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Shelby Cnty Judge of Probate, AL  
01/28/2011 11:59:43 AM FILED/CERT

***This Mortgage was prepared by:***

Brian D. Cunningham, Esq.  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

**RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:**

CHASE NEW MARKETS CORPORATION  
201 South Main Street, 3<sup>rd</sup> Floor  
Salt Lake City, Utah 84111  
Attn: Chet Samuelson

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(Space Above For Recording Use)

Parcel Identification Number: See Exhibit A

**MORTGAGE**

**NAME OF**  
**MORTGAGOR(S):** **MILLSOURCE, INC.**  
an Idaho corporation  
d/b/a WGM Distribution, Inc. in the State of Alabama

**NAME OF**  
**BORROWER:** **WOODGRAIN HOUSTON, LLC**  
an Idaho limited liability company

**NAME OF**  
**MORTGAGEE:** **CHASE NEW MARKETS CORPORATION**  
a Delaware corporation

**Note to Probate Judge: This Mortgage is exempt from mortgage recording tax because the Mortgage does not secure a stated or fixed amount of indebtedness, but rather secures only a contingent repayment obligation of the Mortgagor guarantor under the terms of REPAYMENT AND COMPLETION GUARANTY dated as of January 12, 2011. Because it is uncertain if or when the Mortgagor will be called on to pay the guaranteed obligation, no mortgage tax is due.**

**THE PROPERTY SUBJECT TO THIS MORTGAGE IS NOT HOMESTEAD PROPERTY.**

## **MORTGAGE**

THE PARTIES TO THIS MORTGAGE ("**Mortgage**"), made as of January 12, 2011, are **MILLSOURCE, INC.**, an Idaho corporation, d/b/a WGM Distribution, Inc. in the State of Alabama ("**Mortgagor**"), and **CHASE NEW MARKETS CORPORATION**, a Delaware corporation ("**Mortgagee**"). The mailing address of Mortgagor and Mortgagee are the addresses for those parties set forth or referred to in Section 7.8 below.

### **ARTICLE 1. GRANT**

- 1.1 **GRANT**. For the purposes of and upon the terms and conditions in this Mortgage, and as security for the Secured Obligations (as hereinafter defined), the Mortgagor hereby grants, bargains, sells, assigns and conveys unto the Mortgagee, and hereby grants to the Mortgagee a security interest in, all of the Mortgagor's right, title and interest in, to and under the following property and interests in property, with power of sale and right of entry and possession, to wit: all of that real property located in the County of Shelby, State of Alabama, described on Exhibit A attached hereto, together with all buildings and other improvements, fixtures now or hereafter located on the real property, all right, title, interest, and privileges of Mortgagor in and to all streets, roads, and alleys used in connection with or pertaining to such real property, all water and water rights, minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, all appurtenances, easements, rights and rights of way appurtenant or related thereto, and all air rights, development rights and credits, licenses and permits related to the real property. All interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing, are collectively referred to herein as the "**Property**". The listing of specific rights or property shall not be interpreted as a limit of general terms.
- 1.2 **WARRANTY OF TITLE; USE OF PROPERTY**. Mortgagor warrants that it is the sole owner of good and marketable unencumbered fee simple title to the Property, subject only to those exceptions approved by Mortgagee in writing. Mortgagor warrants that the Property is not used principally for agricultural or farming purposes, and that the Property is not homestead property.

### **ARTICLE 2. OBLIGATIONS SECURED**

- 2.1 **OBLIGATIONS SECURED**. Mortgagor makes this Mortgage for the purpose of securing: (a) the performance of the obligations contained herein and in that certain Construction Loan Agreement dated of even date herewith to which **WOODGRAIN HOUSTON, LLC**, an Idaho limited liability company ("**Borrower**"), and Mortgagee are parties ("**Loan Agreement**"), which Loan Agreement provides for, among other things, the construction of certain Improvements (as defined in the Loan Agreement) located on real estate in Texas; (b) the payment of SEVEN MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,800,000.00), with interest thereon, according to the terms of that certain Promissory Note ("**Note**") of even date herewith, executed by Borrower, and payable to Mortgagee, as lender; (c) any and all extensions, renewals, or modifications of the Note and Loan Agreement, whether the same be in greater or



lesser amounts; (d) the performance of Borrower's obligations as guarantor of the Loan (as defined in the Loan Agreement) pursuant to that certain Repayment and Completion Guaranty of even date herewith; and (e) the performance of the obligations contained in a rider attached hereto as Exhibit B (collectively, the "Secured Obligations"). Notwithstanding any provision of this Mortgage or any other document or instrument related to the indebtedness hereby secured, the obligations arising under the Environmental Indemnity Agreement (as defined in the Loan Agreement) executed by Borrower and Mortgagor are not, and shall not be, any part of the Secured Obligations.

- 2.2 **INCORPORATION.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations, together with all costs of collecting the Secured Obligations. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and the rate of interest on one or more Secured Obligations may vary from time to time.

