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STATE OF NEBRASKA COUNTY OF WASHINGTON) SS 984983  
ENTERED IN NUMERICAL INDEX AND FILED FOR RECORD  
THIS 14th DAY OF October, A.D. 1998  
AT 1:55 O'CLOCK P. M. AND RECORDED IN BOOK  
290 AT PAGE 491-502  
COUNTY CLERK Charlotte K. Peterson  
BY Jaren Madson

FILED

98 OCT 14 PM 1:55

CHARLOTTE K. PETERSON  
WASHINGTON COUNTY CLERK  
CLERK OF DISTRICT

Recorded	<input checked="" type="checkbox"/>
General	<input type="checkbox"/>
Numerical	<input checked="" type="checkbox"/>
Photostat	<input type="checkbox"/>
Proofed	<input checked="" type="checkbox"/>

### EASEMENT AND COVENANTS AGREEMENT

This Easement and Covenants Agreement (this "Agreement") is made and entered into this 29<sup>th</sup> day of September, 1998, by and between Ole Hickory Farm Limited Partnership, a Nebraska limited partnership ("Grantor"), and Hidden Acres Farms, L.L.C., a Nebraska limited liability company ("First Grantee"), The Laura Hofer Trust Revocable Trust dated March 7, 1988 ("Second Grantee"), and Rushmore-Borghlum Ministry, Inc., a South Dakota non-profit corporation ("Third Grantee") (First Grantee, Second Grantee and Third Grantee collectively, "Grantees").

#### WITNESSETH:

WHEREAS, First Grantee is the owner of the real estate located in Washington County, Nebraska, described on Exhibit "A" attached hereto, which real estate will hereinafter be referred to as "First Grantee's Parcel"; and

WHEREAS, Second Grantee is the owner of the real estate located in Washington County, Nebraska, described on Exhibit "B" attached hereto, which real estate will hereinafter be referred to as "Second Grantee's Parcel"; and

WHEREAS, Third Grantee is the owner of the real estate located in Washington County, Nebraska, described on Exhibit "C" attached hereto, which real estate will hereinafter be referred to as "Third Grantee's Parcel" (First Grantee's Parcel, Second Grantee's Parcel and Third Grantee's Parcel together, the "Grantees' Parcels"); and

WHEREAS, Grantor owns the real estate located in Washington County, Nebraska, described on Exhibit "D" attached hereto, which real estate will hereinafter be referred to as the "Grantor Parcel"; and

WHEREAS, an unpaved access road described on Exhibit "E" attached hereto, which road will hereinafter be referred to as the "Easement Area," crosses the Grantees' Parcels and the Grantor Parcel; and

WHEREAS, in connection with related property transfers occurring at or about the same time as the execution and delivery of this Agreement, Grantor desires to grant to Grantees, and each of

the Grantees desire to grant to the other Grantees, a permanent right of ingress and egress to and from their respective properties over the Easement Area.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Grant of Easement by Grantor.** Grantor hereby grants to each of the Grantees for the benefit of Grantees, their heirs, personal representatives, successors, assigns, employees, agents and invitees (collectively, the "Authorized Users"), and for the benefit of Grantees' Parcels, a permanent nonexclusive appurtenant easement for the purposes of ingress and egress by vehicular and pedestrian traffic over and across the Easement Area. Grantor shall not do or permit any act or acts that will unreasonably prevent or hinder the ingress or egress of Grantees or the Authorized Users over and across the Easement Area.
2. **Grant of Easement by Grantees.** Each of the Grantees hereby grants to each of the other Grantees for the benefit of Grantees and the Authorized Users, and for the benefit of Grantees' Parcels, a permanent nonexclusive appurtenant easement for the purposes of ingress and egress by vehicular and pedestrian traffic over and across the Easement Area. Grantees shall not do or permit any act or acts that will unreasonably prevent or hinder the ingress or egress of Grantees or the Authorized Users over and across the Easement Area.
3. **Grant of Utilities Easements by Grantor and Grantees.** Grantor and each of the Grantees hereby grants to the Omaha Public Power District, Metropolitan Utilities District, Papio Natural Resources District, Huntel, Inc., U.S. West Communications, Cox Communications, and to any other company or entity which has been granted a franchise to provide cable television and/or other telecommunications facilities within Washington County (collectively, the "Utilities"), and the Utilities' respective successors and assigns, a permanent right of way easement with rights of ingress and egress thereto, to construct, operate, maintain, replace, and remove their underground electric, gas, water and telecommunications facilities (subject to the limitations of this Easement Agreement), consisting of cables, wires, conduits, manholes, drains, splicing boxes, and other appurtenances not taller than three (3) feet in height, upon, over, along, and under the Easement Area. Grantor and each of the Grantees hereby grant to the Utilities, and the Utilities' respective successors and assigns, the right, privilege, and authority to clear all trees, roots, brush, and other obstructions from the surface and subsurface of the Easement Area and to temporarily open any fences crossing the same. Grantor and each of the Grantees agree that grade shall not be reduced more than one (1) foot in elevation without prior notification to the Utilities. Grantor and Grantees understand that a single pole and appurtenances may be used temporarily to provide service to the Grantor Parcel and the Grantees' Parcels. In granting this easement, it is understood that said cables shall be buried below plow depth in order not to interfere with the ordinary cultivation of the area. Damages to fences and growing crops and any other improvements of Grantor and Grantees within the Easement Area arising from the use, construction and maintenance of the aforesaid systems shall be paid for by the Utility causing such damage and if any portion of the surface of the Easement Area is disturbed by such Utilities, the surface shall be returned to the condition in which it existed prior to any such disturbance by the Utilities. Grantor and Grantees covenant that they have lawful possession of the Grantor Parcel and the Grantees' Parcels, respectively, good, right and lawful

