

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

FEB 08 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF:
Mullinax Concrete Services Co.
Limited Mining Operation Application
TFN 5 4/117

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DOCKET NO. 10- 4601

PETITION FOR REVIEW / REQUEST FOR HEARING

Petitioner, Mullinax Concrete Service Co. ("Mullinax"), by and through its undersigned attorneys of record and pursuant to W. S. § 35-11-1001, and the Wyoming Department of Environmental Quality General Rules of Practice and Procedure, Ch 1 §§ 2 and 3, Mullinax hereby supplements its pending appeal Docket No. 09-4602 to the Environmental Quality Council of the State of Wyoming ("Council" or "EQC")) as follows:

1. Name and Address of Petitioner and Petitioners' Attorney. The name and address of the Petitioner is: Mullinax Concrete Service Co., Inc., a Wyoming corporation of P.O. Box 2044, Sheridan, WY 82801.
2. Action Upon Which Hearing Is Requested. This appeal is pending from the final January 21, 2010 decision by Mark Rogaczewski, Supervisor, DEQ LQD District III. copy of the decision letter is marked and attached to this pleading as Exhibit A.
3. Facts.
 - a. On or about August 12, 2009, Mullinax applied for Limited Mining Operation ("LMO") permit to establish and operate an LMO gravel operation at T55N, R18W, 6th PM, Sections 17 and 18 (partials) as shown specifically in the attached application materials that are

attached hereto and incorporated herein *en masse* as Exhibit B. This LMO permit application was designated by the DEQ as application TFN 5 4/117.

b. On or about January 21, 2010, the Sheridan, Wyoming office of the DEQ denied Mullinax's LMO application TFN 5 4/117. See attached Exhibit A. The stated grounds for the denial by DEQ were that DEQ's January 30, 2006 Non-coal Standard Operating Policy (SOP) No. 1.6 concerning the proximity of limited mining operations for small mining permits and regular mining permits somehow precluded granting the permit. The SOP states on its face that is not a formally promulgated rule or regulation with the force of law. DEQ's denial letter relied solely upon the SOP and did not state any other controlling statute or regulation as the basis of DEQ's denial.

c. The DEQ is and has been fully informed of Mullinax's concerns about its attempt to regulate proximity of proposed LMO's under DEQ's January 30, 2006 Non-coal Standard Operating Policy (SOP) No. 1.6 and about Mullinax's concerns that DEQ regulation of this issue has become arbitrary. Detailed facts explaining the DEQ's knowledge of Mullinax's good faith concerns in this regard are set out in detail in the record for pending EQC Case No. 09-4602 concerning Mullinax's application for permit TFN 5 4/123.

4. Council Issues On Appeal.

The following alternative issues on appeal exist in this matter:

a. Whether the DEQ had the legal authority to deny Mullinax's application for LMO Permit TFN 5 4/117 given the facts and circumstances of that permit application?

b. Whether DEQ's Non-coal Standard Operating Policy (SOP) No. 1.6 "guidelines" have any force and effect of law sufficient to serve as any legal basis for denial of Mullinax's application for LMO Permit TFN 5 4/117?

c. Whether DEQ's past practices and interpretation of its own guidelines and any other DEQ authority governing the review and issuance of LMO permits has been such that DEQ's denial of Mullinax's application for LMO Permit TFN 5 4/117 is arbitrary and capricious and/or lacks a substantial evidence basis?

d. Whether the DEQ's denial of Mullinax's application for LMO Permit TFN 5 4/117 record in this matter is otherwise arbitrary, capricious or an abuse of discretion?


e. Whether the DEQ's denial of Mullinax's application for LMO Permit TFN 5 4/117 record in this matter is made otherwise not in accordance with law, in excess of statutory jurisdiction, authority or limitations, lacking statutory right, or was made without observance of procedure required by law?

f. Whether this case and pending EQC Case No. 09-4602 should be consolidated for hearing and decision?

5. Request for Hearing. Mullinax respectfully requests a full contested case hearing on this matter before the Environmental Quality Council and requests that the Council reverse the January 21, 2010 decision of the DEQ that is attached hereto as a part of Exhibit A.

DATED this 5th day of February, 2010.

Counsel for Petitioner



Wendtland & Wendtland, LLP
Anthony T. Wendtland – WSB#05-2468
Attorney for Petitioner
2161 Coffeen Ave., Suite 301
Sheridan, WY 82801
(307) 673-4696
(307) 673-4828 (fax)

CERTIFICATE OF SERVICE

I, Anthony T. Wendtland, attorney for the Petitioner, in the above-entitled and numbered cause do hereby certify that on the 5th day of February, 2010, I caused a true and correct copy of the Petition For Review / Request For Hearing to be served as follows:

VIA REGISTERED MAIL / RETURN RECEIPT REQUESTED:

RE 120 276 299 US

Dennis Boal
Chairperson of the Environmental Quality Council
122 W. 25th St.
Herschler Bldg., Rm 1714
Cheyenne, WY 82002

RE 120 276 308 US


John Corra, Director
State of Wyoming, Dept. of Environmental Quality
122 West 25th Street
Herschler Building
Cheyenne, WY 82002

RE 120 276 310 US

Richard Chancellor, Administrator
State Dept. of Environmental Quality
Land Quality Division
122 West 25th Street
Cheyenne, WY 82002

RE 120 271 606 US

John S. Burbridge
Senior Assistant Attorney General
Attorney General's Office
123 Capitol Ave.
Cheyenne, WY 82002



Anthony T. Wendtland

Exhibit A



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

January 21, 2010

Mr. Larry Ligocki
Mullinax Concrete Service Company
P.O. Box 2044
Sheridan, WY 82801

RE: Beckton Pit Limited Mine Operation (LMO) Application, LQD Denial of LMO Application, TFN 5 4/117

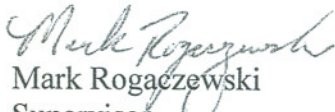
Dear Mr. Ligocki:

Mullinax Concrete Services Co., submitted the above referenced application under your cover letter dated August 12, 2009. The LQD District III office received the application on the same day. A review of LQD files has resulted in LQD discovering that this proposed LMO will be located within 6 miles of Permit 766, an existing sand and gravel mining operation under Mullinax Concrete Services, Co.

