

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

V.

Defendants.

Magistrate Judge Susan E. Cox

N. Neville Reid, not individually, but solely as the court-appointed receiver (the “Receiver”) for the Estate of Defendant Northridge Holdings, Ltd. and its related entities and affiliates as more particularly set forth in the Receivership Order (as defined herein) (collectively, the “Receivership Defendants,” and the assets of such entities as more particularly set forth therein, the “Receivership Assets,” and such estate the “Receivership Estate” and such administration, the “Receivership”), and pursuant to the powers vested in him by the *Order Appointing Receiver* entered by the Court on September 12, 2019 [Dkt. No. 22] (the “Receivership Order”), hereby moves for approval of (a) the real estate commission rate to be charged by CBRE, Inc. (“CBRE”) upon sale of the Timber Lake Property (defined below) and (b) sales procedures to be employed in connection with the sale of the Timber Lake Property (defined below). In support of the Motion, the Receiver states as follows:

INTRODUCTION

1. As set forth in prior motions, the Receivership Assets include a 576 unit apartment complex located at 1200 Kings Circle, West Chicago, Illinois 60185 (the “Timber Lake Property”). The Timber Lake Property is currently 85-90% leased, and the Receiver’s property manager, 33 Realty, is collecting the rents and maintaining the Timber Lake Property on behalf of the Receivership.

2. The Receiver, with the assistance of 33 Realty and CBRE, has prepared a real estate marketing and sale process for the Timber Lake Property that is robust, efficient and intended to maximize the value of the Receivership Estate for the benefit of all stakeholders (collectively, the “Sales Procedures”).¹ As described herein, the Sales Procedures will be carefully run in accordance with the Receivership Order and applicable law. And, in no case will the Receiver close on a proposed sale of the Timber Lake Property absent further order of the Court.

3. By this Motion, the Receiver seeks approval of: (a) the commission rate to be charged by CBRE for the marketing and sale of the Timber Lake Property and authority to pay this commission at the closing of the Timber Lake Property and (b) the Sales Procedures (as set forth below).

AUTHORITY

4. Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, the Securities and Exchange Commission (the “SEC”) sought and obtained the appointment of a Receiver pursuant to the Receivership Order. Under the Receivership Order, the Receiver

¹ The Timber Lake Property is believed to be worth in excess of \$50 million and the currently mortgage balance on the Timber Lake Property is approximately \$22 million (i.e. there is likely significant equity in the property).

has authority in equity, as well as under 28 U.S.C. §§ 754, 959, and 1692, and Fed. R. Civ. P. 66, and was given broad powers to investigate and safeguard the assets of the Receivership Defendants. Among other powers, the Receiver is authorized to retain a broker, otherwise engage a broker or take “all necessary and reasonable actions” to cause the sale or lease of all real property in the Receivership Estate. *See Receivership Order*, ¶¶ 8K, 38, 50. Although the Receivership Order and relevant law may authorize the Receiver to retain CBRE as broker for the Timber Lake Property and utilize the Sales Procedures to sell the Timber Lake Property and seek further order of the Court in order to close such a sale, the Receiver presently seeks approval of the Sales Procedures out of abundance of caution and in the interest of full disclosure to the Court and interested parties.

RELEVANT BACKGROUND

5. Maximizing the value of the Receivership Defendants’ real estate assets is a major objective of the Receivership. With the assistance of 33 Realty and CBRE, the Receiver has prepared the Timber Lake Property to be marketed for sale. This effort included updating the rent roll, getting the building’s leases and finances on a generally acceptable property management software system, creating a financial pro forma of the Timber Lake Property, obtaining a Phase I environmental study, obtaining bids on major deferred capital expenditures, creating a data room and identifying comparable sales. CBRE is producing marketing materials (the “Marketing Materials”) that will be distributed to potential buyers.

6. To identify a broker for the Bartlett Property, the Receiver solicited proposals from five (5) real estate brokerage firms located in the greater Chicagoland area. For the reasons set forth further below, the Receiver selected CBRE’s proposal.

7. Any prior offers and requests for information related to the Timber Lake Property

have been or will be communicated to CBRE and will be fully considered and pursued by CBRE.

RATES TO BE CHARGED BY CBRE

8. The listing agreement between the Receiver and Essex is attached hereto as **Exhibit A** and is incorporated herein.

9. The proposed commission rate to be charged by CBRE if there is no cooperating broker is .45% of the sale price for the Timber Lake Property up to \$60 million and 3% of the sale price for the Timber Lake Property in excess of \$60 million.

10. The proposed commission rate to be charged by CBRE if there is a cooperating broker is .55% of the sale price for the Timber Lake Property up to \$60 million and 3% of the sale price for the Timber Lake Property in excess of \$60 million. If there is a cooperating broker, the commission will be split 60% to CBRE and 40% to the cooperating broker.