authority to make such conveyance and the their heirs, executors, administrators, successors and assigns shall warrant and defend the same and will indemnify and hold harmless the Utilities forever against the claims of all persons whomsoever in any way asserting any right, title or interest prior to or contrary to this conveyance.

4. **Maintenance of Easement Area.** Grantor, at its sole cost and expense, shall maintain that portion of the Easement Area which crosses Grantor's Parcel in reasonably good order, condition, and repair. The Grantees shall maintain that portion of the Easement Area which crosses the Grantee's Parcels in reasonably good order, condition and repair. The cost and expense of the maintenance of that portion of the Easement Area which crosses Grantor's Parcel shall be shared equally by the Grantor and each of the Grantees on the basis of one-fourth ( $\frac{1}{4}$ ) each. The Grantees shall maintain that portion of the Easement Area which crosses the Grantee's Parcels and the expense of such maintenance shall be shared equally by the Grantees on the basis of one-third ( $\frac{1}{3}$ ) each. Such maintenance shall include, but shall not be limited to, cleaning, snow removal, repair, re-rocking or graveling, and reconstruction when necessary; provided no party hereto shall be responsible for the cost of paving the Easement Area unless such party consents in writing to pay its share of the cost of such paving.

5. **Warranties.** Grantor warrants to Grantees and their heirs, personal representatives, successors and assigns that Grantor is lawfully seized of the Easement Area which crosses the Grantor Parcel, and that Grantor has the right and lawful authority to grant the easement herein granted. Each of the Grantees warrants to the other Grantees and their heirs, personal representatives, successors and assigns that such Grantee is lawfully seized of the Easement Area which crosses the respective Grantee's Parcel, and such Grantee has the right and lawful authority to grant the easement herein granted.

6. **Covenants.** The owners of the Grantor Parcel and the Grantees' Parcels shall not build any structures including, but not limited to, houses, barns, sheds and out-buildings, within fifty feet (50') of the edge of the Easement Area. Excluded from the foregoing restriction shall be any existing improvements now existing within fifty feet (50') of the edge of the Easement Area. It is hereby specifically agreed and understood that all of the Grantees' Parcels shall access from the Easement Area, and that all Grantees agree that the E-911 residence markers of Washington County will be placed by each driveway's entrance onto the Easement Area. The Grantor's Parcel and Grantee's Parcels shall be used only for single family residential purposes and/or farming purposes, provided, however, the raising, sheltering, breeding or feeding for commercial purposes of any farm animals, livestock, fowl or poultry of any kind shall be prohibited. The Grantor's Parcel and Grantee's Parcels shall not at any time be used, developed, improved, operated, leased, sold or transferred in conflict with any of the provisions of this paragraph 6 even if any zoning or other governmental order, rule or regulation pertaining to any of such properties as presently constituted or as hereafter changed, varied, modified or waived would permit such use, development, improvement, operation, leasing or sale. Any owner of property shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions and covenants imposed by the provisions of this paragraph 6 either to prevent or restrain any violation or to recover damages for such violation. Failure of any property owner to enforce any covenant or restriction herein contained

shall in no event be deemed a waiver, relinquishment, or impairment of the right to do so at anytime thereafter.