Based on this file review, the LQD has to deny this LMO application. An operator/applicant cannot mine the same mineral at locations less than 6 miles from their existing mining operations. These types of proposed operations are restricted by LQD Non-coal Rules and Regulations, Chapter 10, Section 8(a)(ii), and LQD Non-coal Standard Operating Procedure 1.6.

If you have any questions, please contact the District III Office at 672-6488.

Sincerely,


Mark Rogaczewski
Supervisor
LQD District III

xc: Cheyenne LQD Files

1866 SOUTH SHERIDAN AVENUE • SHERIDAN, WY 82801

AIR, LAND AND WATER DIVISIONS
(307) 673-9337 • FAX (307) 672-2213



Exhibit B



MULLINAX
Concrete - Irrigation
Construction Supply
Sheridan, Wyoming

August 12, 2009

Don Crecelius
Senior LQD Analyst
Wyoming DEQ
District III Office

RE: Beckton 10-Acre ET Permit Application

Dear Mr. Crecelius,

I have enclosed the following with this cover letter:

- 1) Form 10 – Notification and surface owner consent for limited mining operations.
- 2) A letter of approval from the Sheridan County Public Works Dept. indicating that the operation conforms to local regulations.
- 3) Two maps indicating the location and existing haul roads for the operation.
- 4) A copy of the letter of credit from First Federal Savings Bank indicating the reclamation performance bond has been set up for the operation. The original, signed letter of credit has been mailed to Deanna Hill in Cheyenne.

Please call if you have any questions.

Sincerely,



Larry Ligocki
Mullinax Concrete Service Co.
P.O. Box 2044
Sheridan, WY 82801
307-674-4466 (ext. 216)

**Notification and Surface Owner Consent for Limited Mining Operations
also known as Ten Acre Exemption**

Under the Wyoming Environmental Quality Act W.S. §35-11-401(e)(vi), this form may be used only for mining Sand, Gravel, Scoria, Limestone, Dolomite, Shale, Ballast or Feldspar. The cumulative affected lands may not exceed ten (10) acres.

1. Location of lands affected by the mining operation.
- A. Pit, Stockpile and equipment storage areas: enter quarter-quarter or equivalent description.
- | | | | | |
|----------------------|-------------------|--------------|-----------------|-----------------------|
| <u>NE 1/4 SE 1/4</u> | Section <u>18</u> | T. <u>S5</u> | N. R. <u>85</u> | W., Acres <u>8.51</u> |
| <u>SE 1/4 NE 1/4</u> | Section <u>18</u> | T. <u>S5</u> | N. R. <u>85</u> | W., Acres <u>.35</u> |
| <u>NW 1/4 SW 1/4</u> | Section <u>17</u> | T. <u>S5</u> | N. R. <u>85</u> | W., Acres <u>1.14</u> |
- B. Haul and access roads; list those portions of newly constructed or upgraded private roads which provide exclusive service to the mining operation.
- | | | | | |
|-------|---------------|----------|-------------|-----------------|
| _____ | Section _____ | T. _____ | N. R. _____ | W., Acres _____ |
| _____ | Section _____ | T. _____ | N. R. _____ | W., Acres _____ |
| _____ | Section _____ | T. _____ | N. R. _____ | W., Acres _____ |
- C. All listed lands occur in Sheridan County, WY and the Total Acres are 10

Ranch roads already exist.
No new roads.

2. List all operators defined in W.S. §35-11-103(e)(ix) as "...any person engaged in mining...or who acts as an agent or independent contractor...in the conduct of mining operations."
- A. Applicant for the Limited Mining Operation
Mullinax Concrete Service Co.
(individual or company name)
- B. Operator (if different from applicant)
- P.O. Box 2044
Sheridan, WY 82801
(mailing address) PHONE (307) 674-4466 FAX (307) 674-6871
(area code and phone and fax number)
- corporation - sand, gravel, concrete
(type of entity)

3. Description of affected lands and mining operation.
- A. The mineral to be mined is Sand & Gravel and mineral ownership is PRIVATE
(type) (private, state, federal)
- B. The mining operation will begin on December 2009 and is projected to last until December 2016
(month & year) (month & year)
- C. The mining operation will include 1) removing and stockpiling all topsoil with a dozer, scraper or similar equipment 2) removing and stockpiling overburden with a dozer, scraper or similar equipment 3) removing and processing, and stockpiling the mineral 4) hauling the processed mineral 5) backfilling stockpiled overburden and unused mineral, regrading and contouring and retopsoiling and reseedling all affected lands. (No PROCESSING) will only haul the raw material.
- D. The premining and postmining land uses are grazing and wildlife habitat.
- E. The maximum depth of mining will be ± 12 feet and the estimated depth to groundwater at the pit is 10' feet.

4. A Reclamation Performance Bond in the amount of \$ 10,000 calculated at the rate of \$1,000 per acre for the total acres listed in I.C. above. The bond is 03-801004-15
(C.D. No., Surety Bond No. (Letter of Credit No.))

5. Under penalties of perjury, we declare that we have examined this notification and consent and the information contained herein, and to the best of our knowledge it is true, correct and complete, and that the location of the proposed operation is accurately shown in the original U.S.G.S. quadrangle map accompanying this consent, and this Ten Acre Exemption will not be used in conjunction with any other adjacent Ten Acre Exemption to circumvent the permitting requirements of the Wyoming Environmental Quality Act. Further, it is agreed that the reclamation of the lands affected by the mining operation shall be in compliance with applicable Land Quality Division (LQD) Rules and Regulations and that we have the right to mine the minerals.

