STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 26 CV 001244-440

FUSE 10, LLC,

Plaintiff,

v.

CEDARS LODGE & SPA, L.L.C. and 719NOMAIN LLC,

Defendants.

MOTION FOR CONTINUANCE OF HEARING ON RECEIVER'S MOTION TO APPROVE SALE OF PROPERTY AND OBJECTION TO SALE CONDITIONS

Laurence and Micole Bag, William F. Beck (William F. Beck Revocable Trust), Emily and Kevin Blessinger, Jack Bragin (Big Papi Holdings LLC), Angela DelVecchio-Hall, Dustin and Mark Goodman, Glenn and Lisa Harshberger, Rich Hughes, Frank and Christina Jennings (FJC LLC), Rodrigo Londono and Michael Dean (Base Drum Investments LLC), Mike Ostendorf (Dreamers Investments, LLC), Enoch and Beth Poon, Saul Rosen and Neal Berman (Boognish Brothers, LLC), Charles and Priscilla Rouse, Gordon Segal, Robin Smith, John and Susan Turchin, and Deborah D. Wilson (Deborah D. Wilson Survivors Trust) (collectively, "Movants"), through undersigned counsel, move the Court to continue the hearing presently set for September 22, 2026, on the *Receiver's Motion to Approve Sale of Property and Sale Procedures* (ECF No. 42) (the "Receiver's Motion") for reasons addressed herein.

This Motion is made pursuant to the Court's authority under N.C. Gen. Stat. § 1-507.22 to determine all matters concerning the receivership, the receivership property, and the exercise of the receiver's powers. In that regard, the Movants have two overarching concerns about the timing and substance of the Receiver's Motion.

First, notwithstanding that this Court's Order Appointing Limited Receiver dated June 24, 2026 (ECF No. 19; the "Order") held that any transfer of the property be made subject "to all valid security interests and liens", *Id.* ¶ 40, the Receiver's Motion seeks to sell the property to Fuse 10, LLC as a "good faith purchaser" free and clear of any such interests and liens.

Second, the approximately 65 individuals who purchased units in Cedars Lodge and funded through deposits more than $18 million towards improving the property have been ordered not to file proofs of claim, have received little, if any, notice of this hearing, have been afforded no meaningful opportunity to obtain information or discovery from the parties, largely lack representation, nor have they been offered a process through which this Court can adjudicate their interests, liens, or rights in and to the property.

The Movants thus object to the Receiver's Motion because it seeks to extinguish their rights without adequate notice and without a process through which this Court can adjudicate the Movants' interests. Movants respectfully submit and believe that the following should occur:

(1) That the hearing on the Receiver's Motion be continued for a reasonable time to afford unrepresented purchasers of units the opportunity to obtain representation;

(3) That the Movants be afforded an opportunity to obtain information and discovery related to their claims; and,

(4) That the Court set a briefing schedule on the claims process either before the property is sold or afterwards, provided the property is sold subject to any and all such claims and interests.

In support of this Motion, the Movants say as follows:

PROCEDURAL & FACTUAL BACKGROUND

1. This Action arises from a stalled construction project of condominiums on eight tracts of land in Hendersonville, North Carolina (the "Real Property").

2. Movants are purchasers of units who made pre-construction deposits and thus parties in interest to this Action, per their respective Notices of Appearance (ECF No. 35; ECF No. 36, and ECF No. 52).

3. On June 3, 2026, Fuse 10, LLC ("Fuse") moved the Court to appoint The Liberty Solution, LLC as a general receiver over the Real Property and Defendants' other assets. *See* Plaintiff's Motion for Appointment of Receiver (ECF No. 6).

4. Defendants objected to Plaintiff's Motion for Appointment of Receiver, arguing generally that a general receivership was improper because Fuse already had the right and means to preserve the property. *See* Defendants' Response in Opposition to Plaintiff's Motion for Appointment of Receiver (ECF No. 14, p. 7).

Defendants acknowledged that the "most vulnerable stakeholders in the matter are the 66 individuals who bought condominium units and made pre-construction deposits" and who thus have "a direct and compelling interest in the completion of the Project. . . ." *Id*. at p. 6. Defendants also argued a limited receivership was more appropriate than a general receivership to protect the property and balance asset preservation (*Id*. p. 8).

5. The Court subsequently appointed The Liberty Solution, LLC ("Receiver") as a limited receiver over the collateral to the project. *See* Order ¶ 32. The Order authorizes the Receiver to sell, following notice and a hearing, receivership property and Defendants' other assets free and clear of all security interests, liens, claims and other interests **with all valid security interests and liens to attach to the proceeds of such sale**." (*Id*. ¶ 40) (emphasis supplied).