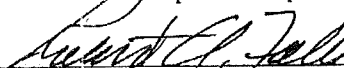
7. **Binding Effect.** The easements and covenants granted in this Agreement and the covenants and agreements herein contained shall run with the land, and shall perpetually inure to the benefit of and be binding upon the owners of the Grantor's Parcel and the Grantees' Parcels and the Easement Area and their respective heirs, successors, transferees and assigns.

8. **Injunctive Relief.** In the event of any violation or threatened violation by any owner or occupant of any portion of the Grantor's Parcel, the Grantees' Parcels or the Easement Area of any of the terms, covenants and conditions of this Agreement, any or all of the owners of the Grantor's Parcel, the Grantees' Parcels and the Easement Area shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all of the remedies available by statute, at law and in equity.

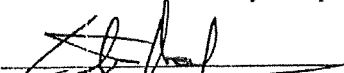
9. **No Public County Road.** It is hereby specifically acknowledged and agreed that the Easement Area sometimes known and referred to as Ole Hickory Lane is not a public county road, is not a dedicated public right-of-way, and no the maintenance or repair in any manner whatsoever will be performed by Washington County, Nebraska, on said roadway, and that all maintenance and repairs of said roadway will be at the private expense of the adjacent property owners utilizing said roadway for ingress and egress to the real estate owned by them, as provided in this Agreement.

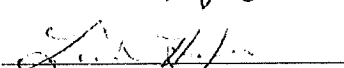
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

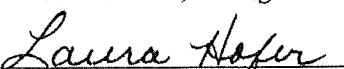
OLE HICKORY FARM LIMITED PARTNERSHIP,  
a Nebraska limited partnership

By:   
Robert A. Falk, General Partner

HIDDEN ACRES FARMS, L.L.C.,  
a Nebraska limited liability company

By:   
Curt Hofer, Manager

By:   
Linda Hofer, Manager

  
Laura Hofer, as Trustee of the Laura Hofer Revocable  
Trust dated March 7, 1988

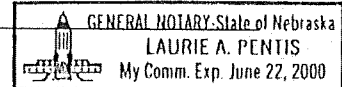
RUSHMORE-BORGLUM MINISTRY, INC., a  
South Dakota non-profit corporation

By *Robert A. Falk*  
Name *Robert A. Falk*  
Title *Vice President*

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF *Douglas* )

On this *29* day of *September*, 1998, before me appeared Robert A. Falk, to me personally known, who, being by me duly sworn did say that he is a general partner of Ole Hickory Farm Limited Partnership, a Nebraska limited partnership, and that said instrument was signed and sealed on behalf of said partnership and acknowledged to me that he executed the same as the free act and deed of said partnership.

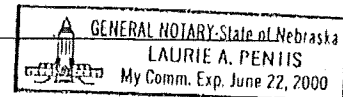
*Laurie A. Pentis*  
Notary Public  
My Commission Expires: \_\_\_\_\_



STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF DOUGLAS )

On this *29* day of *September*, 1998, before me appeared Curt Hofer, to me personally known, who, being by me duly sworn did say that he is a manager of Hidden Acres Farms, L.L.C., a Nebraska limited liability company, and that said instrument was signed and sealed on behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed of said limited liability company.

*Laurie A. Pentis*  
Notary Public  
My Commission Expires: \_\_\_\_\_

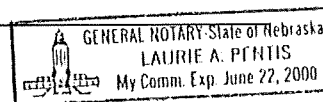


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STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

On this 29 day of September, 1998, before me appeared Linda Hofer, to me personally known, who, being by me duly sworn did say that she is a manager of Hidden Acres Farms, L.L.C., a Nebraska limited liability company, and that said instrument was signed and sealed on behalf of said limited liability company and acknowledged to me that she executed the same as the free act and deed of said limited liability company.

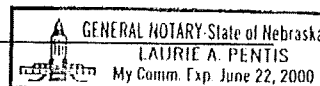
Laurie A. Pentis  
Notary Public  
My Commission Expires: \_\_\_\_\_



STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

On this 29 day of September, 1998, before me appeared Laura Hofer, to me personally known, who, being by me duly sworn did say that she is the Trustee of the Laura Hofer Revocable Trust dated March 7, 1988, and that said instrument was signed and sealed on behalf of said Trust and acknowledged to me that she executed the same as the free act and deed of said Trust.

Laurie A. Pentis  
Notary Public  
My Commission Expires: \_\_\_\_\_



STATE OF NEBRASKA     )  
                                   ) ss.  
 COUNTY OF DOUGLAS    )

On this 13<sup>th</sup> day of October, 1998, before me appeared Lonnie J. Hofe to me personally known, who, being by me duly sworn did say that he is the Vice President of Rushmore-Borglum Ministry, Inc., a South Dakota non-profit corporation, and that said instrument was signed and sealed on behalf of said corporation and acknowledged to me that he executed the same as the free act and deed of said corporation who, being by me duly sworn did say that he executed the same as his free act and deed.

