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Subject: Submission to CPC for VTT-82152 / ENV-2018-2116-EIR
Attachments: More-MILLENNIUM-BS-18-27.pdf

To the City Planning Commission office:

Please distribute the attached ten pages to the City Planning Commissioners prior to the October 15, 2020 public hearing on the Millennium matter.

Attached are pages 18 through 27 to the letter submitted by historysoul.

Thank you.

1 shareholder of MPI and has been involved in the development, management, and or/sale of the
2 Millennium Tower and its units.

3 32. **Defendant Philip E. Aarons** is a Founding Partner and Principal of MPI and has
4 been involved in the development, management, and or/sale of the Millennium Tower and its
5 units.

6 33. **Defendant Philip H. Lovett** is a Founding Partner and Principal of MPI and has
7 been involved in the development, management, and or/sale of the Millennium Tower and its
8 units.

9 34. Collectively, Christopher Jeffries, Aarons, and Lovett constitute the “Millennium
10 Founders.”

11 35. **All three Millennium Founders were involved in the development and management of**
12 **the Millennium Tower and bear responsibility for the Millennium Tower’s defective development,**
13 **design, and construction.**

- 14 a. On information and belief, the HOA alleges that Christopher Jeffries directs and
15 manages all Millennium Partners’ projects. This has been the case since he
16 founded Millennium Partners and “set his sights on key gateway cities across the
17 United States” for his new form of mixed-use developments.¹⁵ His co-founder
18 Aarons acknowledged as much, stating that Christopher Jeffries makes the “final
19 decisions” at Millennium.¹⁶ Christopher Jeffries took ownership of and defended
20 the San Francisco project at a September 20, 2016 press conference declaring:
21 “We did this building the right way.”¹⁷

- 22 b. On information and belief, the HOA alleges that Aarons also speaks and acts as a
23

24 ¹⁵ Millennium Partners, <http://millenniumptrs.com> (last visited Mar. 28, 2017).

25 ¹⁶ Aug. 12, 2010 Philip Aarons Dep. 42:18-21, cited as Ex. 5 to Plaintiff’s Notice of Filing Exhibits
26 in Support of Plaintiffs’ Responses to Defendants’ Motions for Summary Judgment and Motions for
Judgment on the Pleadings, *Altenel, Inc. v. Millennium Partners, LLC, et al.*, No. 1:11-cv-22806-
KMW, ECF No. 338-5.

27 ¹⁷ Associated Press, *San Francisco Skyscraper Is Leaning - And Sinking*, Popular Mechs. (Oct. 24,
28 2016), <http://www.popularmechanics.com/technology/infrastructure/a23521/san-francisco-skyscraper-is-leaningand-sinking/>.

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representative for and owner of the Millennium Tower. He too represented Millennium Partners at the September 2016 press conference. Aarons was involved in high-level strategic decisions about the Millennium Tower project in its early development phases; for example, he joined Sean Jeffries to meet with potential designers and architects for the project in 2006. He is identified as an "Important MP [Person]" in the Millennium Tower Sales Manual.¹⁸

c. On information and belief, the HOA alleges that Lovett is responsible for the day-to-day operations and management of Millennium Partners.¹⁹ Accordingly, he is listed as an emergency contact in the Millennium Tower Sales Manual²⁰ and was involved in communications regarding the budgets for each of the Millennium Tower constituent residences,²¹ among other supervisory and management activities.

36. Defendant Sean Jeffries is Vice President of MPI and the sole member of MSD. Sean Jeffries signed the September 1, 2011 First Amendment to the Easement Agreement between the TJPA and the HOA, and was listed as the designated recipient of monitoring data from the TJPA regarding the sinking and tilting of the Tower. On information and belief, Sean Jeffries is a resident of San Francisco, California..

37. Defendant John Luciano is Vice President of MPM and was a member of the HOA's Board from 2009 through 2016. On information and belief, John Luciano is a resident of San Francisco, California.

