

Prepared By and Return To:  
 Bryan K. Smith  
 FARRIS, HANCOCK, GILMAN,  
 BRANAN & HELLEN  
 5384 Poplar Avenue, Suite 403  
 Memphis, Tennessee 38119

JUN 3 10 03 AM '94

EJ 9298

BK 709 PG 746  
 W.E. DAVIS CH. CLK.  
*W.E. Davis*

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**AGREEMENT TO MODIFY PROMISSORY NOTE 022746;  
 SHELBY COUNTY, TENN. DEED OF TRUST NO. BH 6483;  
 DESOTO COUNTY, MISS. DEED OF TRUST BOOK 490, PAGE 320;  
 MODIFICATION AGREEMENTS CK 3409, CU 7906, DK 2059, DW 5502,  
 IN SHELBY COUNTY, TENNESSEE; AND MODIFICATION  
 AGREEMENTS BOOK 555, PAGE 42; BOOK 582, PAGE 672;  
 BOOK 629, PAGE 397; AND BOOK 630, PAGE 284;  
 IN DESOTO COUNTY, MISSISSIPPI**

THIS AGREEMENT is made and entered into this the 12th day of May, 1994, by and Between WEATHERPROOF SYSTEMS, INC., a Tennessee corporation, "hereinafter referred as "Borrower"), WILLIAM E. WARNER, and CHELLIE WARNER, (hereinafter referred to as "Guarantors"), WATERPROOF SYSTEMS, INC., a Tennessee corporation, (hereinafter referred to as "Assuming Party"), and UNITED AMERICAN BANK OF MEMPHIS, (hereinafter referred to as "Bank").

**WITNESSETH:**

WHEREAS, Borrower presently has a revolving line of credit (the "Loan") with Bank in the original principal amount of \$125,000.00, evidenced by Promissory Note 022746, being executed by Borrower and bearing the date of September 29, 1989; and

WHEREAS, said Loan is secured by a Deed of Trust on certain real property located at and municipally known as 2193 Frisco, Memphis, Shelby County, Tennessee, said property being more particularly described in the Deed of Trust of record as Instrument No. BH 6483 in the Register's Office of Shelby County, Tennessee; and

WHEREAS, said Loan is also secured by a Deed of Trust on certain real property located at and municipally known as 4531 White Oak, Nesbit, Desoto County, Mississippi, said property being more particularly described in the Deed of Trust recorded at Book 490, Page 320, in the Office of the Chancery Court Clerk, Desoto County, Mississippi; and

WHEREAS, said Promissory Note and Deeds of Trust were modified by Modification Agreements recorded as Instrument Nos. CK 3409, CU 7906, DK 2059 AND DW 5502, in the Register's Office of Shelby County, Tennessee; and Modification Agreements recorded at Book 555,

**MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES: \$0.00**

**EXACTLY SAME COLLATERAL AS PRIOR DEBT. DOES NOT INCREASE PRINCIPAL DEBT.**

Page 42; Book 582, Page 672; Book 629, Page 397, and Book 630, Page 284, in the Office of the Chancery Court Clerk of Desoto County, Mississippi; and

**WHEREAS**, the current outstanding principal balance of the Loan is approximately \$74,500.00; and

**WHEREAS**, Bank has been made aware of a dispute between the two shareholders of Borrower, and Borrower is likely to be liquidated in the near future. Bank believes this probability of liquidation seriously impairs the Borrower's ability to repay its indebtedness to Bank. For these reasons, and pursuant to the terms and conditions of the Promissory Note, Bank is prepared to declare the loan in default; and

**WHEREAS**, Bank has informed Borrower of Bank's intention to declare the loan in default. Guarantors, notified Bank that they have formed a new corporation, the Assuming Party, and desired to have the same credit facility with Assuming Party as was currently in place with Borrower. After careful consideration of this matter and that all of the collateral securing the Loan is owned by Guarantors, Bank agreed to allow Assuming Party to fully assume the Loan and all obligations and liabilities of Borrower arising therefrom; and

**WHEREAS**, Assuming Party desires and agrees to assume all rights and obligations as more particularly set forth in the Promissory Note, and all other documents executed in conjunction with the Loan.

