

1902

**ASSIGNMENT OF MORTGAGES AND OTHER COLLATERAL AS SECURITY**

THIS ASSIGNMENT OF MORTGAGES AND OTHER COLLATERAL AS SECURITY is executed by Cobb Investment Co., Inc., an Alabama corporation (the "Assignor") in favor of First Alabama Bank, an Alabama banking corporation (the "Assignee"), on January 29, 1992.

**RECITALS**

A. The Assignor and Henry H. Cobb, Jr. are, jointly and severally, justly indebted to the Assignee in the principal amount of \$6,000,000.00, as evidenced by that certain Commercial Loan Agreement dated January 29, 1992 in the principal amount of \$6,000,000.00 (hereinafter called the "Secured Note").

B. The Assignor is the owner and holder of a Promissory Note dated February 1, 1990 in the original principal amount of \$7,500,000.00 made by Destin Development Co., Inc., a Delaware corporation (hereinafter the "Maker") in favor of the Assignor. The original Promissory Note has been lost and a duplicate original has been executed and delivered by Maker to Assignor; and for all purposes herein constitutes one and the same instrument. The Promissory Note has been amended by that certain Amendment to Promissory Note dated January 17, 1992. The Promissory Note, as amended by the Amendment to Promissory Note, has been assigned by Assignor to Assignee as collateral for its obligations under the Secured Note by virtue of that certain Assignment of Note as Security dated January 29, 1992 (hereinafter the Promissory Note, as amended, is referred to as the "Assigned Note").

C. As security for the repayment of the Assigned Note, the Assignor did receive and have executed in its favor, or is a party to, the following documents:

(i) that certain Mortgage from Destin Development Co., Inc., a Delaware corporation, Julians' Outrigger, Inc., a Florida corporation and Destin Development Golf, Inc., a Florida corporation, in favor of Assignor dated the 10th day of May, 1990, recorded in the Office of the Clerk of Circuit Court, Okaloosa County, Florida in Official Records Book 1555, at Page 1575, which Mortgage has been amended by that certain Amendment to Mortgage dated January 17, 1992, to be recorded in said public records;

(ii) that certain Mortgage from Maker to Assignor made as of the 10th day of May, 1990 filed for record in the Probate Office of Shelby County, Alabama in Real Record Book 304, at Page 634, which Mortgage has been amended by that certain Amendment to Mortgage dated January 17, 1992, to be recorded in said Probate Office;

(iii) that certain Subordination Agreement executed by Destin Development Co., Inc., a Delaware corporation, and Destin Development Golf, Inc., a Florida corporation, in favor of Assignor as recorded in the Office of the Circuit Clerk of Okaloosa County, Florida in Official Records Book 1555, at Page 1587;

(iv) that certain Subordination, Non-Disturbance and Attornment Agreement entered into as of the 10th day of May, 1990 by and between Nighttown, Inc., a Florida corporation, and Assignor as recorded in the Office of the Circuit Clerk of Okaloosa County, Florida in Official Records Book 1555, at Page 1588;

(v) that certain Assignment of Leases, Rents and Profits made the 10th day of May, 1990 by and between Destin Development Co., Inc., a Delaware corporation, as Borrower, and Cobb Investment Co., Inc., as Lender, as recorded in the Office of the Circuit Clerk of Okaloosa County, Florida in Official Records Book 1555, at Page 1583;

(vi) those certain Hypothecation Security Agreements dated May, 1990, one of which was executed by Julian's Outrigger, Inc. and Destin Development Golf, Inc. in favor of Assignor, one of which was executed by Destin Development Golf, Inc. in favor of Assignor, and one of which was executed by Julian's Outrigger, Inc. in favor of Assignor;

(vii) that certain Assignment of Franchise Agreement dated May 10, 1990 by Destin Development Golf, Inc., a Florida corporation, to Assignor and the Acknowledgement of Assignment of Franchise as Collateral executed on July 3, 1990 by the Board of County Commissions of Okaloosa County, Florida, as recorded in the Office of the Circuit Clerk of Okaloosa County, Florida in Official Records Book 1564, at Page 1798;

(viii) Security Agreement (General) dated May 10, 1990 executed by Destin Development Co., Inc. and Destin Development Golf, Inc. d/b/a Island Golf Center, as Debtor, in favor of Assignor, as Secured Party, pertaining to that certain Offer to Purchase Franchise dated the 1st day of March, 1983, recorded in Official Records Book 1324, at Page 1440 and amended in Official Records Book 1324, at Page 1448, as

