STATE OF NORTH CAROLINA COUNTY OF HENDERSON FUSE 10, LLC, Plaintiff, v. CEDARS LODGE & SPA, L.L.C. and 719NOMAIN LLC, Defendants.	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 26 CV 001244-440

SUPPLEMENTAL BRIEF IN SUPPORT OF PURCHASERS' OBJECTIONS TO RECEIVER'S MOTION TO APPROVE SALE

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), 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), Gina Krein, Hiren Patel (Krishiroshi LLC), Wendell and Pamela Wierenga (Wendell and Pamela Wierenga Family) (collectively, "purchasers") submit this supplemental memorandum in support of their Objections to Sale Conditions (ECF No. 54; the "Motion").

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INTRODUCTION

The Receiver has moved to approve a sale of the only receivership asset–the uncompleted Condominium property—that would have this Court extinguish "all claims of any third parties who contracted for the purchase of units . . . and provided pre-construction deposits" without a claims process to adjudicate their rights. PSA § 2.4(f) (ECF No. 42.2). That proposal is procedurally and fundamentally unfair.

The purchasers are interested creditors asserting claims of more than $18 million and, as explained below, possess disputed lien rights in the property under well-established North Carolina law. The Receiver's proposed sale terms would improperly permit Fuse to extinguish those rights without a hearing and lack legal support. The Court should instead use a two-step process: approve the sale subject to creditors' claims and interests and then establish a claims process to resolve competing rights in the property or the sale proceeds.

North Carolina's receivership statute, case law, and basic principles of due process require nothing less.

FACTUAL BACKGROUND

1. Cedars Lodge & Spa, L.L.C. ("Cedars") undertook to develop a high-end residential condominium on eight tracts in Hendersonville, including a planned residential condominium in the subject Pisgah Tower. A second tower called the DuPont was scheduled to be built after the Pisgah Tower. The property once developed was to be known as the Fairmont Heritage Place The Cedars (the "Condominium"). Compl. ¶¶ 8-10 (ECF No. 3).

Fuse Dictates Terms, Controls Deposits and Construction Spending

2. The purchase agreements and financing documents frame both the purchasers' asserted rights and the treatment of their deposits. Fuse 10, LLC ("Fuse") financed construction under an October 2022 Construction Loan Agreement secured by a recorded first-priority deed of trust. Compl. Ex. 1(f) (ECF No. 3).

3. Fuse's loan was structured to use purchaser deposits as a construction-funding source alongside Fuse's advances—not merely as evidence of demand. *Id.* The loan agreement required all the purchaser's pre-construction deposits to be made in a "Restricted Account" that was subject to the "joint control" of Fuse and Cedars and made both the availability and the permitted use of those deposits *conditions* of its lending. *Id.* ¶ 2.10(a). The loan agreement also dictated the terms of the purchase agreements at issue. For example, the loan agreement required Cedars to provide Fuse its form purchase agreement calling for staged pre-closing deposits for Cedars to use to fund construction. *Id.* ¶ 7.2(w).

4. Beyond that, Fuse retained control over construction expenditures under the loan agreement, making all of Cedars' construction expenses subject to Fuse's approval. *Id.* Under the loan agreement, purchase contracts had to first generate usable funds before Fuse would be required to fund the loan;[1] Fuse shared

[1] Cedars had to furnish Fuse satisfactory proof of executed agreements for at least 65% of Phase I units and at least $6 million in initial purchaser deposits that were legally available for construction and deposited into the Restricted Account. Section 2.10(a) states that no loan advances were allowed until its $6 million "Deposit Requirement" was met. Cedars also had to prove to Fuse that the deposits could be used for construction after the seven-day cancellation period. *Id.* ¶¶ 2.10(a), 7.2(q), (u).

control over the Restricted Account and approved its use;[2] and this arrangement continued throughout the loan across multiple phases and draws.[3]

5. The loan agreement thus supports that Fuse not only dictated the terms of the purchase agreements and that deposits first be used for construction to improve Fuse's collateral (*i.e.*, increasing its loan-to-value) as a condition of loan advances, but also required, contemplated, and exercised contractual oversight and control over project expenses, spending, and use of deposits, all as part of its construction-financing structure.

Purchasers' Contractual Completion and Rescission Rights

6. The form purchase agreement Fuse approved contains uncommon rescission rights for purchasers and those provisions matter because purchasers are asserting rights in the receivership arising from the failure to complete their units with their pre-construction deposits, not repayment of deposits.

