

## **FORBEARANCE AGREEMENT**

**THIS FORBEARANCE AGREEMENT** is entered into this 27th day of June, 2012 (the "Effective Date"), by and between SOUTHFIRST BANK (or "SOUTHFIRST"), ANTHONY WILLOUGHBY ("Borrower") and WILLOUGHBY DEVELOPMENT, INC. ("MORTGAGOR")

### **Recitals**

A. SOUTHFIRST has one loan outstanding to the Borrower that is encompassed by this agreement. (the "Indebtedness") Loan I (# 6430000796) is in the name of ANTHONY WILLOUGHBY and has a current principal balance of \$64,748.85. This balance does not include interest, late charges and/or attorney fees and is not a payoff. Loan I makes up the "Indebtedness" for purposes of this agreement.

B. The Borrower is in default on the payments on his indebtedness. The Borrower has requested that SOUTHFIRST enter into a forbearance agreement in order to lower his payments on his Indebtedness at the bank. SOUTHFIRST is willing to modify the repayment terms on the Indebtedness but only upon strict compliance with the terms and conditions contained herein.

### **Agreement**

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. **Acknowledgement of Indebtedness.** The Borrower acknowledges that he is indebted to SOUTHFIRST for repayment of the Indebtedness, plus all accruing interest, costs, attorney fees and any other expenses related to the Indebtedness. The Borrower hereby reaffirms the Note and other related Security Documents, and acknowledges that they are strictly enforceable in accordance with their terms.

2. **Acknowledgement of Lack of Defenses.** The Borrower acknowledges that he has no defense, counterclaim, offset, cross complaint, claim or demand of any kind or nature whatsoever (collectively, the "Claims") that can be asserted to reduce or eliminate all or any part of Borrower's liability to repay the Indebtedness to SOUTHFIRST or to seek affirmative relief for damages of any kind or nature from SOUTHFIRST, which Claims arise out of or are related to the Indebtedness. To the extent that any such Claim exists, it is fully, forever and irrevocably released as provided in Paragraph 6, hereof.

3. **Forbearance.** Based on SOUTHFIRST (1) receiving a fully executed copy of this agreement on or before June 29, 2012, (2) receiving monthly payments on Loan I in the amount of \$200.00 with the first payment due on 7/20/12 and each of the subsequent payments coming due on the 20<sup>th</sup> day of the following month with one final balloon payment of the full balance due upon maturity at 12/20/12 and (3) provided there are no other defaults by the Borrower under the note or other financing documents, including without limitation, this Agreement, then SOUTHFIRST will proceed under the terms as detailed above. The undersigned, WILLOUGHBY DEVELOPMENT, INC.



("Mortgagor"), in exchange for SOUTHFIRST BANK restructuring said note and other good and valuable consideration receipt of which is hereby acknowledged, hereby acknowledges SOUTHFIRST BANK'S mortgages on certain real estate described below which secures the indebtedness upon the terms and conditions set forth herein.

Lot 10, according to the Survey of Fieldstone Park, 4<sup>th</sup> Sector, as recorded in Map Book 30, Page 107 and refiled in Map Book 31, Page 3, in the Office of the Judge of Probate of Shelby County, Alabama.

Lot 14, according to the Survey of Fieldstone Park, 4<sup>th</sup> Sector, as recorded in Map Book 30, Page 107 and refiled in Map Book 31, Page 3, in the Office of the Judge of Probate of Shelby County Alabama.

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4. **Legal Fees.** Borrower will pay all legal fees incurred by SOUTHFIRST in connection with the preparation and execution of this Agreement and any other costs associated with the collection of the Indebtedness up to 33% of the unpaid balance of the indebtedness.

5. **Default.** Should the Borrower default in his obligations under the terms of this Agreement, the Note, or other financing documents, the terms of which are incorporated by reference herein and made a material part of this Agreement (except as modified herein), the Indebtedness shall become immediately due and payable in full. Also, a default rate of interest of 5.5% in excess of the Wall Street Journal Prime Rate will immediately become effective in the event Borrower defaults in any of his obligations under the terms of this Agreement, the Note, or other financing documents. The Borrower must return an executed and acknowledged original of this Agreement by not later than June 29, 2012. Nothing in this Agreement shall be construed to waive any default by the Borrower, or to limit or waive any rights that SOUTHFIRST may have against the Borrower as a consequence of such defaults, including without limitation prior payment defaults by Borrower, except as expressly set forth herein.

6. **Release By the Borrower and Mortgagor.** The Borrower and Mortgagor, for their successors, heirs and assigns, affiliates, subsidiaries, officers, agents, and employees does hereby release and forever discharge SOUTHFIRST, its successors and assigns, officers, agents, employees, and attorneys, from any and all claims, demands, actions, causes of actions, suits, damages, and loss, of whatsoever kind and nature, for or on account of anything that has heretofore occurred up to and including the date of this Forbearance Agreement. Any disputes arising after the date of this Forbearance Agreement shall be resolved by Arbitration. (See paragraph 13)

7. **Integration.** This Agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof and all prior negotiations and representations relating thereto are merged herein. This Forbearance Agreement is not intended to modify and does not modify the obligations of the Borrower pursuant to any loan or security agreement, guaranty or debt instrument, except to the extent expressly set forth herein. This Forbearance Agreement shall inure to the benefit of, and be binding upon, the representatives, successors and assigns of the parties thereto, respectively. The parties each acknowledge that they have read and understood this Agreement, that they have had the ability to consult with an attorney of their own choosing, and that they



execute this Agreement voluntarily. This Agreement may be executed in whole or in counterparts, each of which shall be an original but all of which, when taken together, shall constitute but one agreement. No hand written changes to this agreement have any effect whatsoever unless initialed by all parties to the agreement.

