

Case 00-01738

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2000 049821

STATE OF INDIANA
Merrillville, Lake County, Indiana
FILED FOR
El Torito Restaurant #203

2000 JUL 14 PM 12:21

MORRIS W. CARTER

**MORTGAGE, ASSIGNMENT OF LEASES
AND SECURITY AGREEMENT**

DATED as of June 28th, 2000

Document is
from

NOT OFFICIAL!

This Document is the property of
EL TORITO RESTAURANTS, INC.
the Lake County Recorder!

to

FLEET NATIONAL BANK, as Agent

Notice: This instrument secures, inter alia, obligations
which may provide for:

(a) a variable rate of interest;

(b) future and/or revolving credit advances or
readvances, which when made, shall have the same
priority as advances or readvances made on the date
hereof whether or not (i) any advances or readvances were
made on the date hereof and (ii) any indebtedness is
outstanding at the time any advance or readvance is made;
and/or

(c) after-acquired property provisions and secures
future advances pursuant to a line of credit for business or
commercial purposes.

Notwithstanding anything to the contrary
contained herein, the maximum principal indebtedness
secured under any contingency by this instrument shall in
no event exceed \$115,000,000.

1446 E. 82nd Ave.
Merrillville, Indiana
Restaurant #203
Recording Office: Lake County

HOLD FOR MERIDIAN TITLE

BUSDOCS:867973.3

\$59.00
T.L.
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2000

**MORTGAGE, ASSIGNMENT OF LEASES
AND SECURITY AGREEMENT**

THIS INDENTURE made as of June 28th, 2000, WITNESSETH: That EL TORITO RESTAURANTS, INC., a Delaware corporation with a place of business at 4001 Via Oro Avenue, Suite 200, Long Beach, California 90810 (the "*Mortgagor*"), MORTGAGES AND WARRANTS to FLEET NATIONAL BANK, a national banking association having offices at 100 Federal Street, Boston, MA 02110, as Agent for itself and the other Banks who are now or may become parties to the Credit Agreement, as defined in the Mortgage Rider attached hereto as *Exhibit C* (in such capacity, the "*Mortgagee*"), the Property (as defined in the Mortgage Rider).

NOTICE: This Document is the property of
the Lake County Recorder!

THE CREDIT AGREEMENT PROVIDES FOR EXTENSIONS OF CREDIT BY WAY OF ADVANCES FROM TIME TO TIME DRAWN THEREUNDER OF UP TO ONE HUNDRED AND FIFTEEN MILLION DOLLARS (\$115,000,000.00) IN AGGREGATE PRINCIPAL AMOUNT OUTSTANDING AT ANY ONE TIME UPON TERMS FOR AND CONDITIONS THEREIN SPECIFIED. THIS MORTGAGE IS INTENDED TO SECURE FUTURE ADVANCES.

This Mortgage is given to secure the payment and performance of the Obligations of the Borrowers (as defined in the Mortgage Rider) to the Mortgagee and the Banks (as defined in the Mortgage Rider), in an aggregate principal amount not to exceed \$115,000,000.00, as described and defined in the Mortgage Rider. The covenants, agreements, conditions, representations and warranties contained in the Mortgage Rider which is annexed hereto as *Exhibit C* are incorporated herein by reference as if fully set out herein; and all references to covenants, agreements, conditions, representations and warranties contained in this Mortgage shall be deemed to include the covenants, agreements, conditions, representations and warranties contained in said Mortgage Rider.

Upon the occurrence and continuance of an Event of Default (as defined in the Mortgage Rider), all of the indebtedness hereby secured shall, at the option of the Mortgagee and without notice, become immediately due and payable and this Mortgage may be foreclosed accordingly. Upon such foreclosure, the Mortgagee may continue the abstract of title to the Property, or obtain other appropriate title evidence, and may add the cost thereof to the principal balance due. Mortgagor agrees that in the event of foreclosure, it will pay, as part of the mortgage

debt, a reasonable attorney's fee for Mortgagee's attorney, survey costs, court costs, other miscellaneous costs, and also all expenses of title search and abstracting necessary for such foreclosure, and that on suit being filed, the Court shall at once, and without notice, appoint a receiver to take charge of the Property.

All rights and obligations hereunder shall extend to and be binding upon the several heirs, representatives, successors and assigns of the parties to this Mortgage. When applicable, use of the singular form of any word also shall mean or apply to the plural and masculine form shall mean or apply to the feminine or the neuter. The titles of the several paragraphs of this Mortgage are for convenience only and do not define, limit or construe the contents of such paragraphs.

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LAWYERS TITLE INSURANCE CORPORATION

EXHIBIT A

LEGAL DESCRIPTION:

PART OF LOT 1, WEST LAKE PLAZA, AS SHOWN IN PLAT BOOK 47, PAGE 77, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH RIGHT OF WAY LINE OF PLAZA DRIVE, SAID POINT LYING 720.00 FEET WEST (MEASURED PERPENDICULARLY) OF THE EAST LINE OF SAID LOT 1 (WEST RIGHT OF WAY LINE OF MISSISSIPPI STREET); THENCE SOUTH 86 DEGREES 51 MINUTES 45 SECONDS WEST ALONG SAID NORTH RIGHT OF WAY LINE, 39.18 FEET; THENCE CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE ALONG A CIRCULAR CURVE WHICH IS CONVEX TO THE NORTHWEST WHOSE RADIUS 180.00 FEET, TANGENT 105.68, DEFLECTION ANGLE 60 DEGREES 50 MINUTES 02 SECONDS A DISTANCE OF 191.12 FEET ALONG SAID CURVE; THENCE NORTH 63 DEGREES 58 MINUTES 17 SECONDS WEST 87.78 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 395.88 FEET TO THE NORTHERLY LINE OF SAID LOT 1 (SOUTHERLY LINE OF I-65 EXIT RAMP); THENCE EASTERLY ALONG SAID NORTHERLY LINE OF LOT 1, ALONG A CIRCULAR CURVE WHICH IS CONVEX TO THE NORTH WHOSE RADIUS 722.27 FEET, TANGENT 39.06 FEET, DEFLECTION ANGLE 06 DEGREES 11 MINUTES 29 SECONDS A DISTANCE OF 78.05 FEET ALONG SAID CURVE; THENCE CONTINUING ALONG SAID NORTHERLY LINE, NORTH 86 DEGREES 51 MINUTES 45 SECONDS EAST, 91.74 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 72.00 FEET; THENCE NORTH 86 DEGREES 51 MINUTES 45 SECONDS EAST, PARALLEL WITH THE NORTH LINE, 100 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 278.53 FEET TO THE POINT OF BEGINNING.