### ARTICLE 3. INTENTIONALLY OMITTED

### ARTICLE 4. INTENTIONALLY OMITTED

### ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor and Borrower shall promptly pay and perform each Secured Obligation when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly affect Mortgagee's rights in the Property, then Mortgagee may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to protect the value of the Property and Mortgagee's rights in the Property, including the retaining of counsel, and any amount so expended by Mortgagee will be added to the Secured Obligations and will be payable by Mortgagor to Mortgagee on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.
- 5.2 **TAXES AND ASSESSMENTS.** Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed upon the Property by any public authority or upon Mortgagee by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Mortgagee pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Mortgagee and which are measured by and imposed upon Mortgagee's net income. If the Property or any lot or parcel thereof is part of a larger tax or assessment parcel, Mortgagor shall, as soon after recordation of this Mortgage as is reasonably possible, cause the tax or assessment parcel to be split or amended so that its boundaries correspond to the boundaries of the Property and its lots or parcels.
- 5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall immediately discharge any lien not approved by Mortgagee in writing that has or may attain priority over this Mortgage.
- 5.4 **DUE ON SALE OR ENCUMBRANCE.** If the Property or any interest therein shall be sold, transferred, including, without limitation, through sale or transfer, directly or indirectly, of a majority or controlling interest in the corporate stock, partnership interests, or limited liability company membership interests of a Mortgagor or managing member or general partner of Mortgagor, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without



the prior written consent of Mortgagee, THEN Mortgagee, in its sole discretion, may at anytime thereafter declare all Secured Obligations immediately due and payable.

**5.5 DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

- a. The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Mortgagee and, at the request of Mortgagee, shall be paid directly to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Mortgage, Mortgagee may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Mortgagee, and/or Mortgagee may release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may impose. Mortgagee may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; provided, however, in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Mortgagee or its employees or agents.
- b. At its sole option, Mortgagee may permit insurance or condemnation proceeds held by Mortgagee to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Mortgagee of such additional funds which Mortgagee determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Mortgagee of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Mortgagee, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Mortgagee; and (iv) the delivery to Mortgagee of evidence acceptable to Mortgagee (aa) that after completion of the work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) of the continuation of Leases acceptable to and required by Mortgagee; (cc) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Mortgagor and Borrower and any guarantors since the date of this Mortgage; and (ee) of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within 30 days of receipt by Mortgagee of such insurance or condemnation proceeds, then Mortgagee may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose.

- 5.6 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security hereof and the rights and powers of Mortgagee hereunder against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of any material damage to the Property and of any condemnation offer or action.

**5.7 [INTENTIONALLY OMITTED].**



- 5.8 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Mortgagee may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Mortgage upon the Property.
- 5.9 **SUBROGATION.** Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to the Loan Documents or by the proceeds of any loan secured by this Mortgage.
- 5.10 **RIGHT OF INSPECTION.** Mortgagee, its agents and employees, may enter the Property at any reasonable time for the purpose of inspecting the Property and ascertaining Mortgagor's compliance with the terms hereof.

## ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "Default" shall mean: (a) any default under the Note, the Loan Agreement, or any of the other Loan Documents, including this Mortgage; or (b) any default under the Other Mortgage (as defined in Exhibit B attached hereto and incorporated herein by this reference).
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Mortgagee shall have all the following rights and remedies:
- a. With or without notice, to declare all Secured Obligations immediately due and payable;
  - b. With or without notice, and without releasing Mortgagor or Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor or Borrower and, in connection therewith, to enter upon the Property and do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Mortgagee under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority to this Mortgage, the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (iv) to employ counsel, accountants, contractors and other appropriate persons;
  - c. This Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) under the power of sale which is hereby given to the Mortgagee, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Property to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Property to be sold is located. If there is real estate to be sold in more than one county, publication shall be made in all counties where the real estate to be sold is located, but if no



newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Mortgagee may bid at any sale held under this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Secured Obligations shall have been paid in full and this Mortgage shall have been terminated as provided herein. To the extent permitted by applicable law, the Mortgagor hereby authorizes and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

- d. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;
- e. To apply to a court of competent jurisdiction for and to obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment;
- f. To enter upon, possess, manage and operate the Property or any part thereof;
- g. To cause the Property to be sold to satisfy the Secured Obligations. Except as required by law, neither Mortgagor nor any other person or entity other than Mortgagee shall have the right to direct the order in which the Property is sold;
- h. To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent actions;
- i. To credit bid and purchase at any foreclosure sale and at any sale conducted under the provisions of the United States Bankruptcy Code, including Section 363 of the United States Bankruptcy Code; and

Upon sale of the Property at any foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, the costs of any structural reports, hazardous waste reports or any remediation costs related thereto; (iv) anticipated discounts upon resale of the Property as a distressed or foreclosed property; and (v) such other factors or matters that Mortgagee deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not



impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Mortgagee; and (z) Mortgagee's credit bid may be higher or lower than any appraised value of the Property.