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evidenced by that certain UCC-1 filed for record on May 22, 1990 in the Department of State, Florida, having file number 90 0000131251, and the Clerk of Circuit Court of Okaloosa County, Florida in Official Records Book 1555, at Page 1585;

(ix) Release Agreement executed on May 10, 1990 by and among Assignor, Destin Development Co., Inc., Julian's Outrigger, Inc., and Destin Development Golf, Inc; and

(x) all other documents, instruments and agreements executed and delivered by Destin Development Co., Inc. and/or others in favor of the Assignor in connection with the loan evidenced by the Assigned Note.

Hereinafter, all of the foregoing (i)-(x), both inclusive, are referred to as the "Collateral".

D. The Assignor has agreed to pledge and assign to the Assignee all of the Assignor's right, title and interest in the Collateral described above as security for the Secured Note and all other indebtedness, obligations and liabilities of the Assignor to the Assignee, whether now existing or hereafter incurred, contracted for or arising.

#### AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration and as an inducement to Assignee to make the loan evidenced by the Secured Note, the receipt and sufficiency of which are hereby acknowledged by the Assignor, the Assignor and Assignee hereby agree as follows:

1. Granting Clause. To secure (a) the payment of all indebtedness evidenced by the Secured Note (including without limitation, principal, interest, cost and charges); (b) all other indebtedness, obligations and liabilities of the Assignor to the Assignee of every kind and character whatsoever, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted for or arising, joint or several, liquidated or unliquidated, whether evidenced by an instrument or agreement or not so evidenced, and whether incurred as drawer, maker, endorser, surety or guarantor or otherwise, in every extension and renewal of the same; and (c) the compliance with all of the stipulations contained in the Secured Note and the Assignment Of Note As Security (hereinafter (a), (b) and (c) the next above being collectively called the "Indebtedness") the Assignor does hereby negotiate, pledge, transfer, assign, set over and convey unto the Assignee, its successors and assigns, and does hereby grant to the Assignee, its successors and assigns, all of the Assignor's rights, title and interest in and to the Collateral, in each and every instrument constituting or forming a part of the Collateral and does hereby grant unto the Assignor a security interest in the Collateral and all proceeds thereof. It is the intent hereof

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that the full benefit of all powers, rights and remedies expressly or impliedly contained therein and conferred thereby upon the Assignor are hereby transferred to Assignee.

2. Warranties, Representations and Covenants. The Assignor hereby warrants, represents and covenants to the Assignee as follows: that the Assigned Note has been duly authorized, executed and delivered by the Maker and constitutes the legal, valid and binding obligations of the Maker, enforceable against the Maker in accordance with its terms; that the Assignor has good title to the Assigned Note, free and clear of any assignment, security interest, pledge, lien, charge or other encumbrance and has the full and unqualified right to assign and pledge its rights and interests in the Collateral as herein provided; that the Assignor has not heretofore assigned, transferred, or encumbered, and, so long as any of the Indebtedness shall remain unpaid and outstanding, the Assignor will not assign, transfer or encumber its rights and interest with respect to the Collateral; that the Assignor will not, without the prior written consent of the Assignee, request or receive prepayment of any amount due under any Assigned Note or waive or forgive any indebtedness evidenced by the Assigned Note or extend the maturity thereof; that the Assignor has not performed any act, or executed any instrument, and will not perform any act or execute any instrument, which might prevent or hinder the Assignee from obtaining and enjoying, fully and completely, all of the benefits, rights and privileges conferred, or sought to be conferred, upon the Assignee by this assignment; and that there are not any defaults now existing, or which with notice or lapse of time, or both, will be existing, under the Secured Note, or the Assigned Note.

3. Events of Default. Each of the following shall constitute an event of default (hereafter called an "Event of Default") hereunder and under the Secured Note: (a) the violation of or default in the observance or performance of any term, warranty, representation or agreement contained herein or in any other document, instrument or agreement evidencing, securing, or executed in connection with the Indebtedness, or any part thereof (hereinafter called a "Security Document"); (b) the default by any maker, endorser, surety or guarantor of the Secured Note (collectively hereinafter called the "Obligors") in the due payment of any amount payment with respect to the Secured Note; (c) default in the due payment of any other part of the Indebtedness; (d) the misrepresentation or distortion by any Obligor in any statement, report, certification or representation made to the Assignee at any time of any material fact; (e) the occurrence of any event which will or could result in the acceleration of the maturity of any indebtedness of any Obligor other than the Indebtedness; (f) default in the due payment of any sum payable with respect to the Assigned Note; (g) the occurrence of any event of default under the Assigned Note; (h) the loss, theft, damage, sale, seizure, attachment or encumbrance of any material portion of the collateral described in any Security Document; (i) the insolvency or death of any Obligor, or if any Obligor is a corporation, association or partnership, the dissolution or liquidation thereof; (j) if any Obligor fails to pay such Obligor's debts generally as they become due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement, wage-earner's plan or

