

## EASEMENT AGREEMENT

Easement Agreement made this 14 day of December, 1993, between John V. Lilly, Trustee of the John V. Lilly Trust and Edna B. Lilly, Trustee of the Edna B. Lilly Trust, John Kern Lilly and Karen L. Lilly, hereinafter "Owners", and Don Johnston & Son, a Partnership consisting of Donald Scott Johnston and Gwendolyn Jean Johnston, hereinafter "Grantee".

## RECITALS

1. Owners are the owners and operators of the agricultural property described in Exhibit "A" which is incorporated herein by reference.
2. Grantee is the owner of the property described in Exhibit "B" which is incorporated herein by reference.
3. Grantee has had the consent of Owners to install and operate a pump on a ditch at a location which is shown in the attached aerial photograph as "1" marked Exhibit "C". The pump also is connected to a sump, pipelines and power lines and is located adjacent to Power Pole No. C-662 on owners' property.
4. The parties desire to commit their easement agreement to writing.

## AGREEMENT

1. Owners grant to Grantee, their heirs and assigns an easement to place and maintain a pump, irrigation mainline, and electrical connections at its present location described approximately in the attached aerial photograph on a ditch that for purposes of description, extends through Owners' property to a point on the northerly bank of the Klamath River. The pump is to be used only for irrigation purposes appurtenant to Grantee's farm land described above.
2. The above grant of easement is for the placement and maintenance of a pump, underground irrigation line, sump, canal and associated electrical connections. Owners make no representations concerning the adequacy of or the right to the use of the irrigation water in the aforementioned ditch. Grantee agrees to hold harmless and defend owner in the event that a third party should make any claim to said water rights to which are claimed by Johnston as against owner or any other person.
3. Owner further grants to Grantee an easement to enter upon Owners' premises as further

herein described to operate and maintain the ditch and pump upon the following conditions:

3.1 Ingress and egress to the pump is limited to the road that parallels the ditch with entrance and exit only from the south. Except as described in paragraph 4 below, Grantee shall not enter or exit from the northerly boundary of the field or from Highway 66 through owners property.

3.2 If it should become necessary to clean the ditch by use of a backhoe or other heavy equipment, Grantee agrees to place the debris or spoil from the ditch in such a way so as not to interfere with Owners' access to and from Owners' fields, equipment, and fuel tanks. Grantee will notify Owners in writing prior to any such ditch maintenance.

3.3 The expenses of normal maintenance of the ditch, including but not limited to the application of chemicals for the control of weeds and moss, shall be divided evenly among the parties hereto. Each party desiring to perform maintenance shall notify the other in writing of his intent to do so and the amount of the expense involved. If both parties do not agree on the amount of expense the arbitration provisions of paragraph 10 shall apply.

3.4 Both parties agree not to block the road described herein unnecessarily and not to interfere with owners' access to their fields.

4. Replacement of Pump, Sump or Supply Line: In the event of the necessity for the replacement of the pump, sump or supply line, Grantee agrees to notify Owners in writing prior to such repairs and Grantee agrees to exercise reasonable care so as not to limit damage or injury to any crops of Owners. Grantee agrees to reimburse Owners for any crop or other damage or repair work that is necessitated by Grantee's activities with regard to such repair or removal. In the event that access for this purpose is impractical by the route described in Paragraph 3.1, Grantee may have the right of limited access for this purpose from Highway 66 through Owners' property. Grantee's access from said highway is limited to the gate and roadway on the westside of Owners' barn. Grantee agrees to give Owners notice in writing 24 hours prior to entry upon Owners' premises for this purpose.

5. Both parties agree to exercise good faith in exercising their rights and responsibilities under this Agreement.

## 2- EASEMENT AGREEMENT

6. **Water Damage to the Pump or Wiring:** It is agreed between the parties that the Owner shall not be responsible to Grantee for water damage or damage by any other cause to Grantee's pump or wiring, it being understood that the Grantee is responsible for shielding and protecting the pump and related wiring and equipment.