8. **Correction Agreement.** The undersigned Borrower for and in consideration of SOUTHFIRST agrees, if requested by SOUTHFIRST or closing agent for SOUTHFIRST, to fully cooperate and adjust for clerical errors on any or all of the loan closing documentation including but not limited to this agreement if deemed necessary at the reasonable discretion of SOUTHFIRST. The undersigned Borrower does hereby so agree and covenant in order to assure among other things that the loan documentation will reflect the agreement of the parties and that the loan documentation will also be acceptable in the market place in the instance of sale, transfer, or conveyance by SOUTHFIRST of its interest in said loan documentation. The undersigned Borrower agrees that the failure of Borrower to cooperate, adjust, and/or replace any such loan documentation as provided herein, upon the reasonable request of SOUTHFIRST, will constitute a default under the loan documentation.

9. **Course of Dealing.** No course of dealing between SOUTHFIRST and Borrower shall be effective to amend, modify or change any provision of this agreement. This agreement may not be amended, modified or changed in any respect except by agreement in writing signed by all parties hereto.

10. **State Law of Alabama.** This agreement shall be governed by and construed in accordance with the laws of the State of Alabama. Whenever possible, each provision of this agreement shall be interpreted in such a manner to be effective and valid under applicable law. If any provision shall be deemed ineffective and/or invalid, this will not invalidate the remainder of this agreement. The proper venue for any litigation between the parties shall be the Circuit Court of Shelby County, Alabama.

11. **Arbitration.** All disputes shall be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and the Arbitration Rules for Commercial Financial Disputes of the American Arbitration Association. Borrower and Mortgagor specifically waive their right to a trial by jury. All defenses, including those defenses based on statutes of limitation, estoppel, waiver, laches and similar doctrines, that would otherwise be applicable to an action brought by a party, shall be applicable in such arbitration proceeding. Notwithstanding the foregoing, Borrower and Mortgagor agree that SOUTHFIRST shall have the right, but not the obligation, to submit and pursue in a court of law any claim against Borrower and/or Mortgagor for a debt due. No provision of, nor the exercise of any rights under this section, shall limit SOUTHFIRST'S right to foreclose against any real or personal property by exercise of a power of sale under a mortgage, to exercise self-help remedies such as repossession or set-off, or to obtain provisional or ancillary remedies such as injunctive relief, attachment or the appointment of a receiver from a court having jurisdiction either before, during or after the pendency of any arbitration. The arbitrator may not award punitive damages, treble damages, penalties, or attorney's fees.

12. **Non-Waiver.** No failure or delay on the part of the bank in exercising



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any right, power, or privilege under this agreement or any of the other loan documents shall operate as a waiver thereof. In addition, a single and/or partial exercise of any right, power, or privilege under this agreement or any of the other loan documents does not preclude any other and/or future exercise of any right, power, or privilege granted the bank in this agreement or any of the other loan documents. No modification, amendment, and/or waiver of any provision of this agreement or any of the other loan documents shall be effective unless in writing and signed by a duly authorized officer of SOUTHFIRST, and then only in the specific instance and for the purpose for which given.

13. **Cross-Collateralization.** The collateral of Borrower in which SOUTHFIRST has a security interest in secures the principal and interest on all the Indebtedness, obligations (including obligations of performance), and liabilities of Borrower to SOUTHFIRST of every kind and description whatsoever, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, or acquired by SOUTHFIRST from any source, joint or several, liquidated or unliquidated, regardless of how they arise and/or were incurred or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, or otherwise, and any and all extensions, forbearances, or renewals of any of the same, including without limitation any reimbursement obligations incurred in connection with the issuance of a letter of credit.

14. **Cross-Default.** In the event of the failure of Borrower to make the payments when due as called for in this agreement or the failure of the Borrower to make the payments on any of his other obligations to SOUTHFIRST ("Obligations" meaning thereby this agreement and any and all renewals and extensions thereof and all other liabilities of the Borrower to SOUTHFIRST, now existing or hereafter incurred or arising, direct or indirect, and however incurred) and/or the failure of the Borrower to make any payments on any of their obligations to any other lending entity, SOUTHFIRST shall have the right at its election and without notice to the Borrower to declare all obligations of the Borrower immediately due and payable in full.

15. **Confidentiality.** The terms of this forbearance are to remain confidential between the parties to said agreement and are only to be disclosed on a strict need to know basis or if required by operation of law.

IN WITNESS WHEREOF, the parties have hereunto set their names and seals, all as of the day and year first above written.


DOCUMENT PREPARED BY: MARK HAYNES  
P.O. BOX 167  
SYLACAUGA, AL 35150

SOUTHFIRST BANK

By *Mark Haynes*  
Its *S. Via Pres*

STATE OF ALABAMA

COUNTY OF *Shelby*

  
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SWORN TO AND SUBSCRIBED before me this the *28th* day of

June, 2012.

Boila M. May  
Notary Public  
My Commission expires: 9-29-2015

[Signature]  
ANTHONY WILLOUGHBY

STATE OF ALABAMA

COUNTY OF Shelby

SWORN TO AND SUBSCRIBED before me this the 28<sup>th</sup> day of

June, 2012.

Boila M. May  
Notary Public  
My Commission expires: 9/29/2015

WILLOUGHBY DEVELOPMENT, INC.

By [Signature]  
Its President

STATE OF ALABAMA

COUNTY OF Talladega

SWORN TO AND SUBSCRIBED before me this the 28<sup>th</sup> day of

June, 2012.

Douglas J. Comphe  
Notary Public  
My Commission expires: \_\_\_\_\_