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otherwise) is filed by or against any Obligor, or if any Obligor applies for the benefits of, or take advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, creditors; (k) the business failure of any Obligor; (l) the entry of a judgement or the issuance of a writ of attachment or garnishment against any Obligor; (m) the occurrence of any default or event of default as set forth in any Security Document or any note evidencing indebtedness owed by any Obligor to the Assignee; (n) the failure of Assignor to furnish to Assignee a true and complete copy of the tax return of each of the Assignor and Destin Development Co., Inc. within thirty (30) days after each is filed; (o) the failure of Assignor to provide to Assignee by March 1 of each year annual cash flow statements on all income producing property owned by Assignor and Destin Development Co., Inc.; (p) the failure of Henry H. Cobb, Jr. to furnish to Assignee personal financial statements in form satisfactory to Assignee on an annual basis on or before July 30th of each calendar year; (q) a 30% or greater decrease in the net worth of Henry H. Cobb, Jr. (other than as a result of his death) from that reflected on his financial statement dated July 1, 1991 furnished by him to the Assignee; or (r) the failure of Assignor to apply as a prepayment on the Secured Note the proceeds of the sale or redemption of any stock or securities owned now or hereafter by Assignor unless the proceeds are reinvested in other similar type stock or securities.

4. Assignee's Rights Upon Event of Default. Upon the occurrence of an Event of Default hereunder the Assignee may, at its sole option, without demand or notice thereof to the Assignor, (a) declare all or any part of the unpaid balance of the Indebtedness immediately due and payable, whereupon all such Indebtedness shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Assignor and Assignee may immediately enforce payment of such amounts; (b) receive all payments of principal and interest payable in respect of the Assigned Note and apply all such sums against the unpaid balance of the Indebtedness; (c) hold all payments on and proceeds of the Assigned Note in a non-interest bearing reserve fund as security for any of the Indebtedness that is not yet due and payable; and (d) exercise all other rights, powers and remedies vested in the Assignee by this Assignment, the Secured Note, the Assignment of Mortgages and Other Collateral as Security and any other rights, powers and remedies as may be now or hereafter existing at law or in equity, by statute or otherwise, for the protection and enforcement of the Assignee's rights and interests hereunder. The Assignor also waives any and all rights the Assignor may have to a hearing before any judicial authority prior to the exercise by the Assignee of any of its rights under this Assignment, the Secured Note, any of the other Security Documents and applicable law.

Upon the occurrence of an Event of Default, or any time thereafter, this Assignment shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due real estate mortgages, or, at the option of the Lender, to sell the Assigned Note and Mortgages under the provisions of the Alabama Uniform Commercial Code, including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, the Assigned Note and Mortgages in any manner to the fullest extent authorized

or permitted under the Alabama Uniform Commercial Code after default hereunder. To the extent permitted by law, the Borrower expressly waives any notice of sale or any other disposition of the Assigned Note and Mortgages and any rights or remedies of the Lender with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Assigned Note and Mortgages or to the exercise of any other right or remedy of the Lender existing after default.

5. Foreclosure of Collateral. In the event of any default in the observance or performance of the conditions or covenants of any of the Collateral hereby assigned, whether before or after an Event of Default, the Assignee may take and is hereby granted any remedy by foreclosure or otherwise by the Collateral conferred for the recovery of the debt and interest thereby secured, or to enforce or realize the security therefor, but it shall not be incumbent on Assignee to do so.

