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October 13, 2022

Los Angeles City Council  
c/o Office of the City Clerk  
City Hall, Room 395  
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**APPEAL RESPONSE FOR THE FIG PROJECT, DIR-2022-14-CLQ-HCA; CF 19-0370-S2**

In response to appeals submitted for The Fig Project (Project), as modified by the Q Clarification issued on August 8, 2022 (Modified Project), the Department of City Planning has prepared the following responses for the PLUM Committee's consideration for the hearing scheduled on October 18, 2022.

The Modified Project would adjust the layout of the on-site buildings, remove the hotel and office, and market-rate housing components of the Original Project (as approved in June 2019) and provide additional student housing and affordable dwelling units in-lieu of market rate dwelling units. The Original Project proposed 408 dwelling units (222 student housing units, 82 affordable housing units, and 104 and market rate units), and the Modified Project would include 435 dwelling units (348 student housing units and 87 affordable housing units). Commercial uses would be reduced to 23,670 square feet compared to the Original Project's 96,446 square feet of commercial uses. The Modified Project would centralize parking within the Project Site into a parking structure, lined with residential and commercial uses on all frontages. The total amount of development would be reduced from 620,687 square feet under the Original Project to 577,700 square feet under the Modified Project.

**PROJECT HISTORY**

In June 2019, the City Council certified The Fig Project EIR and approved The Fig Project for a seven-story development comprised of a hotel, student housing, and mixed-income housing components, within three separate buildings (Original Project). The Zone Change and Height District Change ordinance (Ordinance No. 186,185) became effective on July 29, 2019 and placed the property in a "Q" or Qualified Condition. Following the City Council's decision, a lawsuit was filed by the West Adams Heritage Association (Petitioner) that challenged the Project's certified environmental clearance and approved entitlements. As part of the settlement between the Petitioner and Applicant, the Applicant agreed to preserve three of the historic multi-family structures on-site. This settlement was in addition to Applicant's previous obligation to relocate three historic multi-family structures. As a result, the two northernmost historic structures would

remain on-site, one of the three structures that would have been relocated off-site would now be relocated on-site immediately south of the buildings to be retained, and two structures would be relocated off-site, currently planned for an adjacent site located on Flower Drive immediately to the south of the Project Site. Ultimately, five of the seven historic structures would be preserved, two historic structures would be demolished, and one structure not contributing to the historic district would be demolished.

In 2020, in order to accommodate the on-site retention of the three historic structures, the Applicant revised the footprint of the 2019 Project and made corresponding changes to the Original Project's site plan, floor plans, elevations, and landscaping plans (2020 Project). A "Q" Clarification (Case No. DIR-2020-2157-CLQ) was approved to permit the adjustments to the footprint and components of the development. Subsequently, due to recent market changes, the Applicant requested to further reduce the Project footprint and to modify the composition of uses and number of residential units (2022 Project or Modified Project). Similar to the 2020 Project, the 2022 Project would not result in an increase to the Project's building envelope and would decrease the total floor area within the development from 620,687 to 577,700 square feet. As such, a second Clarification of the Q Classification was issued (DIR-2022-14-CLQ-HCA) to update the project plans and supersede and replace any changes approved pursuant to DIR-2020-2157-CLQ.

Modifications to the Q conditions included:

- 1) Updating Q.1 references to a new Exhibit and a revised project description (removing hotel, meeting room, and office uses and market-rate residential units, increasing student housing units from 222 to 348 units, increasing affordable housing units from 82 to 87 units, and decreasing retail/restaurant space from 55,326 to 23,670 square feet)
- 2) Updating Q.2 and Q.3 regarding the affordable housing requirements by increasing required affordable housing from 82 to 87 units.
- 3) Updating Q.4 with the increased size of the landscaped plaza, from 7,900 to 8,670 square feet.

## ***Appeals***

On August 29, 2022, the entirety of the Q Clarification decision was appealed by the Tenants Association of Flower Drive / Asociación de Inquilinos de Flower Drive, which represented tenants from the 3800 block of Flower Drive, located one block north of the Project Site. The following represents a summary of appeal points and responses to the appeal:

### **Appeal Point 1**

The Appellant states that the project would displace longtime, working-class tenants from Flower Drive and the broader area. The Appellant also claims that residents have been harassed and intimidated to leave their homes, and that while the tenants from the Project Site (3900 block of Figueroa Street) have been removed, that tenants at the 3800 block have remained, but have been continued to be pressured by the Applicant to relocate.

