Hearing Date and Time: January 31, 2025 at 11:30 a.m. (EST)
Objection Deadline: January 24, 2025 at 5:00 p.m. (EST)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Cold Spring Acquisition, LLC, Debtor.	Chapter 11 Case No. 25-22002 (SHL)

RESERVATION OF RIGHTS OF 1199SEIU UNITED HEALTHCARE WORKERS EAST IN RESPONSE TO DEBTOR'S NOTICE OF CONDITION PRECEDENT TO SALE AND RESERVATION OF RIGHTS AND PRELIMINARY OBJECTION TO THE SALE AND RECEIVER MOTIONS

1199SEIU United Healthcare Workers East ("**1199SEIU**" or the "**Union**"), a creditor and party-in-interest in the above-referenced case, by and through its undersigned counsel, Levy Ratner, P.C., hereby submits this reservation of rights in response to the Debtor's *Notice of Condition Precedent to Sale* (the "**Notice**") and preliminary objection to Sale Motion and the

Receiver Motion (the "**Reservation of Rights**") [1] [Docket No. 281]. In support of this Reservation of Rights, the Union respectfully states as follows:

1. The Union is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended, 29 U.S.C. § 153(5) (the "**NLRA**") and maintains its principal place of business at 498 Seventh Avenue, New York, New York 10018.

2. Pursuant to Section 9(a) of the NLRA, 1199SEIU is the exclusive representative of approximately 410 1199SEIU bargaining unit employees currently employed (the "**Employees**"), and those formerly employed, by the Debtor, including, but not limited to, the Debtor's Certified Nursing Attendants, Certified Occupational Therapy Aides, Cooks, Dietary Aides, Dietary Technicians, Dieticians, Housekeepers, Laundry Aides, Licensed Practical Nurses, Mechanics, Medical Records Clerks, Occupational Therapists, Painters, Physical Therapists, Physical Therapy Aides, Physical Therapy Assistants, Receptionists, Recreation Assistants, Recreation Therapists, Registered Nurses, Respiratory Therapists, Respiratory Technicians, Store Room Workers, Wheelchair Technicians, Ward Clerks, and Waxer/Strippers.

3. 1199SEIU and the Debtor are bound by a series of collectively bargained contracts, consisting of a collective bargaining agreement for the period 1987 – 1989, as amended and modified by memoranda of agreement for the periods 1989 – 1992, 1992 – 1995, 1996 – 1998, 1998 – 2001, 2002 – 2005, 2004 – 2008, 2007 – 2011, 2011 – 2012, 2012 – 2013, 2013 – 2014, 2014 – 2016, 2016 – 2017, 2017 – 2018, 2018 – 2021, 2021 – 2024, and most recently, for the period July 1, 2023 – September 30, 2026 (together, the "**CBA**") setting forth the terms and conditions of employment of the Employees.

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Court's January 20, 2025 Order Granting Debtor's Motion for Order Scheduling Hearing on Shortened Notice. [Dkt. 53].

4. The success or failure of the going concern sale contemplated by the Debtor hinges on the ability of the Debtor to seamlessly transition operations so as not to disrupt continuity of care for the Debtor's vulnerable residents. The services of the experienced and committed Employees are undeniably essential to that continuity of care and the stability of the nursing home's operations. Either mass resignation due to materially uncompetitive wages and benefits in a strong job market for healthcare employees, or a labor dispute, would jeopardize the ability to maintain adequate staffing during this critical period. Thus, the success or failure of the receivership and sale are also contingent upon reaching an agreement that is acceptable to the Union and the Employees.

5. The Union has had several discussions with the proposed receiver/operator ("**Sywood**") and its representatives over certain CBA modifications requested by Sywood since prior to the filing of the Petition and as recently as yesterday afternoon. Throughout this period, Sywood has represented to the Union that it would abandon the potential receivership and purchase if a satisfactory agreement could not be reached with the Union.

