



09094103

COOK COUNTY

RECORDER

EUGENE "GENE" MOORE

SKOKIE OFFICE

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Cook County Recorder 33.50

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SETTLEMENT AGREEMENT AND JOINT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND JOINT AND MUTUAL RELEASE ("Agreement") is entered into as of June 28, 1999 by and between Marquette National Bank, a national banking association ("Marquette") and Nick Kavouris of 16431 S. Kimbark, South Holland, Illinois 60473 ("Kavouris").

UNDERSTANDINGS

- A. Marquette has extended credit to Midway Industrial Contractors, Inc.
- B. Kavouris and Anthony Kavouris have executed and delivered to Marquette personal Guaranties guaranteeing the payment of the indebtedness of Midway to Marquette.
- C. The extension of credit from Marquette to Midway is in default and Midway has commenced a liquidating Chapter 11 Bankruptcy Proceeding before the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division docketed as Case No. 99 B 09175.
- D. On April 15, 1999, Marquette commenced an action against Kavouris and Anthony Kavouris in the Circuit Court of Cook County, Illinois docketed as Case No. 99 L 004193 (the "Lawsuit").
- E. On April 28, 1999, Judgment by Confession was entered in favor of Marquette and against Kavouris in the amount of \$261,365.02 in the Lawsuit., recorded as documents 99459616 and 99459617.
- F. Marquette has asserted a claim in the Bankruptcy Proceeding as a secured creditor ("Claim") which Claim is represented by a Note, a Security Agreement and other loan documents assigning Marquette a security interest in the accounts receivable, inventory and equipment of Midway and UCC filings ("Loan Documents"). Marquette makes no representation or warranty as to the validity, enforceability, collectability or authenticity of the Loan Documents. Marquette makes no representation or warranty as to the perfection or priority of any of the security interests.
- G. The Bankruptcy Proceeding provides for the liquidation of Midway and Marquette expects to receive from the liquidation proceeds as a secured creditor at the time of distribution, certain receipts to be applied to its claim. These receipts are subject to the Intercreditor Agreement entered into between Marquette, George Gee and Chicago Painters and Decorators Fringe Benefits Fund ("Intercreditor Agreement"), a copy of which is attached hereto as Exhibit A. Marquette makes no representation or warranty regarding the validity or enforceability of the Intercreditor Agreement nor any representation or warranty as to whether or not any amount will ever be paid to Marquette from the assets of Midway.

UNOFFICIAL COPY

LEGAL DESCRIPTION 9902989

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LOT 93 IN HOESKTRA'S FOURTH ADDITION TO DUTCH VALLEY, BEING A SUBDIVISION OF PART OF LOTS 1, 2 AND 3 OF ANKER'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 AND THE NORTHWEST 1/4 OF SECTION 23, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 8, 1960, AS DOCUMENT 17799211, AND FILED IN THE REGISTRAR'S OFFICE ON THE SAME DATE AS DOCUMENT LR 1911879, IN COOK COUNTY, ILLINOIS.

P.I.N.# 29-23-203-042

PROPERTY ADDRESS ← 16440 S. KIMBARK
SOUTH HOLLAND, IL 60473

H. Marquette and Kavouris wish to resolve any disputes and claims between them in connection with the Guaranty of Kavouris of the indebtedness of Midway.

NOW THEREFORE, in consideration of the payment to Marquette by Kavouris of \$25,000.00, the vacating of the judgment, the entering into this Agreement and for other good and valuable consideration the sufficiency and adequacy of which is hereby acknowledged, Marquette and Kavouris agree as follows:

1. The Understandings set forth above are hereby restated and incorporated by reference as though fully set forth herein.

2. Kavouris shall pay to Marquette on or before June 30, 1999 \$10,000.00 by cash, cashier's check or wire transfer and \$15,000.00 by cash, cashier's check or wire transfer on or before July 30, 1999.