7. The purchase agreements not only entitle purchasers to the return of their deposits if Cedars committed a willful breach, as is alleged to have occurred

[2] Under Paragraph 2.10, withdrawals from the Restricted Account required a signatory from both Fuse and Cedars; both had access to account information; and the parties were to coordinate advances from that account, with Fuse ultimately approving the proposed use in its sole discretion. The agreement also gave Fuse a right, upon an event of default, to withdraw Restricted Account funds and apply them to satisfy Cedars's obligations to Fuse. *Id.* ¶ 2.10.

[3] Paragraph 2.2 describes Tranches A–D as financing portions of construction "along with the use of Deposits." For later tranches, the agreement imposed increasing presale thresholds—generally 75% of the preceding phase and 65% of the next—and required available purchaser deposits to have been collected and placed in the Restricted Account. *Id.* ¶¶ 2.2, 7.2(ss)–(uu), 7.3(b).

here, but also guarantee purchasers a right and process to *rescind* the agreements if construction was not completed by December 31, 2025. Ex. 1 ¶ 5.[4]

8. Paragraph 5 of the purchase agreements required Cedars to complete each purchaser's unit in the Pisgah Tower by December 31, 2025, and guaranteed each purchaser the right to rescind the agreement for delays if their unit remained incomplete after 180-days' notice and opportunity to cure. *Id.*

9. This process afforded each purchaser a safety valve: it allowed them to exit the Condominium and their purchase agreements—and be restored to all their rights and deposits—if, as here, Cedars became unable to complete construction.

The Deposits and Their Use in Construction

10. All told, purchasers advanced more than $18 million in deposits earmarked only for construction and the amount and use of the deposits by Cedars and Fuse bear on the interests the Receiver's proposed sale might affect.

11. Subject to their rescission safety valve, purchasers committed to buying units and paid construction deposits before Fuse initiated this receivership. By way of example only, Deborah D. Wilson Survivors Trust contracted on May 1, 2024, for Unit 408/410, and paid $559,799.99 in deposits; Enoch and Beth Poon contracted with Cedars on September 26, 2022, for Pisgah Unit 526/528, and paid $504,960.00; John and Susan Turchin contracted on October 25, 2022, for Unit 406 and paid $149,600;

[4] *See* Exhibit 1, ¶ 4. Although Exhibit 1 is for a single purchaser, Turchin, as a form agreement approved by Fuse, Paragraph 5, and all the other clauses cited in this memorandum appear to be identical to the corresponding clauses in the other purchasers' agreements.

and Jack Bragin with Big Papi Holdings, LLC contracted on August 14, 2023, for Unit 226/228, and paid $400,000.

12. Each purchase agreement identifies a particular proposed unit and calls for staged deposits before the remaining balance is due at closing. These purchasers and others like them paid their deposits throughout 2023, 2024, and 2025.

13. The purchase agreements provided that the deposits would remain in escrow only until the Buyer's right of rescission under applicable law had expired, then released for construction. In the Turchin and Poon agreements, as with the others, Goosmann Rose Colvard & Cramer, P.A. served as escrow agent and was authorized to release such funds to Cedars only to cover "costs, fees, or expenses *related to the construction*" of the Condominium. *See* Exhibit 1 ¶ 2 (emphasis added).

14. According to Cedars' Schedule of Creditors, there were approximately 55 purchasers who paid over $18,000,000 in deposits into the Restricted Account subject to these restrictions, with all interest accruing on such funds benefiting only Fuse. *See* Defendants' Schedules of Receivership Property pp. 6-17 (ECF No. 39).

15. Deposit ledgers confirm that purchasers' deposits were used directly to fund construction. *E.g.*, Exhibit 2. By way of example, deposit ledgers for purchaser Gordon Segal show his $447,300 in escrow deposits released to fund Turner Construction's draw requests from August 29, 2024, through August 22, 2025. And, a Vertex "limited analysis of project-related costs" report dated April 27, 2026 ("Vertex report"), requested by Cedars, shows that: (1) purchaser deposits totaling approximately $14,000,000 were used exclusively to fund the first six construction

draws, (2) "the seventh draw and onward were funded by both buyer deposits and construction loan funding", and (3) "the remaining buyer deposit funds . . . were also used for construction related expenses." Exhibit 3.

16. The purchasers' bargain thus put purchaser funds exclusively at work improving the very units they expected to receive subject to a concomitant understanding that if Cedars could not build in time or at all, they had the right to rescind their agreements altogether.

