

**ATTACHMENT A to CLAIM AGAINST TRANSBAY AND CITY AND
COUNTY OF SAN FRANCISCO**

1. The real property that is the subject of this claim consists of units within the Millennium Tower and the land on which it is located, is commonly known as the Millennium Tower, 301 Mission Street, located in San Francisco County, is more particularly described as Assessor's Lot 019, Block 3719 and is referred to in this Claim as "Units." A legal description of the Units owned by Claimants is attached to this notice as Exhibit A.
2. Claimants are, and at all times relevant to this claim were, individuals who reside in San Francisco County. Claimants purchased and became the owners of the Units on the "Closing Dates" attached to this Notice as Exhibit A.
3. The named parties responsible ("Named Parties") are the Developers of the Millennium Tower and city and state agencies, Department of Building Inspection of the City of San Francisco ("DBI"), Transbay Joint Powers Authority ("Transbay") and the City Attorney's Office ("City Attorney").
4. Mission Street Development, LLC, ("MSD") is a Delaware limited liability company doing business in California, is an alter ego of Millennium Partners I, Inc. MSD constructed, designed, and developed the Millennium Tower and is responsible for its defective design.
5. Millennium Partners I, Inc. ("MP") is a New York corporation doing business in California also as "New York SF Millennium Partners I, Inc." Millennium Partners, acting in part through its alter egos, constructed, designed, and developed the Millennium Tower and is responsible for its defective design.
6. TJPA is a joint powers agency and a government agency created under 27 California Government Code section 6500 *et seq.* The TJPA bears sole responsibility for developing the Transbay Project and any adverse impacts therefrom on the Millennium Tower.
7. The City Department of Building Inspection is the regulatory building safety agency responsible for overseeing the City and County Building Code and the responsible agency for inspecting and permitting the Millennium Tower.
8. The City Attorney's Office is the legal representative for the Department of Building Inspection and Transbay and was a signatory on confidentiality agreements among Millennium Partners, Transbay and the City Attorney's Office.

9. The Millennium Tower Association (“MTA”) is a California nonprofit mutual benefit corporation. The MTA is the owner, operator and manager of the underlying property at 301 Mission Street, including the foundation of the Millennium Tower.

10. Sean Jefferies, Vice President of Millennium Partners, (“Jefferies”) is the lead and responsible individual who was responsible for The Millennium Tower’s defective design and was the designated contact and recipient for the Millennium Tower Association for submission of monitoring data from TJPA related to the sinking and tilting of the building. In his capacity as the contact for receipt of monitoring data from TJPA on behalf of the Millennium Tower Association, Jefferies owed a fiduciary duty to Claimants to keep them informed as to the status of the building.

CAUSE OF ACTION (Damages for Conspiracy to Commit Fraud By Concealment against MP, MSD, Jefferies, Transbay, the Department of Building Inspection, the City Attorney and Does 1 through 5)

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

12. MSD, MP and Jefferies had a duty pursuant to § 1102 et seq. of the California Civil Code to disclose construction defects to claimants including the sinking and tilting of the Millennium Tower immediately after completion of construction in early 2009 or even earlier if they had knowledge that the Tower was sinking and tilting. MSD, MP and Jefferies were marketing Units in 2008 and should have disclosed the sinking and tilting of the Tower to potential purchasers then if they were in possession of such information which on information and belief they were as a result of their monitoring activities.

13. At all relevant times, MSD and Jefferies failed to disclose the sinking and tilting of the Tower to claimants and purchasers as required by state law. This failure to disclose was willful and intentional to deceive claimants to purchase their Units without knowing about the construction defects including the sinking and tilting of the Tower.

14. The purchase agreements for the Units, including disclosure statements did not disclose certain material facts, including that: (a) The Millennium Tower had sunk by 8.3 inches by early 2009 when the Tower was designed to sink only 1 to 2 inches by the end of construction in early 2009; the Millennium Tower had differential settlement by early 2009; The Millennium Tower

was continuing to sink and differentially settle during 2009; the Millennium Tower had differential settlement of 5.6 inches from southeast to northwest at Basement 1 of the Tower by November 2009. MSD and Jefferies had no knowledge as to when the Tower was going to stop sinking or no longer differentially settle in early 2009 and do not have that knowledge even today. Having sunk by 8.3 inches in early 2009 the Tower had already sunk beyond the design standard of 4-6 inches for the 40 year life of the building. None of these material facts were disclosed to Claimants in any documents provided to Claimants prior to close of escrow.