38. On information and belief, the HOA alleges that MSD, MSH, MPM, and MP LLC were at all relevant times the alter egos or agents of MPI and the Millennium Founders, because a unity of interest and ownership existed between MSD, MSH, MPM, MP LLC, MPI, Christopher Jeffries, Aarons, and Lovett, and adherence to the fiction of separate corporate

¹⁸ Millennium Tower San Francisco Sales Manual, Book 1, Oct. 2007.
¹⁹ Millennium Partners, <http://millenniumptrs.com> (last visited March 28, 2017).
²⁰ Millennium Tower San Francisco Sales Manual, Book 1, Oct. 2007.
²¹ Email from David Goben to Stephanie Kay-Foss regarding Preliminary Budget Comments (Feb. 28, 2013).

1 existence would promote injustice under these circumstances.

- 2 a. On information and belief, the HOA alleges that The Millennium Defendants
3 hold themselves out as a single, unified enterprise, advertised as developer of
4 properties in Boston, New York, San Francisco, and Los Angeles, including
5 the Millennium Tower.²²
- 6 b. On information and belief, the HOA alleges that MSD, MSH, MPM, and MP
7 LLC existed as mere conduits or shell corporations for the interests and
8 manipulations of MPI, Christopher Jeffries, Aarons, and Lovett. The
9 Millennium Defendants' collective efforts to develop, construct, improve,
10 market, and sell the Millennium Tower allowed Christopher Jeffries to
11 effectuate his dream of developing "housing with a lifestyle" across the
12 country.²³
- 13 c. On information and belief, the HOA alleges that the Millennium Defendants
14 controlled and dominated their constituent entities and made crucial decisions
15 about the development, construction, and management of the building. For
16 instance, between 2011 and 2016, Sean Jeffries, on behalf of the Millennium
17 Defendants, positioned himself, or others employed by the Millennium
18 Defendants, as recipient of critical monitoring data from consulting engineers
19 who evaluated the settlement of the building.
- 20 d. On information and belief, the HOA alleges that the Millennium Defendants
21 disregarded the formal distinctions between their constituent entities, treating
22 them as one and the same. For example, "Millennium Partners" was the
23 recipient of invoices for construction and other professional services
24 completed at the Millennium Tower by various firms.²⁴ Steven Hood (an

25 ²² Millennium Partners, <http://millenniumptrs.com> (last visited March 28, 2017).

26 ²³ Jennifer Frey, *Striking It Ritz; For the, er, Richly Deserving, a Not-So-Humble Abode*, Wash. Post,
27 Aug. 24, 1999.

28 ²⁴ J&C Fuentes Invoice (May 21, 2010); Architectural Energy Corp. Invoice (April 30, 2010);
McMillan Companies Invoice (May 6, 2010).

1 employee of Millennium Partners) and Sean Jeffries sent correspondence
2 related to the Millennium Tower on behalf of the Millennium Defendants and
3 on "Millennium Partners" letterhead.^{25 26}

- 4 e. The Millennium Defendants all share a business address at 1995 Broadway,
5 New York, New York.
- 6 f. On information and belief, the HOA alleges that the assets of the Millennium
7 Defendants' constituent entities were commingled in the development of the
8 Millennium Tower.
- 9 g. The Millennium Defendants' constituent entities share employees and
10 executives. For instance, Richard Baumert, identified as a Managing Partner
11 of Millennium Boston on the Millennium Partners website,²⁷ also signed the
12 First Addendum to the Residential Purchase Agreement as Vice-President of
13 Mission Street Holdings, LLC.²⁸ Other correspondence identifies him as an
14 employee of Millennium Partners LLC.²⁹ The overlapping structure of
15 employment and control confused business associates as well: Steven Hood is
16 sometimes addressed as affiliated with "Millennium Partners" and other times
17 with "Mission Street Development."³⁰
- 18 h. On information and belief, the HOA alleges that the Millennium Defendants
19 also share attorneys. In other litigation relating to the sinking and tilting of
20 the Millennium Tower, Peter Meier and the law firm Paul Hastings LLP
21 represent MPI, MSD, MPM, Sean Jeffries, and John Luciano.

22
23 ²⁵ Letter from Steven Hood to Kenneth Klein at Simpson Gumpertz & Heger (June 8, 2009).

24 ²⁶ Letter from Sean Jeffries to Jeff Peters (Feb. 28, 2014).