Recording Office: Lake County, Indiana
El Torito Restaurant No. 203

EXHIBIT B

PERMITTED ENCUMBRANCES

Those exceptions listed on Schedule B of a certain Title Insurance Policy issued to Mortgagee by Commonwealth Land Title Insurance Company insuring the lien of this Deed of Trust with respect to the Premises described in *Exhibit A*.

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STOP



EXHIBIT C

MORTGAGE RIDER

Mortgage Rider attached to and made a part of that certain Mortgage, dated as of June 28, 2000 (the "Mortgage") from El Torito Restaurants, Inc., a Delaware corporation, having a principal office at 4001 Via Oro Avenue, Suite 200, Long Beach, California 90810, as mortgagor (the "Mortgagor"), to Fleet National Bank, a national banking association having its principal office at 100 Federal Street, Boston, MA 02110, as Agent for itself and the other Banks who are or may become parties to the Credit Agreement, as mortgagee (in such capacity, the "Mortgagee").

With intent to be legally bound, Mortgagor and Mortgagee agree that the following terms and conditions are herein made a part of the Mortgage as an integral part thereof. The provisions of this Mortgage Rider are supplementary to the provisions of the Mortgage to which this Mortgage Rider is attached and to the extent any provision of this Mortgage Rider deals with the same subject matter as similar provisions of the Mortgage, the provisions hereof are to be construed to expand such similar provisions and not to limit the general application of any general provision contained in the Mortgage. To the extent any provision of this Mortgage Rider conflicts with the Mortgage, the language in the Mortgage shall control. In case any one or more provisions of this Mortgage Rider may be found to be invalid or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of any other provisions of this Mortgage Rider. Unless otherwise defined herein, capitalized terms used in the Mortgage and this Mortgage Rider shall have meanings ascribed to them in the Credit Agreement.

1. REPRESENTATIONS AND WARRANTIES.

The Mortgagor hereby represents, covenants and warrants to Mortgagee as follows.

1.1. Title to Property. The Mortgagor warrants that Mortgagee has good and marketable title to the Property subject only to the Permitted Encumbrances.

1.2. Authority; No Encumbrances. The Property is now free and clear of all encumbrances whatsoever except the Permitted Encumbrances, and the Mortgagor has good right and lawful authority to mortgage and convey the same in the manner and form hereby mortgaged and conveyed.

1.3. Governmental Filings. Other than the recording of this Mortgage and the filing of financing statements with the appropriate recording and filing offices in the state where the Property is located, no

approval, authorization or other action by, or filing with, any federal, state, or local commission, board or agency, is required under existing law in connection with the execution and delivery by Mortgagor of this Mortgage.

1.4. No Leases. There are presently in effect no leases of the Property or any part thereof.

1.5. Absence of Litigation. Except as previously disclosed on Schedule 8.7 to the Credit Agreement, there are no actions, suits, proceedings or investigations, including, without limitation, condemnation and eminent domain proceedings, pending or, to Mortgagor's knowledge, threatened, against or affecting the Property, or which may involve or affect the validity of this Mortgage, and Mortgagor is not in default with respect to any order, writ, injunction, decree or demand of any court or any administrative agency or governmental authority affecting the Property or the use thereof in any manner which could reasonably be expected to result in the imposition of substantial penalties or materially or adversely affect the financial condition, properties or business of Borrowers and their Subsidiaries, taken as a whole.

1.6. Compliance with Law. Except for such violations or noncompliance which could not reasonably be expected to result in the imposition of substantial penalties or materially or adversely affect the financial condition, properties or business of Borrowers and their Subsidiaries, taken as a whole, the Property is in compliance with all applicable laws and governmental regulations, including but not limited to those governing zoning, land use, subdivision control, health, safety, fire protection and protection of the environment.

2. CERTAIN COVENANTS AND CONDITIONS.

The Mortgagor covenants and agrees as follows:

2.1. Governmental Charges. Mortgagor shall pay before the same become delinquent all taxes, charges, sewer use fees, water rates and assessments of every name and nature, whether or not assessed against Mortgagor, if applicable or related to the Property, or any interest therein, or applicable or related to any of the Obligations, which, if unpaid, might by law become a lien or charge upon all or any part of the Property; provided, however, that so long as no distraint, foreclosure sale or other levy upon or transfer with respect to the Property or any part thereof shall have been effected or threatened, Mortgagor shall not be required to pay any such taxes, charges, fees, rates and assessments by reason of this §2.1 if (i) the amount, applicability or validity thereof is currently being contested by Mortgagor in good faith by appropriate legal proceedings, (ii) such contest operates to suspend enforcement of compliance therewith

and/or collection thereof, and (iii) Mortgagor shall have set aside on its books reserves (segregated to the extent required by sound accounting principles and practices) reasonably deemed by Mortgagee to be adequate with respect thereto.