15. MSD and Jefferies, who had clear statutory duties to disclose the construction defects, including the sinking and tilting of the building, conspired with the Department of Building Inspection, TJPA and the City Attorney to conceal and not disclose to Claimants the construction defects including the sinking and tilting of the Tower and the fact that it was continuing to sink and tilt from completion of construction to this day.

16. The California Supreme Court has stated, conspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration. By participation in a civil conspiracy, a coconspirator effectively adopts as his or her own the torts of other coconspirators within the ambit of the conspiracy. In this way, a coconspirator incurs tort liability co-equal with the immediate tortfeasors. *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th 503 (1994). MSD, MP, Jefferies, TJPA, DBI and the City Attorney are joint tortfeasors under this doctrine in concealing the construction defects from purchasers and claimants.

17. The MSD disclosure agreement to purchasers stated that MSD had entered into an underground easement agreement with TJPA to provide both a permanent and temporary easement on the property. MSD's disclosure agreement mentioned that there was to be a permanent easement to allow for a 5 foot encroachment onto MSD's property to construct a shoring wall to be installed for TJPA's new terminal. It mentioned that the temporary easement may affect traffic in the driveway and the Millennium Tower's porte cochere and an assortment of other effects designed to conceal the damage that was likely to occur from construction of the shoring wall. There was no mention that the construction of the shoring wall could cause the Tower to settle 3 inches and the podium to settle ½ inch, thereby causing differential settlement between them. The disclosure statement was intended as a "head fake" to deceive buyers into

believing that the easement was a typical easement and not one that was going to result in vertical and differential settlement of the Tower. At the same time that MSD provided this disclosure agreement to purchasers, it knew that the Tower had already sunk and tilted beyond design standards for the life of the building. MP, MSD, and Jefferies deliberately concealed the potential impact from the Transit Center construction by informing Claimants in the April 2009 Property Disclosure Statement that Claimants should expect increased congestion, traffic and noise level in the neighborhood that may have a negative impact on available parking. Claimants were also alerted that the development could last for years and create noise, dust, fumes and odors, but there was no mention of the construction defects including the sinking and tilting of the Tower.

18. MSD entered into an easement agreement (“easement agreement”) October 10, 2008 with TJPA; the easement agreement was signed by Sean Jefferies as MSD’s authorized agent and Maria Ayerda, Executive Director on behalf of Transbay and only recorded in March of 2009. The easement contemplated a system to provide lateral and adjacent support for the Millennium Tower because of its proximity to the Tower and the need for TJPA to work adjacent if not underneath the Tower. The agreement included extensive monitoring, including baseline studies. The baseline studies along with the monitoring were never shared with Claimants even though they documented both vertical and differential settlement of the Tower. The easement agreement contains covenants which grandfathered the “cracking or settlement” of the Tower prior to commencement of construction of the Transit Center. On information and belief there is photographic evidence of cracking and settling that occurred prior to TJPA’s construction activities. On information and belief MSD, Sean Jefferies, DBI and Transbay knew at the time of entering the easement agreement in 2008 that the Millennium Tower had already sunk and differentially settled. MSD, TJPA, and Jefferies failed to disclose to Claimants that they had entered into an easement agreement on October 10, 2008 between TJPA and MSD that acknowledged that damage to the Millennium Tower was likely to occur as a result of construction of the Transbay Transit Center. At no time did MSD or TJPA notify Claimants of these material facts before the Closing Dates on their Units.

19. On information and belief, DBI was aware of this 2008 easement agreement and the sinking and tilting of the Tower at least as early as late 2008 when the easement agreement was executed and certainly when it was recorded in March of 2009. DBI failed to disclose to

Claimants that TJPA was installing monitoring equipment in the basement of Millennium Tower to measure tilt in and vibrations to the structure to determine liability for damages. DBI further failed to disclose to claimants that the Tower had sunk and differentially tilted in February 2009 when DBI's Raymond Lui wrote a letter to MP's lead project engineer raising questions about the sinking and tilting of the Tower. He most likely learned of the sinking and tilting of the Tower from discussions with TJPA who had been doing the monitoring of the Tower. DBI failed to disclose to Claimants that as of the October 8, 2008 execution date of the easement agreement between TJPA and MSD and Jefferies the parties acknowledged that there was a distinct possibility that the construction of the Transbay Transit Center would could cause larger than expected settlement or other damage to the Millennium Tower.

