



## AGENDA REPORT

**Meeting Date:** October 6, 2015  
**Item Number:** F-2  
**To:** Honorable Mayor & City Council  
**From:** James R. Latta, L.C.S.W., Human Services Administrator  
**Subject:** CONDITIONS, COVENANTS AND RESTRICTIONS BETWEEN THE CITY OF BEVERLY HILLS AND THE TAMMY APARTMENTS , LLC, A CALIFORNIA LIMITED LIABILITY COMPANY; AND  
  
REQUEST FOR APPROVAL TO ISSUE A PURCHASE ORDER IN THE AMOUNT OF \$63,000 FOR HOUSING UNIT RESTRICTED BY THE CITY OF BEVERLY HILLS FOR THE HOMELESS

**Attachment:** 1. Conditions, Covenants and Restrictions (the CCR's) executed by The Tammy Apartments, LLC for 1146-1148 Tamarind Avenue in Los Angeles

---

### **RECOMMENDATION**

Staff respectfully recommends City Council approve a grant of \$63,000 to The Tammy Apartments, LLC in exchange for the Conditions, Covenants and Restrictions (CC&Rs) enclosed hereto in attachment 1. The CC&Rs is required to be executed, acknowledged and recorded as a condition to Step Up On Second receiving \$63,000. The apartment is owned by The Tammy Apartment LLC, but is managed by an affiliate, Step Up On Second Street, Inc.

The CC&Rs restrict the apartment currently known as number 2 in the Tammy Apartments (the "Tammy Project Unit") for a twenty-five year period for occupancy by a qualified homeless individual selected by the City of Beverly Hills at a restricted rent. The CC&Rs provide that the Owner shall not charge the homeless individual rent in excess of 30% of the tenant's income. In addition, the CC&Rs request that the Owner provide, at no cost, enrollment of the individual in the Owner's Life Skills Program and give support to the renter through the program to access mental health services and providers as needed.

## **INTRODUCTION**

In November 2011, the City of Beverly Hills, by way of Resolution, publicly announced its support of the United Way Greater Los Angeles Home for Good initiative. This initiative organizes a regional plan to end chronic homelessness through coordinated services and the development of affordable housing. Joining this movement extended the City's local commitment to addressing homelessness to the activities occurring at the regional level.

The City receives an annual allocation of Federal Community Development Block Grant (CDBG) funds through the Los Angeles County Development Commission (LACDC). These funds must be used to assist low to moderate income persons and households in the City. It can be particularly difficult for cities such as Beverly Hills, without qualified low-income areas, to find CDBG-eligible projects. Generally, CDBG-funded projects must be located within the city's jurisdiction except for projects serving the homeless. Such projects may be located anywhere in the County as they will still benefit homeless persons from the City providing the CDBG funds.

The City has a history of leveraging CDBG funds to increase the supply of affordable housing in the region. This history includes the construction of the Beverly Hills Senior Housing Building and the Upward Bound House Culver City project which provides permanent housing for formerly homeless individuals.

In February 2012, the Human Services Division advised Council that available CDBG funds would be insufficient to significantly contribute to the construction of an affordable housing project within City limits. At the February 7, 2012 Formal Meeting, City Council approved in concept, the sale of the City's unexpended CDBG funds for \$63,000 to another municipality seeking to purchase these funds. At that time, the City had identified an opportunity to apply the resulting unrestricted funds to support Step Up On Second's Hollywood-based affordable housing development for formerly homeless individuals.

At the following meeting on February 21, 2012, City Council approved directing the unrestricted funds resulting from the sale of the CDBG funds to the affordable housing project located at 1146-1148 Tamarind Avenue in Los Angeles.

One month later in March 2012, Step Up On Second successfully housed an older adult who had been homeless in Beverly Hills for many years. Although Council approved the City to move forward with the partnership in February 2012, finalizing the CC&R's between the City and Step Up on Second and securing the unrestricted funds through the CDBG process has taken much longer than expected. Step Up On Second has in good faith continued this individual's tenancy in the Tammy Project Unit while waiting for the matter to be completed.

Tod Lipka, President and Chief Executive Officer of Step Up On Second will be present to answer any questions.

