

# UNOFFICIAL COPY

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

AND AFTER RECORDING MAIL TO:  
S<sup>c</sup>LaSalle Bank N.A.

Collateral Services  
4747 W. Irving Park Rd, 3<sup>rd</sup> fl  
Chicago IL 60641



Doc#: 0620556032 Fee: \$36.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/24/2006 09:53 AM Pg: 1 of 7



## SECOND MODIFICATION AGREEMENT

**THIS SECOND MODIFICATION AGREEMENT** (this "Agreement") is entered into as of the 17 day of April, 2005 by and between WISCON CORP., an Illinois corporation (herein, the "Mortgagor"), and LASALLE BANK NATIONAL ASSOCIATION (herein, the "Mortgagee").

**WHEREAS**, Mortgagee extended to the Mortgagor and Caputo Cheese Market, Inc., an Illinois corporation ("CCM") (Mortgagor 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**, Mortgagee also extended to Caputo Real Estate, LLC, an Illinois limited liability company ("Caputo LLC") a mortgage loan in the principal sum of \$600,000.00; and

**WHEREAS**, to secure payment of all of the aforesaid loans to Borrowers and Caputo LLC, 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. 0520754007; and

**WHEREAS**, pursuant to First Modification Agreement dated as of September 21, 2005, the Mortgage was amended to also secure a mortgage loan in the principal sum of \$1,050,000.00 made by Mortgagee to Caputo LLC;

**WHEREAS**, the aggregate outstanding principal balance of the aforesaid mortgage loans to Caputo LLC in the original respective principal sums of \$600,000.00 and \$1,050,000.00 is

4650  
7  
S yes  
P7  
S NO  
M yes  
\$1050  
MB

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\$1,601,250.00, and Caputo LLC has asked the Bank to consolidate such loans into one consolidated mortgage loan in the principal sum of \$1,601,250.00 (the "Caputo Consolidated Mortgage Loan"), and Mortgagee has consented to such request provided, among other conditions, that Mortgagee 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:**

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 five "WHEREAS" clauses beginning on page 1 of the Mortgage are hereby deleted and the following clauses are hereby substituted therefor:

**"WHEREAS**, the Mortgagor and Caputo Cheese Market, Inc., an Illinois corporation ("CCM") (Mortgagor 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 "Revolving Note"), evidencing a \$7,000,000.00 revolving line of credit loan made by Mortgagee to Borrowers (the "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 "Term Note"), evidencing a \$1,000,000.00 term loan made by Mortgagee to Borrowers (the "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 "Mortgage Note"), evidencing a \$4,500,000.00 mortgage loan made by Mortgagee to Borrowers (the "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**, Caputo Real Estate, LLC, an Illinois limited liability company ("Caputo LLC") has executed and delivered to the Mortgagee the following described promissory note (the "Caputo Mortgage Note"): a Consolidated Mortgage Note dated April \_\_, 2006, payable to the order of Mortgagee, in the principal sum of One Million Six Hundred One Thousand Two Hundred Fifty and 00/100 (\$1,601,250.00) Dollars, evidencing a \$1,601,250.00 consolidated mortgage loan made by Mortgagee to Caputo LLC, repayable in installments of principal plus interest calculated at a variable interest rate therein described, with a final payment due on April 30, 2011; and

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**WHEREAS**, the payment and performance of the Caputo Mortgage Note have been unconditionally guaranteed by Borrowers pursuant to that certain Unconditional Guaranty dated April 17, 2006 executed by the Borrowers in favor of Mortgagee (the "Caputo LLC Guaranty"); and

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

**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 Guaranty, (iii) all obligations and liabilities of Borrowers and Caputo LLC, 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 Borrowers and/or Caputo LLC 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 Borrowers and/or Caputo LLC 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, CCM, Caputo LLC 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;"

3. Subsection (l) of Section 19 of the Mortgage is hereby amended in its entirety to read as follows:

"(l) A default shall occur under any loan heretofore, now or hereafter made by the Mortgagee to Caputo LLC, including, without limitation, the loan evidenced by the Caputo Mortgage Note (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;"

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

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

5. 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).

6. 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.


7. 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.

8. 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 Second Modification Agreement as of the day and year first above written.

MORTGAGOR

WISCON CORP.