Nilda Hill

Notary Public

My Commission Expires



## EXHIBIT A

First Grantees' Parcel  
Legal Description

PART OF TAX LOT 21, TOGETHER WITH PART OF THE NE 1/4 OF THE NW 1/4, ALL IN SECTION 23, T17N, R12E OF THE 6TH P.M., WASHINGTON COUNTY, NEBRASKA, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF SAID NE 1/4; THENCE S00°14'57"E (ASSUMED BEARING) 478.17 FEET ON THE WESTERLY LINE OF SAID NE 1/4; THENCE N89°45'03"E 66.00 FEET; THENCE S56°24'09"E 418.56 FEET; THENCE S85°58'51"E 378.81 FEET TO THE POINT OF BEGINNING; THENCE S67°59'56"E 163.06 FEET; THENCE S18°42'00"E 257.36 FEET; THENCE S32°01'02"E 122.64 FEET; THENCE N57°40'25"E 922.25 FEET; THENCE N39°30'32"W 73.21 FEET; THENCE N68°06'56"W 682.49 FEET TO THE SOUTHEASTERLY LINE OF A ROAD EASEMENT; THENCE S52°15'05"W 485.00 FEET ON THE SOUTHEASTERLY LINE OF A ROAD EASEMENT; THENCE SOUTHWESTERLY ON THE SOUTHEASTERLY LINE OF A ROAD EASEMENT ON A 258.64 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING S54°15'35"W, CHORD DISTANCE 18.13 FEET, AN ARC DISTANCE OF 18.13 FEET; THENCE S00°02'25"E 87.68 FEET ON A NON-TANGENT LINE TO THE POINT OF BEGINNING;

AND

PART OF TAX LOTS 1 AND 21 TOGETHER WITH PART OF THE NE 1/4 OF THE NW 1/4 ALL IN SECTION 23, T17N, R12E OF THE 6TH P.M., WASHINGTON COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF SAID NE 1/4; THENCE S00°14'57"E (ASSUMED BEARING) 478.17 FEET ON THE WEST LINE OF SAID NE 1/4; THENCE N89°45'03"E 66.00 FEET; THENCE S56°24'09"E 418.56 FEET; THENCE S85°58'51"E 378.81 FEET; THENCE S67°59'56"E 163.06 FEET; THENCE S18°42'00"E 257.36 FEET; THENCE S32°01'02"E 272.35 FEET; THENCE S41°31'08"E 135.04 FEET; THENCE S50°54'39"E 70.39 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S50°54'39"E 158.72 FEET; THENCE N18°53'03"E 296.49 FEET; THENCE N50°13'55"E 114.89 FEET; THENCE S79°00'18"E 680.80 FEET TO THE EASTERLY LINE OF SAID TAX LOT 21; THENCE S00°17'33"E 1319.11 FEET ON THE EASTERLY LINE OF SAID TAX LOT 21 TO THE SE CORNER THEREOF; THENCE S89°25'55"W 1793.17 FEET ON THE SOUTHERLY LINES OF SAID TAX LOTS 1 AND 21 TO THE SW CORNER OF SAID TAX LOT 1; THENCE N00°13'45"W 990.00 FEET ON THE WESTERLY LINE OF SAID TAX LOT 1 TO A CORNER THEREOF; THENCE S89°25'54"W 495.00 FEET ON THE SOUTHERLY LINE OF SAID TAX LOT 1 TO THE WESTERLY LINE OF SAID NE 1/4; THENCE N00°14'57"W 575.61 FEET ON THE WESTERLY LINE OF SAID NE 1/4; THENCE N89°57'35"E 744.37 FEET; THENCE S10°35'02"E 536.92 FEET; THENCE S15°14'30"E 734.24 FEET; THENCE N20°36'41"E 786.37 FEET; THENCE N00°14'57"W 151.93 FEET TO THE POINT OF BEGINNING.