2.2. Provision for Payment of Governmental Charges and Other Obligations. To assure the payment of all taxes, charges, sewer use fees, water rates, ground rents and assessments of every name and nature, or any other obligations which may have or acquire priority over this Mortgage, and which are assessed or payable with respect to the Property, upon the occurrence and during the continuance of an Event of Default, Mortgagor, if so requested by Mortgagee, shall deposit with Mortgagee, on the first day of each month, a sum determined by Mortgagee to be sufficient to provide, in the aggregate, a fund adequate to pay any such amounts at least ten (10) days before the same become delinquent; and whenever Mortgagee determines sums accumulated under the provisions of this §2.2 to be insufficient to meet the obligation for which such deposits were made, Mortgagor shall pay, on the demand of Mortgagee, any amount required to cover the deficiency therein. Every such deposit may, at the option of Mortgagee, be applied directly against the obligation with reference to which it was made, or, to the fullest extent permissible according to law, any other obligation of Mortgagor secured hereby. Such deposits may, to the fullest extent permitted by law, be commingled with other assets of Mortgagee and, in the discretion of Mortgagee, invested by Mortgagee for its own account, without any obligation to pay income from such investment, or interest on such deposits, to Mortgagor, or to account to Mortgagor for such income in any manner.

2.3. Maintenance of Property; Alterations. Mortgagor shall keep and maintain the Property in good condition, repair and working order, damage from casualty expressly not excepted, shall make all necessary and proper repairs, replacements, additions and improvements to the Property as shall be necessary for the proper conduct of its business thereon, and shall not permit or commit waste on the Property. Mortgagor shall not permit removal or alteration of anything which constitutes a part of the Property without the consent of Mortgagee except that Mortgagor may remove personal property or fixtures which have become obsolete, provided that Mortgagor shall substitute personal property or fixtures of equal utility and equal or greater value for the items so removed. The Mortgagor shall have the right at all times to make or permit such alterations, improvements or new construction, structural or otherwise (herein sometimes called collectively "alterations"), of or on the Property to be made in all cases subject to the following conditions:

(a) all work done in connection with any alterations shall be done promptly and in a first-class and workmanlike manner;

(b) the cost of all alterations shall be paid promptly so as to keep the Property free of all liens; and

(c) no alterations of any kind shall be made to the Property which shall change the use or reduce the value of the Property in any respect.

Mortgagor shall permit Mortgagee to enter the Property in accordance with the provisions of the Credit Agreement at any reasonable time to determine whether Mortgagor is in compliance with its obligations under this Mortgage. All construction on the Property shall comply with, and each and every part of the Property shall be maintained and used in accordance with, all applicable federal, state and local laws and governmental regulations, and any lawful private restrictions or other requirements or provisions, relating to the maintenance or use thereof.

2.4. Insurance. The Mortgagor agrees, at Mortgagor's sole cost and expense, to keep the Property insured at all times throughout the term of this Mortgage with policies of insurance as follows:

(a) property or physical hazard insurance on an "all risks" basis, with broad form flood and earthquake coverages where necessary or prudent based upon geographic location, and building code, valuable papers, extra expenses, extended period of indemnity and electronic data processing coverages, with a full replacement cost endorsement (including builder's risk during any period or periods of time that any construction or remodeling is being performed by Mortgagor on the Property) and an "agreed amount" clause, in an amount equal to 100% of the full replacement cost of all improvements (excluding only the reasonable value of footings and foundations) and Mortgagor's contents therein, such amount to be determined annually by an insurer or qualified appraiser selected and paid for by Mortgagor and acceptable to Mortgagee, and in any event, in an amount sufficient to prevent Mortgagor from incurring any coinsurance liability;

(b) if at any time the Property or any portion thereof is located in a "Flood Hazard Area" pursuant to the Flood Disaster Protection Act of 1973 (or any successor thereto), flood insurance in such total amount as Mortgagee shall reasonably require from time to time (or the maximum amount available, if less); and

(c) insurance with respect to other insurable risks and coverages relating to the Property (including, without limitation,

commercial general liability insurance (broad form), boiler insurance, builder's risk insurance and worker's compensation insurance) in such amounts and containing such terms and conditions as Mortgagee may reasonably require from time to time.

Mortgagor shall deposit certified copies of all insurance policies (or certificates thereof reasonably acceptable to Mortgagee) providing coverage applicable to the Property, whether or not required by this Mortgage, with Mortgagee forthwith after the binding thereof, and shall deliver to Mortgagee new policies (or certificates acceptable to Mortgagee) for any insurance about to expire at least thirty (30) days before such the date of such expiration. All such insurance policies (other than liability policies) shall be first payable in case of loss to Mortgagee by means of a standard non-contributory Mortgagee clause, shall be written by such companies, on such terms, in such form and for such periods and amounts as Mortgagee shall from time to time reasonably approve, shall be primary and without right of contribution from other insurance which may be available, shall waive any right of setoff, counterclaim, subrogation, or any deduction in respect of any liability of Mortgagor and Mortgagee, shall provide that with respect to Mortgagee, the insurance shall not be invalidated by any action or inaction by Mortgagor including without limitation any representations made by Mortgagor in the procurement of such insurance, and shall provide that such policies shall not be cancelled or amended without at least thirty (30) days prior written notice to Mortgagee. All liability insurance policies shall include Mortgagee as an additional insured. All such insurance policies shall provide that all losses thereunder shall be adjusted by (but not disbursed, except as set forth herein, to) Mortgagor, so long as no Event of Default has occurred and is continuing, provided, however, that after an Event of Default has occurred and so long as any such Event of Default continues, Mortgagor shall not consent to a final adjustment in any amount without obtaining Mortgagee's prior written approval. After the occurrence of an Event of Default, upon foreclosure hereof, Mortgagor hereby grants Mortgagee full power and authority as irrevocable attorney-in-fact of Mortgagor to cancel or transfer such insurance, to collect and endorse any checks issued in the name of Mortgagor and to retain any premium and to apply the same to the Obligations secured hereby.

The proceeds of any casualty insurance described in this §2.4, in respect of any damage or loss of any of the Property shall be disbursed in accordance with §2.5.

2.5. Casualties and Takings. All proceeds of any property or hazard insurance or awards of damages on account of any taking or condemnation for public use of or injury to the Property shall be disbursed

and applied by Mortgagor in the manner set forth in Section 4.4.2.1 of the Credit Agreement.

2.6. Notice of Condemnation. Mortgagor, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation or requisition of the Property or any portion thereof, shall notify Mortgagee of the pendency of such proceeding. The Mortgagee may participate in such proceedings, and Mortgagor from time to time shall deliver to Mortgagee all instruments reasonably requested by Mortgagee to permit such participation.