7. **Leakage From Pump:** Grantee agrees to so maintain the pump and main line so as to avoid leaks that damage owners' crops. Grantee agrees to reimburse owner for any damage occasioned thereby.

8. Grantee shall be responsible for the ditch maintenance between the pump described in paragraphs 1 and 2 above and grantor's pump which is located in the same ditch.

9. **Hold Harmless:** It is understood that Grantee and members of Grantee's family, including minor children, will be traversing Owners' property in order to maintain and operate the pump. It is understood by Owners and Grantee that there are inherent dangers and possibilities of injury in this regard. Grantee accepts and assumes complete responsibility for the activities of Grantee, their agents, employees and family members and agrees to hold Owners harmless with respect to any property damage or personal injury which may occur in the exercise of their activities with respect to the operation and maintenance of the pump with the exception of conditions that are caused by the sole negligence or negligent activities of owner. Similarly, Owner agrees to hold Grantee harmless with respect to personal injury or property damage unless caused by the negligence of Grantee. Similarly, Grantee agrees to reimburse Owners for any damage caused to Owners' roads, irrigation works, equipment or crops caused by Grantee's activities in this regard.

10. **Arbitration:** All disputes, claims and questions, regarding the rights and obligations of the parties under this agreement are subject to arbitration. Either party may make a demand for arbitration by notifying the other party hereto in writing within a reasonable time. Thereafter each party shall choose an arbitrator within one (1) day. The two arbitrators within two (2) further days shall select a third arbitrator. The conclusion of the arbitrators shall be binding on both parties to this agreement.

11. **Notice.** Any notice under this agreement shall be in writing and shall be effective when actually delivered in person or deposited in the United State mail registered or certified return receipt requested, postage prepaid and addressed to the party at the address stated in this agreement or such other

address as either party may designate by written notice to the other.

John V. Lilly  
Trustee of the John V. Lilly Trust  
13350 Highway 66  
Klamath Falls, OR 97601

Edna B. Lilly  
Trustee of the Edna B. Lilly Trust  
13350 Highway 66  
Klamath Falls, OR 97601

John Kern Lilly  
Karen L. Lilly  
13350 Highway 66  
Klamath Falls, OR 97601

Donald Scott Johnston  
Gwendolyn Jean Johnston  
13619 Highway 66  
Klamath Falls, OR 97601

12. Attorney Fees: In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

IN WITNESS WHEREOF, the parties have executed this lease on the day and year first above written.

#### OWNERS

John V. Lilly Trust Edna B. Lilly Trust  
John V. Lilly Trustee of the John V. Lilly Trust Edna B. Lilly Trustee of the Edna B. Lilly Trust

John Kern Lilly Karen L. Lilly  
John Kern Lilly Karen L. Lilly

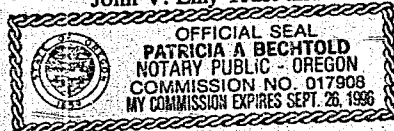
#### GRANTEE: DON JOHNSTON & SON

Donald Scott Johnston Gwendolyn Jean Johnston  
Donald Scott Johnston Gwendolyn Jean Johnston

STATE OF OREGON )

County of Lane ) ss. PAB

On this 6th day of January 1994, before me personally appeared JOHN V. LILLY, Trustee of the John V. Lilly Trust and acknowledged the foregoing instrument to be his voluntary act and deed.

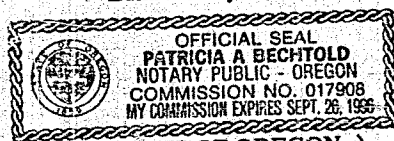


Patricia A. Bechtold  
Notary Public for Oregon  
My commission expires: 09-26-96

STATE OF OREGON )

County of Lane ) ss. PAB

On this 6th day of January 1994, before me personally appeared EDNA B. LILLY, Trustee of the Edna B. Lilly Trust and acknowledged the foregoing instrument to be her voluntary act and deed.