11. CBRE shall also be entitled to be reimbursed for actual out-of-pocket marketing costs incurred up to \$5,000.

12. The Receiver selected CBRE as broker for the Timber Lake Property because (among other reasons): (a) CBRE's rate was as low (or was about the same) as other proposals when taking into account all cost components; and (b) CBRE demonstrated the most experience with respect to marketing and selling multi-family housing at this price point in the greater Chicagoland area. In fact, CBRE's broker team for this matter is the same that sold the Timber Lake Property to Mr. Mueller. As a result, CBRE is intimately familiar with the Timber Lake Property. Put simply, CBRE's proposed commission rate is fair, reasonable, appropriate and in the best interest of the efficient and economical administration of this Receivership. Further, CBRE does not hold or represent an interest materially adverse to the interests of the

receivership.

PROPOSED SALES PROCEDURES

13. Pursuant to the Sales Procedures, CBRE plans to market the Timber Lake Property on a local and national basis, exposing such property to as much of the market as possible. The Receiver seeks to sell the Timber Lake Property on an “as is where is” basis with no representations or warranties of any kind (other than delivering good free and clear title to the property) by quitclaim deed.

14. The proposed Sales Procedures are as follows:

a. **Pre-Marketing Phase (approximately 30 days):** CBRE, with the assistance of the Receiver and 33 Realty, will finalize the Marketing Materials, compile anticipated due diligence information, finalize confidentiality agreements for potential purchasers to sign in order to access due diligence materials, complete financial underwriting and outline real time financing options for potential purchasers.

b. **Marketing Phase (approximately 45 days):**² As of mid-March 2020, CBRE will send out marketing materials through the following channels: (a) an extensive database of multifamily property owners and buyers in the greater Chicagoland area (such owners and buyers are local and national) that is maintained by CBRE; (b) Co-Star, and Loopnet, which are all national databases of potential buyers and brokers; and (c) CBRE’s website. During this period, CBRE will also call high probability buyers, distribute a press release to major real estate publications around the country and will place notice of sale in the Chicago Tribune and Crain’s.

² The Receiver seeks to reserve the right to extend the marketing phase and call for offer date in the event of unforeseen circumstances (e.g. corona virus outbreak in U.S., etc.). All deadlines (and any changes to same) will be clearly communicated to all parties that have expressed interest in the Timber Lake Property.

c. **Call for Offers:** CBRE currently anticipates setting an offer deadline of after the marketing phase is complete (approximately mid-May). CBRE and the Receiver will review all offers (including any prior offers and any revisions to same) and determine which bids will be invited to participate in a final round of bidding.

d. **Best and Final:** CBRE currently anticipates setting a best and final offer deadline ten to fifteen business days of the offer deadline. As part of the best and final round, potential purchasers will be asked to provide a mark-up of the Receiver's draft Purchase and Sale Agreement so that all terms of the offers can be easily compared.

The Receiver, with the assistance of CBRE, will then select the highest and best offer and seek Court approval of same. The Receiver, with the assistance of CBRE, will use the following criteria to select the highest and best offer: (a) price; (b) contingencies (financial, due diligence, etc.) or lack thereof; (c) ability to close (e.g. evidence of financial *bona fides*); (d) terms related to good faith deposit (e.g. amount, "hard" deposit); and (e) any other terms which the Receiver determines in his reasonable judgment are in the best interests of the Receivership Estate.

BEST INTERESTS OF RECEIVERSHIP ESTATE

15. A receiver's proposed sale of assets in an equity receivership is generally governed by 28 U.S.C. § 2001. Sale of property in the possession of a receiver must generally be conducted by public sale at the courthouse of the county, parish or city where the property is located or on the premises of the property. 28 U.S.C. § 2001(a). Courts may also determine in equity receiverships that the best interests of the estate are served by permitting private sales, with adequate notice to all interested parties, but requires three independent appraisals. 28 U.S.C. § 2001(b). 28 U.S.C. § 2004, however, allows the Court to deviate from section 2001 and "order otherwise." *See* 28 U.S.C. 2004 ("Any personalty sold under any order or decree of any court of

the United States shall be sold in accordance with 28 U.S.C. § 2001, **unless the court orders otherwise.**”) (emphasis added). Courts throughout the country have exercised their discretion in permitting receivers to enter into private asset sales, outside of the requirements of sections 2001 and 2004. See *FTC v. E.M. Sys. & Serv., LLC*, 2016 WL 11110381, *3 (M.D. Fla. 2016) (citing to *SEC v. Nadel*, No. 8:09-cv-87-T-26TBM, Dkt. No. 1050 (M.D. Fla. Aug. 13, 2013) (waiving requirements of three (3) independent appraisals and publication of terms of sale)); *SEC v. Kirkland*, No. 6:06-cv-183-Orl-28KRS, 2008 WL 4264532, at *3 (M.D. Fla. Sept. 12, 2008) (permitting sale of motorcycle based on highest of six (6) offers received). Additionally, District Courts have broad power and wide discretion in determining relief in an equity receivership. *SEC v. Elliott*, 953 F. 2d 1560, 1566 (11th Cir. 1992); see also *A.I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964) (once the equitable jurisdiction of a district court has been properly invoked, the Court may use all of its equitable remedies to effectuate the statutory purpose, including ordering non-injunctive relief in a variety of forms). The Court’s wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F. 2d at 1566. The relief sought by the Receiver in this Motion falls squarely within the Court’s discretionary powers.

