

6-21-2010

Beus v. Beus Clerk's Record v. 1 Dckt. 37384

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Beus v. Beus Clerk's Record v. 1 Dckt. 37384" (2010). *Idaho Supreme Court Records & Briefs*. 1042.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/1042

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law.

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

DALLAS BEUS, Individually;

DOUG BEUS, Individually;

vs. Plaintiffs-Respondents

John C. Souza, Trustee of the Lynn G. Beus Trust; Jerry Beus, Individually,

Defendants,

Jerry Beus

vs. Cross-Claimant/Appellant,

John C. Souza, Trustee of the Lynn G. Beus Trust Cross-Defendant/Respondent

Hon. David C. Nye District Judge

Appealed from the District Court of the Sixth Judicial District of the State of Idaho, in and for Bannock County.

Stephen C. Smith

Hawley Troxell Ennis & Hawley LLP

Attorney For Appellant

Randall C. Budge

Racine, Olson, Nye, Budge & Bailey, Chartered

Attorney For Respondent

Filed this _____ day of _____

2008

FILED - COPY

JUN 21 2010

Clerk

Deputy

Supreme Court

37384

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually;)
DOUG BEUS, individually,)
)
Plaintiffs-Respondents,)

Supreme Court No. 37384

Vs.)

JOHN C. SOUZA, Trustee of the Lynn G.)
Beus Trust; JERRY BEUS, individually,)
)
Defendants,)

Volume I

JERRY BEUS,)
)
Cross-Claimant/Appellant,)

Vs.)

JOHN C. SOUZA, Trustee of the Lynn G.)
Beus Trust,)
)
Cross-Defendant)
Respondent)

CLERK'S RECORD

Appeal from the District Court of the Sixth Judicial District of the State of
Idaho, in and for the County of Bannock.

Before **HONORABLE David C. Nye**, District Judge.

For Appellant:

**Stephen C. Smith
Hawley Troxell Ennis & Hawley LLP
P.O. Box 1617
Boise, Idaho 83701-1617**

For Respondent:

**Randall C. Budge
Racine, Olson, Nye
Budge & Bailey, Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391**

**Thomas J. Holmes
Jones, Chartered
P.O. Box 967
Pocatello, Idaho 83204**

TABLE OF CONTENTS

VOLUME I

VERIFIED COMPLAINT FOR RELIEF AND DECLARATORY JUDGMENT, filed 5-6-09	1
DEFENDANT JERRY BEUS' ANSWER TO VERIFIED COMPALINT FOR RELIEF AND DECLARATORY JUDGMENT, filed 8-10-09	88
ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER, filed 8-26-09	99
MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 9-3-09.....	102
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 9-3-09	105

VOLUME II

SUPPORTING AFFIDAVIT OF RANDDALL C. BUDGE, filed 9-3-09	137
---	-----

VOLUME III

CERTIFICATE OF SERVICE, filed 9-3-09	393
JOINT STATEMENT OF INFORMATION FOR SCHEDULING ORDER, filed 9-8-09	395
DEFENDANT JERRY BEUS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-5-09	399
AFFIDAVIT OF STEPHEN C. SMITH IN SUPPORT OF DEFENDANT JERRY BEUS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-5-09.....	418
AFFIDAVIT OF THOMAS J. HOLMES, filed 10-13-09	488
PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-13-09	519

CERTIFICATE OF SERVICE, filed 10-13-09	537
DECISION ON MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 11-23-09	542
MOTION FOR JUDGMENT AND RULE 54(b) CERTIFICATE, filed 12-8-09	555
MOTION FOR ORDER AWARDING ATTORNEYS; FEES AND COSTS, filed 12-8-09	558
MEMORANDUM OF FEES AND COSTS, filed 12-8-09	563
MINUTE ENTRY AND ORDER, filed 1-5-10	567
MOTION TO APPROVE OR DISAPPROVE SALE AND, IF APPROVED, TO DECLARE JERRY BEUS' RIGHT OF FIRST REFUSAL TO HAVE LAPSED, filed 1-8-10	569
PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO APPROVE SALE, CONFIRM DISPOSITION OF PROCEEDS AND OBLIGATIONS OF JERRY BEUS, filed 1-20-10	571

VOLUME IV

RESPONSE TO MOTION TO APPROVE OR DISAPPROVE SALE AND, IF APPROVED, TO DECLARE JERRY BEUS' RIGHT OF FIRST REFUSAL TO HAVE LAPSED, filed 1-15-10	583
MOTION TO APPROVE SALE, CONFIRM DISPOSITION OF PROCEEDS AND OBLIGATIONS OF JERRY BEUS, filed 1-19-10	589
ORDER APPROVING SALE, filed 1-27-10	592
JUDGMENT AND RULE 54(b) CERTIFICATE, filed 1-27-10	596
NOTICE OF APPEAL BY JERRY BEUS, filed 2-1-10	602
DECISION ON MOTION FOR ATTORNEY FEES, filed 2-4-10	609
MOTION FOR LEAVE TO AMEND COMPLAINT, filed 2-22-10	618
PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPAINT, filed 2-22-10	625

AMENDED COMPALINT, filed 3-9-10	635
STIPULATION, filed 3-3-10.....	639
ORDER GRANTING LEAVE OF COURT TO AMEND PLAINTIFFS' COMPLAINT, filed 3-4-10	641
DEFENDANT DBL COMPANY, INC.'S MOTION FOR TEMPORARY RESTRAINING ORDER, filed 4-2-10	643
MINUTE ENTRY AND ORDER, filed 4-20-10	646
DEFENDANT DBL COMPANY, INC.'S MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	649
DEFENDANT DBL COMPANY, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	652
MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 4-13-10.....	673
<hr/>	
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 4-3-10	676
AFFIDAVIT OF COUNSEL, filed 4-13-10	693
DEFENDANT DBL COMPANY, INC.'S OBJECTION TO LAKEY LEASE AND MOTION FOR DECLARATORY RELIEF, filed 4-15-10	702
DEFENDANT DBL COMPANY, INC.'S MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	708
DEFENDANT DBL COMPANY, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPALINT, filed 4-15-10	711
NOTICE OF LODGING, dated 3-23-10	732
CLERKS CERTIFICATE,	733
CERTIFICATE OF SERVICE	735

INDEX

AFFIDAVIT OF COUNSEL, filed 4-13-10	693
AFFIDAVIT OF STEPHEN C. SMITH IN SUPPORT OF DEFENDANT JERRY BEUS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-5-09.....	418
AFFIDAVIT OF THOMAS J. HOLMES, filed 10-13-09	488
AMENDED COMPALINT, filed 3-9-10	635
CERTIFICATE OF SERVICE	735
CERTIFICATE OF SERVICE, filed 10-13-09	537
CERTIFICATE OF SERVICE, filed 9-3-09	393
<hr/>	
CLERKS CERTIFICATE,	733
DECISION ON MOTION FOR ATTORNEY FEES, filed 2-4-10	609
DECISION ON MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 11-23-09	542
DEFENDANT DBL COMPANY, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	652
DEFENDANT DBL COMPANY, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPALINT, filed 4-15-10	711
DEFENDANT DBL COMPANY, INC.'S MOTION FOR TEMPORARY RESTRAINING ORDER, filed 4-2-10	643
DEFENDANT DBL COMPANY, INC.'S MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	649
DEFENDANT DBL COMPANY, INC.'S MOTION TO DISMISS AMENDED COMPLAINT, filed 4-15-10	708
DEFENDANT DBL COMPANY, INC.'S OBJECTION TO LAKEY LEASE AND MOTION FOR DECLARATORY RELIEF, filed 4-15-10	702

DEFENDANT JERRY BEUS' ANSWER TO VERIFIED COMPALINT FOR RELIEF AND DECLARATORY JUDGMENT, filed 8-10-09	88
DEFENDANT JERRY BEUS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-5-09	399
JOINT STATEMENT OF INFORMATION FOR SCHEDULING ORDER, filed 9-8-09	395
JUDGMENT AND RULE 54(b) CERTIFICATE, filed 1-27-10.....	596
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 9-3-09	105
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 4-3-10	676
MEMORANDUM OF FEES AND COSTS, filed 12-8-09	563
<hr/>	
MINUTE ENTRY AND ORDER, filed 1-5-10	567
MINUTE ENTRY AND ORDER, filed 4-20-10	646
MOTION FOR JUDGMENT AND RULE 54(b) CERTIFICATE, filed 12-8-09....	555
MOTION FOR LEAVE TO AMEND COMPLAINT, filed 2-22-10	618
MOTION FOR ORDER AWARDING ATTORNEYS; FEES AND COSTS, filed 12-8-09	558
MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 4-13-10.....	673
MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 9-3-09.....	102
MOTION TO APPROVE OR DISAPPROVE SALE AND, IF APPROVED, TO DECLARE JERRY BEUS' RIGHT OF FIRST REFUSAL TO HAVE LAPSED, filed 1-8-10	569
MOTION TO APPROVE SALE, CONFIRM DISPOSITION OF PROCEEDS AND OBLIGATIONS OF JERRY BEUS, filed 1-19-10	589
NOTICE OF APPEAL BY JERRY BEUS, filed 2-1-10.....	602
NOTICE OF LODGING, dated 3-23-10	732

ORDER APPROVING SALE, filed 1-27-10	592
ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER, filed 8-26-09	99
ORDER GRANTING LEAVE OF COURT TO AMEND PLAINTIFFS' COMPLAINT, filed 3-4-10	641
PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPAINT, filed 2-22-10.....	625
PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO APPROVE SALE, CONFIRM DISPOSITION OF PROCEEDS AND OBLIGATIONS OF JERRY BEUS, Filed 1 -20-10.....	571
PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, filed 10-13-09	519
RESPONSE TO MOTION TO APPROVE OR DISAPPROVE SALE AND, IF APPROVED, TO DECLARE JERRY BEUS' RIGHT OF FIRST REFUSAL TO HAVE LAPSED, filed 1-15-10	583
STIPULATION, filed 3-3-10.....	639
SUPPORTING AFFIDAVIT OF RANDDALL C. BUDGE, filed 9-3-09	137
VERIFIED COMPLAINT FOR RELIFE AND DECLARATORY JUDGMENT, filed 5-6-09	1

VOLUME I

VOLUME II

VOLUME III

VOLUME IV

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User		Judge
5/6/2009	NCOC	DCANO	Court records	David C Nye
	COMP	DCANO	Verified Complaint for Relief and Declaratory Judgment Filed	David C Nye
	SMIS	DCANO	Summons Issued	David C Nye
		DCANO	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Racine, Olson Receipt number: 0017405 Dated: 5/6/2009 Amount: \$88.00 (Check) For:	David C Nye
	ATTR	JANA	Plaintiff: Beus, Dallas Attorney Retained Randall C Budge	David C Nye
	ATTR	JANA	Plaintiff: Beus, Doug Attorney Retained Randall C Budge	David C Nye
5/26/2009		MARLEA	Filing: 17 - All Other Cases Paid by: hawley troxell ennis and hawley Receipt number: 0019758 Dated: 5/26/2009 Amount: \$58.00 (Check) For: Beus, Jerry (defendant)	David C Nye
	ATTR	BRANDY	Defendant: Beus, Jerry Attorney Retained Stephen C Smith	David C Nye
	NOAP	BRANDY	Notice Of Appearance; Stephen Smith aty for dfdt Jerry Beus	David C Nye
5/27/2009		CAMILLE	Acceptance of Service of Process; aty John Souza for plntf	David C Nye
6/3/2009		CAMILLE	Amended notice of taking Depo upon oral Examination; set for 6-25-09 @ 1pm: aty Stephen Smith for def Jerry Beus	David C Nye
		CAMILLE	Amended notice of taking Depo upon oral examination; on 6-30-09 @ 9am: aty Stephen Smith for def Jerry Beus	David C Nye
		CAMILLE	Notice of taking Depo upon Oral Examination; set for 6-26-09 @ 9am: aty Stephen Smith for Jerry Beus	David C Nye
		CAMILLE	Notice of taking Deposition upon oral examination; set for 6-25-09 @ 9am: aty Stephen Smith for Jerry Beus	David C Nye
6/4/2009		CAMILLE	Affidavit of Service - srvd on John Souza on 5-21-09	David C Nye
6/11/2009		CAMILLE	Amended Notice of taking Depo upon Oral Examination; 7-1-09 @ 9am aty Stephen Smith for Def Jerry Beus	David C Nye
		CAMILLE	Second Amended Notice of taking Depo upon Oral Examination set for 7-1-09 @ 1pm: aty Stephen Smith	David C Nye
		CAMILLE	Amended Notice of Taking Depo upon Oral Examination; set for 7-2-09 @ 9am: aty Stephen Smith	David C Nye
6/12/2009		CAMILLE	Notice of taking Depo ; set for 6-30-09 @ 9am: aty Randy Budge for plntf	David C Nye

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
6/12/2009		CAMILLE	Notice of taking Depo on Max Hemmert on 6-2-09 @ 1:30 pm : aty Randy Budge for plntf
		CAMILLE	Notice of taking Depo on John Souza on 7-3-09 @ 9 am: aty Rany Budge
6/25/2009		CAMILLE	Amended Notice of Taking Deposition ; of John Souza for 7-3-09: aty Randall Budge for plntf
7/2/2009		CAMILLE	Amended Notice of taking Depo of Max Hemmert on 7-7-09 @ 9am: aty Randall Budge for plntfs
		CAMILLE	Amended Notice of Taking Depo of John Souza on 7-8-09 @ 8am: aty Randall Budge for plntf
7/6/2009		CAMILLE	Amended Notice of Taking Depo of M&M Court Reporting Service on 7-7-09 @ 10:30 am: aty Randall Budge
7/9/2009		CAMILLE	Notice of intent to take default; aty Randall Budge for plntf
8/5/2009		CAMILLE	Second Amended Notice of Taking Depo; John souza @ 10am: aty Randall Budge for plntfs
		CAMILLE	Second Notice of Intent to take Default; aty Randall Budge
8/10/2009		CAMILLE	Defendant Jerry Beus Answer to Verified Complaint for Relief and Declaratory Judgment; aty Stephen Smith for Def Jerry Beus
8/14/2009		MARLEA	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: jones chartered Receipt number: 0030901 Dated: 8/18/2009 Amount: \$58.00 (Check) For: Souza, John C. (defendant)
	NOTC	AMYW	Notice of Appearance; Thomas Holmes, for def John Souza
	ATTR	AMYW	Defendant: Souza, John C. Attorney Retained Thomas J Holmes
8/26/2009	ORDR	AMYW	Order for Submission of Information for Scheduling Order; /s/ J Nye
9/3/2009		CAMILLE	Motion for partial summary Judgment; aty Randy Budge for plntf
		CAMILLE	Memorandum in support of Motion for Partial Summary Judgment ; aty Randall Budge for plntf
		CAMILLE	Notice of hearing; set for 10-19-09 @ 9am: aty Randall Budge for plntf
		CAMILLE	Supporting Affidavit of Randall Budge; aty Randall Budge for plntf
		CAMILLE	Certificate of service - srvd Motion for partial summary judgment, Memorandum in Suport of Motion , Supporting Affidavit , Notice of hearing; aty Randall Budge
9/4/2009	HRSC	CAMILLE	Hearing Scheduled (Motion 10/19/2009 09:00 AM)

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
9/8/2009		DCANO	Joint Statement of Information for Scheduling Order; Randall C. Budge, Attorney for Plnaintiffs.
10/5/2009		CAMILLE	Affidavit of stephen Smith in Support of Def Jerry Beus Memorandum in Opposition to plntfs Motion for partial summary judgment; aty Stephen Smith
		CAMILLE	Defendants Jerry Beus Memorandum in Opposition to Plaintiffs Motion for Partial Summary Judgment; aty Stephen Smith for def Jerry Beus
10/13/2009		CAMILLE	Plntfs Reply Memorandum in support of Motion for Partial Summary Judgment; aty Randy Budge for plntf
		CAMILLE	Certificate of Service - Plntfs Reply Memorandum in support of Motion for Partial Summary Judgment ; aty Randall Budge for plntf
		DCANO	Notice of Lease Termination: Affidavit of Service, served Jerry Beus on 10-8-09 at 3121 Wood Canyon Road, Soda Springs, Idaho.
		DCANO	Notice of Lease Termination; Served Jerry Beus on 10-8-09, Thomas J. Holmes Attorney for Lessor.
		DCANO	Notice to Quit or To Pay Rent; Served Jerry Beus on 10-8-09, Thomas J. Holmes Attorney for Lessor.
		DCANO	Affidavit of Thomas J. Holmes; filed/dated 10-12-09; Thomas J. Holmes, Atty.
10/19/2009	DCHH	AMYW	Hearing result for Motion held on 10/19/2009 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Less than 100 pages.
11/23/2009	DPWO	CAMILLE	Decision on Motion for Partial Summary Judgment; Court GRANTS Motion for Partial Summary Judgment: J Nye 11-23-09
12/8/2009		CAMILLE	Motion for Judgment and Rule 54b certificate; aty Randy Budge for plntf
		CAMILLE	Motion for Order awarding attorneys fees and costs; aty Randy Budge for plntf
		CAMILLE	Affidavit of Randall Budge in support of fees and costs; aty Randy Budge for plntf
		CAMILLE	Memorandum of Fees and Costs; aty Randy Budge for plntf
12/28/2009		CAMILLE	Memorandum in support of Defs Motion to Disallow fees and Costs; aty Stephen Smith for def Jerry Beus
12/29/2009		CAMILLE	Defs Motion to Disallow Fees and Costs; aty Stephen Smith

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
1/4/2010		CAMILLE	Supplemental Memorandum in Support of Defs Motion to Disallow plntfs Request for Costs and Fees; aty Stephen Smith for Def/Cross Claimant Jerry Beus
1/5/2010	MEOR	AMYW	Minute Entry and Order; counsel appeared for motion for attorney fees and costs, court took matter under advisement and will issue a decision within 30 days; /s/ J Nye, 1-5-10
1/8/2010		CAMILLE	Motion to Aprove or disapprove sale and if approved, to declare Jerry Beus right of first refusal to have lapsed; aty Tom Holmes
		CAMILLE	Affidavit of Thomas Holmes; aty Tom Holmes
		CAMILLE	Notice of hearing; set for 1-25-2010 @ 10am: aty Tom Holmes
	HRSC	CAMILLE	Hearing Scheduled (Motion 01/25/2010 10:00 AM)
1/15/2010		CAMILLE	Response to Motion to Approve or Disapprove Sale and if Approved, to declare Jerry Beus Rights of First Refusal to Have lapsed: aty Stephen Smith for def/crossclaimant Jerry Beus
	AFFD	DCANO	Affidavit of Nichole C. Trammel in Support of Defendant's Response to Motion to Approve or Disapprove Sale and, if Approved, To Declare Jerry Beus' Right of First Refusal to Have Lapsed.
1/19/2010		CAMILLE	Notice of hearing; set for motion to approve sale, on 1-25-2010 @ 10am: aty Randall Budge for plntf
		CAMILLE	Motion to approve Sale, Confirm Disposition of Proceeds and Obligation of Jerry Beus: aty Randall Budge for plntf
1/20/2010		CAMILLE	Plntfs Memorandum in support of Motin to Approve sale, confirm disposition of Proceeds and obligations of Jerry Beus; aty Randall Budge for plntf
1/21/2010		CAMILLE	Affidavit of Randall Budge; aty Randall Budge
		CAMILLE	Affidavit of Lisa Ayers; aty RAndall Budge for plntf
1/25/2010	DCHH	AMYW	Hearing result for Motion held on 01/25/2010 10:00 AM: District Court Hearing Held Court Reporter: Waived Number of Transcript Pages for this hearing estimated: Less than 100 pages.
1/27/2010		CAMILLE	Order Approving Sale; J Nye 1-27-2010
	DPWO	CAMILLE	Judgment and Rule (54)b Certificate; J Nye 1-25-2010 (plntfs may hereafter seek amendment of this Judgment to request additioanl attys fees and costs incurred relating to theis Judgment and the collecting of any and all amounts due:

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
2/1/2010		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Hawley Troxell Ennis Receipt number: 0004027 Dated: 2/3/2010 Amount: \$101.00 (Check) For: Beus, Jerry (defendant)
	APSC	DCANO	Appealed To The Supreme Court
	NOTC	DCANO	NOTICE OF APPEAL BY JERRY BEUS; Stephen C. Smith, Atty for Jerry Beus.
	MISC	DCANO	Received \$15.00 check # 119747, \$86.00 check # 119722 and \$100.00 check 119748 for Filing Fees and Clerk's Record on 2-2-10.
2/3/2010	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL; Signed and Mailed to Supreme Court and Counsel on 2-3-10.
2/4/2010		CAMILLE	Decision on Motin for Attorney Fees; (court took the remaining matter concerning atty fees under Advisement . Court now issues its decision Denying atty fees, Plntfs Request for atty fees is Denied) J Nye 2-4-2010
	DPWO	CAMILLE	Disposition Without Trial Or Hearing
2/11/2010	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Record and Reporter's Transcript Suspend. Reason for Suspension: Suspended for Dist. Court Entry of Final Judgment.
	MISC	DCANO	IDAHO SUPREME COURT; Order Suspending Appeal; Remanded to District Court and proceedings in this appeal shall be suspended to allow for the entry of a judgment.
2/22/2010		CAMILLE	Motion for Leave to Amend Complaint; aty Randy Budge for plntf
		CAMILLE	Plaintiffs Brief in Support of Motion for Leave to Amend Complaint; aty Randy Budge for plntfs
	HRSC	DCANO	Hearing Scheduled (Motion 03/08/2010 10:00 AM) Motion for Leave to Amend Complaint.
3/3/2010	STIP	AMYW	Stipulation - parties are agreeable to Plaintiff's Motion for Leave to Amend Complaint
3/4/2010	ORDR	AMYW	Order Granting Leave of Court to Amend Plaintiff's Complaint; Plaintiff's Motion for Leave to Amend Complaint and add DBL Company, Inc. as an additional party for the purpose of determining the validity of the DBL Mortgage lien against the trust property is GRANTED, plaintiff may file and serve its amended complaint; /s/ J Nye, 3-4-10
3/8/2010	MISC	DCANO	IDAHO SUPREME COURT; Notice of Appeal received in SC on 2-2-10. Docket # 37384-2010. Clerk's Record and Reporter's Transcript to be filed in SC by 5-7-10. (4-2-10 5 weeks prior).
	MISC	DCANO	IDAHO SUPREME COURT; Document filed in Sc Judgment and Rule 54(b)Cert.

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User		Judge
3/8/2010	HRVC	AMYW	Hearing result for Motion held on 03/08/2010 10:00 AM: Hearing Vacated Motion for Leave to Amend Complaint.	David C Nye
3/9/2010	AMCO	CAMILLE	Amended Complaint Filed; aty Randall Budge or plntfs	David C Nye
	SMIS	CAMILLE	Summons Issued	David C Nye
3/17/2010		CAMILLE	Affidavit of Return; srvd on DBL Company Inc. on 3-12-2010	David C Nye
3/23/2010		CAMILLE	Motion to Approve or disapprove farm lease with option to purchase; aty Tom Holmes	David C Nye
		CAMILLE	Motion for Expedited Hearing; aty Tom Holmes	David C Nye
		CAMILLE	Third Affidavit of Thomas Holmes; aty Tom Holmes	David C Nye
		CAMILLE	Fourth Affidavit of Thomas Holmes; aty Tom Holmes	David C Nye
		CAMILLE	Second Affidavit of Thomas Holmes; aty Tom Holmes	David C Nye
		CAMILLE	Notice of Hearing; set for 3-30-2010 @ 1:30 pm: aty Tom Holmes for def John Souza	David C Nye
	HRSC	CAMILLE	Hearing Scheduled (Motion 03/30/2010 01:30 PM)	David C Nye
	ORDR	AMYW	Order for Expedited Hearing; /s/ Thomas Holmes, atty for Defendant Souza	David C Nye
	MISC	DCANO	REPORTER'S TRANSCRIPT received from Stephanie Morse in Court Records on 3-23-10 for Motion for Partial Summary Judgment held 10-19-09.	David C Nye
	MISC	DCANO	Notice of Lodging; Stephanie Morse on 3-23-10.	David C Nye
3/29/2010		MEGAN	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Moffatt Thomas Barrett Receipt number: 0011634 Dated: 3/29/2010 Amount: \$58.00 (Check) For: DBL Company, Inc., an Idaho corporation (defendant)	David C Nye
	ATTR	DCANO	Defendant: DBL Company, Inc., an Idaho corporation Attorney Retained Julian E Gabiola	David C Nye
	NOAP	DCANO	Notice Of Appearance; Julian E. Gabiola, Atty for DBL Company, Inc.	David C Nye
	MOTN	DCANO	Defendant DBL Company, Inc.'s Motion to Vacate Hearing on Motion to Approve or Disapprove Farm Lease with Option to Purchase; Julian E. Gabiola, Atty for DBL Company, Inc.	David C Nye
	AFFD	DCANO	Affidavit of Julian E. Gabiola In Support of Motion to Vacate Hearing on Motion to Approve or Disapprove Farm Lease with Option to Purchase; Julian E. Gabiola, Atty for DBL Company, Inc.	David C Nye
3/30/2010	CONT	AMYW	Continued (Motion 04/05/2010 09:00 AM)	David C Nye

Dallas Beus, Doug Beus vs. John C. Souza, Jerry Beus, DBL Company, Inc., an Idaho corporation

Date	Code	User	Judge
4/2/2010	MISC	DCANO	IDAHO SUPREME COURT; Documents Filed in District Court and Supreme court received a copy of: Motion to Approve or Disapprove Farm Lease with Option to Purchase. Second Affidavit of Thomas Holmes, Third Affidavit of Thomas Holmes, Fourth Affidavit of thomas Holmes, Notice of Hearing, Motion for Expedited Hearing and Affidavit of Return.
		DCANO	Defendant DBL Company, Inc.'s Motin for Temporary Restraining Order; Julian E. Gabiola, Atty for Dfdts. DBL Company, INC.
4/13/2010		CAMILLE	Motion for Partial Summary Judgment; aty Randall Budge for plaintiffs
		CAMILLE	Memorandum in support of Motin for Partial Summary Judgment; aty Randall Budge for plaintiffs
		CAMILLE	Affidavit of Counsel; aty Randall Budge for plaintiffs
		CAMILLE	Notice of Hearing; set for (motion at 6-1-2010 @ 9am) aty Randall Budge for Plaintiffs
4/14/2010	HRSC	CAMILLE	Hearing Scheduled (Motion for Summary Judgment 06/01/2010 09:00 AM)
4/15/2010	MISC	DCANO	IDAHO SUPREME COURT; Documents Filed. Notice of Appearance; Defendant DBL Company, Inc.'s Motion to Vacate Hearing on Motion to Approve or Disapprove Farm Lease with Option to Purchase; Affidavit in Support.
		CAMILLE	Defendants DBL company , Inc. Motion to Dismiss Amended Complaint; aty Julian Gabiola for def DBL
		CAMILLE	Defendant DBL Company m Inc's Memorandum in support of motion to dismiss amended Complaint; aty Julian Gabiola for Def DBL
		CAMILLE	Defendant DBL company Inc's Objectijon to Lakey Lease and Motion for Declaratory Relief;
4/20/2010	NOTC	DCANO	Notice of Hearing: Motion for Temporary Restraining Order for April 5th, 2010. at 9:00am.
	MEOR	DCANO	Minute Entry and Order; Regaing Motion for Temporary Restraining Order.The Court Denied DBL Copany, Inc's Motion for Temporary Restraining Order. DBL Company, Inc. can file an objection to the lease once they have reviewed it. It is further order that the money in the trust can pay the taxes on the property. The est of the rental income will need to stay in trust until the remaining issues are resolved. s/Judge David C. Nye on 4-20-10.
4/23/2010	MISC	DCANO	CLERK'S RECORD RECEIVED IN COURT RECORDS ON 4-23-10.

Randall C. Budge (ISB# 1949)
 Mark S. Shaffer (ISB# 7559)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208) 232-6101
 Fax: (208) 232-6109

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 2009 MAY -5 PM 3:08
 BY *[Signature]*
 DEPUTY CLERK

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually,)
 DOUG BEUS, individually,)
)
 Plaintiffs,)
)
 vs.)
)
 JOHN C. SOUZA, Trustee of the Lynn G.)
 Beus Trust; JERRY BEUS, individually,)
)
 Defendants.)
)

Case No. CV-09-1822-OC

**VERIFIED COMPLAINT FOR RELIEF
 AND DECLARATORY JUDGMENT**

DAVID C. WELLS

COMES NOW Plaintiffs Dallas Beus and Doug Beus, individually (hereinafter "Plaintiffs"), through counsel and for their causes of action against the above-named Defendants, John C. Souza, Trustee (hereinafter "Souza" or "Trustee") of the Lynn G. Beus Trust (hereinafter "the Trust"), and Jerry Beus, individually, allege and state as follows:

THE PARTIES

1. At all times material herein Plaintiff Dallas Beus was and is a resident of Mountain Home, Idaho, and is a remainderman beneficiary of the Trust.

S

2. At all times material herein Plaintiff Doug Beus was and is a resident of Evanston, Wyoming, and is a remainderman beneficiary of the Trust.

3. At all times material herein Defendant Souza was and is a resident of Pocatello, Bannock County, Idaho, and the successor trustee of the Trust.

4. At all times material herein Defendant Jerry Beus was and is a resident of Soda Springs, Idaho, and is a remainderman beneficiary of the Trust.

JURISDICTION AND VENUE

5. Souza, the successor trustee of the Trust, is a resident of Bannock County, Idaho. The Trust's principal place of administration is Bannock County, Idaho. On information and belief, the Trust has not been registered as provided under Idaho Code §§ 15-7-101 through 15-7-104, but could be so registered in Bannock County, Idaho. Jurisdiction and Venue for this Complaint is proper in Bannock County, Idaho as provided under Idaho Code §§ 15-7-202 and 15-8-201 through 15-8-212.

GENERAL ALLEGATIONS

6. Lynn G. Beus passed away on January 5, 1986, and was survived by his wife, Beth Beus, and his children, Defendant Jerry Beus, Plaintiff Doug Beus, and Plaintiff Dallas Beus. Beth Beus was the lifetime beneficiary under the Trust after the death of her husband until her death on June 10, 2008.

7. Defendant Jerry Beus and Plaintiffs Doug Beus and Dallas Beus are designated as "remaindermen beneficiaries," of the Trust and equally entitled to the undistributed corpus and income of the Trust upon the death of Beth Beus.

8. R. M. Whittier was appointed the personal representative of Lynn G. Beus' estate and the trustee of the Lynn G. Beus Trust by the Last Will and Testament of Lynn G. Beus ("Will"). The

Will was formally probated in Caribou County Case No. 3848M. A true and correct copy of the Will is attached hereto as Exhibit "A", and incorporated by reference.

9. The Will provided that all probate property would be poured over into the Trust. The assets of the estate held in Trust consists primarily of certain real property and appurtenant water rights and improvements commonly known as "the Ranch" consisting of approximately 2,521 acres of farming and ranching land ("Trust Property") located in Caribou County, Idaho and described as follows:

Township 8 South, Range 42 East of the Boise Meridian:

Section 25: S $\frac{1}{2}$ SW $\frac{1}{4}$;

Section 26: S $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Section 34: E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;

Section 35: N $\frac{1}{2}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$.

