STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
26CV001244-440

FUSE 10, LLC,

Plaintiff,

v.

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

Defendants.

RECEIVER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO APPROVE SALE OF PROPERTY AND SALE PROCEDURES

COMES NOW The Liberty Solution, LLC (the "Receiver"), the duly appointed limited receiver in the above-captioned civil action (this "Action"), which hereby presents this *Memorandum of Law* in support of the *Motion to Approve Sale of Property and Sale Procedures* filed contemporaneously herewith (the "Motion")[1] and respectfully represents as follows to the Court:

INTRODUCTION

1. Through the Motion, and as supported factually by the *Affidavit of Brian Gribble* (the "Gribble Aff.") filed contemporaneously herewith as Exhibit B, the Receiver seeks an order approving the sale of the Property to Fuse 10, LLC ("Fuse") upon the terms and conditions set forth in the Purchase and Sale Agreement ("PSA") filed herewith as Exhibit A *subject to* a competitive bidding process that will provide additional certainty that the Receiver maximized the Estate's recovery from the Property. Though some of the characteristics of the proposed sale are out of the ordinary, namely that the Receiver is proposing to sell the Property to the first lien holder for a credit bid on a relatively expedited basis, the Receiver believes that the proposed process will

[1] Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

test the market and value of the Property for the benefit of the Estate and Defendants' creditors. In the event such a process fails to generate additional overbids, then the Receiver seeks Court approval of the present offer. As set forth more fully below, the circumstances of this case warrant the relief requested in the Motion.

PROCEDURAL AND FACTUAL BACKGROUND

2. On June 24, 2026, the Court concluded that, "Fuse has an apparent right to, and interest in, all of the Collateral, including the Real Property." *See* Receivership Order, ¶ 26.

3. Further the Receivership Order held that, "[a] receiver is needed to safeguard the Collateral and determine whether to sell all or any portion of the Collateral free and clear of any and all liens and encumbrances and, if so, to effectuate such a sale subject to approval by this Court," *See* Receivership Order, ¶ 28; *see also* N.C. Gen. Stat. § 1-507.46(b) (providing that the court may authorize a receiver to transfer receivership property "[o]n motion by the receiver and after notice and a hearing . . . ").

4. Additional procedural and factual background pertinent to the arguments in this Memorandum of Law appear in the Motion itself and are incorporated herein by reference.

RELIEF REQUESTED

5. Through the Motion, the Receiver seeks entry of a Court order: (a) granting the Motion; (b) approving the Proposed Procedures, including any alterations that the Court deems appropriate, and authorizing the Receiver to engage in any and all conduct necessary or appropriate to carry out such procedures; (c) approving the Stalking Horse agreement (subject to higher and better bids) as being fair, reasonable, and in the best interests of the Estate; (d) deeming any sale of the Property consummated by the Receiver in accordance with the Proposed Procedures to be free and clear of all liens, claims, interests, and encumbrances, with any such liens, claims, interests, and encumbrances transferring to any cash proceeds (if any) generated by such sale;

(e) declaring the Stalking Horse to be a "good faith" purchaser within the meaning of N.C. GEN. STAT. § 1-507.46(g); and (f) granting such further relief as is just and proper.

BASIS FOR RELIEF REQUESTED

6. The North Carolina Commercial Receivership Act ("NCCRA") provides that

> The court that appoints a receiver . . . has the exclusive authority to direct the receiver and determine all controversies relating to the receivership or receivership property, wherever located, including, without limitation, . . . 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.

N.C. GEN. STAT. § 1-507.22.

7. NCCRA also provides that, upon a receiver's motion and after notice and a hearing, "the court may authorize the receiver to transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition." N.C. GEN. STAT. § 1-507.46(b).

8. Such a transfer outside of the ordinary course of business may also be ordered by the court supervising the receiver to be free and clear of liens, claims, interests, and encumbrances, unless "[a] secured party's lien . . . will not be paid in full from the proceeds of the proposed sale and the secured party . . . files a timely objection to the receiver's motion to sell the receivership property." N.C. GEN. STAT. § 1-507.46(c)(1).

9. "A lien on receivership property which is extinguished by a transfer under subsection (b) of this section attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the receivership property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien." N.C. GEN. STAT. § 1-507.46(d).

10. The statutory deadline to object to a "free and clear" sale is fourteen (14) days following service of the corresponding motion. N.C. GEN. STAT. § 1-507.46(c).

11. Under NCCRA, "[w]here a provision in this Article, an order issued in the receivership, or a court rule requires an objection or other response to a motion or application within a specific time, and no objection or other response is timely filed with the court, the court may grant the relief requested without a hearing." N.C. GEN. STAT. § 1-507.34(f).

ARGUMENT

APPROVAL OF THE SALE GENERALLY

12. NCCRA is silent on the standards generally applicable to approving sales of receivership property proposed by a receiver pursuant to N.C. GEN. STAT. § 1-507.46.

13. Nevertheless, "[i]n creating the Receivership Act, North Carolina took its cues from the Bankruptcy Code, and accordingly, the Bankruptcy Code's framework in this area is instructive." *See, e.g.*, *Nerko, L.L.C. v. Blue Bridge Benefits LLC* et al., "Order on Objection to Proposed Payment of Claim," Case No. 21-CVS-6263 (N.C. Bus. Ct. (Forsyth) Nov. 28, 2022) (Robinson, J.) (looking to the Bankruptcy Code for insight on claims allowance issues); *see also S.E.C. v. Quiros*, 966 F.3d 1195, 1199 (11th Cir. 2020) (observing that receivership courts "often apply bankruptcy principles to receivership cases because we have limited receivership precedent.").