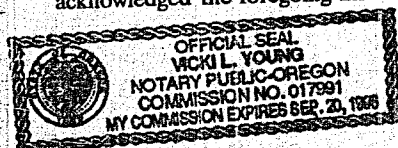


Patricia A. Bechtold  
Notary Public for Oregon  
My commission expires: 09-26-96

STATE OF OREGON )

County of Klamath ) ss.

On this 11 day of January 1994, before me personally appeared JOHN KERN LILLY, and acknowledged the foregoing instrument to be his voluntary act and deed.

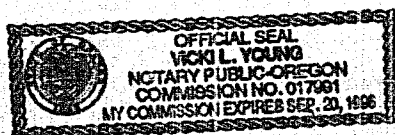


Vicki L. Young  
Notary Public for Oregon  
My commission expires: 9-20-96

STATE OF OREGON )

County of Klamath ) ss.

On this 11 day of January 1994, before me personally appeared KAREN L. LILLY, and acknowledged the foregoing instrument to be her voluntary act and deed.

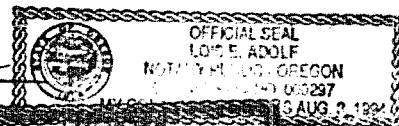


Vicki L. Young  
Notary Public for Oregon  
My commission expires: 9-20-96

STATE OF OREGON )  
 ) ss.  
 County of Klamath )

On this 14<sup>th</sup> day of December, 1993, before me personally appeared DONALD SCOTT JOHNSTON, and acknowledged the foregoing instrument to be his voluntary act and deed.

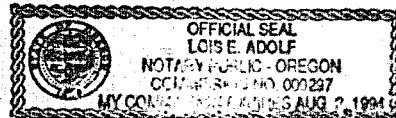
Lois E. Adolf  
 Notary Public for Oregon  
 My commission expires:



STATE OF OREGON )  
 ) ss.  
 County of Klamath )

On this 14<sup>th</sup> day of December, 1993, before me personally appeared GWENDOLYN JEAN JOHNSTON, and acknowledged the foregoing instrument to be her voluntary act and deed.

Lois E. Adolf  
 Notary Public for Oregon  
 My commission expires:





## EXHIBIT "A"

## PARCEL 1:

All that portion of the South Half of the Northeast Quarter of Section 32, lying south of the Klamath Falls-Ashland Highway and west of that parcel of land conveyed to O.L. Grimes by deed recorded on page 299 of Volume 109, Deed Records of Klamath County, Oregon;

## PARCEL 2:

All that portion of the Southeast Quarter of the Northwest Quarter of Section 32, lying south of the Klamath Falls-Ashland Highway;

## PARCEL 3:

All of the Southeast quarter of Section 32, excepting therefrom the portion contained in the right of way of Weyerhaeuser Timber Company's logging railroad, and that portion thereof lying southeasterly from said right of way and containing approximately 38.19 acres;

## PARCEL 4:

The Northeast quarter of the Southwest quarter, Lots 2 and 10, and all of lot 11, in Section 32, excepting the portion contained in the right of way of Weyerhaeuser Timber Company's logging railroad, and that portion described as follows:

Beginning at the corner common to Sections 31 and 32, T. 39 S., and Section 5 and 6, T. 40 S., all in Range 8 E., W.M.; thence North along the section line, 490.7 feet, more or less, to the meander corner; thence S. 81° 30' E., along the meander line which is the northerly line of Lot 11 of said Section 32, a distance of 800.8 feet; thence S. 52° 32' E., 612.7 feet, more or less, to the south line of said Section 32; thence West, along the section line, a distance of 1,278.3 feet, more or less, to the point of beginning; being a portion of Lot 11, Section 32, T. 39 S., R. 8 E., W.M., containing 9.93 acres, more or less; saving and excepting that parcel of land containing 0.86 of an acre, more or less, deeded by B.E. Kerns to the Weyerhaeuser Timber Company for railroad right of way, the deed for which is recorded in Klamath County Deed Records, Volume 85, Page 104;