### **Response to Appeal Point 1**

The Appellant correctly states that Project displaced residential tenants at the Project Site, and the Project Site's existing buildings are now currently vacant. However, there is no evidence in the record that the development of the Project would displace the neighboring residents one block

north of the Project Site or in the broader area. In addition, no proposals for redevelopment of the 3800 block of Flower Street have been filed with the Department of City Planning.

Throughout the approval process for the Original Project, public testimony was provided from the Project Site residents and other community residents regarding concerns of tenant displacement and relocation assistance. The Original Project approvals, staff reports, and the Environmental Impact Report addressed these concerns.

Specifically, the Original Project Staff Report and EIR both disclose that the existing eight multi-family residential buildings on-site are subject to the Rent Stabilization Ordinance (RSO). Page 8 of the Staff Report states, “the RSO is intended to protect existing tenants from excessive rent increases, while at the same time allowing landlords to increase rent each year by a fair amount. Once a tenant leaves an RSO unit, the landlord may charge market-rate rent for the next tenant, although the new rate is again protected from excessive rent increases”. The project would replace 32 units subject to the RSO with 87 affordable housing units (as noted in Q-conditions No. 2 and 3 of the Q-clarification). RSO units are different from an “affordable housing unit” as defined by the Municipal Code. Affordable housing units are set at an affordable rental rate based on a percentage of Area Median Income (AMI) for a period of 55 years by a covenant and agreement. Affordable housing units can only be increased to a market-rate rent after 55 years. Affordable housing units thereby guarantee a long period of affordability; whereas RSO units can be increased to a market-rate rent at any time a tenant vacates the unit. Currently at the project site, the existing 32 apartment units are subject to the RSO, and no affordable housing units as defined by the Municipal Code are provided.

The Staff Report also states that “In addition, the Ellis Act Provisions provide other rental protections, which, among other things, require landlords to provide all tenants with 120 days’ notice, or one year if the tenants lived in the accommodations for at least one year and are more than 62 years of age or disabled, when rental units subject to the RSO are to be withdrawn from the rental market.” The project residents were therefore required to receive all applicable legal protections under the Ellis Act during the removal of the Project Site’s existing units from the rental market. In addition, Q Condition No. 7 (which remains unchanged and was not affected by the Q clarification) explicitly reiterates existing Municipal Code regulations related to the RSO, which require tenant relocation assistance and the establishment of a relocation program in a manner consistent with Section 47.07 of the Los Angeles Municipal Code should the units be removed. Q Condition No. 7 also requires compliance with any tenant relocation requirements established by the Los Angeles Housing and Community Investment Department (HCIDLA), which has since been renamed as the Los Angeles Housing Department (LAHD).

Furthermore, tenants are also allowed to optionally enter into tenant relocation agreements with the Applicant that exceed any of the minimum noticing, timing, and relocation payment requirements of the Ellis Act and RSO as described above. These tenant buyout offers and agreements (also known as “cash-for-keys” programs) must also be reviewed and approved by LAHD in accordance with LAMC 151.31.

Overall, the Project would result in a net increase in the total number of housing units on the site (from 32 units to 435 units) and would include 87 new deed-restricted affordable housing units. Concerns about the loss of rent-stabilized housing, the relocation of renters, and the direct impacts to these residents and families should not be dismissed or diminished; however, consideration of these impacts had been balanced with a consideration of the project’s potential to provide a significant amount of long-term affordable housing to benefit City residents during the Original Project approvals. The provision of new housing and new affordable housing units within the Project was supported and specifically incentivized by various City plans, policies, and

regulations, and the Project would help deliver the amount and type of housing desired by the City to support citywide housing goals and affordable housing needs.

While issues of affordable housing and tenant displacement are addressed overall in City plans and policies, as well as in the Original Project approvals, staff reports, and EIR; the Q clarification action is more narrowly focused on an update to the project's site plans due to the retention of historic structures on-site and minor increases in the number of housing units and affordable housing on-site, and the removal of the hotel and office components. The Q clarification action does not change any of the tenant displacement or relocation assistance requirements from the Original Project. The Q clarification approval substantiates the fact that the site plan design change and increase in on-site housing units is in conformance with applicable general and specific plans, as well as all technical requirements and findings of the Municipal Code. In addition, the previously certified EIR analyzed the environmental impacts of the displacement of residents, and the environmental impacts were found to be less than significant due to the resulting net increase of housing and affordable housing. Therefore, the Director did not err or abuse its discretion in approving the Q clarification and relying on the previously certified EIR, and the appeal point should be denied.