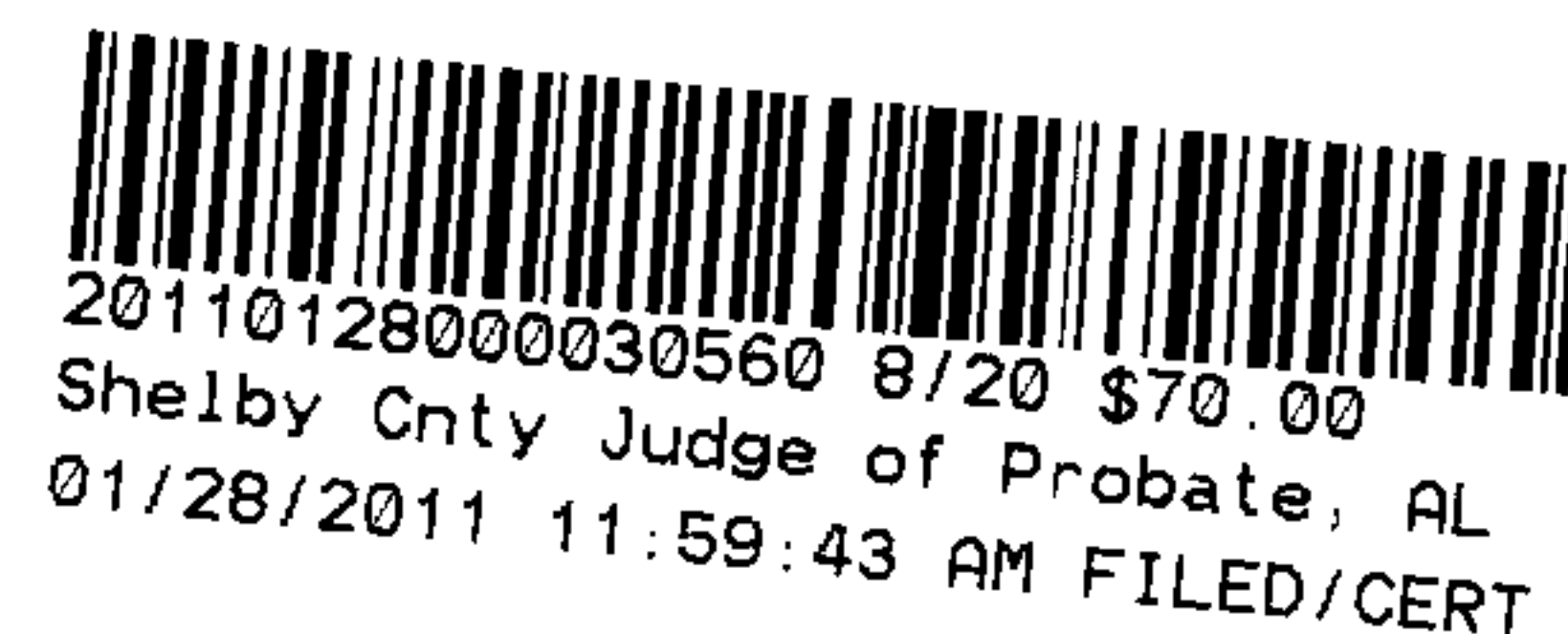
- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Mortgagee, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Mortgagee under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Mortgagee under this Mortgage other than those described in Section 6.3, less all costs and expenses incurred by Mortgagee or any receiver, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Mortgagee shall determine in its sole discretion; provided, however, Mortgagee shall have no liability for funds not actually received by Mortgagee.
- 6.5 **NO CURE OR WAIVER.** Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Mortgagee or any receiver, shall cure or waive any breach, Default or notice of Default under this Mortgage, or nullify the effect of any notice of Default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other Defaults), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of, or security interests created by, this Mortgage.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee immediately and without demand all costs and expenses incurred by Mortgagee pursuant to this Article 6 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property). In addition, Mortgagor will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing amounts must be paid to Mortgagee as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Mortgagee.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Property, and upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Mortgagee may perform any obligation of Mortgagor hereunder.
- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Mortgagee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law or in any other agreements between Mortgagor and Mortgagee. No failure on the part of Mortgagee to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent



Default. No delay on the part of Mortgagee in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Mortgagee shall not waive the agreement contained herein that time is of the essence, nor shall Mortgagee waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

## ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.2 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property and such further rights and agreements are incorporated herein by this reference. Where Mortgagor and Borrower are not the same, "Mortgagor" means the owner of the Property in any provision dealing with the Property, "Borrower" means the obligor in any provision dealing with the Secured Obligations, and both where the context so requires.
- 7.3 **ATTORNEYS' FEES.** If the Note is placed with an attorney for collection or if an attorney is engaged by Mortgagee to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, enforcement of rights and remedies, then in all events, Mortgagor agree(s) to pay all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 7.4 **NO WAIVER.** No previous waiver and no failure or delay by Mortgagee in acting with respect to the terms of the Note or this Mortgage shall constitute a waiver of any breach, default, or failure of condition under the Note, this Mortgage or the obligations secured thereby. A waiver of any term of the Note, this Mortgage or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Note and the terms of any other document related to the loan evidenced by the Note, the terms of the Note shall prevail.
- 7.5 **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing.
- 7.6 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive or modify the provisions of the Section above titled "Due on Sale or Encumbrance".
- 7.7 **GOV ERNING LAW.** This Mortgage shall be construed in accordance with the laws of the state where the Property is located, except to the extent that federal law preempts the laws of such state.
- 7.8 **EXHIBITS INCORPORATED.** All exhibits, schedules or other items attached hereto are incorporated into this Mortgage by such attachment for all purposes.
- 7.9 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Mortgage shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective 3 days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-





receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	<b>MILLSOURCE, INC.</b> 300 NW 16 <sup>th</sup> Street Fruitland, Idaho 83619
With a copy to:	Kantor Taylor Nelson Boyd & Evatt PC 1501 Fourth Avenue, Suite 1610 Seattle, Washington 98101-3613 Attn: Thomas Nelson
Mortgagee:	<b>CHASE NEW MARKETS CORPORATION</b> 201 South Main Street, 3 <sup>rd</sup> Floor Salt Lake City, Utah 84111 Attn: Chet Samuelson  Chase New Markets Corporation 10 South Dearborn, Floor 19 Chicago, IL 60603 Attn: Kevin Goldsmith
With a copy to:	Snell & Wilmer L.L.P. Gateway Tower West 15 West South Temple, Suite 1200 Salt Lake City, Utah 84101 Attn: Brian D. Cunningham, Esq.  and  Bryan Cave LLP 1155 F Street, N.W. Washington, District of Columbia 20004 Attn: Jerome Breed, Esq.

Any party shall have the right to change its address for notice hereunder to any other location within the United States by the giving of 30 days notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Mortgagee, without delay, any notices, letters or other communications delivered to the Property or to Mortgagor naming Mortgagee, "Lender" or the "Construction Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements, the ownership, maintenance and operation of the Property or the ability of Mortgagor to perform its obligations to Mortgagee under the Note or the Loan Agreement.

Mortgagor requests a copy of any statutory notice of default and a copy of any statutory notice of sale be mailed to Mortgagor at the address set forth above.