20. The Millennium Partners, TJPA and two San Francisco City Attorneys signed a confidentiality agreement on February 26, 2010 related to the easement agreement and stability of the Millennium Tower to keep confidential from, among others, the Claimants the meeting and discussion that occurred on the same date. On information and belief the topics of the discussion included the October 10, 2008 easement and the sinking and tilting of the Millennium Tower were also to be kept secret from claimants and potential buyers. TJPA was trying to walk away from the easement agreement and had offered money to MSD and Jefferies to escape the liability under the agreement for any damage that TJPA might do to the Tower during construction of the shoring wall. As part of the negotiations, TJPA agreed to keep secret from claimants that the Tower had sunk and tilted and was continuing to sink and tilt at least at a constant rate. The confidentiality agreement states that the parties agreed to keep any evidence of such discussion inadmissible and out of evidence in any court of law. The parties agreed to keep this discussion confidential when one of the parties, MSD and Sean Jefferies, had a duty to disclose the sinking and tilting of the Tower to, among others, the Claimants and potential purchasers. In particular, there were three attorneys in the room, Andrew Schwartz, representing TJPA, and Sheryl Bergman and George A. Wong, two attorneys from the City Attorney's office attended; at least one of them should have said to Jefferies, you have a duty to disclose the sinking and tilting of the building to owners and purchasers and now we have that duty too. If you don't we will have to disclose it because that is what the law requires. They are members of the California state bar and had an obligation not to knowingly and intentionally participate in a fraud. Instead, they became joint tortfeasors along with everyone else at this meeting and

defrauded by concealment the homeowners at the Millennium Tower. Claimants have been badly damaged by their silence and conspiracy, with Jefferies and MP, not only by diminution of their property value, but because failing to disclose what was required by law has jeopardized the safety and well-being of everyone in the building since subsequent reports have identified a heightened risk from an earthquake as a result of the sinking and tilting of the Millennium Tower. To date not one of these entities or individuals has stepped forward publicly and taken responsibility for what they failed to do. The first Confidentiality Agreement is attached as Exhibit B. At no time did MSD, Jefferies, TJPA or the City Attorney notify Claimants of these material facts before the Closing Dates on their Units.

21. On information and belief there are other such confidentiality agreements between MSD, TJPA and Jefferies. On March 17, 2010, MSD, TJPA and Jefferies entered into another confidentiality agreement that was designed to cover up the duty to disclose the information exchanged in the first confidentiality agreement. The second confidentiality agreement required either party to give a 10 day notice before any confidential information was disclosed under the first agreement. But, on information and belief that 10 day notice was never exercised by either party. TJPA knew that MSD and Jefferies had not disclosed to owners that the Tower was sinking and tilting and therefore TJPA was not relieved of their duty to disclose once TJPA became a participant in the fraud scheme. The 10 day notice in the second confidentiality agreement was a mere “fig leaf” to further conceal the sinking and tilting of the Tower from claimants, other owners and purchasers. Only on July 8, 2016 did Transbay finally provide notice that it was going to be disclosing information on July 18, 2016 that had been discussed under the confidentiality agreement in 2010, but held secret from claimants and other purchasers for 6 years.

22. The TJPA buttress to be constructed on the southern border of the Millennium Tower was intended to stabilize the building from the impacts of TJPA construction activities. But, the TJPA buttress, shoring and excavation specifications written by TJPA’s consultant ARUP, and dated July 30, 2010, projected and did cause ground settlement and lateral deformation adjacent to the excavation. According to ARUP’s analyses, the excavation-induced ground movements would cause settlement and lateral movement of the Tower and podium structure of about 3 inches and 1/2 inches respectively. None of this information was ever disclosed to claimants by Transbay or MP, MSD and Jefferies.

23. Correspondence from MP and its consultants commenting on TJPA's buttress, shoring and excavation bid package confirmed that according to ARUP's analysis, the excavation induced ground movements would cause settlement and lateral movement at the Tower of about 3 inches and the podium structure of about 1/2 inch. Therefore, in addition to the movement of the two structures separately, the seismic joint between them necessary for performance during an earthquake would also experience differential movement. (Letters from MS consultants, DeSimone (10/8/10), Handel Architects (10/14/10), Simpson Gumpertz & Heger (10/11/10) and Treadwell & Rollo (10/14/10). None of this information was ever disclosed to Claimants by TJPA, MSD or Jefferies as required by law.