### **Appeal Point 2**

The Appellant states that the Original Project approval process was flawed, and that the City did not listen to or respect the real tenants' concerns on displacement and destruction of the existing community.

### **Response to Appeal Point 2**

As noted in Response to Appeal Point 1, throughout the approval process for the Original Project, public testimony was provided from the Project Site residents and other community residents regarding concerns of tenant displacement and relocation assistance. The Original Project approvals, staff reports, and the Environmental Impact Report addressed these concerns. While issues of affordable housing and tenant displacement are addressed overall in City plans and policies, as well as in the Original Project approvals, staff reports, and EIR, the Q clarification action is more narrowly focused on an update to the project's site plans due to the retention of historic structures on-site and minor increases in the number of housing units and affordable housing on-site, and the removal of the hotel and office components. The Q clarification action does not change any of the tenant displacement or relocation assistance requirements from the Original Project. Therefore, the Director did not err or abuse its discretion in approving the Q clarification and relying on the previously certified EIR, and the appeal point should be denied.

### **Appeal Point 3**

The Appellant restates the EIR's conclusion that the displacement of long-time tenants from the Project Site's eight buildings would be "less than significant" without mitigation, and questions whether the City thinks that replacing one rent-stabilized unit with one affordable unit which is built years later somehow means that no one is displaced.

### **Response to Appeal Point 3**

The previously certified EIR analyzed the environmental impacts of the displacement of residents, and the environmental impacts were found to be less than significant due to the resulting net increase of housing and affordable housing. The previously certified EIR did not claim that no one is displaced.

The Original Project would have resulted in the replacement of 32 residential units with 186 mixed-income units and 222 units of student housing. The existing 32 units are subject to the provisions of the City's RSO, including the City's Ellis Act provisions (LAMC Sections 151.22 through 151.28). The Original Project would have designated 82 of the Project's new mixed-income residential units for households earning no more than 80 percent of the Area Median Income as determined by the City's LAHD. These 82 affordable units provided would exceed the 32 units displaced by the Project, and pursuant to LAMC Section 151.28.B, the Applicant would request from LAHD an exemption from the RSO's provisions for the new market-rate units to be constructed on the Project Site. The 82 affordable units would have provided replacement housing for approximately 200 residents, which exceeds the number of existing residents that would have been displaced by the Original Project. Therefore, the Original Project would not have displaced substantial numbers of people necessitating the construction of replacement housing elsewhere and impacts were determined to be less-than-significant as evaluated in the Certified EIR.

Under the Modified Project, two multi-family structures located on the Project Site at the corner of W. 39th Street and S. Flower Drive that were planned for relocation would be rehabilitated and restored on the Project Site. One additional Flower Drive Historic District contributor would be restored and moved on-site to the northeast corner of the Site adjacent to the two contributors being restored in place, and two more district contributors would be relocated elsewhere, currently planned for an adjacent site located on Flower Drive to the south of the Project Site. The remaining three buildings would be demolished. As such, under the Modified Project, a greater number of existing housing units would be preserved. In addition, a greater number of affordable housing units would be developed under the Modified Project (87 units) compared to the Original Project (82 units), and a greater number of overall housing units would be construction under the Modified Project (435 units) compared to the Original Project (408 units). Therefore, the Modified Project would not create any new significant impacts related to population and housing displacement, nor would it result in a substantial increase in a previously identified significant impact, and, like the Original Project, impacts would be less-than-significant. Therefore, the appeal point should be denied.

#### **Appeal Point 4**

The Appellant claims that the previous tenants from the Project Site were pressured into relocation or cash-offer agreements by the Applicant, that the Applicant did not honor or fully implement those agreements, and also states that the Project Site's relocation consultant worked on a project at 3819 Flower Drive where tenants dealt with relocations pressures and improper living conditions.