6. We, the surface owner and lessee and operator, are aware that the LQD may conduct inspections of the operation and by our signatures below we give our consent to the conduct of such inspections.

<u>W. Cameron Forbes</u> 8/7/09	<u>Robert Mullinax</u> 8/7/09
Signature of surface owner and date	Signature of applicant and date
<u>Beckton Stock Farm/W. Cameron Forbes</u>	<u>Robert Mullinax Mullinax Concrete Service Co.</u>
Print or type name of surface owner	Print or type name of applicant
_____	_____
Signature of surface lessee and date	Signature of applicant and date
<u>37 Beckton Drive</u> <u>Sheridan WY 82801</u> <u>(307) 674-6095</u>	<u>Mullinax Concrete Service Co.</u> <u>(307) 674-4466</u>
Print or type address and phone no. of surface owner	Print or type name and phone no. of applicant

-----MAKE NO ENTRIES-----FOR LQD USE ONLY-----

TFN No. _____ Approved: _____
Permit No. _____ Administrator, LQD
District _____

Form 10 Approval date: _____
Rev: 05/06



SHERIDAN COUNTY PUBLIC WORKS DEPARTMENT

Robin DeBolt, Land Development Coordinator
224 South Main Street • Sheridan, Wyoming 82801
Phone (307) 675-2420 • Fax (307) 675-2421

April 22, 2009

Beckton Stock Farms
Attn: Cameron Forbes
37 Beckton Drive
Sheridan, WY 82801

Larry Ligocki
P.O. Box 2044
Sheridan, WY. 82801

Item: Q-09-001: Beckton Stock Farms Quarry

To Whom It May Concern;

On April 7th, 2009, the Board of County Commissioners Approved Item Q-09-001: Beckton Stock Farms Quarry with the following conditions:

1. Dust control on haul roads, stockpiles and work areas, as needed, as required in accordance with requirements of the County Engineer and Section 23 of the Zoning Resolution.
2. The permit shall be effective for 10 years, beginning from the day of approval by the BOCC:
3. Hours of operation are Monday-Friday 7:30 a.m. to 5:00 p.m., Saturday 7:30 a.m. to 1:00 p.m. and no hours of operation on Sunday.
4. Crushing shall not be permitted.
5. The applicant shall provide to the County Engineer any permits or renewed permits as required by the State throughout the life of the project, as well as changes that may take place to the operation of the quarry due to changes in regulations or permissions from the State of Wyoming.
6. Operator will cooperate with WYDOT on any matters dealing with the integrity and safety of State Roads that are used for hauling or accessing the site.
7. **The applicant shall record a road easement from the access road leading from the pit to the closest public road and submit a copy of the recorded easement to the Public Works Office prior to starting quarry operations.**
8. **If any of the quarry operations are found to be located within the Flood Plain, the applicant shall apply for and receive a flood plain development permit, complying with the Sheridan County Flood Hazard Resolution.**

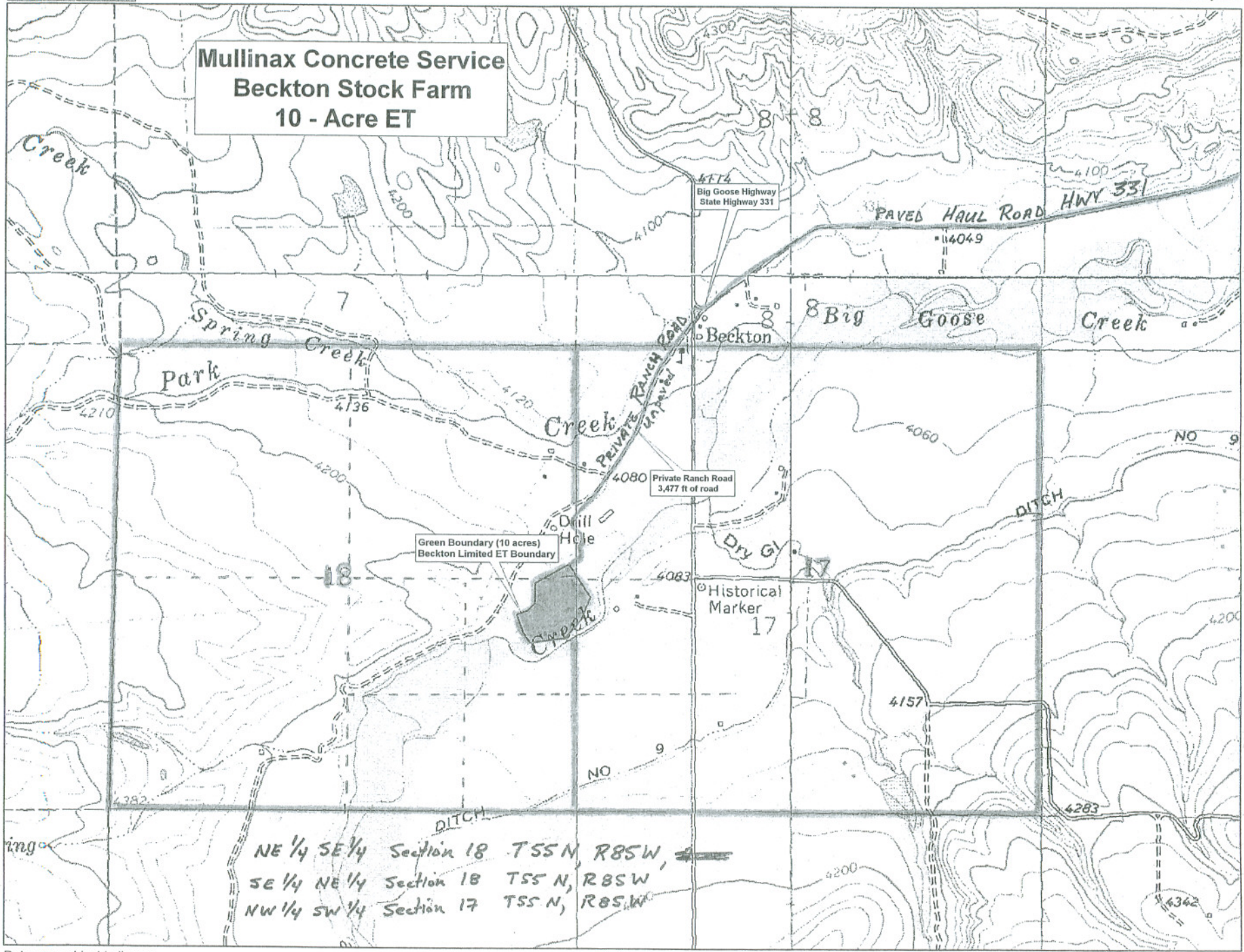
Please call the Planning Office if you have any questions.