2.7. Leases; Assignments; Subordination. Except as expressly permitted by §10.5.2 of the Credit Agreement, Mortgagor shall not lease the Property or any part thereof without the reasonable prior written consent of Mortgagee. If Mortgagor shall enter into a lease with the consent of Mortgagee, Mortgagor shall faithfully keep, observe and satisfy all the obligations on the part of Mortgagor, as lessor, to be kept, performed and satisfied under every lease from time to time in force with reference to the Property, and shall not alter or terminate any such lease, or any guarantee of such lease, except in the ordinary course of business, or accept any rentals for more than one month in advance. Mortgagor hereby absolutely, irrevocably and unconditionally assigns and transfers to Mortgagee all rents, issues and profits, income and other benefits derived under any and all leases of the Property; provided, however, that Mortgagor shall be entitled to collect and retain such rents and profits until an Event of Default shall have occurred. Mortgagor hereby gives to and confers upon Mortgagee the right, power and authority to collect the rents and profits. Mortgagor irrevocably appoints Mortgagee as Mortgagor's true and lawful attorney in fact, at the option of Mortgagee at any time and from time to time, either with or without taking possession of the Property, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all of the rents and profits and apply the same to the Obligations. The assignment of the rents and profits of the Property in this Mortgage is intended to be a present and absolute assignment from Mortgagor to Mortgagee and not merely the creation of a security interest. Mortgagee's right to collect the rents and profits is not contingent upon Mortgagee's taking possession of the Property. Upon the occurrence of an Event of Default, and as long as any such Event of Default exists, Mortgagor's license to collect the rents and profits shall terminate and Mortgagee shall have the right, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the value of the Property or the adequacy of the security for the Obligations, to enter upon and take possession of the Property, or any part thereof, in its own name sue for or otherwise collect the rents and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation

and collection, including attorneys' fees, upon the Obligations, and in such order as Mortgagee may determine. The collection of the rents and profits, or the entering upon and taking possession of the Property, or the application thereof as aforesaid, shall not cure or waive any Default or Event of Default or notice of default hereunder or invalidate any act done in response to such Default or Event of Default or pursuant to such notice of default. At any time on notice from Mortgagee, Mortgagor shall submit to Mortgagee for examination all such leases, or an accounting of the rents and profits thereof, in form reasonably satisfactory to Mortgagee. The Mortgagee shall have the right, by the execution of suitable written instruments from time to time, to subordinate this Mortgage, and the rights of Mortgagee hereunder, to any lease or leases from time to time in force with reference to the Property, and, on the execution of any such instrument, this Mortgage shall be subordinate to the lease for which such subordination is applicable with the same force and effect as if such lease had been executed and delivered, and a notice thereof recorded to the extent required to give notice to third persons, prior to the execution, delivery and recording of this Mortgage.

2.8. Prior Mortgages. If this Mortgage, by its terms, is now, or any time hereafter, becomes subject or subordinate to a prior deed of trust or mortgage, Mortgagor shall fully perform its obligations under such prior deed of trust or mortgage and shall not, without the consent of Mortgagee, agree to the modification, amendment or extension of the terms or conditions of such prior deed of trust or mortgage. Nothing contained in this §2.8 is intended, nor shall it be deemed, to constitute consent by Mortgagee to a subordination of the lien of this Mortgage.

2.9. Encumbrances. Mortgagor shall not create or permit to be created or permit to exist any encumbrance on the Property (other than any lien for property taxes not yet due and payable and the other Permitted Encumbrances) even if such encumbrance is inferior to this Mortgage, without the prior written consent of Mortgagee.

2.10. Transfers of Ownership. Mortgagor shall not sell or permit any transfer of any interest in the Property, or any part thereof, without the prior written consent of Mortgagee, except as expressly permitted by the Credit Agreement.

2.11. Priority of Lien; After-Acquired Property; No Merger of Estates. This Mortgage is and will be maintained as a valid mortgage lien on the Property subject only to the Permitted Encumbrances. All property of every kind acquired by Mortgagor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment or transfer,

become subject to the lien of this Mortgage. The Mortgagor will do, execute, acknowledge and deliver all and every such further conveyances, mortgages, and assurances as Mortgagee shall reasonably require for accomplishing the purposes of this Mortgage. If any action or proceeding shall be instituted to recover possession of the Property or for the foreclosure of any other mortgage or Mortgage or for any other purpose affecting the Property or this Mortgage, Mortgagor will immediately, upon service thereof on or by Mortgagor, deliver to Mortgagee a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers, however designated, served in any such action or proceeding.

2.12. Fixtures and Equipment: Financing Statement. This Mortgage constitutes a security agreement under the Uniform Commercial Code, and Mortgagor hereby grants to Mortgagee to secure the payment and performance of the Obligations and also to secure the performance of all agreements and covenants herein contained, a security interest in all fixtures, Building Service Equipment and any other property included in the Property, now owned or hereafter acquired by Mortgagor, which might otherwise be deemed "personal property" (and all accessions thereto and the proceeds thereof). Some of such "personal property" is now or is to become fixtures on the Premises. Mortgagor covenants and agrees that, upon the acquisition of fixtures, Building Service Equipment or such personal property included in the Property after the date hereof, Mortgagor will provide to Mortgagee such further assurances as may be required by Mortgagee to establish Mortgagee's first and prior security interest in such fixtures, Building Service Equipment and personal property. **IT IS INTENDED BY MORTGAGOR AND MORTGAGEE THAT THIS MORTGAGE BE EFFECTIVE AS A FINANCING STATEMENT FILED WITH THE REAL ESTATE RECORDS AS A FIXTURE FILING.** The mailing address for Mortgagor and address of Mortgagee from which information concerning the security interest may be obtained are set forth in the introductory paragraph of this Mortgage. Mortgagor shall execute, deliver and cause to be recorded and filed from time to time with all necessary public offices, at Mortgagor's sole cost and expense, continuances and such other instruments as will maintain Mortgagee's priority of security in all fixtures, Building Service Equipment and other personal property included in the Property. The remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Mortgagee's sole election.