6. A status conference was initially scheduled for September 15, 2026, per the Notice of Conference (ECF No. 34). The status conference was cancelled by the Court on September 9, 2026, per the Notice of Cancellation (ECF No. 45), and ultimately rescheduled to September 22, 2026, with the inclusion of a hearing on the Receiver's Motion, per Notice of Hearing and Conference (ECF No. 46).

7. Upon information and belief, the Receiver sent its Motion to all 66 or so purchasers by email on September 4, 2026, and on September 10, 2026, sent another email to the purchasers attaching the Notice of Hearing and Conference. *Id.*

8. Shortly after the Receiver's September 10 email, undersigned counsel, one out of a small group of approximately 3 to 4 law firms representing less than

approximately 10 purchasers at that time, started to be contacted by many unrepresented individuals who purchased units and made deposits. Between September 14-16, the undersigned has accepted representation of an additional 16 purchasers, ECF. No. 52.[1] As of the filing of this Motion, the undersigned is still being contacted by unrepresented individuals seeking information about the case and their legal rights.

9. Pursuant to the Receiver's Motion, Receiver is seeking the Court's approval of a proposed sale of the Real Property that is structured to deliver the property to Fuse – the first lienholder and stalking-horse bidder – through a $36 million credit bid, that would extinguish all of the purchasers' rights in the property, eliminate any successor liability, and require no further court confirmation, all of which is contrary to this Court's Order's requirement to preserve all interests and liens. *See* Receiver's Motion, ¶¶ 9, 17-18.

ARGUMENT

10. This is not a request to obstruct Receiver's efforts to protect, market, or sell the property; it is a request to postpone any adjudication of the parties' and the purchasers' respective rights in and to the Real Property and other assets until after unrepresented purchasers have an opportunity to retain counsel and the Movants have a full and fair opportunity to be heard.

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[1] All such representation is limited to preserving claims and issues common to the Movants and made under the guidance and with the approval of North Carolina State Bar Ethics Counsel.

11. Any sale extinguishing rights would affect substantial property rights without due process. The Movants alone represent substantial pre-construction deposits used to improve the Real Property. *See* Defendants' Schedules of Receivership Property, Creditors, Taxing Authorities and Regulatory Authorities (ECF No. 39) ("Defendants' Schedules"). Defendants' Schedules list Movants' deposits as follow: $202,400.00 (Laurence "Larry" Bag), $520,000.00 (William F. Beck; William F. Beck Revocable Trust), $193,200.00 (Kevin Blessinger), $400,000.00 (Jack Bragin; (Big Papi Holdings LLC), $311,200.00 (Angela DelVecchio-Hall), $754,650.00 (Dustin and Mark Goodman), $375,258.00 (Glenn Harshberger), $177,200.00 (Rich Hughes; Rich Hughes Trust), $312,800.00 (Frank Jennings; FJC LLC), $294,800.00 (Rodrigo Londono; Base Drum Investments LLC), $474,400.00 (Mike Ostendorf; Dreamers Investments), $504,960.00 (Enoch Poon), $245,100.00 (Saul Rosen; Boognish Brothers, LLC), $397,600.00 (Charles "Chuck" and Priscilla Rouse), $447,300.00 (Gordon Segal), $400,000.00 (Robin Smith),$149,600.00 (John and Susan Turchin), and $599,799.99 (Deborah "Debbi" D. Wilson; Deborah D. Wilson Survivors Trust) Collectively, that is nearly 6.8 million dollars at stake.

12. And according to the Receiver, there are at a minimum 54 purchasers who paid pre-construction deposits totaling approximately $18,000,0000. (*Id*. pp. 16-17). Given the Defendants' statements that 66 purchasers made pre-construction deposits, the total amount paid by purchasers to fund construction is likely much larger; the rights and interests of these individuals in the Real Property would be extinguished without due process if the Receiver's proposed terms were approved.

13. With so much at stake, the procedural evolution of this Action reinforces the need for additional time and the implementation of an orderly process for other purchasers to retain counsel and make their claims.

14. Fuse originally sought appointment of a general receiver, but a limited receivership was ultimately established by consent of the parties. As seen, the Order appointing the Receiver directed that any sale must be subject to all valid security interests and liens. ECF No. 19 ¶ 40.

