

ALICE E. WATERS

Law Office

April 27, 2020

VIA EMAIL ONLY

Norris J. Bishton
Jeffrey S. Gubernick
Bishton • Gubernick
6701 Center Drive West, Suite 925
Los Angeles, CA 90045

Re: *Mark and Carol Forbush v. Hamilton Cove Homeowners Association*
Design Proposal Presentation

Dear Mr. Gubernick:

Mr. and Mrs. Forbush are ready to proceed with presentation of their third remodeling proposal of Units 81 and 82. Based on the HOA's handling of their previous two submissions and on your suggestion that engineers, architects, and general contractors be consulted on this proposal (Bishton-Gubernick letter dated March 13, 2020, page 3), we propose an onsite presentation of the proposal with all relevant parties present. As a bonded and licensed general contractor of 26 years in good standing, Mr. Forbush is qualified to present their proposal to the group.

In a nutshell, the remodeling proposal includes approximately three major components:

1. The removal of the interior party wall between Units 81 and 82 on the upper level to provide free access between the two spaces. This wall appears to be a party wall and not a load-bearing wall. The interior party wall runs parallel to the ceiling joists which strongly infers it is not load-bearing. If it were a load-bearing wall it would run perpendicular to the ceiling joists. Attached are images of adjoining Unit 83 during its recent repair of extensive water damage (Attachment 1). Based on the images, we know conclusively that the ceiling joists run parallel to the interior party wall that will be removed between Forbush's two Units and that this wall is unlikely to be a load-bearing wall.

In addition to the removal of this party wall, the balcony partition will also be opened up to allow free movement between the Units. Any changes will be consistent with the beauty and aesthetics of Hamilton Cove.

2. The construction of a connecting hallway on the lower level for access between the two Units. This connecting hallway, and other design features, may present a solution to the disputed HOA pipe encroachment in the upper level bathrooms. One of the legal authorities for this connecting hallway, in relation to the encroaching pipes, is Civ. Code §4600(b)(3)(B).
3. The construction of a lift from street level to both levels of Unit 82. This lift will address the lack of disability access to Forbush's Units. One of the legal authorities for this lift is Civ. Code §4600(b)(3)(F). In keeping with the beauty and aesthetics of Hamilton Cove, the lift will be well blended into its surroundings.

There is a vast permissiveness throughout Hamilton Cove concerning private exclusive use of Common Areas. In addition to closed-off Common Area balconies, private televisions and furniture lounge areas of

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Norris J. Bishton
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April 27, 2020
Page 2 of 2

all sorts occupying Common Area spaces, we became particularly interested in the Common Area closets located in the outside entry hallway of Units 80 and 83 Playa Azul. (Units 80 and 83 adjoin the Forbush property.) These outside hallway closets are Common Areas because they are not included in the Condominium Plan or any secondary recorded document description of the boundary space for these Units (Attachment 2). They are being used for private purposes because they contain privately owned washer and dryer appliances and other personal belongings of Units 80 and 83. Use is exclusive because the closet doors are locked with the key in the possession of the owners of these Units. Also, the water and electrical utilities for these rooms are metered exclusively to the homeowner. Unless the HOA's governing documents specify a different percentage, giving an owner exclusive use of any portion of the Common Areas requires the approval of 67% of the membership (Civ. Code §4600(a)). If this has occurred, please provide the documentation of such vote including whether the HOA received any monetary consideration for the grant and whether the HOA or the transferee is responsible for providing any insurance coverage for exclusive use of the common area (Civ. Code §4600(c)).

Alternatively, perhaps the private exclusive use is covered by one of the exceptions in Civ. Code §4600(b).

It is understandable how the homeowners of Units 80 and 83 might believe these spaces are owned by them. The real estate multiple listings for the most recent sale of these Units describe these rooms as included with the Unit (Attachment 3). Common Areas cannot be transferred in the sale of any Unit unless previously approved pursuant to Civ. Code §4600(a) or covered by an exception under §4600(b). It seems that Civ Code §4600(b)(3)(B) may have granted exclusive private use of these Common Area closets to Units 80 and 83 to address a construction defect that left these two Units with no laundry facility inside their Units. Otherwise, these Units would be required to launder in Avalon since Hamilton Cove provides no onsite laundry facility.

