

# UNOFFICIAL COPY



THIS INSTRUMENT PREPARED BY:  
Bennett L. Cohen  
Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062

Doc#: 0530717078 Fee: \$34.50  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 11/03/2005 11:39 AM Pg: 1 of 6

AND AFTER RECORDING MAIL TO:  
Sean C. Gallagher, First VP  
LaSalle Bank National Association  
1000 S. York Road  
Elmhurst, Illinois 60126

## FIRST MODIFICATION AGREEMENT

**THIS FIRST MODIFICATION AGREEMENT** (this "Agreement") is entered into as of the 21 day of September, 2005 by and between CAPUTO REAL ESTATE, LLC, an Illinois limited liability company (herein, the "Mortgagor"), and LASALLE BANK NATIONAL ASSOCIATION (herein, the "Mortgagee").

**WHEREAS**, Mortgagee also extended to Mortgagor a mortgage loan in the principal sum of \$600,000.00; and

**WHEREAS**, Mortgagee extended to Wiscon Corp., an Illinois corporation ("Wiscon") and Caputo Cheese Market, Inc., an Illinois corporation ("CCM") (Wiscon and CCM each singularly hereafter may be referred to as a "Borrower" and collectively as the "Borrowers") the following loans (i) a \$7,000,000.00 revolving line of credit loan, (ii) a mortgage loan in the principal amount of \$4,500,000.00, and (iii) a term loan in the principal amount of \$1,000,000.00; and

**WHEREAS**, to secure payment of all of the aforesaid loans to Mortgagor and Borrowers, the Mortgagor executed a certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of June 30, 2005 (the "Mortgage") mortgaging, granting and conveying to Mortgagee the Premises (as defined in the Mortgage), including the real estate described in Exhibit "A" attached hereto and incorporated herein by reference; and

**WHEREAS**, the Mortgage was recorded on July 26, 2005, in the office of the Recorder of Deeds of Cook County, Illinois as Document No. 0520754005; and

**WHEREAS**, Mortgagor has asked Mortgagee to make Mortgagor a new mortgage loan in the principal sum of \$1,050,000.00, and Mortgagee has consented to such request provided, among other conditions, that Mortgagor executes and delivers this Agreement to Mortgagee;

**NOW THEREFORE**, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Mortgagee is a valid, first and subsisting lien on the Premises and that the execution of this Agreement will not impair the first lien of the Mortgage (for breach of which condition, this Agreement, at the sole election of Mortgagee, shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

S-Y  
P-6  
M-Y  
M.F.

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1. The Mortgagor and Mortgagee represent and agree that the foregoing recitals are true and correct. All capitalized terms used herein without definition shall have the same respective meanings herein as such terms have in the Mortgage.
2. The six "WHEREAS" clauses beginning on page 1 of the Mortgage are hereby deleted and the following clauses are hereby substituted therefor:

**"WHEREAS**, Mortgagor has executed and delivered to the Mortgagee the following two promissory notes (collectively, the "Mortgage Notes" and singularly, a "Mortgage Note"): (i) a Mortgage Note dated June 30, 2005, payable to the order of Mortgagee, in the principal sum of Six Hundred Thousand and 00/100 (\$600,000.00) Dollars ("Mortgage Note A"), evidencing a \$600,000.00 mortgage loan made by Mortgagee to Mortgagor, repayable in installments of principal plus interest calculated at a variable interest rate therein described, with a final payment due on July 1, 2010, and (ii) a Mortgage Note dated September 21, 2005, payable to the order of Mortgagee, in the principal sum of One Million Fifty Thousand and 00/100 (\$1,050,000.00) Dollars ("Mortgage Note B"), evidencing a \$1,050,000.00 mortgage loan made by Mortgagee to Mortgagor, repayable in installments of principal plus interest calculated at a variable interest rate therein described, with a final payment due on October 1, 2010; and