14. Under the federal bankruptcy regime, a transfer of estate assets outside of the ordinary course of business will be approved when the bankruptcy trustee demonstrates a sound business justification for the transfer. *See Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Continental Air Lines*, 780 F.2d 1223, 1226 (5th Cir. 1986); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986).

15. The business judgment standard "is flexible and encourages discretion" on behalf of the estate fiduciary, with the court assessing "all salient factors" and the "diverse interests of

the debtor, creditors, and equity holders, alike." *See In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (2d Cir. 2011) (internal quotations and citations omitted).

16. Some of the factors used by bankruptcy courts in determining if a sound business justification for a transfer exists include: (i) whether there is a sound business reason for the proposed transaction, (ii) whether there is fair and reasonable compensation being provided by the proposed transaction, (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate notice has been provided. *See Committee Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

17. The construction Project has been stalled for almost a year. Upon information and belief, Defendants are out of cash and Defendants' exploration of additional financing options has been exhausted. Defendants are not paying their secured lenders or unsecured creditors. Numerous claims of lien have been filed as to the Project due to failure to pay the general contractor and various subcontractors. Many prospective buyers of units within the Project have made demand for the return of deposits made; however, no deposits have been returned.

18. Fuse holds a first priority lien against the Property. Fuse is owed in excess of $36,621,580.17 as of August 21, 2026. Fuse is currently carrying the costs of the Property including insurance, taxes, and fees and expenses of the Receivership. Fuse could simply foreclose on the Property without any assurance that the value of the Property may exceed its outstanding balance.

19. In the Receiver's opinion, the as-is value of the Property is approximately equal to the amount of the credit bid and the estimated cost to complete one building of the Project, the Pisgah Tower, is estimated to be $35,000,000 - $40,000,000. The interest accruing on the Fuse Loan is approximately $650,000 per month and Fuse is carrying the costs of taxes, insurance,

security, and this receivership. Regardless, Fuse has agreed to purchase the Property for the credit bid amount of $36,000,000, subject to higher and better bids.

20. The Receiver asserts that there is a sound business reason to transfer the Property to Fuse for a credit bid in the amount of $36,000,000, *after a wide marketing campaign* to offer the Property for higher and better bids.

21. Absent the proposed process, Fuse would be entitled to foreclose on the Property. The Receiver strives to maximize value of the Property in a fair and transparent sale process. Though there are no guarantees that a higher and better offer will emerge from the process, the process assures that all parties involved in this case will have notice of the process and that the Property will be marketed nationally to potential developers and investors.

22. The PSA (and any subsequent bids for a greater purchase price) represents a fair and reasonable transaction to liquidate the Property.

23. As described in detail in the Motion, the Receiver has set in motion a marketing campaign to market the Property for sale.

24. The Receiver believes that the purchase price reflected in the PSA is either the highest offer or very near the highest offer that the Receiver could reasonably hope to receive in the near future given current market conditions and the status of the Property.

25. Therefore, the PSA (or any overbids thereof extracted through the Proposed Procedures) should be approved by the Court.

APPROVAL OF THE PROPOSED PROCEDURES

26. Courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales (and, thus, by extension, receivership sales). *See, e.g.*, *In re Financial News Network, Inc.*, 126 B.R. 152, 156 (S.D.N.Y. 1991) (recognizing

that "considerable authority" exists in favor of invoking "court-imposed rules for the disposition of assets . . . to provide an adequate basis for comparison of offers, and to provide for a fair and efficient resolution of bankrupt estates").

27. The Proposed Procedures are a variation of procedures invoked by the Receiver and the Broker in other similar situations and are designed to test the PSA against competing proposals in a fair and efficient manner.

28. Specifically, the Stalking Horse has agreed to share due diligence information which will be available to qualified bidders including but not limited to Property information, financial documents, contracts, surveys, environmental reports and the like.

29. Further, the Stalking Horse has agreed to fund the Broker's marketing effort in the amount of $10,000 if it is the ultimate purchaser of the Property[2] along with other carrying costs and costs of the Receivership during the months long marketing process.

30. Given the commitment of the Stalking Horse to fund the marketing effort and other circumstances, the Motion asks the Court to find that the Stalking Horse is a "good faith" purchaser within the meaning of N.C. GEN. STAT. § 1-507.46(g).

BCR 7.8 CERTIFICATION

31. The undersigned hereby certifies that this brief complies with BCR 7.8.

[2] If the Property is sold to a third party, the Broker will earn a 1.5% commission on the sales price.

CONCLUSION

32. As set forth above, the Receiver, in the exercise of the Receiver's reasonable discretion, believes the PSA, the Proposed Procedures, the "good faith" purchaser finding, and the other relief requested through the Motion to be fair, equitable, and reasonable and otherwise reflecting the best interests of the Estate and is supported by sound business justifications. Therefore, the Court should grant the Motion.

Respectfully submitted this 3rd day of September, 2026.

/s/ Anna S. Gorman
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