It is noted that the HOA has not acknowledged the Forbush's previously raised disability access concerns which is a priority for them to access their Unit. Nonetheless, they are willing to engage in good faith with the HOA on this new proposal to remodel their two Units to allow greater access, including disability access, and possibly resolve the encroachment dispute of the HOA pipes in their upper level bathrooms.

We propose an onsite presentation of Forbush's design proposal with qualified decisionmakers from both parties. This will allow questions, concerns and approvals to move forward. Therefore, in addition to Mr. and Mrs. Forbush and their attorney, we suggest the following be invited to attend the onsite meeting on these proposed dates:

Sandy Love (Chief Operations Officer, Forbush Asset Management)
Pete Edwards, Fine Line Construction

Proposed Date Range: May 15 - June 15

Please send us your list of qualified decisionmakers and available dates for your attendees by **May 8, 2020** so we can proceed with the scheduling process.

Best regards,

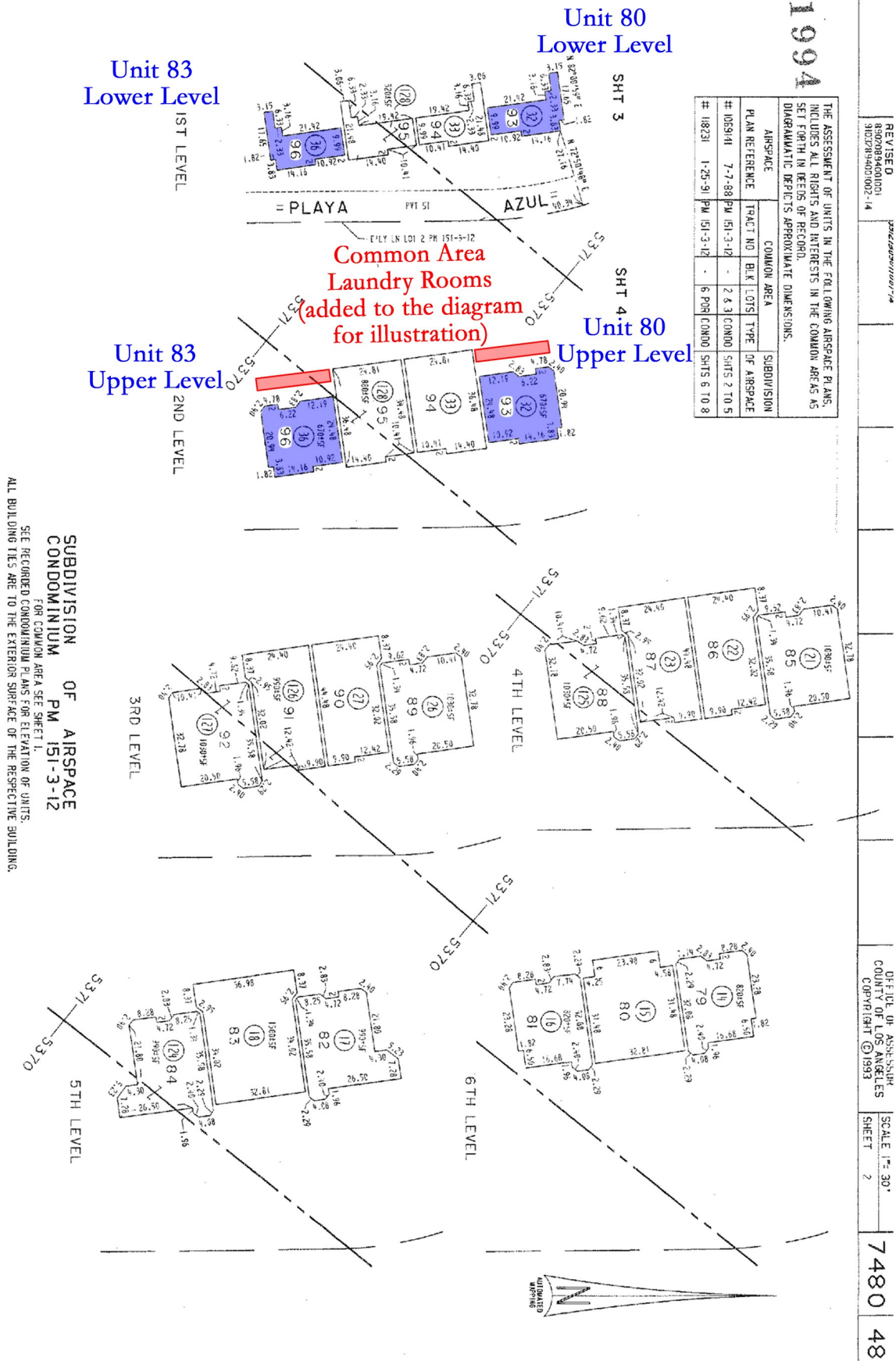
/s/

Alice E. Waters



ATTACHMENT 2

Letter dated April 27, 2020



Data Deemed Reliable, But Not Guaranteed.

ATTACHMENT 3
(4 pages)

Letter dated April 27, 2020

80 Playa Azul, Avalon 90704

STATUS: Closed

LIST/CLOSE: \$769,000/\$769,000

CATALINA ISLAND: From boat terminal go into town, go past Casino & Descanso Beach to gated community Hamilton Cove, down Playa Azul toward beach.



BED / BATH: 1/2,0,0,0
SQFT(src): 985 (A)
PRICE PER SQFT: \$780.71
LOT(src): 806,676/18.5187 (A)
LEVELS: Two
GARAGE: 0
YEAR BUILT(src): 1988 (ASR)
PROP SUB TYPE: CONDO (A)
DOM / CDOM: 8/8
SLC: Standard
PARCEL #: 7480048032
LISTING ID: SB16767868

DESCRIPTION