## EXHIBIT B

### Second Grantees' Parcel Legal Description

PART OF TAX LOTS 1 AND 21 TOGETHER WITH PART OF THE NE 1/4 OF THE NW 1/4, ALL IN SECTION 23, T17N, R12E OF THE 6TH P.M., WASHINGTON COUNTY, NEBRASKA, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF SAID NE 1/4; THENCE S00°14'57"E (ASSUMED BEARING) 478.17 FEET ON THE WEST LINE OF SAID NE 1/4; THENCE N89°45'03"E 66.00 FEET; THENCE S56°24'09"E 418.56 FEET; THENCE S85°58'51"E 378.81 FEET; THENCE S67°59'56"E 163.06 FEET; THENCE S18°42'00"E 257.36 FEET; THENCE S32°01'02"E 122.64 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S32°01'02"E 149.71 FEET; THENCE S41°31'08"E 135.04 FEET; THENCE S50°54'39"E 229.11 FEET; THENCE N18°53'03"E 296.49 FEET; THENCE N50°13'55"E 114.89 FEET; THENCE S79°00'18"E 680.80 FEET TO THE EAST LINE OF SAID TAX LOT 21 LYING WITHIN SAID SECTION 23; THENCE N00°17'33"W 133.00 FEET ON THE EAST LINE OF SAID TAX LOT 21; THENCE N39°30'23"W 659.08 FEET; THENCE S57°40'26"W 922.25 FEET TO THE POINT OF BEGINNING.

CONTAINING 10.32 ACRES

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EXHIBIT C

Third Grantees' Parcel  
Legal Description

PART OF TAX LOT 1 TOGETHER WITH PART OF THE NE 1/4 OF THE NW 1/4, ALL IN SECTION 23, T17N, R12E OF THE 6TH P.M., WASHINGTON COUNTY, NEBRASKA, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF SAID NE 1/4; THENCE S00°14'57"E (ASSUMED BEARING) 478.17 FEET ON THE WEST LINE OF SAID NE 1/4; THENCE N89°45'03"E 66.00 FEET; THENCE S56°24'09"E 418.56 FEET; THENCE S85°58'51"E 378.81 FEET TO THE POINT OF BEGINNING; THENCE S67°59'56"E 163.06 FEET; THENCE S18°42'00"E 257.36 FEET; THENCE S32°01'02"E 272.35 FEET; THENCE S41°31'08"E 135.04 FEET; THENCE S50°54'39"E 70.39 FEET; THENCE S00°14'57"E 151.93 FEET; THENCE S20°36'41"W 786.37 FEET; THENCE N15°14'30"W 734.24 FEET; THENCE N10°35'02"W 536.92 FEET; THENCE N89°57'35"E 45.80 FEET; THENCE N00°02'25"W 333.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 10.13 ACRES

## EXHIBIT D

Grantor Parcel  
Legal Description

An undivided one-half (1/2) interest in and to Tax Lots Four (4), Six (6), Twenty-Nine (29), Sixty (60) and Eighty-Eight (88) of Section Fourteen (14), Township Seventeen (17) North, Range Twelve (12) East of the 6th P.M., and the Northeast Quarter of the Northwest Quarter (NE 1/4 of NW 1/4), and Tax Lots One (1), Five (5), and Twenty-One (21), of Section Twenty-Three (23), Township Seventeen (17) North, Range Twelve (12) East of the 6th P.M., all in Washington County, Nebraska.

Except for the parcels described in Exhibits A, B and C to this Agreement.

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**EXHIBIT E**

**Easement Area  
Legal Description**

That part of the NE 1/4 of the NW 1/4, Together with part of Tax Lots 1 and 21, all in Section 23, T17N, R12E of the 6th P.M., Washington County, Nebraska, described as follows: commencing at the NW corner of said NE 1/4, thence S00°14'57"E (assumed bearing) 478.17' feet on the West line of said NE 1/4; thence N89°45'03"E 66.00 feet to the point of beginning; thence S56°24'09"E 418.56 feet; thence S85°58'51"E 378.81 feet; thence S56°19'22"E 148.44 feet; thence S18°42'00"E 249.97 feet; thence S32°01'02"E 278.94 feet; thence S41°31'08"E 140.84 feet; thence S50°54'39"E 403.42 feet; thence northeasterly on a non-tangent 62.50 foot radius curve to the left, chord bearing N39°01'50"E chord distance 66.00 feet, an arc distance of 323.17 feet; thence N50°54'39"W 397.93 feet on a non-tangent line; thence N41°31'08"W 129.93 feet; thence N32°01'02"W 265.75 feet; thence N18°42'00"W 264.75 feet; thence N56°19'22"W 255.62 feet; thence N85°57'17"W 197.15 feet; thence northwesterly on a 426.25 foot radius curve to the right, chord bearing N71°21'34"W, chord distance 214.82 feet, an arc distance of 217.16 feet; thence N56°45'52"W 350.23 feet; thence S00°14'57"E 118.25 feet on a line 66.00 feet east of and parallel with the west line of said NE 1/4 to the point of beginning.