## PARCEL 5:

All that portion of the Northwest Quarter of the Southwest Quarter and Lot 1, of Section 32, described as follows:

Beginning at the ¼ section corner between Sections 31 and 32, Township 39 South, Range 8 E., W.M., thence South along the Section line 14.66 chains; thence East 12 chains; thence South to the South boundary of Lot 1; thence East along the meander line to the Southeast corner of Lot 1; thence North to the Northeast corner of the NW¼SW¼ of Section 32; thence West to the point of beginning;

Excepting therefrom the following portion thereof: Beginning at the ¼ section corner on the West line of said Section 32; thence South along the Section line 870 feet; thence East 879 feet, more or less, to the East line of the State Highway; thence Northerly along said line of Highway to a point which is 1100 feet East and 206 feet South of said ¼ section corner; thence North 206 feet to the North line of said NW¼SW¼, thence West along said line 1100 feet to the said ¼ section corner; and

Also excepting therefrom that portion thereof described as follows: Beginning at a point on a line between Sections 31 and 32, which is 870 feet south of the  $\frac{1}{4}$  corner common to said sections 31 and 32, thence South along said section line a distance of 97.56 feet to the Northwest corner of the D.J. Puckett property, thence East 879 feet, more or less, to the West line of the right of way of the Oregon State Highway, No. 66, thence North along the west line of said right of way 97.56 feet, thence West 879 feet to the point of beginning.



## EXHIBIT "B"

## PARCEL 1:

SE $\frac{1}{4}$  and NE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 30; N $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 31; W $\frac{1}{2}$ SW $\frac{1}{4}$  Section 29, all that portion of the NW $\frac{1}{4}$  Section 32 lying Northerly and Westerly of the Greensprings Highway and Westerly of that parcel of land conveyed by Ralph A. Johnston et ux to Erwin Heim et ux by deed recorded on page 214 of Volume 245 of Deeds, records of Klamath County, Oregon, ALSO all that portion of SE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 29 lying Westerly of said parcel conveyed to Heims; all in Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

ALSO the following described portion of NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 32, described as follows:

Beginning at the  $\frac{1}{4}$  section corner of the West line of said Section 32; thence South along the Section line 870 feet; thence East 879 feet, more or less, to the West line of the State Highway; thence Northerly along said line of Highway to a point which is 1100 feet East and 206 feet south of said  $\frac{1}{4}$  section corner, thence North 206 feet to the North line of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; thence West along said line 1100 feet to the said  $\frac{1}{4}$  section corner.

## PARCEL 2:

All that portion of Section 32, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at a point on a line between Section 31 and 32, which is 870 feet South of the  $\frac{1}{4}$  corner common to Sections 31 and 32; thence South along said Section lines distance of 97.56 feet, to the Northwest corner of the D.J. Puckett property; thence East 879 feet, more or less, to the West line of the right of way of Oregon State Highway No. 66; thence North along the West line of said right of way 97.56 feet; thence West 879 feet to the point of beginning.

# CONSERVATION PLAN MAP

1148



Prepared by UNITED STATES DEPARTMENT of AGRICULTURE \* SOIL CONSERVATION SERVICE  
cooperating with  
KLAMATH  
U.S. DISTRICT

BY JOHN LILLY

FARM NO. DATE

RATOR

SCALE 1"=625' ACRES 650

KLAMATH

OREGON

PHOTO NO.

EXHIBIT NO. C



STATE OF OREGON, ss.  
County of Klamath

Filed for record at request of:

Robert Boivin

on this 12th day of Jan A.D. 19 94  
at 10:26 o'clock A.M. and duly recorded  
in Vol. M94 of Deeds Page 1139

Evelyn Biehn County Clerk

By Douline Mullendore

Deputy.

Fee, \$75.00