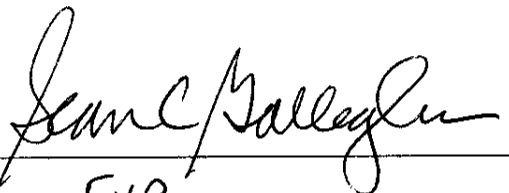
By: 

Natale Caputo

Title: President

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, the President of WISCON CORP., an Illinois corporation, 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 corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17<sup>th</sup> day of APRIL, 2006.



Elizabeth Oriole  
 Notary Public

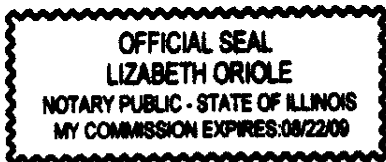
My Commission Expires: 8-22-09

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 17<sup>th</sup> day of APRIL, 2006.

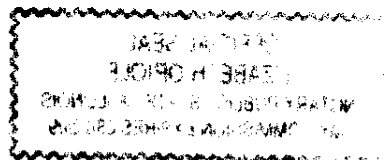
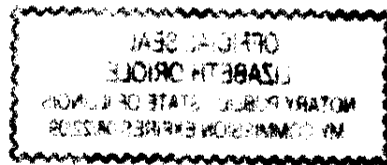


Elizabeth Oriole  
 Notary Public

My Commission Expires: 8-22-09

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## EXHIBIT "A"

### Legal Description

#### PARCEL 1:

THAT PART OF LOTS 4, 7 AND 8 IN THE SUBDIVISION OF THE SOUTHWEST  $\frac{1}{4}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN IN THE TOWN OF LEYDEN, COUNTY OF COOK, STATE OF ILLINOIS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE WEST LINE OF LOT 4, WHICH POINT IS 100 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 THE EAST LINE OF 15<sup>TH</sup> AVENUE AND THE WEST LINE OF GEORGE STREET; THENCE SOUTHERLY IN A STRAIGHT LINE TO A POINT WHICH IS MIDWAY BETWEEN THE EAST LINE OF 15<sup>TH</sup> AVENUE AND THE WEST LINE OF GEORGE STREET ON A LINE 241 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF LOT 4; THENCE WESTERLY ALONG A LINE 241 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF LOT 4 TO THE WEST LINE OF LOT 4, THENCE NORTHERLY ALONG THE WEST LINE OF LOT 4 TO THE PLACE OF BEGINNING.

#### PARCEL 2:

THAT PART OF LOT 4 AND LOT 8 IN THE SUBDIVISION OF THE SOUTHWEST  $\frac{1}{4}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWN OF LEYDEN, COUNTY OF COOK AND STATE OF ILLINOIS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE WEST LINE OF LOT 4, WHICH POINT IS 241 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 THE EAST LINE OF 15<sup>TH</sup> AVENUE AND THE WEST LINE OF GEORGE STREET; THENCE SOUTHERLY ALONG A LINE PARALLEL TO THE WEST LINE OF LOT 4, 24 FEET TO A POINT; THENCE WESTERLY ALONG A LINE PARALLEL TO THE NORTH LINE OF LOT 4 TO THE WEST LINE OF LOT 4; THENCE NORTHERLY ALONG THE WEST LINE OF LOT 4, 24 FEET TO THE POINT OF BEGINNING.

#### PARCEL 3:

AN EASEMENT FOR INGRESS AND EGRESS OVER OTHER PROPERTY AND COST, MAINTENANCE CREATED BY INSTRUMENT RECORDED AS DOCUMENT NUMBER 24469016.

#### PARCEL 4:

AN EASEMENT FOR INGRESS AND EGRESS OVER OTHER PROPERTY RECORDED AS DOCUMENT NUMBER 91488986 AND TERMS AND CONDITIONS CONTAINED THEREIN.

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PARCEL 5:

AN EASEMENT FOR INGRESS AND EGRESS OVER OTHER PROPERTY AND COST, MAINTENANCE CREATED BY INSTRUMENT RECORDED AS DOCUMENT NUMBER 24521222.

STREET ADDRESS: 1945 N. 15<sup>th</sup> Avenue, Melrose Park, Illinois.  
PERMANENT TAX INDEX NUMBER: 12-34-404-035-0000

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