Sincerely,

Robin DeBolt,
Land Development Coordinator

CC: File
BOCC

Mullinax Concrete Service
Beckton Stock Farm
10 - Acre ET



Green Boundary (10 acres)
Beckton Limited ET Boundary

4114
Big Goose Highway
State Highway 331

Private Ranch Road
3,477 ft of road

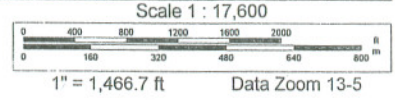
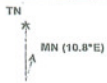
Historical
Marker
17

NE 1/4 SE 1/4 Section 18 TSS N, R85 W,
SE 1/4 NE 1/4 Section 18 TSS N, R85 W,
NW 1/4 SW 1/4 Section 17 TSS N, R85 W

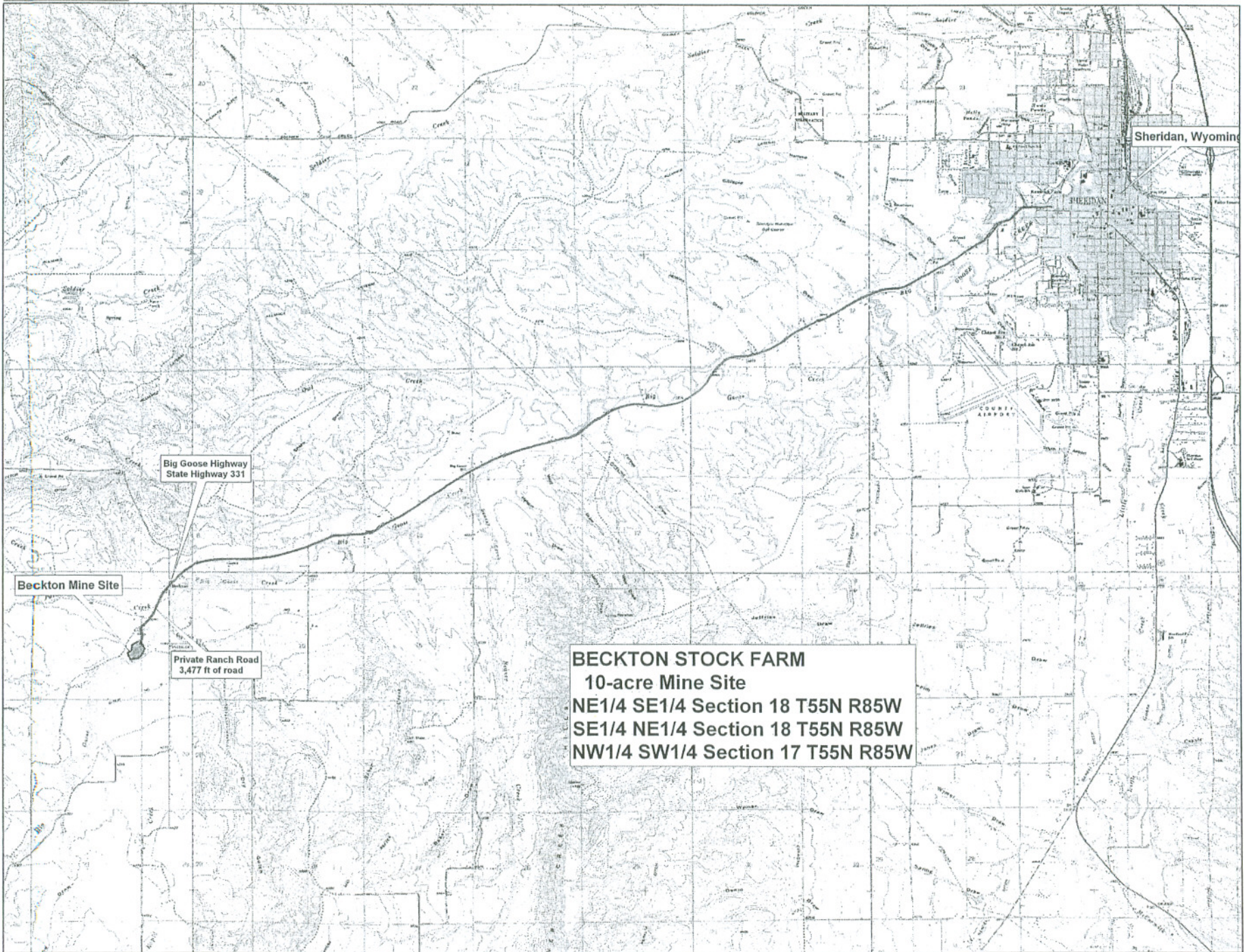
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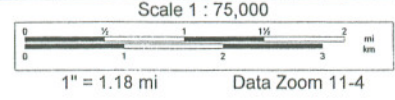
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 www.delorme.com