3. After receipt of the full payment of \$25,000.00, Marquette will, within the schedule availability of the Court, move the Court to vacate the judgment entered against Kavouris in the Lawsuit, dismiss the Lawsuit without prejudice or costs with leave to reinstate the Lawsuit and the judgment entered against Kavouris should one or more of the following events occur:

- (a) This Agreement is held to be unenforceable in whole or in part.
- (b) Any claim is made against Marquette by Midway individually, as Debtor in possession, or by any receiver, assignee, or trustee of Midway or anyone else on behalf of Midway.
- (c) Any claim is made against Marquette by Kavouris or any receiver, assignee, or trustee of Kavouris or anyone else on behalf of Kavouris.
- (d) The payment of \$25,000.00 or any portion of such payment is subsequently declared preferential or fraudulent or invalidated, set aside and/or required to be repaid to Kavouris, his trustee, estate, assignee, receiver or any other party under the Bankruptcy Code as amended from time to time or under any other state or federal law as amended from time to time.

A copy of the Stipulation and Agreed Court Order to be entered by the Court is attached hereto and incorporated by reference as Exhibit B.

4. Marquette will assign its Claim against Midway and its Loan Documents jointly to Kavouris and Anthony Kavouris in a form suitable for filing in the Bankruptcy Proceeding after Marquette has been paid in full on all amounts of principal, interest, costs and attorneys fees due Marquette from Midway. The assignment of the Claim and Loan Documents will be "As Is" without representation or warranty including but not limited to any representations or warranties regarding the validity, enforceability and authenticity of the Claim and Loan Documents and without any representation or warranty regarding the

perfection of any security interests in the assets of Midway. The Assignment will be without recourse to Marquette. The purpose of this assignment will be to allow Kavouris and Anthony Kavouris to exercise any rights of subrogation they may have against Midway. In the event any one or more of the events described in Paragraphs 2(a) through 2(d) above shall occur and Marquette shall, at its option, declare the release of Kavouris to be null and void, Kavouris shall be deemed to have reassigned the Claim and Loan Documents back to Marquette at the time of the occurrence of such event.

5. Marquette, on behalf of itself, its parents, subsidiaries, predecessors, successors, assigns and related corporations and each of their present and former directors, officers, shareholders, agents, employees, attorneys, successors and assigns hereby fully and forever waives, releases, surrenders, acquits and discharges Kavouris from any and all claims, rights, demands, actions, causes of action and costs of any nature whether in law or in equity, whether known or unknown, whether now existing or hereafter accruing arising out of any matter whatsoever from the beginning of time in connection with Midway, the extension of credit to Midway by Marquette, the Guaranty executed by Kavouris and the Lawsuit.

6. Kavouris on behalf of himself and his heirs, legatees, administrators, executors, trustees, successors and assigns hereby fully and forever waives, releases, surrenders, acquits and discharges Marquette, its parents, subsidiaries, predecessors, successors and assigns and related corporations and each of their present and former directors, officers, shareholders, agents employees, attorneys, successors and assigns from any and all claims, rights, demands, actions, causes of action and costs of any nature whether in law or in equity, whether known or unknown, whether now existing or hereafter accruing arising out of any matter whatsoever from the beginning of time in connection with Midway, the extension of credit to Midway by Marquette, the Guaranty executed by Kavouris and the Lawsuit.

7. In the event one or more of the events described in Paragraphs 2(a) through 2(d) above shall occur, Marquette's release of Kavouris as provided for in Paragraph 3 above shall, at the option of Marquette, be null and void and any and all claims which Marquette may have against Kavouris including but limited to any rights or claims arising out of the Guaranty executed and delivered by Kavouris to Marquette guaranteeing the payment of the indebtedness of Midway to Marquette shall be fully reinstated less any amount previously paid by Kavouris to Marquette unless such amount is returned to Kavouris or anyone acting on his behalf.

8. In the event any of the events listed in Paragraphs 2(a) through 2(d) above shall occur and Marquette exercises its option to declare its release of Kavouris null and void, the release granted by Kavouris to Marquette in Paragraph 4 above shall be null and void and any claims which Kavouris has against Marquette shall be fully reinstated.