Financial Shortages, Construction Delays, and Purchaser Communications

17. The timing of construction difficulties and Cedars' communications bears directly on when purchasers could assess and invoke their contractual right of rescission. Up until notice of its abrupt demise around March 2026, Cedars customer-wide communications describe a wildly successful project with anticipated closing to begin in late-2025 and early-2026.

18. In early April 2025, Cedars sent enticing emails to all purchasers requesting them to select between "one of two finishing themes" for their units "designed by award-winning Antrobus Design Collective" that "are amazing!" Exhibit 4. Later that month, Cedars circulated an update email to all purchasers announcing that "the Pisgah Tower . . . is topped off and the residences are being built" and "the Fairmont Heritage Place The Cedars will feature two towers, the Pisgah Tower and the Dupont Tower, for a combined 130 residences, along with event and commercial space." The update concludes: "there are some great units and pre-construction prices available . . . ***Expected occupancy Winter 2025***." Exhibit 5 (emphasis added).

19. On the heels of these announcements, Cedars aggressively marketed the sale of additional units at Pisgah Towers to existing purchasers promising each discounted prices only for "them" and "their eyes only", but in fact sending other emails offering the same discounts to other purchasers. Exhibit 6.

20. In August 2025, Cedars sent another email titled "Update from Fairmont Heritage Place The Cedars" explained that the Pisgah Tower was no longer "being built" as it had stated in its April update but that it "***has been built*** and topped off" and announcing the launch of the next two phases of the project. It went on to say that the actual "closing of Pisgah Tower residences [will] start in Spring 2026." Exhibit 7.

21. In late-September 2025, Cedars sent yet more announcements confirming that "Construction continues on our highly-anticipated luxury condo project", a "magnificent 130-unit community offering amenities rarely seen" in the region and promising "the opportunity to own a luxury residence ***when we open our doors in early 2026***." Exhibit 8.

22. On October 29, 2025, Cedars sent another mass announcement with a "Halloween Offer" that included the "four remaining units in the first (Pisgah)" tower and stating that the "***residences are expected to be completed in 2025***." Exhibit 9.

23. On November 13, 2025, Cedars announced that construction of its second tower, the Dupont Tower, was "coming soon" and expected to be completed in 2026. Exhibit 10.

24. On December 23, 2025, Cedars sent a solicitation to all purchasers to generate more deposits. It offered: a "special end-of-year promotion for any buyers who sign a contract by December 31, 2025 . . . "[f]or any buyers who sign a contract between now and December 31, 2025, we will include the first 12 months of condo fees (HOA type fees) . . . ." Exhibit 11.

25. That is, throughout the end of 2025, Cedars continued to promote the success of the Condominium and announced closings in the Pisgah Tower to begin imminently.

Cedars Masks Evidence of Funding and Construction Problems

26. Cedars' construction updates and mass purchaser communications masked contemporaneous evidence of serious funding shortages and construction problems.

27. According to the Complaint, Turner Construction Company "served as the general contractor" for the Condominium and a dispute arose between Turner and Cedars regarding payment in June of 2025. Compl. Ex. 1(k) ¶ 6-9 (ECF No. 3). It was at that time that Turner had actually "suspended Work on the Property due to Cedars' lack of payment" and, thereafter, while negotiations ensued, that Turner only performed work necessary "to maintain and protect its work in place," not to progress construction. *Id.* ¶ 11. Turner claims a principal balance due and owing of at least $6,988,473.19. *Id.* ¶ 13.

28. The Vertex report reproduces Cedars's April 2025 corporate report and states that Fuse did not pay Draw No. 25, for $2,088,124.56, that Turner issued a

notice of potential work suspension for failure of payment on April 16, 2025, and a stop-work suspension notice for failure of payment on April 21. The corporate report says Turner's work was suspended in late April 2025. This is clear evidence of an interruption in construction funding and work stoppage—not merely forecasting difficulties. Vertex report ¶ 82, figs. 19–20, p. 34.

29. In other words, when Cedars was sending purchasers multiple updates reporting the success of the project, *ongoing* construction progress, the Pisgah Tower having already "been built" and ready to start closings in Winter 2025, Cedars had, in fact, grossly miscalculated project costs, had run out of funds, was experiencing a documented payment-related work stoppage, and was pursuing conditional replacement financing, while continuing to use purchaser deposits as its construction funding source. Vertex report ¶¶ 7, 85–87, pp. 2, 36–37.