Township 9 South, Range 42 East of the Boise Meridian:

Section 2: Lots 2, 3, 4, 5, 6, and 7, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Section 3: Lots 1, 2, and 3, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$;

Section 10: N $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$;

Section 11: Lots 2 and 3, S $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$.

10. R. M. Whittier was acting as the personal representative of Lynn G. Beus's estate and the trustee of the Trust at the time of Lynn G. Beus's death and acted as trustee of the Trust from 1986 until his death.

11. Thereafter, R.M. Whittier's son and law partner, Monte R. Whittier, acted as successor trustee of the Trust for a period of time.

12. Thereafter, Souza has acted as successor trustee of the Trust to date.

LYNN G. BEUS TRUST ALLEGATIONS

13. The Will creates a testamentary trust (the Trust). See the sixth section of Exhibit "A".

14. The Trust, established pursuant to the Will, was further memorialized and

implemented for administration purposes by a separate document titled Trust Agreement created on or about May 14, 1987, following the death of Lynn G. Beus, by agreement executed by R. M. Whittier, Personal Representative of the Estate of Lynn G. Beus, R. M. Whittier, as Trustee, and Beth Beus, the lifetime beneficiary under the Trust. A true and correct copy of the Trust Agreement is attached hereto as Exhibit "B", and incorporated by reference.

15. The testamentary trust provisions of the Will are controlling. *See* section 6 of Exhibit "B". The Trust Agreement states that "the Trustee shall attempt to follow the desires of Lynn G. Beus as was set forth in his Last Will and Testament dated June 27, 1983." *See id.* Thus, any inconsistency between the Trust Agreement and the Will is governed and controlled by the testamentary trust provisions contained in the Will. *See id.*

16. The Trust Agreement vests the Trustee with certain powers, "in addition to those now or hereinafter conferred by statute or case law, all of which shall be exercised in a fiduciary capacity subject to any limitations stated elsewhere in this Agreement." *See* section 17 of Exhibit "B".

17. Pursuant to the Trust Agreement, and consistent with the Will, all assets of the Estate of Lynn G. Beus were held "in trust" for the benefit of his surviving spouse, Beth Beus, during the balance of her life. *See* the sixth section of Exhibit "A", and sections 1 and 24 of Exhibit "B".

18. The provisions of the Trust as described in the Will provide that "the death of my spouse, this Trust shall close and terminate and all remaining assets, including any undistributed income, if any shall be distributed as hereinafter set out." *See* subsection B(2) of the sixth section of Exhibit "A".

19. The provisions of the Trust as described in the Will provide that "[i]f my children are unable to agree upon the operation, management or division of the real property, following the death

of my wife, my Trustee is instructed to sell the same, and to divide the proceeds equally between Dallas, Jerry and Doug after all expenses, taxes and liens of any kind and nature against the Trust property is paid." See the eighth section of Will, Exhibit "A". Beth Beus passed away on June 10, 2008 at which time her interests in the Trust terminated.

20. Since the death of Beth Beus on June 10, 2008 the residual beneficiaries (Defendant Jerry Beus, Plaintiff Douglas Beus, and Plaintiff Dallas Beus) have been unable to agree upon the continued operation or division of the real property by reason of which all assets of the Trust are to be sold, the proceeds from the sale divided and distributed equally to the residual beneficiaries, and the Trust terminated. See the eighth section of Exhibit "A" and section 13 of Exhibit "B".

TRUST LEASES TO JERRY BEUS ALLEGATIONS

21. The Trust Property has been leased, since the death of Lynn G. Beus, to Defendant Jerry Beus pursuant to various farm lease agreements.

22. R. M. Whittier, as personal representative of the estate of Lynn G. Beus, entered into the first farm lease with Defendant Jerry Beus on March 26, 1986 (the "1986 Farm Lease") for a total annual rent of \$23,900.00. The term of the 1986 Farm Lease ran from March 1, 1986 through December 31, 1987, and was thereafter amended by R. M. Whittier and Defendant Jerry Beus to run through December 31, 1993. The 1986 Farm Lease was recorded at the request of Defendant Jerry Beus with the Caribou County Recorder's office on February 13, 1997 as Instrument No. 153677, a true and correct copy of which is attached hereto as Exhibit "C", and incorporated by reference.

23. Monte R. Whittier, as acting successor trustee of the Trust, entered into an Addendum Farm Lease with Defendant Jerry Beus on April 6, 1994 (the "1994 Addendum Farm Lease"). The 1994 Addendum Farm Lease modified the terms of the 1986 Farm Lease by increasing the annual

rent to \$25,500.00 and extending the lease to run from March 1, 1994 through March 1, 2001. The 1994 Addendum Farm Lease was recorded, at the request of Defendant Jerry Beus, with the Caribou County Recorder's office on February 13, 1997 as Instrument No. 153678, a true and correct copy of which is attached hereto as Exhibit "D", and incorporated by reference.

24. Souza, as Trustee, entered into a new farm lease for the Trust Property with Defendant Jerry Beus on January 1, 2007 (the "2007 Farm Lease") for a term of January 1, 2007 through December 31, 2013, with the annual rent reduced to \$12,000.00. The 2007 Farm Lease expressly provided that "this lease is subject to the terms of the Last Will and Testament left by Lynn Beus and subject to the terms of the Trust established by Lynn Beus for and on behalf of his wife, Beth Beus." Beth Beus passed away on June 10, 2008 at which time her interests in the Trust terminated. *See* subsection B(2) of the sixth section of Exhibit "A", and sections 1 and 24 of Exhibit "B". The 2007 Farm Lease also expressly provided that "the provisions of this lease shall be binding upon the heirs, successors, administrators, and assigns of the parties hereto," which includes Defendant Jerry Beus as a remainderman beneficiary. Additionally, the 2007 Farm Lease added, for the first time, a term stating that "the Lessee shall be compensated for any and all improvements he makes to said leased premises . . . at the time said improvements are made and completed." The remainder of the 2007 Farm Lease follows the language of the 1986 Farm Lease almost verbatim, with the exception of the 2007 Farm Lease including conflicting statements that the Lessee agrees to pay "[t]he taxes on the real property of the trust," while also stating that "[t]he Lessor shall pay all taxes on the real estate which is owned by the Estate or Trust." Notwithstanding the conflicting language, Lessee Jerry Beus has continued to pay real property taxes consistent with all previous leases. A true and correct copy of the 2007 Farm Lease, which was not recorded, is attached hereto

5

as Exhibit "E", and incorporated by reference.

JERRY BEUS TRUST PROPERTY COMPENSATION ALLEGATIONS

25. The 1986 Farm Lease and the 2007 Farm Lease expressly obligate Defendant Jerry Beus to: "[M]aintain the irrigation pumps, mainlines, and sprinkler heads and any irrigation equipment as necessarily used for the irrigation of the farm. . . . [F]urnish all fertilizer, spray chemicals and chemicals that might be needed for the operation of the farm in a good and husband-like manner. . . . [S]hall continue to remove rocks which might interfere with the orderly farming operation at his cost and expense. . . . [S]hall maintain the liability and property and fire insurance policy covering the farming operation and the buildings and other property in his possession. . . . [T]hat the property will be protected and will remain in as good a condition as it is now with reasonable wear and tear excepted. . . . [S]hall, at his own proper costs and expense, maintain said fences and be responsible for all repairs thereto during the term of the lease. . . . [S]hall be solely responsible for any and all loss or damage which may be occasioned to Lessee or any other party by virtue by escape of Lessee's stock from the leased premises. . . . [S]hall keep the leased premises free from noxious and offensive weeds and agrees to spray and eradicate the same whenever necessary, all in accordance with Caribou County Weed Control Regulations. . . . [S]hall, at [his] expense, maintain public liability insurance." *See Exhibits "C" and "E".*

26. Pursuant to the 1986 and 2007 Lease Agreements, the Trust has no obligation to pay or to reimburse Defendant Jerry Beus for any operating expenses or his personal operating loans as Lessee. *See Exhibits "C" and "E".*

27. Neither the 1986 Farm Lease nor the 1994 Addendum to Farm Lease impose upon the Trust any obligation to reimburse Defendant Jerry Beus for improvements. Only the 2007 Farm

Lease obligates the Trustee to reimburse the Lessee Defendant Jerry Beus for improvements. *See* Exhibits "C", "D", and "E".

28. Defendant Jerry Beus has not made or documented any claim against the Trust seeking reimbursement for improvements to the Trust Property pursuant to the 2007 Lease Agreement or any prior lease.

JERRY BEUS NOTES AND MORTGAGES ALLEGATIONS

29. Defendant Jerry Beus signed a Promissory Note, dated June 7, 2002, in favor of Ireland Bank, to obtain a personal loan in the amount of \$372,740.00, a true and correct copy of which is attached hereto as Exhibit "F", and incorporated by reference. The purpose of the loan was to pay off past operating lines of credit, according to letters from Ireland Bank dated September 24, 2008 and October 14, 2008, true and correct copies of which are attached hereto as Exhibit "G", and incorporated by reference. The Promissory Note was secured by a Real Estate Mortgage signed by Souza as Trustee dated June 7, 2002 and recorded in the Caribou County Recorder's office as Instrument No. 166205 ("Mortgage 166205"), thereby pledging the Trust Property as security for repayment of Defendant Jerry Beus's personal \$372,740.00 Promissory Note. A true and correct copy of Mortgage 166205 is attached hereto as Exhibit "H", and incorporated by reference. The balance owing by Defendant Jerry Beus on said Ireland Bank Mortgage 166205 in the amount of \$332,141.66 was paid off by a new loan secured by Jerry Beus with DBL Company Inc. ("DBL Company"), which was also secured by a mortgage against the Trust Property. *See* Exhibits "G" and "L".

30. Defendant Jerry Beus signed a second Promissory Note, also dated June 7, 2002, in favor of Ireland Bank, to obtain a personal loan in the amount of \$235,000.00, a true and correct

copy of which is attached hereto as Exhibit "I", and incorporated by reference. The purpose of the loan was cross collateralization of a new operating line of credit. *See* Exhibit "G". The Promissory Note was secured by a Real Estate Mortgage signed by Souza as Trustee dated June 7, 2002 and recorded in the Caribou County Recorder's office as Instrument No. 166206 ("Mortgage 166206"), thereby pledging the Trust Property as security. A true and correct copy of Mortgage 166206 is attached hereto as Exhibit "J", and incorporated by reference. The balance owing by Defendant Jerry Beus on said Ireland Bank Promissory Note was paid off by Defendant Jerry Beus. *See* Exhibit "G".

31. A Promissory Note dated May 2, 2007, in the amount of \$427,500.00, was executed by Souza, as Trustee, in favor of DBL Company, a true and correct copy of which is attached hereto as Exhibit "K", and incorporated by reference. Said Promissory Note refinanced the unpaid balance Defendant Jerry Beus owed Ireland Bank, as indicated by the Settlement Statement entered into by Souza, as Trustee, and Caribou Title, dated May 3, 2007, a true and correct copy of which is attached hereto as Exhibit "L", and incorporated by reference. Said DBL Company Promissory Note was secured by a mortgage against the Trust Property dated May 2, 2007, recorded in the Caribou County Recorder's office as Instrument No. 178119 ("Mortgage 178119"), a true and correct copy of which is attached hereto as Exhibit "M", and incorporated by reference. Of the \$427,500.00 loan proceeds, \$332,141.66 went to Ireland Bank to pay off Defendant Jerry Beus's personal past operating lines of credit with the balance providing a new operating line of credit for Defendant Jerry Beus. *See* Exhibits "G" and "L". From said loan proceeds Defendant Jerry Beus was also paid a cash amount of \$18,153.84 pursuant to Trustee Souza's Instruction Letter, a true and correct copy of which is attached hereto as Exhibit "N", and incorporated by reference.

32. The purpose of said Promissory Note in favor of DBL Company was solely to benefit

Defendant Jerry Beus by refinancing his personal loans from Ireland Bank and providing additional monies. *See* Exhibit "G".

33. The current amount due on the Promissory Note in favor of DBL Company is in excess of \$438,376.27, with interest accruing. A true and correct copy of the current Caribou Land Title Escrow History Report is attached hereto as Exhibit "O", and incorporated by reference.

34. Defendant Jerry Beus maintains that the proceeds he received from the Promissory Note in favor of DBL Company were used to enhance the value of the Trust Property and claims that the Trust is now obligated to repay his personal loans.

35. Defendant Jerry Beus received the benefit of all proceeds from the DBL Company Promissory Note used for personal operating expenses, which operating expenses were the express obligations of Defendant Jerry Beus as Lessee of the Trust Property, and not legal obligations of the Trust. *See* Exhibits "C" and "E".

36. At the time the above described Ireland Bank and DBL Company promissory notes were signed by Defendant Jerry Beus, there existed no prior loans or mortgages of Lynn G. Beus or the Trust against the Trust Property.

37. Defendant Jerry Beus recently asserted for the first time subsequent to the death of Beth Beus that the Promissory Note in favor of DBL Company is now the equal obligation of the Trust and all Trust beneficiaries, even though such claim is contrary to all lease agreements and he has never previously made such a claim.

38. The Trust Agreement mandates that "[n]either the principal or the income of the trust estate herein created shall be liable for the debts of the beneficiary hereof." *See* Section 8 of Exhibit "B".

39. The Trust Agreement mandates that “[t]he interests of any beneficiary in the corpus or income of this trust . . . shall not . . . be voluntarily or involuntarily alienated or encumbered by any such beneficiary.” See Section 15 of Exhibit “B”.

40. The entire amount due on the Promissory Note in favor of DBL Company is the sole obligation of Defendant Jerry Beus, because the Promissory Note in favor of DBL Company was executed to pay off past operating lines of credit owed solely by Defendant Jerry Beus, and Mortgage 178119 was executed for cross collateralization of a new operating line of credit that was owed solely by Defendant Jerry Beus. See Exhibits “G” and “L”.

41. As a matter of law, the Promissory Note in favor of DBL Company is the sole liability of Defendant Jerry Beus, not an expense, tax, lien of any kind or nature against the Trust Property, nor the legal responsibility of the Trust or the other residual beneficiaries, Plaintiffs Dallas Beus and Doug Beus.

FIRST CAUSE OF ACTION
AGAINST TRUSTEE
(For Removal of Trustee and Damages for Breach of Fiduciary Duty)

42. The allegations in paragraphs 1 through 41 are incorporated by reference and made a part hereof.

43. Pursuant to Idaho Code §§ 68-104 through 68-106, 15-7-101 through 15-7-308, 15-8-201 through 15-8-212, and sections 17, 18, and 19 of the Trust Agreement, Plaintiffs bring a cause of action seeking an Order from the Court against the Trustee for breach of fiduciary duty.

44. A fiduciary relationship exists between Souza, as Trustee, and Defendant Jerry Beus, Plaintiff Dallas Beus, and Plaintiff Doug Beus, as remaindermen beneficiaries of the Trust.

45. As Trustee, Souza has the legal duty to administer the Trust expeditiously for the

benefit of the beneficiaries as provided in Idaho Code § 15-7-301.

46. As Trustee, Souza has a legal duty to manage all Trust assets as a prudent man dealing in the property of another and to account to all beneficiaries of the Trust, including the Plaintiffs, for all of the receipts, disbursements, and distributions from the Trust as provided in Idaho Code §§ 15-7-302 and 15-7-303 and sections 2 and 19 of the Trust Agreement.

47. Souza, as Trustee, has failed to provide any accounting to Plaintiffs and has failed to keep Plaintiffs reasonably informed of the Trust and its administration. Additionally, Souza, as Trustee, has failed to act in accordance with the express terms and conditions of the Will and Trust Agreement by making the required sale and distribution of Trust assets to the residual beneficiaries despite repeated demands by Plaintiffs.

48. Souza, as Trustee, last filed a tax return for the Trust assets on October 15, 2001.

49. The Trust Agreement limited the Trustee's powers by stating that: "[n]o powers of the Trustee enumerated herein or now or hereafter conferred upon Trustee generally shall be construed to enable the Grantee, or the Trustee, or any other person to purchase, exchange, or otherwise deal with or dispose of all or any part of the corpus or income of the trust for less than an adequate consideration in money or money's worth or to enable the Grantee to borrow all or any part of the corpus or income of the Trust directly or indirectly, without adequate interest or security." See section 18 of Exhibit "B".

50. The 2007 Farm Lease was entered by Souza, as Trustee, and Defendant Jerry Beus, as Lessee, for substantially reduced rent that does not reflect the fair market value of the property and for an unreasonably extended term, providing a windfall benefit to Defendant Jerry Beus while disregarding the Trustee's fiduciary duties to protect the interests of Beth Beus as lifetime beneficiary

and Plaintiffs Dallas Beus and Doug Beus as remaindermen beneficiaries.

51. As described above, Souza, as Trustee, has failed to manage all Trust assets as a prudent man dealing in the property of another by: (a) failing to give an accounting to all beneficiaries of the Trust, (b) failing to file a tax return for the Trust after 2001, (c) entering into the 2007 Farm Lease agreement for less than an adequate consideration in money or money's worth, (d) enabling Defendant Jerry Beus to borrow all or any part of the corpus or income of the Trust directly or indirectly, without adequate interest or security, and (e) for failing to administer the Trust expeditiously for the benefit of the beneficiaries.

52. As Trustee, Souza has failed and/or refused to provide full and proper fiduciary accounting of the Trust and its respective activities. Specifically, the Trustee has not provided Plaintiffs:

- a. A report of all receipts, disbursements, and distributions with respect to the Trust; and
- b. A historical and current complete statement of the Trust Property.

53. Based on the foregoing Trustee Souza has breached the Trust by failing and refusing to sell and distribute the Trust Property to the remaindermen and has otherwise breached his fiduciary duties as described above.

54. As a direct and proximate result of the Trustee's breach of fiduciary duty, Trustee Souza should be removed as Trustee of the Trust and the administration and termination of the Trust should proceed under the direction of the Court or an independent trustee appointed and supervised by the Court.

55. As a direct and proximate result of the Trustee's breaches, Plaintiffs are entitled to an

award of monetary damages, the exact nature and extent of which are not known at this time, according to proof at the time of trial.

SECOND CAUSE OF ACTION
AGAINST TRUSTEE
(For Specific Performance and Dissolution of Trust)

56. The allegations in paragraphs 1 through 55 are incorporated by reference and made a part hereof.

57. Pursuant to Idaho Code §§ 15-8-201 through 15-8-212, section 13 of the Trust Agreement, and the eighth section of the Will, Plaintiffs bring a cause of action seeking an Order from the Court directing the Trustee to perform his obligations under the Trust by selling the Trust assets, distributing the proceeds, and dissolving the Trust.

58. After the death of Beth Beus, Defendant Jerry Beus, Plaintiff Dallas Beus, and Plaintiff Doug Beus have been unable to agree upon the operation, management, or division of the Trust Property.

59. In accordance with the language of the Will and the Trust Agreement, as described above, Souza, as Trustee, is required to sell the Trust Property and distribute the proceeds equally between Defendant Jerry Beus, Plaintiff Dallas Beus, and Plaintiff Doug Beus (the remaindermen beneficiaries), after all expenses, taxes, and liens of any kind and nature against the Trust Property are paid.

60. To facilitate the listing and sale of the Trust Property, and at a cost paid for by the remaindermen, an Appraisal Report of the Trust Property was completed on November 21, 2008 by Robert R. Fellows, CGA, a true and correct copy of the cover page of which is attached hereto as Exhibit "P", and incorporated by reference.

61. The Appraisal Report estimated the market value of the Trust Property to be \$2,901,550.00 as of June 10, 2008. See Exhibit "P".

62. Plaintiffs have repeatedly demanded that Trustee Souza list and sell the Trust Property as required by the terms of the Will and Trust but he has failed and refused to do so.

63. Defendant Jerry Beus wrongfully and unlawfully asserts that the DBL Company Promissory Note should be paid from the sale proceeds and/or is the joint responsibility of Defendant Jerry Beus, Plaintiff Dallas Beus, and Plaintiff Doug Beus, and has objected to the sale of the Trust Property in a wrongful and unlawful attempt to leverage Plaintiffs to agree to pay a share of his personal Promissory Note owing to DBL Company.

64. By reason of the acts and conduct of Defendant Jerry Beus, Trustee Souza has and continues to refuse to list and sell the Trust Property, charge the DBL Company Promissory Note payoff to Defendant Jerry Beus, and distribute the net proceeds to all remaindermen.

65. By reason of the foregoing, Trustee Souza has and continues, since the death of Beth Beus on June 10, 2008, to breach his duty to sell the Trust Property, distribute the proceeds, and dissolve the Trust as expressly required by the terms of the Trust.

66. The continual delay of the Trustee to sell the Trust Property and dissolve the Trust following the death of Beth Beus has prevented the Trust Property from being timely sold to interested buyers, damaging the remaindermen beneficiaries.

67. Based on the foregoing, Plaintiffs are entitled to an Order from the Court compelling specific performance of the Trust Agreement and ordering the Trustee to list for sale and sell the Trust Property and divide the proceeds equally between Defendant Jerry Beus, Plaintiff Dallas Beus, and Plaintiff Doug Beus, after first charging to the share of Defendant Jerry Beus any and all loans,

mortgages, liens, taxes and other encumbrances against the Trust Property and thereupon dissolve the Trust.

68. Plaintiffs request an immediate order removing Souza as Trustee by reason of breach of fiduciary duty, pursuant to Idaho Code § 15-7-308, and replacing Souza with an independent trustee appointed by the Court. Plaintiffs also request that the sale of the Trust Property and distribution of the proceeds proceed under direction of the Court and alternatively by an independent Trustee appointed by the Court.

THIRD CAUSE OF ACTION
DECLARATORY JUDGEMENT AGAINST TRUSTEE AND JERRY BEUS
(That the 2007 Farm Lease is Terminated)

69. The allegations in paragraphs 1 through 68 are incorporated by reference and made a part hereof.

70. Pursuant to Idaho Code § 10-1201, Plaintiffs request a Declaratory Judgment from the Court that the 2007 Farm Lease is terminated by operation of law upon sale of the Trust property. The 2007 Farm Lease expressly provided that “this lease is subject to the terms of the Last Will and Testament left by Lynn Beus and subject to the terms of the Trust established by Lynn Beus for and on behalf of his wife, Beth Beus.” Beth Beus passed away on June 10, 2008 at which time her interests in the Trust terminated. *See* subsection B(2) of the sixth section of Exhibit “A”, and sections 1 and 24 of Exhibit “B”. The 2007 Farm Lease also expressly provided that “the provisions of this lease shall be binding upon the heirs, successors, administrators, and assigns of the parties hereto,” which includes Defendant Jerry Beus as a remainderman beneficiary. Accordingly, the 2007 Farm Lease terminates upon sale of the Trust Property to permit distribution of the proceeds to the remaindermen and termination of the Trust.

5

71. Alternatively, the 2007 Farm Lease should be terminated on the grounds that it was entered between Trustee Souza and Defendant Jerry Beus, as Lessee, for unconscionably low rent that both parties knew or should have known did not reflect the fair market value of the property and for an unreasonably extended term thereby providing a windfall benefit to Defendant Jerry Beus and an unconscionable penalty to Plaintiffs while disregarding the Trustee's fiduciary duties to protect the interests of Beth Beus as lifetime beneficiary and Plaintiffs Dallas Beus and Doug Beus as remaindermen beneficiaries.

72. Defendant Jerry Beus has continuously since the death of Beth Beus on June 10, 2008 wrongfully and unlawfully maintained that the 2007 Farm Lease continues in effect through year 2013, disregarding the express terms of the Trust the lease was made subject to and thereby refused to the listing and sale of the Trust Property, thus deterring potential buyers and interfering with the sale of the Trust Property.

73. Based on the forgoing, the Court should enter a declaratory judgment that the 2007 Farm Lease is void and/or terminates immediately upon sale of the Trust property.

FOURTH CAUSE OF ACTION
DECLARATORY JUDGEMENT AGAINST TRUSTEE AND JERRY BEUS
(That Jerry Beus is not entitled to reimbursement for improvements)

74. The allegations in paragraphs 1 through 73 are incorporated by reference and made a part hereof.

75. Pursuant to the 1986 and 2007 Lease Agreements, the Trust has no obligation to pay or to reimburse Defendant Jerry Beus for any of his loans or other financial obligations for the reason that all such operating expenses are the sole obligations of the Lessee. *See Exhibits "C" and "E".*

76. Neither the 1986 Farm Lease nor the 1994 Addendum to Farm Lease impose upon the

Trust any obligation to reimburse Defendant Jerry Beus for improvements. Only the 2007 Farm Lease obligates the Trustee to reimburse the Lessee Defendant Jerry Beus for improvements. *See* Exhibits "C", "D", and "E".

77. Defendant Jerry Beus has not made or documented any claim for improvements to the Trust Property pursuant to the 2007 Lease Agreement.

78. Based on the forgoing the Court should enter a declaratory judgment that Defendant Jerry Beus is not entitled to the reimbursement of any improvements to the Trust Property incurred prior to the 2007 Farm Lease; and, further should make a determination of any obligation the Trust may have to reimburse Defendant Jerry Beus for any improvements to the Trust Property incurred after the effective date of the 2007 Farm Lease.

**FIFTH CAUSE OF ACTION
DECLARATORY JUDGEMENT AGAINST TRUSTEE AND JERRY BEUS
(That the DBL Company loan is the sole obligation of Defendant Jerry Beus)**

79. The allegations in paragraphs 1 through 78 are incorporated by reference and made a part hereof.

80. Pursuant to Idaho Code § 10-1201, Plaintiffs request a declaratory judgment from the Court that the loan with DBL Company is solely the responsibility of Defendant Jerry Beus and should be repaid from his share of the proceeds from the sale of the Trust Property.

REQUEST FOR ATTORNEY FEES AND COSTS

Plaintiffs hereby request an award of attorney fees and costs against Defendant Souza and Defendant Jerry Beus pursuant to Sections 12-120 and 12-121, Idaho Code, and pursuant to the terms of the Trust Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment from the Court against Trustee Souza and against Defendant Jerry Beus as follows:

- A. That Trustee Souza breached his fiduciary duties as Trustee of the Trust;
- B. That Trustee Souza be removed as Trustee for breach of fiduciary duty pursuant to Idaho Code § 15-7-308;
- C. That administration and termination of the Trust and distribution of the Trust Property proceed under the direction of the Court or in the alternative by an independent trustee appointed and supervised by the Court;
- D. For an Order directing the listing and sale of all Trust assets and the distribution of the proceeds equally between Defendant Jerry Beus and Plaintiffs Dallas Beus and Doug Beus, after first deducting from the share of Defendant Jerry Beus all mortgages, liens, taxes and other encumbrances against the Trust Property, and thereafter terminating the Trust.
- E. For a Declaratory Judgment that the 2007 Farm Lease entered into between Trustee Souza and Defendant Jerry Beus terminates as a matter of law upon sale of the Trust Property pursuant to the terms of the Will and Trust; and, alternatively is invalid and void;
- F. For a Declaratory Judgment that Jerry Beus is not entitled to any reimbursement from the Trust for: (a) any improvements made to the Trust Property prior to 2007, or (b) any undocumented improvements after 2007;
- G. For a Declaratory Judgment that the loan with DBL Company, Inc. is the personal loan and sole legal obligation of Defendant Jerry Beus;
- H. For an Order granting the Plaintiffs damages against Defendant Souza and

Defendant Jerry Beus, the exact nature and extent of which are not known at this time, according to proof at the time of trial;

I. For an Order granting Plaintiffs their reasonable attorney fees and costs incurred herein as provided by Idaho Code §§ 12-120 and 12-121;

J. For such other and further relief as the Court deems just and proper under the circumstances.

DATED this 6th day of May, 2009.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By: _____



RANDALL C. BUDGE
Attorney for Plaintiffs

VERIFICATION

STATE OF IDAHO)
 :SS
County of Bannock)

Dallas Beus, after first being duly sworn on oath, deposes and states as follows:

That I am a remainderman beneficiary of the Lynn G. Beus Trust; that I have read the contents of the foregoing Complaint; that I have personal knowledge of the facts alleged in the forgoing Complaint; and the facts therein stated are true to the best of my knowledge and belief.

Dallas Beus
DALLAS BEUS

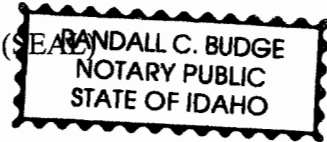
SUBSCRIBED AND SWORN TO before me this 6th day of MAY, 2009.

Randall C. Budge

NOTARY PUBLIC FOR IDAHO

Residing at: Pocatello, ID.

My Commission expires: 10/11/2012



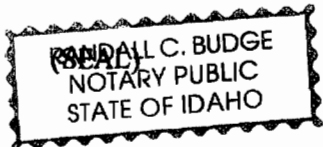
STATE OF IDAHO)
 :SS
County of Bannock)

Doug Beus, after first being duly sworn on oath, deposes and states as follows:

That I am a remainderman beneficiary of the Lynn G. Beus Trust; that I have read the contents of the foregoing Complaint; that I have personal knowledge of the facts alleged in the forgoing Complaint; and the facts therein stated are true to the best of my knowledge and belief.

Douglas J. Beus
DOUG BEUS

SUBSCRIBED AND SWORN TO before me this 6th day of MAY, 2009.



Randall C. Budge

NOTARY PUBLIC FOR IDAHO

Residing at: *Footstall, Id.*

My Commission expires: *10/11/2012*

Last Will and Testament

OF

LYNN G. BEUS

KNOW ALL MEN BY THESE PRESENTS:

I, LYNN G. BEUS, a resident of Soda Springs, Caribou County, Idaho, being of sound and disposing mind and memory and free from all menace, fraud, duress, undue influence or restraint whatsoever, do hereby make, publish and declare this to be my Last Will and Testament, in the manner and form following:

FIRST: Prior Wills. I hereby expressly revoke all prior Wills or Codicils heretofore made by me.

SECOND: Marriage and Family. I declare that I am married to Beth Beus, and I have three living children, namely; Jerry Beus, Dallas Beus, and Doug Beus, and that my daughter, Marcia Manda, has predeceased me and has left two children, Carrie Ann Taylor and Stacey Lynn Taylor, both minors.

In as much as my grand-daughters, Carrie Ann Taylor and Stacey Lynn Taylor, will receive substantial benefits through the estate of my daughter, Marcia Manda, equalling or exceeding their needs, it is my intention that they shall not be heirs to this, my Last Will and Testament, that they are to receive moneys which will be set aside for them during my lifetime. Carrie Ann Taylor and Stacey Lynn Taylor shall receive nothing through my estate in order to avoid any chance of legal action against any representative of my estate.

This is to further state that my beloved wife, Beth Beus, has two children by a prior marriage, namely; Karen Schrand and LaNae Call. It is my understanding that her said children will be taken care of by my wife through her will.

THIRD: Appointment of Fiduciaries. I appoint R. M.

Whittier to be the Personal Representative of my will. In the event that my Personal Representative is unwilling or unable to act as Personal Representative, then I appoint my beloved son, Dallas Beus, to be Personal Representative of my will, to serve without bond. I appoint R. M. Whittier to be Trustee of all Trusts herein created.

