

TMIF II Timber Lake LLC, an affiliate of Turner Impact Capital (“Turner”) for \$50.25 million. This includes an earnest money deposit of \$5 million. *See* DKT No. 183.

3. The Timber Lake Motion states that “maximizing the value of the Receivership Defendants’ real estate assets is a major objective of the Receivership.” *See* DKT No. 183. Yet, as discussed below, the Receivership rejected an offer for Timberlake that would result in more money to the Receivership for the benefit of investors.
4. Prior to the Receivership assuming control of the Timber Lake Property on September 12, 2019, Mr. Louis Virgilio, the Defendant’s real estate broker, was negotiating multiple offers for the Timber Lake Property that exceeded \$50.25 million. This included offers and/or letters of intent from the following: Standard Communities for \$60 million; H&S Trevian Equities, LLC for \$60.5 million; and an offer from Sapphire Investment Group (“Sapphire”), through Balance Partners Properties, LLC,¹ to purchase the Bartlett Lake Property,² the Chablis Property,³ and the Timber Lake Property for \$96 million, with an estimated amount of \$65 million to be allocated towards the Timber Lake Property (the “Prior Offers”). The Prior Offers are attached hereto as group **Exhibit A**.

¹ Balance Partners Properties, LLC is an acquisition company that Sapphire Investment Group periodically uses when organizing real estate deals on Sapphire’s behalf.

² The Bartlett Lake Property is a 192-unit apartment complex located in Bartlett, Illinois. The sale for the Bartlett Lake Property closed on June 24, 2020 to Monument Capital Management IV, LLC for \$17.8 million. The original offer for the Bartlett Lake Property was \$19.3 million, but it was subsequently amended and reduced to \$17.8 million. This reduction was approved by this Court. *See* DKT Nos. 110, 143, and 147.

³ The sale for the Chablis Property, located at 610, 620, 622, and 630 N. Lincoln Avenue in Addison, Illinois, was negotiated pre- Receivership, but the sale did not close until September 20, 2019, after the Receiver assumed control of the Receivership Entities. The Chablis Property was sold for \$10.3 million. All proceeds from the sale of the property were wired to the Receiver at closing. *See* DKT No. 22.

5. Even when considering the unique challenges presented by the COVID-19 Pandemic, the Prior Offers suggest the Receivership's current offer of \$50.25 million from Turner is, at best, at the low-end of market value.
6. Further, after the Receivership assumed control of the Receivership entities, the Prior Offers for the Timber Lake Property were sent to the Receivership by Mr. Virgilio in late September and early October of 2019. This was done at the Receivership's invitation. The Receivership then informed Mr. Virgilio that they were not entertaining offers for the Timber Lake Property at that time, but they hoped to work with Mr. Virgilio on these deals in the future. The Receivership also ensured Mr. Virgilio that they would revisit the Prior Offers when they went to market with the Timber Lake Property.
7. Despite these assurances, the Receivership failed to revisit all the Prior Offers. Significantly, the Receivership did not revisit the offer from Sapphire. In fact, the Receivership did not even contact Sapphire to inform them when the Timber Lake Property came back on the market. Thus, Sapphire is inaccurately referred to as the "Second Late Bidder," in the Timber Lake Motion. *See* DKT No. 183. It is more accurate to refer to Sapphire as the ignored first bidder.
8. On February 27, 2020, the Receivership sought approval from this Court of the proposed sale procedures (the "Sale Procedures") for the Timber Lake Property. The Sale Procedures, in pertinent part,⁴ were as follows:
 - a. Marketing Phase (approximately 45 days): As of mid-March 2020, CBRE, Inc. ("CBRE"), will send out marketing materials through the following channels: (a)

⁴ The Defendant is primarily concerned with how the "Marketing Phase" of the Sales Procedures was carried out. A complete description of the Timber Lake Sales Procedures can be found at DKT No. 112.

an extensive database of multifamily property owner 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 the sale in the Chicago Tribune and Crain's. *See* DKT No. 112.

This Court approved the Sale Procedures on June 9, 2020. *See* DKT No. 157. As discussed below, the Sale Procedures were not followed by CBRE.

9. Instead, the Receivership wound up delaying and substantially altering the Court approved marketing process for the Timber Lake Property. *See* DKT No. 183.
10. According to the latest Timber Lake Motion, without Court approval, CBRE recommended, and the Receiver approved, an off-market strategy that focused on targeting buyers who CBRE believed were most likely to make an offer. To that end, "the Receiver and CBRE amended the selling process to 'test' the market and determine whether an acceptable offer for the Timber Lake Property existed despite the pandemic This process involved a multi-pronged approach whereby CBRE would target strategic active purchasers who could potentially transact in the COVID-19 environment" DKT No. 183.

11. As a result of this off-market strategy, CBRE marketed the Timber Lake Property to a mere 112 potential buyers. Of those 112 potential buyers, 59 signed confidentiality agreements to obtain additional information relating to the Timber Lake Property, an undisclosed number of potential buyers requested additional due diligence information,

and only nine (9) potential buyers toured the Timber Lake Property in-person. *See* DKT No. 183.