#### **Response to Appeal Point 4**

As noted in Response to Appeal Point 1, the Ellis Act Provisions provide other rental protections, which, among other things, require landlords to provide all tenants with 120 days' notice, or one year if the tenants lived in the accommodations for at least one year and are more than 62 years of age or disabled, when rental units subject to the RSO are to be withdrawn from the rental market. The project residents were required to receive all applicable legal protections during the removal of the Project Site's existing units from the rental market. In addition, Q Condition No. 7 (which remains unchanged and was not affected by the Q clarification) explicitly reiterates existing Municipal Code regulations related to the RSO, which require tenant relocation assistance and the establishment of a relocation program in a manner consistent with Section 47.07 of the Los Angeles Municipal Code should the units be removed. Q Condition No. 7 also requires compliance with any tenant relocation requirements established by the LAHD. Furthermore, tenants are also allowed to optionally enter into tenant relocation agreements with the Applicant that exceed any

of the minimum noticing, timing, and relocation payment requirements of the Ellis Act and RSO as described above. These tenant buyout offers and agreements (also known as “cash-for-keys” programs) must also be reviewed and approved by LAHD in accordance with LAMC 151.31.

It is not clear from the Appellant’s statements how the Applicant did not honor or fully implement these Ellis Act or RSO provisions. The Q clarification action does not change any of the tenant displacement or relocation assistance requirements from the Original Project. The property located at 3819 Flower Drive is not located on the Project Site and is separate from the Project. Therefore, the Director did not err or abuse its discretion in approving the Q clarification and the appeal point should be denied.

### **Appeal Point 5**

The Appellant claims that it was more important to the City to relocate the historic buildings, rather than to ensure that residents had somewhere to go.

### **Response to Appeal Point 5**

As noted in the Project History, following the City Council’s decision to approve the Original Project, a lawsuit was filed by the West Adams Heritage Association (Petitioner) that challenged the Project’s certified environmental clearance and approved entitlements. As part of the settlement between the Petitioner and Applicant, the Applicant agreed to preserve three of the historic multi-family structures on-site. This will be accomplished by preserving the two northernmost structures in place and relocating one other historic structure on-site and immediately adjacent and south of the two retained buildings. Additionally, two other historic structures will be relocated to an off-site location, currently proposed immediately to the south of the Project Site on Flower Street.

As determined in the Certified EIR for the Original Project, the Project Site includes a portion of the Flower Drive Historic District (Flower Drive District), which has been determined to be eligible for listing in the California Register of Historic Resources (California Register) and is therefore considered a historic resource under CEQA. The Original Project would have resulted in the demolition or relocation of eight out of 19 buildings that currently comprise the Flower Drive District. Seven of the eight total buildings proposed for removal were identified as contributors to the Flower Drive Historic District. Thus, the Flower Drive Historic District as a whole would have been substantially altered by the Original Project. As such, the Original Project was considered to have a significant impact on a historical resource.

The Certified EIR included three mitigation measures to address and reduce impacts to the Flower Drive District, and an additional Project Design Feature (PDF) to address non-environmental impacts to residents. As specified in Mitigation Measure (MM) C-1, the Original Project would be required to document the architectural and historical significance of the Flower Drive Historic District. MM C-2 requires that a salvage and reuse plan must be created, identifying elements and materials that can be saved prior to the issuance of a demolition permit and salvageable items shall be removed in the gentlest, least destructive manner possible. MM C-3 would require least three of the seven historic contributors to be relocated to a suitable and appropriately zoned site or sites within five miles of the Project Site.

In addition, PDF C-1 requires the retention of relocation consultant to assist Project Site residents by providing services including, but not limited to, identification of available replacement dwellings, transportation to view potential replacement housing, coordination of movers, and establishment/oversight of relocation fee escrow accounts. However, as determined in the

Certified EIR, implementation of PDF C-1 and Mitigation Measures C-1, C-2 and C-3 would not reduce the Original Project's impacts on to a less-than-significant level and historic impacts of the Original Project would remain significant and unavoidable.

The Modified Project would not result in new or more severe significant impacts to historical resources. The Modified Project is located on the same Project Site and retains the same Project boundary as the Original Project; however, the Modified Project would preserve a total of five existing multi-family structures on the Project Site identified as contributors to the Flower Drive Historic District, two of which would be preserved in place and three of which would be relocated, and one such location would occur within the Project Site.

More specifically, two multi-family structures located on the Project Site at the corner of W. 39th Street and S. Flower Drive that were planned for relocation under the Original Project would be rehabilitated and restored in place on the Project Site. One additional Flower Drive Historic District contributor would be restored and moved onsite to the northeast corner of the Project Site adjacent to the two contributors being restored in place, and two more district contributors would be relocated elsewhere, currently planned for an adjacent site located on Flower Drive to the south of the Project Site, which plans fully comply with and exceed the requirements of MM-C-3 to preserve three existing onsite contributors.