16. Here, the Receiver seeks approval from the Court to deviate from the requirements of section 2001 (i.e. not require three appraisals) and sell the Timber Lake Property in a manner consistent with the process multifamily properties in Illinois are normally marketed and sold. The proposed Sales Procedures have been designed to expose the Timber Lake Property to the market (local and national) in order to obtain the highest and best offer for the Timber Lake Property. The Sales Procedures are the product of a joint effort between the Receiver and CBRE and are based on their collective experience in maximizing the value of real

estate assets such as the Timber Lake Property. The Receiver respectfully submits that the Court should approve the Sales Procedures because they are in the best interests of the Receivership Estate and are commercially reasonable. Lastly, the Sales Procedures contemplate that the Receiver will return to the Court and file a motion seeking approval of the sale (the “Sale Motion”). The Sale Motion will describe, among other things: (a) the marketing process conducted (i.e. confirm the Sales Procedures were followed); (b) disclose the number of offers received; (c) describe the Receiver’s consideration of offers generally and set forth the reasons the Receiver chose the “winning” proposal as highest and best; and (d) attach the proposed purchase and sale agreement. The Sale Motion will also seek entry of an order authorizing the Receiver, among other things, to convey title to the Timber Lake Property free and clear of all claims, liens and encumbrances and to pay certain costs at closing (i.e. payoff the existing mortgage and any associated costs and fees, CBRE’s real estate commission, etc.).

DISCLOSURE OF PRIOR RELATIONSHIP

17. Receiver’s counsel, Fox Swibel, has in the past represented CBRE as court-appointed receiver in other receivership matters in the past (none of which were SEC-related matters). Fox Swibel does not currently represent CBRE in any capacity. Moreover, Fox Swibel has never represented and has never had any dealings with the members of CBRE’s broker team that will be marketing the Timber Lake Property.

NO OBJECTION BY THE SEC

18. Counsel for the SEC has indicated that the SEC does not object to the relief requested herein.

WHEREFORE, the Receiver respectfully requests that the Court (a) grant this Motion and enter an order approving same and (b) grant all other or further relief that is just and proper.

Dated: February 27, 2020

N. Neville Reid, Receiver

By: /s/ Ryan T. Schultz

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EXHIBIT A

[Listing Agreement]



EXCLUSIVE SALES LISTING AGREEMENT

THIS EXCLUSIVE SALES LISTING AGREEMENT ("Agreement") is entered into as of the 27th day of February, 2020, by and between **CBRE Inc.**, a Delaware corporation with an office located at 321 North Clark Street ("CBRE") and N. Neville Reid, not individually but solely as the Court-appointed receiver in the case SEC vs. Northridge Holdings Ltd. et. al., Case No. 19-cv-05957 (the "Receiver" and such case the "Receivership Case" or the "Case"), and the receivership estate (the "Receivership Estate" or "Estate") (collectively, the Receiver and such Estate "Seller").

RECITALS

WHEREAS, Seller is the court-appointed receiver for the entity Timber Lake Apartments, LLC ("Owner") which in turn owns title to certain land, buildings and improvements commonly known as Timber Lake Apartments located at 1200 Kings Circle, West Chicago, IL 60185 (the "Property"); and

WHEREAS, Seller desires to engage CBRE as its exclusive broker, and to grant to CBRE the exclusive right, to list for sale the Property, and CBRE is agreeable to such engagement on the terms and conditions as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereinafter expressed, the parties hereto agree as follows:

ARTICLE ONE

APPOINTMENT

1.1. Exclusive Right to Sell. Seller hereby appoints CBRE as its exclusive agent and grants CBRE the exclusive right to solicit and procure prospective purchasers for the Property. Reference herein to the Property or Properties shall mean all or any portion thereof. CBRE accepts the appointment and agrees to act in good faith and use diligent efforts to perform the services required by this Agreement.

1.2. Definition of "Sale" or "Purchase". As used in this Agreement, the term "sale" or "purchase," in reference to the Property, shall include a sale or exchange of the Property, the granting of an option to purchase the Property, or any other transfer, conveyance, or contribution of a controlling interest in the Property or in the entity which owns the Property, or any other transaction identified in Section 5.2 below.

1.3. Listing Price. The Property shall be marketed without a listing price and shall be sold on terms and conditions as acceptable to Seller in his sole and absolute discretion.

1.4. Court Approval. CBRE acknowledges and agrees that this Agreement, and any sale of

the Property, must be approved by order of the United States District Court for the Northern District of Illinois. Seller shall seek court approval for payment of the Fee (defined below) at closing in any filing seeking approval of the sale of the Property.

ARTICLE TWO

TERM

2.1. Term of Agreement. The term (“Term”) of this Agreement shall commence on the date hereof and shall end at midnight, September 30, 2020 unless sooner terminated or extended in accordance with the provisions of this Agreement. The Term shall be extended only by an agreement in writing signed by the parties hereto. Notwithstanding anything contained herein to the contrary, in the event the Property is removed from the market due to the opening of an escrow or acceptance of an offer to purchase the Property during the Term, or any extension thereof, and the sale is not consummated for any reason then, in that event, the Term shall be extended for a period of time equal to the number of days that the escrow had been opened and/or the Property had been removed from the market, whichever is longer, provided that, in no event shall such extension(s) exceed one hundred eighty (180) calendar days in the aggregate.