FOURTH: Debts, Taxes and Estate Expenses. I order and direct that all my just debts, all taxes at or because of my death, all expenses of my last illness and burial, and all costs and expenses in connection with the probate and distribution of my estate be paid as soon after my death as conveniently can be done. I hereby empower my Personal Representative to settle and discharge any claim made in favor of or against my estate in the absolute discretion of my Personal Representative.

FIFTH: Division of Separate and Community Property. At the time of the making of this Will, I am the owner of approximately Twenty-Five Hundred (2500) acres of farming and ranching land, located in the S 1/2 of the SW 1/4 of Section 25; SW 1/4 of the SW 1/4; S 1/2 of the SE 1/4 of Section 26; SE 1/4; E 1/2 of the NE 1/4; and the E 1/2 of the SW 1/4 of Section 34; the W 1/2, the NE 1/4; the W 1/2 of the SE 1/4 of Section 35; Township 8 South, Range 32 E.B.M.: Section 2; tract in Section 3; tract in Section 10; tract in Section 11, in the Township 9 South, Range 42 E.B.M. in the approximate acreage of 2,521 acres. There may be other agricultural lands not herein described, but if some are discovered hereafter, then the disposition of the same is to be included as hereinafter set out.

I hereby instruct my Personal Representative to separate the assets known as the Gummersall House and the Ender's property in Soda Springs, which is hereafter bequeathed to my wife, from those assets secured by myself

individually, and by my wife and I during my life time.

SIXTH: Gift to Spouse:

A. I bequeath to my spouse, Beth Beus, all of my personal effects, clothing and automobile owned by me at the time of my death, together with the following described real property:

1. A tract 205 feet by 101 feet, which is a part of Lot 1 and 2, of Block 39, of Soda Springs, Idaho, which is used in connection with the Ender's Cafe, Bar and Hotel, together with all furnishings, fixtures, appurtenances, appliances of every nature and every kind.
2. The home and the lot together with all real property used in connection therewith, and all appurtenances the 50' X 165' tract of land in Lot 8, Block 21, of Soda Springs, Caribou County, Idaho.

B. ~~Trust in Trust for the Benefit of my Spouse~~ In the event my spouse, Beth Beus, survives me, I give, devise and bequeath all the rest, residue and remainder of my property, real, personal and mixed, and wheresoever situated, now known or hereafter discovered, whether separate or community, and as segregated and divided by my Personal Representative as between my share of the community property and the share of my spouse, to the Trustee herein named ~~in Trust~~, nevertheless for the following uses and purposes:

1. ~~It is my intention that the income of this Trust be used for the support and maintenance of my spouse and that the Trustee shall pay to Beth Beus during her lifetime, at a monthly or whatever intervals she shall request, the income from the Trust property, less the necessary Trust expenses, including a reasonable Trustee's fee.~~
2. At the death of my spouse, this Trust shall close and terminate and all remaining assets, including any undistributed income, if any shall be distributed as hereinafter set out.

SEVENTH: Farming and Ranching Operation. The farming and ranching property heretofore described is to be inventoried and leased by my Personal Representative and Trustee. These ~~lands are presently being rented by my son, Jerry Beus.~~ So

~~Long as the farming operation is~~ satisfactorily performed and in accordance with the wishes of my beloved wife, Beth Beus, ~~Jerry Beus is to have the first option to lease the property at a rate agreeable to my beloved wife, Beth Beus, and the Personal Representative and Trustee as the case may be in this matter.~~

EIGHTH: Gift to My Children. ~~Upon the passing of my wife from this life, it is my desire if at all possible that the children retain this farming and ranching land and hold it together and farm it as joint tenants, under whatever arrangements are mutually agreeable to them, without the necessity of selling or subdividing it.~~

For several years last past, Jerry Beus has been farming the land as my tenant and has been paying to me a landlords share. ~~In the event Doug or Dallas does not desire to join in and enter into the farming operation and they decide to rent or lease their land, it is my desire that Jerry have the first option to rent or lease the land at a price that Doug and Dallas would accept for such land from any third person.~~

~~If any one of my children desire to sell their interest, my remaining child or children are to be given the first option to buy the land, at a price any third party who is a bonafide purchaser for value could pay my said child or children.~~

~~If my children are unable to agree upon the operation, management or division of the land property, following the death of my wife, my trustee is instructed to sell the same, and to divide the proceeds equally between Dallas, Jerry and Doug after all expenses, taxes and liens of any kind and nature against the trust property is paid.~~

NINTH: Spendthrift Cl: . No beneficiary under any Trust created under this Will shall have the power to pledge,

assign, mortgage, sell or in any manner transfer or hypothecate any interest which such beneficiary may have or may expect to have in any income or principal; nor shall such interest of any beneficiary be liable or subject in any manner while in the possession of the Personal Representative or Trustee, respectively, for the debts, contracts, liabilities, engagements, obligations or torts of such beneficiary, save and except that with the consent of the Trustee, whoever operates the farm may jointly, with the Trustee, borrow such money as is necessary to finance the operation of the farm, providing the farming is done in a good and workmanlike manner.

TENTH: Power of Fiduciary. In the administration of my estate the Personal Representative and in the administration of the Trust, the Trustee shall have the power with respect to the property of the trust estate which each administers, or any part thereof, and under such terms and in such manner as he may deem advisable to sell, convey, exchange, convert, improve, repair, manage and control; to lease for terms within or beyond the terms of this Trust and for any purpose, including the exploration for any removal of gas, oil and other minerals; to borrow money for any trust purpose, and to encumber or hypothecate by mortgage or deed of trust funds in such property as the fiduciary may deem advisable, whether or not it is of the character permitted by law for the investment of trust funds; and with respect to securities held in trust, to vote, give proxy and pay assessments or other charges, to participate in foreclosures, reorganizations, consolidations, mergers and liquidations and transactions incident thereto, to deposit securities with a transfer title to any protective or other committee upon such terms as the fiduciary may deem advisable, and the fiduciary shall have such additional powers as may now or hereafter be conferred upon him by law as may be necessary

to enable the fiduciary to administer this Trust in accordance with the provisions of this Trust instrument.

IN WITNESS WHEREOF, I, LYNN G. BEUS, the Testator above name, have hereunto subscribed my name and sign this, my Last Will and Testament, at Pocatello, Bannock County, Idaho, on this 2 day of June, 1983.

Lynn G. Beus
LYNN G. BEUS

The foregoing instrument, consisting of six pages, including this page, was at the date hereof signed, sealed, published and declared to be by the Testator, LYNN G. BEUS, his Last Will and Testament, in the presence of us, who at his request and in his presence of no other, have subscribed our names as witnesses thereto.

Ra. G. Hoff
Address: Box 992
Springdale, Id. 83276

De. Lester
Address: 125 7th St. East
Springdale, Id. 83276

James R. [Signature] SUBSCRIBED AND SWORN to before me this 27 day of June, 1983.

(S E A L)

[Signature]
Notary Public of Idaho
at Pocatello, Idaho

TRUST AGREEMENT

THIS AGREEMENT Made this 14 day of May, 1987 by R. M. Whittier, Personal Representative of the Estate of Lynn G. Beuss, Grantor and R. M. Whittier, as Trustee, hereinafter referred to as "Trustee."

1. Trust Property: The Grantor, desiring to create a trust for the benefit of Beth Beus, for her life, with property to pass to Jerry Beus, Dallas Beus and Doug Beus, hereinafter referred to as "Remaindermen Beneficiaries" will convey to Trustee immediately after the execution of this Agreement, certain real property, as more particularly described as Exhibit A attached hereto and incorporated herein by reference, held by Grantor by delivering to Trustee, a Personal Representative's Deed and Trustee shall record said deed subject to the terms and conditions of this Agreement.

2. Duty of Trustee: Duties of the Trustee shall be to keep the books and records of the trust, to invest and reinvest the corpus and income of the trust where necessary; to otherwise perform all things necessary to be done concerning this trust, including the actual physical management, renting and/or leasing and operation of the real property composing the trust.

3. Distribution of Income: The Trustee shall have the power to distribute to or for the benefit of Beth Beus, the surviving spouse of Lynn G. Beus, the net income after payment of expenses from the operation of the trust property at monthly or whatever other intervals Beth Beus may request or as may be necessary or desirable for the support, medical care, comfortable maintenance, and general welfare of Beth Beus, taking into consideration all other income and cash resources available to Beth Beus for the purposes from all sources known to the Trustee.

4. The net income only from the property in this trust is to be used for the support of the Beneficiary, however, the Trustee is authorized, if necessary, to invade the principal or the income of the trust estate, to protect the Beneficiary against any emergency where his health or welfare is placed in jeopardy or when it is necessary to provide for the support, medical care, comfort and general welfare of the Beneficiary. Said Trustee shall make such invasions from time to time and in such amounts as said Trustee shall consider reasonable and necessary under the circumstances for the purposes stated.

5. Trust Function: R. M. Whittier, as Trustee, will act as Trustee in accordance with the laws of the State of Idaho.

6. The Trustee shall have the full power and authority to manage and control the trust estates and to sell, exchange, lease for terms extending beyond the termination of the trust, partition, grant options, rent and mortgage, pledge and assign and transfer or to otherwise dispose of all or any part thereof, upon such terms and conditions as the Trustee may see fit within or without the State of Idaho. However, the Trustee shall attempt to follow the desires of Lynn G. Beus as was set forth in his Last Will and Testament dated June 27, 1983.

7. The Trustee shall have full power to determine whether any money or other property coming into the trust concerning which there may be any doubt shall be considered as part of the principal or income of the trust estate and to apportion between such principal and income any loss or expenditure in connection with the trust estate as to said Trustee may see just and equitable.

TRUST AGREEMENT
Page 2
3885d

8. Neither the principal or the income of the trust estate herein created shall be liable for the debts of the beneficiary hereof, nor shall the same be subject to seizure by any creditor of the beneficiary under any writ or proceeding at law or in equity, and beneficiary shall not have any power to sell, assign, transfer or encumber in any manner, nor to anticipate nor dispose of his or her interest in the trust estate or the income produced thereby.

9. The situs of this trust is the State of Idaho and all of the terms and provisions of the trust instrument are to be interpreted under the laws of the State of Idaho.

10. The Trustee hereunder is entitled to be paid all of her expenses and to receive reasonable compensation for the services rendered. Said fees and expenses to be paid first from income and then from corpus if the income is insufficient to pay said fees and expenses.

11. It is directed that the Trustee shall defend the validity and the operation of this trust with every means at his disposal.

12. The Trustee shall have the absolute discretion as to whether the corpus of the estate be distributed in kind or in cash following the sale of the corpus of the estate if the beneficiary cannot agree as to the division of said property. The corpus trustee shall be given absolute and unconditional authority and discretion to determine what best and most advantageous means of distribution of the property shall be accomplished.

13. Death of a Beneficiary: In the event or upon the death of the beneficiary and before complete distribution of the estate shall have been made to income beneficiaries, this trust shall accumulate to the benefit of the remainderman beneficiaries. The undistributed corpus and income thereof

TRUST AGREEMENT
Page 3
3885d

shall be distributed to the remaining beneficiaries equally. In the event any remaindermen beneficiary shall have predeceased the income beneficiaries, then their share shall pass to his heirs in such manner and at such time as the remainderman beneficiaries would have received the same had they lived, equally to their heirs per stripes, or if none, then equally, per stripes to the surviving remaindermen beneficiaries or to their decedents then living, then to the heirs at law of the other remaindermen beneficiaries as determined by the laws of descent and distribution of the State of Idaho then in force.

14. Additional Property: The Grantor, or any other person, shall have the right, at any time, to make additions to the corpus of this trust acceptable to the Trustee. All such additions shall be held, controlled and distributed by the Trustee in accordance with all the terms and conditions hereof.

15. Spendthrift Provision: The interests of any beneficiary in the corpus or income of this trust shall not be subject to assignment, alienation, pledge, attachment or claims of creditors, and shall not otherwise be voluntarily or involuntarily alienated or encumbered by any such beneficiary.

16. Income Beneficiary: The primary purpose and intent in creating this trust is to provide for the income beneficiary. The rights and interest of remaindermen are subordinate and incidental to that purpose. The provisions of this Agreement shall be literally construed by the Trustee in the interest and for the benefit of the income beneficiary.

17. Trustees Power: The Trustees are hereby vested with the following powers, in addition to those now or hereinafter conferred by statute or case law, all of which shall be exercised in a fiduciary capacity subject to any limitations stated elsewhere in this Agreement.

(a) The Trustee shall have the power to lend money or to purchase assets from the Estate of the Grantor and shall not be accountable for any loss resulting from any such transaction.

(b) The Trustee shall have the power to determine what is principal or income of the trust fund and to apportion and allocate, in their discretion, receipts and expenses as between those accounts, including, but without limiting the general application of the foregoing, the power to charge in whole or in part against principal, or to amortize out of or charge forthwith to income, as and to the extent from time to time determined by the Trustee, premiums paid on the purchase of bonds or other obligations for the payment of money, share dividends, or other extraordinary or non-cash dividends, reserves for depreciation, and other reserves or charges, and to treat as principal or as income, or partly as one and partly the other, as to her shall deem best, all realized appreciation in the value of corporate shares and bonds, securities or other property forming a part of the trust fund, resulting from the sale of or other disposition thereof, and to deduct losses thereon from the principal or income, and the decision of the Trustee with respect to all of the foregoing shall be conclusive upon all parties.

(c) The Trustee is authorized to engage in any business deemed advisable by her in her sole discretion as a general or special partner therein; to incorporate any such business and hold the shares thereof as an investment; and to employ agents to manage and operate such business without liability for the acts of any such agent; and for any loss, liability, or indebtedness of such business, if the management is selected or retained with reasonable care.

(d) The Trustee may invest and reinvest the trust assets in bonds, corporate shares, notes, mortgages, real

estate and improvements thereon, or in such other property, real or personal, as to her shall appear to be in the best interests of the trust. The Trustee shall have as wide a latitude in the selection and making of any investments or reinvestments of the corpus and income of the trust property or in borrowing or lending money for the benefit and use of the trust fund, as if she, as an individual, were the absolute owner thereof, irrespective of any statute or rule of law limiting the investment of trust funds.

(e) The Trustee may publicly or privately, and without order of any court, mortgage, create a security interest in, pledge, or sell for its fair market value any or all of the trust property and any reinvestments thereof from time to time, and may lease such property for periods beginning or ending after the termination of the trust. No purchaser, secured party, or mortgagee shall be obligated to see to the application of any purchase, loan or mortgage money.

(f) The Trustee shall have the power to make any division or distribution of income or corpus in kind or partly in kind and partly in money, and to determine the value of any property so divided or distributed.

(g) The Trustee is authorized to cause any securities or other property, real or personal, belonging to the trust to be held or registered in her name, or in the names of her nominees, or in such other form as she deems best, without disclosing the trust relationship.

(h) The Trustee is authorized to sell to the income beneficiary of this trust any of the property held in this trust upon payment by the income beneficiary to the Trustee of the then fair market value of such property. The Trustee may make loans to the income beneficiary, with or without security,

upon terms satisfactory to the Trustee, without liability for any losses that may result from such transaction.

(i) Each and every power and right granted to the Trustee may be exercised without any order of the Court and without any notice to or consent of anyone.

18. Limitation on Trustee's Powers: No powers of the Trustee enumerated herein or now or hereafter conferred upon Trustee generally shall be construed to enable the Grantee, or the Trustee, or any other person to purchase, exchange, or otherwise deal with or dispose of all or any part of the corpus or income of the trust for less than an adequate consideration in money or money's worth or to enable the Grantee to borrow all or any part of the corpus or income of the Trust directly or indirectly, without adequate interest or security. No person, other than the Trustee, shall have or exercise the power to vote or direct the voting of any shares or other securities of the trust, to control the investment of the trust either by directing investments or reinvestments or by vetoing proposed investment or reinvestments, or to reacquire or exchange any property of the trust by substituting other property of an equivalent value. No part of the corpus or income of the trust property shall be used for or applied to the payment of premiums upon policies of insurance on the life of the Grantor or to satisfy any legal obligations of the Grantor.

19. Accounting by Trustee: The Trustee shall render an annual accounting of the trust to the primary beneficiary.

20. Bond: The Trustee or successor Trustee shall not be required to give a bond or other security unless requested by any beneficiary or remainderman beneficiary of this trust.

21. Irrevocability: This trust shall be irrevocable, and the Grantor hereby expressly waives all right and power to

alter, amend, revoke or terminate the trust or any part of the terms of this Agreement in whole or in part. The Grantee hereby renounces any interest, either vested or contingent, including any reversionary interest or possibility of reverter, in the income or corpus of this trust.

22. Situs: Notwithstanding that the Grantor or the income beneficiaries may now or at any future time be domiciled elsewhere than in the State of Idaho, this Agreement shall be regarded for all purposes as an Idaho document, the validity and construction hereof shall be determined and governed in all respects by the laws of the State of Idaho; and the trust, powers, and provisions herein contained shall be administered, exercised and carried into effect according to the laws of the State of Idaho.

23. The Trustee shall have the power at any time to designate successor Trustee, and the successor Trustee shall have the same duties and powers as are assumed and conferred in this Agreement upon the Trustee, including the power in any successor to himself appoint a successor. Any appointment of a successor Trustee shall be made in writing, shall be acknowledged, and shall state the time or the event when such appointment shall take effect. A copy of the appointment shall be delivered to the Beneficiary and remainderman beneficiaries upon the failure of any Trustee to designate a successor Trustee and the failure of the successor to assume the duties of Trustee, the Beneficiary and Remaindermen beneficiaries may petition the Courts for appointment of a successor Trustee.

24. Ratification. I, Beth Beus, do place my signature hereinafter and do hereby ratify the actions taken by the Personal Representative in transferring the aforementioned property in trust with the income to be paid hereafter during my lifetime.

TRUST AGREEMENT
Page 8
3885d

IN WITNESS WHEREOF, the Grantor and the Trustee have signed, sealed and acknowledged this Agreement.

Beth Beus
BETH BEUS

R. M. Whittier
R. M. WHITTIER
GRANTOR/TRUSTEE

STATE OF IDAHO)
 : ss
County of Bannock)

On this 14 day of May, 1987, before me, a Notary Public in and for the State of Idaho, personally appeared R. M. WHITTIER, known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

My Commission Expires On:



Jacquie Whittier
NOTARY PUBLIC for Idaho
Residing at Pocatello, Idaho

FARM LEASE

THIS INDENTURE Made and entered into this 13th day of March, 1986 by and between R. M. WHITTIER, Personal Representative and nominated Trustee of the Estate of Lynn Beus, hereinafter referred to as the Lessor and JERRY BEUS, a single person of Soda Springs, Caribou County, State of Idaho, hereinafter referred to as Lessee.

WITNESSETH: That for and in consideration of the covenants, conditions and agreements hereinafter set forth and the payment of the rent hereinafter specified, the Lessor does hereby lease, demise and rent to the Lessee the following described property situated in Caribou County, Idaho, to wit:

"Approximately Twenty-Five Hundred (2500) acres of farming and ranch land, located in the S 1/4 of the SW 1/4 of Section 25; SW 1/4 of the SW 1/4; S 1/4 of the SE 1/4 of Section 26; SE 1/4; E 1/4 of the Ne 1/4; and the E 1/4 of the SW 1/4 of Section 34; the W 1/4, the NE 1/4 the W 1/4 of the SE 1/4 of Section 35; Township 8 South, Range 32 E.B.M.: Section 2; tract in Section 3; tract in Section 10; tract in Section 11, in the Township 9 South, Range 42 E.B.M. in the approximate acreage of 2,521 acres. "

TO HAVE AND TO HOLD the said premises together with the appurtenances, rights, privileges and easements thereunto belonging or appertaining, for the period from March 1, 1986 through December 31, 1987 unless this lease is sooner terminated as hereinafter provided. Further, Lessee shall surrender to the Lessor upon the termination of this lease all land in which crops were grown for the crop year when the lease is terminated to allow the Lessor to prepare said lands for crops to be planted during the year following the date of the termination of this lease.

IN CONSIDERATION OF the demising and leasing of said premises as aforesaid, the Lessee covenants, stipulates and

FARM LEASE PAGE 1

STATE OF IDAHO } ss 153677
County of Caribou }

I hereby certify that this instrument was filed at the request of Jerry Beus at 11:05 o'clock A.M. on this 13th day of Feb. 19 87 in my office and duty.

recorded in Microfilm Records
Recorder: Edie Pratt
James S. Godfrey 24.00
Ex-Officio Recorder Deputy

EXHIBIT "C"

40577

agrees to pay Lessor as rental therefor, the total sum of TWENTY-THREE THOUSAND NINE HUNDRED DOLLARS and no/100 cents (\$23,900.00) payable on November 1, 1986 and TWENTY-THREE THOUSAND NINE HUNDRED DOLLARS and no/100 cents (\$23,900.00) payable on the November 1, 1987. Each of said payments shall be made payable through the Estate of Lynn Beus or in the event the Estate is terminated and a trust is established, will be payable to the Lynn Beus Trust.

IT IS FURTHER UNDERSTOOD AND AGREED between the parties hereto as follows, to wit:

The Lessee is to maintain the irrigation pumps, mainlines, and sprinkler heads and any irrigation equipment as necessarily used for the irrigation of the farm.

The Lessee is to furnish all fertilizer, spray chemicals and chemicals that might be needed for the operation of the farm in a good and husband-like manner.

The Lessee shall continue to remove rocks which might interfere with the orderly farming operation at his cost and expense.

The Lessee shall maintain the liability and property and fire insurance policy covering the farming operation and the buildings and other property in his possession all to the end that if a catastrophe occurs that said benefits paid under the insurance policy will be able to replace any improvements, homes, outbuildings, pumps or its equivalent. Further, that the property will be protected and will remain in as good a condition as it is now with reasonable wear and tear excepted.

IT IS FURTHER UNDERSTOOD AND AGREED that the adjacent to the farm lands heretofor described, there is an old house which is unoccupied. Beth Beus is to have full control over the disposition and use of said house and it shall be her elec-

ay
e-
s,
le
r-
re
nd
as
19

th
to
16
-
1
1
se
or
se

d
id

est
-
of
ily
|
2
|
1

tion as to whether there will be any insurance for casualty, fire or theft upon said premises.

The Lessor shall maintain all irrigation ditches and do all irrigation, in accordance with good and productive irrigation practices, in Lessor's sole discretion and as Lessor sees fit.

The Lessor may pasture the unused portion of lands which are adjacent and contiguous to the farmed land for pasture of his own horses or livestock.

The Lessor shall pay all taxes on the real estate which is owned by the Estate or Trust.

The Lessee shall pay all personal property taxes on property used in connection with the farming operation.

The Lessee shall, at his own proper costs and expense, maintain said fences and be responsible for all repairs thereto during the term of the lease.

The Lessee shall be solely responsible for any and all loss or damage which may be occasioned to Lessee or any other party by virtue of escape of Lessee's stock from the leased premises.

IT IS HEREBY EXPRESSLY UNDERSTOOD AND AGREED that certain portions of the boundaries of the above-described property are subject to existing fencing agreements with adjoining landowners and the Lessee agrees to comply with the terms of the agreements.

Further, Lessee shall keep the leased premises free from noxious and offensive weeds and agrees to spray and eradicate the same whenever necessary, all in accordance with Caribou County Weed Control Regulations.

That Lessee agrees that at the termination of the lease, they will surrender possession of the leased premises to Lessor without further demand or notice. Said premises shall

FARM LEASE
PAGE 3

be in good order and condition as the same was when they were entered upon by the Lessee, loss by fire or inevitable accident or ordinary wear and tear excepted.

The Lessee shall not permit or suffer waste on said premises or any damage thereto.

The Lessee shall not assign this lease for rent, sublet or underlet the demised premises, or any part thereof, without first obtaining the previous consent in writing, of the Lessor but the Lessor agrees that he will not arbitrarily withhold consent to an assignment of this lease or renting, subletting or underletting of the demised premises by the Lessee by a responsible or reliable person or persons provided, however, any such assignment, renting, subletting or underletting by Lessee, with or without the consent of the Lessor, shall not relieve the Lessee from any of its covenants, agreements or obligations under this lease.

The Lessee has carefully inspected and examined all property included the lease including, but not limited to, the condition of the soil, productivity of the farm, condition of improvements, and conditions and adequacy of the irrigation system and the Lessee accepts the same in an "as is" basis. Any warranty as condition of any property is expressly disclaimed.

That time is of the essence with this agreement and in the event the demised premises are vacated, or default be made in the performance of any of the covenants and conditions conveyed in this lease on the part of the Lessee to be kept or performed, or if the Lessee shall file a petition in bankruptcy or be adjudicated a bankrupt or make any assignments for the benefit of creditors, or take advantage of any insolvency act, and such condition or default shall continue for a period for thirty (30) days after the deposit in the mail by Lessor of a

FARM LEASE
PAGE 4

notice from the Lessor sent by registered or certified mail, postage, pre-paid, to the Lessee at Soda Springs, Idaho or at such other address as maybe given in writing to Lessee to Lessor, demanding payment, performance or removal of any of the aforementioned conditions or compliance with any of the terms and conditions hereof, then the Lessor may, at his election, without further notice, in addition to such other remedies as Lessor may have at law or in equity, terminate this lease and the terms thereof and in such event, after such default, the Lessee shall be deemed guilty of unlawful and forcible detention of the premises. In the event of any forfeiture or termination under the provisions of this lease, either with possession resumed or without possession resumed by the Lessor, the Lessee shall not, thereby or by otherwise, be released or exonerated from liability to pay the Lessor the rent herein and hereby provided for, but in any such event of default and termination of this agreement, the entire amount of such rent for the full unexpired term of the agreement remaining unpaid shall be, at once, due and payable to the Lessor from and by the Lessee without demand, as agreed liquidated damages and compensation for such breach of default and its consequence to the Lessor. The Lessor shall be at liberty to relet the premises and in the event of such reletting, only the rental actually paid to and received by the Lessor after deducting therefrom all reasonable costs to the Lessor of such reletting, shall be credited upon the rental or to become due by the Lessee to the Lessor.

That the waiver by the Lessor of any breach by the Lessee hereunder shall not be deemed to be a waiver of any subsequent breach. Failure of the Lessor to insist upon strict performance and Lessor shall not relinquish his right to thereafter and force such performance.

FARM LEASE
PAGE 5

That in addition to the remedies hereinabove recited, the Lessor shall also have such other remedies as are afforded by law or equity in the event of any breach of any of the covenants and conditions herein contained by Lessee.

That Lessor shall have the right to enter upon the premises at any reasonable time to inspect and examine any and all parts thereof.

That this lease shall not be construed to deem to create or give rise to any partnership or employee/employer relationship between the parties.

The Lessee shall, at their expense, maintain public liability insurance insuring the Lessor and Lessee against personal injury or death and property damage claims with a reputable company, arising out the use and occupancy of the premises and from the operation conducted on said premises with the limits not less than \$50,000.00 per person or \$100,000.00 per accident.

That for and in consideration of the sums heretofore recited as rental to be paid by the Lessee to the Lessor, the Lessor does hereby grant to the Lessee an option to extend the lease for a one (1) year period at a rental price to be negotiated by the parties by Lessee giving notice to the Lessor at the office of Whittier and Souza, P.A., P.O. Box 4082, Pocatello, Idaho 83205, to the attention of R. M. Whittier at at such other place as the Lessor may designate within ninety (90) days of the expiration of the lease herein provided with the exception that if it should be determined that because of the Estate's financial condition that any part of the land should be sold, divided or set aside for any purpose,

IT IS UNDERSTOOD AND AGREED between the parties that the Lessor shall have the right to terminate said lease or to renegotiate the terms at the end of the year.

FARM LEASE
PAGE 6

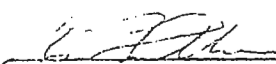
IT IS FURTHER UNDERSTOOD AND AGREED between the parties that the Lessor shall not lease the said property to any other person during the initial terms of the lease herein provided except in case of hardship or unforeseen circumstances arising which makes it impossible to continue on with the lease agreement.

IT IS UNDERSTOOD AND AGREED between the parties that this lease is subject to the terms of the Last Will and Testament left by Lynn Beus and subject to the terms of the Trust established by Lynn Beus for and on behalf of his wife, Bath Beus.

THE PARTIES HERETO AGREE that should either party default in any of the covenants or agreements contained herein that the defaulting parties shall pay to the other party all costs and expenses, including but not limited to a reasonable attorneys fee which the non-defaulting party may incur in enforcing the agreement or in obtaining the possession of the premises covered hereby or in pursuing any remedy provided hereunder by the statutes of the State of Idaho whether such remedy is pursued by filing suit or otherwise.

That the provisions of this lease shall be binding upon the heirs, successors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.



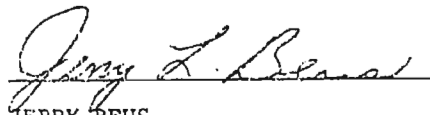
R. M. WHITTIER

Personal Representative of the

Estate of Lynn Beus as

LESSOR

FARM LEASE
PAGE 7



JERRY BEUS

LESSEE

STATE OF IDAHO

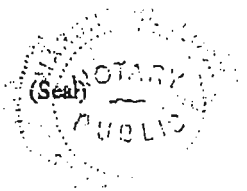
:23

County of Bannock

On this 26th day of March, 1986, before me a notary public personally appeared R.M. Whittier as Personal Representative and nominated Trustee of the Estate of Lynn Beus and Jerry Beus a single person, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Mason Blalock

Notary Public for Idaho
Residing at Pocatello, Idaho



ADDENDUM TO FARM LEASE

THIS ADDENDUM being entered into on this 6th day of April, 1994, by and between MONTE R. WHITTIER, as Successor Trustee of the Estate of Lynn Beus, hereinafter referred to as Lessor; and JERRY BEUS, a single person of the City of Soda Springs, County of Caribou, State of Idaho, hereinafter referred to Lessee, hereby agree to include this Addendum to the original Farm Lease entered into on the 26th day of March, 1986, and recite as follows:

IT IS HEREBY EXPRESSLY AGREED AND UNDERSTOOD that the certain Farm Lease entered into between R. M. Whittier as Personal Representative and Trustee of the Estate of Lynn Beus as Lessor and Jerry Beus as Lessee, on the 26th day of March, 1986, shall be modified to include the following provisions.

IT IS FURTHER EXPRESSLY AGREED AND UNDERSTOOD that the term of the Farm Lease heretofore identified shall be for a period of seven (7) years, and shall be inclusive from the 1st day of March, 1994 through the 1st day of March, 2001.

IT IS FURTHER EXPRESSLY AGREED AND UNDERSTOOD that the lease payments shall be made on a yearly basis, and shall be in the sum of Twenty Five Thousand Five Hundred Dollars and no/100 (\$25,500.00).

ADDENDUM TO FARM LEASE
Page 1

EXHIBIT "D"

STATE OF IDAHO } ss. 153678
County of Caribou }

I hereby certify that this instrument was filed at the request

of Jerry Beus

at 11:05 o'clock A m this 13th day of

Feb., 19 97 in my office and duty

recorded in Microfilm Records

Recorder: Eddie Izatt 9.00

J. S. Godfrey Deputy

IN WITNESS WHEREOF, the parties to this Addendum have set their hands and affixed their official seals the date and year first above written.