## **DISCUSSION**

The unit of interest is part of a ten unit building located at 1146-1148 Tamarind Avenue, Los Angeles, which is approximately 5.23 miles from Beverly Hills. Built in the late 1930's, the building is in excellent shape with a majority of the units upgraded at the close of escrow on October 2011. Although the property is run by Step Up On Second, it is owned by The Tammy Apartments L.L.C., which is an affiliated entity.

Step Up On Second is a community based, nondenominational 501C (3) non-profit social service agency founded to address the unmet mental health and housing needs of very low income homeless individuals in the region. The Tamarind Avenue building is one of three Housing First Projects in Hollywood that are owned and run by Step Up. Counting four additional projects in Santa Monica, Step Up has a total inventory of 200 permanent supportive housing units.

Like Step Up's other Hollywood projects, The Tammy was financed by Aileen Getty, who graciously provided full acquisition funding (\$960,000) for the Tamarind building. Ms. Getty provided a long term (20 year) low interest secured loan to Step Up for the purchase of the property with the consideration to forgive a portion of the loan should Step Up raise additional support for the project.

Following the acquisition of the property, The Los Angeles County Community Development Commission (LACCDC), with the support of then Los Angeles County Supervisor, Zev Yaroslavsky, approved a grant of \$250,000 for the Tamarind project for acquisition costs and minor renovation. The CCRs required Tammy Apartments, LLC to adhere to the following:

- 1) Use Restriction to provide permanent supportive housing for homeless persons with mental illness;
- 2) Safe and Sanitary Facilities and;
- 3) Homeless assistance.

The LACCDC CC&Rs are similar to that of the City's as they require Tammy Apartments, LLC to ensure the building provides permanent supportive housing for homeless individuals.

**Council is advised that according to the title report dated July 17, 2015, the Aileen Getty deed of trust will be senior to the CC&Rs, such that if it were foreclosed, the CC&Rs would be extinguished. The \$63,000 is to be a grant, with no promise of repayment and no security. As soon as the money is delivered to the owner of the apartments, the City will only have the CC&Rs (in effect, the City is "buying" the CC&Rs with the money), but the CC&Rs are at risk of extinguishment in the event of a foreclosure of that senior deed of trust.**

**According to Tod Lipka, CEO of Step Up On Second, Aileen Getty is probably unwilling to subordinate to the City given the amount of their funding invested (\$960,000) in the project and also due to the fact that they were early lenders to the project long before the City. Tod Lipka has expressly asked that we not ever contact Ms. Getty or her representatives to ask for subordination of their deed of trust to the contemplated new CC&Rs.**

**Council is also advised that another deed of trust for \$215,000 turned up in our title report, but does not appear in Tammy's title policy. Tammy explained that the lien for \$215,000 was paid through the closing for the purchase of the property, but the reconveyance was never recorded. This seems likely as their title policy does not show this deed of trust as an exception, even though the deed of trust was dated and recorded prior to the date of the title policy. The closing/settlement statement from the purchase also appears to indicate that the loan was to have been paid off through the purchase escrow.**

**Additionally, there is a release of deed of trust that was signed in 2011 and recorded very recently, but it was executed by an “attorney in fact” for the individual lender/deed of trust holder. The title officer would not accept the release, because it was signed by an “attorney in fact” under a power of attorney--we don't have the power of attorney and that power of attorney was not recorded as required by law. Council is therefore advised that if that \$215,000 deed of trust were successfully foreclosed, the City's CC&Rs would be extinguished. The City would have no recourse to the owner's title company. However, Tammy represented in the CC&Rs that this deed of trust does not affect the property, so if it were foreclosed, we arguably should have recourse to Tammy for the \$63,000, but of course Tammy may not be able to repay it.**

For the past seven years, the City has contracted with Step Up On Second for the Changing Lives and Sharing Places (CLASP) homeless outreach program. The CLASP team works closely with City staff to engage and refer for assistance members of the Beverly Hills homeless community. Providing just one permanent supportive housing unit greatly assists the outreach team in their efforts to craft long-term sustainable housing plans for the City's most vulnerable community members. Supporting this grant reflects the City of Beverly Hills' commitment to permanent, supportive housing for the most vulnerable people who are homeless in our community.

