

April 12, 2004

To: All owners of units formerly part of the Air Force Base in Port Austin.¹

From: The trustees of the Port Austin Sabbatarian Church Community, or PASCC. We are the heads of four families who have covenanted together to establish a Christian community that will be a blessing to those of you living in Port Austin as well as those who come to stay on our campus. We plan to acquire some of the former Air Force base there and are seeking your cooperation in dealing with all of the issues common to us.

Throughout this letter, you will find small numbers corresponding to “endnotes” at the end of this document. For example, if you want to know more about who “we” are, you can look here².

One of our goals is the establishment of a Bible, technical and Internet school for young people. We call this program SEE, or the Sabbatarian Educational Environment. We also will make a place for older, retired people to live on campus so they may share their knowledge and wisdom with the younger people. This is our Sabbatarian Elder Adult Living program or SEAL. As God provides, we plan to establish local industries to support our families, help fund the ministries, provide practical experience for the students, and benefit Port Austin in general. Our intent is to share the bounty of the Lord's blessings with everyone that we can. The entire environment will be based upon living by biblical laws and principles:

Now this is the commandment, and these are the statutes and judgments which the LORD your God has commanded to teach you, that you may observe them in the land which you are crossing over to possess, "that you may fear the LORD your God, to keep all His statutes and His commandments which I command you, you and your son and your grandson, all the days of your life, and that your days may be prolonged (Deuteronomy 6:1-2).

Children, obey your parents in the Lord, for this is right. "Honor your father and mother," which is the first commandment with promise: "that it may be well with you and you may live long on the earth." And you, fathers, do not provoke your children to wrath, but bring them up in the training and admonition of the Lord (Ephesians 6:1-4).

While we may be new to most of you, we have been interested in this Port Austin property for quite a while. One of our Trustees, Norman Edwards, read about the large “Jesus’ 2000th Birthday” celebration there in 1999, and then brought a group of about 70 people to the “Feast of Tabernacles” there in 2000. Norman visited at other times, and we have all made several visits over the last few months.

We share many common beliefs with Eternal Life Bible Institute, but we do not have any organizational ties to Eternal Life Bible Institute and did not have any real knowledge of how the property was owned until this year. We are not a cult-like or exclusive group—we believe that God works in many ways through many people, but that he has a specific mission for us. We believe that God has shown us that we are to establish our community there at Port Austin, but we also realize that God wants us to abide by the contracts and promises we make as well as the properly established laws of our local, state and national governments.

Problems with the Property

In our efforts to be honest and lawful in our dealings, we have discovered a number of difficulties with the ownership of the former Air Force Base property. The Bible teaches us to deal kindly with our neighbors (Leviticus 19:17-18; Romans 13:8-10), so we are bringing the issues directly to all of you hoping to find a solution that is best for everyone. This is our best effort to find the truth, if we are wrong about anything, please let us know and we will change. We are not sure who is responsible for creating the various problems; many are simply the result of oversight in our complex legal world. We are more interested in coming to a present solution than in blaming someone for it.

Our information comes from the Huron County Registrar of deeds³ and the Port Austin Township Tax records. Some of the problems that we have found may already have solutions. The solutions may simply need to be recorded at the County so that everyone can have a clear title.

This letter addresses specifically the properties that were once a part of the old Air Force Base. The 754th also bought the campground and other properties, but we are not interested in buying them and most of the issues raised in this letter do not apply to them.

1. **Huron County has the right to buy anything that the 754th, Inc. sells⁴.** The deed from Huron County to the 754th (the corporation that originally bought the base and the campground) states that any time the 754th sells a part of the old base, they must offer it for sale to Huron County at the same price. If the offer was made and a letter was received from the county saying that they did not want to buy it, all is well. There are no such letters recorded at the county.

