

2009-007704

Klamath County, Oregon



06/03/2009 03:06:46 PM

Fee: \$36.00

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DAVID STUART

**MORTGAGE**

**THIS MORTGAGE**, made this 3rd day of June 2009, between **RICHARD M. SCHMERBACH**, as Mortgagor, and **PACIFIC STONE & SUPPLY CO., INC.**, an Oregon corporation doing business as **ROGUE PACIFIC LUMBER**, as Mortgagee,

**WITNESSETH**, that the Mortgagor in consideration of One Hundred Fifty-nine Thousand Four Hundred Eighty and 43/100ths (\$159,480.43) Dollars paid to the Mortgagor by the Mortgagee, and evidenced by a Promissory Note dated June 1, 2009, does hereby grant, bargain, sell and convey unto the Mortgagee, and the Mortgagees' successors and assigns, that real property situated in the County of Klamath, State of Oregon, described as follows:

LOTS 9 AND 10, BLOCK 28, WEST KLAMATH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

Map No.: R-3908-013AD-01500 Property ID: R496172 Tax Code: 007

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, and which may hereafter thereto belong or appertain, and the rents, issues and profits therefrom, and any and all fixtures upon the premises at the time of the execution of this Mortgage or at any time during the term of this Mortgage.

TO HAVE AND TO HOLD the premises with the appurtenances unto the Mortgagee and the Mortgagee's personal representatives, successors and assigns forever.

This Mortgage is intended to secure Mortgagor's performance of the terms and covenants set forth in the Promissory Note above mentioned.

The date of maturity of the debt secured by this Mortgage is the date on which all obligations of payment described in the Promissory Note have been satisfied in full by Mortgagor, which date is June 1, 2014.

The Mortgagor warrants that the obligations set forth in the Promissory Note and this Mortgage are for an organization or (even if Mortgagor is a natural person) for business or commercial purposes.

This Mortgage is further conditioned upon the faithful observance by the Mortgagor of the following covenants hereby expressly entered into by the Mortgagor,

to-wit:

Mortgagor is lawfully seized of the Premises and now has a valid and unencumbered fee simple title thereto, except as follows: leases, encumbrances and easements of record at the time this Mortgage is recorded, and Mortgagor will warrant and defend the same against the claims and demands of all persons whomsoever, except those above mentioned.

Mortgagor will pay the obligations and perform the other terms and conditions of the Promissory Note promptly as the same become due, or arise, according to the tenor of the Promissory Note.

So long as this Mortgage remains in force, Mortgagor will pay all taxes, assessments, and other charges of every nature levied or assessed upon or against the Premises when due and payable, according to law, and before the same become delinquent, and will promptly pay and satisfy any construction liens or other encumbrances that, by operation of law or otherwise, become a lien upon the mortgaged premises superior to the lien of this Mortgage.

Mortgagor will keep the improvements erected on the premises in good order and repair and will not commit or suffer any waste of the premises.

So long as this Mortgage shall remain in force, Mortgagor will keep the buildings now erected, or any which may hereafter be erected on the premises, insured against loss or damage by fire, with extended coverage, to the extent of their full insurable value, in a company or companies acceptable to the Mortgagee and for the benefit of both parties hereto as their interests may appear, and will deliver copies of all the policies and renewals thereof to the Mortgagee.

Mortgagee, by accepting this Mortgage and causing the same to be recorded, acknowledges that it is subordinate a prior encumbrance recorded June 22, 2004 in Volume M04 Page 40118, Records of Klamath County, Oregon.

**NOW THEREFORE**, if the Mortgagor performs the terms and covenants set forth in the Promissory Note above mentioned, and Mortgagor pays all sums required of Mortgagor to be paid by the terms of the Promissory Note, and if Mortgagor shall fully satisfy and comply with the covenants hereinbefore set forth, then this conveyance shall be void, but otherwise it shall remain in full force and effect as a Mortgage to secure the performance of Mortgagor as aforesaid and the performance of the covenants and agreements herein contained. Any failure to make any of the payments provided for in the Promissory Note when the same shall become due or payable, or to perform any agreement therein or herein contained, shall give to the Mortgagee the option to declare

the whole amount due, or unpaid thereon or on this Mortgage, at once due and payable. This Mortgage may be foreclosed at any time after Mortgagor's failure to make any of the payments provided for in the Promissory Note when the same shall become due or payable, or to perform any agreement contained in this mortgage. If the Mortgagor shall fail to pay any taxes or other charges or any lien or insurance premium as herein provided to be done, the Mortgagee shall have the option to pay the same. Any payment so made shall be added to and become a part of the debt secured by this Mortgage, and draw interest at the rate of nine (9%) per cent per annum, without waiver, however, of any right arising from breach of any of the covenants herein. Time is of the essence with respect to all sums due hereunder.

If a suit or action is brought to foreclose this Mortgage, the court may, upon motion of the holder of the Mortgage, without respect to the condition of the property, appoint a receiver to collect the rents and profits arising out of the premises and direct the receiver to apply such rents and profits to the payment and satisfaction of the amount due under this Mortgage, first deducting all proper charges and expenses of the receivership, including a reasonable charge for attorney fees.

In the event any suit or action to foreclose this Mortgage is commenced, the losing party therein agrees to pay the attorney fees, costs and disbursements of the prevailing party, including statutory costs and disbursements and costs of title report(s) and/or title search. If any appeal is taken from any judgment entered pursuant to such suit or action, the losing party on appeal therein promises to pay the attorney fees, costs and disbursements, including all statutory costs and disbursements, of the prevailing party. To the extent permitted by law, all such sums shall be and are secured by the lien of this Mortgage and shall be included in the judgment of Foreclosure.

Each and all of the covenants and agreements herein contained shall apply to, inure to the benefit of, and bind the personal representatives, successors and/or assigns of the Mortgagor and of the Mortgagee respectively.

In construing this Mortgage, it is understood that the Mortgagor or Mortgagee may be more than one person. If the context so requires, the singular shall be taken to mean and include the plural. Generally, all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

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



Richard M. Schmerbach

STATE OF OREGON     )  
                                  )ss.  
County of Klamath     )

This instrument was acknowledged before me on June 3, 2009, by Richard M. Schmerbach.

*Denise Reis*  
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Notary Public for Oregon  
My Commission Expires: 7/26/2011