**NOW, THEREFORE**, for and in consideration of the mutual advantages accruing to the parties hereto, one to the other, and for other good and valuable consideration, the receipt and adequacy of which is hereby expressly acknowledged, the parties hereby covenant and agree that the above Loan shall be assumed by Assuming Party and the Loan shall be modified and amended as follows:

1. Assuming Party hereby acknowledges the debt described herein, and in consideration for Bank allowing Assuming Party to assume the repayment of the Note and to enjoy the benefit of the Loan, Assuming Party hereby specifically, for itself, its successors and assigns, agrees to assume the liability for the repayment of the Loan, as it has been amended and modified as set out above, under the same terms and conditions as set forth therein, the same as if Assuming Party had executed the original documents itself. Assuming Party further agrees to abide by all of the terms, covenants, and conditions as set out in the Promissory Note, as subsequently modified and set out above.

2. Guarantors, Mark D. Warner and Robin L. Warner, are hereby relieved of their personal liability on the Loan and Bank agrees to forever release and discharge said guarantors of any obligations that they may have to Bank pursuant to said Loan.

3. Guarantors, William E. Warner and Chellie Warner hereby agree and consent to the assumption of the Loan by Assuming Party. Guarantors hereby further acknowledge and consent to their continuing, personal, joint and several liability as guarantors on the Loan, as modified and assumed herein.

4. Guarantors further acknowledge that all of the collateral currently securing the Loan shall and does hereby continue to secure the Loan as modified and assumed herein. Nothing herein contained shall be construed to be in satisfaction or release, in whole or in part, of Bank's security interest in any of the property securing the Loan.

5. The aforescribed Promissory Note and Deeds of Trust, as subsequently modified, are hereby amended and modified to reflect the changes herein described. It is expressly understood and agreed that the Promissory Note, Deeds of Trust, and other related Loan documents are only modified as expressly provided herein and all other terms, conditions and covenants shall remain in full force and effect, and the parties hereto ratify and affirm said provision.

6. Bank does not, in any manner or fashion, join in the execution of this document for the purpose of releasing or conveying any interest whatsoever, nor does it waive any other rights which it may have under any of the Loan documents or by law.

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the date first above written.

**BORROWER:** WEATHERPROOF SYSTEMS, INC.

BY: William E. Warner  
WILLIAM E. WARNER, President

**ASSUMING PARTY:** WATERPROOF SYSTEMS, INC.

BY: Chellie B. Warner  
CHELLIE B. WARNER, President

**GUARANTORS:** William E. Warner  
WILLIAM E. WARNER

Chellie Warner  
CHELLIE WARNER

BANK:

UNITED AMERICAN BANK OF MEMPHIS

BY: [Signature]  
STEVE W. KLYCE, Vice President

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public, of the State and County aforesaid, personally appeared **WILLIAM E. WARNER**, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be President of the **WEATHERPROOF SYSTEMS, INC.**, the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as President.

WITNESS my hand and seal at office on this 12th day of May, 1994.

[Signature]  
Notary Public

My Commission Expires: MY COMMISSION EXPIRES OCT. 28, 1996

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public, of the State and County aforesaid, personally appeared **CHELLIE B. WARNER**, with whom I am personally acquainted, and who, upon oath, acknowledged herself to be President of the **WATERPROOF SYSTEMS, INC.**, the within named bargainor, a corporation, and that she as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by herself as President.

WITNESS my hand and seal at office on this 12th day of May, 1994.

[Signature]  
Notary Public

My Commission Expires: MY COMMISSION EXPIRES OCT. 28, 1996

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, a Notary Public of the State and County aforesaid, personally appeared **WILLIAM E. WARNER** and **CHELLIE WARNER**, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

WITNESS my hand and seal at office on this 12th day of May, 1994.

[Signature]  
Notary Public

My Commission Expires: MY COMMISSION EXPIRES OCT. 28, 1996

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, a Notary Public of the State and County aforesaid, personally appeared **STEVE W. KEYCE**, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Vice President, of **UNITED AMERICAN BANK OF MEMPHIS**, the within named bargainor, a Tennessee banking corporation, and that he as such Vice President, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as Vice President.

WITNESS my hand and seal at office on this 12th day of May, 1994.

[Signature]  
Notary Public

My Commission Expires: MY COMMISSION EXPIRES OCT. 28, 1996

No.	EJ 9298
D/C	DR
Pgs.	4
Val	
STATE TAX	
REGISTER'S FEE	
RECORDING FEE	16.00
WT	<input type="checkbox"/> MISC FEE
TOTAL	
STATE OF TENNESSEE SHELBY COUNTY GUY B. BATES REGISTER/ADMISCWA TERPRF.MOD	

SHELBY COUNTY  
REGISTER OF DEEDS  
94 MAY 17 AM 10:00

EJ9298

STW