2. **The Federal Government’s “Excess Profit Covenant”⁵.** The Air Force gave the property to the Federal Governments’ General Services Administration (GSA), which sold it to Huron County which sold it to 754th. Numerous provisions in the Deed from the GSA to Huron County stay with the land, no matter how many sales. One section requires any owners to send the GSA’s Chicago office a report each year for three years showing any partial property sales and profits. After three reports are sent, the GSA returns a “free and clear” letter which should be recorded at the County. If the reports were never sent, then the reporting duration continues to extend year by year—till now. Because the property was originally purchased for \$454,000 and Deeds recorded at the County show property sales of \$1.1 Million, **the GSA can claim \$656,000 as excess profit**—unless reports are sent to them documenting some or all of the \$656,000 as allowable expenses. The GSA’s powers to recover excess profit are broad, they could tap bank accounts, the property, or other assets. If no reports were filed, then some kind of deal needs to be made with the GSA—some of the property could be donated to avoid excess profit.
3. **Condominium associations must be maintained.** Except for “Outlot A” (Windy Hill, gym and bowling alley) and “Outlot B” (the three dormitories together), all of the rest of the properties are in two condominiums: **Pleasant View Condominium⁶** (the nine houses) and **Hillcrest Condominiums of Port Austin⁷** (everything else). A “condominium” provides a way to sell individual units when their lot size, utilities and/or streets are not up to State and County standards required for a regular subdivision. Unfortunately, the deeds creating these condominiums have errors and unclear wording that needs to be corrected. By State law, each of these condominiums must have an association that maintains the common areas (nearly all the land area), negotiates necessary **maintenance agreements** on behalf of the owners, collects money for emergencies, etc.
 The law requires each property owner to be given a condominium buyer’s hand book, a **disclosure statement⁸**, a title insurance policy and other things. This has not been done. It appears that the associations have not met for five years. Their last corporation reports were filed in 1998 and their corporate status is now “automatic dissolution” on the Michigan Bureau of Commercial Services website. None of the real estate attorneys we spoke with have ever heard of any condominium association in this state of dysfunction. The maintenance agreement filed on November 6, 1997, listed the president and vice president of Pleasant View Condominium Association as Darrel J. Heins and Dale Kozlowski. If there are no later records, Mr. Kozlowski is still the president of that association, since he still lives there. We could find no evidence that the Hillcrest Condominiums of Port Austin Association has ever met.
4. **Need a new Maintenance Agreement⁹.** The November 6, 1997 maintenance agreement is the only one recorded at the County. It makes the Hillcrest Condominium Association” responsible for **road** maintenance and **water** billing and the 754th responsible for **sewer** billing. A Land Contract filed May 15, 1999 transfers the 754th’s **water** supply responsibilities (which are apparently nothing) to Arthur Hawkins, and that contract was assigned to Eternal Life Bible Institute on December 14, 1999. Fortunately, Eternal Life Bible Institute has been maintaining all three, but the **recorded** responsibility rests with the Hillcrest Condominium Association. Unfortunately, this service agreement contains **no signature** on behalf of Hillcrest Condominium Association.
5. **Resolution of these problems.** We have no desire to buy your property if you want to keep it. We are operating by selling our personal homes and assets and through small free-will offerings. But we believe it is critical to resolve title and maintenance problems—for all of you and for ourselves. There are several legal ways to do this, but all three of the law firms and the paralegal person we contacted agreed that a peaceful, cooperative resolution would be the least expensive for everyone. There is no government agency that enforces condominium agreements or requires people to fix erroneously recorded information. Without cooperation, these issues can only be cleaned up through lawsuits, which are likely to result in tens of thousands of dollars of additional costs.
 We hope that you will return the attached questionnaire and copies of any relevant documents you might have. We will encourage the parties to record at the County any documents that might clear up these title and service problems. Then we will draft agreements to purchase those properties which we can afford, to accept others as offerings, to restart the operation of the condominium Associations, to clear up the title problems, to release each owner from suits over known past problems, and for us to accept maintenance responsibility of the water, sewer and roads at customary rates. **Paul Drieman, one of our Trustees**, has maintained similar facilities in the past.
 We must act quickly as there are related contracts with payments already due. If you are considering working together, please return your questionnaire within the next few days or let us know via phone, fax or e-mail. If you have your own solution for these problems, please let us know. If you do not communicate with us, a court action would be our only remaining way to resolve these issues and we would rather not do that. Thank you for reading!
6. **Document Status.** We are not licensed attorneys and do not give legal advice. Consult a licensed professional if you need legal advice. We write in sincerity, sharing information as guaranteed by our First Amendment.