7.10 **ADVERTISING.** In connection with the Loan, Mortgagor hereby agrees that **JP Morgan Chase & Co. and** its subsidiaries ("**JP Morgan**") may publicly identify details of the Loan in JP Morgan advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of



the Property, the address of the Property, the amount of the Loan, the date of the closing and a description of the size/location of the Property.

7.11 **WAIVER OF MARSHALING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property marshaled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien securing the Secured Obligations. Mortgagee shall have the right to sell the Property and any or all of said other property as a whole or in separate parcels, in any order that Mortgagee may designate.

7.12 **DATE OF MORTGAGE.** The date of this Mortgage is intended as a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on that date.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, this Mortgage has been duly authorized and has been executed and delivered by Mortgagor on the date of the acknowledgment of the Mortgagor's signature below, to be effective as of the day and year first above written.

**"MORTGAGOR"**

**MILLSOURCE, INC.**  
an Idaho corporation

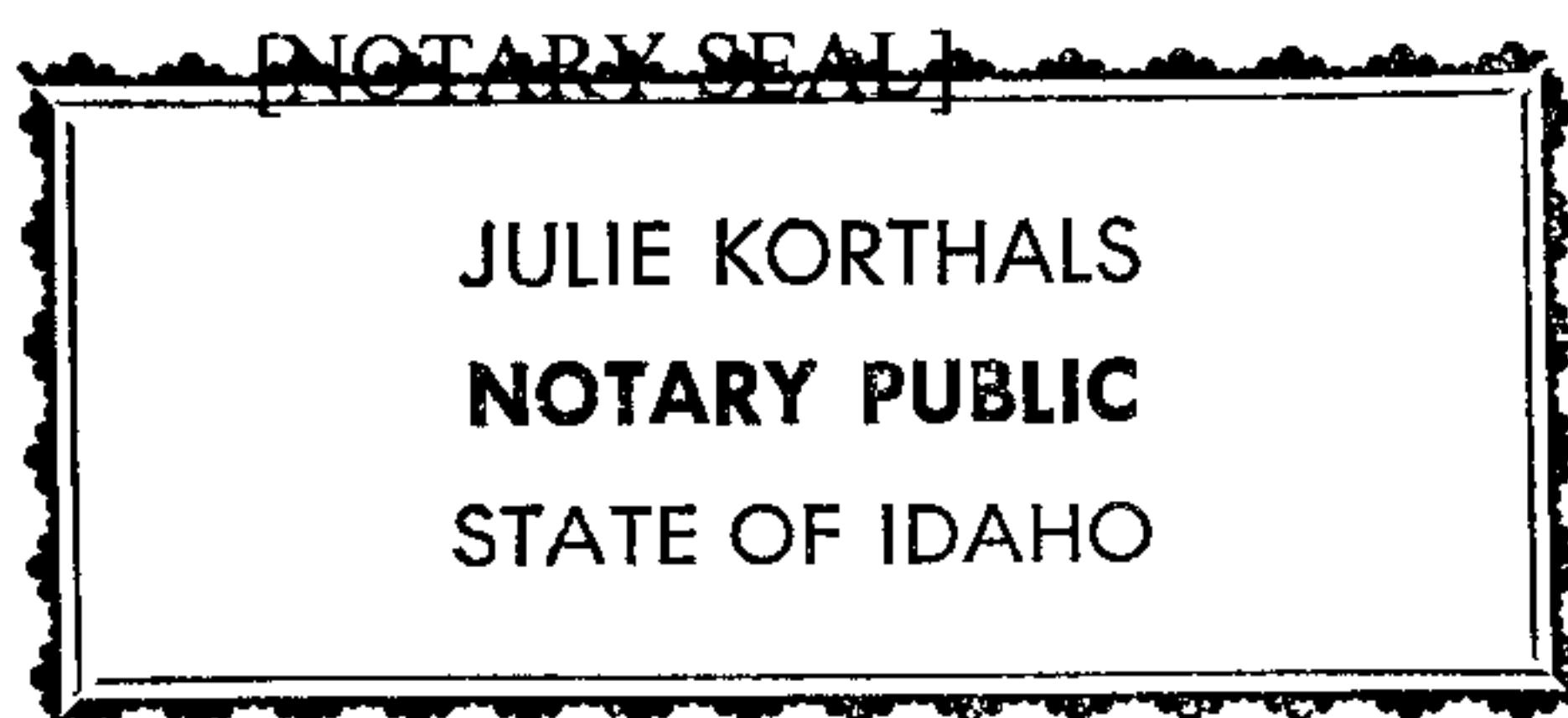
By: Steven J. Atkinson  
Name: Steven J. Atkinson  
Title: Treasurer

STATE OF Idaho )  
COUNTY OF Payette )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Steven J Atkinson, whose name as Treasurer of **MILLSOURCE, INC.**, an Idaho corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Treasurer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 11<sup>th</sup> day of January, 2011.

Julie Korthals  
NOTARY PUBLIC  
My Commission Expires: Commission expires 1/9/2015





**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

Exhibit A to Mortgage executed by **MILLSOURCE, INC.**, an Idaho corporation, as Mortgagor, to **CHASE NEW MARKETS CORPORATION**, a Delaware corporation, as Mortgagee, dated as of **January 12, 2011**.