30. The simple truth being that by early 2026 the project was in dire straits, the Pisgah Tower was nowhere near complete or ready to begin closings, Fuse's loan had matured without payoff and was in default on December 31, 2025, Cedars had failed to secure alternative funding, and Cedars and Fuse were withholding these and other financial details from purchasers all while Cedars and Fuse were collecting deposits and Cedars was soliciting more deposits and misrepresenting the status of construction and its readiness and ability to close.

31. Though there has been no opportunity for discovery or a claims process affording purchasers the right to information, three indisputable inferences from the facts are clear: 1) Fuse knew about Cedars' funding shortage and construction

problems early in 2025; and 2) Fuse had access to and continued to use purchasers' deposits to improve its collateral throughout 2025; and 3) Cedars' communications to purchasers throughout 2025 were designed to mask construction delays and thwart purchasers from exercising their rights to rescind under Paragraph 5 of the purchase agreements.

Futility of Purchasers' Rescission Notices

32. Though Cedars had no ability to complete construction, neither Cedars nor Fuse had any intent to honor purchasers' rescissions rights. On March 19, 2026, Cedars transmitted an "update" to purchasers, stating that the initial construction loan had expired and that Cedars was working on a second construction loan; construction would resume once that loan closed. Exhibit 12. While that update hinted at problems, the first notice to purchasers of any substance or accuracy about the real condition of Cedars and their unites did not come until July 1, 2026, in the form of an article published by the Henderson Lightning, *In lawsuit seeking receivership, lender calls Cedars developer "insolvent."* Exhibit 13.

33. By then it was too late. Neither Cedars nor Fuse, who had to have been aware of the funding shortages and work stoppages as early as April 2025, had informed purchasers about the funding and construction issues in time for them to avail themselves of their safety valve of rescission.

34. Afterwards, any 180-day cure notice under Paragraph 5 of the purchase agreement, as a condition to rescission, would be an exercise in futility, as borne out by the fact that neither Cedars nor Fuse honored such rights even for those who

complied with the agreements' cure provisions. By way of example, Deborah D. Wilson entered a purchase agreement on May 1, 2024, on behalf of the Deborah D. Wilson Survivors Trust, under which she had been obligated to pay $1,199,400 in deposits to Cedars. *See* Exhibit 14. On December 22, 2025, Ms. Wilson notified Cedars to complete the unit within 180 days and, when that date passed, followed that up with a timely notice of cancellation on June 25, 2026, over 180 days later. *See* Exhibit 15. In her notice, Ms. Wilson stated:

> The requisite 180 days have now passed since Buyer's Notice to Seller and the Unit, in fact, is still not substantially completed. Paragraph 5 of the Agreement specifically addressed such issue, stating that if the Unit is still not substantially completed by the Seller within 180 days after receipt of such notice from the Buyer, Buyer shall have the right to rescind this Agreement by giving the Seller written notice of rescission within 10 days after expiration of said 180-day period ("Notice of Rescission") . . . . *Id.* (emphasis omitted).

35. Notwithstanding that Ms. Wilson's agreement is rescinded, Cedars and Fuse have failed to honor her rights to the return of her funds or impose a lien, and, in fact, Fuse claims she has no such rights.

36. Multiple other purchasers have sent rescission notices including, among others, Jack Bragin, John Turchin, and Frank Jennings. Exhibit 16. Because these and other 180-day notices to complete construction sent to Cedars, a defunct developer, are now pointless, all purchasers have exercised their rescission rights by sending notice of cancellation of their purchase agreements. Exhibit 17.[5]

[5] If given the opportunity to testify in a claims process, every one of the purchasers would say that had they known the truth about the funding shortages and construction delays by June 2025, they would have issued 180 notices at that time.

PROCEDURAL BACKGROUND

37. Fuse commenced this receivership action on May 29, 2026, seeking appointment of a receiver; on June 24 the Court appointed The Liberty Solution, LLC as limited receiver. Appointment Order (ECF No. 19).

38. The appointment order recognizes the deposits and authorizes a sale after notice and hearing, with "valid security interests and liens" attaching to sale proceeds. *Id.* ¶ 40. It also allows the Receiver to treat claims as allowed in the amounts shown on Cedars's books or schedules but directs that no proofs of claim be filed absent further order. *Id.* ¶ 45. That order did not determine the validity, extent, or priority of any individual purchaser's asserted equitable interest.