25 ²⁷ Millennium Partners, <http://millenniumptrs.com> (last visited March 28, 2017).

26 ²⁸ First Addendum to the Residential Purchase Agreement (March 20, 2012) (for Buyers Richard and Jo-Tung Tu Chang).

27 ²⁹ Letter from Shirley Cui to Richard Baumert (Oct. 27, 2009).

28 ³⁰ Letter from Brian Dykes (TJPA) to Steven Hood (Mission Street Development) (Jan. 8, 2013); Letter from Ramin Golesorkhi and Joseph E. Romano (Langan Treadwell Rollo) to Steven Hood (Millennium Partners) (Sept. 6, 2016).

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- i. On information and belief, the HOA alleges that MSD, MSH, MPM, and MP LLC were and are undercapitalized and potentially incapable of satisfying a judgment should the HOA prevail in this action.
- j. On information and belief, the HOA alleges that the Millennium Defendants have benefited from the development, construction, and sale of the Millennium Tower; **it would be unjust if they were to escape liability for obligations associated with these benefits.** Modelling subsequent developments on the San Francisco Millennium Tower, **Millennium Partners has benefited from its reputation as a national leader in luxury living.** Without its “impressive portfolio across the nation,” including the Millennium Tower San Francisco, Millennium Partners could not have drawn on this powerful branding to advertise its latest project, the Millennium Tower in Boston.³¹ Accolades include the San Francisco Chamber of Commerce’s “Excellence in Business—Building San Francisco” Award, which was accepted by Managing Director Baumert.³² But in order to draw upon the power of its national brand, Millennium Partners must be required to take responsibility for the flaws in its various developments.

39. Defendant Webcor Construction, Inc. was a corporation formed under the laws of the State of California, with its principal place of business in California, and doing business as “Webcor Builders.” Its exact current nature is unknown. Webcor entered into an Agreement for Construction Management Services with MSD to act as the general contractor for the Millennium Defendants in the construction of the Millennium Tower.

40. Defendant Webcor Construction LP is a limited partnership formed under the laws of the State of California, with its principal place of business in California, and also doing

³¹ Upscale Living Magazine, Home/Real Estate/Millennium Boston Tower (2017), <http://upscalelivingmag.com/millennium-boston-tower/>.

³² Business Wire, *Millennium Tower Honored at Excellence in Business Awards (Dec. 8, 2010)*, <http://www.businesswire.com/news/home/20101208006994/en/Millennium-Tower-Honored-Excellence-Business-Awards>.

1 business as “Webcor Builders.” Webcor Construction LP was insured under the primary
2 Contractors Controlled Insurance Policy (“CCIP”) for the 301 Mission Street project. On
3 information and belief, Webcor Construction LP also acted as the general contractor for the
4 Millennium Defendants in the construction of the Millennium Tower. Collectively, Webcor
5 Construction, Inc. and Webcor Construction LP will be referred to as “Webcor.”

6 41. Defendant Handel Architects LLP (“Handel”) is a limited liability partnership
7 doing business in the City and County of San Francisco, California. Handel was the architect of
8 record and designed the Millennium Tower and its components.

9 42. Defendant Treadwell & Rollo, Inc. (“Treadwell & Rollo”) is a corporation, the
10 exact current nature of which is unknown, that at one point had its principal place of business in
11 the City and County of San Francisco, California. Treadwell & Rollo was the geotechnical
12 engineer of record for the Millennium Tower.

13 43. Defendant T & R Consolidated, Inc. (“T & R Consolidated”) was also a
14 geotechnical engineer and the successor in interest to Treadwell & Rollo. On information and
15 belief, the HOA alleges that Treadwell & Rollo changed its name to T&R Consolidated after
16 selling its assets to Langan Engineering and Environmental Services, Inc. and before dissolving.

17 44. Defendant Langan Engineering and Environmental Services, Inc. (“Langan”) is a
18 New Jersey corporation engaged in various geotechnical, environmental, and other engineering
19 services, and is the successor in interest to Treadwell & Rollo and T & R Consolidated.

