



Doc#: 1123741029 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/25/2011 02:13 PM Pg: 1 of 5

**PREPARED BY AND
WHEN RECORDED MAIL TO:**

Locke Lord Bissell & Liddell LLP
111 South Wacker Drive
Chicago, Illinois 60606
Attention: Samuel B. Stempel, Esq.
Loan Number: 706108575
Deal Name: Newcastle Retail Portfolio

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ASSIGNMENT OF LEASES AND RENTS- FIRST
(Paradise Cliffs LLC)

THIS ASSIGNMENT OF LEASES AND RENTS – FIRST (this “Assignment”) is made as of the 18 day of August, 2011, by **PARADISE CLIFFS LLC**, an Illinois limited liability company, having its principal office and place of business at c/o Newcastle Limited LLC, 150 North Michigan Avenue, Suite 3610, Chicago Illinois 60601 (“Borrower”), to **THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**, a New Jersey corporation, having an office at c/o Prudential Asset Resources, Inc., 2100 Ross Avenue, Suite 2500, Dallas, Texas 75201, Attention: Asset Management Department; Reference Loan No. 706103575 (“Lender”).

RECITALS:

A. Borrower is the sole owner and holder of (a) the premises described in **Exhibit A** attached hereto and incorporated herein (“Property”) and (b) the landlord’s interest under the Leases (as defined in the Instrument [defined below]), including, without limitation, the applicable leases described in Exhibit E of the Loan Agreement, which is incorporated into this Assignment by reference (the “Specific Leases”);

B. Borrower and one or more affiliates of Borrower (the “Other Borrowers”) and with the Borrower, collectively, “Borrowers”) have entered into that certain Loan Agreement with Lender dated of even date herewith (as the same may be amended from time to time, the “Loan Agreement”) (capitalized terms used without definition shall have the meanings ascribed to them in the Loan Agreement or in that certain Mortgage and Security Agreement – First made by Borrower to Lender as of the date of this Assignment with respect to the Property (the “Instrument”), as applicable);

C. Lender has made certain loans to Borrowers in the aggregate principal sum of Twenty Million and No/100 Dollars (\$20,000,000.00) (collectively, the “Loans”), including, without limitation, that certain loan from Lender to Borrower in the amount of Three Million Three Hundred Fifty Thousand and No/100 Dollars (\$3,350,000.00) (the “Loan”). The Loans are evidenced by (x) the Note (as defined in the Instrument) in the original principal amount of \$3,350,000.00 with respect to the Loan, and (y) the Other Notes (as defined in the Instrument) with respect to the Loans made to the Other Borrowers, and secured by, among other things, (i) the Property, and (ii) certain other properties, as identified from time to time on Exhibit B to the Loan Agreement, owned by one or more of Borrowers; and

D. Lender was willing to make the Loan to Borrower only if Borrower assigned the Leases and Rents (as defined in the Instrument) to Lender in the manner provided below to secure payment of the Obligations (as defined in the Loan Agreement).

Prudential Loan No. 706108575
Newcastle Retail Portfolio - Paradise Cliffs
Assignment of Leases and Rents - First

Box 400-CTCC

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IN CONSIDERATION of the principal sum of the Note and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to further secure the payment of the Obligations, and as an essential and integral part of the security therefor, Borrower agrees as follows:

1. Assignment. Borrower irrevocably, absolutely and unconditionally assigns, transfers, and sets over to Lender, its successors and assigns, all of the right, title, interest, and estates that Borrower may now or later have in, to and under (a) the Leases (which term shall also include the Specific Leases and all guaranties thereof) now or hereafter entered into; (b) the Rents; (c) all proceeds from the cancellation, surrender, sale or other disposition of the Leases, including, but not limited to, any Recovery (as defined in the Loan Agreement); (d) the right to collect and receive all the Rents; and (e) the right to enforce and exercise, whether at law or in equity or by any other means, all terms and conditions of the Leases. This Assignment is intended by Borrower and Lender to constitute a present, absolute assignment and not a collateral assignment for additional security only. Upon full payment and satisfaction of the Obligations and written request by Borrower, Lender shall transfer, set over, and assign to Borrower all right, title, and interest of Lender in, to, and under the Leases and the Rents.
2. Borrower's License. Until an Event of Default (as defined in the Loan Agreement) occurs, Borrower shall have a revocable license (the "License") from Lender to exercise all rights extended to the landlord under the Leases. Borrower shall hold the Rents, or an amount sufficient to discharge all current sums due on the Obligations, in trust for use in the payment of the Obligations. Following an Event of Default, whether or not legal proceedings have commenced and without regard to waste, adequacy of security for the Obligations or the solvency of Borrower, the License shall automatically terminate without notice by Lender (any such notice being expressly waived by Borrower). Upon such termination, Borrower shall deliver to Lender within seven (7) days after written notice from Lender (a) all Rents (including prepaid Rents) held or collected by Borrower from and after the date of the Event of Default, (b) all security or other deposits paid pursuant to the Leases, and (c) all previously paid charges for services, facilities or escalations to the extent allocable to any period after the Event of Default. Borrower agrees and stipulates that upon execution of this Assignment, Borrower's only interest in the Leases or Rents is as a licensee revocable upon an Event of Default.
3. Lender as Creditor of Tenant. Upon execution of this Assignment, Lender, and not Borrower, shall be the creditor of any Tenant in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting any such Tenant; provided, however, that Borrower shall be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Notwithstanding the foregoing, Lender shall have the right, but not the obligation, to file such claims instead of Borrower and if Lender does file a claim, Borrower agrees that Lender (a) is entitled to all distributions on such claim to the exclusion of Borrower and (b) has the exclusive right to vote such claim and otherwise to participate in the administration of the estate in connection with such claim. Lender shall have the option to apply any monies received by it as such creditor to the Obligations in the order set forth in the Documents. If a petition is filed under the Bankruptcy Code by or against Borrower, and Borrower, as landlord under any Lease, decides to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender at least ten (10) days' prior written notice of the date when Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender may, but shall not be obligated to, send Borrower within such ten-day period a written notice stating that (a) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (b) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender sends such notice, Borrower shall not reject the Lease provided Lender complies with clause (b) of the preceding sentence.

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4. Notice to Tenant of an Event of Default. Upon the occurrence of an Event of Default and written demand sent by Lender to any of the Tenants (in each case, a "**Rent Direction Letter**"), Borrower hereby irrevocably authorizes each Tenant to (a) pay all Rents to Lender and (b) rely upon any such Rent Direction Letter from Lender without any obligation to inquire as to the actual existence of the Event of Default, notwithstanding any claim of Borrower to the contrary. Borrower shall have no claim against any Tenant for any Rents paid by Tenant to Lender pursuant to any Rent Direction Letter.
5. Indemnification of Lender. Borrower hereby agrees to indemnify and hold Lender harmless from any and all Losses that Lender may incur under the Leases or by reason of this Assignment, except for Losses incurred as a direct result of Lender's willful misconduct or gross negligence. Nothing in this Assignment shall be construed to bind Lender to the performance of any of the terms of the Leases or to otherwise impose any liability on Lender including, without limitation, any liability under covenants of quiet enjoyment in the Leases in the event that any Tenant shall have been joined as party defendant in any action to foreclose the Instrument and shall have been barred thereby of all right, title, interest, and equity of redemption in the premises. This Assignment imposes no liability upon Lender for the operation and maintenance of the Property or for carrying out the terms of any Lease before Lender has entered and taken actual possession and complete control of all operations of the Property. Any Losses incurred by Lender, by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Lender's request, be reimbursed by Borrower. Such reimbursement shall include interest at the Default Rate from the date of demand by Lender and any and all Costs incurred by Lender. Lender may, upon entry and taking of possession, collect the Rents and apply them to reimbursement for any such items.
6. No Merger. Each Lease shall remain in full force and effect, notwithstanding any merger of Borrower's and Tenant's interest thereunder.
7. Limited Recourse Liability. The terms and conditions of Sections 8.01 and 8.02 of the Loan Agreement are hereby incorporated herein by reference and this Assignment is subject to those terms and conditions.
8. Documents Incorporated. The terms and conditions of the Junior Documents are incorporated into this Assignment as if fully set forth in this Assignment.
9. WAIVER OF TRIAL BY JURY. EACH OF BORROWER AND LENDER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY EITHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE DOCUMENTS, OR ANY ALLEGED ACTS OR OMISSIONS OF LENDER OR BORROWER IN CONNECTION THEREWITH.
10. Subordination of First Priority Assignment. This Assignment shall be in all respects subject and subordinate to the Assignment of Leases and Rents – First of even date herewith by Borrower in favor of Lender.

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