(See Attached)





**PARCEL I:**

**A portion of the Northwest 1/4 of Section 3, Township 24 North, Range 12 East, described as follows:**

**Begin at the intersection of the West right of way of Shelby Street and the North right of way Depot Street in the Town of Montevallo, Alabama, and run Southwesterly along the North right of way of Depot Street for 245.78 feet to a point on the East R.O.W. of Dauphin Street, said point also being the Southwest corner of Parcel I as described in Deed Book 218, Page 275; then turn an angle of 90°00' to the right and run Northwesterly along the East R.O.W. of Dauphin Street for 214.33 feet to the Northwest corner of Parcel II as described in Deed Book 218, Page 275; then turn an angle of 92°12'06" to the right and run Northeasterly along the South side of the land as described in Deed Book 269, Page 513, for 110.17 feet to the Southeast corner of said land; then turn an angle of 92°12'06" to the left and run Northwesterly along the East side of said land as described in Deed Book 269, Page 513, for 53.00 feet; then turn an angle of 92°08'12" to the right and run Northeasterly for 60.16 feet to a point on the West side of the land as described in Deed Book 266, Page 521; then turn an angle of 87°25'45" to the right and run Southeasterly for 8.65 feet to the Southeast corner of the said land, said point also being the Northwest corner of the Mary Lee Brown Lot; then continue along the last described course and along the West side of the Mary Lee Brown Lot for 66.92 feet to the Southwest corner of said Lot, said point also being the Northwest corner of the land as described in Deed Book 263, Page 212; then turn an angle of 91°57'19" to the left and run Northeasterly along the North side of the land as described in Deed Book 263, Page 212, for 161.10 feet to a point on the West right of way of Cedar Street; then turn an angle of 92°31'29" to the right and run Southeasterly along the West R.O.W. of Cedar Street for 68.01 feet to a point on the West right of way of Shelby Street; then turn an angle of 34°33' to the right and run Southwesterly along the West R.O.W. of Shelby Street for 150.78 feet back to the point of beginning.**

**PARCEL II:**

**A part of the Northwest 1/4 of fractional Section 3, Township 24 North, Range 12 East, described as follows:**

**Begin at the intersection of East side of Shelby Street, in the Town of Montevallo, Alabama, with North border of Southern Railway and go North 17°02' West and along the East border of Shelby Street 18 feet; thence continue along this border North 17°44' East, 139.47 feet; thence North 41°07' East, 100.04 feet to South border of Highway 12; thence continue along this border North 68°39' East, 126.05 feet to the point of an undefined curve to the left, concave Southeasterly, with a chord bearing of North 83°17'45" East a distance of 668.98 feet; thence run along the arc of said curve parallel to the Old Columbiana-Centerville Road Northeasterly; thence Easterly to the end of said chord line; thence South 80°55' East, 170.15 feet (formerly, 169.18 feet) to the intersection with North border Southern Railway; thence along this border South 72°58' West, 1101.11 feet (formerly, 1100 feet) to beginning.**

**PARCEL III:**

**Commence at a point on center line of the main track of the Southern Railroad Company 885.63 feet (formerly 965.4 feet) Northeast from the point where said center line of said track intersects the line between Sections 3 and 4, Township 24 North, Range 12 East; thence North 17°02' West, a distance of 68.0 feet to a point on the tangent of the Southeast boundary of Shelby Street; thence North 17°44' East along the tangent and Southeast boundary of Shelby Street a distance of 361.28 feet to the point of beginning of the property herein described; thence continue North 17°44' East along the Southeast boundary of Shelby Street a distance of 344.12 feet to a point lying 26.0 feet South of the South edge of Shoal Creek; thence South 65°02' East a distance of 399.90 feet to a point lying 11.0 feet South of the South edge of Shoal Creek; thence South 79°40' East a distance of 116.30 feet to a point lying 7.0 feet South of the South edge of Shoal Creek; thence South 6°05' East a distance of 74.30 feet to a point on the North margin of the Old Columbiana-Centerville Road; thence South 78°46'48" West a distance of 505.51 feet along the chord of a nondefined curve to the left, concave Southeasterly; thence run along the arc of said curve parallel to the Old Columbiana-Centerville Road Westerly; thence Southwesterly to**



the end of said chord line; thence South 68°39' West a distance of 68.51 feet along said right of way; thence North 28°54' West a distance of 66.29 feet to the point of beginning.

**PARCEL IV:**

Commence at a point on center line of the Main track of the Southern Railroad Company 285.63 feet (formerly 965.4 feet) Northeast from the point where said center line of said track intersects the line between Sections 3 and 4, Township 24 North, Range 12 East; thence North 17°02' West, a distance of 68.0 feet to a point on the tangent of the Southeast boundary of Shelby Street; thence North 17°44' East along the tangent and Southeast boundary of Shelby Street a distance of 705.40 feet to a point lying 26.0 feet South of the South edge of Shoal Creek, said point being the Northwest corner of a parcel heretofore conveyed by the Grantor, Annie Jo Brown to W. V. Brown on October 6, 1958, as shown by deed recorded in Deed Book 198, at Page 142, Office of the Judge of Probate of Shelby County, Alabama, said point being the point of beginning of the parcel herein described; thence South 65°02' East a distance of 399.90 feet to a point lying 11.0 feet South of the South edge of Shoal Creek; thence South 79°40' East a distance of 116.30 feet to a point lying 7.0 feet South of the South edge of Shoal Creek; thence turn an angle of 73°35' to the left and run 32 feet, more or less, to the center of Shoal Creek; thence run Northwesterly along the meanderings of the center line of said Shoal Creek to the intersection thereof with the Southeast boundary of Shelby Street; thence run Southwesterly along the Southeast boundary of Shelby Street a distance of 46 feet, more or less, to the point of beginning, except road right of way as shown by deeds recorded in Deed Book 200, Page 409, and Deed Book 201, Page 232, said property being situated in Section 3, Township 24 North, Range 12 East, Shelby County, Alabama.