- 20 a. On information and belief, the HOA alleges that all or substantially all of
21 **Treadwell & Rollo’s assets were transferred to Langan** pursuant to an
22 Asset Purchase Agreement on November 1, 2010.
- 23 b. On information and belief, the HOA alleges that this asset transfer was not
24 supported by adequate consideration to meet the claims of other creditors.
- 25 c. Treadwell & Rollo legally changed its name to Treadwell & Rollo
26 Consolidated, Inc. (“T & R Consolidated”) after the asset purchase. T &
27 R Consolidated subsequently dissolved and no longer exists as an
28 operating entity.

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- d. Plans called for Treadwell & Rollo to maintain its name for an interim period, but be branded “A Langan Company.” In 2012, it would become known as “Langan Engineering & Environmental Services.”³³
- e. On information and belief, the HOA alleges that one or more individuals were officers, directors, or stockholders of both Treadwell & Rollo and Langan. Philip Tringale was President of Treadwell & Rollo, Inc., and currently is Director of Western Operations at Langan Engineering & Environmental Services. He represents that the start date for both positions was March 1992.³⁴
- f. Langan assumed the obligations of Treadwell & Rollo necessary for the continuation of Treadwell & Rollo’s business obligations. Indeed, it continued on with Treadwell & Rollo’s obligations at 301 Mission Street: From approximately 2012 through 2013, “Treadwell & Rollo: A Langan Company” produced memoranda to Millennium Partners evaluating Arup’s settlement monitoring measurements. In 2014, “Langan Treadwell Rollo” continued with the same evaluation memoranda using the same template. And in December 2016, “Langan” continued the work Treadwell & Rollo had begun, presenting the results of building survey measurements in a Building Survey Report.

45. Defendant DeSimone Consulting Engineers LLC (“DeSimone LLC”) is a limited liability company organized under the laws of the State of Delaware and doing business in the City and County of San Francisco, California. DeSimone LLC acted as the structural engineer for the Millennium Defendants in connection with the design and construction of the Millennium Tower. DeSimone LLC filed a Cross-Complaint and an Answer admitting to providing structural engineering services at 301 Mission Street in the related matter, *Laura S. Lehman, et.*

³³ PR Newswire, *Langan Acquires Treadwell & Rollo* (Nov. 1, 2010), <http://www.prnewswire.com/news-releases/langan-acquires-treadwell--rollo-106465148.html>.

³⁴ Philip Tringale, LinkedIn, <https://www.linkedin.com/in/philip-tringale-85b37711/>.

1 *al. v. Transbay Joint Powers Authority, et al.*

2 46. Defendant DeSimone Consulting Engineers, PLLC (“DeSimone PLLC”) is a
3 professional limited liability company organized under the laws of the State of California and
4 doing business in the City and County of San Francisco, California. DeSimone PLLC entered an
5 Agreement for Structural Engineering Services to act as structural engineer for the Millennium
6 Defendants in connection with the design and construction of the Millennium Tower.
7 Collectively, DeSimone LLC and DeSimone PLLC will be referred to as “DeSimone.”

8 47. Collectively, Treadwell & Rollo, T & R Consolidated, Langan, and DeSimone are
9 the “Engineering Defendants.”

10 48. Defendant Transbay Joint Powers Authority (“TJPA”) is a government joint
11 powers entity created under California Government Code section 6500 *et seq.* The TJPA is the
12 entity charged with developing the Transbay Terminal, which includes construction of the five-
13 story Transit Center and underground train facility directly adjacent to the Property.

14 49. Defendant Arup North America Limited (“Arup”) is a corporation formed under
15 the laws of the United Kingdom, and on information and belief has its principal place of business
16 in California. Arup is a geotechnical engineering firm that TJPA retained to provide
17 geotechnical studies of the soil underlying, and foundation of, the Transbay Terminal Project,
18 and a below-ground buttress pile wall on and adjacent to the Property.

19 50. The HOA is ignorant of the true names and capacities of defendants sued as Does
20 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. The
21 HOA will amend this Complaint to allege the true names and capacities of these defendants
22 when ascertained. Each of the fictitiously named defendants is, or will be, responsible for the
23 occurrences alleged in this Complaint and for the HOA’s injuries, both existing and prospective.
24 Each Doe defendant legally and proximately caused damage to the HOA. Each and every Doe
25 defendant had a duty to the HOA to use reasonable care in performing the tasks related to the
26 planning, development, creation, improvement, design, construction, supervision, observation,
27 inspection, management, and/or repair of the Millennium Tower.