DATED: 4/6/94

Monte R. Whittier
MONTE R. WHITTIER, Successor
Trustee of the Estate of Lynn
Beus, and Lessor

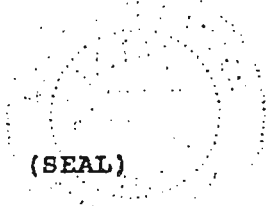
DATED: 4/6/94

Jerry L. Beus
JERRY BEUS, Lessee

STATE OF IDAHO)
) ss.
County of Bannock)

On this 6th day of April, 1994, before me, a Notary Public in and for the State of Idaho, personally appeared MONTE R. WHITTIER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date and year first above written.



(SEAL)

My Commission Expires

Mary Ann Hansen
NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello, Idaho

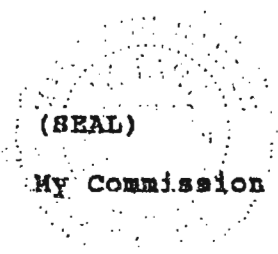
ADDENDUM TO FARM LEASE
Page 2

STATE OF IDAHO)
) ss.
County of Bannock)

On this 6th day of April, 1994, before me, a Notary Public in and for the State of Idaho, personally appeared JERRY BEUS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date and year first above written.

Mary Ann Hansen
NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello, Idaho



My Commission Expires

FARM LEASE

THIS INDENTURE made and entered into this 1st day of January, 2007, by and between JOHN C. SOUZA, Trustee of the Estate of Lynn Beus, hereinafter referred to as the Lessor; and JERRY BEUS, a single person of Soda Springs, County of Caribou, State of Idaho, hereinafter referred to as Lessee.

WITNESSETH: That for and in consideration of the covenants, conditions, and agreements hereinafter set forth and the payment of the rent hereinafter specified, the Lessor does hereby lease, demise and rent to the Lessee the following described property situated in Caribou County, Idaho, to-wit:

Approximately twenty-five hundred (2500) acres of farming and ranching land, located in the S 1/2 of the SW 1/4 of Section 25; SW 1-1/4 of the SW 1/4; S 1/2 of the SE 1/4 of Section 26; SE 1/4; E 1/2 of the NE 1/4; and the E 1/2 of the SW 1/4 of Section 34; the W 1/2, the NE 1/4, the W 1/2 of the SE 1/4 of Section 35; Township 8 South Range 32 EBM: Section 2; tract in Section 3; tract in Section 10; tract in Section 11, in the Township 9 South, Range 42 EBM, in the approximate acreage of 2,521 acres.

TO HAVE AND TO HOLD the said premises together with the appurtenances, rights, privileges, easements thereunto belonging or appertaining, for the period from January 1, 2007 through Dec 31 1, 2014, ^{of 11 9 2015} unless this lease is sooner terminated as hereinafter provided. Further, Lessee shall surrender to the Lessor upon the termination of this lease all land in which crops were grown for the crop year when the lease is terminated to allow the Lessor to prepare said lands for crops to be planted during the year following the date of the termination of this lease.

IN CONSIDERATION OF the demising and leasing of said premises as aforesaid, the Lessee covenants, stipulates and agrees to pay:

1. The sum of (\$12,000.00), to be paid to Beth Beus.
2. The taxes on the real property of the trust.

3. Any and all payments that may be done in the real property annually.

IT IS UNDERSTOOD AND AGREED that the Lessee shall be compensated for any and all improvements he makes to said leased premises. Said compensation shall be paid to the Lessee herein at the time said improvements are made and completed, as set forth in the terms of the trust.

IT IS FURTHER UNDERSTOOD AND AGREED between the parties heretofore as follows, to-wit:

The Lessee is to maintain the irrigation pumps, mainlines, and sprinkler heads and any irrigation equipment as necessarily used for the irrigation of the farm.

The Lessee is to furnish all fertilizer, spray chemicals and chemicals that might be needed for the operation of the farm in a good and husband-like manner.

The Lessee shall continue to remove rocks which might interfere with the orderly farming operation at his cost and expense.

The Lessee shall maintain the liability and property and fire insurance policy covering the farming operation and the buildings and other property in his possession all to the end that if a catastrophe occurs that said benefits paid under the insurance policy will be able to replace any improvements, homes, outbuildings, pumps or its equivalent. Further, that the property will be protected and will remain in as good a condition as it is now with reasonable wear and tear excepted.

IT IS FURTHER UNDERSTOOD AND AGREED that adjacent to the farm lands heretofore described, there is an old house which is unoccupied. Beth Beus is to have full control over the disposition and use of said house and it shall be her election as to whether there will be any insurance for casualty, fire, or theft upon said premises.

The Lessor shall maintain all irrigation ditches and do all irrigation, in accordance with good and productive irrigation practices. In Lessor's sole discretion and as Lessor sees fit.

The Lessor may pasture the unused portion of lands which are adjacent and contiguous to the farmed land for pasture of his own horses or livestock.

The Lessor shall pay all taxes on the real estate which is owned by the Estate or Trust.

The Lessee shall, at his own proper costs and expense, maintain said fences and be responsible for all repairs thereto during the term of the lease.

The Lessee shall be solely responsible for any and all loss or damage which may be occasioned to Lessee or any other party by virtue of escape of Lessee's stock from the leased premises.

IT IS HEREBY EXPRESSLY UNDERSTOOD AND AGREED that certain portions of the boundaries of the above-described property are subject to existing fencing agreements with adjoining landowners and the Lessee agrees to comply with the terms of the agreements.

Further, Lessee shall keep the leased premises free from noxious and offensive weeds and agrees to spray and eradicate the same whenever necessary, all in accordance with Caribou County Weed Control Regulations.

That Lessee agrees that at the termination of the lease, they will surrender possession of the leased premises to Lessor without further demand or notice. Said premises shall be in good order and condition as the same was when they were entered upon by the Lessee, loss by fire or inevitable accident or ordinary wear and tear excepted.

The Lessee shall not permit or suffer waste on said premises or any damage thereto.

The Lessee shall not assign this lease for rent, sublet or underlet the demised premises, or any part thereof, without first obtaining the previous consent in writing, of the Lessor but the

Lessor agrees that he will not arbitrarily withhold consent to an assignment of this lease or renting, subletting or under letting of the demised premises by the Lessee by a reasonable or reliable person or persons provided, however, any such assignment, renting, subletting or under letting by Lessee, with or without the consent of the Lessor, shall not relieve the Lessee from any of its covenants, agreements, or obligations under this lease.

The Lessee has carefully inspected and examined all property included on the lease, including, but not limited to, the condition of the soil, productivity of the farm, condition of improvements, and conditions and adequacy of the irrigation system and the Lessee accepts the same in an "as is" basis. Any warranty as condition of any property is expressly disclaimed.

That time is of the essence with this agreement and in the event the demised premises are vacated, or default be made in the performance of any of the covenants and conditions conveyed in this lease on the part of the Lessee to be kept or performed, or if the Lessee shall file a petition in bankruptcy or be adjudicated as bankrupt or make any assignments for the benefit of creditors, or take advantage of any insolvency act, and such condition or default shall continue for a period for thirty (30) days after the deposit in the mail by Lessor of a notice from the Lessor sent by registered or certified mail, postage prepaid, to the Lessee at Soda Springs, Idaho or at such other address as maybe given in writing to Lessee to Lessor, demanding payment, performance or removal of any of the aforementioned conditions or compliance with any of the terms and conditions hereof, then the Lessor may, at his election, without further notice, in addition to such other remedies as Lessor may have at law or in equity, terminate this lease and the terms thereof and in such event, after such default, the Lessee shall be deemed guilty of unlawful and forcible detention of the premises. In the event of any forfeiture or termination under the provisions of this lease, either with possession resumed or without possession resumed by the Lessor, the

Lessee shall not , thereby or by otherwise, be released or exonerated from liability to pay the Lessor the rent herein and hereby provided for, but in any such event of default and termination of this agreement, the entire amount of such rent for the full unexpired term of the agreement remaining unpaid, shall be, at once, due and payable to the Lessor from and by the Lessee without demand, as agreed liquidated damages and compensation for such breach of default and its consequence to the Lessor. The Lessor shall be at liberty to relet the premises and in the event of such reletting, only the rental actually paid to and received by the Lessor after deducting therefrom all reasonable costs to the Lessor of such reletting, shall be credited upon the rental or to become due by the Lessee to the Lessor.

That the waiver by the Lessor of any breach by the Lessee hereunder shall not be deemed to be a waiver of any subsequent breach. Failure of the Lessor to insist upon strict performance and Lessor shall not relinquish his right to thereafter and force such performance.

That in addition to the remedies hereinabove recited, the Lessor shall also have such other remedies as are afforded by law or equity in the event of any breach of any of the covenants and conditions herein contained by Lessee.

That Lessor shall have the right to enter upon the premises at any reasonable time to inspect and examine any and all parts thereof.

That this lease shall not be construed to deem to create or give rise to any partnership or employee/employer relationship between the parties.

The Lessee shall, at their expense, maintain public liability insurance insuring the Lessor and Lessee against personal injury or death and property damage claims with a reputable company, arising out of the use and occupancy of the premises and from the operation conducted on said premises with the limits not less than \$50,000.00 per person or \$100,000.00 per accident.

That for and in consideration of the sums heretofore recited as rental to be paid by the Lessee to the Lessor, the Lessor does hereby grant to the Lessee an option to extend the lease for a one (1) year period at a rental price to be negotiated by the parties by Lessee giving notice to the Lessor at P. O. Box 1361, Pocatello, Idaho 83404, to the attention of John C. Souza, or at such other place as the Lessee may designate within ninety (90) days of the expiration of the lease herein provided with the exception that if it should be determined that because of the Estates financial condition that any part of the land should be sold, divided or set aside for any purpose.

IT IS UNDERSTOOD AND AGREED between the parties that the Lessor shall have the right to terminate said lease or to renegotiate the terms at the end of the year.

IT IS FURTHER UNDERSTOOD AND AGREED between the parties that the Lessor shall not lease the said property to any other person during the initial terms of the lease herein provided except in case of hardship or unforeseen circumstances arising which makes it impossible to continue on with the lease agreement.

IT IS UNDERSTOOD AND AGREED between the parties that this lease is subject to the terms of the Last Will and Testament left by Lynn Beus and subject to the terms of the Trust established by Lynn Beus for and on behalf of his wife, Beth Beus.

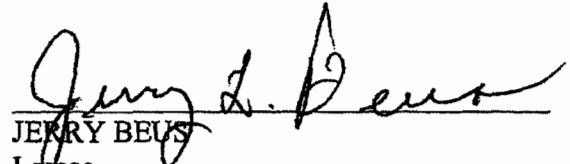
THE PARTIES HERETO AGREE that should either party default in any of the covenants or agreements contained herein that the defaulting parties shall pay to the other party all costs and expenses, including but not limited to a reasonable attorneys fee which the non-defaulting party may incur in enforcing the agreement or in obtaining the possession of the premises covered hereby or in pursuing any remedy provided hereunder by the statute of the State of Idaho whether such remedy is pursued by filing suit or otherwise.

That the provisions of this lease shall be binding upon the heirs, successors,
administrators, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day
and year first above written.



JOHN C. SOUZA
Trustee
Lessor



JERRY BEUS
Lessee

LOAN NUMBER	NAME	ACCT. NUMBER	NOTE D.	INITIALS
60 150 02741	JERRY BEUS	519-56-3596	06/07/02	TM
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$372,740.00	Wall Street Journal Prime plus 3.000%	7.750%	12/01/08	Agricultural

Creditor Use Only

PROMISSORY NOTE

(Agricultural - Single Advance - Variable Rate)

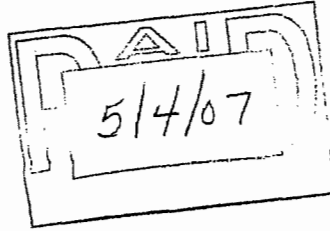
DATE AND PARTIES. The date of this Promissory Note (Note) is June 7, 2002. The parties and their addresses are:

LENDER:

IRELAND BANK
98 W. 2nd S.
PO Box 887
Soda Springs, Idaho 83276
Telephone: (208) 547-2191

BORROWER:

JERRY BEUS
3126 WOOD CANYON RD.
P.O. BOX 712
SODA SPRINGS, Idaho 83276



1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together with their heirs, successors and assigns, and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, with its participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.
- B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- E. Percent. Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$372,740.00 (Principal) plus interest from June 7, 2002 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 7.750 percent (Interest Rate) until June 7, 2003, after which time it may change as described in the Variable Rate subsection.

- A. Post-Maturity Interest. After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note or obligation will be limited to the Maximum Lawful Amount of interest allowed by state or federal law. Amounts collected in excess of the Maximum Lawful Amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. Statutory Authority. The amount assessed or collected on this Note is authorized by the Idaho usury laws under Idaho Code §28-42-201.
- D. Accrual. During the scheduled term of this Loan interest accrues using an Actual/365 days counting method.
- E. Variable Rate. The Interest Rate may change during the term of this transaction.
 - (1) Index. Beginning with the first Change Date, the Interest Rate will be based on the following Index: the highest base rate on corporate loans posted by at least 75% of the nation's 30 largest banks that The Wall Street Journal publishes as the Prime Rate. The Current Index is the most recent index figure available on each Change Date. You do not guaranty by selecting this Index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers. If this Index is no longer available, you will substitute a similar index. You will give me notice of your choice.
 - (2) Change Date. Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change June 7, 2003 and annually thereafter.
 - (3) Calculation Of Change. On each Change Date, you will calculate the Interest Rate, which will be the Current Index plus 3.000 percent. The result of this calculation will be rounded to the nearest .25 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.
 - (4) Interest Rate Carryover. Any changes in the Index which are not reflected in a rate adjustment may be carried over to subsequent rate adjustment periods, and be implemented to the extent not offset by opposite movement in the index.
 - (5) Effect Of Variable Rate. A change in the Interest Rate will have the following affect on the payments: The amount of scheduled payments will change.

4. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

- Title Insurance. A(n) Title Insurance fee of \$1,780.03 payable from the loan proceeds.
- Recording - Mortgage. A(n) Recording - Mortgage fee of \$6.00 payable from the loan proceeds.
- Loan Origination. A(n) Loan Origination fee of \$6,000.00 payable from the loan proceeds.
- GUARANTY FEE. A(n) GUARANTY FEE fee of \$3,354.86 payable from the loan proceeds.
- Flood Check. A(n) Flood Check fee of \$18.00 payable from the loan proceeds.
- Filing. A(n) Filing fee of \$35.00 payable from the loan proceeds.
- Appraisal. A(n) Appraisal fee of \$1,500.00 payable from the loan proceeds.

I understand and agree that some payments to third parties as part of this transaction may also involve money retained by you or paid back to you as commissions or other remuneration.

5. PAYMENT. I agree to pay this Note on demand, but if no demand is made, I agree to pay this Note in 7 payments. A payment of \$42,919.09 will be due December 1, 2002, and on the same day each year thereafter. This scheduled payment amount may change to reflect changes in the Interest Rate as described in the Variable Rate subsection of this Note. A final payment of the entire unpaid balance of Principal and interest will be due December 1, 2008.

Payments will be rounded up to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

If the amount of a scheduled payment does not equal or exceed interest accrued during the payment period the unpaid portion will be added to, and will be payable with, the next scheduled payment.

Each payment I make on this Note will be applied first to interest that is due then to any charges that I owe other than principal and interest, and finally to principal that is due. If you and I agree to a different application of payments, we will describe our agreement on this Note. The actual amount of my final payment will depend on my payment record.

6. PREPAYMENT. I may not prepay this Loan in full. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

JERRY BEUS
Idaho Promissory Note
ID/4TcBride00529B0003528017080702N

EXHIBIT "Fu"
1996 Bankers Systems, Inc., St. Cloud, MN Experts™

Initials *JFB*
Page 1

7. LOAN PURPOSE. The purpose of this is RESTRUCTURE NOTE 6020002480, 6020002482, 6020002315, 6002303 AND ADDITIONAL MONEY FOR DEBT CONSOLIDATION.

8. SECURITY. This Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document
Security Agreement - JERRY BEUS	JERRY BEUS <i>J.B.</i>
Mortgage - 3125 WOOD CANYON RD. P.O. BOX 712	The Lynn G. Beus Trust

9. DEFAULT. I understand that you may demand payment anytime at your discretion. For example, you may demand payment in full if any of the following occur:
- A. Payments. I fail to make a payment in full when due.
 - B. Insolvency. I make an assignment for the benefit of creditors or become insolvent, either because my liabilities exceed my assets or I am unable to pay my debts as they become due.
 - C. Death or Incompetency. I die or am declared legally incompetent.
 - D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.
 - E. Other Documents. A default occurs under the terms of any other transaction document.
 - F. Other Agreements. I am in default on any other debt or agreement I have with you.
 - G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
 - H. Judgment. I fail to satisfy or appeal any judgment against me.
 - I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
 - J. Name Change. I change my name or assume an additional name without notifying you before making such a change.
 - K. Property Transfer. I transfer all or a substantial part of my money or property.
 - L. Property Value. The value of the Property declines or is impaired.
 - M. Erosion. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained by federal law.
 - N. Insecurity. You reasonably believe that you are insecure.

10. ASSUMPTIONS. Someone buying the Property cannot assume the obligation. You may declare the entire balance of the Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, or transfer of the Property. However, I may sell or similarly dispose of any Products that are farm products or inventory derived from farm products.

11. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

- (1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property securing this Note.
- (4) You, or any institution participating in this Note, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or other Loan documents, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

12. REMEDIES. After I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

- A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.
- B. Sources. You may use any and all remedies you have under state or federal law or in any instrument securing this Note.
- C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on my default.
- D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.
- E. Attachment. You may attach or garnish my wages or earnings.
- F. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

G. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

13. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. To the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees you incur to collect this Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

14. WARRANTIES AND REPRESENTATIONS. I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

15. INSURANCE. I understand and agree that any insurance premiums paid to insurance companies as part of this Loan Agreement will involve money retained by you or paid back to you as commissions or other remuneration.

- A. Property Insurance. I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing this Loan.
- B. Insurance Warranties. I agree to purchase any insurance coverages that are required, in the amounts you require, as described in this or any other documents I sign for this Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. If I buy or provide the insurance from someone other than you, the firm will be reasonably acceptable to you. I will have the insurance company name you as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will keep the insurance until all debts secured by this agreement are paid. If I want to buy the insurance from you, I have signed a separate statement agreeing to this purchase.
- C. Prepayment. If I prepay in full or if I default and you demand payment of the unpaid balance, I may be entitled to a partial refund credit of any prepaid, unearned insurance premiums. This refund may be obtained from you or from the insurance company named in my policy or certificate of insurance.

JERRY BEUS
Idaho Promissory Note
ID/4TMCBride00529B00003528017060702N

©1996 Bankers Systems, Inc., St. Cloud, MN *Express*

Initials *J.B.*
Page 2

16. APPLICABLE LAW. This Note is governed by the laws of Idaho, the United States of America and to the extent not provided, by the laws of the jurisdiction where the Property is located.

17. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay this Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on this Loan, or any number of us together, to collect this Loan. Extending this Loan or new obligations under this Loan, will not affect my duty under this Loan and I will still be obligated to pay this Loan. The duties and benefits of this Loan will bind and benefit the successors and assigns of you and me.

18. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note is the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

19. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

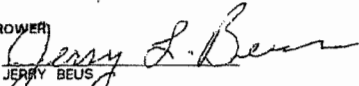
20. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

21. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

22. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you or any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

23. SIGNATURES. By signing, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER


JERRY BEUS

LENDER:

Ireland Bank


Tom McBride, AVP/Loan Officer

(Attest)



Home Office • 33 Bannock Street • Malad City, Idaho 83252 • 766-2211

Aberdeen Office
386 N. Main
Aberdeen, ID 83210
397-7100

Carey Office
20449 North Main
Carey, ID 83320
823-9300

Downey Office
17 East Center
Downey, ID 83234
897-5226

Grace Office
1 North Main
Grace, ID 83241
425-3066

Inkom Office
110 Hwy. 30 East
Inkom, ID 83245
775-3354

Lava Office
146 East Main
Lava, ID 83246
776-5656

Mackay Office
208 South Main
Mackay, ID 83251
588-2100

Montpelier Office
420 North 4th Street
Montpelier, ID 83254
847-3100

Pocatello Poleline Office
2715 Poleline Road
Pocatello, ID 83201
233-1816

Pocatello Yellowstone Office
486 Yellowstone Avenue
Pocatello, ID 83201
233-0022

Preston Office
85 East Oneida
Preston, ID 83263
852-2400

Soda Springs Office
98 West 2nd South
Soda Springs, ID 83276
547-2191

September 24, 2008

Racine Olson Nye Budge & Bailey Chartered
201 East Center Street
P.O. Box 1301
Pocatello, ID 83204

Re: Lynn Beus Trust

Dear Mr. Shaffer

This letter is in regards to the faxed request in regards to two mortgages, No.s 166205 and 166206.

The loans pertaining to theses mortgages were to term out past operating lines of credit and the second one was for cross collateralization of a new operating line of credit.

The new operating line of credit was paid off by Jerry Beus. The term loan was paid off by The Lynn G. Beus Trust.

If you have any questions or concerns, please contact me at 547-2191.

Sincerely,

Tom McBride
Sr. Loan Officer/AVP

EXHIBIT "G"



Home Office • 33 Bannock Street • Malad City, Idaho 83252 • 766-2211

Aberdeen Office
386 N. Main
Aberdeen, ID 83210
397-7100

Carey Office
20449 North Main
Carey, ID 83320
823-9300

Downey Office
17 East Center
Downey, ID 83234
897-5226

Grace Office
1 North Main
Grace, ID 83241
425-3066

Inkom Office
110 Hwy. 30 East
Inkom, ID 83245
775-3354

Lava Office
146 East Main
Lava, ID 83246
776-5656

Mackay Office
208 South Main
Mackay, ID 83251
588-2100

Montpelier Office
420 North 4th Street
Montpelier, ID 83254
847-3100

Pocatello Poleline Office
2715 Poleline Road
Pocatello, ID 83201
233-1816

Pocatello Yellowstone Office
486 Yellowstone Avenue
Pocatello, ID 83201
233-0022

Preston Office
85 East Opaida
Preston, ID 83263
852-2400

Soda Springs Office
98 West 2nd South
Soda Springs, ID 83276
547-2191

October 14, 2008

Racine Olson Nye Budge & Bailey Chartered
201 East Center Street
P.O. Box 1301
Pocatello, ID 83204

Re: Lynn Beus Trust

Dear Mr. Shaffer:

This letter is in regards to the phone request that you asked for on October 14, 2008 dealing with the origination of the to loans/mortgages in question.

Jerry Beus originated the two loans/mortgages. The smaller loan was his current operating line of credit and the other was a combination of some loans that Jerry needed to have restructured.

Again, Jerry paid off the smaller loan/mortgage. The other note was paid through Caribou Land Title and on the memo section of the check the following is stated;

Loan ***** Jerry Beus #17383 The Lynn G. Beus Trust

Therefore, I am assuming that the Trust paid that loan/mortgage off.

If you have any further questions or concerns, please contact me at 547-2191.

Sincerely

Tom McBride
Sr. Loan Officer/AVP

REAL ESTATE MORTGAGE 166205

THIS MORTGAGE, made by THE LYNN G. BEUS TRUST of the County of CARIBOU, State of IDAHO, as Mortgagor, and IRELAND BANK, a corporation, at its office in SODA SPRINGS.

WITNESSETH:

That the said Mortgagor hereby grants, bargains, sells, and conveys unto the said Mortgagee, its successors and assigns forever, the following described real property, situated in CARIBOU County, State of Idaho, to-wit:

TOWNSHIP 8 SOUTH, RANGE 42 EAST OF THE BOISE MERIDIAN:

SECTION 25: S1SW1. SECTION 26: S1SE1, SW1SW1. SECTION 34: E1NE1, E1SW1, SE1 SECTION 35: N1, SW1, W1SE1.

TOWNSHIP 9 SOUTH, RANGE 42 EAST OF THE BOISE MERIDIAN:

SECTION 2: LOTS 2, 3, 4, 5, 6 and 7, SW1NE1, S1NW1, N1SW1, NW1 SE1. SECTION 3: LOTS 1, 2 and 3, S1NE1, SE1NW1, S1. SECTION 10: N1N1, SE1NE1. SECTION 11: LOTS 2 and 3, S1NW1, W1SW1.

TOGETHER WITH all water, water rights, ditch, ditch rights, improvements, privileges and appurtenances thereunto belonging and the rents, issues and profits thereof.

Said Mortgagor hereby warrants the title to said land and appurtenances against all persons whomsoever and agrees to defend the same.

This grant is intended as a mortgage:

(1) To secure the payment of the principal sum of THREE HUNDRED SEVENTY TWO THOUSAND SEVEN HUNDRED FORTY DOLLARS AND 00/100 + + + + +

DOLLARS (\$ 372,740.00) lawful money of the United States of America, evidenced and according to the terms of a Promissory note executed and delivered on the 7th day of JUNE, 2002, by Mortgagor as maker, to the Mortgagee herein as payee, with both principal and interest being payable at the Mortgagee's office above referenced, with the final payment, if not sooner paid, to be due and payable on the 1st day of DECEMBER, 2008.

(2) To secure the payment of any and all further sums as may be hereafter loaned or advanced Mortgagor by Mortgagee during the existence of this Mortgage, whether represented by notes, open accounts, drafts, or otherwise, it being the express intention of the parties that this mortgage shall stand as continuing security for all such loans, together with interest thereon and all costs, disbursements and attorney fees that become payable by Mortgagor here under.

Mortgagor covenants and agrees to keep the buildings located upon the premises insured, in a company satisfactory to Mortgagee, for at least \$ 126,600.00 with loss payable to Mortgagee, and further that each policy or renewal thereof shall be delivered to said Mortgagee. In the event Mortgagor fails to insure or fails to pay the insurance premiums when due, Mortgagee may insure said buildings.

Mortgagor hereby covenants and agrees to pay before the same becomes delinquent, all taxes and assessments levied or assessed upon or against the above-described premises, including all personal taxes; and in the event of Mortgagor's failure to pay the same when due, the Mortgagee may make the payments.

Mortgagor agrees not to commit or permit waste upon the mortgaged properties and shall maintain the properties in as good condition as at present, reasonable wear and tear excepted.

Failure to pay, when due, any sum herein covenanted to be paid or secured hereby or the failure to comply with any of the terms and conditions hereof shall constitute a default and shall cause the whole debt to become immediately due and collectable at the option of the Mortgagee, without notice, including all monies paid by the said Mortgagee for taxes, assessments, insurance premiums, and any sum paid in protection of the lien of this mortgage shall bear interest from the date of such payment at the maximum rate of interest allowed by law.

Mortgagee's failure to enforce its rights upon breach of default of any of the terms hereof shall not thereby waive his rights in case of any subsequent breach of default.

In the event this Mortgage is foreclosed by Mortgagee, as provided by law, Mortgagor agrees to pay a reasonable attorney's fee, the same to be a lien upon the said premises due and payable when suit is begun. The plaintiff in such suit of foreclosure shall be entitled, without notice, to the appointment of a receiver, to collect and receive the rents, issues and profits of the mortgaged premises, and exercise such other power as the Court shall confer. It is agreed that should this mortgage be foreclosed the property described in the decree of foreclosure entered in such action may be ordered sold en masse, or as lots or parcels at the option of the Mortgagee.

Should the property herein mortgaged be sold, transferred or assigned by Mortgagor, the entire unpaid sum then due hereon or secured hereby shall become immediately due and payable.

This mortgage and the note secured hereby shall be governed and construed according to the laws of the State of Idaho.

The word "mortgagor" and the language of this instrument shall, where there is more than one mortgagor, be construed as plural and be binding equally on all mortgagors; and the word "mortgagee" shall be construed as including any lawful holder hereof; and both the words "mortgagor" and "mortgagee" shall be construed as including the heirs, executors, administrators, personal representatives, successors and assigns of each as the case may be.

IN WITNESS WHEREOF, the Mortgagor has hereunto set his hand this 7th day of JUNE, 2002

THE LYNN G. BEUS TRUST By: JOHN C. SOUZA, TRUSTEE

EXHIBIT 4

STATE OF IDAHO

COUNTY OF Caribou ss.

On this 7th day of June, 2002, 1902, before me, a Notary Public in and for said State of Idaho, personally appeared John C. Souza, known to me to be the trustee of the Lynn C. Beus Trust known or identified to me to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same, the same for and on behalf of said trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
Notary Public for Idaho,
Residing at: Lava Hot Springs, ID
My Commission expires 7/22/02

STATE OF IDAHO

COUNTY OF _____ ss.

On this _____ day of _____, 19____, before me, a Notary Public in and for said State of Idaho, personally appeared _____ known or identified to me to be the _____ of _____ the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho,
Residing at: _____
My Commission expires _____

STATE OF IDAHO } 166205
County of Caribou } ss.
I hereby certify that this instrument was filed at the request of Caribou Title at 4:35 o'clock p in this 13th day of June, 2002 in my office and duly recorded official Records Recorder Edie Izatt
Denise Stanley Deputy 600
Signature

INSTRUMENT No. _____
Real Estate Mortgage

STATE OF IDAHO, COUNTY OF _____
I hereby certify that this instrument was filed for record at the request of _____ at _____ minutes past _____ o'clock _____ m., this _____ day of _____, 19____, in my office, and duly recorded in micro-film records, Instrument No. _____

By _____ Ex-Officio Recorder
Deputy
Fees \$ _____
Mail to: _____

IDAHO STATE RECORDING REGULATIONS

LOAN NUMBER	LOAN NO.	ACCT. NUMBER	NC DATE	INITIALS
80 200 02742	BEUS	619-56-3586	06/07	TM
NOTE AMOUNT	//Margin	RATE	MATURIT	LOAN PURPOSE
\$235,000.00	Wall Street Journal Prime plus 3.000%	7.750%	12/01/02	Agricultural
Creditor Use Only				

-FILMED- 0-10-02-

PROMISSORY NOTE
(Agricultural - Draw - Variable Rate)

DATE AND PARTIES. The date of this Promissory Note (Note) is June 7, 2002. The parties and their addresses are:

LENDER:
IRELAND BANK
98 W. 2nd S.
PO Box 887
Soda Springs, Idaho 83276
Telephone: (208) 547-2191

BORROWER:
JERRY BEUS
3125 WOOD CANYON RD.
P.O. BOX 712
SODA SPRINGS, Idaho 83276

EXHIBIT I

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together with their heirs, successors and assigns, and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, with its participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.
- B. **Note.** Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. **Loan.** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. **Property.** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- E. **Percent.** Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, amounts advanced from time to time under the terms of this Note up to the maximum total principal balance of \$235,000.00 (Principal), plus interest from the date of disbursement, on the unpaid outstanding Principal balance until this Note matures or this obligation is accelerated.

