourteenth Amendments to the United States Constitution.

10 WHEREFORE, Plaintiffs pray judgment as set forth below.

11 **CAUSE OF ACTION NINE: For Nuisance against Defendant TJPA**

12 119. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
13 1 through 118, inclusive, as if fully set forth in this cause of action.

14 120. TJPA's construction of the Transbay Transit Center has caused or contributed to the  
15 sinking and tilting of the Millennium Tower.

16 121. TJPA's use and maintenance of their property has interfered with and continues to  
17 interfere with Plaintiffs' use and enjoyment of their units and damaged and continues to  
18 damage Plaintiffs' units.

19 122. TJPA's activities in constructing the Transbay Transit Center has substantially  
20 contributed to the Millennium Tower's sinking and tilting and thereby has resulted in a  
21 diminution of value in Plaintiffs' units and caused substantial safety risk to the occupants of the  
22 building.

23 123. The invasion of Plaintiffs' interest in the use and enjoyment of their units is substantial  
24 and that substantial invasion is unreasonable.

25 124. As a result of TJPA's construction activities, Plaintiffs have suffered damages.

26 WHEREFORE, Plaintiffs pray judgment as set forth below.



1 **CAUSE OF ACTION TEN: For Trespass and Breach of Easement Agreements against**  
2 **Defendant TJPA**

3 125. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
4 1 through 124, inclusive, as if fully set forth in this cause of action.

5 126. TJPA has physically damaged the Millennium Tower and continues to physically  
6 damage the Millennium Tower by having caused both vertical and differential settlement  
7 within the Tower that has exacerbated and is exacerbating the ongoing sinking and tilting of the  
8 Millennium Tower.

9 127. In constructing the Transbay Terminal, TJPA agreed to maximum allowable movement  
10 with corrective action trigger levels for the Millennium Tower.<sup>18</sup> By 2014, the Millennium  
11 Tower's settlement exceeded the established settlement trigger levels. Instead of taking  
12 required actions, TJPA asserted that it had the discretion to relax the vertical settlement levels  
13 reached because the Tower had experienced and continues to experience settlement  
14 independent of the TJPA activity.<sup>19</sup> TJPA had no authority to unilaterally change the corrective  
15 action trigger levels without the consent of the MTA and the unit owners.

16 128. TJPA's unauthorized intrusion onto the Millennium Tower's property exceeded that  
17 which was agreed to under the easement agreement entered into in October 2008, thereby  
18 causing or contributing to the sinking and tilting of the Tower and damaging Plaintiffs' unit  
19 property value and causing a substantial safety risk to the occupants of the building.

20 129. By physically damaging the common areas of the Millennium Tower, through the  
21 construction of the shoring wall and related construction activities, TJPA has damaged  
22 individual units within the Millennium Tower by causing a substantial diminution in market  
23 value of Plaintiffs' individual units.

24  
25  
26 <sup>18</sup> Transbay Transit Center, Specifications Buttress Package Construction Documents for Review, Performance  
Requirements, Sec. 3.3 A (January 8, 2010).

27 <sup>19</sup> Letter from B. Dykes, Principal Engineer, to S. Hood, Millennium Partners (June 12, 2014).

1 130. Plaintiffs are third-party beneficiaries of the easements between TJPA, MSD, and  
2 Jeffries and as such are entitled to all the rights of repair that TJPA agreed to within those  
3 easement agreements.

4 131. Because of TJPA's construction activities, Plaintiffs have suffered damages.

5  
6 WHEREFORE, Plaintiffs pray judgment as set forth below.

7 **CAUSE OF ACTION ELEVEN: Breach of Fiduciary Duty against Defendants Jeffries,**  
8 **Luciano, and Does 1 through 5**

9  
10 132. Plaintiffs reallege and incorporate by reference each allegation of Paragraphs 1 through  
11 131 inclusive, as if fully set forth in this cause of action.