The Modified Project retains and restores two of the existing multi-family structures identified as contributors to the Flower Drive Historic District in place on the Project Site, preserving their original setting and reducing the Original Project's impacts on historic resources. The Modified Project would also relocate one existing contributor on-site, moving it to a new, nearby location on Flower Drive within the Project, near its current location. The Modified Project would also relocate two additional Flower Drive District contributors to a proposed location directly south of the Project Site along Flower Drive, further reducing the impacts of the Original Project.

The Modified Project would also continue implement PDF C-1 and Mitigation Measures C-1, C-2 and C-3 that would further reduce the Modified Project historic impacts. However, as two historic structures on the Project Site would be demolished and three more removed from their current original setting (these three would be relocated either on the Project Site or on an adjacent site, all on Flower Drive), the Modified Project's impacts on the Flower Drive Historic District would remain significant and unavoidable, though they would be reduced from the Original Project.

The Q clarification would therefore result in the retention of more of the existing historic buildings and residential units on-site; however, as the buildings would either need to be relocated and/or rehabilitated, the Modified Project, similar to the Original Project, would result in the displacement of the on-site tenants. The Q clarification did not modify or change the PDF C-1 requirement for tenant relocation assistance or any of the Ellis Act or RSO tenant protection measures (see Response to Appeal Point 1). During the building permit process, the Applicant will be required to demonstrate compliance with these measures. Therefore, the appeal point should be denied.

### **Appeal Point 6**

The Appellant states that the Project's change to an entirely student housing complex will result in air and noise contamination and the release of hazardous materials such as asbestos and lead-based paint, which will have a negative impact on the health and well-being of tenants. The Appellant also identifies problems with loud student parties and lack of access to affordable housing at a different housing development that was built at the corner of 38<sup>th</sup> and Figueroa Street.

## **Response to Appeal Point 6**

The Modified Project would result in a net decrease of residents and permanent jobs as compared to the Original Project and would thus also generally reduce potential air and noise impacts to a greater extent than the Original Project (see Addendum, October 2020, link provided at end of report).

### *Air Quality and Emissions*

Regarding construction of the project, all criteria pollutant emissions related to construction would remain below their respective thresholds. The highest daily emissions of the Modified Project have been reduced for nitrogen oxides (NOX), carbon monoxide (CO), PM10, and PM2.5 and although reactive organic gases (ROG) increase, the emissions remain below the SCAQMD threshold. The slight increase in ROG emissions is associated with the increase in residential units in comparison with the Original Project.

The main source of air pollutant emissions during operations would be from motor vehicles. The development of the Modified Project would generate approximately 40 percent fewer trips on a daily basis using Institute of Transportation Engineers (ITE) 11th Edition trip generation data compared to the trips predicted in the Certified EIR for the Original Project. The estimated operational emissions associated with Modified Project compared to Original Project would decrease for ROG and NOX and increase slightly for CO, PM10, and PM2.5. However, all emissions remain below the SCAQMD operational thresholds.

The Certified EIR identified no exceedances of the SCAQMD operational thresholds for criteria air pollutants and concluded a less-than-significant long-term impact. The same conclusion has been reached for the Modified Project; no new operational impacts would occur, the emissions would not exceed SCAQMD operational thresholds, and the impact is less-than-significant. No mitigation measures are required.

Regarding the exposure of sensitive receptors to substantial pollutant concentrations, the Certified EIR determined that the construction and operation of the Original Project on sensitive receptors would be less-than-significant. As with the Original Project, the nearest sensitive receptors to the Modified Project include residences on the northeast adjacent to the Project Site, Exposition Park approximately 160 feet to the northwest, residences located around 100 feet north (across W. 39th Street) and approximately 380 feet west across Interstate 110 Highway.

The Certified EIR determined that the Original Project's construction and operational emissions would not exceed the SCAQMD's LST. The Modified Project includes the development grading and construction of the entire Original Project Site excluding the two northeastern single-family houses. As such, the Modified Project would disturb less area. The Modified Project's peak day construction emissions would not result in significant concentrations of pollutants at nearby sensitive receptors. During operations, the number of operational vehicle trips generated by the Modified Project would be less than the Original Project. The maximum daily emissions of these pollutants during operations would not result in significant concentrations of pollutants at nearby sensitive receptors under the Modified Project. Therefore, as with the Original Project, the construction and operation of the Modified Project would not expose sensitive receptors to substantial pollutant concentrations and its localized construction emission impacts would be less-than-significant.