**FISCAL IMPACT**

The sale of the unexpended CDBG funds to the City of Hawaiian Gardens provided \$63,000 to the General Fund to purchase the dedicated unit of housing for the City's homeless program. These funds have been set aside for this purpose and the appropriation request will allow advancing that amount to Step Up On Second, Inc.

  
Steven Zoet, CS Director  
Approved B

# **Attachment 1**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383

**CONDITIONS, COVENANTS AND RESTRICTIONS  
(Housing Unit Restricted by the City of Beverly Hills for the Homeless)**

THESE CONDITIONS, COVENANTS AND RESTRICTIONS (the "CC&R'S") are dated as of October 6, 2015, and are entered into by and between the CITY OF BEVERLY HILLS, a municipal corporation (the "City") and THE TAMMY APARTMENTS, LLC, a California limited liability company (the "Owner").

**RECITALS**

A. Owner has acquired the land and improvements commonly known as 1146 – 1148 Tamarind Avenue in the City of Los Angeles (the "Project"). The land is described on Exhibit "A".

B. In exchange for a payment from City of Sixty Three Thousand Dollars (\$63,000.00), Owner has agreed to execute, acknowledge and record these CC&R's in order to restrict the apartment currently known as apartment number 2 in the Project (the "Unit") for a specified period to occupancy by a Homeless Individual, as hereinafter defined. The Unit is depicted on Exhibit "B"

**NOW, THEREFORE**, City and Owner hereby agree as follows:

1. **Payment by City.** Within ten (10) business days after these CC&R'S and the subordination agreement(s) described in Section 18 below have been recorded in the Official Records of Los Angeles County, California, and copies of such recorded documents showing recording information have been delivered to the City, the City shall pay the sum of Sixty-three Thousand and No Dollars (\$63,000.00) to Owner (by check delivered to 1328 Second Street, Santa Monica, CA 90401, Attn: Mr. Tod Lipka).

2. **Selection of Homeless Individual.** Subject to Owner's approval, which shall not be unreasonably withheld, conditioned or delayed (and shall be deemed given if not withheld in writing specifying the reasons for disapproval within ten (10) days after City delivers its written selection to Owner), City shall have the right to select the occupant of the Unit, who shall be a Homeless Individual (as hereinafter defined) with a mental illness who shall have been homeless

for more than one (1) calendar year and who otherwise qualifies for a governmental issued housing voucher, as reasonably determined by City.

The capitalized term "Homeless Individual" shall mean: (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and (2) an individual who has a primary nighttime residence that is - (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (b) an institution that provides a temporary residence for individuals intended to be institutionalized; (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; (d) who are sharing the housing of other persons ("doubling up" or "couch surfing") due to loss of housing, economic hardship, or similar reason" or are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; or (e) is fleeing a domestic violence housing situation and no subsequent residence has been identified and lacks the resources and support networks needed to obtain housing.

If a Homeless Individual occupying the Unit dies, or the Homeless Individual's lease expires and is not renewed or is terminated, Owner shall notify City in writing and shall deliver reasonable evidence of the death (such as a death certificate), expiration or termination, as applicable, to City and City shall thereafter have ninety (90) days to select a new Homeless Individual for the Unit, subject to Owner's approval which shall not be unreasonably withheld, conditioned or delayed and shall be deemed given if not withheld in writing, specifying the reason for disapproval, within ten (10) days after City delivers its written selection to Owner. If Owner requires the Homeless Individual to execute a lease or other occupancy agreement for the Unit ("Lease"), Owner shall first deliver a copy of the lease to City for City's reasonable approval, and Owner shall not amend the Lease or enter into any other agreements with the Homeless Individual without the prior written approval of City, which will not be unreasonably withheld.

3. **Rent and Other Charges; Services.** The Owner covenants that all tenant units at the Project shall be rented to and occupied by Lower Income Households, as such term is defined in the California Health and Safety Code Section 50079.5. In addition, Owner shall not charge the Homeless Individual in the Unit rent that exceeds 30% of the income of the Homeless Individual for the use and occupancy of the Unit (which shall be used as a residence). Owner shall at all times make reasonably available to the Homeless Individual a property management service for the Project to address issues relating to the occupancy and maintenance of the Unit and/or the Project. Owner shall also provide, at no cost to the Homeless Individual, continuing enrollment in Owner's "Life Skills Program" (or comparable successor program, if applicable), and the Homeless Individual shall be given support through such program to access mental health services and mental health service providers on an as-needed basis.