9. Marquette shall mark on its books and records to reflect the payment in full of the Guaranty of Kavouris. However, Marquette shall retain the original Guaranty of Kavouris in the event any of the events listed in Paragraphs 2(a) through 2(d) above shall occur and the claims of Marquette against Kavouris, including but not limited to any rights

or claims arising out of the Guaranty, are fully reinstated.

10. This Agreement shall be binding upon and inure to the benefit of each of the parties to this Agreement and their respective successors and assigns.

11. The parties represent and warrant to each other that this Agreement sets forth the entirety of the Agreement between the parties hereto, and that before executing this Agreement, they have read it and have fully informed themselves of its contents, meaning and legal effect; that each had a full opportunity to consult with counsel and have consulted with counsel before entering into this Agreement; that the terms of this Agreement are contractual and not a mere recital; that it constitutes a full, complete and final agreement between the parties hereto; that each party relies wholly upon its own judgment, belief and knowledge of the nature and extent, effect and duration of the alleged damages and liabilities therefore, and does not rely upon any statement or representation of any other party or its representative, except as expressly stated in this Agreement; and that the execution of this Agreement is their own free act and deed of each party hereto.

12. This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois without giving effect to the laws of conflicts.

13. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document

MARQUETTE NATIONAL BANK

By: *Peter Huser*
As: *Vice President*

Nick Kavouris
NICK KAVOURIS



assignee or trustee or Midway or anyone else on behalf of Midway.

B. Any claim is made against Marquette by Midway Industrial Contractors, Inc. ("Midway") individually, as a Debtor in possession or by any receiver, unenforceable in whole or in part.

A. The Settlement Agreement and Joint and Mutual Release ("Settlement Agreement") entered into between Marquette and Kavouris, a copy of which is attached hereto and hereby incorporated by reference is held to be

in the event any one or more of the following events occur: judgment entered in favor of Marquette and against Kavouris in the amount of \$261,365.02

without costs with leave granted to Marquette to restate the Complaint and reinstate the Complaint against Kavouris is hereby dismissed without prejudice and

1999 in the amount of \$261,365.02 is hereby vacated.

1. The judgment entered in favor of Marquette and against Kavouris on April 28,

O'Brien, O'Rourke & Hogan hereby stipulate and agree as follows:

& Richter, P.C. and Nick Kavouris ("Kavouris") by his attorney, John C. O'Rourke, Jr. of Marquette National Bank ("Marquette") by its attorney, Paul J. Richter of DeHaan

STIPULATION TO DISMISS

COPY

Case No. 99 L 004193

MARQUETTE NATIONAL BANK, Plaintiff, v. ANTHONY KAVOURIS and NICK KAVOURIS, Defendants.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

- C. Any claim is made against Marquette by Kavouris or any receiver, assignee or trustee of Kavouris or anyone else on behalf of Kavouris.
- D. The Settlement payment of \$25,000.00 by Kavouris to Marquette or any portion of such payment is subsequently declared preferential or fraudulent or invalidated, set aside and/or required to be repaid to Kavouris, his trustee, his estate, assignee, receiver or any other party under the Bankruptcy Code as amended from time to time or under any other state or federal law as amended from time to time.

3. In the event any one or more of the items listed above in Paragraph 2(A) through 2(D) occurs, Marquette and Kavouris hereby stipulate that this Court shall, on Motion of Marquette, vacate the Court Order vacating the Judgment and vacate the Court Order Dismissing the Complaint against Kavouris thereby reinstating the Lawsuit and reinstating the Judgment entered in favor of Marquette and against Kavouris.

4. This Court shall retain jurisdiction of this matter for the purposes of enforcing this Stipulation.

MARQUETTE NATIONAL BANK

By: _____
Paul J. Richter

NICK KAVOURIS

By: _____
John C. O'Rourke

PREPARED BY & MAIL TO:

Paul J. Richter
DeHaan & Richter, P.C.
55 W. Monroe Street
Suite 1000
Chicago, IL 60603
Firm No. 22624