6. Sywood has proposed to eliminate all scheduled wage increases and drastically slash benefits. The Union and Sywood have been discussing which of, and to what extent, these and other modifications to the CBA would be acceptable to each party.

7. However, two proposals in particular that Sywood has insisted upon thus far in discussions with the Union have the very real likelihood of undermining continuity of care at the nursing home because either one will leave the Employees with virtually no choices other than to engage in collective actions that risk serious disruption and/or find other employment in a highly unionized industry with mostly standardized wages and benefits, and a labor shortage.

A. First, Sywood demands that certain job classifications be *removed* from the bargaining unit, leaving the registered nurses, physical therapists, physical therapy assistants, occupational therapists, certified occupational therapy assistants, respiratory therapists, respiratory technicians and dieticians without representation of the Union they and/or their predecessors have been part of for decades. After their years, and for some, decades, of loyal service to the residents of the nursing home, many of these approximately 50 employees are within a few years of retiring with a *full pension and full retiree health benefits* (assuming the reinstatement of benefits by the 1199SEIU National Benefit Fund for Health and Human Service Employees ("**NBF**") upon payment of the contractually required contributions) *at no additional cost to the Debtor or a future employer*. These employees will have every incentive to engage in collective actions and seek positions with another 1199SEIU nursing home or hospital employer to preserve these critical and hard-earned retirement benefits.[2]

B. Second, Sywood demands that the Union agree to accept health insurance plans far inferior to and far more expensive to the Employees than the benefits provided by the NBF at no cost to participants or beneficiaries, until after the receivership ends and the contemplated sale occurs, which could be several years from now. This contract modification would similarly cause the Employees to engage in collective actions and/or seek employment elsewhere within the generally understaffed New York nursing home industry where access to the totally free comprehensive healthcare coverage provided by

[2] To the extent past experience has shown that bargaining unit employees would stay, peacefully, at the nursing home after the employee benefits at issue in bargaining were terminated and replaced with an inferior insurance plan, that will not be the case in the event that members lose hope for the restoration of their benefits, resulting in escalating labor actions and/or employee flight.

the NBF is widely and readily available. This is especially true for those employees who have already accrued significant years of service in part as an investment in the retirement benefits, including retiree health benefits, described in the paragraph immediately above.

8. Yesterday, after hearing again from Sywood about their purported justifications for these two proposals, bargaining unit members who are elected delegates representing professional, technical, and service and maintenance workers in every Union-represented department and job classification at the nursing home voted *unanimously* to stand together in solidarity and reject these two proposals even under Sywood's threat to walk away.

9. The removal of the 12-15% of the bargaining unit made up of the relatively highly compensated registered nurses, physical therapists, occupational therapists, respiratory therapists, respiratory technicians, occupational therapy assistants, physical therapy assistants, and dieticians, (especially combined with Sywood's proposal to make 10% of the remaining bargaining unit ineligible for benefits) will realize some cost savings for Sywood, but will also very likely trigger a withdrawal from the 1199SEIU Pension Fund for Health Care Employees that would result in an assessment of withdrawal liability against the Debtor's estate and all businesses under common control with the Debtor.

10. On January 15, 2025, this Court granted the Debtor's Motion to Shorten and ordered the Debtor to file "any updated or supplemental documents by no later than" January 20, 2025, at 2:00pm, with objections or responses to the Receiver Motion or the Sale Motion due at 5:00pm on January 24, 2025. The Debtor's January 20, 2025 notice that "the Debtor and Sywood are discussing appropriate revisions to the APA to reflect…modifications, after which, the amended APA will be filed with the Court" does not say when that amended document would be

filed. As of 1:47 pm on the day objections are due, no amended APA has been filed. Additionally, the draft receivership agreement previously filed by the Debtor contains provisions that are internally inconsistent, some of which are also inconsistent with the Debtor's representations in court as to the allocation of assets and liabilities as between the Debtor and Sywood. Union counsel requested clarification from Debtor's counsel on Friday, January 17, 2025, see Exhibit A hereto, but as of 1:47 pm on the date that objections are due, no amended receivership agreement has been filed, and the Union has not received any clarifying response. Accordingly, the Union reserves all rights to object or otherwise respond to either motion once the necessary documents have been filed.