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IV. JURISDICTION AND VENUE

51. Jurisdiction over this action in the Superior Court of the State of California in and for the County of San Francisco is proper pursuant to California Code of Civil Procedure section 410.10 because all Defendants have sufficient minimum contacts with California to support the exercise of jurisdiction.

52. Venue is proper in the Superior Court of the State of California pursuant to California Code of Civil Procedure section 392 because the real property that is the subject of the action is located in the City and County of San Francisco. Venue is also proper pursuant to California Code of Civil Procedure section 395.5 because this is the county where some Defendants reside, and pursuant to California Code of Civil Procedure section 395.5 because this county is where the corporate defendant entities' relevant contracts were entered into and performed, and where the relevant obligations and liabilities arose.

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V. EASEMENT AGREEMENTS

53. The TJPA owns real property adjacent to the Property and is in the process of building a new transit terminal that will include an above-ground bus station and a below-ground rail station. It entered into an Easement Agreement with MSD on October 10, 2008, which was authorized by the TJPA Board of Directors on October 17, 2008, and recorded in the official records of the City and County of San Francisco on March 25, 2009, Document no. 2009-1739852-00 (the "Easement Agreement").

54. The TJPA then entered into the First Amendment to the Easement Agreement with MSD and the HOA on September 1, 2011, which was recorded in the official records of the City and County of San Francisco on November 3, 2011, Document no. 2011-J296169-00 (the "Amended Easement Amendment").

55. Under the terms of the Easement Agreement, at Section II.A.1(a), the TJPA covenanted and agreed to design and construct the Support System (lateral and subjacent support for the Property) and the Transit Center to stabilize the soil beneath the Millennium Tower, prevent the material movement and/or settlement of the Millennium Tower, and provide for the structural support, integrity, and safety of the Millennium Tower during and after the TJPA's

1 construction of the Transit Center.

2 56. The TJPA, at Section II.A.1.(b) of the Easement Agreement, agreed that it has the
3 full, complete, and exclusive responsibility for the support, integrity, and safety of the
4 Millennium Tower to the extent the Millennium Tower is affected by the construction of the
5 Transit Center and Support System.

6 57. Under Section II.B.1(h) of the Easement Agreement, the TJPA agreed to repair, at
7 its own cost and expense, or pay the reasonable cost of repairing, any damage to the Millennium
8 Tower substantially caused by the TJPA's construction activities. The TJPA specifically
9 acknowledged that its obligation to repair damage to the Millennium Tower substantially caused
10 by the TJPA's construction activities is not dependent on the existence of fault or negligence on
11 the TJPA's part. In particular, but not exclusively, the TJPA agreed to repair damage to
12 waterproofing or cracks in the foundations or walls of the Millennium Tower resulting from
13 settlement or movement substantially caused by its construction activities.

14 58. The HOA is the successor in interest to MSD under the Easement Agreement. On
15 or about August 23, 2016, the HOA gave notice to the TJPA of the HOA's claims against the
16 TJPA for damages to the extent required under Government Code section 910 *et seq.* The TJPA
17 denied the HOA's claims on or about October 7, 2016.

18 **VI. THE DEFECTS**

19 59. The Tower was constructed on an inadequate foundation system and has
20 experienced vertical displacement of over 16 inches. The Tower has settled differentially and is
21 it out of plumb by over 12 inches. The Property also suffers from other defects, including
22 inadequate garage construction and waterproofing, defective windows, curtain wall corrosion
23 and water intrusion, inter-unit odor transmission, cracks, and alignment issues.

24 60. The following list of defects as defined in the California Civil Code is preliminary
25 and nonexclusive and, therefore, is given without prejudice to the HOA's right to expand,
26 amend, modify, or augment its claims and/or list of defects at any time, and the HOA specifically
27 reserves its right to do so herein:

- 28 a. Civil Code § 896(a)(2): Water intrusion through windows and their systems