Signed by:

 Norman Scott Edwards,
 Trustee, Port Austin Sabbatarian Church Community

Date

 Terry Williams
 Trustee, Port Austin Sabbatarian Church Community

Date

End Notes

(The small numbers throughout the above document correspond to the numbered sections below)

¹ List of People Receiving This Letter

These are the units on the old Air Force Base and their current owner or contract holder according to tax records:

<u>Unit</u>	<u>Owner</u>
Outlot Expansion A	Eternal Life Bible Institute
Outlot Expansion B	Eternal Life Bible Institute
Hillcrest Condominium Unit 1	Eternal Life Bible Institute
Hillcrest Condominium Unit 2	Schroka, Dennis & Katherine
Hillcrest Condominium Unit 3	Pfeilstucker, Keith & Scott
Hillcrest Condominium Unit 4	754th Incorporated
Hillcrest Condominium Unit 5	Steffler, Stephen M
Hillcrest Condominium Unit 6	Pfeilstucker, Keith
Hillcrest Condominium Unit 7	Gersch, Daniel K Sr
Hillcrest Condominium Unit 8	Gersch, Daniel K & Pamela
Hillcrest Condominium Unit 9	Fields, Richard A
Hillcrest Condominium Unit 10	Heins, Richard & Arlene T
Hillcrest Condominium Unit 11	Viterbo, Anthony
Hillcrest Condominium Unit 12	Eternal Life Bible Institute
Hillcrest Condominium Unit 13	Viterbo, John & Marjorie M
Hillcrest Condominium Unit 14	Eternal Life Bible Institute
Hillcrest Condominium Unit 15	Eternal Life Bible Institute
Hillcrest Condominium Unit 16	Eternal Life Bible Institute
Hillcrest Condominium Unit 17	Eternal Life Bible Institute
Hillcrest Condominium Unit 18	Eternal Life Bible Institute
Hillcrest Condominium Unit 19	Eternal Life Bible Institute
Hillcrest Condominium Unit 20	Eternal Life Bible Institute
Hillcrest Condominium Unit 21	Eternal Life Bible Institute
Hillcrest Condo Common Areas	Eternal Life Bible Institute
Pleasant View Condominium Unit 1	Klein, Robert L & Barbara A
Pleasant View Condominium Unit 2	Schulz, Elizabeth J
Pleasant View Condominium Unit 3	Hawkins, Arthur
Pleasant View Condominium Unit 4	Byrne, John P & Katherine J
Pleasant View Condominium Unit 5	Kozlowski, Dale & Denise E
Pleasant View Condominium Unit 6	Almstadt, Audrey D & Margaret
Pleasant View Condominium Unit 7	Heins, Raymond C & Lisa
Pleasant View Condominium Unit 8	Rehn, Stephen & Mary Jane
Pleasant View Condominium Unit 9 (selling via contract)	Seale, Kenneth J & Seale A Babcock, Gary & Lorene

² Who We Are

Paul Drieman has a family of seven and has maintained buildings and utilities for Child Evangelism Fellowship for 15 years that are very similar to the old Port Austin Air Force Base. He has much experience with pastoral care, producing good results from volunteer church work parties and church group organization.

Norman Edwards, has worked as a Bible teacher for the past 10 years, trusting God to supply the necessary means to take care of his family of six. Most of that support has come through the 2500 readers of his ministry's news letter, *Servants' News*. Before that, he worked for churches for 20 years as a writer, manager, systems analyst and computer programmer. He also bought and sold real estate as a hobby.

Phil Frankford has a family of eight and has worked in many aspects of computers for the past 30 years but is a thorough Bible student as well. **In addition to his duties as a Trustee**, he will be bringing the businesses he owns to the Port Austin area to supply work and resources for the community.

Terry Williams has a variety of business and Bible study backgrounds and much experience working with a variety of people. He will be heading up the SEAL (elder adult) program.