12 133. On December 8, 2008, Mission Street Development, LLC, established and organized  
13 the Millennium Tower Association, a homeowners' association to, among other things, manage,  
14 administer, maintain, preserve, and to promote the health, welfare and safety of all the owners  
and residents within the property.

15 134. The Center Board of the MTA, the governing body, has a fiduciary responsibility to  
16 Plaintiffs to inform them of, among other things, latent construction defects that they learn of  
17 and that directly impact the safety of the building and the value of Plaintiffs' units.

18 135. John Luciano, a Vice President of Millennium Partners Management, LLC, and a prior  
19 contact for Mission Street Development, LLC, was the Center Board President from December  
20 8, 2008, until the end of 2012, at which time elected unit owners became members of the  
Center Board along with Mr. Luciano who has remained as a commercial member.

21 136. In his capacity as President and a member of the Center Board of the MTA, Mr.  
22 Luciano had a fiduciary duty to Plaintiffs to inform them about the excessive vertical and  
23 differential settlement that occurred, and the existence and purpose of an easement between the  
24 Defendants and TJPA.

25 137. Mr. Luciano also had a fiduciary duty to disclose to Plaintiffs that the construction of  
26 the Transbay Terminal adjacent to the Millennium Tower posed a substantial risk of damaging  
27 the building by causing both differential and vertical settlement.

1 138. Mr. Luciano breached his fiduciary duties to Plaintiffs and Plaintiffs have been  
2 substantially damaged as a result of his failure to perform his responsibilities owed to Plaintiffs.

3 139. If Mr. Luciano had disclosed the vertical displacement and differential settlement to  
4 potential purchasers, including Plaintiffs, when he first learned about it at least in early 2009,  
5 Plaintiffs would not have purchased their units.

6 140. Mr. Luciano conspired with MPI, MSD, MPM, Jeffries, and other unknown individuals  
7 to keep Plaintiffs in the dark about the vertical displacement, differential settlement and the  
8 details of the easement between TJPA and the MPI Defendants.

9 141. By Defendants Jeffries' and Luciano's protracted and intimate involvement with the  
10 Millennium Tower Association, said Defendants owed to Plaintiffs a fiduciary duty.

11 142. Defendants abused the trust and confidence of Plaintiffs by failing to lawfully inform  
12 Plaintiffs that the Millennium Tower had sunk and tilted in early 2009, and has been continuing  
13 to sink and tilt over time.

14 143. Plaintiffs are informed and believe and on that basis allege that Defendants, each of  
15 them, did the acts herein alleged with the intent to deceive and defraud Plaintiffs.

16 144. The nondisclosure by Jeffries and Luciano of material facts relating to the sinking and  
17 tilting of the Tower was a breach of their fiduciary duties and the Plaintiffs have been damaged  
18 in an amount presently unknown to Plaintiffs, an amount to be proved at trial.

19 145. Plaintiffs are informed and believe and on that basis allege that in doing the things  
20 alleged in this complaint, said Defendants, each of them, acted with oppression, fraud, and  
21 malice, and that said acts were approved and/or ratified by Defendants MPI, MPM and MSD.  
22 Plaintiff is therefore entitled to punitive damages in an amount according to proof.

23 WHEREFORE, Plaintiffs pray judgment as set forth below.

24 **Prayer for Relief**

- 25 A. For a jury trial on all issues triable by jury;  
26 B. Actual damages, statutory damages, punitive or treble damages, and such other relief as  
27 provided by the statutes cited herein;  
28 C. Pre-judgment and post-judgment interest on such monetary relief;  
D. Equitable relief;

- 1 E. The costs of bringing the suit, including reasonable attorneys' fees; and  
2 F. All other relief to which Plaintiffs may be entitled at law or equity.

3  
4  
5 Date: January 1/5/2017  
6 \_\_\_\_\_, 2017

DocuSigned by:  
*Gerald P. Dodson*  
866939F010A348D...