LOCATION MAP



9



Beckton

IRREVOCABLE LETTER OF CREDIT NO. 03-801004-15

Date of Issue: 8/11/2009 Beneficiary: Wyoming Department of Environmental Quality

Date of Expiry: 8/11/2010 Amount: Ten Thousand Dollars and No/100 (\$10,000.00)

Gentleman:

COPY

We hereby establish our irrevocable letter of credit in your favor, available by your drafts at sight drawn on First Federal Savings Bank at 46 W. Brundage, Sheridan, WY 82801, accompanied by the following document:

A signed and dated statement from the Director of the Department of Environmental Quality and the land Quality Administrator in any one of the three following forms:

- a. "The Undersigned here by advise that an order in an amount identical to the amount of the sight draft which this statement accompanies has been entered by the Environmental Quality Council pursuant to W.S. 35-11-421, forfeiting all or part of the amount of the credit because of any violation of the Wyoming Environmental Quality Act, by Mullinax Concrete Service Co., Inc. Permit No. Beckton Ranch ET . A certified copy of the order of forfeiture is attached."
- b. "The Undersigned hereby advise that a Settlement Agreement in an amount identical to the amount of the sight draft which this statement accompanies has been signed on behalf of the Department of Environmental Quality and on behalf of the operator, Mullinax Concrete Service Co., Inc., Permit No. Beckton Ranch ET in which the parties have agreed to an amount due to the Department because of a violation of the Wyoming Environmental Quality Act, and that Mullinax Concrete Service Co., Inc., has failed to pay the amount due within the period of time specified in the agreement."
- c. "The Undersigned certify that the operator Mullinax Concrete Service Co., Inc., Permit No. Beckton Ranch ET , has not filed with the Department an extension of this letter of credit, a substitute letter of credit or other acceptable

evidence of financial responsibility in the place of the letter of credit; and this it is thirty (30) days or less until the current or any amended expiration date of this Irrevocable Letter of Credit."

Pursuant to Chapter 12, Land Quality Division Noncoal Regulations, the bank shall give immediate notice to the permittee and the Director of the Department of Environmental Quality of: (a) any notice received or action filed alleging the insolvency or bankruptcy of the bank; or (b) alleging any violations of regulatory requirements which could result in suspension or revocation of the banks charter or license to do business; or (c) the bank, for any reason, becomes unable to fulfill its obligation under the letter of credit.

Each draft must bear upon its face the clause, "Drawn under Letter of Credit No. 03-801004-15, dated August 11, 2009, and the total of this draft and all other previously drawn under this Letter of Credit does not exceed \$10,000.00."

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiration date hereof, unless ninety (90) days prior to any such date we shall notify the Director of the Wyoming Department of Environmental Quality in writing by overnight courier service at the above mentioned address that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw hereunder.

We hereby agree with you that draft drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the above-mentioned drawee bank on or before August 11, 2010.

All questions arising in connection with this Letter of Credit shall be determined according to the laws of the State of Wyoming.

This Letter of Credit is subject to the Uniform Customs and Practice of Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, except to the extent it is inconsistent with the laws of Wyoming.

Very truly yours,

FIRST FEDERAL SAVINGS BANK

By: _____

Name: Steven D. Carroll
Title: Senior Vice President
Date: August 11, 2009

IRREVOCABLE STANDBY LETTER OF CREDIT APPLICATION

DATE AND PARTIES. The date of this Irrevocable Standby letter of Credit Application (Application) is August 11, 2009. The parties and their addresses are:

APPLICANT:
MULLINAX CONCRETE SERVICE CO., INC.
P O BOX 2044
SHERIDAN, WY 82801

ISSUER:
FIRST FEDERAL SAVINGS BANK
46 West Brundage
Sheridan, WY 82801

BENEFICIARY:
FIRST FEDERAL SAVINGS BANK
P O BOX 6007
SHERIDAN, WY 82801

1. APPLICATION. Applicant requests that Issuer issue an Irrevocable Standby Letter of Credit (Letter of Credit) in favor of Beneficiary for the account of Applicant up to the aggregate sum of \$ 10,000.00 (ten thousand dollars and zero cents U.S. Dollars). The Letter of Credit should be available by draft or drafts drawn in United States dollars on you at sight when accompanied by the following documents:

- A. The original Letter of Credit, together with any amendments.
- B. A sight draft drawn by Beneficiary on Issuer.
- C. A signed statement by Beneficiary including the following statement: SEE ATTACHED EXHIBIT 'A'.

Issuer should advise Beneficiary of the existence of this Letter of Credit by certified United States First Class mail.

2. EXPIRATION. This Letter of Credit will expire at Issuer's office at 12:00 A.M. MOUNTAIN AND SHALL BE AUTOMATICALLY EXTENDED-SEE ATTACHED EXHIBIT 'B' (Time) on August 11, 2010.

3. DRAWINGS. Beneficiary shall be permitted to make multiple drawings on this Letter of Credit. The maximum number of drawings that may be made on this Letter of Credit is 0. "Draft" means a draft drawn at sight.

4. NON-TRANSFERABLE. This Letter of Credit is not transferable.

5. PAYMENT. Applicant authorizes Issuer to debit drawings, fees, and other charges incurred under the Irrevocable Standby Letter of Credit and Reimbursement Agreement to account No. or to any other account or accounts as agreed in this Application or Reimbursement Agreement.