15. The Receiver's Motion now seeks authority for a sale process, including a sale free and clear of asserted third-party interests, on an expedited schedule. *See* Receiver's Motion, ¶ 18.

16. Though the Court may authorize a sale "following notice and a hearing" (Order, ¶ 40), the present setting of September 22, 2026, affords unrepresented purchasers inadequate time to retain counsel, and Movants and unrepresented purchasers insufficient time to investigate the governing purchase agreements and lending documents, assess the proposed transaction, and present their respective interests and arguments to the Court in a meaningful manner.

17. The Purchase Sale Agreement ("PSA"), Exhibit A of Receiver's Motion, states that the Motion should be heard by the Court "on an expedited basis and attempt to get a ruling on the Motion no later than October 15, 2026." *See* PSA, § 2.4.

18. An expedited hearing on the matter is unfairly prejudicial. That prejudice is not abstract. The proposed sale would extinguish asserted interests that are current and vested, and would relegate depositors to an uncertain claim against

whatever cash remains, which will likely be none. Such a decision would amount to a binding determination without affording the Movants a right to be heard on the merits or meaningfully participate in such proceedings. *See e.g.*, *Lasley v. Scales*, 179 N.C. 578, 580 103 S.E. 214, 216 (1920) (recognizing generally the court's need to hold receivership property intact until the relative rights of the parties can be determined).

19. The fact that many of the purchasers are just receiving notice and are scrambling to find counsel, attempting to organize and coordinate efforts, also suggests that there is a need for a claims process and proper notice. The Order states that the "Receiver is authorized, but not directed, to treat claims as allowed claims based on the amounts established in the books and records . . . without the necessity of filing proofs of claim. Absent further order of this Court, no proofs of claims are to be filed in this case." Order ¶ 45. This language appears to be limited to the amount or quantum of the claims, but not issues of entitlement, which remain to be determined.

20. The Movants request such a process, one that affords them notice, time to retain counsel, sufficient time to investigate, obtain information, and brief issues of entitlement. Anything less would be improper. *See e.g.*, *Benton v. Mintz*, 97 N.C. App. 583, 589, 389 S.E.2d 410, 414 (1990) (acknowledging a "fundamental element of due process is adequate and reasonable notice appropriate to the nature of the hearing," which "involves a reasonable time for preparation."). Likewise, the opportunity to be heard at a "meaningful time and in a meaningful manner" is also a

fundamental requirement of due process. *In re Duvall*, 268 N.C. App. 14, 19, 834 S.E.2d 177, 181 (2019) (internal quotations omitted).

21. Under Rule 40(b) of the North Carolina Rules of Civil Procedure, a "continuance may be granted only for good cause shown and upon such terms and conditions as justice may require." The motion should be granted where "nothing in the record controverts a sufficient showing made by the moving party." *Shankle v. Shankle*, 289 N.C. 473, 483, 223 S.E.2d 380, 386 (1976). As explained above, Movants' due process rights are at stake; they stand to lose millions of dollars on an *expedited basis*, leaving them without meaningful time and manner to investigate, obtain information, and brief claims. The Receiver has not made a showing sufficient to controvert Movants' showing. Justice therefore requires a continuance on those dispositive issues.

22. Therefore, because the purchasers' rights cannot be supported or fairly adjudicated on the present record, a continuance on the Receiver's Motion is appropriate to promote orderly participation by materially affected parties, including but not limited to Movants, while preserving the Court's control over the sale process and avoiding premature adjudication on the merits.

BCR 7.3 CONSULTATION REPRESENTATION

23. Before filing this Motion, the counsel for Movants conferred with counsel for each appearing party, as required by Business Court Rule 7.3. The Receiver and Fuse object to the relief requested herein and have indicated that they do not plan on filing a response to this Motion.

BCR 7.10 MOTIONS THAT DO NOT REQUIRE BRIEFS

24. Pursuant to BCR 7.10(b), briefs are not required for motions to continue a hearing. Therefore, a brief has not been submitted with this Motion as it pertains to the continuance. In compliance with BCR 7.10, this Motion states the grounds for the relief sought, includes any necessary supporting materials, and is accompanied by a proposed order. However, a brief has been included regarding objection to the conditions of the sale.

STATUTORY BASIS FOR RELIEF REQUESTED

25. Under N.C.G.S. § 1-507.22, the Court has exclusive authority to direct the Receiver and determine controversies relating to receivership property, including controversies concerning its preservation, disposition, and distribution, and all matters otherwise arising in or relating to the receivership, the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties.