\_\_\_\_\_  
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13 Attorney for Plaintiffs  
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Exhibit A – Unit Owner Information

| <b>Unit Owner</b>  | <b>Purchase Date</b> | <b>Escrow Close Date</b> | <b>Seller</b>                   | <b>Unit Number</b> |
|--|----------------------|--------------------------|---------------------------------|--------------------|
| Pamela Buttery, Trustee of the Pamela Buttery 1990 Trust                           | August 2, 2010       | August 13, 2010          | Mission Street Development, LLC | 57A                |
| Paula B. Pretlow, Trustee of The Paula B. Pretlow Trust                            | May 22, 2012         | June 29, 2012            | Mission Street Development, LLC | 31B                |
| Viniti Narain Mahlbubani   | September 28, 2010   | October 6, 2010          | Mission Street Development, LLC | 43B                |
| Helena Geng and Navad Khan (deceased)  | February 2, 2011     | March 11, 2011           | Mission Street Development, LLC | 11C                |
| Helena H. Geng Living Trust  | April 16, 2012       | June 5, 2012             | Mission Street Development, LLC | 12G                |
| Joanne Fox   | June 23, 2011        | November 16, 2011        | Mission Street Development, LLC | 29C                |
| Jeffrey A. Saal and Jeannette C. Saal, Trustees of the Saal Revocable Living Trust | July 30, 2008        | April 7, 2009            | Mission Street Development, LLC | 35D                |

Exhibit A – Unit Owner Information

|  |                   |                    |                                      |     |
|--|-------------------|--------------------|--------------------------------------|-----|
| Elaine Lum MacDonald and Eva Lum<br>Camp and Jackson Lum Jr. and Evonne<br>Lum | February 21, 2009 | June 1, 2009       | Mission Street<br>Development, LLC   | 31C |
| Nina Agabian   | May 15, 2010      | August 15, 2010    | Mission Street<br>Development, LLC   | 29B |
| Giovanni and Vanessa Colella   | January 8, 2013   | January 23, 2013   | Robert Darby                         | 48C |
| Giovanni and Vanessa Colella   | June 29, 2014     | August 13, 2014    | Wan Ling Chen and<br>Harvey S. Young | 48D |
| Frank H. Jernigan, Trustee of the Frank H.<br>Jernigan Family Trust            | May 16, 2011      | September 16, 2011 | Mission Street<br>Development, LLC   | 50C |
| Frank H. Jernigan, Trustee of the Frank H.<br>Jernigan Family Trust            | May 16, 2011      | June 28, 2011      | Mission Street<br>Development, LLC   | 11D |
| Gerald and Patricia Dodson, TTEE, Living<br>Trust Dated 2/27/95                | November 28, 2008 | October 7, 2009    | Mission Street<br>Development, LLC   | 42E |
| Catherine Farrell  | May 31, 2014      | June 13, 2014      | Srikant and Shalini<br>Reddy Saddda  | 15D |
| Theresa and Tyrone Strickland  | March 12, 2013    | April 18, 2013     | Jerold and Phyllis<br>Rosenberg      | 35C |