2.13. Environmental Assessments. If the Mortgagee reasonably suspects that an Event of Default has occurred hereunder, or, whether or

not the Mortgagee reasonable suspects that an Event of Default has occurred, at any time after Mortgagee shall receive notice of a Release or threatened Release of Hazardous Substances from Mortgagor, or shall have received notice from any other source reasonably deemed reliable by Mortgagee that a Release of Hazardous Substances in violation of Environmental Laws may have occurred, Mortgagee may at its election after five (5) days prior written notice to Mortgagor obtain one or more environmental assessments of the Property prepared by a hydrogeologist, an independent engineer or other qualified consultant or expert approved by Mortgagee to evaluate or confirm (i) whether any Hazardous Substances are present in the soil or water at the Property in violation of Environmental Law, and (ii) whether the use and operation of the Property complies with all applicable Environmental Laws. Such environmental assessments or audits shall be conducted, to the extent reasonably practicable, in a manner that does not unreasonably interfere with the Mortgagor's use of the Mortgaged Property. Environmental assessments may include without limitation detailed visual inspections of the Property including any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and ground water samples, as well as such other investigations or analyses as Mortgagee deems reasonably appropriate. Such environmental assessments shall be at the sole cost and expense of Mortgagor.

3. DEFAULT AND REMEDIES.

3.1. Default; Acceleration of Obligations. If an Event of Default shall occur and be continuing then Mortgagee may exercise the remedies provided under this Mortgage, under the Credit Agreement, under any and all other instruments and documents providing security for the Obligations, or under the laws of the state where the Property is situated, or any one or more of such remedies.

3.2. Remedies Cumulative. No remedy herein conferred on Mortgagee is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing. If any Event of Default occurs, and as long as any such Event of Default continues, Mortgagee shall have the right to declare all Obligations secured hereby to be immediately due and payable, and all such Obligations shall thereupon become immediately due and payable, without any presentment, demand, protest or notice of any kind, all of which are expressly waived by Mortgagor.

3.3. Right of Mortgagee to Cure an Event of Default. If an Event of Default shall occur and be continuing, Mortgagee shall have the right, but without any obligation so to do, to cure such default for the

account of Mortgagor and to make any payment or take any action necessary to effect such cure. Without limiting the generality of the foregoing, Mortgagor hereby authorizes Mortgagee to pay all taxes, sewer use fees, water rates and assessments, with interest, costs and charges accrued thereon, which may at any time be a lien upon the Property, or any part thereof; to pay the premiums for any insurance required to be maintained by Mortgagor hereunder; to incur and pay reasonable expenses in protecting its rights hereunder and the security hereby granted; and to pay any balance due under any security agreement on any fixtures and equipment included as a part of the Property; and the payment of all amounts so incurred shall be secured hereby as fully and effectually as any other obligation of Mortgagor secured hereby. If Mortgagee shall make any payment or take action in accordance with this §3.3, Mortgagee will give to Mortgagor written notice of the making of any such payment or the taking of any such action. In any such event Mortgagee and any person designated by Mortgagee shall have, and is hereby granted, the right to enter upon the Property at reasonable times and from any time and from time to time for the purpose of taking any such action, and all monies expended by Mortgagee in connection therewith (including, but not limited to, reasonable legal expenses and disbursements), together with interest thereon at an annual rate of interest equal to the rate applicable to overdue payments under the Credit Agreement (or the highest rate permitted by law, whichever shall be less), from the date of each such expenditure, shall be paid by Mortgagor to Mortgagee forthwith upon demand by Mortgagee, and shall be secured by this Mortgage, and Mortgagee shall have, in addition to any other right or remedy of Mortgagee, the same rights and remedies in the event of non-payment of any such sums by Mortgagor as in the case of a default by Mortgagor in the payment of any installment of principal or interest due and payable under the Credit Agreement.

3.4. Possession of Property. Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of the security, to enter upon and take possession of the Property, or any part thereof, in its own name, and do any acts that Mortgagee deems necessary or desirable to preserve the value, marketability or rentability of the Property or increase the income therefrom or protect the security hereof, and, with or without taking possession of the Property, to sue for or otherwise collect the rents and profits of the Property, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, to the Obligations, all in such order as Mortgagee may determine. The entering upon and taking possession of the Property, the collection of the rents and profits, and the application thereof as aforesaid

shall not cure or waive any Default or Event of Default or notice of default hereunder or invalidate any act done in response to such Default or Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Property or the collection, receipt and application of the rents and profits, Mortgagee shall be entitled to exercise every right or remedy provided for in any of the Loan Documents or by law upon the occurrence of any Event of Default under this Mortgage, including the right to exercise the power of sale.

3.5. Operation of Property. Upon the occurrence and during the continuance of an Event of Default, Mortgagee may hold, lease, manage, operate or otherwise use or permit the use of the Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Mortgagee may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Mortgagee shall deem necessary or desirable), and apply all rents, profits and other amounts collected in connection therewith in accordance with the other provisions of this Mortgage.

3.6. Receiver. Upon the occurrence and during the continuance of an Event of Default, or any actual or threatened waste to all or any part of the Property, or at any time while a suit is pending to foreclose or reform this Mortgage or to enforce any provision hereof, Mortgagee shall have the right to apply without notice for the appointment of a receiver of all or any part of the Property and the rents and profits thereof, and such receiver shall have all the broad and effective functions and powers anywhere entrusted by a court to a receiver. Mortgagee shall be entitled to the appointment of said receiver forthwith as a matter of absolute right, without regard to the adequacy or inadequacy of the value of the Property or the solvency or insolvency of Mortgagor or any other defendant, and Mortgagor hereby waives any right to object to the appointment of such receiver and expressly consents thereto. The income, profits, rents, issues and revenues from the Property shall be applied by such receiver according to the provisions of this Mortgage and the practice of the court appointing such receiver.