The Certified EIR determined that the Original Project's operational emissions would not exceed the SCAQMD's LSTs. During operations, the number of operational vehicle trips generated by the Modified Project would be less than the Original Project. As analyzed in Appendix A the maximum daily emissions of these pollutants during operations would not result in significant

concentrations of pollutants at nearby sensitive receptors. Therefore, as with the Original Project, the operation of the Modified Project would not expose sensitive receptors to substantial pollutant concentrations and its localized construction emission impacts would be less-than-significant.

Therefore, no new impacts from air quality emissions or a substantial increase in the severity of a previously identified impacts evaluated in the certified EIR would be caused by Modified Project and the Project's change to an entirely student housing complex. Therefore, similar to the Original Project, impacts would be less-than-significant.

### *Noise*

As presented in Certified EIR, the Original Project's construction activities would generate the highest noise during the excavation phase, as it is anticipated to have the greater number of pieces of construction equipment in the construction area compared to other construction stages. As indicated in the Certified EIR, the maximum estimated noise levels associated with construction of the Original Project would be below the significance threshold at the identified off-site sensitive receptor locations, which consist of residential buildings to the east, a school to the northwest, a residential building to the southwest, and an African American museum to the northwest (referred to as R3, R5, R7, R8 and R9 in the Certified EIR).

Construction noise levels would exceed the significance threshold by 9.5 dBA at receptor R4 (residential building adjacent to the north at 39<sup>th</sup> Street and Flower Street, located at the southern end of the 3800 block of Flower Street) and 1.5 dBA at receptor R6 (Exposition Park). Therefore, under the most conservative impact assessment, temporary noise impacts associated with the Original Project's on-site construction would be significant at receptor locations R4 and R6. Under the Original Project, Mitigation Measures H-1, which would require the construction of a temporary and impermeable sound barrier, would be implemented to reduce on-site construction noise impacts. As determined in the Certified EIR, implementation of Mitigation Measure H-1, would reduce the Project's on-site construction noise impacts to less-than-significant levels. Regarding off-site construction noise, the Certified EIR concluded that temporary noise impacts from offsite construction traffic would be below the 5 dBA significance threshold and noise impacts would be less-than-significant. Regarding cumulative impacts, the Certified EIR determined that cumulative on-site construction noise impacts would be significant and unavoidable when combined with nearby related projects. However, cumulative noise impacts from off-site construction activities would be less-than-significant.

Regarding the Modified Project, it should be noted that the Modified Project would exclude the three northeastern residential buildings, resulting in a smaller construction site, which would generate less construction related noise. The Modified Project would also implement Mitigation Measure H-1, which would reduce the Project's on-site construction noise impacts to less-than-significant levels similar to the Original Project, but would remain significant and unavoidable when combined with nearby related projects. Regarding off-site construction noise, similar to the Certified EIR, temporary noise impacts from offsite construction traffic under the Modified Project would be below the 5 dBA significance threshold and noise impacts would be less-than-significant.

For operation noise, regarding outdoor spaces, the Original Project would provide various outdoor spaces, including outdoor plaza and dining areas, courtyards, and rooftop amenity areas. As part of the Project and as set forth in PDF H-4, an amplified sound system used in outdoor areas would be designed so as not to exceed the maximum noise levels of 80 to 95 dBA Leq as indicated in the Certified EIR, thereby ensuring that the amplified sound system would not exceed the significance threshold (i.e., an increase of 5 dBA Leq) at any off-site noise-sensitive receptor location. As analyzed in the Certified EIR, noise impacts on site uses including mechanical equipment, outdoor areas, and loading dock and trash compactor operations and parking

facilities, were determined to be less-than-significant. In addition, as determined in the Certified EIR, traffic noise impacts related to the Original Project would be less-than-significant.

The Certified EIR determined that on-site operational noise levels combined with cumulative related projects, due to noise associated with the nearby stadium, would result in significant and unavoidable noise impacts at the nearby noise-sensitive uses at R4 (residential at 39<sup>th</sup> Street and Flower Street, located at the southern portion of the 3800 block of Flower Street) and R7 (residential to the south at MLK Jr. Drive and Figueroa Street). However, cumulative noise impacts due to off-site mobile noise sources associated with the Original Project, future growth, and related projects would be less-than-significant.