39. On September 3, 2026, the Receiver requested approval of a sale process anchored by Fuse's $36 million credit bid. *See* Motion to Approve Sale (the "Motion"; ECS No. 42). The Receiver reported approximately $18 million in purchaser deposits, estimated the Pisgah Tower at roughly 55% complete, and stated that refinancing efforts had failed. *Id.*

40. The Receiver sought approval in advance for a sale to third parties "free and clear of all liens, claims, interests, and encumbrances," transferring those interests to cash proceeds (if any)," and proposed that a winning sale could close after notice without further court confirmation. But, in the event there is no successful bidder, the Receiver's motion seeks approval of a sale to Fuse as a "stalking horse bidder" pursuant to a proposed purchase agreement that grants Fuse good-faith-purchaser status and that authorizes Fuse to take "the Property free and clear of all

claims of any third parties who contracted for the purchase of units at the Property and provided pre-construction deposits to Borrower or Guarantor." *Id.* ¶ 2.4.

41. If the Court were to accept these terms, considering all the facts and circumstances, Fuse would have had its collateral unfairly improved at the expense of the purchasers, whose rights would be vanquished without a claims process or due process.

42. Because this limited receivership warrants a claims process to adjudicate the rights of third-party purchasers, the Court should not approve the Receiver's sale conditions extinguishing those rights without such a process.

ARGUMENT

The purchasers are not asking the Court to halt the Receiver's marketing or sale efforts or even to decide interests or lien priority at this hearing. All they are asking is for the Court to sustain their objections to the Receiver's requested sale conditions transferring title to Fuse free and clear of purchasers' interests and to preserve those rights for a future claims process.

The Receiver's motion would authorize a sale free and clear of "all liens, claims, interests, and encumbrances," transfer them to cash proceeds "(if any)," and permit closing without further confirmation. Receiver's Mot. ¶¶ 17(f)–(h), 18(c) (ECF No. 42). The proposed PSA goes further: it calls for an order declaring that Fuse takes the Property free and clear of *all claims* of persons who contracted to buy units and paid pre-construction deposits. PSA § 2.4(f) (ECF No. 42.2). The Court can allow the

Receiver to test the market without deciding, or inadvertently extinguishing, those purchasers' contested rights now in several ways.

First, it can and should adopt an appropriate claims process after a recommendation by Receiver, as required by Section 1-507.49 of the Commercial Receivership Act ("Act"). In doing so, the Court should require the Receiver to provide purchasers with all the documents this Court ordered Cedars to provide to the Receiver in its appointment order. Appointment Order ¶ 36 (ECF No. 19). Similarly, the claims process should include the opportunity for an exchange of information, briefing and a hearing on whether Fuse is entitled to good-faith purchase status. As seen in Section II below, the purchasers' interests are substantial and warrant such a process.

I. The Factual Circumstances Concerning Purchasers and Their Deposits Call for a Defined Procedure to Identify and Resolve Their Claims.

In a limited receivership, when circumstances require, the receiver **shall** recommend a claims process appropriate to the case. N.C. Gen. Stat. § 1-507.49(a). Whether to establish that process in a limited receivership rests with the Court. *Id.* § 1-507.49(b). Both provisions are important here because the Receiver acknowledges approximately $18 million in purchaser deposits; as seen in Section II below, the purchasers dispute the proposed characterization and treatment of their interests; and the proposed sale order would single out their claims to be extinguished. Receiver's Mot. ¶¶ 3, 18(c); PSA § 2.4(f). Under these circumstances, a statutory claims process is clearly necessary to explain how the Receiver will identify

purchasers, determine disputed amounts or asserted property interests, notify claimants of a proposed determination, and permit objections before the Court acts on their rights.

Paragraph 45 of the appointment order does not fill that gap. It permits—but does not require—the Receiver to allow claims from Cedars' books or schedules without proofs of claim and prohibits proofs absent a further order. Appointment Order ¶ 45 (ECF No. 19). It neither classifies purchaser interests nor supplies a means to challenge their classification. The purchasers are not seeking an adjudication now that every deposit creates a lien, or that any asserted lien outranks Fuse. Fuse invokes contractual lien waivers and subordination provisions; as seen below the purchasers dispute the reach and effect of those provisions and assert rescission and equitable grounds for relief. Fuse Resp. 3–4 (ECF No. 53). Those questions require adjudication, not an assumption embedded in sale conditions.

The Supreme Court of North Carolina has recognized the importance of notice and an opportunity to contest a claim's asserted status and priority before a receivership court distributes property on that basis. *National Surety Corp. v. Sharpe*, 232 N.C. 98, 104, 59 S.E.2d 593, 597–98 (1950). Although that case arose under an earlier receivership scheme and does not require all claims to be tried before any sale, it still counsels against making a disputed priority determination through a sale order without a fair claims process for affected claimants to contest it. The current Act gives this Court authority to direct the Receiver and determine controversies about the disposition and distribution of receivership property. N.C.