3.7. Certain Terms of Foreclosure Sale. At any foreclosure sale, any combination, or all, of the Property or security given to secure the indebtedness secured hereby, may be offered for sale for one total price, and the proceeds of such sale accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds. Mortgagor hereby waives the application of any doctrine of marshaling, and, in case Mortgagee, in the exercise of the power of sale herein given, elects to sell in parts or parcels, said sales

may be held from time to time, and the power shall not be fully executed until all of the property or security not previously sold shall have been sold.

3.8. Uniform Commercial Code. If the provisions of the Uniform Commercial Code are applicable to any property or security given to secure the indebtedness secured hereby which is sold in combination with or as a part of the Property, or any part thereof, at one or more foreclosure sales, any notice required under such provisions shall be fully satisfied by the notice given in execution of the power of sale or other provision in accordance with which the sale of real property pursuant to such foreclosure is held with respect to the Property or any part thereof.

3.9. Other Mortgage Instruments. The Obligations secured by this Mortgage may also be secured by various other deeds of trust or mortgages or both (collectively, including this Mortgage, the "Mortgage Instruments") conveying or encumbering real estate in the state in which the Property is situated and in other jurisdictions. An Event of Default under the Credit Agreement shall be an Event of Default under all Mortgage Instruments. Except as may be expressly stated in this Mortgage or in such other Mortgage Instruments, all the property conveyed or encumbered by the Mortgage Instruments is security for the Obligations secured by the Mortgage Instruments without allocation of any one or more of the parcels or properties serving as security under the Mortgage Instruments to any part of the Obligations. The Mortgagee may act at the same time or at different times to pursue a remedy or remedies under the Mortgage Instruments or under any of them by proceedings appropriate to the state in which the property serving as security lies, and no such action shall stay or bar enforcement, or be construed as a waiver of, any remedy of Mortgagee under any other instrument in the same state or jurisdiction or in any other state or jurisdiction.

3.10. Rights Cumulative. Each right, power and remedy conferred upon Mortgagee by this Mortgage, the Credit Agreement and by all other documents evidencing or securing the Obligations and conferred by law or in equity is cumulative and in addition to every other right, power and remedy herein or therein set forth or otherwise so existing, may be exercised from time to time, as often, and in such order, as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of, or discontinuance by, Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. To constitute a waiver, there must be a writing signed by an officer of Mortgagee and directed to Mortgagor, specifying the waiver.

In case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage or the Credit Agreement by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken. In the event of a breach or default under this Mortgage or under the Credit Agreement or any other document evidencing or securing the Obligations, Mortgagor agrees to pay and to indemnify and hold harmless Mortgagee and the Banks for all reasonable expenses, attorneys' fees, taxes and other court costs occasioned by such breach or default.

4. DEFINITIONS.

The following terms as used herein shall have the following meanings:

"Arranger" means FleetBoston Robertson Stephens Inc., the arranger under the Credit Agreement.

"Bank(s)" shall mean Fleet National Bank and such other lending institutions or other lenders which are or may become parties to the Credit Agreement.

"Mortgagee" shall mean the Mortgagee named at the beginning of this instrument, any subsequent holder or holders of this Mortgage or the indebtedness secured hereby and their respective successors and assigns.

"Borrowers" shall mean Acapulco Acquisition Corp., Acapulco Restaurants, Inc., El Torito Franchising Company, El Torito Restaurants, Inc., Acapulco Restaurant of Encinitas, Inc., Acapulco Franchising, Inc., Tarv, Inc., Acapulco Restaurant of Ventura, Inc., Acapulco Restaurant of Westwood, Inc., Acapulco Mark Corp., Murray Pacific, Ala Design, Inc., Ala Foods, Inc., Acapulco Restaurant of Downey, Inc., Triad Engineers Inc., and El Paso Cantina, Inc.

"Building Service Equipment" shall mean all apparatus, fixtures and articles of personal property owned by Mortgagor now or hereafter attached to or used or procured for use in connection with the operation or maintenance of any building, structure or other improvement located on or included in the Property (except apparatus, fixtures or articles of personal property belonging to lessees or other occupants of such building or to persons other than Mortgagor unless the same be abandoned by any such lessee or other occupant or person), together with any and all replacements thereof and additions thereto.

"Credit Agreement" shall mean that certain Revolving Credit and Term Loan Agreement dated as of June 28, 2000, by and among the Borrowers, the

Banks and the Mortgagee, as Agent for itself and the other Banks, pursuant to which the Banks have agreed (a) to make revolving credit loans to the Borrowers, and to issue letters of credit for the account of the Borrowers, in an aggregate outstanding principal amount of up to \$25,000,000, and (b) to make two (2) term loans to the Borrowers in an aggregate principal amount of \$90,000,000, as such Revolving Credit and Term Loan Agreement is originally executed, or if varied, supplemented, amended or restated from time to time, as so varied, supplemented, amended or restated.

"Default" shall mean any Default under the Credit Agreement (as therein defined).

"Mortgage" shall have the meaning assigned to it in the recitals to this Mortgage Rider.

"Environmental Laws" shall have the meaning assigned to it in the Credit Agreement.

"Event of Default" shall mean any Event of Default under the Credit Agreement (as therein defined).

"Hazardous Substances" shall have the meaning assigned to it in §8.17(b) of the Credit Agreement.

"Letter of Credit" shall mean a standby or documentary letter of credit in such form as may be requested from time to time by the Borrowers and agreed to by the Mortgagee, all as further defined in §5.1 of the Credit Agreement.

"Letter of Credit Application" shall have the meaning assigned to it in the Credit Agreement.

"Loan Documents" shall mean the Credit Agreement, the Notes, the Letter of Credit Applications, the Letters of Credit, the Fee Letter (as defined in the Credit Agreement), the Subordination and Intercreditor Agreement (as defined in the Credit Agreement) and the other Security Documents (as defined in the Credit Agreement).

"Loans" shall mean the Revolving Credit Loans (as defined in the Credit Agreement) and the Term Loans (as defined in the Credit Agreement).

"Mortgage Instruments" shall have the meaning assigned to it in §3.11 hereof.