24. On September 1, 2011, TJPA's Maria Ayerdi, Executive Director and Jefferies on behalf of the Millennium Tower Association as "owner" entered into an amendment to the first easement dated October 8, 2008. In the amended agreement TJPA agreed to provide to authorized representatives of MSD and MTA the real-time data from the monitoring that had confirmed that the Tower had sunk and tilted and was continuing to sink and tilt. Although Jefferies had a fiduciary duty to claimants and other owners, Jefferies never disclosed that the Tower was sinking and tilting. TJPA knew that Jefferies had failed to disclose the sinking and tilting of the Millennium Tower but pursuant to the confidentiality agreements it had entered, it kept that information secret from claimants and other owners even though they had a duty to disclose it as a matter of law.

25. TJPA never disclosed monitoring and reporting information to claimants despite knowing that Jefferies had not disclosed the information that he was required to under law. Once TJPA participated in the tortious fraud scheme to mislead homeowners and purchasers along with MSD and Jefferies, all of them had the ongoing duty to disclose that the building was sinking and tilting and all of them were participating in an ongoing tort of fraud. TJPA, MSD and Jefferies participated in a fraud by concealment to keep homeowners and potential purchasers in the dark about the sinking and tilting of the building, which they were required to disclose as a matter of law.

26. Sean Jefferies, Vice President of Millennium Partners acted as the contact for the Millennium Tower Association with Transbay for purposes of receiving monitoring data and information about the stability of the building as related to the easement. Jefferies role on behalf of the MTA continued after the ownership of the Millennium Tower was conveyed to the MTA.

In his position as recipient of monitoring data from TJPA, Sean Jefferies had a fiduciary duty to disclose this information to Claimants because of their right to know about their safety and property value. At no time did Jefferies disclose this information to Claimants.

27. The Claimants have been damaged as a result of the failure to disclose the nature and scope of the easement between MSD and TJPA prior to Claimants' close of escrow. Claimants are informed and believe and on that basis alleges that each of them, did the acts herein alleged with the intent to deceive and defraud Claimants.

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

29. If Claimants would have known that MSD, MP and Jefferies had entered into an easement agreement with TJPA that anticipated damage of unknown degree to be determined only with ongoing monitoring of the stability of the building they would never have purchased their units.

CAUSE OF ACTION (Fraud by Concealment and Wanton Misconduct against DBI, MP, MSD, Jefferies and Does 1-5 inclusive)

30. Claimants reallege and incorporate by reference each and every allegation of Paragraphs 1 through 29, inclusive, as if fully set forth in this cause of action.

31. The City Department of Building Inspection knew or should have known that the Millennium Tower if built as described in the permit and approved by DBI would dramatically sink and tilt and be in danger of failing during an earthquake. The only reason this building could have been completed as it stands today is that DBI overlooked significant facts and made intentional unnecessary concessions to the developer without regard to the impacts it would have on the eventual owners of the condominiums or risks to the citizens of San Francisco should the building fail in an earthquake. Remedial measures should have been imposed by DBI on MP, MSD and Jefferies prior to the issuance of the certificates of occupancy. The decisions made by

DBI during the construction of the Millennium Tower appear intentional to claimants as they all favored MP, MSD and Jeffries over the safety of the claimants and the eventual inhabitants of the building. The continued sinking and tilting of the Millennium Tower is disrupting the lives of every resident in it and being discussed around the world because DBI utterly failed to do its job.

32. The Millennium Partners could not have perpetrated their fraud against the claimants and other owners without the intentional conduct and explicit help of DBI. The DBI is the agency in the City responsible to the citizens of San Francisco to ensure that buildings that are constructed are safe. There were numerous points before, during and after construction was completed that DBI had the knowledge and authority to step in and require MP, MSD and Jefferies to alter their construction plans and ensure that the building was structurally sound. All of those points were ignored by DBI while it had full knowledge and appreciation of the fact that Tower was sinking and tilting and the risk that it could ultimately fail. In fact, DBI never disclosed to the claimants or purchasers that the Tower was sinking and tilting in early 2009 when it was working with MP, MSD and Jefferies, who all had duties to disclose to claimants that the Tower was sinking and tilting.