Gen. Stat. § 1-507.22. The Court should require a prompt recommendation, followed by a defined process and express reservation of unresolved claims.

A. The Court should require a full exchange of information already ordered to be produced and opportunity to be heard before making dispositive findings.

The appointment order required Cedars to promptly turn over to the Receiver essentially all the financial records and other documents related to the Condominium, with a lengthy list of such documents set forth in the order. Appointment Order ¶ 36 (ECF No. 65). At the September 23 hearing, the Receiver acknowledged that Cedars has not complied with that requirement and the Receiver has not sought to compel enforcement either. The Court therefore enter an order against Cedars compelling production of those records to the Receiver and directing the Receiver it to provide the records to purchasers.

The Court's September 23 order required Cedars to furnish deposit-account and project-cost records, and the Receiver to furnish the forensic report, by September 29; briefing was due October 1. Order ¶¶ 4, 7 (ECF No. 65). The Vertex forensic report was timely received and by its terms is a limited report related to construction expenses. It does not include or summarize Cedars' financial or banking or account information that it was expected to contain. The purchases did not receive Cedar's bank records until the day this memorandum was filed, October 1, and such records could not reasonably be reviewed in time.

The Court should require Cedars to provide all such information to the Receiver and purchasers and allow a focused opportunity to supplement the record before making any rulings.

B. A "free-and-clear" sale order must account for asserted liens and actual sale consideration; a good-faith finding for Fuse is premature.

Section 1-507.46(d) provides that a lien extinguished by a receivership transfer attaches to **the proceeds** with the same validity, perfection, and priority it held immediately before transfer—even if proceeds are insufficient. N.C. Gen. Stat. § 1-507.46(d). Paragraph 40 of the appointment order likewise provides that valid security interests and liens attach to sale proceeds. Appointment Order ¶ 40 (ECF No. 19). Neither provision adjudicates whether a particular purchaser has a lien. Nor does the statute guarantee a recovery if an established senior lien exhausts the proceeds. But the proposed sale order cannot treat all purchaser claims as extinguished without distinguishing personal claims from asserted property interests, preserving the attachment of any valid lien, and addressing what "proceeds" exist and to what extent purchaser liens attach, if Fuse purchases by credit bid.

Nor should Fuse receive a present finding that it acquired in good faith. Under § 1-507.46(g), reversal or modification of a transfer order generally will not unwind a completed transfer to a good-faith acquirer or revive an extinguished lien against it unless the order was stayed before transfer. N.C. Gen. Stat. § 1-507.46(g). The Act defines good faith to include honesty in fact and observance of reasonable commercial

standards of fair dealing. *Id.* § 1-507.20(b)(13). Fuse's financing documents made construction-eligible deposits part of the lending structure and gave Fuse joint control over the restricted deposit account and control over construction expenses. Compl. Ex. 1(f) §§ 2.10(a), 7.2(w) (ECF No. 3). At the time Cedars was experiencing funding shortages and work stoppages, Fuse and Cedars were using purchaser deposits to fund construction and improve Fuse's collateral. Had purchasers known about Cedar's precarious condition, they would have rescinded their agreements sooner. Those provisions and issues warrant examination in light of the circumstances of this case. A good-faith finding should be considered, if requested, on an adequately developed record during a claims process—not granted in advance as part of the bidding procedures.

The Court should therefore permit marketing and competitive bidding if it finds them appropriate but decline to preapprove a purchaser-specific extinguishment of claims, a no-successor-liability declaration, automatic closing without further confirmation, or a good-faith finding for Fuse. It should direct the Receiver to recommend an appropriate claims process; require documented notice and a meaningful opportunity to examine the records in the appointment order and September 23 order; and reserve the validity, extent, priority, and treatment of purchaser interests for a later day. If a free-and-clear sale is ultimately authorized, the order should expressly preserve all claims against appropriate parties and all rights that applicable law carries into actual proceeds, without purporting to determine any purchaser's lien or priority in this procedural ruling.

II. The Purchasers' Equitable-Lien Claims are Sufficiently Substantial to Warrant a Claims Process.

The Court need not decide at this hearing whether any purchaser has an equitable lien, much less its extent or priority. This case is a complicated case that has substantial risk for all involved, but the present request is a simple one: to have an appropriate claims process that gives the purchasers fair notice and an opportunity to be heard. Fuse's and the Receiver's premise that a process to determine those interests would be futile is without merit.