"Note(s)" shall mean the Revolving Credit Notes (as defined in the Credit Agreement), the Term Notes (as defined in the Credit Agreement) and the Collateral Notes (as defined in the Credit Agreement).

"Obligations" shall mean all indebtedness, obligations and liabilities of any of the Borrowers and their Subsidiaries (as defined in the Credit Agreement) to any of the Banks, the Mortgagee, and the Arranger, individually or collectively, existing or arising on the date of the Credit Agreement or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under the Credit Agreement or any of the other Loan Documents or in respect of any of the Loans made or Reimbursement Obligations incurred or any of the Notes, Letter of Credit Applications, Letters of Credit, or other instruments at any time evidencing any thereof or arising or incurred under any Rate Protection Agreements (as defined in the Credit Agreement) entered into by any of the Borrowers or their Subsidiaries with any of the Banks.

"Permitted Encumbrances" shall mean the encumbrances listed on Exhibit B to this Mortgage and incorporated herein by reference as if fully set out herein and any other encumbrances which are permitted on Mortgaged Property pursuant to §10.2 of the Credit Agreement.

"Premises" shall mean all that certain tract or parcel of land more particularly described and set forth in Exhibit A attached to this Mortgage and made a part hereof.

"Property" shall mean all of the described property, rights, privileges, interests and franchises more particularly described in paragraphs (a) through (i) below:

(a) the Premises;

(b) All and singular the tenements, hereditaments, easements, appurtenances, passages (and all waters, water courses and riparian rights, if any), pipes, conduits, electrical and other utility lines, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to the Premises, including any other claim at law or in equity as well as any after acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof, and all of the estate, right, title, claim or demand whatsoever of Mortgagee therein and in the streets, ways and areas adjacent thereto;

(c) All buildings and other improvements of every kind and description now or hereafter erected or placed on the Premises or any part thereof owned by Mortgagee, and all of the right, title and interest of Mortgagee in and to all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Premises, and all

fixtures, Building Service Equipment, and all renewals or replacements thereof or articles in substitution therefor; it being mutually agreed that all the aforesaid property owned or to be owned by Mortgagor and placed by it on the Premises and such buildings and improvements shall, so far as permitted by law, be deemed to be affixed thereto and covered by this Mortgage;

(d) All of the estate, right, title and interest now owned or hereafter acquired by Mortgagor in and to any and all sidewalks and alleys, and all strips and gores of land, adjacent to or in connection with the Premises;

(e) All present and future leases and licenses of the Premises or of space in the buildings and improvements now or hereafter erected on the Premises, and the rents, issues and profits payable thereunder subject, however, to the right of Mortgagor to receive and use the same and to exercise all rights and privileges as lessor under all of the leases until an Event of Default shall have occurred and be continuing under this Mortgage, together with all rights and privileges of the Mortgagor as lessor thereunder;

(f) All unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor pursuant to the provisions of this Mortgage;

(g) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including any proceeds of insurance and proceeds of condemnation awards;

(h) All transferable building service, building maintenance, construction, management and other similar agreements and contracts, written or oral, express or implied, now or hereafter entered into arising or in any manner related to the construction, design, improvement, use, operation, occupation, enjoyment, sale, conversion or other disposition (voluntary or involuntary) of the Premises, or the buildings and improvements now or hereafter located thereon, or any other interest of Mortgagor in said Premises, or any combination thereof, including all property management agreements, sales contracts, contract deposits, earnest money deposits, prepaid items and payments due and to become due thereunder, and further including all payment and performance bonds, construction guaranties, warranties, construction contracts, architects agreements, general contract agreements, design agreements, engineering agreements, technical service agreements, architectural plans and specifications, sewer and water and other utility agreements, permits, approvals, licenses, building permits, service contracts, advertising contracts, purchase orders and equipment leases; and

- (i) All proceeds and products of the foregoing of every type.

"Reimbursement Obligation" shall mean the Borrowers' obligation to reimburse the Mortgagee and the Banks on account of any drawing under any Letter of Credit as provided in §5.2 of the Credit Agreement.

"Release" shall have the meaning specified in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq. ("CERCLA") and the term "Disposal" (or "disposed") shall have the meaning specified in the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq. ("RCRA") and regulations promulgated thereunder; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply as of the effective date of such amendment and provided further, to the extent that the laws of the state where the Property is located establish a meaning for "release" or "disposal" which is broader than specified in either CERCLA or RCRA, such broader meaning shall apply.

"Mortgagor" shall mean the person or persons named at the beginning of this instrument as Mortgagor, and any subsequent owner or owners of the Property.

5. MISCELLANEOUS.

5.1. Notices. All notices, requests and other communications hereunder shall be made in writing and shall be given in the manner set forth in the Credit Agreement.

5.2. Successors and Assigns; Partial Invalidity. All the covenants and agreements of Mortgagor herein contained shall be binding upon Mortgagor and the successors and assigns of Mortgagor. In case any one or more of the provisions of this Mortgage may be found to be invalid, or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of any other provision thereof.

5.3. Future Advances; Revolving Credit Advances. This Mortgage shall secure, and constitute a lien upon the Property for, all future advances and revolving credit advances or readvances made by the Mortgagee or any of the Banks under the Credit Agreement at any time or times hereafter, whether or not any reference is made to this Mortgage at the time such advances are made, and all such sums shall be equally secured with and, to the extent permitted by law, have the same priority as the Obligations outstanding as of the date hereof. A portion of the indebtedness evidenced by the Notes is revolving credit indebtedness. The Credit Agreement provides that the principal sum of \$25,000,000 may be advanced, repaid and readvanced from time to time in accordance with

the terms and provisions of the Credit Agreement. Accordingly, the aggregate principal advances during the term of the Credit Agreement may exceed \$115,000,000; provided, however, at no time shall the aggregate outstanding principal balance exceed \$115,000,000, except for advances made to protect the lien of this Mortgage as hereinabove provided. Mortgagor agrees that if the outstanding balance of the Credit Agreement, principal and interest, is ever repaid to zero (despite any express prohibition to the contrary contained in the Credit Agreement), the lien and security interest of this Mortgage shall not be deemed released or extinguished by operation of law or implied intent of the parties. This Mortgage shall remain in full force and effect as to any further advances or readvances under the Credit Agreement made after any such zero balance until the Obligations are paid in full, all agreements to make further advances and readvances have been terminated and this Mortgage has been canceled of record. Mortgagor waives the operation of any applicable statute, case law or regulation having a contrary effect. The outstanding principal amount of the indebtedness under the Credit Agreement will bear interest at a variable rate or rates calculated in accordance with the terms and conditions of the Credit Agreement. The Credit Agreement is hereby incorporated into this Mortgage with regard to and to the extent of all references made to it in this Mortgage.