6. INTEREST. Applicant agrees to pay Issuer interest on all amounts owing under the terms of this Application and the Reimbursement Agreement, as of the date Issuer is first entitled to demand payment, at the rate then in effect under the terms of the Promissory Note executed in conjunction with this Application. Issuer's acceptance of interest does not waive its right to demand and require immediate payment of amounts owing under this Application and corresponding Reimbursement Agreement.

7. FEES AND CHARGES. Applicant agrees to pay the following fees and charges for this transaction: 1% ORIGATION FEE.

Applicant agrees to pay any and all costs incurred by Issuer for this transaction. Applicant will also pay all fees charged by any other institution for services rendered in connection with advising or confirming this letter. All fees are payable according to the following terms:

8. REIMBURSEMENT AGREEMENT. This Application is subject to a Reimbursement Agreement, dated August 11, 2009 executed by Applicant in favor of Issuer (Reimbursement Agreement). By signing this Application, Applicant acknowledges receipt of a copy of the Reimbursement Agreement and agreement with its terms.

SIGNATURE BY APPLICANT(S). Applicant agrees to fulfill the terms and conditions specified in this Application and authorizes Issuer to issue an Irrevocable Standby Letter of Credit in favor of Beneficiary in any form not materially inconsistent with the information in this Application. Applicant acknowledges and agrees that acceptance of this Application by Issuer does not constitute a commitment or agreement by Issuer to issue or open the Letter of Credit described in this Application and that opening the Letter of Credit is subject to approval by Issuer and receipt by Applicant of an indication of such approval.

APPLICANT:
MULLINAX CONCRETE SERVICE CO., INC.

By _____ Date _____
ROBERT MULLINAX

ACCEPTANCE BY ISSUER. Issuer agrees to issue an Irrevocable Standby Letter of Credit pursuant to the terms of this Application and the separate Reimbursement Agreement.

ISSUER:

First Federal Savings Bank

By _____ Date _____
Steve Carroll, Senior Vice President

EXHIBIT "A"

A signed and dated statement from the Director of the Department of Environmental Quality and the land Quality Administrator in any one of the three following forms:

- a. "The Undersigned here by advise that an order in an amount identical to the amount of the sight draft which this statement accompanies has been entered by the Environmental Quality Council pursuant to W.S. 35-11-421, forfeiting all or part of the amount of the credit because of any violation of the Wyoming Environmental Quality Act, by Mullinax Concrete Service Co., Inc. Permit No. Beckton Ranch ET . A certified copy of the order of forfeiture is attached."
- b. "The Undersigned hereby advise that a Settlement Agreement in an amount identical to the amount of the sight draft which this statement accompanies has been signed on behalf of the Department of Environmental Quality and on behalf of the operator, Mullinax Concrete Service Co., Inc., Permit No. Beckton Ranch ET, in which the parties have agreed to an amount due to the Department because of a violation of the Wyoming Environmental Quality Act, and that Mullinax Concrete Service Co., Inc., has failed to pay the amount due within the period of time specified in the agreement."
- c. "The Undersigned certify that the operator Mullinax Concrete Service Co., Inc., Permit No. Beckton Ranch ET, has not filed with the Department an extension of this letter of credit, a substitute letter of credit or other acceptable evidence of financial responsibility in the place of the letter of credit; and this it is thirty (30) days or less until the current or any amended expiration date of this Irrevocable Letter of Credit."

EXHIBIT "B"

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiration date hereof, unless one hundred twenty (120) days prior to any such date we shall notify First Federal Savings Bank in writing by overnight courier service at the above mentioned address that we elect not to consider this Letter of Credit renewed for any such additional period.

IRREVOCABLE STANDBY LETTER OF CREDIT REIMBURSEMENT AGREEMENT

DATE AND PARTIES. The date of this Irrevocable Standby Letter of Credit Reimbursement Agreement (Agreement) is August 11, 2009. The parties and their addresses are:

APPLICANT:

MULLINAX CONCRETE SERVICE CO., INC.
P O BOX 2044
SHERIDAN, WY 82801

ISSUER:

FIRST FEDERAL SAVINGS BANK
46 West Brundage
Sheridan, WY 82801

1. CONSIDERATION AND SCOPE. In consideration of Issuer opening any Letter of Credit (Credit) in Applicant's favor, Applicant agrees to the terms of this Agreement. This Agreement shall govern any Credit issued by Issuer on or after the date of this Agreement, except as expressly provided to the contrary in writing when the Credit is applied for and issued. This Agreement is not a commitment by Issuer to issue any Credit. Any Credit issued and subject to this Agreement will be pursuant to a separate Letter of Credit Application (Application for Credit) that is accepted by Issuer. In this Agreement, "Beneficiary" means any beneficiary of any Credit.

2. REIMBURSEMENT TERMS. Applicant agrees to reimburse Issuer immediately for Credit according to the following terms.

A. Payment Of Draw Amounts. Applicant agrees to pay Issuer upon demand the amount of any draft or request for payment Issuer has honored or will honor purporting to be drawn or made under any Credit. If requested by Issuer, Applicant shall pay such amounts in advance of the date Issuer or a confirming bank is to honor the draft or request for payment. Applicant shall pay such amount in good U.S. funds at the Issuer's address indicated in the DATE AND PARTIES section of this Agreement.

B. Payment of Fees. Applicant agrees to pay the following fees, plus interest on such amounts at the rate indicated in the corresponding Application for Credit: (1) all out-of-pocket expenses incurred by Issuer or its correspondents or imposed by its correspondents in connection with this Agreement; (2) any commission and other fees as may be agreed to between Applicant and Issuer or, in the absence of such agreement, in such reasonable amounts as may be determined by Issuer; and (3) the amount determined by Issuer to adequately reimburse it for its increased cost to maintain any Credit caused by any change in any law or regulation or in the interpretation of any law or regulation (such increases may include, among other things, a tax or governmental charge, a reserve or similar requirement, or the need to include the Credit in Issuer's calculations relating to its capital requirements).