**PARCEL V:**

Commence at the Intersection of the Southeasterly right of way line of Depot Street (vacated) and the Southwesterly right of way line of Dauphin Street, being the point of beginning; thence North 72°58' East 264.99 feet to the Westerly right of way of Shelby Street; thence South 03°22'35" West, 106.69 feet along the chord of a curve to the left with a radius of 234.08 feet, and a central angle of 26°20'46"; thence run Southeasterly along the arc of said curve 107.64 feet to the Northwesterly right of way of Southern Railway; thence South 72°58' West a distance of 456.27 feet along said Railway right of way; thence North 5°10'00" East, 108.00 feet; thence North 72°58' East, 187.68 feet to the point of beginning.

All being situated in Shelby County, Alabama.

Less and except any portion of subject property lying within a road right of way.

Tax Parcel ID Number: \_\_\_\_\_



**EXHIBIT B**  
**CROSS-DEFAULT/CROSS-COLLATERALIZATION RIDER**

Exhibit B to Mortgage dated as of January 12, 2011, executed by **MILLSOURCE, INC.**, an Idaho corporation d/b/a WGM Distribution, Inc. in the State of Alabama, as Mortgagor, to **CHASE NEW MARKETS CORPORATION**, a Delaware corporation, as Mortgagee.

1. **ADDITIONAL SECURITY - OBLIGATIONS SECURED BY OTHER MORTGAGE.** In addition to the obligations secured by this Mortgage and described as "Secured Obligations" herein, this Mortgage shall also secure the payment and performance of all obligations secured by a deed of trust ("**Other Mortgage**") made by WOODGRAIN HOUSTON, LLC, an Idaho limited liability company, as grantor, to Randall B. Durant, as trustee, for the benefit of Mortgagee, as beneficiary, of even date herewith and recorded or to be recorded in the real property records of Harris County, Texas.
2. **DEFAULT - OTHER MORTGAGE.** A Default under the Other Mortgage, as defined therein, shall, at Mortgagee's option, constitute a Default under this Mortgage.
3. **DEFAULT - MORTGAGE.** A Default under this Mortgage shall, at Mortgagee's option, constitute a Default under the Other Mortgage.
4. **WAIVER OF MARSHALING RIGHTS.** Mortgagor waives all rights to have all or part of the Property described in this Mortgage and/or the Other Mortgage marshaled upon any foreclosure of this Mortgage or the Other Mortgage. Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of the Property described in either or both of said mortgages as a whole or in separate parcels, in any order that Mortgagee may designate. Mortgagor makes this waiver for itself, for all persons and entities claiming through or under Mortgagor and for persons and entities who may acquire a lien or security interest on all or any part of the Property described in either of said mortgages, or on any interest therein.
5. **WARRANTIES AND REPRESENTATIONS.** Mortgagor represents and warrants that the lien of the Other Mortgage is a first lien on the property described therein and covered thereby and that the provisions of this Mortgage will not cause intervening liens to become prior to the lien of the Other Mortgage. If any intervening lien exists or hereafter arises, Mortgagor shall cause the same to be released or subordinated to the lien of the Other Mortgage, without limiting any other right or remedy available to Mortgagee.  
  
Mortgagor further warrants that Mortgagor has no legal or equitable claim against any Mortgagor named in the Other Mortgage which would be prior to the lien of the Other Mortgage, or which would entitle Mortgagor to a judgment entitling Mortgagor to an equitable lien on all or any portion of that property prior in lien to the Other Mortgage.
6. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Mortgage, all of the terms, covenants and conditions of the Other Mortgage and the other loan documents executed in connection therewith shall remain in full force and effect.
7. **LIEN OF MORTGAGE AND OTHER MORTGAGE.** Mortgagor and Mortgagee acknowledge and agree that: this Mortgage shall constitute a lien or charge upon only that property described herein as the "Property"; and the Other Mortgage shall constitute a lien or charge upon only that property described therein as the "Property".