**WHEREAS**, Wiscon Corp., an Illinois corporation ("Wiscon") and Caputo Cheese Market, Inc., an Illinois corporation ("CCM") (Wiscon and CCM each singularly hereafter may be referred to as a "Borrower" and collectively as the "Borrowers") have executed and delivered to the Mortgagee the following promissory notes, jointly and severally: (i) a Revolving Note dated June 30, 2005, payable to the order of Mortgagee, in the principal sum of Seven Million and 00/100 (\$7,000,000.00) Dollars (herein called the "Borrowers' Revolving Note"), evidencing a \$7,000,000.00 revolving line of credit loan made by Mortgagee to Borrowers (the "Borrowers' Revolving Loan@), repayable on June 30, 2006, together with interest payable periodically calculated at a variable interest rate therein described, (ii) a Term Note dated June 30, 2005, payable to the order of Mortgagee, in the principal sum of One Million and 00/100 (\$1,000,000.00) Dollars (herein called the "Borrowers' Term Note"), evidencing a \$1,000,000.00 term loan made by Mortgagee to Borrowers (the "Borrowers' Term Loan@), repayable in installments of principal plus interest calculated at a variable interest rate therein described, with a final payment due on July 1, 2010, and (iii) a Mortgage Note dated June 30, 2005, payable to the order of Mortgagee, in the principal sum of Four Million Five Hundred Thousand and 00/100 (\$4,500,000.00) Dollars (herein called the "Borrowers' Mortgage Note"), evidencing a \$4,500,000.00 mortgage loan made by Mortgagee to Borrowers (the "Borrowers' Mortgage Loan@) repayable in installments of principal plus interest calculated at a variable interest rate therein described with a final payment due on July 1, 2010; the terms and provisions of which notes are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

**WHEREAS**, the payment and performance of the Mortgage Notes have been unconditionally guaranteed by Borrowers pursuant to those certain Unconditional Guaranties each dated the respective date of the Mortgage Notes executed by the Borrowers in favor of Mortgagee (collectively, the "Caputo LLC Guaranties@", and singularly, a "Caputo LLC Guaranty@); and

**WHEREAS**, the Mortgage Notes, the Borrowers' Revolving Note, the Borrowers' Term Note, and the Borrowers' Mortgage Note, shall collectively hereinafter be called the "Notes@" and individually a "Note@"; and

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**WHEREAS**, this Mortgage shall secure repayment of the following described indebtedness (collectively, hereafter, the "Indebtedness Hereby Secured"): (i) the indebtedness evidenced by the Notes, including the principal thereof and interest and premium, if any, thereon, LIBOR breakage and indemnity charges, if any, and any and all extensions, refinancings, amendments, renewals, modifications, consolidations, conversions and replacements thereof, in whole or in part, any and all other sums which may be at any time due or owing or required to be paid as provided in this Mortgage, the Notes and in the other Loan Documents (as hereinafter defined), (ii) the Borrowers' payment and performance obligations under the Caputo LLC Guaranties, (iii) all obligations and liabilities of Mortgagor and Borrowers, respectively, to the Mortgagee under and pursuant to (a) any ISDA Master Agreement (each, an "ISDA") and any and all schedules and exhibits thereto, heretofore, now or hereafter executed by and between Mortgagor and/or Borrowers and the Mortgagee, as amended from time to time, together with interest thereon at the applicable default rate, and (b) any other interest rate, currency or commodity swap agreement, cap agreement or collar agreement, executed by and between Mortgagor and/or Borrowers and the Mortgagee from time to time (all ISDA's and such other agreements, collectively, "Interest Rate Agreements"), together with all interest rate swap or hedge fees and all other fees, costs and expenses related thereto (if any), (iv) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Mortgagor, Borrowers or any other obligor or grantor to or benefiting the Mortgagee which are evidenced or secured by or otherwise provided in the Notes, this Mortgage or any of the other Loan Documents; and (v) the reimbursement to the Mortgagee of any and all sums incurred, expended or advanced by the Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents or any Interest Rate Agreements, with interest thereon as provided herein or therein;

**WHEREAS**, the indebtedness evidenced by the Notes, including the principal thereof and interest and premium, if any, thereon, and any and all extensions, refinancings, amendments, renewals, modifications, consolidations and conversions thereof or thereto, in whole or in part, the Borrowers' payment and performance obligations under the Caputo LLC Guaranties, and any and all other sums which may be at any time due or owing or required to be paid as provided in this Mortgage or in the Notes or the other Loan Documents, are herein collectively called the "Indebtedness Hereby Secured".