C. Payment of Interest. Applicant agrees to pay Issuer interest on all amounts owing under the terms of this Agreement and any Application for Credit at the rate specified in the Application for the Credit. Interest shall begin to accrue on the date Issuer is first entitled to demand payment according to the terms of this Agreement. Issuer's acceptance of interest does not waive its right to demand and require immediate payment of amounts owing under this Agreement. No provision of this Agreement shall require the payment of interest at a rate greater than the maximum rate allowed by applicable law.

D. Authorization to Charge Applicant's Account. Applicant authorizes Issuer to charge Applicant's account as indicated in the Application for Credit.

3. CONDITIONS. Applicant will satisfy all of the following conditions prior to making any request for Issuer to issue any Credit pursuant to this Agreement. These are the minimum conditions under which Issuer would consider issuing any Credit, but satisfaction of these conditions does not commit Issuer to issuing any Credit under this Agreement.

A. There has not been a default under this Agreement or any other agreement Applicant has with Issuer, nor would issuance of Credit cause such a default.

B. Issuer has received all documents, information, certifications, and warranties as Issuer may require, all properly executed, if appropriate, on forms acceptable to Issuer. This includes, but is not limited to, Applications for Credit, security instruments, and other supporting documentation.

C. Applicant will have performed and complied with all conditions required for issuance of Credit in this Agreement and all other agreements made in conjunction with issuing Credit.

D. The warranties and representations contained in this Agreement are true and correct at the time of applying for the Credit.

E. Applicant's most recent financial statements and other financial reports, delivered to Issuer, are current, complete, true and accurate in all material respects and fairly represent Applicant's financial condition.

F. No proceeding under the United States Bankruptcy Code have been commenced by or against Applicant or any affiliate of Applicant.

G. The Application for Credit has been approved by Issuer in accordance with Issuer's internal standards and procedures for letter of credit transactions.

4. WARRANTIES AND REPRESENTATIONS. Applicant has the right and authority to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Applicant or to which Applicant is a party.

Applicant is duly organized and validly existing in all jurisdictions in which Applicant transacts business. Applicant has the power and authority to enter into this Agreement and to carry on Applicant's business as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Applicant operates.

The execution, delivery and performance of this Agreement and the obligation evidenced by this Agreement are within Applicant's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Applicant is a party or to which Applicant is or any of Applicant's property is subject.

Other than previously disclosed in writing to Issuer, Applicant has not changed Applicant's name or principal place of business within the last ten years and has not used any other trade or fictitious name. Without Issuer's prior written consent, Applicant does not and will not use any other name and will preserve Applicant's existing name, trade names and franchises.

5. AUTHORITY. Applicant understands that if Issuer approves Applicant's Application and issues the Credit, the Credit may be drawn upon by the Beneficiary regardless of any representations or agreements the Beneficiary may have made to Applicant to the contrary. In this respect, Applicant understands that Issuer will be unconditionally obligated to, and will, timely honor a properly presented draft drawn by the Beneficiary under the Credit. If there is a drawing, Applicant will repay Issuer as provided in this Agreement even if Applicant disputes the right of the Beneficiary to have drawn upon the Credit.

If Issuer and its correspondents believe in good faith that a request or notice was authorized by Applicant, they may rely on it. This applies to oral, written, electronic or other requests or notices.

6. APPLICANT SHALL REVIEW CREDIT. Applicant shall review each Credit before or promptly after it is issued, and will immediately inform Issuer of any problems. If Applicant does not immediately inform the Issuer of any problem, then Applicant may no longer object to that problem. If there are any amendments or modifications of the terms of the Credit, this Agreement shall be binding upon Applicant with regard to the Credit as amended. :

7. PROBLEMS WITH DOCUMENTS OR SIGNATURES. Issuer and its correspondents may accept any document appearing on its face to be in order. This is true even if there is a problem with the form, sufficiency, correctness, genuineness, or legal effect of that document or with the authority of any person signing that document. Issuer may refuse to pay any draft or request for payment that does not strictly comply with a Credit even if Applicant waives that non-compliance, and even if Issuer shall have asked Applicant to waive any non-compliance.

8. DELAYS, LOST DOCUMENTS, ACTS OF GOD. Issuer and its correspondents shall not be responsible for any delayed, lost, or altered documents or communications. Also, they shall not be responsible for interruptions of their businesses caused by acts of God, riots, civil disturbances, insurrections, wars, or other causes beyond their control or by labor disputes.

9. REPRESENTATIVES. If Issuer believes that a representative is acting for another person, then Issuer and its correspondents may treat any document signed by that representative as having been signed by that other person. Such a representative could include an administrator, executor, trustee in bankruptcy, or receiver of any of the property of that other person.

10. FINANCIAL INFORMATION. Applicant agrees promptly to provide such financial information as Issuer shall request, including any statements of financial condition and operations.

11. LIMITATION OF LIABILITY. Neither Issuer nor any of its correspondents shall be in any way responsible for any Beneficiary's responsibilities to Applicant. If Issuer or any of its correspondents takes any act in connection with a Credit or any related draft, document or other communication, and it takes that act in good faith and according to United States or other applicable law, then that act shall be binding upon Applicant. Also, such act shall not cause Issuer or any of its correspondents to be liable to Applicant. "Act" includes any action, inaction, or omission. Issuer shall never be liable to Applicant for any incidental, consequential or special damages. Issuer shall not be responsible for any error, neglect, or default of any of Issuer's correspondents. None of the foregoing shall affect, impair, or prevent Issuer from exercising its rights under this Agreement.