ARTICLE THREE

CBRE’S REPRESENTATIONS AND DUTIES

3.1. Licensing. CBRE hereby represents that it and its personnel providing services are, to the extent required by law, duly licensed. CBRE shall, at its expense, obtain and keep in full force and effect throughout the Term of this Agreement all licenses and permits required to be maintained by CBRE in connection with the rendering of the services.

3.2. Performance of Services. CBRE shall perform the services through able, qualified and trained personnel of CBRE in sufficient number to properly render the services in the manner appropriate for the Property as required by this Agreement. CBRE shall have the exclusive right to hire, direct, discipline, compensate and terminate the personnel of CBRE, and shall exercise complete and exclusive control over the conduct of CBRE’s personnel. Such services shall include:

- (a) Inspection, Review and Analysis. CBRE shall review the Property to determine its relative market appeal, quality of location, market and area trends, and potential for value enhancement prior to entering the market. CBRE shall not be responsible for verifying the accuracy or completeness of any information provided by Seller, Seller’s agents, and any property manager.
- (b) Marketing Plan. CBRE shall develop and prepare for Seller’s review and approval a detailed marketing plan (the “Marketing Plan”) setting forth a comprehensive strategy for sale of the Property.
- (c) Offering Materials. CBRE shall assemble and produce for Seller’s review and approval an offering brochure and/or other marketing materials of a type which is customary for similar properties. Seller shall provide the information in its possession, custody or control regarding the Property necessary for CBRE to prepare a professional offering brochure. The brochure shall include, as appropriate, property facts, photographs, high-quality graphics, cash flow projections, market competition data, descriptive area and

location information, site plan, and other relevant information as available. Seller shall be responsible for expenses reasonably incurred by CBRE in the preparation of the offering brochure required hereunder, for any additional print and electronic advertising, and for any other activities, including without limitation, any financial analyses prepared by CBRE's Financial Consulting Group and any necessary travel incurred in marketing and showing the Property. The reimbursement for CBRE's actual out-of-pocket expenses shall not exceed the sum of \$5,000, and Seller shall reimburse CBRE for such costs at closing (the "Expense Reimbursement").

- (e) Marketing Efforts and Advertising. Seller has authorized CBRE to advertise the Property for sale. CBRE shall expose the Property to a wide variety of purchasers via direct mail, print advertising and on the Internet, as deemed appropriate by CBRE. CBRE shall provide prospective purchasers with additional information and coordinate site visits. CBRE shall not disseminate any offering brochures or other written promotional materials, until approved by Seller in writing. Upon closing of the sale of the Property, CBRE may advertise or issue a press release or other public announcement regarding the sale, in form and content reasonably acceptable to Seller. Seller hereby consents to the use of a "tombstone" type ad and CBRE's internal newsletters and publications.
- (f) Prospective Purchaser Qualification and Inspections. CBRE shall solicit and identify prospective purchasers of the Property, deliver the offering materials to such prospective purchasers and, in connection therewith, assist Seller in qualifying prospective purchasers prior to recommending acceptance of an offer, provided, however, that Seller shall have the ultimate responsibility for determining the financial condition and capabilities of any prospective purchaser. If requested by Seller, CBRE shall require each prospective purchaser to execute and deliver to CBRE Seller's form confidentiality agreement. CBRE shall make the necessary arrangements with Seller or Seller's agent to permit prospective purchasers to physically inspect the Property.
- (g) Inquiries. CBRE shall promptly inform Seller of all offers and inquiries received from brokers, prospective purchasers or anyone else with respect to the Property.
- (h) Negotiations and Legal and Tax Advice. All negotiations with prospective purchasers shall be conducted by CBRE in conjunction with Seller and Seller's counsel. Seller and its counsel shall be responsible for determining the legal sufficiency of the purchase and sale agreement and all other documents relating to any transaction contemplated by this Agreement; and Seller and its financial advisors shall be solely responsible for determining the tax consequences of any transaction contemplated under this Agreement.
- (i) Closing. At Seller's request, CBRE shall assist Seller and Seller's counsel in the preparation and execution of the closing checklist and provide information necessary to complete closing documentation, and shall coordinate with the property manager for the Property to secure all documents and information required for closing.
- (j) Presentation of Offers. CBRE shall provide, at a minimum, the following services with respect to presentation of offers: (a) accept delivery of and present all offers and counteroffers to buy the Property; (b) assist the Seller in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to the offers and counteroffers until a purchase agreement is signed and all contingencies are satisfied or

waived; and (c) answer the Seller's questions relating to the offers, counteroffers, notices, and contingencies.