3. The term "Mortgage Note" as used in the Mortgage, is hereby amended, where applicable, to read "Mortgage Notes".

4. Section 19 of the Mortgage is hereby amended to add the following new subsection thereto:

"(m) A default shall occur under any loan heretofore, now or hereafter made by the Mortgagee to Caputo LLC, including, without limitation, the loans evidenced by the Caputo Mortgage Notes (or under any extension, renewal, modification, amendment, refinancing, consolidation or conversion thereof or thereto), or under any loan document or instrument evidencing or securing such loan, and such default shall not be cured within any applicable grace period;"

5. Hereafter, the term "Notes" as used in the Mortgage and hereinbelow, shall refer collectively to the Borrowers' Revolving Note, the Borrowers' Term Note, the Borrowers' Mortgage

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Mortgage Note, and the Mortgage Notes (as such terms are defined hereinabove), and the term "Note" shall individually refer to any one of them.

6. Mortgagor acknowledges and agrees that the Mortgage is and as amended hereby shall remain in full force and effect, and that the Premises are and shall remain subject to the liens granted and provided for by the Mortgage, as modified hereby, for the benefit and security of all obligations and indebtedness described therein, including, without limitation, the indebtedness evidenced by the Notes and all other Indebtedness Hereby Secured (as defined in the Mortgage and amended hereby).

7. Nothing contained in this Agreement shall in any manner impair the Mortgage, as modified hereby, or the first lien created by the Mortgage, as modified hereby, or any other loan documents executed in connection with the loans evidenced by the Notes, or alter, waive, vary or affect any promise, agreement, covenant or condition recited in any of the foregoing documents, except as expressly provided in this Agreement, or affect or impair any rights, powers, or remedies of Mortgagee under any of the foregoing documents.

8. Except as specifically amended and modified hereby, all of the terms and conditions of the Mortgage shall stand and remain unchanged and in full force and effect. This instrument shall be construed and governed by and in accordance with the laws of the State of Illinois.

9. This Agreement shall be binding upon Mortgagor, its successors and assigns, and shall inure to the benefit of the Mortgagee, its successors and assigns.

IN WITNESS WHEREOF, Mortgagor and Mortgagee have executed this First Modification Agreement as of the day and year first above written.

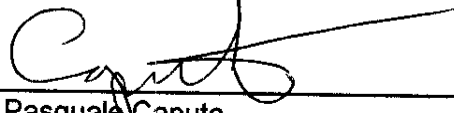
MORTGAGOR

CAPUTO REAL ESTATE, LLC

By: 

Natale Caputo

Title: Manager

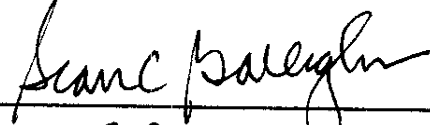
By: 

Pasquale Caputo

Title: Manager

MORTGAGEE

LASALLE BANK NATIONAL ASSOCIATION

By: 

FVP

Title: \_\_\_\_\_

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## ACKNOWLEDGMENT OF SIGNATURES

STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )     SS

I, LIZABETH ORIOLE, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY that Natale Caputo and Pasquale Caputo, the Managers of Caputo Real Estate, LLC, an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of SEPTEMBER, 2005.