3 How You Can Get Documents From Huron County

The recorded documents referred to in this letter are available to anyone at the Huron County Building, Registrar of Deeds, 99 West Soper Road, Bad Axe, Michigan 48413; 989-269-9941. You may view any document there without charge or receive a printed copy for one dollar per page. The staff will fax you pages for the same price, plus a \$3 fax setup charge. All one need do is ask for the document by “Liber and Page” which will be given, below.

4 Huron County “First Right of Refusal”

The **Huron County Quit-Claim Deed to the 754th, a Michigan Corporation** for the old Air Force Base (Liber 572, Pages 27 to 29) contains the following paragraph:

Grantee also covenants and agrees that in the event of sale of all or a portion of the above described real property, Grantee will first offer such real property for sale to Huron County on the same terms and conditions as are contained in the proposed sale.

This paragraph only applies to the “grantee”, which is **the 754th**, in this case. When any property is sold by them, a written offer should first be made to the Huron County Commissioners, 250 E Huron Ave, Bad Axe, Michigan, USA 48413. The commissioners meet on the second, third and fourth Tuesday of each month and would normally respond to such an offer in writing at the next available meeting. While the chances of Huron County wanting to buy any property are low, giving such a notice, and then recording the County’s refusal to buy it is a good way to protect everyone’s title. If the 754th did this for each of the properties it sold, all future sales of those properties would no longer be affected by the above paragraph.

If the 754th actually has letters from Huron County declining to purchase the properties, recording them would solve the problems. If no such letters exist, then those who own the properties need to realize that Huron County, at any time, might demand to buy any or all of the properties sold by the 754th on their original terms—the county is not bound to pay for any improvements that have been made since the sale. However, since the 754th issued Warranty Deeds to most property buyers (a Warranty Deed “warrants” good title), anyone losing money due to Huron County exercising its option to purchase could attempt to recover their losses from the 754th. It is also possible that title insurance would cover their losses—though a careful reading of the Title policy would be required to determine if it specifically excludes this type of problem.

If there are no letters from Huron County releasing buyers of this option, those who have purchased the properties may find it advantageous to obtain a “release” from Huron County—a paper stating that they will not exercise their right to purchase these properties. It might be easiest to negotiate this as a group.

We obtained this information from the county without revealing the property in question to the Huron County Commissioners. They are probably not aware of the issue at all right now.

5 The General Services Administration’s “Excess Profit Clause”

The Quit-Claim Deed from Huron County to the 754th (Liber 572, Pages 27-29) contains this significant paragraph:

NOTE: By acceptance of this Deed, Grantee [the 754th] acknowledges that it is aware of all of the terms and conditions contained in the Quit-Claim Deed from the United States of America to Huron County dated February 28, 1992, and recorded at Liber 572, page 8, Huron County Records. Grantee, by acceptance of this Deed, agrees to be bound by all the terms, conditions and covenants contained herein.

The 754th agree to be bound by several things. The main part of the Quit-Claim Deed from the GSA to Huron County (Liber 572 pages 8-25) is 19 pages including exhibits. Some important points about the land include 1.5 acres reserved for roadways and 9.6 acres reserved for drainage of various kinds. Out of the 40.8 acres of total land, only 29.7 is buildable. There are also requirements to avoid various kinds of discrimination and a disclaimer stating that the government does not claim to have cleaned up all the asbestos.

But most important is the following section which applies to the 754th and all who purchase from it. While it starts by mentioning a “three year period”, a later paragraph shows that the time period is extended indefinitely if no reports are submitted to the GSA. Evidence that these reports have been submitted should be filed in the Huron County deed records, but we could not find any. The Excess Profits Covenant of the deed is reproduced below. The “Grantor” is the General Services Administration (GSA) of the United States of America. (They received the property from the Air Force.) The “Grantee” is Huron County, but all of these restrictions pass on to the 754th and then to anyone else who may purchase from them.