33. In 2004 DBI ordered a work stoppage on a 52 story high-rise similar to the Millennium Tower. According to the plans it would be made of reinforced concrete, the foundation a thick concrete slab supported by piles extending into dense sand and bay mud. The piles would not extend to bedrock. It would have been the tallest and heaviest concrete building on the West Coast. The director of DBI at that time Frank Y. Chiu ordered a peer review by two internationally regarded geotechnical engineers, Professors Charles Ladd and Andrew Whittle of MIT. Professors Ladd and Whittle determined that the building, known as 80 Natoma, could sink 11 Inches and twice as much as the estimates given by the Treadwell & Rollo the developer's geotechnical engineers and would settle differentially based on the uneven soil conditions. Professor Ladd said, "Settlement of this magnitude could cause cracking of the building, displace adjacent structures and increase the risk of serious damage to the building in the event of an earthquake". Eighty Natoma was never built. DBI was on notice that the soil conditions did not support heavy concrete buildings with short piles that did not go to bedrock.

34. In 2005 a permit was issued by DBI for the Millennium Tower. The Millennium Tower was proposed to be an even heavier reinforced concrete structure, taller than 80 Natoma at 58 stories and on similarly unstable soil. The soil was previously under water and subject to

liquefaction in an earthquake. The geotechnical engineers for the Millennium Tower were Treadwell and Rollo, the same engineers who did the soil report on 80 Natoma. They recommended the same cap and pile foundation with piles going down 60 to 80 feet into dense soil resting above mud also called old bay clay. The weight of the building is equivalent to a 150 story steel frame building.

35. Given the similarities between 80 Natoma and the plans for the Millennium Tower, it was wanton and reckless misconduct for DBI not to have had the plans reviewed by geotechnical engineers. A peer review of the plans by geotechnical engineers would have determined that the building, similar to 80 Natoma, was too heavy for the designed foundation and soil and eliminated the problems we are facing today. DBI allowed MP, MSD and Jefferies to construct the building using the minimal standards of the city building code at that time; it is called a prescriptive design. The DBI could have required a performance based standard knowing that a building of its height and weight had never been constructed in San Francisco on reclaimed soil from the bay. A prescriptive design was unprecedented and inappropriate for such a heavy tall structure. DBI claims that the prescriptive design was augmented with a peer review panel but the facts establish that this is false and a true peer review was never undertaken. It was wanton and reckless misconduct for the DBI not to have insisted on peer review of the Millennium Tower.

36. A peer review panel is supposed to consist of three engineers—two structural engineers and a geotechnical engineer. The developers pay the panel members and also get to select them. It would be logical that the DBI should be selecting the panel to ensure that the reviews are impartial. That again is not the how the system worked. The Millennium Partners selected the review panel and chose two structural engineers. DBI requested that Millennium Partners add a geotechnical engineer to the review panel but they refused to do so. This is another point at which the DBI could have demanded a soils engineer or disallowed the project from going forward. Two geotechnical engineers had been called in by the DBI to review 80 Natoma. On the other hand, no action is undertaken by DBI to ensure the safety of the foundation of the Millennium Tower. It was wanton and reckless misconduct on behalf of DBI not insist on a true peer review panel.

37. Jack Moehle a professor at UC Berkeley was selected as one of the members of the review team. However he was also an employee of DeSimone the chief engineering company

for the construction of the Millennium Tower. He had been advising on the Millennium Tower project since 2004. He had also been an advisor on the 80 Natoma. DBI had to be aware of the conflict of interest when a member of the design team on a project is also selected to be a reviewer of that project. There are no letters in the file that indicate that DBI raised Moehle's conflict of interest as a concern. It was wanton and reckless misconduct conduct on behalf of DBI not to insist on an unbiased and objective peer review panel.

38. The other member of the review team was Hardip Pannu from the engineering firm of Middlebrook+Louie. It appears that Mr. Pannu was an independent reviewer. Although there is no letter that has been located in the DBI files from Principal Engineer Hansom Tom to Mr. Pannu, there is a letter from Mr. Pannu, dated August 30, 2005 in which he is clearly responding to a letter from Mr. Tom. Mr. Pannu states that his firm has completed a review of the foundation system prepared for DeSimone Consulting Engineers. Mr. Pannu has one sentence that seems out of place considering he was hired to review the foundation and structure of a first of its kind structure in downtown San Francisco. He states, "We were not asked to review the effects of the Transbay Terminal project on this project". The Transbay Terminal is a massive structure that would be adjacent to the Millennium Tower. It is not clear from any of the documents in the DBI files that anyone was studying the potential effects of Transbay of the Millennium. It was wanton and reckless misconduct for the DBI not to include potential effects of the Transbay Terminal Center on the Millennium Tower when it is a gigantic ongoing construction project adjacent to the Millennium Tower. It is literally ignoring the elephant in the room and reckless misconduct to do so.