3.3. Staffing. CBRE's listing team for purposes of implementing the obligations of CBRE hereunder shall consist of Dan Cohen, John Jaeger and Justin Puppi (the "Listing Team"). Seller and CBRE appoint the Listing Team as Seller's legal agent, to the exclusion of all other CBRE-affiliated brokers and salespersons (the "Non-Listing Team Agents"). The Listing Team shall assume primary responsibility for the initiation of all discussions and the conduct of all negotiations with prospective purchasers on the part of CBRE. CBRE may replace any member of the Listing Team during the Term in the event a member of the Listing Team dies, becomes incapacitated or terminates his/her employment with CBRE, provided such replacement individual has similar or greater experience than the replaced member and provided that Seller consents, which consent shall not be unreasonably withheld. Upon written request by Seller, any member of the Listing Team shall be replaced by another qualified salesperson employed by CBRE, subject to Seller's approval, which approval shall not be unreasonably withheld. For compensation purposes, Non-Listing Team Agents who represent prospective purchasers shall be treated as Cooperating Brokers under Section 3.6 below.

3.4. Reports. CBRE shall submit to Seller a weekly report on the marketing of the Property which shall include an updated list of all prospective purchasers and a summary of the status of any offers or negotiations.

3.5. Confidentiality.

- (a) As used in this Agreement, the term "Confidential Information" means information provided by Seller to CBRE pertaining to the Property which Seller believes in good faith contains legally protectable and/or otherwise confidential trade secrets, non-public research, development, or commercial information and that Seller designates in writing as confidential at the time it is provided to CBRE. Confidential Information does not include information that (i) was known to CBRE at the time it was provided by Seller, (ii) was publicly available at the time it was provided by Seller or thereafter becomes publicly available without breach by CBRE of its obligations hereunder, (iii) becomes available to CBRE on a non-confidential basis from a source other than Seller or its representatives, (iv) can be shown to have been developed independently by CBRE, (v) is required to be disclosed by court order, regulation, or other law or legal process; or (vi) is approved for release by written agreement of Seller.
- (b) For a period of two (2) years from the date of disclosure of any Confidential Information to CBRE, CBRE agrees to hold such Confidential Information in trust and confidence for Seller, and agrees not to use Confidential Information other than as required in the performance of its obligations under this Agreement, which shall include disclosure to CBRE's personnel who have a need to know.

3.6. Cooperating Brokers. CBRE and the Listing Team shall solicit and cooperate with other real estate brokers, including Non-Listing Team Agents, who represent prospective purchasers for the Property ("Cooperating Brokers").

CBRE shall be responsible to pay the fee or commission due to any such Cooperating Broker in accordance with the schedule attached hereto as Exhibit A, provided such Cooperating Broker (i) is licensed in the state of Illinois, (ii) represents the prospective purchaser pursuant to a written agreement, a copy of which is furnished to CBRE, (iii) is not affiliated with the purchaser of the Property, (iv) is not

receiving a separate fee from the purchaser of the Property, (iv) is identified by the Purchaser in a confidentiality agreement signed by the Purchaser, (v) executes and delivers CBRE's standard form Cooperating Brokerage Agreement, (vi) attends all tours of the Property with Purchaser, and (vii) Seller pays to CBRE the Cooperating Broker's share of the commission as set forth in the schedule attached hereto as Exhibit A. Any fee payable to a Cooperating Broker by CBRE shall be paid at closing upon CBRE's receipt of its Fee hereunder.

3.7. Nondiscrimination. Seller and CBRE agree that the Property will be offered in compliance with all applicable federal, state and local anti-discrimination laws and regulations.

3.8. Compliance With Laws. CBRE shall comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, the Property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

ARTICLE FOUR

CBRE'S AUTHORITY

4.1. Limitation of CBRE's Authority. Notwithstanding any designation of CBRE as "agent" in this Agreement, CBRE shall have no right, power or authority to enter into any agreement with any prospective purchaser, real estate broker or any other person in the name of, on behalf of, or otherwise binding upon Seller, nor may CBRE create any other obligations or liabilities binding on Seller, except as otherwise provided by applicable law.

ARTICLE FIVE

FEES AND EXPENSES

5.1. Calculation of Fee. CBRE's sole and exclusive compensation for its services hereunder (the "Fee") shall be calculated as provided on the Schedule attached hereto as Exhibit A. "Gross sales price" shall be the purchase price listed in the purchase and sale agreement.

5.2. When Earned. The Fee shall be payable for services rendered if any contract for the sale of the Property is entered into by Seller during the Term and the sale of the Property subsequently closes, whether during or after the Term, pursuant to the terms of such contract or any amendment or extension thereto. In the event the sale of the Property (or any other transaction enumerated in Section 5.2) fails to close for any reason whatsoever, including Seller's default, CBRE shall not be entitled to any fee, commission or other compensation except for the expenses as set forth in Section 3.2(c) of this Agreement.

5.3. When Payable. The Fee shall be payable hereunder at closing.

5.4. Rights After Term. Seller shall pay CBRE the Fee in accordance with the terms of this Agreement if, within one hundred twenty (120) calendar days after the expiration or earlier termination of the Term, the Property is sold to, or Seller enters into a contract of sale of the Property with, or negotiations continue, resume or commence and thereafter continue leading to a sale of the Property to, any person or entity (including his/her/its successors, assigns or affiliates) with whom CBRE or Seller has negotiated regarding the Property (either directly or through another broker or agent) or to whom the

Property has been submitted prior to the expiration or termination of the Term. CBRE is authorized to continue negotiations with such persons or entities. CBRE shall submit a list of such persons or entities to Seller no later than fifteen (15) calendar days following the expiration or termination of the Term, provided, however, that if a written offer has been submitted, then it shall not be necessary to include the offeror's name on the list.