EXCESS PROFITS COVENANT. This covenant shall run with the land for a period of three years from the date of conveyance. With respect to the Property described in this deed, if at any time within a three-year period from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the Property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee’s or a subsequent seller’s actual

allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire Property, actual allowable costs will be apportioned to the Property based on a fair and reasonable determination by the Grantor.

a. For the purposes of the covenant, the Grantee's or a subsequent seller's allowable costs shall include the following;

1. The purchase price of the real Property;
2. The direct costs actually incurred and paid for improvements which serve only the Property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements;
3. The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in Paragraph (a) 2 of this section; and
4. The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

b. None of the allowable costs described in paragraph a of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

c. In order to verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the Property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

1. A description of each portion of the Property that has been resold;
2. The sale price of each such resold portion;
3. The identity of each purchaser;
4. The proposed land use; and
5. An enumeration of any allowable costs incurred and paid that would offset an realized profit.

If no resale has been made, the report shall so state. Failure to file timely reports will extend the operation of this covenant for an additional one-year period for each late or omitted report.

d. The Grantor may monitor the Property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the Property.

Without revealing the location of the property, we contacted the Chicago office of the General Services Administration (GSA) and found the Excess Profits Covenant to be a standard feature of their land sales since 1986. The GSA indicated that after a buyer sends them the three annual reports, they would normally issue a "free and clear" letter to the buyer, which they should record in their county, showing that this Covenant had been satisfied, clearing the title of the property. According to the paragraph just before paragraph "d" above, if no reports are submitted, the **time period continues to extend for a year**. In other words, it stays open forever until three successive reports are filed. The GSA representative also stated that their internal personnel changes can sometimes cause a case to be dropped for a specific property, but that it might be discovered later.

A sample Excess Profits Covenant is document in Federal Property Management Regulations (41 CFR Part 101-47.4908) and is almost identical to the one above, except that the sentence extending the covenant for each late report was added. Because it is not in the sample and not in all Federal land sales agreements may explain why it may not be uniformly understood or enforced. Nevertheless, this sentence is binding as the 754th agreed to it by accepting the Deed.

If the 754th actually sent the required reports to the GSA or if they received a "free and clear" letter, **all that needs to be done is to file them with Huron County and this aspect of the title is secure**. On the other hand, **if no reports were ever filed and no letter received, the 754th and subsequent owners of the property can be facing a lot of trouble**. The property may never be clear of the covenant until all three reports are filed. Our research indicates that land statutes of limitations do not apply to government land in Michigan. The only way to clear it is to file three reports over the space of three years, or to negotiate a release with the GSA, if that is possible. But unless the \$656,000 difference between sold properties (\$1,100,000) and original price (\$454,000) can be shown to be expenses, then the GSA may try to collect some of the \$656,000 from existing owners.

According to paragraph "d", above. the GSA "may take any actions which it deems reasonable and prudent to recover any excess profits". These actions would include seizing bank accounts, land or other assets of anybody owning some of the original property, though the 754th is probably the most likely target. People other than the 754th may be covered by title insurance, but a careful reading would be required to make sure that they are covered. We cannot know the best way to resolve this until we have all the facts, but it cannot be ignored by anyone holding title to this property.

⁶ Pleasant View Condominium Association Must be Maintained

Pleasant View Condominium Association was created by a Master Deed, Condominium Bylaws, and subdivision plan recorded with Huron County on October 21, 1994 (Liber 626, pages 219-241). It includes the nine smaller houses on the northeast side of the property. Everyone owning such a unit is automatically a member of the

association. The association bylaws say it was to collect funds for maintaining roads and utilities and to provide insurance for all of the units suitable to cover any mortgages that individuals might require for their units.