North Carolina recognizes an equitable lien when a written agreement shows an intent to charge identified property with an obligation **or** when the relations of the parties and circumstances of their dealings warrant that equitable remedy. *Garrison v. Vermont Mills*, 154 N.C. 1, 4–6, 69 S.E. 743, 744–45 (1910). Neither possession of the property nor a particular set of words or circumstance is always necessary. *Id.*

In *Garrison*, advances against identified goods supported a claim to the goods' sale proceeds notwithstanding the mill's intervening receivership. *Id.* at 8–10, 69 S.E. at 746. In that case, the North Carolina Supreme Court imposed an equitable lien in favor of the company making advances because, from the contract and factual circumstances of the parties dealings, it was clear that the company was not advancing the money on "on the credit of the corporation, but practically in partial payment of the goods." *Id.* at 10. Under those conditions, *Garrison* held, equity

created an attachment in favor of the company in which "the right of the receiver is no greater than that of the insolvent corporation." *Id.*

The United States Supreme Court has likewise examined the substance of advances made to secure future coal deliveries rather than treating them automatically as an independent loan. *Hurley v. Atchison, Topeka & Santa Fe Railway Co.*, 213 U.S. 126, 131–34 (1909). *Hurley*, a case heavily relied by *Garrison*, is instructive because it too considered the meaning of the parties' contractual relationship "in light of the conditions surrounding the parties and as necessarily intended by them", when considering whether the property was being pledged as security for the advance payments. *Id.* at 135.

The purchasers here have a viable, albeit contested, basis to invoke such law. The purchase agreements identify particular proposed units, require pre-construction deposits (or advances) credited toward the purchase price on those units, permit the use of deposits only for construction related expenses, and all subject to provisions entitling purchasers to rescission and a refund under certain conditions if the unit is not timely completed. *See, e.g.*, Turchin Purchase Agreement §§ 1–2, 5 (Ex.1). Beyond that, Fuse's loan agreement made construction purchaser deposits part of the project's funding structure and provided for a jointly controlled restricted account over which Fuse retained control over such expenses. Compl. Ex. 1(f) §§ 2.10(a), 7.2(w) (ECF No. 3). These terms and the evidence and circumstances concerning how deposits were disbursed, how accurate information about the project was withheld, and the effect that rescinded agreements have on Fuse's and the purchasers' claims,

justify serious examination into whether the property was equitably charged with a repayment obligation for the purchasers.

The purchaser agreements also present a compelling defense that a claims process must confront, not ignore. As Fuse points out, Paragraph 5 expressly disclaims purchaser lien rights against the condominium or unit and subordinates the agreement and construction deposits to seller-creditor liens. *See, e.g.*, Turchin Purchase Agreement § 5 (Ex. 1). Whether an asserted equitable charge under the unique factual circumstances of this case can survive those express terms and whether those clauses are even enforceable at all after rescission all require legal and factual consideration. The point now is to simply preserve the opportunity for that consideration through an appropriate claims process, not allow the Receiver or Fuse to assume no such rights or defenses exist.

Two additional decisions illustrate why these issues warrant an claims process. In *In re Surplus Furniture Liquidators*, 199 B.R. 136, 143–45 (Bankr. M.D.N.C. 1995), the court, applying *Garrison*, found that customers who had fully paid for identified, tagged furniture held for delivery could assert equitable liens. It allowed a sale free and clear, transferred the disputed liens to actual proceeds, and reserved their validity and extent for later orders through a bifurcated claims process similar to what purchasers are requesting here. While those were identified goods, fully paid for and already held for delivery, the principles should apply no less to pre-construction deposits that are treated as advance payments for identifiable units. Additionally, the case supports a *procedure* that permits a sale while preserving a

genuine lien dispute. *Fulp v. Fulp* likewise recognizes an equitable lien where funds were traced into improvements, but its holding depended on a confidential spousal relationship absent from the ordinary purchaser–developer relationship. 264 N.C. 20, 23–24, 140 S.E.2d 708, 711–12 (1965) ("Since [the spouse] is able to trace the money into the improvements which defendant made on the land, any judgment obtainable would qualify as an equitable lien"). Even so, the text of traceability required is a subject for proof and debate, not a substitute for the other elements of equitable relief.