5.5. Excluded Purchaser. None.

ARTICLE SIX

OWNER'S RIGHTS AND OBLIGATIONS

6.1. Refer All Inquiries. Seller shall cooperate with CBRE in bringing about a sale of the Property, shall provide all available information to permit CBRE to properly market the Property in accordance with the terms of this Agreement, and shall immediately refer immediately to CBRE all offers and inquiries received from brokers, prospective purchasers or anyone else interested in the Property.

6.2. Rights Reserved By Seller. Seller reserves the right, in all events and in Seller's sole and unfettered discretion, to approve, modify or disapprove any and all proposals and offers regarding pricing, marketing and terms of sale of the Property, and to approve or reject any prospective purchaser. Seller reserves the right to adjust the terms and conditions of any offer made or received, including, but not limited to, adjustment of the offering price for the Property upward or downward.

6.3. Withdrawal From The Market. Seller may, by written notification to CBRE, at any time in its sole and unfettered discretion, remove the Property from the Market.

6.4. Termination For Cause. Either party shall have the right to terminate this Agreement upon not less than thirty (30) days' prior written notice to the other in the event of a material breach or default by the other party of any of its obligations hereunder. The notice shall specify with particularity the material breach or default with respect to which the notice is given and the acts which the breaching party must undertake to remedy such failure and, in the event that such material breach or default is not cured by that date which is ten (10) business days from the breaching party's receipt of said notice, this Agreement shall terminate upon the party's receipt of a second written notice from Seller declaring such termination.

6.5. FIRPTA. Seller represents that to the best of his actual knowledge without any inquiry, (i) Owner is the owner of title to the Property (subject to Seller's right, title, interest and power of sale with respect to the Property arising by virtue of the Court order appointing him receiver of Owner) and that (ii) except as may be disclosed in writing to CBRE, no person or entity who has an ownership interest in the property is a foreign person as defined in the Foreign Investment in Real Property Tax Act (commonly known as "FIRPTA").

6.6. Hazardous Materials.

(a) The Property is being sold in an "as is" condition, without representation or warranty of any kind, expressed or implied, oral or written, concerning the Property or any matter related thereto, including zoning, availability of access or utilities, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, or underground storage tanks ("Hazardous Materials") in, on, or about the

Property. Prospective purchasers shall be advised of this fact and shall be allowed to make independent investigations of the Property made by their own experts, at their own expense. Language reflecting the above shall be inserted into any purchase and sale agreement entered into by Seller, which language shall also disclaim any such representations regarding the condition of the Property by CBRE and any reliance on such representations by the prospective purchaser.

- (b) Seller and prospective purchaser are responsible for retaining qualified experts to detect and/or remediate any current, past or potential Hazardous Materials in, on or about the Property. Seller hereby releases and forever discharges CBRE, its directors, officers, employees, agents, successors and assigns from any and all actions, causes of action, suits, covenants, judgments, claims and demands whatsoever, in law or in equity, for or on account of or in any manner connected with Hazardous Materials in, on or about the Property and the violation of any federal, state or local law, statute, ordinance or regulation, any court or administrative order or decree or private agreement relating to the collection, storage, treatment or disposal of hazardous materials, excluding any such claims arising out of CBRE's gross negligence or intentional wrongful conduct.

6.7. Compliance with Laws. Seller agrees to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, any Property that is the subject of an acquisition or proposed acquisition or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

6.8. OFAC Screening. **CBRE and Seller represent and warrant to the other that to the best of their actual knowledge without due inquiry, they are currently in compliance with, and shall use their best efforts at all times during the term of this Agreement (including any extension thereof) to remain in compliance with, the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury, and any statute, executive order or other governmental action relating thereto, including, but not limited to, Executive Order 13224 (dated September 23, 2001) "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism".**

ARTICLE SEVEN

CONFLICTS OF INTEREST

7.1. Dual Representation. Seller and CBRE designate the Listing Team as the legal agent(s) of Seller, to the exclusion of all other CBRE-affiliated licensees (the "Non-Listing Team Agents"). Seller acknowledges that CBRE is a national brokerage firm and that, in some cases, CBRE may represent prospective purchasers. Seller desires the Property to be presented to such purchasers, and agrees that the representation of prospective purchasers by Non-Listing Team Agents shall not result in dual agency. CBRE recognizes that the Listing Team shall owe duties of trust, confidence and loyalty exclusively to Seller; and Seller acknowledges and agrees that Non-Listing Team Agents shall owe duties of trust, confidence, and loyalty exclusively to such prospective purchasers. In the event that the Listing Team has any potential conflict of interest (such as the Listing Team acting for a potential purchaser), then CBRE shall disclose such conflict to Seller in advance of any negotiations with a potential purchaser, and obtain Seller's written consent to such dual agency. The Listing Team and Non-Listing Team Agents shall not disclose the confidential information of one principal to the other except as

expressly authorized by their respective principals.