There are difficulties with the documents. The title on this document is "Pleasant View Condominiums Association" (**plural**) and it says that there is a corporation, but does not give the name. This is not good practice. A service agreement filed on November 6, 1997 gives the corporate name as "Pleasant View Condominium Association" (**singular**), which is probably correct. The Michigan corporate records show "Pleasant View Condominium Association" (**singular**) with an agent named Katherine Byrne in Port Austin, but the "Pleasant View Condominiums Association" (**plural**) has an agent named Brian Eric Jiggins of Leonard, Michigan, who died in an airplane crash in April, 1994. The difference of a single "s" can make all the difference between owning and not owning property. These kinds of errors should be corrected, and there are more of them in other documents pertaining to the properties. You can find the status of any Michigan corporation at this Michigan web site—just enter the name.

http://www.cis.state.mi.us/bcs_corp/rs_corp.asp

While you are at the web site, you can see that the Hillcrest Condominium Association of Port Austin and **even the 754th** have not filed required reports since 1998, but are listed as corporations in "automatic dissolution". While a corporation can be reinstated by paying fees and small penalties, there may be some liability or fraud issues when a dissolved corporation signs deeds and other agreements that stating it is "a corporation in good standing".

There are other errors within the condominium association bylaws. Page 222, par. 3 uses the name "Pleasant View Condominium **Owner's** Association" which does not match any previous title. The same paragraph has "Exhibit A" and "Exhibit B" reversed from the way they are actually recorded.

Articles II (Meetings), III (Board of Directors), IV (Officers) and VI (Finance) all apparently have not been followed. Page 225 paragraph 16 of the Master Deed says that the association is supposed to maintain enough insurance to satisfy the mortgagee for each unit, but this has not happened. The articles do not spell out what happens when a land contract is signed for one of the units: is the owner or the contract holder a member of the association? Article VII Sections 4 and 5 state that recording is not necessary for the bylaws to be amended but that a copy must be given to every member of the association. If this has been done, hopefully someone will still have a copy.

7 Hillcrest Condominiums of Port Austin Association Must be Maintained

The founding documents were recorded on December 3, 1997 (Liber 714, pages 343 to -365). The condominium corporation name is "Hillcrest Condominiums of Port Austin", and the association name is "Hillcrest Condominiums of Port Austin Association". Yet there are references in the Master Deed (e.g. par. 9(c)) where it is called "Hillcrest Condominium Association", the exact same name as a currently active corporation formed by James P Stenger in 1972. There are also name difficulties in the Maintenance Agreement; see the "Maintenance Agreement" footnote.

Also, the "Exhibit A" and "Exhibit B" of the master deed are wrong in both sections 8 and 9(d). Furthermore, the first full paragraph on page 2 says there are "twenty (20)" units, whereas elsewhere it says "twenty-one (21)".

Hillcrest Condominiums of Port Austin is listed as a business condominium, so many of the rules for residential condominiums do not apply to it. Nevertheless, its association required to meet every year, to maintain insurance on all of the units and to manage its extensive common areas that include roads, water and sewer. It also has the responsibility of taking action on poorly maintained or demolished units.

8 Disclosure Statement

We have a nearly-complete copy of the Disclosure Statement for Hillcrest Condominiums of Port Austin which was **not recorded with Huron County**, but apparently filed with the Michigan Department of Commerce. It still contains **blanks** for its **effective date**, some **telephone numbers**, insurance **company name** and **policy number**. It has naming difficulties, too, as it refers to "Hillcrest Condominium" and "Hillcrest Condo Association" without ever defining these names. It differs from the recorded master deed and the maintenance agreement about who is responsible for insurance, water and sewer. The disclosure statement should be made to agree with the recorded documents.

9 Maintenance Agreement

This Water Lines, Sewer Lines and Road Maintenance Agreement was recorded on June 11th, 1997 (Liber 712, pages 195 to 204). The first paragraph states "Hillcrest Condominiums of Port Austin and Hillcrest Condominiums of Port Austin Association, hereafter 'Hillcrest'", but then never uses the name "Hillcrest" by itself but refers to an undefined "Hillcrest Condo Association" or "Hillcrest Association" (712, par 1). This agreement makes Hillcrest Condominiums of Port Austin responsible for many things. The major difficulty, mentioned in the main body, is that the document does not even contain a place of a signature by Hillcrest Condominiums of Port Austin. The Master Deed was not filed until December 3, 1997, but it did not contain any reference accepting this service agreement. Even though the 754th signed and is the developer, the corporation was incorporated on November 12, 1996, and should have had a representative sign for it. The validity of this agreement seems very questionable.