6. Attorney-in-fact. The Assignor hereby appoints and constitutes the Assignee, or any other person whom the Assignee may designate, as the Assignor's attorney-in-fact to exercise at any time, at the Assignor's sole cost and expense, all or any of the following powers which, being coupled with an interest, shall be irrevocable until the Indebtedness shall have been paid in full: (a) to receive, take, endorse, assign and deliver in the Assignor's name or in the name of the Assignee, or both, the Assigned Note and any and all checks, notes, drafts and other instruments that may come into the hands of the Assignee with respect to the Assigned Note; (b) to direct the Maker to make all payments on account of the indebtedness evidenced by the Assigned Note directly to the Assignee in the name of the Assignee; (c) to take or to bring, in the name of the Assignor or in the name of the Assignee, or both, all steps, actions, suits or proceedings deemed by the Assignee necessary or desirable to collect the sums payable under the Assigned Note; and (d) to sell (with or without recourse), discount or otherwise negotiate or dispose of the Assigned Note and apply the proceeds thereof to the balance of the Indebtedness.

7. Termination. This instrument shall remain in full force and effect until terminated in writing by a duly authorized officer of the Assignee, and this instrument shall not be terminated by payment in full of the Indebtedness outstanding at one time. Assignor agrees that all of the Indebtedness (including, without limitation, the Secured Note and all other obligations, liabilities and indebtedness of the Assignor to the Assignee, whether now existing or hereafter incurred or arising) shall be secured hereby until this instrument shall be terminated in writing.

8. Additional Instruments. The Assignor agrees to execute and deliver from time to time such other or further instrument or instruments of assignment, and related financing statements, as may be reasonably necessary or desirable, fully to confer upon the Assignee the rights conferred or intended to be conferred upon the Assignee by this instrument.

9. Costs. The Assignor agrees to reimburse the Assignee promptly for any and all costs, expenses and reasonable attorney's fees incurred by the Assignee in connection

with (a) the exercise by or for the Assignee of any of the benefits, rights and privileges herein conferred upon the Assignee; (b) the perfection or protection of the benefits, rights and interests herein conveyed and granted to the Assignee; and (c) the collection of the Indebtedness hereby secured.

10. Payment of Assigned Note by Maker. The Assignor hereby release and waives any claim against the Maker for sums paid to the Assignee in accordance herewith, and relieves the Maker from any further obligation or liability with respect to any such sums due under the Assigned Note paid to the Assignee.

11. Assignment as Security. The parties hereto agree that this Assignment secures an indebtedness and is not a sale of accounts, contract rights or chattel paper and that the Assignor shall be liable for any deficiency with respect to the Indebtedness.

12. Non-Liability of Assignee. Assignee has no liability or obligation whatsoever or howsoever in connection with the Collateral or any improvements associated with the Collateral, and may, but is not obligated to, inspect such Collateral or any improvements associated therewith. Assignee shall in no way be liable to Assignor for the performance or default of the Maker or any other party to any of the Collateral or any improvements associated therewith.

13. Non-waiver. No failure or delay on the part of the Assignee in exercising any right, power or privilege hereunder or under the Secured Note shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. No modification, amendment or waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the Assignee and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

14. Successors and Assigns: etc. This Assignment, and all of the terms and provisions hereof, shall inure to the benefit of the Assignee and its successors and assigns, and shall be binding upon the Assignor, its, his or their heirs, administrators, executors, successors and assigns. This Assignment shall be governed by the laws of the State of Alabama.

15. Severability. Any provision or provisions of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

16. Counterparts. This Assignment has been executed in four (4) counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, this instrument has been executed or caused to be executed, under the seal of the undersigned on the date first written above.

COBB INVESTMENT CO., INC.,  
an Alabama corporation

WITNESS:

Barry T. Loyal  
Barry T. Loyal  
Sarah R. Tusing  
Sarah R. Tusing

BY: Henry H. Cobb, Jr.  
Its President  
Henry H. Cobb, Jr., President  
(Corporate Seal)

STATE OF ALABAMA )  
COUNTY OF MONTGOMERY )

I the undersigned, a Notary Public in and for said State at Large, do hereby certify that Henry H. Cobb, Jr., whose name as President of Cobb Investment Co., Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this 29<sup>th</sup> day of January, 1992.

Jeffrey W. Blitz  
Notary Public Jeffrey W. Blitz  
My Commission Expires: 9-14-92

(SEAL)

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NOTARY PUBLIC  
I CERTIFY THIS  
INSTRUMENT WAS

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JUDGE OF TRUTH

1. Deed Tax	
2. Mig. Tax	
3. Recording Fee	\$ 20.00
4. Indexing Fee	\$ 3.00
5. No. Tax Fee	\$
6. Certificate Fee	\$ 1.00
Total	\$ 24.00

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