Fuse relies on *Cooper v. BB Syndication Services, Inc. (In re 222 South Caldwell Street, Ltd. Partnership)*, 409 B.R. 770, 789–94 (Bankr. W.D.N.C. 2009). *Cooper* held that the condominium purchasers' contracts did not show an intent to charge the property with repayment of their deposits and that, even if the purchasers had equitable liens, their unrecorded interests were subordinate to the lender's recorded deed of trust under North Carolina's recording rules. *Id.* at 789–94. Although *Cooper* presents similar issues, the present record nevertheless warrants an opportunity to test purchasers' asserted claims rather than a sale order disposing of them by assumption: unlike the agreements discussed in *Cooper*, the Cedars agreements as described here restrict the release of deposits to construction costs and provide completion-and-rescission terms, while Fuse's loan documents provide for a jointly controlled restricted deposit account as part of the construction-funding arrangement. *See, e.g.*, Turchin Purchase Agreement §§ 2, 5; Compl. Ex. 1(f) §§ 2.10(a), 7.2(w). *Garrison* recognizes that an equitable lien may arise from an agreement showing an intent to charge identified property or, in appropriate

circumstances, from the parties' relations and dealings. 154 N.C. 1, 4–6, 69 S.E. 743, 744–45 (1910). Whether those circumstances supply any basis for relief despite the express contract terms—and, separately, whether any interest could have priority over Fuse—requires examination of the agreements and evidence. The purchasers merely ask that those issues be reserved for a defined claims process.[6]

Even if a purchaser ultimately establishes only an unsecured refund claim, a process must establish its amount and treatment. And if a purchaser establishes a valid lien, the Commercial Receivership Act governs its attachment to the proceeds of an authorized transfer without resolving priority in advance. N.C. Gen. Stat. § 1-507.46(d). The Court should therefore reserve the validity, extent, priority, and treatment of these claims, require a process in which they can be tested, and withhold sale terms that would foreclose that process before it begins.

STATUTORY BASIS FOR RELIEF REQUESTED

Under N.C. Gen. Stat. § 1-507.49(a), when circumstances require it in a limited receivership, as here, the receiver **shall** recommend a claims process appropriate to the case. *N.C. Gen. Stat.* § 1-507.49(a). Whether to establish that process rests with the Court. *Id.* § 1-507.49(b). Under N.C.G.S. § 1-507.22, the Court has exclusive

[6] In *Cooper,* purchasers had agreed that deposits could be used for any purpose whatsoever after construction began. In contrast, Cedars' form purchase agreement approved by Fuse limits the released deposits to construction-related costs, calls for significantly larger staged construction deposits than was at issue in *Cooper*, and supplies a specified completion-and-rescission refund mechanism that likely renders the waiver and subordinate clauses that Fuse so heavily relies on as ineffectual. Compare *Cooper*, 409 B.R. at 779, 789–94, with Turchin Purchase Agreement §§ 2, 5. *Cooper* arose in an adversary proceeding in bankruptcy proceedings; it did not decide how to structure this proposed receivership credit-bid sale under the current Act. *Id.* at 777–81, 788–94. Such distinctions explain why those issues should be decided on this record in a defined process, not presumed away at this hearing based on conditions embedded in a proposed sale agreement.

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.

The purchasers respectfully request the Court to sustain their objections to the Receiver's sale motion and proposed PSA that seek to extinguish purchaser rights without a claims process or due process; and instead use a two-step process: (1) approve the sale subject to creditors' claims and interests and then (2) establish a claims process to resolve competing rights in the property or the sale proceeds.

CONCLUSION

The Court should permit marketing and competitive bidding but deny approval of sale terms that now extinguish purchaser claims, dispense with final confirmation, and declare Fuse a good-faith purchaser. It should enter an compelling Cedars to produce all the documents required to be turned over in the appointment order and directing the Receiver to propose a claims process that provides for the exchange of all the Cedars documents ordered produced, require a complete accounting of the consideration and proposed treatment of asserted interests, and reserve final sale terms and the purchasers' rights for a hearing on an adequate record.

Such a course protects the value of the property without deciding—by default—who is entitled to it or its proceeds.

Respectfully submitted, this 1st day of October, 2026.

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BUSINESS COURT RULE 7 CERTIFICATION

I hereby certify that the foregoing brief complies with North Carolina Business Court Rule 7.8 in that it contains less than 7,500 words. In making this certification, I have relied on the Microsoft Word software as required by Business Court Rule 7.8.

This the 1st day of October, 2026.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **BRIEF IN SUPPORT OF OBJECTIONS TO RECEIVER'S MOTION TO APPROVE SALE** was duly served through the Court's Electronic Case Filing System, which will send notification of such filing to all counsel and parties of record listed below:

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