3. ADVANCES. Advances under this Note are made according to the following terms and conditions.

A. **Requests for Advances.** My requests are a warranty that I am in compliance with all the Loan documents. When required by you for a particular method of advance, my requests for an advance must specify the requested amount and the date and be accompanied with any agreements, documents, and instruments that you require for the Loan. Any payment by you of any check, share draft or other charge may, at your option, constitute an advance on the Loan to me. All advances will be made in United States dollars. I will indemnify you and hold you harmless for your reliance on my request for advances that you reasonably believe to be genuine. To the extent permitted by law, I will indemnify you and hold you harmless for any request representing that I authorized this person to request an advance even when this person is unauthorized or this person's name is used.

I or anyone I authorize to act on my behalf may request advances by the following methods.

B. **Advance Limitations.** In addition to any other Loan conditions, requests for, and acceptance of, advances are subject to the following limitations.

- (1) **Obligatory Advances.** You will make all Loan advances subject to this Note and any other Loan documents.
- (2) **Advance Amount.** Subject to the terms and conditions contained in this Note, advances will be made in cash in the amount I request.
- (3) **Disbursement of Advances.** On my fulfillment of this Note's terms and conditions, you will disburse the advance in any manner as you and I agree.
- (4) **Credit Limit.** I understand that you will not ordinarily grant a request for an advance that would cause the unpaid principal of my Loan to be greater than the Principal limit. You may, at your option, grant such a request if you believe that you are acting in my best interests.
- (5) **Records.** Your records will be conclusive evidence as to the amount of advances, the Loan's unpaid principal balances and the accrued interest.

C. **Additional Conditions:** UPON BORROWERS REQUEST, \$1,000.00 MINIMUM

4. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 7.750% (Interest Rate) until June 8, 2002, after which time it may change as described in the Variable Rate subsection.

- A. **Post-Maturity Interest.** After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. **Maximum Interest Amount.** Any amount assessed or collected as interest under the terms of this Note or obligation will be limited to the Maximum Lawful Amount of interest allowed by state or federal law. Amounts collected in excess of the Maximum Lawful Amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. **Statutory Authority.** The amount assessed or collected on this Note is authorized by the Idaho usury laws under Idaho Code §28-42-201.
- D. **Accrual.** During the scheduled term of this Loan interest accrues using an Actual/365 days counting method.
- E. **Variable Rate.** The Interest Rate may change during the term of this transaction.
 - (1) **Index.** Beginning with the first Change Date, the Interest Rate will be based on the following index: the highest base rate on corporate loans posted by at least 75% of the nation's 30 largest banks that The Wall Street Journal publishes as the Prime Rate.
 - The Current Index is the most recent index figure available on each Change Date. You do not guaranty by selecting this index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers. If this Index is no longer available, you will substitute a similar index. You will give me notice of your choice.
 - (2) **Change Date.** Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change June 8, 2002 and daily thereafter.
 - (3) **Calculation Of Change.** On each Change Date, you will calculate the Interest Rate, which will be the Current Index plus 0.000 percent. The result of this calculation will be rounded to the nearest .25 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.
 - (4) **Interest Rate Carryover.** Any changes in the Index which are not reflected in a rate adjustment may be carried over to subsequent rate adjustment periods, and be implemented to the extent not offset by opposite movement in the Index.
 - (5) **Effect Of Variable Rate.** A change in the Interest Rate will have the following effect on the payments: The amount of the final payment will change.

5. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. **Nonrefundable Fees and Charges.** The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

- GUARANTY FEE. A(n) GUARANTY FEE fee of \$2,115.00 payable from the loan proceeds.
- Loan. A(n) Loan fee of \$1,250.00 payable from the loan proceeds.

I understand and agree that some payments to third parties as part of this transaction may also involve money retained by you or paid back to you as commissions or other remuneration.

6. PAYMENT. I agree to pay this Note on demand, but if no demand is made, I agree to pay this Note in a single payment of all unpaid Principal and accrued interest on December 1, 2002.

JERRY BEUS
Idaho Promissory Note
ID/4TMCBride0052B800003528004060702N

©1996 Bankers Systems, Inc., St. Cloud, MN *Express*

Initials *JTB*
Page 1

you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month, but contain no such day will, instead, be made on the last day of such month.

7. PREPAYMENT. I may not prepay this loan. Any partial prepayment will not excuse any later scheduled payment I pay in full.
8. LOAN PURPOSE. The purpose of this Loan is 002 OPERATING LINE OF CREDIT.
9. SECURITY. This Loan is secured by the following, previously executed, security instruments or agreements: SECURITY AGREEMENT DATED JUNE 7, 2002 COVERING LIVESTOCK, EQUIPMENT, CROPS AND FEED. REAL ESTATE MORTGAGE DATED JUNE 7, 2002 COVERING REAL ESTATE PROPERTY LOCATED 3125 WOOD CANYON RD. SODA SPRINGS, IDAHO 83278.
10. DEFAULT. I understand that you may demand payment anytime at your discretion. For example, you may demand payment in full if any of the following occur:
- A. Payments. I fail to make a payment in full when due.
 - B. Insolvency or Bankruptcy. I make an assignment for the benefit of creditors or become insolvent, either because my liabilities exceed my assets or I am unable to pay my debts as they become due; or I petition for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or am the subject of a petition or action under such laws and fail to have the petition or action dismissed within a reasonable period of time not to exceed 60 days.
 - C. Death or Incompetency. I die or am declared legally incompetent.
 - D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.
 - E. Other Documents. A default occurs under the terms of any other transaction document.
 - F. Other Agreements. I am in default on any other debt or agreement I have with you.
 - G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
 - H. Judgment. I fail to satisfy or appeal any judgment against me.
 - I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
 - J. Name Change. I change my name or assume an additional name without notifying you before making such a change.
 - K. Property Transfer. I transfer all or a substantial part of my money or property.
 - L. Property Value. The value of the Property declines or is impaired.
 - M. Erosion. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained by federal law.
 - N. Insecurity. You reasonably believe that you are insecure.
11. ASSUMPTIONS. Someone buying the Property cannot assume the obligation. You may declare the entire balance of the Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, or transfer of the Property.
12. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.
- A. Additional Waiver By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.
- (1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.
 - (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
 - (3) You may release, substitute or impair any Property securing this Note.
 - (4) You, or any institution participating in this Note, may invoke your right of set-off.
 - (5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.
 - (6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.
- B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or other Loan documents, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.
13. REMEDIES. After I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.
- A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.
 - B. Sources. You may use any and all remedies you have under state or federal law or in any instrument securing this Note.
 - C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on my default.
 - D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.
 - E. Termination. You may terminate my right to obtain advances and may refuse to make any further extensions of credit.
 - F. Attachment. You may attach or garnish my wages or earnings.
 - G. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.
- My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.
- Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.
- Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.
- You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.
- H. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.
14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. To the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees you incur to collect this Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.
15. WARRANTIES AND REPRESENTATIONS. I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.
16. APPLICABLE LAW. This Note is governed by the laws of Idaho, the United States of America and to the extent required, by the laws of the jurisdiction where the Property is located. In the event of a dispute, the exclusive forum, venue and place of jurisdiction will be in Idaho, unless otherwise required by law.
17. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay this Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on this Loan, or any number of us together, to collect this Loan. Extending this Loan or new obligations under this Loan, will not affect my duty under this Loan and I will still be obligated to pay this Loan. The duties and benefits of this Loan will bind and benefit the successors and assigns of you and me.
18. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note is the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.
19. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

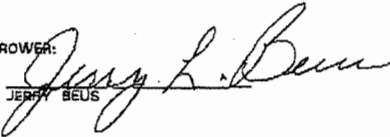
20. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice shall be given by delivering it or mailing it by first class mail to the appropriate party's address stated in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. I will inform you in writing of any change in my name, address or other applicable information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

21. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

22. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

23. SIGNATURES. By signing, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER:


JERRY BEUS

LENDER:

Ireland Bank

Tom McBride, AVP/Loan Officer

(Attest)

JERRY BEUS 3125 WOOD CANYON RD, P.O. BOX 712 SODA SPRINGS, ID 83276	IRELAND BANK 110 HIGHWAY 30 EAST PO BOX 277 INKOM, ID 83245	P# 219-2004 IN# 519-56-2596 Number 6020001327 Date 12-18-2002 Maturity Date 12-20-2003 Loan Amount \$ 235,000.00 Renewal Of _____ PHONE # 208-547-3091
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of **TWO HUNDRED THIRTY FIVE THOUSAND AND NO/100** Dollars **\$235,000.00**

Single Advance: I will receive all of this principal sum on _____ . No additional advances are contemplated under this note.
 Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On 12-20-2002 I will receive the amount of \$ _____ and future principal advances are contemplated.
 Conditions: The conditions for future advances are UPON BORROWER'S REQUEST AND A \$1000.00 MINIMUM

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____ .
 Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 12-20-2002 at the rate of 7.250 % per year until 12-21-2002

Variable Rate: This rate may then change as stated below.
 Index Rate: The future rate will be 3.000 PERCENT ABOVE the following index rate: THE HIGHEST RATE ON CORPORATE LOANS POSTED BY AT LEAST 25% OF THE USA'S THIRTY LARGEST BANKS KNOWN AS THE WALL STREET JOURNAL PRIME RATE. THE RESULT OF THIS CALCULATION WILL BE ROUNDED TO THE NEAREST 0.125

No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.
 Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 12-21-2002
 A change in the interest rate will take effect ON THE SAME DAY

Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ % . The rate may not change more than _____ % each _____ .
 Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:
 The amount of each scheduled payment will change. The amount of the final payment will change.

ACCURAL METHOD: Interest will be calculated on a ACTUAL/365 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:
 on the same fixed or variable rate basis in effect before maturity (as indicated above),
 at a rate equal to _____

LATE CHARGES: If a payment is made more than 15 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MINIMUM FEE OF \$500.00

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are are not included in the principal amount above: FRINGE FEES 17.00, ORIGINATION FEE \$1,250.00

PAYMENTS: I agree to pay this note as follows:
 INTEREST ON THE AMOUNT OF CREDIT OUTSTANDING DUE AT MATURITY AND PRINCIPAL DUE ON 12-20-2003.

ADDITIONAL TERMS: THIS NOTE IS SECURED BY SECURITY AGREEMENT DATED JUNE 7, 2002 COVERING EQUIPMENT, LIVESTOCK, FEED, CROPS AND GOVERNMENT PAYMENTS. REAL ESTATE MORTGAGE DATED JUNE 7, 2002 COVERING PROPERTY AT TOWNSHIP 8 SOUTH, RANGE 42 EBM, SECTION 26, 28, 34 & 35, TOWNSHIP 9 SOUTH, RANGE 42 EBM, SECTION 2, 3, 10 & 11.

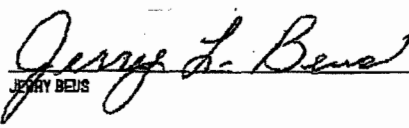
SECURITY: This note is separately secured by (describe separate document by type and date):
SECURITY AGREEMENT DATED 6/7/02, R/E MORTGAGE DATED 6/7/02 AND SECURITY AGREEMENT TO 12/20/02
(This section is for informational use. Failure to list a separate security document does not mean the agreement is not secured by that item.)

PURPOSE: The purpose of this loan is 2003 OPERATING LINE OF CREDIT

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Signature for Lender

 TDM MCBRINE, VICE PRESIDENT


 JERRY BEUS

REAL ESTATE MORTGAGE

1006

THIS MORTGAGE, made by THE LYNN G. BEUS TRUST of the County of CARIBOU, State of IDAHO, as Mortgagor, and IRELAND BANK, a corporation, at its office in SODA SPRINGS,

WITNESSETH:

That the said Mortgagor hereby grants, bargains, sells, and conveys unto the said Mortgagee, its successors and assigns forever, the following described real property, situated in CARIBOU County, State of Idaho, to-wit:

TOWNSHIP 8 SOUTH, RANGE 42 EAST OF THE BOISE MERIDIAN:

- SECTION 25: S 1/2 SW 1/4.
SECTION 26: S 1/2 SE 1/4, SW 1/4 SW 1/4.
SECTION 34: E 1/2 NE 1/4, E 1/2 SW 1/4, SE 1/4.
SECTION 35: N 1/2, SW 1/4, W 1/2 SE 1/4.

TOWNSHIP 9 SOUTH, RANGE 42 EAST OF THE BOISE MERIDIAN:

- SECTION 2: LOTS 2, 3, 4, 5, 6 and 7, SW 1/4 NE 1/4, S 1/2 NW 1/4, N 1/2 SW 1/4, NW 1/4 SE 1/4.
SECTION 3: LOTS 1, 2 and 3, S 1/2 NE 1/4, SE 1/4 NW 1/4, S 1/2.
SECTION 10: N 1/2 N 1/2, SE 1/4 NE 1/4.
SECTION 11: LOTS 2 and 3, S 1/2 NW 1/4, W 1/2 SW 1/4.

TOGETHER WITH all water, water rights, ditch, ditch rights, improvements, privileges and appurtenances thereunto belonging and the rents, issues and profits thereof.

Said Mortgagor hereby warrants the title to said land and appurtenances against all persons whomsoever and agrees to defend the same.

This grant is intended as a mortgage:

(1) To secure the payment of the principal sum of TWO HUNDRED THIRTY FIVE THOUSAND AND 00/100 + + +

DOLLARS (\$235,000.00) lawful money of the United States of America, evidenced and according to the terms of a Promissory note executed and delivered on the 7th day of JUNE, 20 02, by Mortgagor as maker, to the Mortgagee herein as payee, with both principal and interest being payable at the Mortgagee's office above referenced, with the final payment, if not sooner paid, to be due and payable on the 1st day of DECEMBER, 20 02.

(2) To secure the payment of any and all further sums as may be hereafter loaned or advanced Mortgagor by Mortgagee during the existence of this Mortgage, whether represented by notes, open accounts, drafts, or otherwise, it being the express intention of the parties that this mortgage shall stand as continuing security for all such loans, together with interest thereon and all costs, disbursements and attorney fees that become payable by Mortgagor here under.

Mortgagor covenants and agrees to keep the buildings located upon the premises insured, in a company satisfactory to Mortgagee, for at least \$ with loss payable to Mortgagee, and further that each policy or renewal thereof shall be delivered to said Mortgagee. In the event Mortgagor fails to insure or fails to pay the insurance premiums when due, Mortgagee may insure said buildings.

Mortgagor hereby covenants and agrees to pay before the same becomes delinquent, all taxes and assessments levied or assessed upon or against the above-described premises, including all personal taxes; and in the event of Mortgagor's failure to pay the same when due, the Mortgagee may make the payments.

Mortgagor agrees not to commit or permit waste upon the mortgaged properties and shall maintain the properties in as good condition as at present, reasonable wear and tear excepted.

Failure to pay, when due, any sum herein covenanted to be paid or secured hereby or the failure to comply with any of the terms and conditions hereof shall constitute a default and shall cause the whole debt to become immediately due and collectable at the option of the Mortgagee, without notice, including all monies paid by the said Mortgagee for taxes, assessments, insurance premiums, and any sum paid in protection of the lien of this mortgage shall bear interest from the date of such payment at the maximum rate of interest allowed by law.

Mortgagee's failure to enforce its rights upon breach of default of any of the terms hereof shall not thereby waive his rights in case of any subsequent breach of default.

In the event this Mortgage is foreclosed by Mortgagee, as provided by law, Mortgagor agrees to pay a reasonable attorney's fee, the same to be a lien upon the said premises due and payable when suit is begun. The plaintiff in such suit of foreclosure shall be entitled, without notice, to the appointment of a receiver, to collect and receive the rents, issues and profits of the mortgaged premises, and exercise such other power as the Court shall confer. It is agreed that should this mortgage be foreclosed the property described in the decree of foreclosure entered in such action may be ordered sold en masse, or as lots or parcels at the option of the Mortgagee.

Should the property herein mortgaged be sold, transferred or assigned by Mortgagor, the entire unpaid sum then due hereon or secured hereby shall become immediately due and payable.

This mortgage and the note secured hereby shall be governed and construed according to the laws of the State of Idaho.

The word "mortgagor" and the language of this instrument shall, where there is more than one mortgagor, be construed as plural and be binding equally on all mortgagors; and the word "mortgagee" shall be construed as including any lawful holder hereof; and both the words "mortgagor" and "mortgagee" shall be construed as including the heirs, executors, administrators, personal representatives, successors and assigns of each as the case may be.

EXHIBIT J

IN WITNESS WHEREOF, the Mortgagor has hereunto set his hands this 7th day of JUNE, 20 02.

THE LYNN G. BEUS TRUST
[Signature]
JOHN C. SOUZA, TRUSTEE

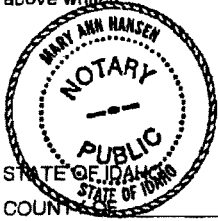
WELLS PRINTING, PRESTON, IDAHO

STATE OF IDAHO

COUNTY OF Bannock

On this 7th day of June, 20 02, before me, a Notary Public in and for said State of Idaho, personally appeared John C. Smith, known to me to be the trustee of the Lynn G. Beus Trust known or identified to me to be the person(s) whose name he subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Mary Ann Hansen

Notary Public for Idaho,

Residing at: Pocatello, Idaho

My Commission expires 07/29/07

STATE OF IDAHO }
COUNTY OF _____ } ss.

On this _____ day of _____, 20____, before me, a Notary Public in and for said State of Idaho, personally appeared _____ known or identified to me to be the _____ of _____ the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho,

Residing at: _____

My Commission expires _____

STATE OF IDAHO }
County of Caribou } ss

166206

I hereby certify that this instrument was filed at the request of Caribou Title at 4:35 o'clock P m this 13th day of June, 2002 in my office and duly

recorded official Records
Recorder Etie Izatt

Signature Denise Horsley Deputy 600

INSTRUMENT No. _____
Real Estate Mortgage

STATE OF IDAHO, COUNTY OF _____
I hereby certify that this instrument was filed for record at the request of _____ at _____ minutes past _____ o'clock _____ m., this _____ day of _____, 20____, in my office, and duly recorded in micro-film records, Instrument No. _____

Ex-Officio Recorder

By _____ Deputy
Fees \$ _____
Mail to: _____

WILSON PRINTING, POCATELLO, IDAHO

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, **THE LYNN G. BEUS TRUST, JOHN C. SOUZA TRUSTEE**, (hereinafter "Maker") promise to pay the sum of **FOUR HUNDRED TWENTY SEVEN THOUSAND FIVE HUNDRED AND NO/HUNDREDTHS DOLLARS (\$427,500.00)** in lawful money of the United States, and as hereinafter provided, to the order of **DBL COMPANY, INC.**, an Idaho corporation (hereinafter "Lender") located at 4444 Hillcrest Dr., Boise, Idaho 83705.

1. Payment schedule and terms. The principal sum above-stated shall bear interest and shall be paid as follows:

(a) Interest and Rate. Such principal sum, or so much thereof as is from time to time unpaid, shall bear interest at the rate of **Fourteen per cent (14.0%) per annum** (the "Interest Rate") from the date of this note until paid.

(a-1) Interest on Accrued Interest and Interest on Late Payment Penalty. Anything to the contrary herein contained notwithstanding, if any sum of interest or late payment penalty is not paid when due, then such sums shall be added to the principal balance.

(b) Payments. Interest for the first year shall be a payment of \$52,500.00 made at closing. After the first year payments shall be made in monthly payments of \$4,987.50 with the first such payment due on the 1st day of June, 2008, and continuing to be paid in a like manner on the 1st day of each subsequent month, until the 1st day of May, 2013, at which date the remaining principal balance and all accrued interest shall be due and payable in full.

(b-1) Full Reconveyance - At such time this loan is paid in full, Lender agrees to make, execute and deliver to Caribou Land Title, Inc. a satisfaction of mortgage for the Property securing this Note.

(c) Late fee - There shall be imposed on each payment received by the escrow holder more than 10 days after the due date thereof a late fee of **Ten percent (10%)** on the amount so overdue, for the purpose of defraying the administrative expense incident to handling such delinquent payments. Maker acknowledges that the exact amount of such administrative expense of holder would be difficult to calculate and that such late charge represents a reasonable estimate of a fair average compensation for the loss that may be sustained by the holder due to the failure of the undersigned to make timely payments. Such late charge shall be paid without prejudice to the right of the holder to collect any other amounts provided to be paid or to declare a default hereunder.

EXHIBIT ²²K₀₂

(d) Place of Payment. Maker shall pay all sums due hereunder at:
Caribou Land Title, Inc., P.O. Box 608, 241 South Main Street, Soda Springs, Idaho 83276 or at such other place as the lawful holder hereof may hereafter direct in writing.

(e) Application of Payments. All payments shall be applied first to escrow fees, then late charges, if any, then interest accrued and, thereafter, to the principal then unpaid.

(f) Pre-payment - Penalty - Payments Unchanged. Except for the principal component of each monthly payment, a prepayment penalty of Three percent (3%) will apply to any principal sums paid and applied to principal note balance reduction or should said loan be paid off, any time during the first year. Any prepayment of principal at any time shall not reduce or otherwise affect the regularly-scheduled payments hereunder.

2. Security. This Note is secured by a Mortgage of even date herewith encumbering certain real property (the "Property") located in Caribou County, State of Idaho, as more particularly described therein.

3. Due-on Sale-Assumption. All sums due and owing pursuant to this Promissory Note and the Mortgage securing same shall become automatically due and payable and fully accelerated if Makers voluntarily or involuntarily transfer, assign, hypothecate, further encumber or otherwise make a transfer of any interest whatsoever in the real property encumbered by this Promissory Note. In the event of such a transfer or further encumbrance, the holder of this Note shall have the right to foreclose against the described real property and to enforce all rights allowed by it under Idaho law.

4. Default. Any default under this Note or in the due, prompt and complete performance or observance of any covenant, agreement or obligation of the undersigned contained in any mortgage, deed of trust, commitment letter, security agreement, or other agreement given as security for this Note or pertaining hereto, after giving effect to the curative periods herein or therein provided, shall, at the option of the Lender, be deemed a default on all Notes, obligations and liabilities of each and all of the parties liable hereon to the Lender hereof, whether now existing or hereafter arising; and, any default under any other Note, obligation or liability of any party liable hereon to the Lender hereof, whether now existing or hereafter arising, after giving effect to any curative periods herein or therein provided, shall, at the option of the Lender hereof, be deemed a default on this Note.

5. Acceleration With Out Notice. If any default occurs in payment of any sum due under this Note, or a default occurs under any loan document, the lawful holder thereof may, after 10 days written notice, declare the full amount of the principal and interest remaining unpaid as immediately due and payable.

6. Default Interest. If any default occurs under this Note or the loan documents, the entire unpaid principal balance hereof shall, for all purposes, thereafter earn interest at the rate which shall be five percent (5%) above the interest rate (the "Default Rate") from the date of such default until the default shall have been cured to the satisfaction of Lender in its sole discretion. Upon the cure of any default under this Note or the loan documents in a manner acceptable to the Lender in its sole discretion, unless the Note or the loan documents shall otherwise be in default, the unpaid principal balance shall thereafter bear interest at the original Interest Rate from the date of such cure, all as determined by the Lender. Failure of Lender to assess interest at the Default Rate on one or more occasions shall not constitute a waiver of the right to do so in the event of any subsequent defaults.

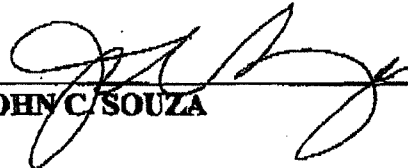
7. Reduction of Principal Balance on Cure of Default. In addition to payment of late fees and default interest upon default hereunder, Maker agrees to make a payment to reduce the principal balance on this Note. The amount of this payment shall be equal to the amount needed to reduce the principal charges, regular interest, default interest and collection costs to the amount they each should be under the amortization schedule for this Note, had no default occurred.

8. Collection Costs. Each undersigned Maker and each endorser and each guarantor, if any, shall pay to the lawful holder hereof all costs incurred to collect any sums due under this Note, including but not limited to, reasonable attorney's fees incurred before and after legal action is commenced, and before and after judgment is entered. Until all such collection costs and attorney's fees are paid in full, they shall accrue interest at the default rate.

9. Waivers. Each undersigned Maker and each endorser and each guarantor of this Note jointly and severally waive(s) demand for payment, presentment for payment, notice of non-payment, notice of dishonor, and protest, and agree that the time for payment hereof may be extended without any further consent and without impairing their liability hereunder. Failure of the lawful holder hereof to enforce any of the provisions hereof upon a default in performance shall not constitute a waiver of the provision itself or any subsequent default in performance thereof.

10. Interpretation. The paragraph headings used herein are for convenience only, and are not a part of this Note, and are not to be used in construing it. Singular terms used herein shall be read as if written in the plural when the context so requires or permits. The liability of all those signing this Note as maker or as endorser or as guarantor, or in any other capacity, shall be joint and several as to each and every provision of this Note.

DATED this 2nd day of May, 2007



 JOHN C. SOUZA

SETTLEMENT STATEMENT U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		B. TYPE OF LOAN	
		1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FMHA 3. <input type="checkbox"/> CONV. UNINS.	
		4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS.	
		6. FILE NUMBER: 07-17383	7. LOAN NUMBER:
8. MORTGAGE INSURANCE CASE NUMBER:			
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in totals.			
D. NAME & ADDRESS OF BORROWER THE LYNN BEUS TRUST c/o John Souza, Trustee 239 NE 8th Ave. Pocatello, ID 83201 PH:		E. NAME & ADDRESS OF SELLER PH: TIN # :	
F. NAME & ADDRESS OF LENDER DBL COMPANY, INC 4444 Hillcrest Drive Boise, ID 83705 PH:		G. PROPERTY LOCATION 8-42 Section 25, 26, 34 and 35 9-41 Section 2, 3, 10, 11	
H. SETTLEMENT AGENT Caribou Title		I. SETTLEMENT DATE 03 May, 2007 DISBURSMENT DATE 03 May, 2007	
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101.		401.	
102.		402.	
103. SETTLEMENT CHARGES TO BORROWER (L 1400)	77,204.50	403.	
104. Ireland Bank	332,141.66	404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City taxes		406. City taxes	
107. Cty taxes		407. Cty taxes	
108. Assmts.		408. Assmts	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	409,346.16	420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTION IN AMOUNT DUE TO SELLER:	
201.		501.	
202. New Loan/DBL Company	427,500.00	502. Settlement charges to seller (L 1400)	
203.		503.	
204.		504.	
205.		505.	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City taxes		510. City taxes	
211. Cty taxes		511. Cty taxes	
212. Assmts		512. Assmts	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	427,500.00	520. TOTAL REDUCTION AMOUNT DUE SELLER	
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amount due frm borrower (L 120)	409,346.16	601. Gross amount due to seller (L 420)	
302. Less amts pd by/for borrower (L 220)	427,500.00	602. Less reductions due seller (L 520)	
303. CASH (FROM) (TO) BORROWER	18,153.84	603. CASH (TO) (FROM) SELLER	

HUD-1 (Rev. 3-86)
RESPA HB 4305.2

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18: US Code Section 1001 and Section 1010.

EXHIBIT "L"

L. SETTLEMENT CHARGES.

GF: 07-17383

700. TOTAL SALES/BROKER'S COMMISSION based on \$		@	.00 % =		
Division of commission as follows:				\$	
701.	\$	.00	to		
702.	\$	.00	to		
703.					
704.					
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801.	Loan Origination	5.0000%	Signature Financial Serv	21,375.00	
802.		.0000%			
803.	Prepaid Interest		DBL Company, Inc. (1 yr int)	52,500.00	
804.	Processing Fee		Mortgage Loan Processors, LLC	162.50	
805.					
806.					
807.					
808.					
809.					
810.					
811.					
812.					
813.					
814.					
900. ITEMS REQUIRED BY THE LENDER TO BE PAID IN ADVANCE					
901.	Interest from		thru	@ \$	/day
902.					
903.					
904.					
905.					
906.					
1000. RESERVES DEPOSITED WITH LENDER					
1001.		mo.	@ \$		/ mo.
1002.		mo.	@ \$		/ mo.
1003.		mo.	@ \$		/ mo.
1004.		mo.	@ \$		/ mo.
1005.		mo.	@ \$		/ mo.
1006.		mo.	@ \$		/ mo.
1007.		mo.	@ \$		/ mo.
1008.	Aggregate Accounting Adjustment			.00	
1100. TITLE CHARGES					
1101.	Closing Fee		Caribou Land Title, Inc.,	500.00	
1102.	Long Term Escrow		Caribou Land Title, Inc.,	250.00	
1103.					
1104.					
1105.					
1106.					
1107.	Attorney's Fee		Fred L. Ramey, Attorney	750.00	
	(includes above item numbers: Attorney's Fee/Mortgage)				
1108.	Title Insurance		Caribou Land Title, Inc	1,493.00	
	(includes above item numbers:)				
1109.	Mortgagee's Policy	\$	427500.00		
1110.		\$	.00		
1111.	Incoming Wire Fee			25.00	
1112.	State Lien Search			25.00	
1113.	2 Express Fees			60.00	
1114.					
1115.					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201.	Recording fees: Deed	\$	28.00	Mtg	\$ 30.00 ; \$.00
1202.	Release Fees	\$	6.00		\$.00
1203.		\$	.00		\$.00
1204.					
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301.					
1302.					
1303.					
1304.					
1305.					
1306.					
1307.					
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Sec J and 502, Sec K)				77,204.50	

SUBSTITUTE FORM 1099 SELLER STATEMENT--The information contained in Blocks E, G, H, and I and on line 401 is important tax information and is being furnished to the Internal Revenue Service in lieu of form 1099-S.

CERTIFICATION

GF:07-17383

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I fully certify that I have received a copy of HUD-1 Settlement Statement.

Borrowers:

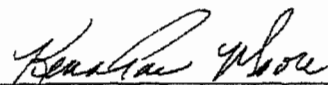
THE LYNN G BEUS TRUST

By:


JOHN SOUZA, Trustee

Sellers:

The HUD-1 Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.


Caribou Title

Settlement agent

5/4/09
Date

MORTGAGE

THIS MORTGAGE, made this 2nd day of May, 2007, between the Lynn G. Beus Trust, of Soda Springs, Caribou County, Idaho, whose mailing address is 239 NE 8th Avenue, Pocatello, Idaho 83201, hereinafter referred to as the "Mortgagor," and **DBL Company, Inc.**, an Idaho corporation, whose address is 4444 Hillcrest Drive, Boise, Idaho 83705, hereinafter referred to as the "Mortgagee;"

WITNESSETH:

The Mortgagor does hereby irrevocably mortgage to the Mortgagee, its successors and assigns, all of that property in the County of Caribou, State of Idaho, as described on EXHIBIT "A," attached hereto and incorporated herein by reference, hereinafter referred to as the "Mortgaged Property," or the "Real Property," or the "Property."

Together with all rents, issues, profits, royalties, income and other benefits derived from the property, subject, however, to the right, power and authority hereinafter given to and conferred upon the Mortgagor to collect and apply such rents, issues and profits;

Together with all easements, rights of way and rights used in connection with the property or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

Together with any and all buildings and improvements now or hereafter erected on the property, including but not limited to, the fixtures, attachments, appliances and other articles attached to or affixed to said buildings (hereinafter referred to as the "Improvements");

Together with any and all claims or demands with respect to the proceeds of insurance and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof.