39. On February 2, 2009 after the Millennium Tower is completed Raymond Lui the Deputy Director for Plan Services wrote a letter to Derrick Roorda the engineer in charge of the project at DeSimone stating that he was aware the building was sinking more than anticipated. In the letter he asks 8 multipart questions about the buildings' structure and safety. In return he receives three separate responses, one from Handel, the architects, one from DeSimone and one from Treadwell and Rollo. The letters confirm that the Millennium Tower had sunk 8.3 inches vertically. This is important in light of the permit which only anticipated sinking of 1-2 inches upon completion of the building and 5-6 inches of settlement over the life time of the building. The responses deny any differential subsidence even though the foundation slab had tilted as much as 5.6 inches by November 2009 and probably when the concrete slab was poured. The

letters confirm that the building is continuing to sink at a rate of .003 inches a day and includes a graph of the settlement. The responses deny any differential settlement. There is a great deal of evidence proving that differential settlement existed and was known by the developers at that time. Almost all of the answers to the questions are cursory. Three of the most important questions remain unanswered. If the settlement continues, how would this effect the building? How will this effect life-safety issues including accessibility compliance? Finally, what remedial measures are required to mitigate these problems? It does not appear from the DBI files that any follow-up action was taken by DBI after the receipt of the three letters with their troubling responses and totally unanswered questions. It was wanton and reckless misconduct not to follow up on such an alarming report.

40. These three letters from MP's engineers were not in DBI files and only surfaced recently in 2016 and not from DBI. In their place are two very short letters that appear to stand in their place. One is written by Derrick Roorda of DeSimone to Gary Ho on March 6, 2009 regarding satisfactory completion of the building. It states that they have completed structural observations for the Millennium Tower project and that the foundations, steel framing, concrete construction, masonry construction and metal decks are in conformance with the building code. In addition, "based upon our limited observations" and reports from the special inspector it is "in our professional judgment that, to the best of our knowledge, the observed work was performed in accordance with industry standards and practices, and the approved plans and specifications". It bears the professional stamp of Roorda. The second letter is addressed to no one in particular in the office of Special Inspection Compliance on March 4, 2009 and is from Ramin Golesorkhi at Treadwell and Rollo. He says that an engineer under our direction as the technical engineer of record special inspection was performed and is in accordance with the building code. Based on observations and tests performed that work was in conformance with plans and code. It stamped by Mr. Golesorkhi.

41. The DBI knew or should have known the Millennium Tower would fail. Even Ron Hamburger, Millennium Partners' expert said in this latest October 3, 2016 report that "With the exception of the foundation, none of the settlement related demands on these elements are at levels that indicate impending failure." This means that the foundation is impending failure because of the cracks in the foundation and the steel that has yielded as he reports as well. The Millennium Tower is practically the mirror image of 80 Natoma. Eighty Natoma is the only one

of the two building to have geotechnical engineers peer review its foundation. Renowned geotechnical engineers said Natoma would crack, experience vertical and differential settlement and be susceptible to greater damage in an earthquake. The Millennium has cracks, and has both vertical and differential settlement. We have not had an earthquake but experts at USGS predict a 62 percent chance of an earthquake of 6.7 or greater happening in the Bay Area by 2032. The Millennium Tower never had a true peer review because the DBI did not require the developer to hire a geotechnical engineer. DBI asked them to. When MP refused the DBI could have stopped the construction from going forward at that point but they did nothing. DBI should hold a developer to the highest standards when they are building a first-of-its-kind building in the middle of the heavily populated downtown San Francisco. When it was constructed the Millennium Tower was the tallest and heaviest structure in San Francisco and it was being built on unstable soil subject to liquefaction in an earthquake. A cap and pile foundation that does not go down to bedrock is completely irresponsible. It sits between two faults and is surrounded by 5 other faults. DBI knew that a gigantic project Transbay was going to be built adjacent to the property. They knew that other buildings were to be constructed all around it. Even in a moderate earthquake it is highly probable that this building will cause harm to those who live here or are in the vicinity. DBI was aware of all the above facts. Its decisions in light the facts are unreasonable and dangerous and there is a strong likely hood of harm as a result. This is nothing short of wanton and reckless misconduct.