Lizbeth Oriole

Notary Public



My Commission Expires: 8-22-09

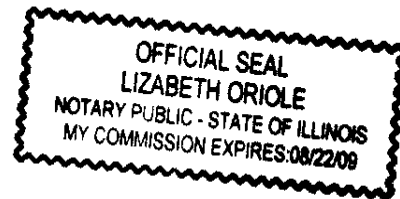
STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )     SS

I, LIZABETH ORIOLE, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY that SEAN GALLAGHER, a FVP of LaSalle Bank National Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of SEPTEMBER, 2005.

Lizbeth Oriole

Notary Public



My Commission Expires: 8-22-09



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## EXHIBIT "A"

### Legal Description

PARCEL 1: THE EAST 72.75 FEET (MEASURED ON NORTH AND SOUTH LINES THEREOF) OF THAT PART OF LOT 4 AND LOT 8 IN AMLING'S SUBDIVISION OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE WEST LINE OF LOT 4 AFORESAID, WHICH POINT IS 241.0 FEET SOUTH OF THE NORTH LINE OF LOT 4; THENCE EASTERLY ALONG A LINE PARALLEL TO THE NORTH LINE OF LOT 4 TO A POINT WHICH IS MIDWAY BETWEEN EAST LINE OF 15<sup>TH</sup> AVENUE AND WEST LINE OF GEORGE STREET; THENCE SOUTHERLY ALONG A LINE PARALLEL TO THE WEST LINE OF LOT 4 TO THE SOUTH LINE OF LOT 8; THENCE WESTERLY ALONG THE SOUTH LINE OF LOT 8 TO THE EAST LINE OF LOT 4; THENCE NORTHERLY ALONG THE EAST LINE OF LOT 4, A DISTANCE OF 13.15 FEET, MORE OR LESS, TO THE NORTH LINE OF THE SOUTH 429.15 FEET OF LOT 4; THENCE WEST ALONG THE NORTH LINE OF THE SOUTH 429.15 FEET OF SAID LOT 4 TO THE WEST LINE OF SAID LOT 4; THENCE NORTH ALONG THE WEST LINE OF SAID LOT 4 TO THE PLACE OF BEGINNING (EXCEPTING THEREFROM THE NORTH 24 FEET THEREOF) IN COOK COUNTY, ILLINOIS.

PARCEL 2: THAT PART OF LOT 4 AND LOT 8 IN AMLING'S SUBDIVISION OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE WEST LINE OF LOT 4 AFORESAID, WHICH POINT IS 241.0 FEET SOUTH OF THE NORTH LINE OF LOT 4; THENCE EASTERLY ALONG A LINE PARALLEL TO THE NORTH LINE OF LOT 4 TO A POINT WHICH IS MIDWAY BETWEEN EAST LINE OF 15<sup>TH</sup> AVENUE AND WEST LINE OF GEORGE STREET; THENCE SOUTHERLY ALONG A LINE PARALLEL TO THE WEST LINE OF LOT 4 TO THE SOUTH LINE OF LOT 8; THENCE WESTERLY ALONG THE SOUTH LINE OF LOT 8 TO THE EAST LINE OF LOT 4; THENCE NORTHERLY ALONG THE EAST LINE OF LOT 4 A DISTANCE OF 13.15 FEET, MORE OR LESS, TO THE NORTH LINE OF THE SOUTH 429.15 FEET OF SAID LOT 4; THENCE WEST ALONG THE NORTH LINE OF THE SOUTH 429.15 FEET OF SAID LOT 4 TO THE WEST LINE OF SAID LOT 4; THENCE NORTH ALONG THE WEST LINE OF SAID LOT 4 TO THE PLACE OF BEGINNING, EXCEPTING THEREFROM THE EAST 72.75 FEET, AS MEASURED ON THE NORTH AND SOUTH LINES THEREOF AND EXCEPT THE NORTH 24 FEET, IN COOK COUNTY, ILLINOIS.

PIN: 12-34-404-036-0000

Address: 1931-1935 N. 15<sup>th</sup> Avenue, Melrose Park, Illinois