11. Finally, the Debtor may not avoid its own continuing obligations under the CBAs (and federal labor law), even during the contemplated period of receivership. See AFL-CIO Hosp. & Nursing Home Council Pension Fund ex rel. Boyens v. Manor Oaks Skilled Nursing Facilities, Inc., No. 01-CV-99S, 2004 WL 1737189, at *3–4 (W.D.N.Y. July 29, 2004) ("Finally, while it may be true that the Caretaker could also be liable for certain contributions to the Pension Fund due after its appointment, Defendant has not identified any provision of the Order Appointing Caretaker that relieves Defendant of its continuing obligations under the CBA"); Lewart v. Haym Salomon Home for the Aged, No. 82-CV-1109, 1983 Dist. LEXIS 20317, at *4-5 (S.D.N.Y. January 3, 1983) ("Although [the receiver] became a successor employer, and thus the primary obligor, it does not necessarily follow that Haym Salomon's obligations thereupon ceased").

CONCLUSION

The Union hereby respectfully reserves all of its rights with respect to any changes to the CBA at any time, including, but not limited to, those rights arising under the Bankruptcy Code, and federal and/or state labor and employment law.

Dated: January 24, 2025
New York, New York

LEVY RATNER, P.C.

By: */s/ Jessica I. Apter*

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CERTIFICATE OF SERVICE

I certify that on this 24th day of January 2025, a true and correct copy of the above Reservation of Rights of 1199SEIU United Healthcare Workers East in Response to Debtor's Notice of Condition Precedent to Sale and Reservation of Rights and Preliminary Objection to the Sale and Receiver Motions was served upon all parties via the Court's electronic case filing system (ECF).

/s/ Jessica I. Apter
Jessica I. Apter

Exhibit A

From: Ryan J. Barbur
To: Carroll, Schuyler; Jessica I. Apter
Cc: Andrea B. Schwartz (Andrea.B.Schwartz@usdoj.gov); Mahoney, Paul [NYC]; Scott, Alee [NYC]; kathy.marks@health.ny.gov
Subject: Question/Issue Regarding Pre-Receivership AR
Date: Friday, January 17, 2025 4:58:56 PM

Schuyler,

Some of the language in the proposed receivership agreement seems to be inconsistent with the Debtor's representation (and other language in the document) that the estate will retain all pre-Receivership accounts receivable. The excerpts below seem to contemplate at least some use/retention of estate assets by the Receiver. In an effort to streamline global discussions concerning the Receivership Agreements and avoid duplication of efforts, we have also copied the U.S. Trustee and attorneys from the AG's Office and DOH. Is this being addressed in a forthcoming draft?

Thanks.

1.2. "The Receiver shall maintain the conditions and fund operations and liabilities of the Facility from the Facility's cash and accounts receivable, both from dates of service before and after the inception of the Term of Receivership (as defined below), from institutional and private working capital loans, and from managing the payables and obligations of the Facility efficiently.

1.12. "Notwithstanding anything in this Agreement to the contrary, all accounts receivable outstanding as of the Receivership Date and all other accounts receivable outstanding at any time thereafter and during the term of this Agreement shall be set forth on Schedule 1.9 hereto and shall, upon collection, be used by the Receiver for the benefit of the Facility pursuant to the terms of this Agreement and consistent with all provisions of law.

1.14 "The Receiver shall be entitled to all revenues accruing with respect to the operation of the business conducted at the Facility, both prior to, at the election of the Receiver, and commencing with the Receivership Date and thereafter during the Term of Receivership.

3.2. "The Home hereby makes available to Receiver all items of tangible personal and real property and equipment belonging to or leased by the Home on the Receivership Date and used in the operation of the Facility . . . including, but not limited to, all of its accounts receivable existing as of the date hereof or hereafter arising, and all of its cash . . ."

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