7.2. Other Interests. Seller acknowledges that, from time to time, CBRE may provide to other persons or other properties services that are similar to or in conflict with those that are to be provided pursuant to this Agreement, including, for example, listing other properties which may be competitive with the Property and showing prospective purchasers other properties in addition to the Property. Such other persons and/or properties may be in direct or indirect competition with Seller, and Seller consents thereto, provided that CBRE shall not disclose the confidential information of Seller.

7.3. CBRE Affiliated Entities. Seller acknowledges that one or more CBRE Affiliated Entities, including, but not limited to, CBRE Capital Markets, may assist the Listing Team in structuring a sale or sales of the Property, and may assist prospective purchasers with financing such transactions. Seller acknowledges and agrees that CBRE Affiliated Entities may earn fees or other compensation in connection with the financing of a sale or sales of the Property; however, in no circumstance shall Seller be liable for compensating such CBRE Affiliated Entities. Seller also acknowledges and agrees that referral fees may be paid by CBRE to CBRE Affiliated Entities, including CBRE Capital Markets; and/or CBRE Affiliated Entities, including CBRE Capital Markets, may pay referral fees to CBRE.

ARTICLE EIGHT

INDEMNIFICATION

8.1. Indemnification.

- (a) Indemnification by CBRE. CBRE agrees to indemnify and defend Seller from and against all liability, damages, losses and expenses resulting from claims or causes of action by a third party (collectively, “Claims”) based solely upon CBRE’s wrongful act, failure to act, or misrepresentation. Such obligation to defend and indemnify will not apply, however, if the claim or cause of action is based upon or arises in any way out of an act, failure to act or representation of any other person or entity, including, but not limited to, Seller providing to CBRE incorrect information or failing to disclose to CBRE information which should have otherwise been disclosed to such claimant or to CBRE. Seller will have the sole and absolute right to select and employ an attorney or attorneys to defend against such Claim and Seller will cooperate in connection with the resolution of any Claims.
- (b) Indemnification by Seller. Seller agrees to indemnify and defend CBRE from and against all Claims by a third party based solely upon Seller's willful misconduct. Seller will have the sole and absolute right to select and employ an attorney or attorneys to defend against such Claim and CBRE will cooperate with Seller and with its attorneys.

8.2. Procedure. If either party (an “Indemnified Party”) notifies the other party (the “Indemnifying Party”) of any Claim for which the Indemnified Party is entitled to indemnification pursuant to his Article, the Indemnifying Party shall, within fifteen (15) days following receipt of such notice, notify the Indemnified Party whether it will assume defense of such Claim, assume defense of such Claim with a reservation of rights, or reject defense of such claim. If the Indemnifying Party fails or refuses to defend such Claim or fails to timely give the notice required by this section, the Indemnified Party shall then have the right to employ counsel at the expense of the Indemnifying Party. If an Indemnifying Party assumes the defense with a reservation of rights, the Indemnified Party shall have the

right to employ counsel at its expense and participate in the defense with the full cooperation of the Indemnifying Party. With respect to any Claim for which an Indemnifying Party assumes defense without a reservation of rights, such Indemnifying Party shall have the right to defend such action, employ counsel of its choice, and negotiate and carry out any settlement of such action. Notwithstanding the foregoing, an Indemnifying Party shall not, without the prior written consent of the Indemnified Party, (i) settle or compromise any Claim or consent to the entry of any judgment in which the Indemnifying Party receives a more comprehensive release or hold harmless than the Indemnified Party, provided that such settlement, compromise or judgment shall not affect the continuing obligation of the Indemnifying Party to indemnify the Indemnified Party hereunder; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that may adversely affect the Indemnified Party or obligate the Indemnified Party to pay any sum or perform any obligation.

8.3. Notwithstanding any other provision hereof to the contrary, any and all claims, damages or liabilities that CBRE claims are payable by Seller to CBRE hereunder for any reasons, including by reason of any alleged breach by Seller of any obligations, representations or warranties hereunder, shall be solely payable by or recoverable against the Estate and never against the Seller personally.

ARTICLE NINE

NOTICES

9.1. Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be sent by email, to the addresses set forth below, and shall be deemed received when actually received.

To Seller: N. Neville Reid, not individually, but solely as Court-Appointed Receiver
Fox Swibel Levin & Carroll LLP
200 W Madison St #3000
Chicago, IL 60606

Attn: Neville Reid (nreid@foxswibel.com); Ryan Schultz (rschultz@foxswibel.com)

Telephone: (312) 224-1245

To CBRE: CBRE, Inc.
321 N Clark St, Suite 3400
Chicago, IL 60654

Attn: Dan Cohen
Telephone: (312) 935-1427
Email: dan.cohen@cbre.com

with a copy (which shall not constitute notice) to:

CBRE, Inc.
321 N Clark St, Suite 3400
Chicago, IL 60654

Attn: Jamie Georgas
Email: Jamie.Georgas@cbre.com

9.2. Change of Notice. Notice of a change in address shall be given by notice in the manner set forth in this Article.

ARTICLE TEN

GENERAL PROVISIONS

10.1. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois.