The entire estate, property and interest is hereby referred to as the "Mortgaged Property."

THIS MORTGAGE IS FOR THE PURPOSE OF SECURING THE FOLLOWING:

MORTGAGE - 1

EXHIBIT "M"

(a) Payment of the sum of \$427,500.00 with interest thereon according to the terms of a Promissory Note of even date herewith (hereinafter referred to as the "Secured Note" or the "Promissory Note") made by the Mortgagor, payable to the order of the Mortgagee, with final payment due May 1, 2013.

(b) Payment of all sums advanced by Mortgagee to protect the Mortgaged Property, with interest thereon at the interest rate specified in the Promissory Note; and

(c) Performance of all obligations of Mortgagor contained in this Mortgage; and

(d) Payment of all other sums, with interest thereon according to the tenor of any document or instrument evidencing the same, which may hereafter be loaned or advanced by Mortgagee to Mortgagor.

This Mortgage, the Promissory Note, and any other documents or instruments given to evidence or further secure the payment and performance of any obligation secured hereby may hereinafter be referred to as the "Loan Documents".

I

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR
HEREBY COVENANTS AND AGREES AS FOLLOWS:

1.1 Mortgagor shall pay when due the Promissory Note and any other indebtedness evidenced by the Promissory Note, together with all interest thereon, and all charges, fees and other sums provided therein and any future advances secured by this Mortgage.

1.2 Mortgagor shall: (a) keep the Mortgaged Property in good condition and repair; (b) not remove or demolish any building or improvements thereon; (c) complete or restore promptly and in good condition and workmanlike manner any building which may be constructed, damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore; (d) comply with all laws affecting the Mortgaged Property or requiring any alterations or improvements to be made thereon; (e) not commit or permit waste thereof; (f) not commit, suffer or permit any act upon the Mortgaged Property in violation of law; (g) to maintain, repair and do all other acts which from the character or use of the Mortgaged Property may be reasonably necessary.

1.3 Mortgagor shall provide, maintain and deliver to Mortgagee public liability and standard replacement cost casualty insurance satisfactory to and with loss payable to Mortgagee. The amount collected under any insurance policy may be applied by Mortgagee upon any indebtedness secured hereby and in such order as Mortgagee may determine, or at the option of the Mortgagee, the entire amount so collected or any part thereof may be released to Mortgagor. Such application or release shall not cure or waive

any default or notice of default hereunder or invalidate any act done pursuant to such notice.

1.4 Mortgagor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee and shall pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Mortgagee may appear.

1.5 Mortgagor shall pay, at least ten (10) days before delinquency, all taxes and assessments affecting the Mortgaged Property, when due, and all loans, encumbrances, charges and liens, with interest, on the Mortgaged Property or any part thereof, which appear to be prior or superior hereto; and all costs, fees and expenses in connection therewith. Mortgagor's failure to satisfy or otherwise fully and faithfully perform any such obligations when due shall constitute a default under this Mortgage.

1.6 Mortgagor shall pay immediately and without demand all sums expended by Mortgagee pursuant to the provisions hereof, with interest from the date of expenditure at the legal interest rate.

1.7 Should Mortgagor fail to make any payment or do any act as herein provided, then Mortgagee, but without obligation so to do and without notice to or demand upon Mortgagor, and without releasing Mortgagor from any obligation hereof, may make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon said property for such purposes and to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee and to pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or superior hereto; and, in exercising any such powers, or enforcing this Mortgage by judicial foreclosure, pay any necessary expenses, employ counsel and pay reasonable attorney's fees.

1.8 Mortgagor shall bear responsibility for compliance with all Environmental Laws for activities and operations on the property from and after the date of this Mortgage. Mortgagor shall indemnify, defend, protect and hold harmless Mortgagee from any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal), judgments, proceedings, administrative enforcements and other administrative actions, and causes of action arising out of the presence upon the premises of any Hazardous Substances, which are released or discharged on the property from Mortgagor's activities or operations upon the property after the date of this Mortgage.

As used herein, the term "Hazardous Substances" is defined as any chemical, compound or material which is deemed a hazardous substance, hazardous waste, hazardous material, infectious waste or toxic substance, crude oil, waste oil and any fractions thereof under any federal Environmental Law or regulation; "hazardous waste," "restricted hazardous wastes," and "waste" with any of the above properties as defined in

Idaho Code § 39-4403(8), (14), and (17), respectively; and any other chemical material or substance that, because of its quantity, concentration, physical or chemical characteristics, exposure to which is limited or regulated for health, safety, and environmental reasons by any governmental agency with jurisdiction or which poses significant present or potential hazard to human health, safety or to the environment if released to the workplace or the environment. The terms "release" and "discharge" shall be broadly construed to mean any spill, escape from confinement, and migration of a Hazardous Substance whether intentional or not. The term "Environmental Law" shall refer to all federal laws designed to protect human health and the environment, including, but not limited to: Clean Air Act; Clean Water Act; Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA); the Emergency Planning and Community Right to Know Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Solid Waste Disposal Act/Resource Conservation Recovery Act; the Safe Drinking Water Act; the Toxic Substances Control Act; and any and all acts regulating nuclear materials, together with all rules and regulations promulgated thereunder and all amendments thereto, and shall also refer to the Idaho Environmental Protection and Health Act, the Idaho Hazardous Waste Management Act, and any state or local law, rule or regulation which covers the same subject matter as these federal laws.

1.9 The individual executing this Mortgage as the Trustee of the Lynn G. Beus Trust warrants and represents that: (1) he is the duly acting and qualified Trustee of said Trust, and (2) the execution, delivery and consummation of this Mortgage will not cause said Trust nor the Trustee to be in violation or breach of any law, regulation, contract, agreement or other restriction to or by which the Trust or the Trustee is subject or bound.

II

THE MORTGAGOR AND MORTGAGEE HEREBY MUTUALLY AGREE AS FOLLOWS:

2.1 Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned to and shall be paid to Mortgagee who may apply or release such monies received by it in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance, or as otherwise provided in the Note.

2.2 By accepting payment of any sum secured hereby after its due date, Mortgagee does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

2.3 Upon payment in full by the Mortgagor of all sums secured hereby the Mortgagee shall release, without warranty, the Mortgaged Property, and shall provide to the Mortgagor a good and sufficient release and satisfaction of mortgage in a form suitable for recording. The recitals in such release and satisfaction of any matters or facts shall be conclusive proof of the truthfulness thereof.

MORTGAGE - 4

2.4. As additional security, Mortgagor hereby gives and confers upon Mortgagee the right, power and authority during the continuance of this Mortgage to collect the rents, issues and profits of said property, reserving unto Mortgagor the right, prior to any default by Mortgagor and payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Mortgagee may at any time without notice, either in person, by agent, or by a receiver to be appointed by a Court of competent jurisdiction, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own names sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive any default or notice of default hereunder nor invalidate any act done pursuant to such notice.

III

REMEDIES UPON DEFAULT:

3.1 Upon default by Mortgagor with respect to payment of any indebtedness secured hereby, or in performance of any agreement hereunder, or any agreement under the Promissory Note, or in any indebtedness secured by the Property with a lien either superior or subordinate hereto, all sums secured hereby shall immediately become due and payable at the option of the Mortgagee.

3.2 If any event of default shall have occurred and be continuing, the Mortgagee shall have, in addition to any rights at law or in equity, each and all of the following rights and remedies, which may be exercised individually, collectively or cumulatively:

(a) Mortgagee may, at its option, by written notice to Mortgagor, declare immediately due and payable the entire debt secured by this Mortgage, and upon any such declaration, the additional amount added to the debt by the Promissory Note, accrued and unpaid interest and premium (if any), shall become and be immediately due and payable, anything to the contrary contained in this Mortgage or the Promissory Note notwithstanding, and the principal debt and interest to that date shall bear interest at the highest lawful contract rate.

(b) Mortgagee may, without regard to the adequacy of any security for the indebtedness or obligation hereby secured, in person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction, enter upon and take possession of all or any part of the Mortgaged Property, and Mortgagor shall on demand peaceably surrender possession thereof to Mortgagee. The Mortgagee, in its own name or in the

name of the Mortgagor, may operate and maintain all or any part of the Mortgaged Property to such extent as the Mortgagee deems advisable, and may rent and lease the same to such persons, for such periods of time, and on such terms and conditions as the Mortgagee in its sole discretion may determine, and may sue for or otherwise collect any and all of the rents, issues and profits thereof, including those past due and unpaid. In dealing with the Mortgaged Property as Mortgagee in possession, Mortgagee shall be without any liability, charge or obligation therefore to the Mortgagor other than for willful misconduct and shall be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of and for the account of the Mortgagor (and all net losses, costs and expenses thereby incurred shall be advancements secured hereby), to the same extent as the owner thereof could do, and to apply the rents, issues and profits first to the payment of receiver's expenses, if any, for management of the Mortgaged Property, then to the payment of all taxes and lien assessments levied against the mortgaged property, where provision for payment of such is not otherwise made, then to the payment of any amounts due and owing to the Mortgagee under the terms of any obligation secured hereby, and then to the payment of current operating costs and expenses, including repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements, arising in connection with the mortgaged property.

(c) In the event of the non-compliance of any duty or duties required of the Mortgagor under the terms of this Mortgage, or the occurrence of any event which, in the judgment of the Mortgagee, impairs the value of the Mortgaged Property herein taken as security for the indebtedness, the Mortgagee reserves the right, at its own election, to advance sufficient funds to accomplish said performance or maintain such security. Said sums, on notice from Mortgagee, shall become immediately due and repayable to the Mortgagee. In default of said payment, the amount advanced will be added to the outstanding principal balance of the Promissory Note, and shall bear interest at the highest lawful contract rate.

(d) The holder of this Mortgage shall have the right to foreclose the same by reason of a breach of any of the within covenants and in addition thereto shall have the right to foreclose the same by reason of any default or breach which gives the holder of this Mortgage the right to accelerate payment of principal or to call due the principal sum.

3.3 At any time after institution of foreclosure proceedings, a receiver may, upon application of the Mortgagee, be appointed by any court of competent jurisdiction to take charge of all of the Mortgaged Property, and to carry on, protect, preserve, replace and repair the Mortgaged Property, and receive and collect all of the rents and issues or profits thereof and to apply the same first to the payment of receiver's expenses for management, operation, and protection of the Mortgaged Property, and then in the manner provided in Paragraph 3.2 (b) herein. Upon appointment of said receiver, Mortgagor will deliver up possession of all Mortgaged Property and the whole thereof to such receiver forthwith. The Mortgagor hereby consents to the appointment of the Mortgagee as receiver in such proceedings.

3.4 Neither the Mortgagor, its trustees, beneficiaries, heirs, executors, administrators or assigns, shall have or assert any right under any statute or rule of law pertaining to the marshaling of assets, the exemption of homestead, the administration of estates of decedents, or in any manner whatever, to defeat, reduce or affect the right of the owners of said debt, under the terms of the Mortgage, to a foreclosure of the Mortgaged Property for the collection of said debt (without any prior or different resort for collection), or the right of such owner, under the terms of this Mortgage, to the payment of such debt out of the proceeds of a foreclosure sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses as aforesaid being first deducted). Any Mortgagor that has signed this Mortgage as a surety or accommodation party or that has subjected its property to this Mortgage to secure the indebtedness of another hereby expressly waives any defense arising by reason of any disability or other defense of the Mortgagor or by reason of the cessation from any cause whatsoever of the liability of the Mortgagor.

3.5 Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or the then owner of the Mortgaged Property, or of any of the Mortgagor or then owner's other property, the Mortgagee shall be entitled to retain possession and control of all property now or hereafter subject to this Mortgage.

3.6 In addition to any remedies provided herein for default hereof, Mortgagee shall have the remedies allowed under the laws of the State of Idaho and the laws of the United States. No failure on the part of the Mortgagee to exercise any of its rights hereunder arising upon default shall be construed to prejudice its rights in the event of any other or subsequent default. No delay on the part of the Mortgagee in exercising any of such rights shall be construed to preclude it from the exercise thereof at any time during the continuance of such default. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently at its option. By accepting payment of any sum secured hereby after its due date, Mortgagee shall not thereby waive the agreement herein contained that the time is of the essence, nor shall Mortgagee waive either its right to require prompt payment when due of all other sums secured or to consider failure so to pay a default hereunder.

3.7 The rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

IV

MISCELLANEOUS PROVISIONS:

4.1 This Mortgage shall be governed by the law of the State of Idaho. In the event that any provision or clause of the Note conflicts with applicable laws, such conflicts shall not affect other provisions that can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable.

4.2 This Mortgage applies to, inures to the benefit of, and binds all parties hereto, its heirs, devisees, administrators, executors, successors and assigns. The term "Mortgagee", shall mean the holder and owner of the Promissory Note secured hereby; or, if the Promissory Note has been pledged, the pledgee thereof. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

4.3 This Mortgage is to be recorded in the real estate records of Caribou County, Idaho.

4.4 The Mortgagor agrees to take such actions and to execute and record, all at the Mortgagor's cost, such further instruments and agreements as the Mortgagee may reasonably request in order to perfect and continue the security hereof or to consummate the transaction contemplated by this Mortgage and the Promissory Note.

4.5 All notices required or permitted to be given hereunder shall be in writing, and shall be effective three (3) business days after such are deposited in the United States Mail, certified or registered, postage prepaid, addressed as shown in the first paragraph of this Mortgage, or to such other address as a party may, from time to time, designate to the other party, in writing.

4.6 The prevailing party in any litigation affecting or concerning this Mortgage or the Promissory Note secured hereby shall be entitled to a reasonable attorney's fee, in addition to allowable costs.

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage the day and year first above written.

The Lynn G. Beus Trust

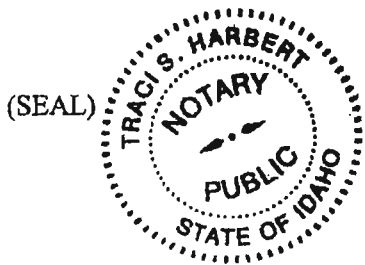
By: _____



John C. Souza, Trustee

STATE OF IDAHO)
 Bannock :SS
County of ~~Caribou~~)

On this 2 day of May, 2007, before me, the undersigned, a Notary Public in and for said County and State, personally appeared **John C. Souza**, known or identified to me to be the person whose name is subscribed to the within instrument as the Trustee of The Lynn G. Beus Trust, and acknowledged to me that he executed the same as such Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.





Notary Public for Idaho
Residing at Traballo
My Commission Expires: Oct. 11

EXHIBIT "A"

Caribou County, Idaho:

Township 8 South, Range 42 East of the Boise Meridian:

- Section 25: S $\frac{1}{2}$ SW $\frac{1}{4}$.
- Section 26: S $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$.
- Section 34: E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$.
- Section 35: N $\frac{1}{2}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$.

Township 9 South, Range 42 East of the Boise Meridian:

- Section 2: Lots 2, 3, 4, 5, 6 and 7, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.
- Section 3: Lots 1, 2 and 3, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$.
- Section 10: N $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- Section 11: Lots 2 and 3, S $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$.

CARBON LAND TITLE
 241 S. MAIN Street
 Soda Springs, Id 83276

RE: Lynn Bens TRUST
 ATTN: Kenna ANN

Dear Carbon Land Title,

Please be advised the undersigned, Trustee of the Lynn Bens TRUST does hereby agree and consent that the cash amounts due to the TRUST pursuant to the current loan may be paid directly to Jerry Bens.

Sincerely,
 J. L. [Signature]
 Trustee

EXHIBIT "N"

CARIBOU LAND TITLE, INC.

ESCROW HISTORY REPORT

4/14/09 PAGE 1

ESCROW#	INT#	PRINC-BAL	YTD-PRINC	YTD-INT	DLQ-INT	YTD-FEE	BUYER	SELLER
1823.1	14.000	438376.27	1570.44	11895.82	.00	15.00	LYNN G BEUS TRUST	DBL COMPANY, INC.
						15.00	(YTD Buyer Fee)	.00 (YTD Seller Fee)
		.00	RESERVE-BAL		.00	YTD-TAXES		.00 YTD-INS
								1496.25 YTD-LTCRG

--YTD ACTIVITY--

PYMNT:	REF#	PMT-DATE	FOR-DATE	TTL-PMT	PRN-PD	INT-PD	FEE	LTE-CHG	TAX-INS	BUY-OTM	SEL-OTH	PRIN-BAL
DISBURSEMENT:				CK-DATE	SEL#	PAYEE			CK#		CK-AMT	
PYMNT	33001	2/25/09	1/01/09	4992.50	.00	4488.75	5.00	498.75	.00	.00	.00	438949.31
						6770.41	**IntShort added to Balance					
DISBURSEMENT				2/27/09	10	DBL COMPANY, INC.			25766		4987.50	
PYMNT	44008	3/20/09	2/01/09	4992.51	616.39	3872.37	5.00	498.75	.00	.00	.00	438831.57
DISBURSEMENT				3/24/09	20	IDAHO INDEPENDENT BANK			25823		4987.51	
PYMNT	53002	4/10/09	3/01/09	4992.50	954.05	3834.70	5.00	498.75	.00	.00	.00	438376.27
DISBURSEMENT				4/14/09	20	IDAHO INDEPENDENT BANK			25868		4987.50	
ACTIVITY TTL				14977.51	1570.44	11895.82	15.00	1496.25	.00	.00	.00	
						TTL Regular Disbursements:					14962.51	

EXHIBIT 0



APPRAISAL & FINANCIAL SERVICE

CERTIFIED REAL ESTATE APPRAISERS IN IDAHO & UTAH

1086N 1400W, PRESTON, IDAHO 83263
TELEPHONE (208) 852-3366

Mr. Mark Shaffer
Attorney at Law
PO Box 1391
Pocatello ID 83204

Re: The Lynn G. Beus Trust Property Located at 3121 Wood Canyon Road in Soda Springs, Idaho

Dear Mr. Shaffer:

In accordance with your request, I am presenting you the following appraisal of The Lynn G. Beus Trust Property which is located in Soda Springs, Idaho.

The appraisal for market value is based on a field examination, together with an investigation and analysis of all pertinent data which is compiled within.

Subject to the assumptions and limiting conditions attached to this appraisal, the market value on the 10th day of June, 2008, is estimated to be:

TWO MILLION NINE HUNDRED ONE THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$2,901,550.00)

This appraisal report contains a total of 97 consecutively numbered pages. If any single page is missing or out of sequence, this entire appraisal report is null and void.

Respectfully submitted,
With warmest personal regards,

[Handwritten signature]

APPRAISAL & FINANCIAL SERVICE COMPANY
Robert R. Fellows, "CGA"
CERTIFIED GENERAL APPRAISER
PROFESSIONAL FARM APPRAISER
License No. CGA-38
(Expiring 7-28-09)

EXHIBIT P

II.

ANSWERS TO GENERAL ALLEGATIONS

1. Defendant Beus admits paragraphs 1, 2, 3 and 4 of Plaintiffs' Complaint.
2. Defendant Beus admits paragraph 5 of Plaintiffs' Complaint except to the extent he lacks sufficient knowledge to determine whether the trust was registered and, therefore, denies the same.
3. Defendant Beus admits paragraph 6 of Plaintiffs' Complaint.
4. Defendant Beus admits that he and Plaintiffs are designated as "remaindermen beneficiaries" but denies the Plaintiffs are entitled to equal distribution of the corpus and income of the trust.
5. Defendant Beus admits paragraphs 8, 9, 10, 11 and 12 of Plaintiffs' Complaint.

[LYNN G. BEUS TRUST ALLEGATIONS]

6. Defendant Beus admits paragraphs 13 and 14 of Plaintiffs' Complaint.
7. Answering paragraph 15 of Plaintiffs' Complaint, the first sentence contains a statement of law to which no answer is required. The second sentence of the paragraph likewise speaks for itself - - as does the referenced Exhibit - - and, thus, no answer is required. The last sentence of the paragraph also contains a statement of law to which no answer is required.
8. Answering paragraph 16 of Plaintiffs' Complaint, Defendant Beus states that the Trust Agreement speaks for itself and no answer is required.
9. Paragraph 17 of Plaintiffs' Complaint contains a statement of law to which no answer is required.
10. Paragraphs 18 and 19 of Plaintiffs' Complaint contain statements repeating the language of the Will. The Will speaks for itself and no answer is required.

11. Defendant Beus admits paragraph 20 of Plaintiffs' Complaint to the extent that the residual beneficiaries have been unable to agree on the continued operation and division of the real property. Defendant Beus denies that Dallas and Douglas Beus are entitled to an equal distribution of the proceeds.

[TRUST LEASES TO JERRY BEUS ALLEGATIONS]

12. Defendant Beus admits paragraphs 21, 22 and 23 of Plaintiffs' Complaint.

13. Defendant Beus admits paragraph 24 of Plaintiffs' Complaint to the extent it quotes from the lease and trust agreement. All other allegations contained therein are denied.

14. Defendant Beus admits paragraph 25 of Plaintiffs' Complaint to the extent it accurately quotes from the farm leases, which speak for themselves. All other allegations contained therein are denied.

15. Defendant Beus denies paragraph 26 of Plaintiffs' Complaint.

16. Answering paragraph 27 of Plaintiffs' Complaint, Defendant Beus answers that the leases speak for themselves. Defendant Beus admits that the 2007 farm lease obligates the trust to reimburse Defendants for improvements.

17. Defendant Beus denies paragraphs 28, 29, 30, 31 and 32 of Plaintiffs' Complaint.

18. Answering paragraph 33 of Plaintiffs' Complaint, Defendant Beus states that the promissory note speaks for itself. To the extent the paragraph states other allegations, those allegations are denied.

19. Defendant Beus admits paragraph 34 of Plaintiffs' Complaint.

20. Defendant Beus denies paragraphs 35 and 36 of Plaintiffs' Complaint.

21. Answering paragraph 37 of Plaintiffs' Complaint, Defendant Beus admits that he has asserted that the DBL obligation is an obligation of the trust, but denies each and every other allegation of paragraph 37.

22. Answering paragraphs 38 and 39 of Plaintiffs' Complaint, Defendant Beus states that the trust agreement and the Will speak for themselves, and no answer is required. To the extent that the paragraphs state other allegations, those allegations are denied.

23. Defendant Beus denies paragraphs 40 and 41 of Plaintiffs' Complaint.

24. There is no allegation of fact in paragraph 42 of Plaintiffs' Complaint and, therefore, no response is required. In the event an answer is deemed required, the allegations are denied.

25. Paragraph 43 of Plaintiffs' Complaint states a conclusion of law to which no answer is required.

26. Defendant Beus admits paragraph 44 of Plaintiffs' Complaint.

27. Paragraphs 45 and 46 of Plaintiffs' Complaint state legal conclusions to which no answer is required.

28. Answering paragraphs 47 and 48 of Plaintiffs' Complaint, Defendant Beus lacks sufficient factual knowledge to admit or deny the allegations and, therefore, denies the same.

29. Answering paragraph 49 of Plaintiffs' Complaint, the language of the trust agreement speaks for itself and, thus, no answer is required. To the extent that the paragraph contains other allegations, those allegations are denied.

30. Defendant Beus denies paragraph 50 of Plaintiffs' Complaint.

31. Defendant Beus lacks sufficient knowledge to admit or deny the allegations of paragraphs 51, 52, 53 and 54 of Plaintiffs' Complaint and, therefore, denies the same.

32. Defendant Beus denies paragraph 55 of Plaintiffs' Complaint.

33. There is no allegation of fact in paragraph 56 of Plaintiffs' Complaint and, therefore, no response is required. In the event an answer is deemed required, the allegations are denied.

34. Paragraph 57 of Plaintiffs' Complaint states a legal conclusion to which no answer is required.

35. Defendant Beus admits paragraph 58 of Plaintiffs' Complaint.

36. Answering paragraph 59 of Plaintiffs' Complaint, the Will and trust agreement speak for themselves and, thus, no answer is required. To the extent the paragraph states other allegations, they are denied.

37. Defendant Beus admits paragraph 60 of Plaintiffs' Complaint only to the extent an appraisal was conducted. The remaining allegations of the paragraph are denied.

38. Defendant Beus admits paragraph 61 of Plaintiffs' Complaint.

39. Defendant Beus denies paragraphs 62, 63, 64, 65, 66, 67 and 68 of Plaintiffs' Complaint in their entirety.

40. There is no allegation of fact in paragraph 69 of Plaintiffs' Complaint and, therefore, no response is required. In the event an answer is deemed required, the allegations are denied.

41. Defendant Beus denies paragraphs 70, 71, 72 and 73 of Plaintiffs' Complaint.

42. There is no allegation of fact in paragraph 74 of Plaintiffs' Complaint and, therefore, no response is required. In the event an answer is deemed required, the allegations are denied.

43. Defendant Beus denies paragraphs 75, 76, 77 and 78 of Plaintiffs' Complaint.

44. There is no allegation of fact in paragraph 79 of Plaintiffs' Complaint and, therefore, no response is required. In the event an answer is deemed required, the allegations are denied.

45. Defendant Beus denies paragraph 80 of Plaintiffs' Complaint.

46. Defendant Beus denies that Plaintiffs are entitled to attorney fees.

AFFIRMATIVE DEFENSES

In asserting the following defenses, Defendant Beus does not assume the burden of proving any element thereof which any applicable case law, statute, rule, regulation or other authority places upon Plaintiffs.

FIRST AFFIRMATIVE DEFENSE (No Justiciable Controversy)

Plaintiffs are barred from maintaining this action because Plaintiffs' action fails to present a justiciable controversy between Plaintiffs and Defendant.

SECOND AFFIRMATIVE DEFENSE (Questions Are Moot)

Plaintiffs are barred from maintaining this action against Defendant by reason of the fact that the questions presented by the action are moot.

THIRD AFFIRMATIVE DEFENSE (Lack Of Standing)

Plaintiffs lack standing to assert the claims set forth in their Complaint.

FOURTH AFFIRMATIVE DEFENSE (Accord and Satisfaction)

Plaintiffs are barred from maintaining this action against Defendant by reason of accord and satisfaction of the claims upon which the action is based.

**FIFTH AFFIRMATIVE DEFENSE
(Failure To Mitigate)**

Plaintiffs are barred from maintaining this action against Defendant because Plaintiffs, by failing to act reasonably, have failed to mitigate the damages to which Plaintiffs may be entitled.

**SIXTH AFFIRMATIVE DEFENSE
(No Privity Of Contract)**

Plaintiffs are barred from maintaining this action because there is no privity of contract between Plaintiffs and Defendant.

**SEVENTH AFFIRMATIVE DEFENSE
(Failure To Allege That Plaintiffs Have Complied With Terms Of Contract)**

Plaintiffs are barred from maintaining this action because Plaintiffs' Complaint fails to state a claim against Defendant in that it fails to allege that Plaintiffs have complied with all of the terms and conditions of the purported contracts upon which the action is based.

**EIGHTH AFFIRMATIVE DEFENSE
(Breach Of Contract)**

Plaintiffs are barred from maintaining this action because Defendant's breach of his contract with Plaintiffs, if any, is excused by Plaintiffs' breach of the contract.

**NINTH AFFIRMATIVE DEFENSE
(Impossibility Of Performance)**

Plaintiffs are barred from maintaining this action because Defendant's breach of his contract with Plaintiffs, if any, is excused by impossibility of performance.

**TENTH AFFIRMATIVE DEFENSE
(Frustration Of Purpose Of Contract)**

Plaintiffs are barred from maintaining this action because Defendant's breach of his contract with Plaintiffs, if any, is excused by frustration of the purpose of the contract.

**ELEVENTH AFFIRMATIVE DEFENSE
(Failure/Lack Of Consideration)**

Plaintiffs are barred from maintaining this action because Defendant's breach of his contract with Plaintiffs, if any, is excused by a material failure of consideration.

**TWELFTH AFFIRMATIVE DEFENSE
(Nonperformance Of Conditions Precedent)**

Plaintiffs are barred from maintaining this action against Defendant because a condition precedent to Defendant's duty of immediate performance failed to occur.

**THIRTEENTH AFFIRMATIVE DEFENSE
(Nonperformance Of Conditions Subsequent)**

Plaintiffs are barred from maintaining this action against Defendant because the occurrence of a condition subsequent to Defendant's duty of immediate performance terminated Plaintiffs' right to immediate performance.

**FOURTEENTH AFFIRMATIVE DEFENSE
(Fraud)**

Plaintiffs are barred from maintaining this action against Defendant because the contract upon which the action is based is void or voidable since Defendant entered into the contract as a result of Plaintiffs' fraud.

**FIFTEENTH AFFIRMATIVE DEFENSE
(Mutual Or Unilateral Mistake)**

Plaintiffs are barred from maintaining this action against Defendant because the contract upon which the action is based is void or voidable since Defendant entered into the contract as a result of a mutual or unilateral mistake of fact.

**SIXTEENTH AFFIRMATIVE DEFENSE
(Rescission)**

Plaintiffs are barred from maintaining this action against Defendant because the contract upon which the action is based was rescinded.

**SEVENTEENTH AFFIRMATIVE DEFENSE
(Laches)**

Plaintiffs are barred from maintaining this action against Defendant based upon the doctrine of laches.

**EIGHTEENTH AFFIRMATIVE DEFENSE
(Estoppel)**

Plaintiffs are barred from maintaining this action against Defendant based upon the doctrine of estoppel.

**NINETEENTH AFFIRMATIVE DEFENSE
(Unclean Hands)**

Plaintiffs should be denied any equitable relief herein on the ground of unclean hands.

RULE 11 STATEMENT

Defendant Beus has considered and believes that he may have additional claims and defenses but does not have sufficient information at this time to assert the additional claims or defenses under Idaho Rule of Civil Procedure 11. Defendant Beus does not intend to waive any such claims or defenses and specifically asserts his intention to amend this Answer if, pending research and after discovery, facts come to light giving rise to additional claims and defenses.

ATTORNEYS' FEES

Defendant Beus has been required to retain the services of counsel to defend against this action and has agreed to pay reasonable attorneys' fees for the services rendered. In accordance with Idaho law, including but not limited to Idaho Code §§ 12 120, 12 121 and 45 513, *et seq.*,

5

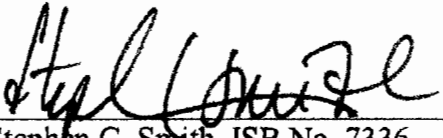
and Rule 54 of the Idaho Rules of Civil Procedure, Defendant Beus is entitled to recover his reasonable attorneys' fees plus his costs and expenses incurred in defending against this action.

WHEREFORE, Defendant Beus prays for judgment from the Court as follows:

1. That Plaintiffs' Complaint be dismissed with prejudice and Plaintiffs take nothing thereunder.
2. That Defendant Beus' interest in and to the subject Property is superior to that of Plaintiffs' interest, if any, in the Property.
3. That Defendant Beus be awarded the reasonable attorneys' fees and costs necessarily incurred in defending this action.
4. For such other and further relief as the Court deems just and proper.