5.4. Modification. No change, amendment, modification, cancellation or discharge of this Mortgage, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

5.5. Captions. Section headings are inserted for convenience of reference only, do not form part of this Mortgage and shall be disregarded for purposes of the interpretation of the terms of this Mortgage.

5.6. Governing Law. The Credit Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, but this Mortgage and the perfection and enforcement of the lien and security interest hereunder (and any financing statement filed in connection herewith) shall be governed by and construed and enforced in accordance with the laws of the state in which the Property is situated.

5.7. Additional Security. If Mortgagee at any time holds additional security for any of the Obligations secured hereby, Mortgagee may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

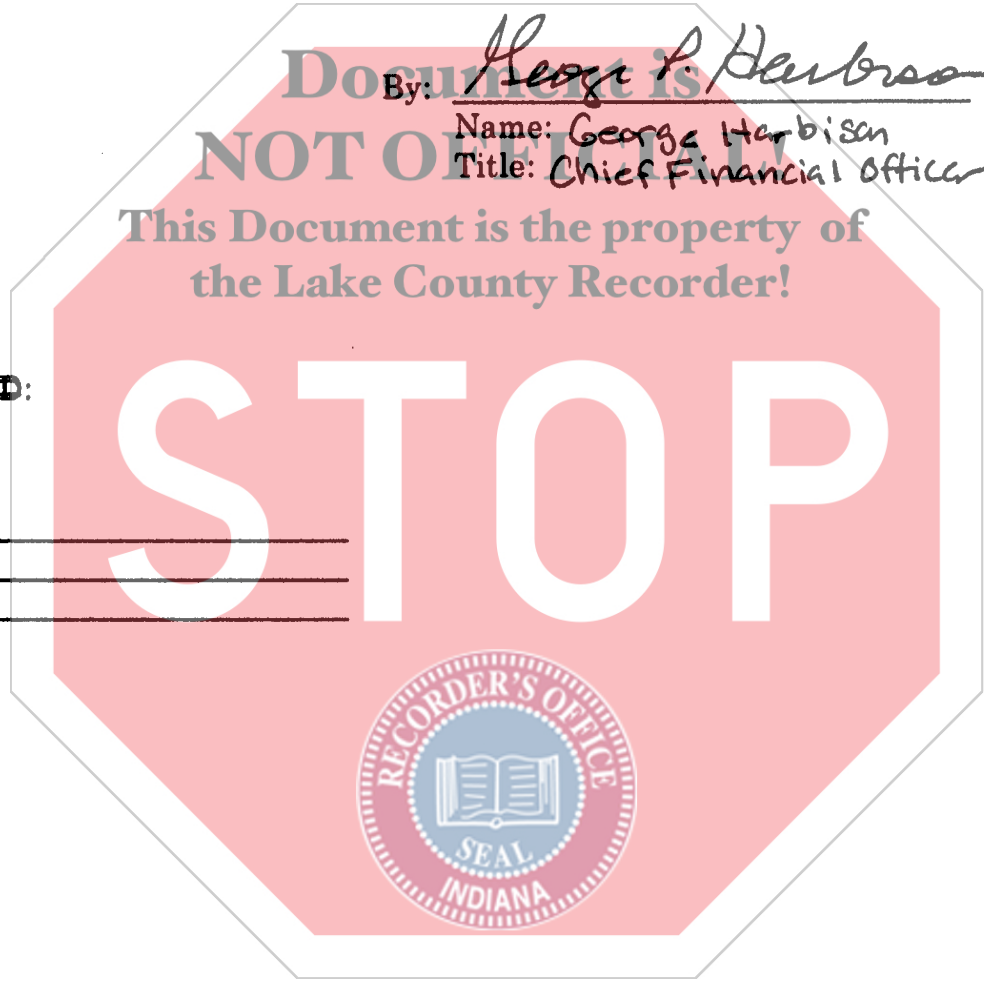
5.8. Request for Notice. Mortgagor hereby requests that a copy of any notice of a Default or an Event of Default and of any notice of sale

under this Mortgage be mailed to Mortgagor at the address of Mortgagor set forth in this Mortgage as required by applicable law.



IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage as of the ___ day of June, 2000.

MORTGAGOR: EL TORITO RESTAURANTS, INC.



~~ATTESTED:~~

Name: _____
Title: _____

STATE OF New York)
COUNTY OF New York) ss.

Before me, a Notary Public in and for said County and State, personally appeared George Harrison CEO, of El Torito Restaurants, Inc. who acknowledged the execution of the foregoing ~~mortgage~~ mortgage to be the duly authorized, free act and deed of said ~~partner or general partner of said corporation~~ ~~partner or general partner of said corporation~~, and who, being first duly sworn, affirmed that the statements contained therein are true.

Witness my hand and Notarial Seal June 28th, 2000.

GABRIELLE M. KISSANE
Notary Public, State of New York
No. 01K15047168
Qualified in Suffolk County
Commission Expires July 31, 20 01

Gabrielle M. Kissane
Notary Public
Printed Name: Gabrielle M. Kissane
My Commission expires: 7/31/01
County of residence: Suffolk

This instrument was prepared by Marcia Robinson, attorney at law.
When recorded, return to: Marcia Robinson

Marcia Robinson, ESQUIRE
BINGHAM DANA LLP
150 FEDERAL STREET
BOSTON, MASSACHUSETTS 02110
(617) 951-8000

