RESOLUTION NO. 46-2004

Adopted April 20, 2004

AUTHORIZING THE EXECUTION OF A NOTICE OF EARLY TERMINATION AGREEMENT WITH CHARLES H. BREIDINGER AND JOHN E. BREIDINGER, AS TENANTS IN COMMON, OWNERS OF PROPERTY LOCATED AT 1375 EVANS AVENUE, ASSESSOR'S BLOCK 5237, LOTS 13, 14 AND 15; INDIA BASIN INDUSTRIAL PARK APPROVED REDEVELOPMENT PROJECT AREA

BASIS FOR RESOLUTION

1. In furtherance of the objectives of the Community Redevelopment Law of California, the Redevelopment Agency of the City and County of San Francisco (the "Agency") has undertaken a program for the clearance and reconstruction or rehabilitation of blighted areas in the City and County of San Francisco (the "City"), and in this connection has undertaken a project in the area known as the India Basin Industrial Park Approved Redevelopment Project Area (the "Project Area").

2. The Agency has prepared, and the City has approved a plan, acting through its Board of Supervisors by Ordinance No. 26-69, adopted January 20, 1969, as amended by the Redevelopment Plan approved by Ordinance No. 474-86, adopted December 1, 1986, as amended by the Redevelopment Plan approved by Ordinance No. 141-87, adopted April 20, 1987, and as amended by the Redevelopment Plan approved by Ordinance No. 416-94, adopted December 12, 1994, providing for the redevelopment or rehabilitation of certain lands in the Project Area and the future uses of such land; which Redevelopment Plan and amendments have been filed as Document No. R-47100, on March 6, 1969, Document No. E-135915, on February 29, 1988, Document No. E135923, on February 29, 1988, and Document No. F-816262, on July 17, 1995, respectively, in the Office of the Recorder of the City and County of San Francisco (the "Redevelopment Plan").

3. The California Community Redevelopment Law requires the Agency to adopt rules governing the participation of property owners prior to the adoption of a redevelopment plan (Health and Safety Code Section 33345). On December 10, 1968, the Agency adopted Owner Participation Rules (the "Rules") for the Butchertown Redevelopment Project, which was later renamed the India Basin Industrial Park Approved Redevelopment Project Area.

4. In furtherance of the Redevelopment Plan and on May 8, 1970, the Agency caused a Declaration of Restrictions affecting all properties within the Project Area to be recorded in the Office of the Recorder of the City and County of San Francisco, State of California, in Book B-422 of Official Records at page 870, as Document No. S-55260 (the "Declaration of Restrictions").
5. Charles H. Breidinger and John E. Breidinger, as tenants in common ("Owners"), are the current owners of record of vacant land located at 1375 Evans Avenue and composed of Lots 13, 14 and 15 in Assessor's Block 5237 (the "Site").

6. By Resolution No. 194-2000, the Agency and the Owners entered into an Owner Participation Agreement dated October 10, 2000 (the "OPA") to allow the Owners to merge the three existing lots and develop a three-story, 20,700-square-foot, light industrial building designed for multimedia companies on the merged 12,500-square-foot property. To complete the proposed development, the Agency also granted the Owners four design variances (Resolution No. 193-2000).

7. Since October 10, 2000 when the OPA was executed, the regional economy (and the high-technology sector in particular) has experienced a sharp and significant reversal of fortune. As a result, there is little demand for this type of space (i.e., multi-story, office/light industrial/flex space), especially in areas far from the City's downtown core like the Third Street corridor, Potrero Hill, and India Basin. Because the development program envisioned by the Owners, and enshrined in the OPA, cannot realistically be built any time in the near future, the Owners wish to terminate the OPA in order to pursue other development options for the property.

8. The Redevelopment Plan allows property owners to apply for an exception to their development obligations if they believe that these development obligations are causing "undue hardships, practical difficulties, or consequences inconsistent with the general purposes" of the Redevelopment Plan (Section II.C., Exceptions, at page 11). Furthermore, the Redevelopment Plan allows the Agency to grant exceptions to property owners provided that they (1) are consistent with the general purposes and intent of the Redevelopment Plan and (2) do not change the land uses indicated in the Redevelopment Plan.

9. By seeking a termination of the OPA, the Owners have in essence applied for an exception to their development obligations under Section II.C. of the Redevelopment Plan. As evidence of undue hardships and practical difficulties, the Owners cite that (1) there is no longer a market for multi-story, office/light industrial/flex space in India Basin, (2) multi-story buildings designed for high-technology users remain vacant in India Basin, even at very low asking rents, and (3) the marketing effort for 1375 Evans Avenue has been prolonged and unsuccessful.

10. Unfortunately, the Rules do not provide any additional guidance as to when the Agency can grant an exception to development obligations and terminate an owner participation agreement. However, the Rules do require that owner participation agreements include provisions requiring adherence to a performance schedule and payment of a performance security — one that is "reasonably necessary" to ensure that the scope of development contemplated under the owner participation agreement is completed.
11. The Owners’ OPA does not include provisions requiring payment of a performance security, but it does include the remedy of specific performance in the event that the Owners fail to perform. At the time of the OPA approval, the Agency determined that this remedy was sufficient to ensure the Owners’ compliance with their performance schedule and therefore did not include a monetary performance security. OPAs customarily provide that an owner who fails to redevelop property in accordance with the agreement forfeit any performance security deposit upon termination of the OPA. In this case, Agency staff does not recommend charging the Owners a termination fee because (1) provisions requiring a performance security were not included in the OPA, and (2) the Owners have proven to the Agency’s satisfaction that they have suffered “undue hardships, practical difficulties, or consequences inconsistent with the general purposes” of the Redevelopment Plan.

12. Agency staff has reviewed the materials submitted by the Owners and has concluded that, given the unique circumstances in this case, a termination of the OPA is warranted. Agency staff believes that granting an exception to the Owners (one that in this case amounts to termination of the OPA) is consistent with the general purposes and intent of the Redevelopment Plan because the Agency is solely interested in furthering its redevelopment goals in the Project Area, and has determined that these goals are more expeditiously achieved in this case if the Site were either redeveloped as one-story, light industrial/warehouse space or sold unencumbered by the OPA.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Owners have demonstrated undue hardship and practical difficulties in the performance of the OPA because market conditions have changed so dramatically and unexpectedly since the date the OPA was executed; that the Owners cannot adhere in any way to the Schedule of Performance and cannot complete in any way the Scope of Development; and that relief from specific performance of the OPA is consistent with the general purposes and intent of the Redevelopment Plan.

IT IS FURTHER RESOLVED that the Redevelopment Agency of the City and County of San Francisco hereby grants an exception from the development obligations of the OPA and authorizes the Executive Director to execute a Notice of Early Termination Agreement with the Owners, thereby terminating the OPA.

APPROVED AS TO FORM:

[Signature]
James B. Morales
Agency General Counsel