The Modified Project would include similar on-site noise generation uses such as mechanical equipment, outdoor areas, parking facilities and loading areas. Similar to the Original Project, the Modified Project would incorporate PDF H-4, thereby ensuring that the amplified sound system would not exceed the significance threshold (i.e., an increase of 5 dBA Leq) at any off-site noise-sensitive receptor location. With incorporation of PDF H-4, noise impacts associated with the Modified Project for on-site uses would be similar to the Original Project and would be less-than-significant. Regarding traffic noise impacts, the development of Modified Project would result in fewer vehicle trips than the Original Project, as with an associated reduction motor vehicle noise would occur. As such noise impacts generated by the Modified would be reduced under the Modified Project and as determined in the Certified EIR, would be less-than-significant. Similar to the Original Project, on-site operational noise levels combined with cumulative related projects would result in significant and unavoidable impacts at the nearby noise-sensitive uses.

Therefore, no new impacts from noise or a substantial increase in the severity of a previously identified impacts evaluated in the certified EIR would be caused by Modified Project and the Project's change to an entirely student housing complex. Therefore, similar to the Original Project, most noise impacts would be less-than-significant, except cumulative construction noise impacts and on-site operational noise levels combined with cumulative related projects would result in significant and unavoidable impacts at the nearby noise-sensitive uses.

#### *Hazards and Hazardous Materials*

The Certified EIR indicated that construction and operation of the Original Project would involve the routine transport, use and disposal of small quantities of hazardous materials and removal of the Project Site's existing buildings, which could include the opportunity for hazardous materials releases. As analyzed in the Certified EIR, the Project Site would not be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5

During construction, any hazardous materials associated with construction materials and equipment would be handled and disposed with in compliance with the manufacturer's instructions and all applicable federal, state and local laws and regulations. Construction activities would occur in accordance with OSHA requirements for worker safety. Based on the age of the on-site buildings, asbestos containing materials, lead based paint, and pole-mounted transformers containing polychlorinated biphenyls (PCB) materials may be encountered during construction. However, these materials would be removed in accordance with all applicable regulations, including requirements promulgated by the South Coast Air Quality Management District, compliance with which would result in impacts that are less-than-significant. Therefore, the Certified EIR concluded that with compliance with applicable regulations, impacts associated with the routine transport, use, or disposal of hazardous materials during the Original Project's construction would be less-than-significant.

Operation of the Original Project involved the limited use of potentially hazardous materials typical of those used in residential, hotel, office, and commercial uses. Activities involved in handling and disposal of any hazardous wastes on site would occur in compliance with all applicable laws and regulations. As such, the Certified EIR concluded that, with compliance with applicable regulations, impacts associated with the routine transport, use, or disposal of hazardous materials during Project operation would be less-than-significant.

The Modified Project would be constructed within the same Project Site and boundaries as the Original Project and would thus also not be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. Construction and operation of the Modified Project would also be in compliance with applicable laws and regulations, therefore similar to the Original Project, impacts associated with the routine transport, use, or disposal of hazardous materials for the Modified Project would be less-than-significant.

Therefore, no new impacts from hazards or hazardous materials or a substantial increase in the severity of a previously identified impacts evaluated in the certified EIR would be caused by Modified Project and the Project's change to an entirely student housing complex. Therefore, similar to the Original Project, impacts would be less-than-significant.

#### *Lack of Affordable Housing and Loud Student Parties at Nearby Development*

The Applicant does not own or control the noted housing development at the corner of 38<sup>th</sup> and Figueroa Street. The Project would incorporate affordable housing and as described above, would incorporate PDF H-4, requiring that any amplified sound system used in outdoor areas would be designed so as not to exceed the maximum noise levels of 80 to 95 dBA Leq, thereby ensuring that the amplified sound system would not exceed the significance threshold (i.e., an increase of 5 dBA Leq) at any off-site noise-sensitive receptor location for project-level impacts. However, on-site operational noise levels combined with cumulative related projects, due to noise associated with the nearby stadium, would result in significant and unavoidable noise impacts at the nearby noise-sensitive uses at R4 (residential at 39<sup>th</sup> Street and Flower Street, located at the southern portion of the 3800 block of Flower Street) and R7 (residential to the south at MLK Jr. Drive and Figueroa Street). These impacts would remain the same under the Modified Project, as they would under the analysis for the Original Project. As demonstrated in the noise analysis in the Addendum, dated October 2022, the Modified Project and the Project's change to an entirely student housing complex and the retention of three historic structures on-site would not result in any new impacts from noise or a substantial increase in the severity of a previously identified impacts evaluated in the certified EIR.