10.2. Illinois Human Rights Act. Seller and CBRE acknowledge that it is illegal for either Seller or CBRE to refuse to display or sell to any person because of one's membership in a protected class, e.g., race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status, or any other class protected by Article 3 of the Illinois Human Rights Act, and the Property will be offered in compliance with all applicable anti-discrimination laws.

10.3. Disputes.

- (a) Any claim, controversy or dispute (a "Dispute"), whether sounding in contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whenever brought and whether between the parties to this Agreement or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be subject to this section.
- (b) Any Dispute shall be adjudicated in the United States District Court for the Northern District of Illinois and specifically in the action United States Securities and Exchange Commission v. Northridge Holdings Ltd. et al. Case No. 19-cv-5957.
- (c) Neither party shall be entitled to punitive damages, and the parties hereby waive all rights to, and claims for, relief other than for compensatory damages.
- (d) The prevailing party in any Dispute shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements incurred in connection with any Dispute.
- (e) EACH PARTY UNCONDITIONALLY AND IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE.

10.4. Amendment, Modification and Termination. This Agreement may be amended, modified or terminated only by written agreement of CBRE and Seller.

10.5. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other party.

10.6. Counterparts. This Agreement may be executed in counterparts, each of which shall be

deemed an original, but all of which together shall constitute one and the same instrument.

10.7. Headings. The headings of the Sections and Articles of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

10.8. Due Authority. Each individual signing this Agreement on behalf of a party warrants and represents to the other party that he has the authority to execute this Agreement on such party's behalf and to bind such party to the terms hereof.

10.9. Severability. In the event any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, that provision shall be severed from this Agreement and shall not affect the validity of the remainder of the Agreement.

10.10. Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.

10.11. Entire Agreement. This Agreement, including the Exhibits hereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations and warranties, whether oral or written, by any officer, employee or representative of any party hereto. This Agreement shall be construed neutrally, neither for nor against either party, regardless of which party is deemed to have drafted the Agreement.

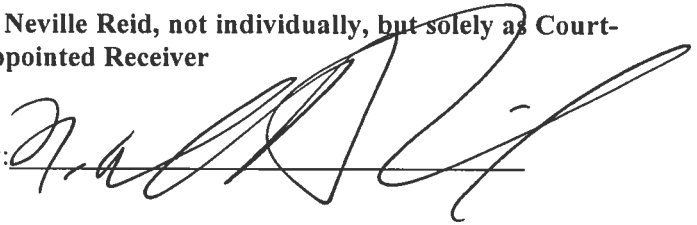
10.12. Foreclosure. In the event that the Property becomes the subject of foreclosure proceedings prior to the expiration of this Agreement, then CBRE may, in its sole and absolute discretion (i) suspend this Agreement until such time as CBRE may elect, in its sole and absolute discretion, to reinstate this Agreement, or (ii) terminate this Agreement and be free to enter into a listing agreement with any receiver, the party initiating the foreclosure, the party purchasing the Property at a foreclosure sale, or any other person having an interest in the Property.

10.13. Bankruptcy. In the event that the Property comes under the jurisdiction of a bankruptcy court, Seller shall immediately notify CBRE of the same, and shall promptly take all steps necessary to obtain court approval of CBRE's appointment, unless CBRE shall elect to terminate this Agreement upon said notice.

IN WITNESS WHEREOF, this Agreement has been executed by Seller and CBRE, through their duly authorized representatives, as of the day and year first above written.

N. Neville Reid, not individually, but solely as Court-Appointed Receiver

By: _____

A handwritten signature in black ink, appearing to read 'N. Neville Reid', written over a horizontal line.

CBRE, INC.

By: _____

Name: _____


Title: _____

IN WITNESS WHEREOF, this Agreement has been executed by Seller and CBRE, through their duly authorized representatives, as of the day and year first above written.

N. Neville Reid, not individually, but solely as Court-Appointed Receiver

By: _____

CBRE, INC.

By: 
Name: Jamie Bergas
Title: Sr. Managing Director

SCHEDULE 1

Property Description

Timber Lakes Apartments 576 apartments located at 1200 Kings Circle, West Chicago, IL 60185

EXHIBIT A

Fee Schedule

- If CBRE is not obligated to compensate a Cooperating Broker under Section 3.6 of this Agreement, Seller shall pay CBRE a Fee equal to Forty-five basis points (0.45%) of the gross sale price up to \$60,000,000 plus Three Hundred Basis points (3%) of the gross sales price in excess of \$60,000,000.
- If a Cooperating Broker represents a purchase and CBRE is obligated to pay such Cooperating Broker under Section 3.6 of this Agreement, Seller shall pay CBRE a Fee equal to Fifty-five basis points (0.55%) of gross sale price up to \$60,000,000 plus Three Hundred Basis points (3%) of the gross sales price in excess of \$60,000,000 with such total Fee being split 60% to CBRE and 40% to Cooperating Broker.
- In addition to the brokerage fee, shall pay CBRE the Expense Reimbursement at closing.