4. **Duration.** The Project and Unit shall be subject to the requirements of these CC&R'S for twenty-five (25) years from the date that these CC&R's are recorded in the Official Records of Los Angeles County, California, or the expiration (or earlier termination) of the lease for the Unit with a Homeless Individual, whichever is later.

5. **Maintenance; Repair.** Owner shall maintain the Project in a decent, safe and sanitary manner, and in compliance with applicable laws. If at any time Owner fails to maintain the Project in accordance with the foregoing and such condition is not corrected within fifteen (15) days after written notice from the City (or such longer period as may be reasonably necessary to remedy the condition, provided Owner commences to cure the failure within the fifteen (15) business day period), then the City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Project and perform all acts and work necessary to protect, maintain, and preserve the Project and the costs thereof shall be promptly paid by Owner to the City upon written demand by City.

6. **Recordkeeping.** Until the third anniversary after the expiration of these CC&R'S, Owner shall maintain records relating to Owner's compliance with these CC&R'S (including copies of all leases and any other agreement with the Homeless Individual) at Owner's address specified in Section 12 below. Representatives of the City shall be entitled to enter the Project to monitor compliance with these CC&R'S and to inspect the records at Owner's offices. The Owner agrees to fully cooperate with the City in making the Project and such records available for inspection.

7. **Compliance With Laws.** Owner shall maintain, improve, repair, and operate the Project in conformity with all applicable laws, including all applicable state labor standards, zoning and development standards, building, plumbing, mechanical and electrical codes, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., the Unruh Civil Rights Act, Civil Code Section 51, et seq., and Labor Code Section 1720 et. seq.

8. **Successors and Assigns; Runs With the Land.** These CC&R'S shall run with the land, and all of the terms, covenants and conditions of these CC&R'S shall be binding upon the Owner and the successors and assigns of the Owner and all subsequent owners of any portion of or interest in the Project.

9. **Taxes and Assessments.** Owner shall pay prior to delinquency all property taxes and assessments on the Project (unless Owner is exempt), subject to the Owner's right to contest in good faith any such taxes.

10. **Remedies.** The occurrence of any default by Owner under these CC&R'S shall give the City the right to proceed with any and all remedies available at law or equity, including specific performance and/or injunctive relief.

11. **Attorneys' Fees.** If either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit, including without limitation expert witness fees and reasonable attorneys' fees.

12. **Notices.** Any notice which either party may desire to give to the other party under these CC&R'S must be in writing and may be given either by (i) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of

delivery, or (ii) mailing by certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by a notice given under this Section:

City: City of Beverly Hills  
455 North Rexford Drive, 4<sup>th</sup> Floor  
Beverly Hills, CA 90210  
Attn: City Manager

With a copy to: City of Beverly Hills  
455 North Rexford Drive, Suite 230  
Beverly Hills, CA 90210  
Attn: City Attorney

Owner: The Tammy Apartments, LLC  
1328 Second Street,  
Santa Monica, CA 90401  
Attn: Mr. Tod Lipka

13. **Partial Invalidity.** If any provision of these CC&R'S shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

14. **Governing Law.** These CC&R'S and the documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

15. **Amendments.** These CC&R'S may not be changed orally, but only by agreement(s) in writing signed by Owner and the City that are acknowledged and recorded in the Official Records of Los Angeles County.

16. **Time of Essence.** Time is of the essence of each and every provision hereof in which time is a factor.

17. **City Manager Authority.** The City Manager of the City is hereby authorized to give any consents or other notices on behalf of the City under these CC&R'S.

18. **Owner Representation and Warranty.** Owner hereby represents and warrants to City that the Project is not encumbered by any liens or other monetary encumbrances except for (i) liens for property taxes and assessments not yet due; and (ii) that certain Deed of Trust and Assignment of Rents dated October 11, 2011 executed by Step Up on Second Street, Inc., as trustor, in favor of Aileen Getty, as beneficiary, which was recorded on October 14, 2011 as Document No. 20111391704 in the Official Records of Los Angeles County, California (the "Deed of Trust").

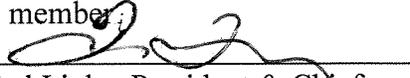
**IN WITNESS WHEREOF**, the parties hereto have executed these CC&R'S effective as of the date and year set forth above.