DATED THIS 10th day of August, 2009.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By 
Stephen C. Smith, ISB No. 7336
Attorneys for Defendant Jerry Beus

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August, 2009, I caused to be served a true copy of the foregoing DEFENDANT JERRY BEUS' ANSWER TO VERIFIED COMPLAINT FOR RELIEF AND DECLARATORY JUDGMENT by the method indicated below, and addressed to each of the following:

Randall C. Budge
Mark S. Shaffer
RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED
P.O. Box 1391
Pocatello, ID 83204-1391
[Attorneys for Plaintiffs]

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 E-mail
 Telecopy: 208.232.6109



Stephen C. Smith

5

FILED
BANNOCK COUNTY
CLERK
2009 AUG 25 AM 8:58
DeW
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

DALLAS BEUS, individually; DOUG
BEUS, individually,

Plaintiffs,

vs.

JOHN C. SOUZA, Trustee of the Lynn G.
Beus Trust; JERRY BEUS, individually,

Defendants.

Case No:CV-2009-0001822-OC

**ORDER FOR SUBMISSION OF
INFORMATION FOR
SCHEDULING ORDER**

A Complaint was filed in this matter on the 6th day of May, 2009. The Defendants have now appeared and/or answered and the case is at issue.

IT IS HEREBY ORDERED, pursuant to I.R.C.P. 16, that the parties, through their counsel (or the parties themselves if self-represented), confer and submit to the Court, within fourteen (14) days of the date of this Order, a joint statement containing the following information:

- (1) Whether any service is still needed upon any unserved parties.
- (2) Whether motions to add new parties or otherwise amend the pleadings are contemplated.
- (3) Whether the parties currently contemplate or anticipate any pre-trial motions.

Case No.: CV-2009-0001822-OC

ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER

Page 1 of 3

- (4) Whether the case presents any unusual time requirements for trial preparation.
- (5) The agreed amount of time required for trial.
- (6) Whether the case presents any unusual times requirements for discovery.
- (7) Whether any party requests court-ordered mediation.
- (8) Three stipulated trial dates, one no less than six (6) months and no more than nine (9) months from the date of this Order, and a second no less than nine (9) months and no more than twelve (12) months from the date of this Order, and a third no less than twelve (12) months and no more than fifteen (15) months from the date of this Order. These trial dates cannot be during the first full week of any month.


(9) Whether there are other matters conducive to determination of the action that the parties agree should be brought to the attention of the Court prior to entering a Scheduling Order.

The parties shall agree as to which party shall make the joint submission but, if they cannot agree, Plaintiff shall be responsible to make the submission.

Upon receipt of this joint submission the Court will issue an Order setting the matter for trial with appropriate dates for discovery, disclosure of witness, etc.

IT IS FURTHER ORDERED that if the parties do not file the stipulation required herein, within the fourteen (14) days set forth, the Court will set this matter for trial on a date available to the Court.

DATED this 26th day of August, 2009.


DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of August, 2009, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Randall C. Budge
Mark S. Shaffer
Racine, Olson, Nye, Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, Idaho 83204-1391

U.S. Mail
 Overnight Delivery
 Hand Deliver
 Fax: 232-6109

Thomas J. Holmes
Jones, Chartered
P.O. Box 967
Pocatello, Idaho 83204

U.S. Mail
 Overnight Delivery
 Hand Deliver
 Fax:

Stephen C. Smith
Hawley, Troxell Ennis & Hawley, LLP
P.O. Box 1617
Boise, Idaho 83701-1617

U.S. Mail
 Overnight Delivery
 Hand Deliver
 Fax: 208-954-5268

Amy J. Wegner
Deputy Clerk

Randall C. Budge (ISB# 1949)
 Mark S. Shaffer (ISB# 7559)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208) 232-6101
 Fax: (208) 232-6109

FILED
 BANNOCK COUNTY
 CLERK OF DISTRICT COURT
 2009 SEP -3 PM 4:50
 DEPUTY CLERK

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually;)	
DOUG BEUS, individually,	)	Case No. CV-2009-0001822-OC
)	
Plaintiffs,)	
)	
vs.	)	MOTION FOR PARTIAL
	)	SUMMARY JUDGMENT
JOHN C. SOUZA, Trustee of the Lynn G.)	
Beus Trust; JERRY BEUS, individually,)	
)	
Defendants.)	
)	

COMES NOW Plaintiffs Dallas Beus and Doug Beus, individually (hereinafter "Plaintiffs"), by and through counsel, and pursuant to Rule 56 of the Idaho Rules of Civil Procedure, hereby move the Court for entry of partial summary judgment in favor of Plaintiffs and against each of the Defendants. This Motion is made upon the grounds and for the reasons that there are no material issues of fact and the moving parties are entitled to judgment as a matter of law that:

1. That the Lynn G. Beus Trust ("Trust") terminated June 10, 2008, upon the death of Beth Beus, the surviving spouse of Lynn G. Beus and lifetime beneficiary of the Trust.

2. That the 2007 Farm Lease entered into between trustee Souza and defendant Jerry Beus terminates pursuant to the terms of the Will and Trust upon the death of Beth Beus; or, upon the sale of the Trust property. Alternatively, that the trustee must exercise his discretionary right to terminate the Trust upon sale of the property.

3. That the DBL Company, Inc., Promissory Note and Mortgage executed by the trustee to pay off and refinance the prior loan obligations of Jerry Beus is the sole obligation of Jerry Beus and must be paid by him or be debited to his share of the proceeds from the sale of the Trust property.

4. That the proceeds from the sale of the Trust property are required to be distributed equally between the residual beneficiaries, Jerry Beus, Dallas and Doug Beus with the payoff of the DBL note and mortgage, taxes and other encumbrances against the Trust property debited to Jerry Beus's share pursuant to the terms of the 2007 Lease Agreement.

5. That Jerry Beus is not entitled to reimbursement from the Trust for any improvements to the Trust property.

6. That the Trust be closed upon distribution of the sale proceeds.

7. That if the beneficiaries are unable to mutually agree as to a sale price for the Trust property, the trustee be authorized and directed to sell the Trust property for any price agreed upon by two of the three beneficiaries. Alternatively, that the Trustee must sell the property at a price approved by the Court.


8. That Defendant John C. should Souza be removed as trustee of the Trust with the Court to oversee the sale of the Trust property and distribution of the proceeds. Alternatively, an independent trustee should appointed.

DATED this 3rd day of September, 2009.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By 
RANDALL C. BUDGE

2009 SEP -3 PM 4: 50

BY  DEPUTY CLERK

Randall C. Budge (ISB# 1949)
Mark S. Shaffer (ISB# 7559)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208) 232-6101
Fax: (208) 232-6109

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

DALLAS BEUS, individually,)
DOUG BEUS, individually,)
Plaintiffs,)

Case No. CV-2009-0001822-OC

vs.)

**MEMORANDUM IN SUPPORT
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT**

JOHN C. SOUZA, Trustee of the Lynn G.)
Beus Trust; JERRY BEUS, individually,)
Defendants.)

COMES NOW Plaintiffs Dallas Beus and Doug Beus, individually (hereinafter "Plaintiffs"), by and through counsel, and submit this memorandum in support of Plaintiffs' Motion for Partial Summary Judgment filed herein. The summary judgment motion and this memorandum are based upon Plaintiff's Verified Complaint together with the Supporting Affidavit of Randall C. Budge, to which is attached the depositions of Plaintiffs, Defendants John C. Souza and Jerry Beus, CPA Max Hemmert, banker Tom McBride, and thee deposition exhibits referred to in this Memorandum. Exhibits A-P attached to the complaint are the same as deposition exhibits 1-16. For convenience, all exhibits referred to as deposition exhibits.

I. INTRODUCTION

This action arises out of a dispute between the three sons of Lynn G. Beus (Defendant Jerry Beus, Plaintiff Douglas Beus, and Plaintiff Dallas Beus), who are the remaindermen of the Lynn G. Beus Trust (“Trust”). The Last Will and Testament of Lynn G. Beus (“Will”) created a testamentary trust by providing that all probate property would be poured over into the Trust. *See* the Sixth section of Exhibit “1”. The assets of the estate that were held in the Trust consist primarily of certain real property and appurtenant water rights and improvements commonly known as “the Beus Ranch,” consisting of approximately 2,521 acres of farming and ranching land (“Trust Property”) located in Caribou County, Idaho. *See* the Fifth section of Exhibit “1”. Beth Beus was the surviving spouse of Lynn G. Beus and the sole beneficiary until her death June 10, 2009. By its terms the Trust terminated upon the death of Beth Beus and has been listed for sale so the proceeds can be distributed between the three sons. Defendant Jerry Beus has been the long term lessee and remains in possession although he has subleased the property the last two years.

The dispute between the parties primarily centers over: (1) whether the termination of the Trust also terminated the current lease agreement of the Trust Property (“2007 Farm Lease”) entered into by Defendant John C. Souza (“Souza” or “Trustee”) and Defendant Jerry Beus, or whether the sale must be subject to the lease; (2) Trustee Souza’s right and obligation to terminate the lease and sell the Trust Property, distribute the proceeds and close the Trust; (3) whether the DBL promissory note and mortgage executed by the Trustee to refinance and pay off personal loans of Defendant Jerry Beus is the responsibility of the Trust, and thus shared by all beneficiaries, or the sole responsibility of Defendant Jerry Beus; and (5) whether Jerry Beus is entitled to reimbursement for any improvements made to the Trust Property while he was in possession of the Trust Property as a lessee.

Defendant Jerry Beus does not dispute that since the beneficiaries do not agree to any joint continued operation of the Trust Property, it must be sold and the proceeds divided as required by the Trust terms Verified Complaint ¶ 58; Answer ¶ 35. However, Jerry Beus asserts that the 2007 Farm Lease remains in effect beyond the sale of the Trust Property through 2013, and that the DBL Company loan executed by the Trustee for the benefit of Defendant Jerry Beus should be the responsibility of the Trust.

The Plaintiffs assert that, pursuant to the provisions of the Trust it terminates at the death of Beth Beus"; that the 2007 Farm Lease of the Trust Property to Jerry Beus terminates at the latest upon sale of the property; that the Trustee is obligated to sell the Trust Property; and, that the proceeds of sale must be divided between the three sons, remaindermen Dallas, Doug and Jerry Beus; and, that the share of Defendant Jerry Beus must be charged or debited in the amount necessary to pay off the DBL promissory note and mortgage against the property securing his personal loans together with any unpaid lease obligations. Some 11 months after the death of Beth Beus and only after Plaintiffs' Complaint was filed the Trustee Defendant Souza listed the Trust Property for sale with Lisa Ayers of Gate City Realty with the approval of the parties. The parties agree that in the event an acceptable offer is received that Jerry Beus has the first option to buy as provided in the Will.

II. LEGAL STANDARD

Summary judgment is proper when "the pleadings, depositions, admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Idaho R. Civ. P. 56(c). "All disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that

section of Exhibit "1".

2. Beth Beus was the lifetime beneficiary under the Lynn G. Beus Trust (hereinafter "the Trust") after the death of her husband until her death on June 10, 2008. *See* the Sixth section of Exhibit "1"; Section 1 of Exhibit "2".

3. Defendant Jerry Beus and Plaintiffs Doug Beus and Dallas Beus are designated as "remaindermen beneficiaries" of the Trust and equally entitled to the undistributed corpus and income of the Trust upon the death of Beth Beus. *See* the Eighth section of Exhibit "1"; Sections 1 and 13 of Exhibit "2".

4. R. M. Whittier was appointed the personal representative of Lynn G. Beus' estate and the trustee of the Lynn G. Beus Trust by the Last Will and Testament of Lynn G. Beus ("Will"). *See* the Third section of Exhibit "1".

5. The Will was formally probated in Caribou County Case No. 3848M.

6. The Will creates a testamentary trust by providing that all probate property would be poured over into the Trust. *See* the Sixth section of Exhibit "1". The assets of the estate held in Trust consist primarily of the Trust Property located in Caribou County, Idaho. *See* the Fifth section of Exhibit "1".

7. The Trust, established pursuant to the Will, was further memorialized and implemented for administration purposes by a separate document titled Trust Agreement created on or about May 14, 1987, following the death of Lynn G. Beus, by agreement executed by R. M. Whittier, Personal Representative of the Estate of Lynn G. Beus, R. M. Whittier, as Trustee, and Beth Beus, the lifetime beneficiary under the Trust. *See* Exhibit "2".

8. The testamentary trust provisions of the Will are controlling. *See* Section 6 of Exhibit "2". The Trust Agreement states that "the Trustee shall attempt to follow the desires of Lynn G. Beus

as was set forth in his Last Will and Testament dated June 27, 1983." *See id.* Any inconsistency between the Trust Agreement and the Will is governed and controlled by the testamentary trust provisions contained in the Will. *See* the Sixth section of Exhibit "1"; Section 6 of Exhibit "2".

9. The Trust Agreement vests the Trustee with certain powers, "in addition to those now or hereinafter conferred by statute or case law, all of which shall be exercised in a fiduciary capacity subject to any limitations stated elsewhere in this Agreement." *See* Section 17 of Exhibit "1".

10. Pursuant to the Trust Agreement, and consistent with the Will, all assets of the Estate of Lynn G. Beus were held "in trust" for the benefit of his surviving spouse, Beth Beus, during the balance of her life. *See* the Sixth section of Exhibit "1"; Sections 1 and 24 of Exhibit "2".

11. The provisions of the Trust as described in the Will provide that "[a]t the death of my spouse, this Trust shall close and terminate and all remaining assets, including any undistributed income, if any shall be distributed as hereinafter set out." *See* subsection B(2) of the Sixth section of Exhibit "1".

12. The provisions of the Trust as described in the Will provide that "[i]f my children are unable to agree upon the operation, management or division of the real property, following the death of my wife, my Trustee is instructed to sell the same, and to divide the proceeds equally between Dallas, Jerry and Doug after all expenses, taxes and liens of any kind and nature against the Trust property is paid." *See* the Eighth section of Exhibit "1". Beth Beus passed away on June 10, 2008 at which time the Trust was to be terminated. *See* subsection B(2) of the Sixth section of Exhibit "1"; Sections 1 and 24 of Exhibit "2"

13. Since the death of Beth Beus on June 10, 2008 the residual beneficiaries (Defendant Jerry Beus, Plaintiff Douglas Beus, and Plaintiff Dallas Beus) have been unable to agree upon the continued operation or division of the real property; therefore, all assets of the Trust are to be sold,

the proceeds from the sale divided and distributed equally to the residual beneficiaries, and the Trust terminated. *See* the Eighth section of Exhibit "1"; Section 13 of Exhibit "2"; Verified Complaint ¶ 58; Answer ¶ 35.

TRUST LEASES TO DEFENDANT JERRY BEUS

14. The Trust Property has been leased, since the death of Lynn G. Beus, to Defendant Jerry Beus pursuant to various farm lease agreements. *See* Exhibits "3", "4", and "5.

15. R. M. Whittier, as personal representative of the estate of Lynn G. Beus, entered into the first farm lease with Defendant Jerry Beus on March 26, 1986 (the "1986 Farm Lease") for a total annual rent of \$23,900.00. *See* pages 1-2 of Exhibit "3". The term of the 1986 Farm Lease ran from March 1, 1986 through December 31, 1987, and was thereafter amended by R. M. Whittier and Defendant Jerry Beus to run through December 31, 1993. *See* page 1 of Exhibit "3". The 1986 Farm Lease was recorded at the request of Defendant Jerry Beus with the Caribou County Recorder's office on February 13, 1997 as Instrument No. 153677. *See* page 1 of Exhibit "3".

16. Monte R. Whittier, acting as successor trustee of the Trust, entered into an Addendum Farm Lease with Defendant Jerry Beus on April 6, 1994 (the "1994 Addendum Farm Lease"). *See* Exhibit "4". The 1994 Addendum Farm Lease modified the terms of the 1986 Farm Lease by increasing the annual rent to \$25,500.00 and extending the lease to run from March 1, 1994 through March 1, 2001. *See* page 1 of Exhibit "4". The 1994 Addendum Farm Lease was recorded, at the request of Defendant Jerry Beus, with the Caribou County Recorder's office on February 13, 1997 as Instrument No. 153678. *See* page 1 of Exhibit "4".

17. Souza, as Trustee, entered into a new farm lease for the Trust Property with Defendant Jerry Beus on January 1, 2007 (the "2007 Farm Lease") for a term of January 1, 2007 through December 31, 2013, with the annual rent reduced to \$12,000.00, to be paid directly to Beth

Beus. *See* page 1 of Exhibit “5”.

18. The 2007 Farm Lease expressly provides that “this lease is subject to the terms of the Last Will and Testament left by Lynn Beus and subject to the terms of the Trust established by Lynn Beus for and on behalf of his wife, Beth Beus.” *See* page 6 of Exhibit “5”. Beth Beus passed away on June 10, 2008 at which time the Trust, and thus the 2007 Farm Lease, was to be terminated. *See* subsection B(2) of the Sixth section of Exhibit “1”; Sections 1 and 24 of Exhibit “2”.

19. The 2007 Farm Lease expressly provides “[t]hat Lessee agrees that at the termination of the lease, they will surrender possession of the leased premises to Lessor without further demand or notice.” *See* page 3 of Exhibit “5”.

20. The 2007 Farm Lease expressly provides that “the provisions of this lease shall be binding upon the heirs, successors, administrators, and assigns of the parties hereto,” which includes Defendant Jerry Beus as a remainderman beneficiary. *See* page 7 of Exhibit “5”.

21. The 2007 Farm Lease added, for the first time, a term stating that “the Lessee shall be compensated for any and all improvements he makes to said leased premises . . . at the time said improvements are made and completed.” *See* page 2 of Exhibit “5”. The remainder of the 2007 Farm Lease follows the language of the 1986 Farm Lease almost verbatim, with the exception of the 2007 Farm Lease including conflicting statements that the Lessee agrees to pay “[t]he taxes on the real property of the trust,” while also stating that “[t]he Lessor shall pay all taxes on the real estate which is owned by the Estate or Trust.” *See* pages 1 and 3 of Exhibit “5”. Notwithstanding the conflicting language, Defendant Jerry Beus has made all payments for real property taxes on the Trust Property. (Jerry Beus Dep. 93:22–94:23; Souza Dep. 58:19-23.)

22. The 2007 Farm Lease expressly provides that “[t]he Lessee shall not assign this lease for rent, sublet or underlet the demised premises, or any part thereof, without first obtaining the previous

consent in writing, of the Lessor.” See page 3 of Exhibit “5”.

23. Defendant Jerry Beus did sublease the Trust Property to his son in 2008. (Jerry Beus Dep. 105:5-14.) Defendant Jerry Beus, however, did not obtain the written consent from the Trustee prior to entering into the sublease. (Jerry Beus Dep. 106:9-12, 112:2-8; Souza Dep. 62:14-24, 90:14-91:3, 96:22-97:8.)

24. Defendant Jerry Beus is currently subleasing the Trust Property, through a written agreement, to Dwight Lakey and Sons to farm the Trust Property. (Jerry Beus Dep. 106:21-107:4.) Defendant Jerry Beus, however, did not obtain the written consent from the Trustee prior to entering into the current written sublease agreement. (Jerry Beus Dep. 112:9-14; Souza Dep. 62:25-63:17, 96:22-97:8.) The terms of the written sublease agreement are that the sublessee pays \$60,000 to Defendant Jerry Beus to sublease the cultivated portion of the Trust Property, an amount Defendant Jerry Beus believes is a fair price to lease the Trust Property. (Jerry Beus Dep. 113:13-24.)

DEFENDANT JERRY BEUS TRUST PROPERTY COMPENSATION

25. The 1986 Farm Lease and the 2007 Farm Lease expressly obligate Defendant Jerry Beus to: “[M]aintain the irrigation pumps, mainlines, and sprinkler heads and any irrigation equipment as necessarily used for the irrigation of the farm. . . . [F]urnish all fertilizer, spray chemicals and chemicals that might be needed for the operation of the farm in a good and husband-like manner. . . . [R]emove rocks which might interfere with the orderly farming operation at his cost and expense. . . . [M]aintain the liability and property and fire insurance policy covering the farming operation and the buildings and other property in his possession. . . . [Ensure] that the property will be protected and will remain in as good a condition as it is now with reasonable wear and tear excepted. . . . [A]t his own proper costs and expense, maintain said fences and be responsible for all repairs thereto during the term of the lease. . . . [B]e solely responsible for any

and all loss or damage which may be occasioned to Lessee or any other party by virtue by escape of Lessee's stock from the leased premises. . . . [K]eep the leased premises free from noxious and offensive weeds and agrees to spray and eradicate the same whenever necessary, all in accordance with Caribou County Weed Control Regulations. . . . [At the termination of the lease,] surrender possession of the leased premises to Lessor without further demand or notice. Said premises shall be in good order and condition as the same was when they were entered upon by the Lessee. . . . [N]ot assign this lease for rent, sublet or underlet the demised premises, or any part thereof, without obtaining the previous consent in writing, of the Lessor. . . . [A]t [his] expense, maintain public liability insurance." *See* pages 2 through 5 of Exhibit "3"; pages 2, 3, 4, and 6 of Exhibit "5" .

26. Pursuant to the 1986 and 2007 Lease Agreements, the Trust has no obligation to pay or to reimburse Defendant Jerry Beus for any operating expenses or his personal operating loans as Lessee. *See* Exhibits "3" and "5".

27. Neither the 1986 Farm Lease nor the 1994 Addendum to Farm Lease impose upon the Trust any obligation to reimburse Defendant Jerry Beus for improvements. *See* Exhibits "3" and "4". Only the 2007 Farm Lease obligates the Trustee to reimburse the Lessee Defendant Jerry Beus for improvements. *See* page 2 of Exhibit "5". (Jerry Beus Dep. 97:9-17; Souza Dep. 57:23-58:1.)

28. Defendant Jerry Beus has produced no evidence supporting any claim against the Trust seeking reimbursement for improvements to the Trust Property pursuant to the 2007 Lease Agreement or any prior lease. (Jerry Beus Dep. 22:25-25:11, 97:18-100:19, 160:24-162:5; Souza Dep. 58:2-6, 110:5-9.)

29. The only assertion Defendant Jerry Beus has made against the Trust seeking reimbursement for improvements to the Trust Property pursuant to the 2007 Lease Agreement is an unsubstantiated claim that he installed some main line on the Trust Property. (Jerry Beus Dep. 98:8-

99:25.) Defendant Jerry Beus, however, has not produced any documentation pertaining to the installation of the main line. (Jerry Beus Dep. 22:25–25:11, 100:1-19; Souza Dep. 58:2-6.)

DEFENDANT JERRY BEUS NOTES AND MORTGAGES

30. Defendant Jerry Beus signed a Promissory Note, dated June 7, 2002, in favor of Ireland Bank, to obtain a personal loan in the amount of \$372,740.00. Exhibit “6”. The purpose of the loan was to pay off past operating lines of credit, according to letters from Ireland Bank dated September 24, 2008 and October 14, 2008. Exhibit “7”. The Promissory Note was secured by a Real Estate Mortgage signed by Souza as Trustee dated June 7, 2002 and recorded in the Caribou County Recorder’s office as Instrument No. 166205 (“Mortgage 166205”), thereby for the first time pledging the Trust Property as security for repayment of Defendant Jerry Beus’s \$372,740.00 Promissory Note. Exhibit “8”. The balance owing by Defendant Jerry Beus on said Ireland Bank Mortgage 166205 in the amount of \$332,141.66 was paid off by a loan with DBL Company Inc. (“DBL ”), which was also secured by a mortgage against the Trust Property. *See Exhibits “7” and “12”.*

31. Defendant Jerry Beus signed a second Promissory Note, also dated June 7, 2002, in favor of Ireland Bank, to obtain a loan in the amount of \$235,000.00. Exhibit “9”. The purpose of the loan was cross collateralization of a new operating line of credit. *See Exhibit “7”.* The Promissory Note was secured by a Real Estate Mortgage signed by Souza as Trustee dated June 7, 2002 and recorded in the Caribou County Recorder’s office as Instrument No. 166206 (“Mortgage 166206”), thereby pledging the Trust Property as security. Exhibit “10”. The balance owing by Defendant Jerry Beus on said Ireland Bank Promissory Note was paid off by Defendant Jerry Beus. *See Exhibit “7”.*

32. Ireland Bank asked that Defendant Jerry Beus go elsewhere to do business even

though the bank had the farm as collateral. Jerry Beus Dep. 124:24–125:18.)

33. Defendant Jerry Beus asked Plaintiffs, as remaindermen beneficiaries, to sign off on a loan from Federal Land Bank because Federal Land Bank wanted the permission of all beneficiaries. (Jerry Beus Dep. 127:14-24.) Plaintiffs, however, did not want to put the farm as collateral on any loan and refused to sign any documentation. (Jerry Beus Dep. 141:23–142:12.)

34. Defendant Jerry Beus then contacted Trustee Souza and asked if Souza would put up the farm as collateral in order to get the money to pay the loans at Ireland Bank. (Jerry Beus Dep. 143:4-21; Souza Dep. 79:13–80:16.)

35. Trustee Souza agreed and as Trustee signed a Promissory Note dated May 2, 2007, in the amount of \$427,500.00, in favor of DBL. *See* Exhibit “11”. Said Promissory Note refinanced the unpaid balance Defendant Jerry Beus owed Ireland Bank, as indicated by the Settlement Statement entered into by Souza, as Trustee, and Caribou Title, dated May 3, 2007. Exhibit “12”. (Jerry Beus Dep. 137:22–138:12; Souza Dep. 80:11-16, 81:6–83:17.)

36. The DBL Promissory Note was secured by a mortgage against the Trust Property dated May 2, 2007, recorded in the Caribou County Recorder’s office as Instrument No. 178119 (“Mortgage 178119”). Exhibit “13”. Of the \$427,500.00 loan proceeds, \$332,141.66 went to Ireland Bank to pay off Defendant Jerry Beus’s loans with the balance providing a new operating line of credit for Defendant Jerry Beus. *See* Exhibits “7” and “12”. (Jerry Beus Dep. 136:14–138:12, 144:23–145:6; Souza Dep. 80:11-16, 81:6–83:17.) From said loan proceeds Defendant Jerry Beus was also paid a cash amount of \$18,153.84 pursuant to an Instruction Letter from Trustee Souza. *See* Exhibit “14”. (Jerry Beus Dep. 144:23–146:10; Souza Dep. 82:21–83:17.)

37. The current amount due on the Promissory Note in favor of DBL has increased from the original \$427,500.00 amount to an amount in excess of \$438,376.27, with interest accruing. *See*

Exhibit "15". Jerry Beus missed the August 2009 payment and the DBL loan is now in default creating a risk of foreclosure.

38. Defendant Jerry Beus has made all payments on the DBL loan directly to DBL Company. (Jerry Beus Dep. 146:11-16, 149:17-20.) The Trust has made no payments to DBL. (Jerry Beus Dep. 146:11-16; Souza Dep. 86:7-13.)

39. Defendant Jerry Beus has admitted that pursuant to the 2007 Farm Lease he is obligated to pay the DBL loan as part of that lease agreement. *See* item 3., page 2 of Exhibit "5". (Jerry Beus Dep. 146:11-149:16; Souza Dep. 55:15-56:13.)

40. The purpose of said Promissory Note in favor of DBL was for the sole benefit Defendant Jerry Beus by refinancing his loans from Ireland Bank and providing additional monies. Exhibit "7". (Souza Dep. 81:6-16, 83:4-11.)

41. Defendant Jerry Beus received the benefit of all proceeds from the DBL Promissory Note. *See* Exhibits "7" and "12". (Jerry Beus Dep. 137:16-139:5, 144:23-146:10; Souza Dep. 81:6-16, 85:19-23.) The DBL loan has been used by Defendant Jerry Beus for personal operating expenses. (Jerry Beus Dep. 111:19-112:1). Operating expenses are the express obligation of Defendant Jerry Beus as Lessee of the Trust Property, and not legal obligations of the Trust. *See* Exhibits "3" and "5".

42. At the time the above-described Ireland Bank and DBL promissory notes and mortgage were signed by Defendant Jerry Beus and Trustee Souza, respectively, and recorded, the Trust property was debt free as reflected in the title report issued at the loan closing. *See* Exhibits "26" and "27". (Souza Dep. 73:10-25.)

43. The Trust Agreement mandates that "[n]either the principal or the income of the trust estate herein created shall be liable for the debts of the beneficiary hereof." *See* Section 8 of Exhibit

"2".

44. The Trust Agreement mandates that "[t]he interests of any beneficiary in the corpus or income of this trust . . . shall not . . . be voluntarily or involuntarily alienated or encumbered by any such beneficiary." *See* Section 15 of Exhibit "2".

TRUSTEE'S BREACH OF FIDUCIARY DUTY

45. Plaintiffs have never previously been provided with an accounting from the Trustee, have never been reasonably informed of the administration of the Trust, and have never received a Trustee's report or a copy of a Trust income tax statement. (Dallas Beus Dep. 65: 3-18; Douglas Beus Dep. 31:7-32:13; Souza Dep. 47:1-12.)

V. ISSUES PRESENTED

Plaintiffs submit that pursuant to their Motion for Partial Summary Judgment, the following issues should be determined as a matter of law based upon undisputed facts, to-wit:

1. Whether the Lynn G. Beus Trust terminated June 10, 2008, upon the death of Beth Beus, the surviving spouse of Lynn G. Beus and lifetime beneficiary of the Trust?
2. Whether the 2007 Farm Lease entered into between Trustee Souza and Defendant Jerry Beus terminates pursuant to the terms of the Will and Trust upon the June 10, 2008 death of Beth Beus, or upon the sale of the property. Alternatively, whether the Trustee must exercise his right to terminate the Trust upon sale of the Trust Property?
3. Whether the DBL Promissory Note and Mortgage executed by the Trustee to pay off and refinance the prior loan obligations of Defendant Jerry Beus is a lawful obligation of Defendant Jerry Beus which must be debited to his share of the proceeds from the sale of the Trust Property; or an obligation of the Trust which all beneficiaries must share?

4. Are the proceeds from the sale of the Trust Property required to be distributed equally between the residual beneficiaries, Defendant Jerry Beus, Plaintiff Dallas and Plaintiff Doug Beus, with the payoff of the DBL note and mortgage, taxes and other encumbrances against the Trust Property debited to Defendant Jerry Beus's share pursuant to the terms of the 2007 Lease Agreement or otherwise?

5. Is Defendant Jerry Beus entitled to reimbursement from the Trust for any improvements to the Trust Property?

6. Should the Trust be closed upon distribution of the sale proceeds?

7. If the beneficiaries are unable to agree as to a sale price, should the Trustee be authorized and directed to sell the Trust Property for any price agreed upon by two of the three beneficiaries? Alternatively, should the Trustee be required to present any purchase offers to the Court and secure Court approval to sell the Trust Property?

8. Should Defendant Souza be removed as Trustee of the Trust with the Court to oversee the sale of the Trust Property and distribution of the proceeds? Alternatively, should an independent trustee be appointed?