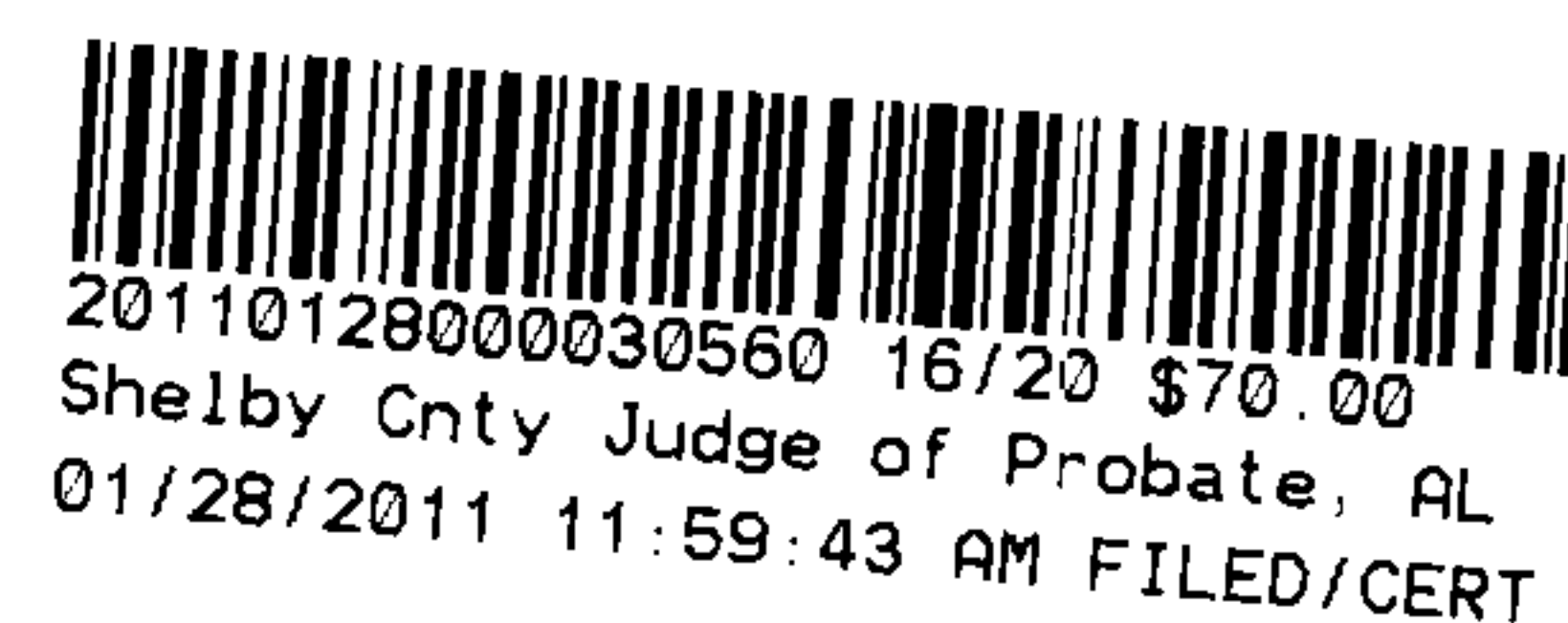
## EXHIBIT C

### NON-BORROWER MORTGAGOR RIDER

Exhibit C to Mortgage executed by **MILLSOURCE, INC.**, an Idaho corporation, d/b/a WGM Distribution, Inc. in the State of Alabama, as Mortgagor, in favor of **CHASE NEW MARKETS CORPORATION**, a Delaware corporation, as Mortgagee, dated as of January 12, 2011.

To the extent this Mortgage secures a promissory note and other loan documents ("**Loan Documents**") made by a party or parties ("**Borrower**") not identical to the party or parties constituting Mortgagor, the party or parties constituting Mortgagor agree as follows:

1. **CONDITIONS TO EXERCISE OF RIGHTS.** Mortgagor hereby waives any right it may now or hereafter have to require Mortgagee, as a condition to the exercise of any remedy or other right against Mortgagor hereunder or under any other document executed by Mortgagor in connection with any Secured Obligation: (a) to proceed against any Borrower or other person, or against any other collateral assigned to Mortgagee by Mortgagor or any Borrower or other person; (b) to pursue any other right or remedy in Mortgagee's power; (c) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Mortgagee by any Borrower or other person (other than Mortgagor), or otherwise to comply with the applicable Uniform Commercial Code (as modified or recodified from time to time) with respect to any such personal property collateral; or (d) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with any Secured Obligation or any collateral (other than the Property) for any Secured Obligation.
2. **DEFENSES.** Mortgagor hereby waives any defense it may now or hereafter have that relates to: (a) any disability or other defense of any Borrower or other person; (b) the cessation, from any cause other than full performance, of the obligations of Borrower or any other person; (c) the application of the proceeds of any Secured Obligation, by any Borrower or other person, for purposes other than the purposes represented to Mortgagor by any Borrower or otherwise intended or understood by Mortgagor or any Borrower; (d) any act or omission by Mortgagee which directly or indirectly results in or contributes to the release of any Borrower or other person or any collateral for any Secured Obligation; (e) the unenforceability or invalidity of any collateral assignment (other than this Mortgage) or guaranty with respect to any Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien hereof) which secures any Secured Obligation; (f) any failure of Mortgagee to marshal assets in favor of Mortgagor or any other person; (g) any modification of any Secured Obligation, including any renewal, extension, acceleration or increase in interest rate; (h) any and all rights and defenses arising out of an election of remedies by Mortgagee, even though that election of remedies, may have or has destroyed Mortgagor's rights of subrogation and reimbursement against the principal by the operation of law or otherwise; (i) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (j) any failure of Mortgagee to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (k) the election by Mortgagee, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (l) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (m) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (n) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Mortgagor further waives any and all rights and defenses that Mortgagor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) Mortgagee may collect from Mortgagor without first foreclosing on any real or personal property collateral pledged by Borrower; (2) if Mortgagee





forecloses on any real property collateral pledged by Borrower, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Mortgagee may collect from Mortgagor even if Mortgagee, by foreclosing on the real property collateral, has destroyed any right Mortgagor may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Mortgagor may have because Borrower's debt is secured by real property. Without limiting the generality of the foregoing or any other provision hereof, Mortgagor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Mortgagor under law.