12. While we acknowledge the obvious and serious concerns presented by the COVID-19 Pandemic, the Receivership did not substantially comply with the Court-approved Sale Procedures outlined in DKT No. 157 and paragraph eight (8) above.
13. There was no robust and efficient marketing and sales process designed to maximize the value of the Receivership Estate for the benefit of all stakeholders. *See* DKT No. 112. Instead, the Receivership used the Pandemic to radically depart from the Court approved marketing and sale procedures without providing, until now, any opportunity to object to this plan and amended sale procedure. Marketing of the Timber Lake Property in accordance with the Court approved procedures would have exposed thousands of buyers to the Timber Lake Property.
14. In contrast, CBRE and the Receivership only targeted 112 potential buyers, ultimately resulting in the comparably low offer from Turner of \$50.25 million for the sale of the Timber Lake Property.
15. On August 27, 2020, despite the Receivership's failure to contact them as promised, Sapphire sent the Receiver, through Mr. Virgilio, a letter of intent. This was prompted by a conversation between Mr. Virgilio and the Receivership regarding the sale of Timber Lake. Following that conversation, Mr. Virgilio contacted Sapphire. Sapphire informed Mr. Virgilio that they were never informed that the Timber Lake Property was on the market. Sapphire further informed Mr. Virgilio that they were still very interested in purchasing the property. Sapphire promptly sent Mr. Virgilio an initial offer for the

Timber Lake Property. After significant back and forth with the Receivership, the following terms were proposed:

- a. **Purchase Price:** \$60 million cash offer.
- b. **Earnest Money Deposit:** \$3 million.⁵
- c. **Due Diligence Period:** 30 days from execution of the purchase sale agreement (the “PSA”).
- d. **Other Contingencies:** None

16. Sapphire provided the Receiver with proof of the \$61 million in cash funds. See, Proof of Funds Letter from Universal Abstract, **Exhibit B**. Sapphire’s offer is also memorialized in Sapphire’s PSA, which was written and provided to them by the Receiver, except for the due-diligence period clause. It is attached hereto as **Exhibit C**.

17. Despite proof of funds, \$3 million in earnest money and the higher purchase price, the Receiver declined to sign Sapphire’s PSA.

18. Contrary to the Receiver’s representations in DKT No. 192, Sapphire is not unreasonably insisting that it be awarded the deal prior to conducting due diligence.⁶ Sapphire merely asks that the Receivership sign the PSA and allow them to begin their due diligence process as requested.

19. Claiming they do not want to delay the proposed \$50.25 million sale to Turner, the Receiver has dug its heels in the ground, unreasonably insisting on a “hard” earnest money offer before any due diligence has been completed.

⁵ Although not stated in the PSA, Sapphire is willing to raise the earnest money deposit to \$4 million if provided with a standard 30-day due diligence period to allow their engineers to inspect the structural integrity of the property.

⁶ As this Court knows, only this Court can award a deal by authorizing the sale of the Timber Lake Property.

20. Significantly, this stubborn refusal ignores the reality of the situation and a buyer willing to purchase the property for an additional \$9.75 million. *See* DKT No. 183.
21. Understandably, the Receivership may not wish to jeopardize the proposed sale with Turner. However, we are only asking for a brief delay. We are not asking the Receiver to terminate the Turner contract at this time. In any case, the Turner offer is not final unless and until it is approved by this Court. Thus, while Sapphire's proposed offer is not yet "hard," the proposed sale to Turner is not yet final either.
22. Further, through conversations with the Receivership, it is our understanding that there is a clause in Turner's PSA that allows the Receiver to force Turner to proceed with the sale of the Timber Lake Property. The Turner PSA and sales price is secured indefinitely, because the Turner PSA does not contain a "drop dead" expiration date. And, in the unlikely event Turner walks away from this deal, they could not do so without forfeiting \$5 million in earnest money. Thus, any fear of jeopardizing the proposed sale to Turner because of a short delay is unwarranted.
23. Given the above considerations, we recommend that the Receivership sign Sapphire's PSA and give Sapphire the standard 30-day due diligence period. A due diligence period that allows a thorough and complete inspection is common in real estate transactions, and a 30-day due diligence process would be comparable with the 25-day due diligence period previously provided to Turner. Once such inspection is complete, Sapphire would have the opportunity to make their offer "hard," while Turner's offer would remain available for consideration against any future offers from Sapphire.

24. Forcing Sapphire to put forward \$4-5 million in “hard,” earnest money without thoroughly inspecting the property is unreasonable, especially since Sapphire is offering close to \$10 million more.
25. There appears to be little risk to signing Sapphire’s PSA and giving them the standard due diligence period. The potential downside is a 30-day delay, which could be moved along by the Receivership immediately signing Sapphire’s PSA. In contrast, the potential upside is an increase of \$9.75 million in the purchase price, which is in line with the Receiver’s stated goal of maximizing the value of the Timber Lake Property for the benefit of the Receivership Estate. *See* DKT No. 192.

WHEREFORE, Defendant respectfully objects to the Receiver’s motion to authorize the sale of the Timber Lake Property and related relief.

Respectfully Submitted,
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