VI. ARGUMENT

A. THE LYNN G. BEUS TRUST TERMINATED ON JUNE 10, 2008, THE DATE OF DEATH OF BETH BEUS.

The provisions of the Trust as described in the Will provide that “[a]t the death of my spouse, this Trust shall close and terminate and all remaining assets, including any undistributed income, if any shall be distributed as hereinafter set out.” See subsection B(2) of the Sixth section of Exhibit “1”. Additionally, the provisions of the Trust state that “[i]f my children are unable to agree upon the operation, management or division of the real property, following the death of my wife, my Trustee

is instructed to sell the same, and to divide the proceeds equally between Dallas, Jerry and Doug after all expenses, taxes and liens of any kind and nature against the Trust property is paid." See the Eighth section of Exhibit "1".

Beth Beus passed away on June 10, 2008 at which time the Trust was to be terminated. See subsection B(2) of the Sixth section of Exhibit "1"; Sections 1 and 24 of Exhibit "2". Following the death of Beth Beus, Plaintiffs made repeated demands to Trustee Souza that the Trust Property be listed for sale, sold and the proceeds distributed Exhibit "35", a letter from Randy Budge dated October 20, 2008; Exhibit "36", a letter from Randy Budge dated January 13, 2009. To facilitate the listing and sale of the Trust Property, and at a cost paid for by the Plaintiffs, an Appraisal Report of the Trust Property was completed on November 21, 2008 by Robert R. Fellows, CGA. Exhibit "16".

The Appraisal Report estimated the market value of the Trust Property to be \$2,901,550.00 as of June 10, 2008. See *id.* The Plaintiffs also contacted a real estate agent to assist in listing the Trust Property and to locate interested buyers. Trustee Souza, however, failed and refused to take any effort to sell the Trust Property and distribute the proceeds until after Plaintiff's filed their complaint to force the issue (Souza Dep. 92:25-94:18, 99:23-25 According the clear terms of the Will and the Trust, the Trust must be closed and terminated at the death of Beth Beus and Souza must distribute the Trust Property. See subsection B(2) of the Sixth section of Exhibit "1". Because Defendant Jerry Beus, Plaintiff Dallas Beus, and Plaintiff Doug Beus are unable to agree upon the operation, management, or division of the real property, Trustee Souza is required to sell the Trust Property and divide the proceeds equally between Defendant Jerry Beus, Plaintiff Dallas Beus after paying all expenses, taxes, and liens against the Trust Property. See the Eighth section of Exhibit "1". Plaintiffs are therefore entitled to an Order from the Court declaring that the Trust terminated upon the death of Beth Beus, that the Trust Property must be sold, and that the proceeds must be divided

equally between the beneficiaries.

B. THE 2007 FARM LEASE WITH DEFENDANT JERRY BEUS TERMINATED UPON THE JUNE 10, 2008 DEATH OF BETH BEUS OR WILL TERMINATE UPON THE SALE OF THE TRUST PROPERTY. ALTERNATIVELY, THE TRUSTEE MUST EXERCISE HIS RIGHT TO TERMINATE THE TRUST UPON SALE OF THE TRUST PROPERTY.

The Trust Property has been leased to Defendant Jerry Beus since 1986 pursuant to three farm lease agreements entered into on March 26, 1986 ("1986 Farm Lease"), April 6, 1994 ("1994 Addendum Farm Lease"), and January 1, 2007 ("2007 Farm Lease"). *See* Exhibits "3", "4", and "5". The 1986 Farm Lease was entered into for a total annual cash rent of \$23,900.00, payable to the Trustee on November 1 of each year included in the lease. *See* page 2 of Exhibit "3". The 1994 Addendum Farm Lease increased the annual cash rent to \$25,500.00, also payable to the Trustee on November 1 of each year included in the lease. *See* page 1 of Exhibit "4". The 2007 Farm Lease reduced the annual cash rent to \$12,000.00, payable to Beth Beus at no specified period. *See* page 1 of Exhibit "5".

The terms of the 2007 Farm Lease are for all intents and purposes identical to the terms of the 1986 Farm Lease and the 1994 Addendum Farm Lease. The 2007 Farm Lease is different from the other lease agreements in that it added, for the first time, a terms stating that "the Lessee covenants, stipulates and agrees to pay . . . [a]ny and all payments that may be done in the real property annually," and that "the Lessee shall be compensated for any and all improvements he makes to said leased premises . . . at the time said improvements are made and completed." *See* pages 1 and 2 of Exhibit "5". The remainder of the 2007 Farm Lease follows the language of the 1986 Farm Lease almost verbatim, with the exception of the 2007 Farm Lease including conflicting statements that the Lessee agrees to pay "[t]he taxes on the real property of the trust," while also stating that "[t]he Lessor shall pay all taxes on the real estate which is owned by the Estate or Trust." *See* pages 1 and 3

of Exhibit "5". Notwithstanding the conflicting language, Defendant Jerry Beus has made all payments for real property taxes on the Trust Property. (Jerry Beus Dep. 93:22-94:23; Souza Dep. 58:19-23.)

The 2007 Farm Lease expressly provides that "this lease is subject to the terms of the Last Will and Testament left by Lynn Beus and subject to the terms of the Trust established by Lynn Beus for and on behalf of his wife, Beth Beus." *See* page 6 of Exhibit "5". The Will provides that "[a]t the death of my spouse, this Trust shall close and terminate and all remaining assets, including any undistributed income, if any shall be distributed as hereinafter set out." *See* subsection B(2) of the Sixth section of Exhibit "1". Beth Beus passed away on June 10, 2008 at which time the Trust, and thus the 2007 Farm Lease, was to be terminated. *See id.*; Sections 1 and 24 of Exhibit "2".

The 2007 Farm Lease expressly provides "[t]hat Lessee agrees that at the termination of the lease, they will surrender possession of the leased premises to Lessor without further demand or notice." *See* page 3 of Exhibit "5". The 2007 Farm Lease also expressly provides that "the provisions of this lease shall be binding upon the heirs, successors, administrators, and assigns of the parties hereto," which includes Defendant Jerry Beus as a remainderman beneficiary. *See* page 7 of Exhibit "5".

Defendant Jerry Beus has continuously since the death of Beth Beus on June 10, 2008 maintained that the 2007 Farm Lease continues in effect through year 2013, disregarding the express terms of the Trust to which the lease was made subject. The refusal and delay of Trustee Souza and list and sell the Trust Property, the pending litigation to force the sale, resolve disputes over the termination date of the 2007 Farm Lease coupled with the total lack of cooperation from Defendant Jerry Beus has and continues to impair the sale of the Trust Property and deter potential buyers. All of this was calculated to leave Defendant Jerry Beus in possession for as long as possible while depriving Plaintiffs of their rightful inheritance. As a matter of law and simply following the clear

language, of the Trust should have been terminated at the death of Beth Beus on June 10, 2008; and the Trustee should have clearly given notice that the 2007 Farm Lease would terminate upon sale of the Trust Property to permit distribution of the proceeds to the remaindermen beneficiaries.

Additionally, the 2007 Farm Lease expressly provides that “[t]he Lessee shall not assign this lease for rent, sublet or underlet the demised premises, or any part thereof, without first obtaining the previous consent in writing, of the Lessor.” *See* page 3 of Exhibit “5”. Notwithstanding, the Defendant Jerry Beus did sublease the Trust Property to his son in 2008 without receiving the written consent from the Trustee prior to entering into the sublease. (Jerry Beus Dep. 105:5-14, 106:9-12, 112:2-8; Souza Dep. 62:14-24, 90:14–91:3, 96:22–97:8.) Defendant Jerry Beus also has currently hired Dwight Lakey and Sons, through a written sublease agreement, to farm the Trust Property without obtaining the written consent from the Trustee prior to entering into the sublease agreement. (Jerry Beus Dep. 106:21–107:4, 112:9-14; Souza Dep. 62:25–63:17, 96:22–97:8.)

Further, the 2007 Farm Lease expressly provides that “the Lessor shall have the right to terminate said lease or to renegotiate the terms at the end of the year.” *See* page 6 of Exhibit “5”. Without good cause the Trustee has taken no action to terminate the lease allowing Defendant Jerry Beus in 2009 to sublease the cultivated portion of the Trust Property to Dwight Lakey and Sons for a total annual rent of \$60,000.00. (Jerry Beus Dep. 113:13-24.) Defendant Jerry Beus is profiting at the expense of the Plaintiff beneficiaries by receiving \$60,000.00 for a sublease of the cultivated portion Trust Property while owing the Trustee a total annual rent of a mere \$12,000.00 for his lease of the entire Trust Property even though he has yet to pay even one dollar of rent so far in 2009. Astonishingly, the 2007 Farm Lease prepared by Souza for Jerry Beus does not even state when the rent payments are due. Defendant Jerry Beus should not be able to receive such a windfall from the sublease when he has not paid the rent that he owes to

the Trust, and when he is in default with his obligations to pay the DBL loan (as discussed in Section C of this memorandum). The growing indebtedness of the DBL mortgage balance places the Trust property and Plaintiffs' inheritance at an unreasonable risk. Based on the foregoing, the Court should enter a declaratory judgment that the 2007 Farm Lease terminated upon the passing of Beth Beus, and that the 2007 Farm Lease is invalid and void. Alternatively, the 2007 Farm Lease should terminate immediately upon sale of the Trust property or the Trustee should be required to exercise his right to terminate the 2007 Farm Lease to facilitate the sale of the Trust property. Plaintiffs therefore request, pursuant to Idaho Code § 10-1201, a declaratory judgment from the Court that the 2007 Farm Lease has terminated or will terminate by operation of law upon sale of the Trust property. If the Court does not agree, Plaintiffs request a declaratory judgment from the Court that the Trustee must exercise his right to terminate the 2007 Farm Lease at the end of the year and renegotiate a new lease reflecting the current market value on a year to year basis until the property is sold.

C. THE DBL PROMISSORY NOTE IS THE SOLE OBLIGATION OF JERRY BEUS.

The Trust Agreement mandates that "[n]either the principal or the income of the trust estate herein created shall be liable for the debts of the beneficiary hereof." *See* Section 8 of Exhibit "2". The Trust Agreement mandates that "[t]he interests of any beneficiary in the corpus or income of this trust . . . shall not . . . be voluntarily or involuntarily alienated or encumbered by any such beneficiary." *See* Section 15 of Exhibit "2". At the time the Ireland Bank and DBL promissory notes were signed by Defendant Jerry Beus and Trustee Souza, respectively, there existed no prior loans or mortgages of Lynn G. Beus or the Trust against the Trust Property. *See* Exhibits "26" and "27". (Souza Dep. 73:10-25.) Additionally, the two loans Defendant Jerry Beus had with Ireland Bank restructured the individual prior debts of Defendant Jerry Beus and created a new operating loan

solely for Defendant Jerry Beus. (McBride Dep. 24:13-22.) Thus, any loans initiated by Defendant Jerry Beus for any purpose relating to the Trust Property are the sole responsibility of Defendant Jerry Beus, as a remainderman beneficiary, and neither the principal or income of the trust estate are liable for the debts of Defendant Jerry Beus. In addition, Defendant Jerry Beus's insistence that the Trust be responsible for the amount owed on the DBL Company loan alienates and encumbers the interests of Plaintiffs, the other remaindermen beneficiaries of the Trust, in violation of the Trust Agreement.

The Ireland Bank loans increased year after year until they reached the point that the bank asked Defendant Jerry Beus go elsewhere to do business even though the bank had the farm as collateral. (Jerry Beus Dep. 124:24-125:18.) Defendant Jerry Beus therefore attempted to get Plaintiffs, as remainderman beneficiaries, to sign off on a loan because the potential loaning entity wanted the permission of all beneficiaries. (Jerry Beus Dep. 127:14-24.) Plaintiffs, however, did not want to put the farm as collateral on any loan and refused to sign any documentation. (Jerry Beus Dep. 141:23-142:12.) Thereafter, Defendant Jerry Beus contacted Trustee Souza requesting that he put up the farm as collateral in order to get the money to pay off Defendant Jerry Beus's loans at Ireland Bank (which included a personal loan to pay off past operating lines of credit, and cross collateralization of a new operating line of credit). (Jerry Beus Dep. 143:4-21; Souza Dep. 79:13-80:16; McBride Dep. 24:13-22.) As a result, a Promissory Note dated May 2, 2007, in the amount of \$427,500.00, was executed by Souza, as Trustee, in favor of DBL, an unconventional private lender.

As a result of this refinance the interest rate went up from 7.75% at Ireland bank to 14% with DBL which also required the first year interest of \$52,500 be paid in advance, included a 3% prepayment penalty, and additional default interest rate of 5% , with a total of \$77,204.50 in settlement charges just to secure the loan. *See Exhibits 11, 12*". The Promissory Note refinanced the unpaid balance

owed by Defendant Jerry Beus to Ireland Bank for Defendant Jerry Beus's personal loans. *See* Exhibit "12".

The DBL Promissory Note was secured by a mortgage against the Trust Property. *See* Exhibit "13". Of the \$427,500.00 loan proceeds, \$332,141.66 went to Ireland Bank to pay off Defendant Jerry Beus's personal loans. *See* Exhibits "7" and "12". (Jerry Beus Dep. 136:14–138:12, 144:23–145:6; Souza Dep. 80:11-16, 81:6–83:17.) Defendant Jerry Beus was also paid a cash amount of \$18,153.84 from the DBL loan proceeds, pursuant to an Instruction Letter from Trustee Souza. *See* Exhibit "14". (Jerry Beus Dep. 144:23–146:10; Souza Dep. 82:21–83:17.) Defendant Jerry Beus therefore received the benefit of all proceeds from the DBL Company Promissory Note. *See* Exhibits "7" and "12". (Jerry Beus Dep. 137:16–139:5, 144:23–146:10; Souza Dep. 81:6-16, 85:19-23.) The DBL loan has been used by Defendant Jerry Beus for personal operating expenses, (Jerry Beus Dep. 111:19–112:1), which operating expenses were the express obligations of Defendant Jerry Beus as Lessee of the Trust Property, and not legal obligations of the Trust. *See* Exhibits "3" and "5".

The current amount due on the Promissory Note in favor of DBL has increased from the original \$427,500.00 amount to an amount in excess of \$438,376.27, with interest accruing. *See* Exhibit "15". Defendant Jerry Beus has made all payments due on the DBL Company loan directly to DBL Company. (Jerry Beus Dep. 146:11-16, 149:17-20.) The Trust has made no payments to DBL. (Jerry Beus Dep. 146:11-16; Souza Dep. 86:7-13.) Therefore, because the purpose of the Promissory Note in favor of DBL Company was solely to benefit Defendant Jerry Beus by refinancing his personal loans from Ireland Bank and providing additional monies, the entire amount due on the Promissory Note in favor of DBL must be declared to be the sole obligation of Defendant Jerry Beus as a matter of law. *See* Exhibit "7". (Souza Dep. 81:6-16, 83:4-11.)

In addition, Jerry Beus admitted in his deposition that under the terms of the 2007 Farm Lease he was obligated to pay the DBL loan. In making this admission he was referring to the new language in the 2007 Farm Lease on the top of page 2 which states: "3. Any and all payments that may be done in the real property annually." Exhibit "5". (Jerry Beus Dep. 146:11-149:16; Souza Dep. 55:15-56:13.) The entire amount due on the Promissory Note in favor of DBL Company is therefore the sole obligation of Defendant Jerry Beus, because the Promissory Note in favor of DBL was executed to pay off past personal loans for operating lines of credit owed solely by Defendant Jerry Beus, and the loan entered into with DBL was executed for cross collateralization of a new operating line of credit that was owed solely by Defendant Jerry Beus. See Exhibits "7" and "12".

Thus, based on the forgoing undisputed material facts Plaintiffs request a declaratory judgment from the Court that the loan with DBL is solely the responsibility of Defendant Jerry Beus and must be debited to his distributive share of the Trust property sale proceeds as a matter of law.

D. THE PROCEEDS FROM THE SALE OF THE TRUST PROPERTY MUST BE DISTRIBUTED EQUALLY TO THE RESIDUAL BENEFICIARIES, WITH THE DBL NOTE, TAXES, AND OTHER EXPENSES DEBITED TO JERRY BEUS'S SHARE.

The provisions of the Trust as described in the Will provide that "[a]t the death of my spouse, this Trust shall close and terminate and all remaining assets, including any undistributed income, if any shall be distributed as hereinafter set out." See subsection B(2) of the Sixth section of Exhibit "1". Additionally, the provisions of the Trust state that "[i]f my children are unable to agree upon the operation, management or division of the real property, following the death of my wife, my Trustee is instructed to sell the same, and to divide the proceeds equally between Dallas, Jerry and Doug after all expenses, taxes and liens of any kind and nature against the Trust property is paid." See the Eighth section of Exhibit "1".

Beth Beus passed away on June 10, 2008 at which time the Trust was to be terminated. *See* subsection B(2) of the Sixth section of Exhibit "1"; Sections 1 and 24 of Exhibit "2". It is undisputed that after the death of Beth Beus, Defendant Jerry Beus, Plaintiff Dallas Beus, and Plaintiff Doug Beus have been unable to agree upon the operation, management, or division of the Trust Property. Verified Complaint ¶ 58; Answer ¶ 35. Therefore, in accordance with the plain language of the Trust as provided in the Will, Souza, as Trustee, is required to sell the Trust Property and distribute the proceeds equally between the remaindermen beneficiaries (after all expenses, taxes, and liens of any kind and nature against the Trust Property are paid). *See* the Eighth section of Exhibit "1"; Section 13 of Exhibit "2".

Under the terms of the 2007 Farm Lease, Defendant Jerry Beus has made all payments for real property taxes on the Trust Property. (Jerry Beus Dep. 93:22–94:23; Souza Dep. 58:19-23.) The 2007 Farm Lease also expressly obligates Defendant Jerry Beus to "[M]aintain the liability and property and fire insurance policy covering the farming operation and the buildings and other property in his possession. . . . [A]t [his] expense, maintain public liability insurance." *See* pages 2 and 5 of Exhibit "3". Accordingly, the Court should rule as a matter of law that Defendant Jerry Beus is responsible for all due and owing rent payments, insurance payments, and real property taxes until such time as his lease is terminated. Thus, after the Trustee sells the Trust Property the Trustee must distribute the proceeds equally between the beneficiaries, and deduct all amounts for which Defendant Jerry Beus is responsible solely from Defendant Jerry Beus's share of the proceeds.

Based on the foregoing, Plaintiffs are entitled to summary judgment declaring that the Trustee is obligated to sell the Trust Property and divide the proceeds equally between Defendant Jerry Beus, Plaintiff Dallas Beus, and Plaintiff Doug Beus, after first charging to the share of Defendant Jerry Beus any and all amounts necessary to clear the DBL mortgage and any other liens

or encumbrances against the property together with any unpaid lease obligations.

E. DEFENDANT JERRY BEUS IS NOT ENTITLED TO REIMBURSEMENT FROM THE TRUST OF ANY IMPROVEMENTS TO THE TRUST PROPERTY.

Pursuant to the lease agreements entered into by Defendant Jerry Beus and the trustees of the Trust, the Trust has no obligation to pay or reimburse Defendant Jerry Beus for any of his loans or other financial obligations because all such operating expenses are the sole obligations of the Lessee. See Exhibits "3" and "5". The Supreme Court of Idaho, in *Hettinga v. Sybrandy*, 126 Idaho 467 (1994), held that recovery of improvements "for unjust enrichment is unavailable if the benefits to the [Lessor] were created incidentally by [the Lessee] in pursuit of [the Lessee's] own financial advantage." *Id.* at 471. In that case, the district court found that the Lessee did not establish that the improvements to the property were intended for the benefit of the Lessor. The district court instead found that the Lessee improved the property to increase the income generated by a dairy operation, and the income had in fact increased. Noting that the Lessor and the Lessee did not enter into an agreement as to whether the Lessee would be compensated for the improvements at the termination of the leasehold, the district court held that there was no basis from which to conclude that the Lessor was unjustly enriched at the Lessee's expense. See *id.* (citing *Knauss v. Hale*, 64 Idaho 218 (1942) (general rule that where tenant voluntarily places improvements upon leasehold in absence of agreement, tenant is not entitled to compensation from landlord)).

In this case, Defendant Jerry Beus has no evidence that any improvements to the property were intended for the benefit of the Trust. To the contrary, the undisputed facts establish that any improvements by Defendant Jerry Beus were solely to increase the income generated by his farming and cattle operations. Additionally, neither the 1986 Farm Lease nor the 1994 Addendum to Farm Lease impose upon the Trust any obligation to reimburse Defendant Jerry Beus for improvements.

See Exhibits “3” and “4”. Therefore, because those lease agreements did not contain an agreement as to whether Defendant Jerry Beus would be compensated for improvements at the termination of the leasehold, there is no basis from which to conclude that the Trust was unjustly enriched at Defendant Jerry Beus’s expense.

The 2007 Farm Lease does obligate the Trustee to reimburse the Lessee Defendant Jerry Beus for improvements. *See* page 2 of Exhibit “5”. (Jerry Beus Dep. 97:9-17; Souza Dep. 57:23–58:1.) Any improvements that would be reimbursable would therefore need to have occurred after 2007. Upon the record before the Court, the undisputed facts show that Defendant Jerry Beus has never produced any documentation claiming reimbursement for improvements to the Trust Property pursuant to the 2007 Lease Agreement. (Jerry Beus Dep. 22:25–25:11, 97:18–100:19, 160:24–162:5; Souza Dep. 58:2-6, 110:5-9.) Defendant Jerry Beus is therefore not entitled to any reimbursement for improvements as a matter of law. Thus, the Plaintiffs ask the Court to enter a declaratory judgment that Defendant Jerry Beus is not entitled to the reimbursement of any improvements to the Trust Property incurred prior to or after the effective date of the 2007 Farm Lease.

F. THE TRUST SHOULD BE CLOSED UPON DISTRIBUTION OF THE SALE PROCEEDS.

As discussed previously, the provisions of the Trust as described in the Will provide that “[a]t the death of my spouse, this Trust shall close and terminate and all remaining assets, including any undistributed income, if any shall be distributed as hereinafter set out.” *See* subsection B(2) of the Sixth section of Exhibit “1”. Additionally, the provisions of the Trust state that “[i]f my children are unable to agree upon the operation, management or division of the real property, following the death of my wife, my Trustee is instructed to sell the same, and to divide the proceeds equally between

Dallas, Jerry and Doug after all expenses, taxes and liens of any kind and nature against the Trust property is paid." See the Eighth section of Exhibit "1".

Beth Beus passed away on June 10, 2008 at which time the Trust was to be terminated. See subsection B(2) of the Sixth section of Exhibit "1"; Sections 1 and 24 of Exhibit "2". It is undisputed that after the death of Beth Beus, Defendant Jerry Beus, Plaintiff Dallas Beus, and Plaintiff Doug Beus have been unable to agree upon the operation, management, or division of the Trust Property. Verified Complaint ¶ 58; Answer ¶ 35. Therefore, in accordance with the plain language of the Trust as provided in the Will, Souza, as Trustee, is required to sell the Trust Property and distribute the proceeds equally between the remaindermen beneficiaries. See the Eighth section of Exhibit "1".

Although the Trust was to be terminated upon the death of Beth Beus, the Trust cannot be closed until the Trust Property has been sold and proceeds divided equally between the remaindermen beneficiaries. Thus, the Plaintiffs ask the Court to enter a declaratory judgment that the Trust be closed upon the sale of the Trust Property and the distribution of the proceeds to the beneficiaries.

G. THE TRUSTEE SHOULD BE ORDERED TO SELL THE TRUST PROPERTY BY ACCEPTING ANY OFFER APPROVED BY TWO OF THE THREE BENEFICIARIES.

Plaintiff Dallas Beus and Plaintiff Doug Beus paid for an Appraisal Report of the Trust Property. Exhibit "16". The Appraisal Report estimated the market value of the Trust Property to be \$2,901,550.00 as of June 10, 2008 and the property is currently listed for sale for that amount. See *id.* Defendant Jerry Beus has also obtained an appraisal report for a somewhat lesser amount (Jerry Beus Dep. 168:9–170:5.) Although no offers have been received to date, it should be anticipated that a dispute could arise between the parties as to what would be an acceptable price to sell the Trust Property, particularly since Jerry Beus as a first option and therefore an incentive to keep the price

low. For those reasons the Plaintiffs ask the Court to direct how an acceptable price should be decided among the parties. The Plaintiffs therefore ask that any offer approved by two of the three beneficiaries be presented to the Court for approval.

In this case, the Plaintiffs have an incentive to sell the Trust Property at the highest price available because they do not have a desire to run the farm associated with the Trust Property. Defendant Jerry Beus, however, has an incentive to sell the Trust Property at the lowest price available because under the Will he has a right of first refusal for the Trust Property. *See* the Eighth section of Exhibit "1". In addition, Defendant Jerry Beus has an incentive to derail any efforts to sell the Trust Property at a reasonable price because he currently receives \$60,000.00 from his sublease of the Trust Property, while paying only \$12,000.00 to the Trustee for leasing the Trust Property.

Thus, in an effort to bring closure to any possible dispute between the parties, and according to the mandates of the Will and Trust Agreement, Plaintiffs ask the Court for a declaration requiring that the Trust Property be sold at a price approved by two of the three beneficiaries or provide other directive to the Trustee concerning the sale of the property.

H. DEFENDANT SOUZA SHOULD BE REMOVED AS TRUSTEE OF THE TRUST.

A fiduciary relationship exists between a Trustee and the beneficiaries of a trust. Section 15-7-301 of the Idaho Code gives a trustee the legal duty to administer a trust expeditiously for the benefit of the beneficiaries. Additionally, a trustee has a legal duty to manage all trust assets as a prudent man dealing in the property of another and to account to all beneficiaries of the trust. *See* Idaho Code § 15-7-302; Idaho Code § 68-104 (noting that the term "prudent man" is defined as "a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which men of ordinary prudence, diligence, discretion, and judgment would act in the management of their own

affairs.”). A trustee is also required to keep the beneficiaries of the trust reasonably informed of the trust and its administration; and to provide a beneficiary with a statement, upon reasonable request, of the accounts of the trust annually and on termination of the trust or change of the trustee. Idaho Code § 15-7-303.

Trustee Souza admits that he has not provided any accountings to any beneficiaries,, has failed to keep Plaintiffs reasonably informed of the Trust and its administration, and has failed to provide Plaintiffs with a Trustee’s report or a copy of a Trust income tax statement. (Dallas Beus Dep. 65: 3-18; Douglas Beus Dep. 31:7–32:13; Souza Dep. 47:1-12.) In fact, Trustee Souza has failed to file any tax returns for the Trust since 2001, (Souza Dep. 45:25–46:12, 100:1-6.), and has not handled any Trust money since 2000. (Souza Dep. 46: 13-25). Trustee Souza has failed and/or refused to provide full and proper fiduciary accounting of the Trust and its respective activities as a matter of law and in fact for many years has not kept records or performed any Trustee functions.

Additionally, Trustee Souza entered into the 2007 Lease Agreement with Defendant Jerry Beus on terms beyond comprehension compared to the amount of rent required by Defendant Jerry Beus as part of the 1986 Farm Lease and the 1994 Addendum Farm Lease. *See* Exhibits “3”, “4”, and “5”. Trustee Souza also signed a note and mortgage on the DBL loan thereby obligating the Trust and pledging Trust property to refinance and secure personal loans of Defendant Jerry Beus as the lessee. In addition, Trustee Souza has a clear conflict of interest with Defendant Jerry Beus because Souza was at the same time acting as his personal attorney in prepared an estate plan for Defendant Jerry Beus, for which Souza billed Defendant Jerry Beus directly, and for other work performed by Trustee Souza on behalf of Defendant Jerry Beus. (Jerry Beus Dep. 36:1-25; Souza Dep. 13:2–14:23.)

Trustee Souza has also failed to act in accordance with the express terms and conditions of the Will and Trust Agreement because he has failed to timely perform the required sale and distribution of Trust assets to the residual beneficiaries despite repeated demands by Plaintiffs. *See* the eighth section of Exhibit “1”; Sections 2, 6, and 12 of Exhibit “2”; Exhibits “35”, “36”, and “37”. (Souza Dep. 92:25–94:18, 99:23-25.) Trustee Souza has therefore breached his duty to sell the Trust Property, distribute the proceeds, and dissolve the Trust as expressly required by the terms of the Trust. Although the Trustee has recently listed the Trust Property for sale after the complaint was filed, the delay and uncertainties over the termination of the lease has effectively deterred interested buyers, all to the loss and damage of the remaindermen beneficiaries.

The Court should rule as a matter of law based on these undisputed facts that Trustee Souza has breached his fiduciary duty as Trustee and should be removed. Plaintiffs therefore request an immediate Order removing Souza as Trustee by reason of breach of fiduciary duty, pursuant to Idaho Code § 15-7-308, and declaring that the sale of the Trust Property and the distribution of the proceeds proceed under direction of the Court or alternatively by an independent Trustee appointed by the Court.

I. ATTORNEY FEES

Plaintiffs’ Verified Complaint requested an award of attorney’s fees and costs against Defendant Souza and Defendant Jerry Beus pursuant to Sections 12-120 and 12-121, Idaho Code, and pursuant to the terms of the Trust Agreement. Plaintiffs have also served upon Defendant Jerry Beus and Defendant Souza an Offer of Judgment pursuant to Idaho Rules of Civil Procedure 68. Plaintiff’s claim for attorney fees and costs is reserved and will be separately pursued once the issues in dispute have been finally determined by the Court.

J. REMAINING ISSUES OF THE COMPLAINT NOT INCLUDED IN THE MOTION FOR PARTIAL SUMMARY JUDGMENT.

The Plaintiffs' Verified Complaint requests an order from the Court granting the Plaintiffs damages against Defendant Souza and Defendant Jerry Beus, the exact nature and extent of which are not known at this time, according to proof at the time of trial. Plaintiffs do not include this claim as a part of their Summary Judgment motion.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court enter summary judgment in their favor as a matter of law declaring that(1) the Lynn G. Beus Trust terminated upon the death of Beth Beus on June 10, 2008; (2) that the 2007 Farm Lease entered into between Trustee Souza and Defendant Jerry Beus terminates pursuant to the terms of the Will and Trust upon the June 10, 2008 death of Beth Beus, or upon the sale of the property; alternatively, that the Trustee is obligated to exercise his right to terminate the lease; (3) that the DBL Promissory Note and Mortgage executed by the Trustee to pay off and refinance the prior loan obligations of Defendant Jerry Beus is the sole and lawful obligation of Defendant Jerry Beus which must be debited to his share of the proceeds from the sale of the Trust Property; (4) that the proceeds from the sale of the Trust Property be distributed equally between the residual beneficiaries, Defendant Jerry Beus, Plaintiff Dallas and Plaintiff Doug Beus, with the payoff of the DBL note and mortgage, taxes and unpaid lease obligations of Jerry Beus charged against his share of the trust proceeds available for distribution upon sale of the property;; (5) that Defendant Jerry Beus is not entitled to reimbursement from the Trust for any improvements to the Trust Property; (6) that the Trust be closed upon distribution of the sale proceeds; (7) that if the beneficiaries are unable to agree as to a sale price, that any two of the beneficiaries in agreement can determine the price; alternatively that that the Court approval of

the sale price; and (8) that Trustee Souza be removed as Trustee of the Trust with the Court to oversee the sale of the Trust Property and distribution of the proceeds.

Respectfully submitted.

DATED this 3rd day of September, 2009.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By Randall C. Budge
RANDALL C. BUDGE