80 Playa Azul in Hamilton Cove- This beautiful two level 1 bedroom, 2 bath end unit Villa, in a fabulous location, is close to the beach with ocean views from every room. You can actually hear the waves lapping on the shore below. Each level has a private balcony, a separate entry door to the outside and a wood burning fireplace. Mexican paver flooring throughout. The main level consists of a living room with a wood burning fireplace, dining area, tiled kitchen, guest bath. There are French doors that open to a private patio with built-in barbeque. A laundry room and storage room complete the main level. The master bedroom with fireplace are located downstairs with French doors and private balcony. The Master bathroom has tub with shower. **This property has its own laundry room and separate storage, both with locking doors.** This 985 SF +/- (Source: tax assessor) Villa has a vacation rental permit and rental history. It comes fully furnished including a golf cart. Close to pool, ocean, beach, and Club House. Association Amenities include, Pool, Jacuzzi, full Gym with Saunas lockers and Showers, 2 Tennis Courts, 18 Hole Putting Course, Croquet Course, Beaches, with Volleyball Court, BBQ's and picnic tables For extra fee you can get small boat storage and preferred Hamilton Cove mooring. Monthly dues apply.

EXCLUSIONS: Seller's personal possessions in locked cabinets and INCLUSIONS: Furniture, furnishings, golf cart closets, four wall hangings, a cabinet/chest in dining area

AREA: 1C - Catalina
SUBDIVISION: /Hamilton Cove
COUNTY: Los Angeles
SENIOR COMMUNITY?: No
CERTIFIED 433A?:

LIST \$ ORIGINAL: \$769,000
BASEMENT SQFT:
COMMON WALLS: 1 Common
Wall
PARKING: Assigned,
Uncovered, Parking Space
HORSE:
PROBATE AUTHORITY:

ROOM TYPE: All Bedrooms
Down, Laundry, Master
Suite, Walk-In Closet
EATING AREA: Breakfast
Counter / Bar, Separated

COOLING: None
HEATING: Radiant, Electric
VIEW: Ocean
WATERFRONT: Beach Access, Ocean
Access
**LAUNDRY: Dryer Included, Individual
Room, Outside, Washer Included**

PROP SUB TYPE:
Condominium (Attached)

STRUCTURE TYPE:

COMMON INTEREST: Condominium

INTERIOR

INTERIOR: Furnished, Tile Counters,
Track Lighting
MAIN LEVEL BEDROOMS: 0
MAIN LEVEL BATHROOMS: 1

ACCESSIBILITY: None
APPLIANCES: Dishwasher, Electric
Oven, Electric Cooktop, Disposal,
Microwave, Refrigerator
KITCHEN FEATURES:
BATHROOM FEATURES:

FLOORING: Tile
ENTRY LOC/ENTRY LVL: One level up from bottom
street/
FIREPLACE: Living Room, Master Bedroom, Wood
Burning

EXTERIOR

EXTERIOR: Barbecue Private
FENCING:
DIRECTION FACES:

SECURITY: 24 Hour Security,
Closed Circuit Camera(s),
Fire Sprinkler System, Gated
Community, Gated with
Guard, Smoke Detector(s)
SEWER: Public Sewer, Sewer
Assessments

LOT: Close to Clubhouse,
Landscaped, Sprinklers
Timer
POOL: Association,
Community

PATIO/PORCH: Deck, Enclosed
SPA: Association, In Ground

BUILDING

BUILDER NAME:

ARCH STYLE:

ROOF: Spanish Tile

CONSTR MTLs: Stucco

POWER PROD TYPE: POWER PROD SIZE: POWER PROD YR INSTALL: POWER PROD ANNUAL:

COMMUNITY

HOA FEE: **\$665**

HOA FEE 2: **\$0**

COMMUNITY:

HOA NAME:

HOA NAME 2:

HOA AMENITIES: **Clubhouse,
Pool, Spa/Hot Tub**

HOA PHONE:

HOA PHONE 2:

OF UNITS:

UNITS IN COMMUNITY: **185**

STORIES TOTAL:

HOA MANAGEMENT NAME:

HOA MANAGEMENT NAME 2:

LAND

LAND LEASE?: **Yes**

PARCEL #: **7480048036**

ADDITIONAL APN(s): **No**

LAND LEASE AMOUNT:

\$1,620.00

LAND LEASE AMT FREQ:

LAND LEASE PURCH?: **No**

LAND LEASE RENEW:

UTILITIES: **Cable Available,
Sewer Available**

ELECTRIC:

WATER SOURCE: **Public**

LOT SIZE DIM:

ASSESSMENTS:

TAX LOT: **2**

TAX BLOCK:

TAX TRACT #: **1**

ZONING:

SCHOOL

HIGH SCHOOL DISTRICT: **Long
Beach Unified**

ELEMENTARY:

ELEMENTARY OTHER:

MIDDLE/JR HIGH:

MIDDLE/JR HIGH OTHER:

HIGH SCHOOL:

HIGH SCHOOL OTHER:

LISTING

BAC: **2.000%**

BAC RMRKS:

DUAL/VARI COMP?: **No**

LEASE CONSIDERED?: **No**

CURRENT FINANCING:

POSSESSION:

SIGN ON PROPERTY?: **No**

CONTINGENCY LIST:

CONTINGENCY:

PRIVATE REMARKS: **Beautiful, popular rental unit on the ocean. Our office will help you get you and your clients to the Villa for the usual referral fee. Please call to make an appointment. It is very popular and we will need to let you know when it is available. Map Book: 5923G4**

TERMS: **Cash**

LIST AGRMT: **Exclusive Right To Sell**

LIST SERVICE: **Full Service**

AD NUMBER:

DISCLOSURES: **Homeowners Association**

INTERNET, AVM?/COMM?: **Yes/Yes**

INTERNET?/ADDRESS?: **Yes/Yes**

DATES

LIST CONTRACT DATE: **11/09/05**

ON MARKET DATE: **11/09/05**

PRICE CHG TIMESTAMP:

STATUS CHG TIMESTAMP: **12/01/05**

MOD TIMESTAMP: **01/14/06**

EXPIRED DATE: **04/25/06**

PURCH CONTRACT DATE: **12/01/05**

CLOSE DATE: **12/30/05**

SHOWING INFORMATION

SHOW CONTACT TYPE: **Occupant**

SHOW CONTACT NAME: **Clifford**

WHague

SHOW CONTACT PH:

SHOW INSTRUCTIONS: **Call Listing Office**

DIRECTIONS: **Cross Streets: Gaviota**

LOCK BOX LOCATION: **Call Listing Office**

LOCK BOX TYPE: **None**



OCCUPANT TYPE: **Owner**

OWNER'S NAME:

AGENT / OFFICE

LA: (**PGILBJOH**) **John Gilbert**

CoLA:

LO: (**PB9125**) **Catalina Island Real Estate**

LO PHONE: **310-510-3000**

CoLO:

CoLO PHONE:

LA State License:

CoLA State License:

LO State License:

LO FAX: **310-510-8375**

CoLO State License:

CoLO FAX:

Offers Email:

CONTACT PRIORITY

1.OTHER:

2.LA TOLL FREE:

3.LA DIRECT:

4.LA CELL: **310-995-4579**

5.LA EMAIL: **jgilbert@catalinaisp.com**

6.LO PHONE: **310-510-3000**

COMPARABLE INFORMATION

CLOSE PRICE: **\$850,000**

LIST PRICE: **\$899,000**

LIST \$ ORIGINAL: **\$899,000**

PURCH CONTRACT DATE:

12/01/05

DOM/CDOM: **0/0**

BA: (**PGILBJOH**) **John
Gilbert**

BO: **Catalina Island Real
Estate**

BA State License:

BO State License:

CoBA: (**Recip**)

CoBO:

CoBA State License:

CoBO State License:

BUYER FINANCING: **Conventional**

CONCESSIONS \$:

CONCESSION CMTS:

COE DATE: **12/30/05**

83 Playa Azul, Avalon 90704STATUS: **Closed**LIST/CLOSE: **\$769,000/\$769,000**

Drive past the Casino, Descanso Beach to Hamilton Cove main gate, travel down to Playa Azu.



BED / BATH: **1/1,0,0,0**
SQFT(src): **985 (A)**
PRICE PER SQFT: **\$780.71**
LOT(src): **806,676/18.5187 (A)**
LEVELS: **Three Or More**
GARAGE: **0**
YEAR BUILT(src): **1988 (ASR)**
PROP SUB TYPE: **CONDO (A)**
DOM / CDOM: **1/1**
SLC: **Standard**
PARCEL #: **7480048036**
LISTING ID: **PW17075956**

DESCRIPTION

Stunning Hamilton Cove villa with spectacular views. This beautifully upgraded and completely remodeled two bedrooms, two bath, 985 sq. ft. two-story villa has breathtaking views from almost every room. It is conveniently located next to the club house, pool, and steps away to the beautiful beach front. The first level features a completely remodeled kitchen with beautiful cabinets and granite counter tops, guest bath, dining room and living room with a fireplace and French doors leading to a private deck to enjoy the incredible ocean and white water views. The master bedroom and bathroom suite is on the second level with its own private entrance. It features a romantic fireplace and private deck to watch beautiful sunrises, have private time and listing to waves softly splash on the shore. **A laundry and storage room allows plenty of space for your beach toys and laundry needs.** Comes beautifully furnished, with a golf cart and a vacation rental permit.

EXCLUSIONS:**INCLUSIONS:**

AREA: **1C - Catalina**
SUBDIVISION: **/**
COUNTY: **Los Angeles**
SENIOR COMMUNITY?: **No**
CERTIFIED 433A?:

LIST \$ ORIGINAL: **\$769,000**
BASEMENT SQFT:
COMMON WALLS: **2+ Common Walls, End Unit**
PARKING:
HORSE:
PROBATE AUTHORITY:

ROOM TYPE: **Master Bedroom, Master Suite, Walk-In Closet**
EATING AREA:

COOLING: **None**
HEATING: **Central**
VIEW: **Harbor, Ocean**
WATERFRONT:
LAUNDRY:

PROP SUB TYPE:
Condominium (Attached)

STRUCTURE TYPE:

COMMON INTEREST: **Condominium****INTERIOR**

INTERIOR:
MAIN LEVEL BEDROOMS: **0**
MAIN LEVEL BATHROOMS: **1**

ACCESSIBILITY:
APPLIANCES:
KITCHEN FEATURES:
BATHROOM FEATURES:

FLOORING:
ENTRY LOC/ENTRY LVL: **/**
FIREPLACE: **Living Room, Master Bedroom**

EXTERIOR

EXTERIOR:
FENCING:
DIRECTION FACES:

SECURITY:
SEWER: **Public Sewer**

LOT: **0-1 Unit/Acre**
POOL: **Association, Community, In Ground**

PATIO/PORCH:
SPA:

BUILDING

BUILDER NAME:
MAKE:
BUILD MODEL:
TAX MODEL:

ARCH STYLE:
DOOR:
WINDOW:

ROOF:
FOUNDATION DTLS:
PROP COND:

CONSTR MTLs:
OTHER STRUCT:
NEW CONSTRUCTION YN: **No**

GARAGE AND PARKING

ATTACHED GARAGE?:
UNCOVERED SPACES: **1**

PARKING TOTAL: **1**
REMOTES:

GARAGE SPACES: **0**
RV PARK DIM:

CARPORT SPACES:

GREEN

GREEN BLDG VERIFICATION TYPE: GREEN VERIFICATION BODY: GREEN VERIFICATION YR: GREEN VERI. RATING:
GREEN ENERGY GEN: GREEN ENERGY EFF: GREEN SUSTAIN: GREEN WTR CONSERV:
WALK SCORE:

POWER PRODUCTION

POWER PROD TYPE: POWER PROD SIZE: POWER PROD YR INSTALL: POWER PROD ANNUAL:
POWER PROD ANNUAL STATUS:

COMMUNITY

HOA FEE: **\$990/Monthly** HOA NAME: **Hamilton Cove** HOA PHONE: **310510-9500** # OF UNITS: **1**
HOA FEE 2: HOA NAME 2: HOA PHONE 2: # UNITS IN COMMUNITY: **185**
COMMUNITY: **Street Lights** HOA AMENITIES: **Pool, Spa/Hot Tub, Barbecue, Picnic Area, Playground, Golf Course, Tennis Court(s), Gym/Ex Room, Clubhouse, Security** STORIES TOTAL:

HOA MANAGEMENT NAME:
HOA MANAGEMENT NAME 2:

LAND

LAND LEASE?: **No** LAND LEASE AMOUNT: UTILITIES: TAX LOT: **1**
PARCEL #: **7480048036** LAND LEASE AMT FREQ: ELECTRIC: TAX BLOCK:
ADDITIONAL APN(s): **No** LAND LEASE PURCH?: **Yes** WATER SOURCE: **Public** TAX TRACT #: **69836**
LAND LEASE RENEW: LOT SIZE DIM: ZONING: **AVU***
ASSESSMENTS: **Special Assessments**

SCHOOL

HIGH SCHOOL DISTRICT: **Long Beach Unified** ELEMENTARY: MIDDLE/JR HIGH: HIGH SCHOOL:
ELEMENTARY OTHER: MIDDLE/JR HIGH OTHER: HIGH SCHOOL OTHER:

LISTING

DATES

BAC: **2%** TERMS: **Cash, Cash to New Loan** LIST CONTRACT DATE: **04/11/17**
BAC RMRKS: LIST AGRMT: **Exclusive Right To Sell** ON MARKET DATE: **04/11/17**
DUAL/VARI COMP?: **Yes** LIST SERVICE: **Full Service** PRICE CHG TIMESTAMP:
LEASE CONSIDERED?: **No** AD NUMBER: STATUS CHG TIMESTAMP: **05/17/17**
CURRENT FINANCING: DISCLOSURES: MOD TIMESTAMP: **05/17/17**
POSSESSION: INTERNET, AVM?/COMM?: **Yes/Yes** EXPIRED DATE: **05/11/17**
SIGN ON PROPERTY?: INTERNET?/ADDRESS?: **Yes/Yes** PURCH CONTRACT DATE: **04/12/17**
CONTINGENCY LIST: CLOSE DATE: **05/17/17**
CONTINGENCY:
PRIVATE REMARKS: **Assessment every February of approximately \$450 to pay for earthquake insurance. Avalon is currently in stage 1 Water Rationing, each property is allotted monthly water allotments through So. Cal Edison. This property has a current CUP (Vacation Rental Permit). A special assessment of \$1,920 was voted in for the 2017 Budget; starting January an additional monthly payment of \$110 for 12 months or a lump sum payment of \$1,140 (5% discount) by January, 2017. Land purchase will be included with full price purchase**

SHOWING INFORMATION

SHOW CONTACT TYPE: **Agent** LOCK BOX LOCATION: **Contact Listing Agent** OCCUPANT TYPE: **Owner**
SHOW CONTACT NAME: LOCK BOX TYPE: **Call Listing Office** OWNER'S NAME:
SHOW CONTACT PH:

SHOW INSTRUCTIONS: **Call Listing Agent**
DIRECTIONS: **Drive past the Casino, Descanso Beach to Hamilton Cove main gate, travel down to Playa Azu.**

AGENT / OFFICE

CONTACT PRIORITY

LA: (**PNELKEL**) **Kelly Brown** LA State License: **01313763** 1.LA CELL: **310-293-7272**
CoLA: CoLA State License: 2.LA EMAIL: **kelly@knbre.com**
LO: (**PB18739**) **Kelly Brown, Broker** LO State License: 3.LA FAX:
LO PHONE: **310-293-7272** LO FAX:
CoLO: CoLO State License:
CoLO PHONE: CoLO FAX:
Offers Email:

COMPARABLE INFORMATION

CLOSE PRICE: **\$769,000** BA: (**PNELKEL**) **Kelly Brown** CoBA: **()**
LIST PRICE: **\$769,000** BO: **Kelly Brown, Broker** CoBO:
LIST \$ ORIGINAL: **\$769,000** BA State License: **01313763** CoBA State License:
PURCH CONTRACT DATE: BO State License: CoBO State License:
04/12/17 BUYER FINANCING: **Cash to New Loan**
DOM/CDOM: **1/1** CONCESSIONS \$: **\$0**
CONCESSION CMTS: **0**
COE DATE: **05/17/17**

LAW OFFICES
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6701 CENTER DRIVE WEST
LOS ANGELES, CALIFORNIA 90045
(310) 337-4866
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NORRIS J. BISHTON, JR.
JEFFREY S. GUBERNICK

Writer's email: jeff@bishgub.com

May 18, 2020

Via email only:
aeh2oslaw@gmail.com

Alice E. Waters, Esq.
Alice E. Waters Law Office
216 S. Grand Avenue, Suite 35
Covina, CA 91724

Re: Mark and Carol Forbush

Dear Ms. Waters:

We are in receipt of your letter dated April 27, 2020. The HCHOA is willing to participate in an onsite presentation of your clients' design proposal. However, the HCHOA wants to make clear that such a meeting is considered to be only one part of the preliminary submission required by Rule 3 of the Architectural Rules. Based on what transpires at the meeting, the Architectural Committee will advise your clients whether any additional materials will be required by the Architectural Committee to determine whether or not to approve your clients' basic plan.

Your letter raises concerns regarding Units 80 and 83. You are correct that granting exclusive use of common area property requires the approval of two-thirds of the members. However, the HCHOA never granted exclusive use of those closets to the owners of those Units. Leaving aside the fact that the closets were constructed by the developer, those closets contain pipes that service other units and they are accessible from the outside hallways. For these reasons, the HCHOA contends that Civil Code §4600(b) is not applicable.

With regard to your claim that your clients' proposed renovations are warranted because of disability access concerns, the HCHOA intends to comply with applicable law. To this end, please advise at your earliest convenience which of your clients is considered disabled and exactly what accommodations he or she is seeking with respect to the Common Areas.

Your clients are proposing a meeting that includes five participants just from your side. The HCHOA will likewise need to have at least five participants. In light of the stay at home and

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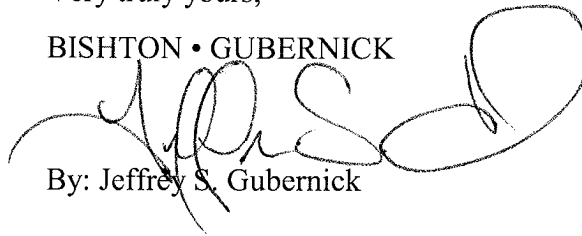
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Alice E. Waters Law Office
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social distancing orders currently in place, such a meeting is not appropriate at this time. I propose that we have a conference call shortly after July 15 (or sooner, if the stay at home orders are lifted) to address how and when to proceed with the onsite presentation.

Both the Board and Architectural Committee members have indicated that, even though it is not required, in light of the extensive scope of the proposed project, it would be extremely useful if they could review, prior to the meeting, detailed plans of the proposed work as well as any engineering studies that your clients have already obtained. Please advise whether your clients will agree to provide that material.

Very truly yours,

BISHTON • GUBERNICK

A handwritten signature in black ink, appearing to read 'J. S. Gubernick', with a large, stylized loop at the end.

By: Jeffrey S. Gubernick

JSG:cab