3. **SUBROGATION.** Mortgagor hereby waives, until such time as all Secured Obligations are fully performed: (a) any right of subrogation against any Borrower that relates to any Secured Obligation; (b) any right to enforce any remedy Mortgagor may now or hereafter have against any Borrower that relates to any Secured Obligation; and (c) any right to participate in any collateral now or hereafter assigned to Mortgagee with respect to any Secured Obligation.
4. **BORROWER INFORMATION.** Mortgagor warrants and agrees: (a) that Mortgagee would not make the Loan but for this Mortgage; (b) that Mortgagor has not relied, and will not rely, on any representations or warranties by Mortgagee to Mortgagor with respect to the credit worthiness of any Borrower or the prospects of repayment of any Secured Obligation from sources other than the Property; (c) that Mortgagor has established and/or will establish adequate means of obtaining from each Borrower on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of each Borrower; (d) that Mortgagor assumes full responsibility for keeping informed with respect to each Borrower's business operations, if any, and financial condition; (e) that Mortgagee shall have no duty to disclose or report to Mortgagor any information now or hereafter known to Mortgagee with respect to any Borrower, including, without limitation, any information relating to any of Borrower's business operations or financial condition; and (f) that Mortgagor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.
5. **REINSTATEMENT OF LIEN.** Mortgagee's rights hereunder shall be reinstated and revived, and the enforceability of this Mortgage shall continue, with respect to any amount at any time paid on account of any Secured Obligation which Mortgagee is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to any Borrower.
6. **SUBORDINATION.** Until all of the Secured Obligations have been fully paid and performed: (a) Mortgagor hereby agrees that all existing and future indebtedness and other obligations of each Borrower to Mortgagor (collectively, the "**Subordinated Debt**") shall be and are hereby subordinated to all Secured Obligations which constitute obligations of the applicable Borrower, and the payment thereof is hereby deferred in right of payment to the prior payment and performance of all such Secured Obligations; (b) Mortgagor shall not collect or receive any cash or non-cash payments on any Subordinated Debt or transfer all or any portion of the Subordinated Debt; and (c) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, any Borrower with respect to any Subordinated Debt is received by Mortgagor, such payment or distribution shall be held in trust and immediately paid over to Mortgagee, is hereby assigned to Mortgagee as security for the Secured Obligations, and shall be held by Mortgagee in an interest bearing account until all Secured Obligations have been fully paid and performed.
7. **HAZARDOUS MATERIALS.**
  - a. **Representations and Warranties.** Without in any way limiting the other representations and warranties set forth in this Mortgage, and after reasonable investigation and inquiry, Mortgagor hereby represents and warrants to the best of Mortgagor's knowledge as of the date of this Mortgage as follows:



- (i) **Hazardous Materials.** The Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances,” “wastes,” “regulated substances,” “industrial solid wastes,” or “pollutants” under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the “**Hazardous Materials**”). “Hazardous Materials” shall not include commercially reasonable amounts of such materials used in the ordinary course of construction, renovation, maintenance and operation of the Property which are used and stored in accordance with all applicable environmental laws, ordinances and regulations.
- (ii) **Hazardous Materials Laws.** The Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials (“**Hazardous Materials Laws**”), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.
- (iii) **Hazardous Materials Claims.** There are no claims or actions (“**Hazardous Materials Claims**”) pending or threatened against Mortgagor or the Property by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.
- (iv) **Adjacent or Nearby Property.** There has been no occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated through the migration of Hazardous Materials onto, above or under the Property.

b. **Hazardous Materials Covenants.** Mortgagor agrees as follows:

- (i) **No Hazardous Activities.** Mortgagor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.
- (ii) **Compliance.** Mortgagor shall comply and cause the Property to comply with all Hazardous Materials Laws.
- (iii) **Notices.** Mortgagor shall immediately notify Mortgagee in writing of: (A) the discovery of any Hazardous Materials on, under or about the Property; (B) any knowledge by Mortgagor that the Property does not comply with any Hazardous Materials Laws; (C) any Hazardous Materials Claims; and (D) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated through the migration of Hazardous Materials onto, above or under the Property.



- (iv) **Remedial Action.** In response to the presence of any Hazardous Materials on, under or about the Property, Mortgagor shall immediately take, at Mortgagor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.
- c. **Inspection By Mortgagee.** Upon reasonable prior notice to Mortgagor, Mortgagee, its employees and agents may from time to time (whether before or after the commencement of a foreclosure proceeding) enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.
- d. **Hazardous Materials Indemnity.** MORTGAGOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS MORTGAGEE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FOR, FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) WHICH MORTGAGEE MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL, THREATENED DISPOSAL, TRANSPORTATION OR PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE PROPERTY. MORTGAGOR SHALL IMMEDIATELY PAY TO MORTGAGEE UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE NOTE. MORTGAGOR'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS MORTGAGEE SHALL SURVIVE THE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE MORTGAGE.
7. **LAWFULNESS AND REASONABLENESS.** Mortgagor warrants that all of the waivers in this Mortgage are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Mortgagor may destroy or impair rights which Mortgagor would otherwise have against Mortgagee, Borrower and other persons, or against collateral. Mortgagor agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.
8. **ENFORCEABILITY.** Mortgagor hereby acknowledges that: (a) the obligations undertaken by Mortgagor in this Mortgage are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Mortgagee's consideration for entering into this transaction, Mortgagee has specifically bargained for the waiver and relinquishment by Mortgagor of all such defenses, and (d) Mortgagor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Mortgagor does hereby represent and confirm to Mortgagee that Mortgagor is fully informed regarding, and that Mortgagor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Mortgagor, and (iv) the legal consequences to Mortgagor of waiving such defenses. Mortgagor acknowledges that Mortgagor makes this Mortgage with the intent that this Mortgage and all of the informed waivers herein shall each and all be fully enforceable by Mortgagee, and that Mortgagee is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.
9. **DISCLOSURE OF INFORMATION; PARTICIPATIONS.** Mortgagor understands and agrees that Mortgagee may elect, at any time, to sell, assign, or participate all or any part of Mortgagee's interest in the Loan, and that any such sale, assignment or participation may be to one or more financial institutions, private



investors, and/or other entities, at Mortgagee's sole discretion. Mortgagor further agrees that Mortgagee may disseminate to any such potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Mortgagee with respect to: (a) the Property and its operation; (b) any party connected with the Loan (including, without limitation, the Mortgagor, the Borrower, any partner of Borrower and any guarantor); and/or (c) any lending relationship other than the Loan which Mortgagee may have with any party connected with the Loan.

10. **WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY TO THIS MORTGAGE, AND BY ITS ACCEPTANCE HEREOF, MORTGAGEE, HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY AND MORTGAGEE HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS MORTGAGE AND MORTGAGEE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO AND MORTGAGEE TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.
11. **INTEGRATION; INTERPRETATION.** This Mortgage and the other Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. This Mortgage and the other Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Mortgagee in writing.