The users of the Credit shall be deemed Applicant's agents and Applicant shall assume all risks of their acts or omissions. Neither Issuer nor Issuer's correspondents shall be responsible for (a) the adequacy or validity of any insurance or insurer; (b) the validity, sufficiency or genuineness of documents, even if they are ultimately proven to be in any or all respects invalid, insufficient, fraudulent or forged; (c) the solvency or responsibility of any party issuing any documents; (d) delay in arrival or failure to arrive of any documents; (e) delay in giving or failure to give notice of arrival or any other notice; (f) failure of any draft to bear adequate reference to the Credit; (g) failure of documents to accompany any draft at negotiation or failure of any person to endorse on the Credit the amount of any draft or to surrender or take up the Credit or to send documents apart from drafts as required by the terms of the Credit, each of which provisions, if contained in the Credit itself, it is agreed may be waived by Issuer; or (h) errors, omissions, interruptions or delays in transmission or delivery of any message by mail, cable, telegraph, wireless or otherwise.

12. INDEMNIFICATION AND REIMBURSEMENT FOR COSTS AND LOSSES. Applicant will indemnify Issuer and its correspondents, and their officers, employees and agents, against their loss or damage in connection with any action Issuer or its correspondent shall take or not take in connection with any Credit, unless that loss or damage is caused by Issuer's or its correspondent's gross negligence or intentional misconduct. Applicant will also reimburse Issuer for Issuer's costs of enforcing this agreement (including reasonable attorneys' fees) and for any dispute regarding this agreement or any Credit.

13. DEFAULT. Applicant will be in default if any of the following occur:

- A. Applicant fails to make a payment in full when due.
- B. Applicant makes an assignment for the benefit of creditors or becomes insolvent, either because Applicant's liabilities exceed Applicant's assets or Applicant is unable to pay Applicant's debts as they become due; or Applicant petitions for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or is the subject of a petitions or action under such laws and fails to have the petition or action dismissed within a reasonable period of time not to exceed 60 days.
- C. Applicant merges, dissolves, reorganizes, or ends its business existence, or a partner or majority owner dies or is declared legally incompetent.
- D. Applicant fails to perform any condition or to keep any promise or covenant of this Agreement.
- E. Applicant defaults on any other agreement Applicant has with Issuer.
- F. Applicant makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- G. Applicant fails to satisfy or appeal any judgment against Applicant.
- H. Applicant changes Applicant's name or assumes an additional name without notifying Issuer prior to making such a change.
- I. Applicant transfers all or a substantial part of Applicant's money or property.
- J. Issuer determines in good faith that a material adverse change has occurred in Applicant's financial condition from the conditions set forth in Applicant's most recent financial statement before the date of this Agreement or that the prospect for payment or performance of the Credit is impaired for any reason.

14. REMEDIES. In the event of a default by Applicant, Applicant will pay to Issuer the total undrawn amount of all Letters of Credit outstanding. That payment shall be held by Issuer without interest in Issuer's name as collateral for all of Applicant's obligations to Issuer, and may be applied to any payment that Applicant owes to Issuer at that time or a later time.

On or after Default, to the extent permitted by law, Applicant agrees to pay all expenses of collection, enforcement or protection of Issuer's rights and remedies under this Agreement. 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 Agreement.

By choosing any one or more remedies, Issuer does not give up Issuer's right to use any other remedy. Issuer does not waive a default if Issuer chooses not to use a remedy. By electing not to use any remedy, Issuer does not waive Issuer's right to later consider the event a default and to use any remedies if the default continues or occurs again.

15. WAIVERS AND CONSENT. To the extent not prohibited by law, Applicant waives any right Applicant has to protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

16. AGREEMENT IS BINDING. This agreement shall be binding upon Applicant and its successors and assigns. This agreement shall be enforceable by Issuer and its successors and assigns. Applicant may not transfer this agreement without Issuer's written consent.

17. ILLEGAL PROVISIONS. If any provision of this agreement is invalid, illegal or unenforceable, that provision shall be treated as though it were not in the agreement. That invalidity, illegality or unenforceability shall not affect any other provision in this agreement.

18. LAW AND OTHER RULES. This Agreement shall be governed by the International Standby Practices 1998 (ISP98). This Agreement shall also be governed by the laws of Wyoming, except as those laws conflict with the International Standby Practices 1998 (ISP98). In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be in Wyoming unless otherwise required by law.

19. MORE THAN ONE APPLICANT. If more than one person (individual or organization) signs this agreement as "Applicant," then the term "Applicant" means every such person, and each such person shall be jointly and severally liable for all obligations of the Applicant. Each Applicant's obligations are independent of any other Applicant's obligations. Issuer may sue any Applicant, or any number of Applicants together, to enforce this Agreement. Each such person shall be the agent of the other. Issuer may give any notices required under this Agreement to any one of those persons. Issuer may release any one of those persons without releasing the others. If any event listed above as an Event of Default shall occur with respect to any of those persons, it shall be an Event of Default. The duties and benefits of this Agreement will bind and benefit the successors and assigns of Issuer and Applicant.

20. NO ORAL AGREEMENTS. This written Agreement, together with all documents executed pursuant to this transaction, represents the entire understanding between Issuer and Applicant. This Credit Application and Agreement may not be amended or modified by oral agreement. No amendment or modification of this Credit Application and Agreement is effective unless made in writing and executed by Applicant and Issuer.

21. 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 Agreement.

22. 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 Applicant will be deemed to be notice to all Applicants. Applicant will notify Issuer in writing of any change in Applicant's name, address or other application information.

SIGNATURES. By signing below, Applicant and Issuer agree to the terms of this Agreement and acknowledge receipt of a copy of this Agreement.

APPLICANT:

MULLINAX CONCRETE SERVICE CO., INC.

By _____ Date _____
ROBERT MULLINAX

ISSUER:

First Federal Savings Bank

By _____ Date _____
Steve Carroll, Senior Vice President