Exhibit A – Unit Owner Information

|  |                          |                           |  |            |
|--|--------------------------|---------------------------|--|------------|
| <p>Andrea D. Reid, individually and as Trustee for (i) the Survivor's Trust under the James H. and Andrea D. Reid Living Trust; (ii) the Marital Trust under the James H. and Andrea D. Reid Living Trust; and (iii) the Credit Shelter Trust under the James H. and Andrea D. Reid Living Trust dated April 4, 1994</p> | <p>July 3, 2011</p>      | <p>July 23, 2011</p>      | <p>Mark M. Tarpinian</p>                               | <p>23F</p> |
| <p>Herbert I. Finkelman, TTEE, Living Trust DTD 6/13/96</p>  | <p>February 15, 2012</p> | <p>July 2, 2012</p>       | <p>Mission Street Development, LLC</p>                 | <p>46E</p> |
| <p>Stirling Spencer and Gary Demasi</p>  | <p>August 20, 2014</p>   | <p>September 30, 2014</p> | <p>Daria M. Janese and Teresa L. Johnson, Trustees</p> | <p>36B</p> |
| <p>Jerold and Phyllis Rosenberg</p>  | <p>December 13, 2012</p> | <p>April 18, 2013</p>     |  | <p>51B</p> |
| <p>Seung P. Kim</p>  | <p>January 23, 2013</p>  | <p>March 16, 2013</p>     | <p>Millennium Partners</p>                             | <p>4F</p>  |
| <p>Joyce Ratner</p>  | <p>May 21, 2012</p>      | <p>May 24, 2012</p>       |  | <p>32C</p> |
| <p>Joel Adler and Rita Choit Adler, Trustees of the Adler Trust</p>  | <p>February 25, 2010</p> | <p>June 10, 2010</p>      | <p>Mission Street Development, LLC</p>                 | <p>32B</p> |

**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. Those 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 through out 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, Goldengate Transit, SamsTrans, 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 1<sup>st</sup> 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 Records office.

FURTHER INFORMATION ON THE TRANSBAY TERMINAL DEVELOPMENT MAY BE OBTAINED BY VISITING THE TJPA WEB SITE AT [WWW.TJPA.COM](http://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 44<sup>TH</sup> 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 LA. 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.

(a) **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 panles 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 5/8<sup>th</sup> 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 fires. 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 preference.

**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.


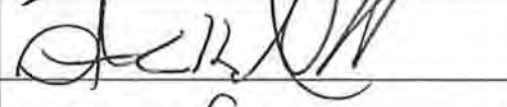
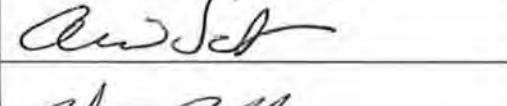

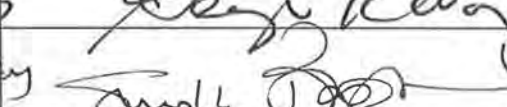
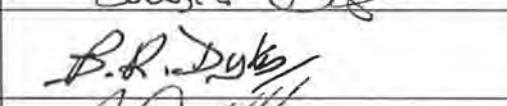


**64. Water Heater Certification.** Seller certifies that the water heater in your Unit has been anchored, braced or strapped in accordance with the requirements of Health and Safety Code Section 19211."

**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.

**CONFIDENTIALITY AGREEMENT**

Representatives of the Transbay Joint Powers Authority ("TJPA") and Mission Street Development, LLC and/or Millennium Partners ("Millennium"), identified below by name and signature, hereby acknowledge and agree that the discussion among such individuals which occurred on February 26, 2010, and any documents exchanged at that meeting or as result of that meeting, is/are and shall for all purposes be considered confidential to the extent allowed by law. Such discussion and any evidence of such discussion shall be protected from discovery in litigation, as if a mediation or mediation consultation under California Evidence Code section 1119, and inadmissible in a court of law as negotiations and offers to compromise under California Evidence Code section 1152 and the Federal Rules of Evidence.

Acknowledged and agreed as of this 26<sup>th</sup> day of February, in San Francisco, California:

| Print Name       | Representing              | Signature  |
|------------------|---------------------------|--|
| Sean Tetterer    | MP                        |    |
| STEVE HOLT       | MP                        |   |
| Andrew Schwartz  | TJPA                      |  |
| Robert P. Beck   | TJPA                      |  |
| George Conway    | SF City Attorney          |  |
| SHERYL BEGMAN    | SF CITY ATTORNEY FOR TJPA |  |
| BRIAN DYKES      | TJPA                      |  |
| RAMIN GOLESORKHI | T&R                       |  |
|                  |                           |  |
|                  |                           |  |
|                  |                           |  |