**OWNER:**

THE TAMMY APARTMENTS, LLC,  
a California limited liability company

By: Step Up On Second Street, Inc.,  
a California nonprofit public benefit  
corporation

Its sole member:

By:   
\_\_\_\_\_  
Tod Lipka, President & Chief  
Executive Officer

**CITY:**

CITY OF BEVERLY HILLS,  
a municipal corporation

By: \_\_\_\_\_  
Julian A. Gold, M.D.,  
Mayor

ATTEST:

\_\_\_\_\_  
Byron Pope, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Laurence S. Wiener  
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )

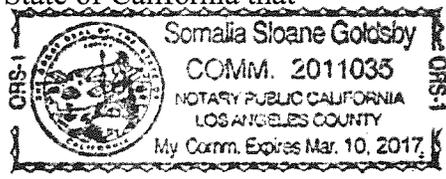
On 09/25/2015, before me, Somalia Sloane Goldsby *notary public*  
(insert name and title of the officer)

Notary Public, personally appeared TOD LIPKA,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~  
subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same  
in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Somalia Sloane Goldsby*



(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT "A"**

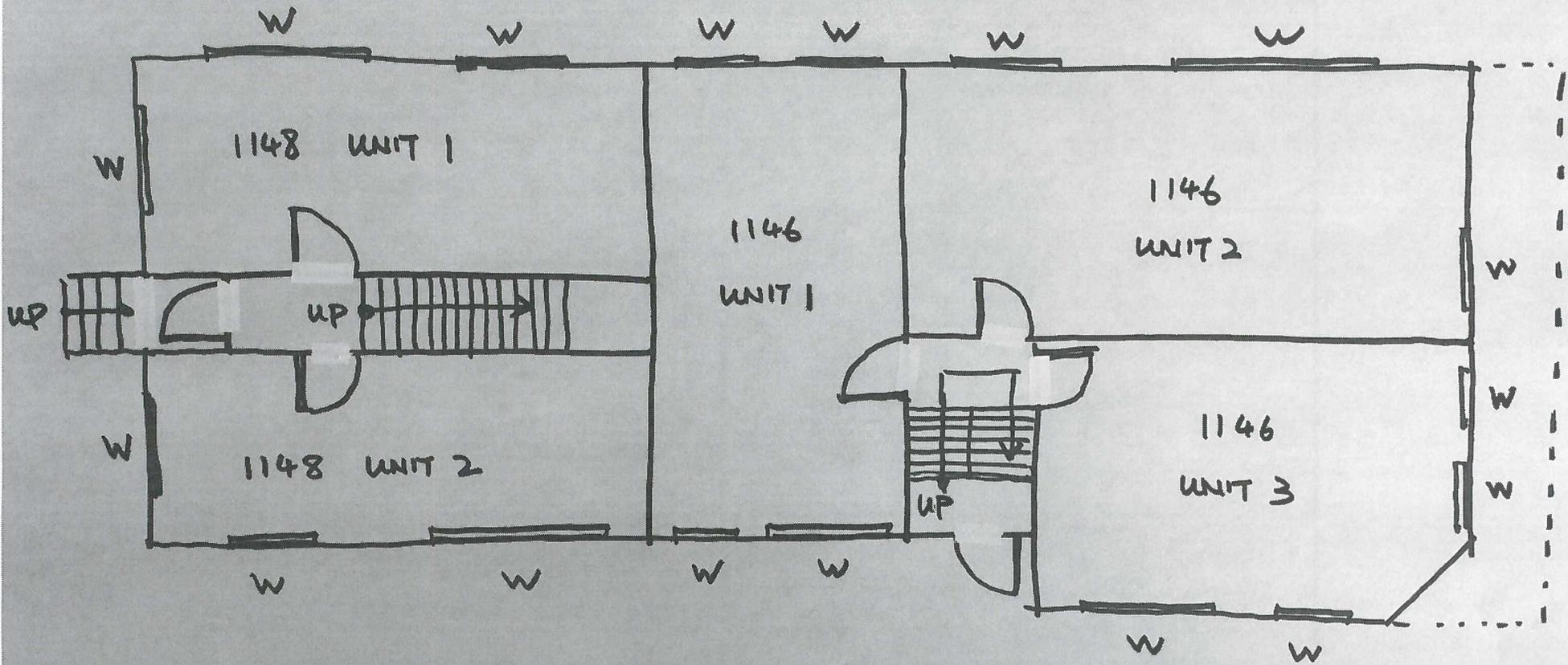
**LEGAL DESCRIPTION OF LAND**

LOT 58 OF GRIDER AND HAMILTON'S HOLLYWOOD TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDING IN BOOK 9 PAGE 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