The Modified Project would not exceed the scope of air emission, noise, or hazardous material impacts, as described under the Original Project and the previously certified EIR. As such, the appeal point should be denied.

#### **Appeal Point 7**

The Appellant states that the EIR identified Alternative 1 and 2 as the superior options regarding the health of the community and environmental impacts, but ignored these by adopting a Statement of Overriding Considerations based on a list of community benefits, which the Appellant states are not actually for the benefit of the existing community.

#### **Response to Appeal Point 7**

In conjunction with approvals for the Original Project, the City Council certified the EIR, adopted the Mitigation Monitoring Program, and adopted CEQA Findings, including a Statement of

Overriding Considerations in 2019, and the statute of limitations for legal challenges to the certified EIR has since expired. Therefore, any legal challenges to the arguments relating to the adequacy of the previously certified EIR exceed the scope of this appeal and are time-barred under the applicable statute of limitations. As such, the appeal point should be denied. Nonetheless, the following provides additional background regarding the Alternatives analysis of the Certified EIR.

As part of the City Council's actions in approving the Project, the City recognized that significant and unavoidable impacts will result from implementation of the Project. Having (i) adopted all feasible mitigation measures, (ii) rejected as infeasible alternatives to the project, (iii) recognized all significant, unavoidable impacts, and (iv) balanced the benefits of the Project against the Project's significant and unavoidable impacts, the City found that the each of the Project's benefits outweighs and overrides the significant unavoidable impacts of the Project. The benefits included improvements to the site due to site redevelopment, providing student housing in proximity to educational institutions, supporting the City's housing goals, creation of jobs and tax revenue due to the commercial component, and supporting sustainability efforts and smart growth practices. These findings and the Statement of Overriding Considerations were based on substantial evidence in the record, including but not limited to the EIR, the source references in the EIR, and other documents and material that constitute the record of proceedings.

### **Conclusion**

The appeal addresses specific concerns regarding tenant displacement and relocation, the previous approval process, and potential air quality, noise, and hazards impacts from the Modified Project. Upon careful consideration of the Appellants' points, the Appellants have failed to adequately disclose how the City erred or abused its discretion in approving the Modified Project. In addition, no new substantial evidence was presented that the City has erred in its actions relative to the EIR and the associated entitlements. The Appellants have failed to raise new information to dispute the Findings of the EIR or the City's actions on this matter.

Nonetheless, additional supplemental information and environmental analysis has been provided in the Addendum, dated October 2022, to further substantiate and demonstrate that the Modified Project would not result in any new significant impacts or substantially increase the severity of significant impacts from changes to the project, changes to circumstances, or the existence of new information pursuant to CEQA Guidelines Section 15162.

Therefore, the appeals should be denied and the following modified actions of the Director of Planning, including adoption of updated CEQA Findings to (*Exhibit 1 – Modified CEQA Findings*), should be considered:

**Find**, based on the independent judgment of the decision-maker, after consideration of the whole of the administrative record, the project was assessed in the previously certified Environmental Impact Report No. ENV-2016-1892-EIR, certified on June 12, 2019; and pursuant to CEQA Guidelines, Sections 15162 and 15164 **and the Addendum, dated October 2022**, that no major revisions to the EIR are required and no subsequent EIR, or negative declaration is required for approval of the project;

**Deny** the appeals and sustain the Director's Clarification of "Q" Conditions, dated August 8, 2022;

**Approve** the Clarification of “Q” Conditions Nos. A.1 and A.4 of Ordinance No. 186,185, to permit the development of the Modified Project in accordance with the updated set of Exhibit A Plans, dated July 15, 2022; and

**Adopt** the attached **Modified** findings.

Sincerely,

VINCENT P. BERTONI, AICP  
Director of Planning



Alan Como, AICP  
City Planner

VPB:MZ:AC

Enclosures

*Exhibit 1 – Modified CEQA Findings*

*Addendum, October 2022: <https://planning.lacity.org/development-services/eir/fig-project-2>*

c: Sherilyn Correa, Director of Planning and Economic Development, Council District 9