42. Claimants have suffered harm and damages as a result.

CAUSE OF ACTION (Damages for Inverse Condemnation against TJP)

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

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

45. TJP’s construction activities at the site of the Transbay Transit Center and adjacent to the Millennium Tower have caused vertical and differential settlement of the Millennium Tower.

46. TJPA's construction of the Transbay Transit Center is a substantial cause of the vertical and differential settlement of the Millennium Tower which proximately caused damage to claimants.

47. Based upon monitoring by ARUP, TJPA's consultant, the Millennium Tower has sunk 16 inches to date and tilts 15 inches at the top to the northwest and it continues to sink and tilt over time.

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

CAUSE OF ACTION (Nuisance against TJPA)

49. Claimants reallege and incorporate by reference each and every allegation of Paragraphs 1 through 48, inclusive, as if fully set forth in this cause of action.

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

51. TJPA's use and maintenance of their property has interfered with and continues to interfere with claimant's use and enjoyment of their Units, obstructed and continues to obstruct the use of claimants' Units and damaged and continues to damage claimants' Units.

52. TJPA's activities in constructing the Transbay Transit Center has caused or contributed to the Millennium Tower's sinking and tilting and thereby has resulted in a diminution of value in claimants' Units.

53. The invasion of claimants' interest in the use and enjoyment of their Units is substantial and that substantial invasion is unreasonable.

54. As a result of TJPA's construction activities, claimants have suffered damages.

CAUSE OF ACTION (Trespass against TJPA)

55. Claimants reallege and incorporate by reference each and every allegation of Paragraphs 1 through 54, inclusive, as if fully set forth in this cause of action.

56. TJPA has physically damaged the Millennium Tower and continues to physically damage the Millennium Tower by having caused both vertical and differential settlement within the

Tower that has exacerbated and is exacerbating the ongoing sinking and tilting of the Millennium Tower initially caused by MSD's failure to construct the foundation to bedrock.

57. TJPA's unauthorized intrusion onto the Millennium Tower's property exceeded that which was agreed to under the easement agreement entered into in October 2008 thereby causing or contributing to the sinking and tilting of the Tower and damaging claimants' Unit property value.

58. By physically damaging the common areas of the Millennium Tower, through the construction of the shoring wall and related construction activities, TJPA has damaged individual Units within the Millennium Tower by causing a substantial diminution in market value of claimants' individual Units.

59. As a result of TJPA's construction activities, claimants have suffered damages.

EXHIBIT A

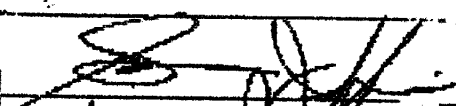
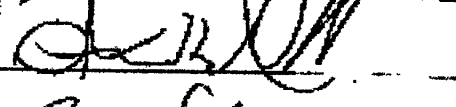
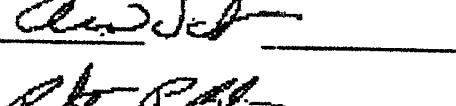
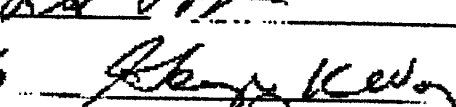
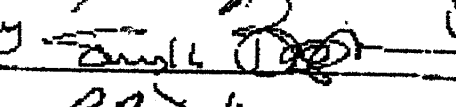
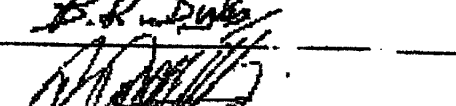
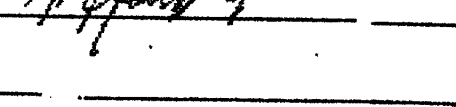
1. Gerald and Patricia Dodson, Unit 42E - escrow close date: October 7, 2009
(Collectively "unit owners or "unit buyers")

Exhibit B

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 26th day of February, in San Francisco, California:

Print Name	Representing	Signature
Sean Telford	MP	
STEVE HODG	MP	
Andrew Schwartz	TJPA	
Robert P. Beck	TJPA	
Sharon K. Wong	SF City Attorney	
Thomas Brennan	SF City Attorney	
BRIAN DYKES	TJPA	
RAMIN GOLESORKHI	T&E	