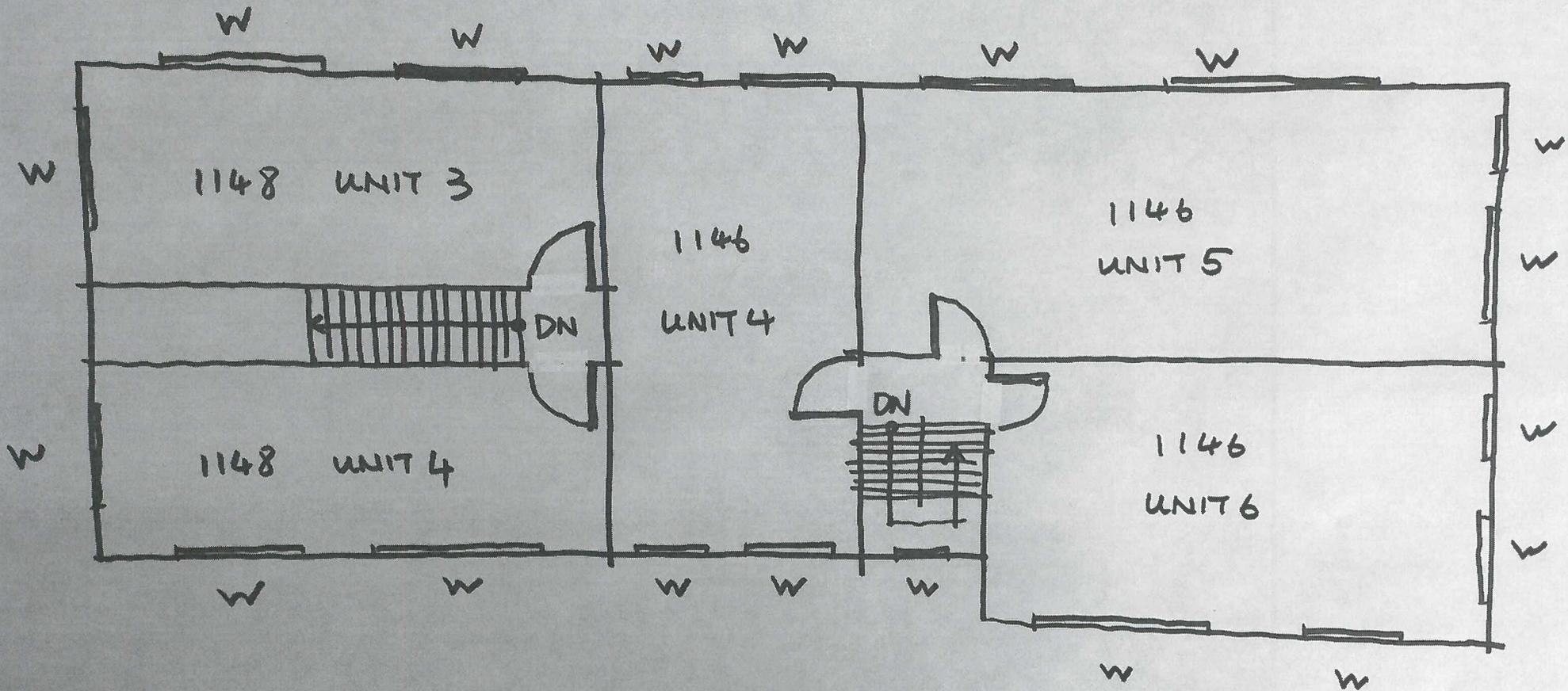
**EXHIBIT "B"**

**DIAGRAM/DEPICTION OF THE UNIT**

(Attached.)



1146 - 1148 TAMARIND FIRST FLOOR



1146-1148 TAMARIND SECOND FLOOR