RELIEF REQUESTED

WHEREFORE, Movants respectfully request the Court:

1. Continue the September 22, 2026, hearing on the Receiver's Motion to a date and time as is necessary to afford unrepresented purchasers the opportunity to obtain representation;

2. Establish a process that affords Movants the opportunity to obtain information and discovery related to their claims;

3. Set a briefing schedule on the claims process either before the property is sold or afterwards, provided the property is sold subject to any and all such claims; and,

4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 17th day of September, 2026.

/s/ Paul A. Capua
Paul A. Capua / N.C. State Bar No. 40239
Capua Law Firm, PA
58½ North Lexington Ave.
Asheville, NC 28801
Phone: (828) 264-0260
E-mail: Paul@capualaw.com
Attorney for Movants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **MOTION FOR CONTINUANCE OF HEARING ON RECEIVER'S MOTION TO APPROVE SALE OF PROPERTY AND OBJECTION TO SALE CONDITIONS** was duly served via the Court's Electronic Case Filing System, which notifies all counsel and parties of record listed below:

willesser@parkerpoe.com
William L. Esser IV
Parker Poe Adams & Bernstein LLP
620 South Tryon Street, Suite 800
Charlotte NC 28202
Attorneys for Plaintiff

PAF@wardandsmith.com
Paul A. Fanning
Ward and Smith P.A.
P.O. Box 8088
Greenville, NC 27835-8088
Attorneys for Defendants

emmusselwhite@wardandsmith.com
Evan M. Musselwhite
Ward and Smith P.A.
751 Corporate Center Drive, Suite 300
Raleigh, NC 27607
Attorneys for Defendants

LPM@wardandsmith.com
Lance Martin
Ward and Smith P.A.
P.O. Box 2020
Asheville NC 28802
Attorneys for Defendants

jlayscue@wardandsmith.com
Joanne L. Ayscue
Paralegal to Paul Fanning and Evan Musselwhite

rbeaver@bradley.com
Ryan L. Beaver
Bradley Arant Boult Cummings, LLP
Truist Center

214 North Tryon Street, Suite 3700
Charlotte, NC 28202
Attorneys for Turner Construction Company

tjones@hsblawfirm.com
Todd A. Jones
Haynesworth Sinkler Boyd
421 N. Blount Street
Raleigh, NC 27601
Attorneys for Baker Concrete
David@HSMlawyers.com
David Hilton
Hilton Silvers & McClanahan, PLLC
17320 Six Forks Road
Raleigh NC 27615
Attorneys for RGC Rick Gilchrist Co., Inc.

mweiner@poynerspruill.com
Matt Weiner
Poyner Spruill
301 Fayetteville St., Suite 1900
Raleigh NC 27601
Attorneys for Cedars Lodge and Spa EB-5 Funding, LLC

gfrash@smithcurrie.com
Eugene Rash
Smith Currier Oles, LLP
5727 Westpark Drive, Suite 200
Charlotte, NC 28217
Attorneys for Power Design, Inc.

mmartinez@grierlaw.com
Michael L. Martinez
agorman@grierlaw.com
Anna A. Gorman
Grier Wright Martinez
521 E. Morehead Street
Charlotte, NC 28202
Attorneys for Receiver

ed@ashevillelitigators.com
Edward L. Bleynat, Jr.
Ferikes Bleynat & Cannon, PLLC
67 Charlotte Street

Asheville, NC 28801
Attorneys for Jean Ann Mullen

steve@hylerandagan.com
Stephen P. Agan
Hyler & Agan, PLLC
90 Southside Ave, Suite 150
Asheville, NC 28801
Attorneys for Keith Halterman and Debra Halterman

rcox@lawhssm.com
Robert A. Cox, Jr
Hamilton Stephens Steele + Martin, PLLC
515 N Tryon St, Suite 1400
Charlotte, NC 28202
Attorneys for Tap 43 EB5 Funding II, LLC

shawn@copelandrichards.com
Shawn A. Copeland
Copeland Richards, PLLC
PO Box 430
215 S Main Street, Suite 301
Davidson, NC 28036
Attorneys for Patrice Winovich

Allen L. West
Hamilton, Stephens Steele & Martin, PLLC
525 N. Tryon Street, Ste. 1400
Charlotte, NC 28202
awest@lawhssm.com
Attorneys for The RBA Group, Inc.

This, the 17th day of September, 2026.

/s/ Paul A. Capua____________________
Paul A. Capua / N.C. State Bar No. 40239
Attorney for Movants