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LLC*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

Chapter 11

CYXTERA TECHNOLOGIES, INC., et al.,

Case No. 23-14853 (JKS)

Debtors.

(Jointly Administered)

**HEARING DATE: NOVEMBER 16, 2023, 2:00 P.M.  
OBJECTION DEADLINE: NOVEMBER 13, 2023**

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF 1919 PARK AVENUE  
ASSOCIATES, LLC TO THE ASSUMPTION AND ASSIGNMENT OF ITS LEASED  
PURSUANT TO THE THIRD AMENDED JOINT CHAPTER 11  
PLAN OF REORGANIZATION OF CYXTERA TECHNOLOGIES, INC. AND ITS  
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

TO: THE JOHN K. SHERWOOD  
UNITED STATES BANKRUPTCY JUDGE

1919 Park Avenue Associates, LLC ("Landlord"), by and through its undersigned counsel, hereby files the following limited objection and reservation of rights (the "Limited Objection") to the Third Amended Joint Chapter 11 Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (as same may be further amended, the "Plan"). In support of the Limited Objection, the Landlord respectfully state as follows:



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### **BACKGROUND**

1. On June 4, 2023 (the “Petition Date”), each of the above-referenced debtors (collectively, the “Debtors”) filed a voluntary petition for relief under chapter 11 of Title 11, United States Code (the “Bankruptcy Code”). On June 6, 2023, the Court entered an order authorizing the procedural consolidation and joint administration of the Debtors’ Chapter 11 Cases [Docket No. 71].

2. Upon information and belief, the Debtors continue to operate their businesses and manage their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. Landlord is party to a Lease dated July 24, 2009, with debtor Cyxtera Communications, LLC (“Cyxtera Comm.”) f/k/a Savvis Communications Corporation, pursuant to which Landlord leases certain premises to Cyxtera Comm. located at 1919 Park Avenue, Weehawken, New Jersey (the “Lease”). In connection with the Lease, Cyxtera Comm. provided to the Landlord an Irrevocable Standby Letter of Credit (the “LC”). Additionally, the obligations of Cyxtera Comm. under the Lease are guaranteed by debtor Cyxtera Data Centers, Inc. f/k/a Savvis, Inc. pursuant to a written Guaranty dated July 24, 2009 (the “Guaranty”).

4. On November 2, 2023, Debtors filed the Plan [Doc. No. 649].

5. On November 3, 2023, Debtors filed the Plan Supplement for the Third Amended Joint Chapter 11 Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (the “Supplement”) [Doc. No. 650].

6. Exhibit C-1 (Draft Schedule of Assumed Executory Contracts and Unexpired Leases) of the Supplement identifies the Lease as an unexpired lease the Debtors will assume and assign to “Purchaser, defined in the Plan as “(a) in the event that the Debtors, with the consent of

the Required Consenting Term Lenders, determine to pursue the Asset Sale, Phoenix Data Center Holdings LLC and its affiliates that are Designees under and as defined in the Purchase Agreement, or (b) in the event that the Debtors, with the consent of the Required Consenting Term Lenders, determine to pursue the Equity Investment Transaction, the “Purchaser” under and as defined in the Purchase Agreement.”

7. Exhibit C-1 also includes the Guaranty.

8. It is the Landlord’s understanding that although Court approval of the assumption and assignment of the Lease will be sought at the hearing on confirmation of the Plan (the “Confirmation Hearing”), the actual closing on the assignment of the Lease to Phoenix Data Center Holdings LLC and its affiliates (collectively, “Phoenix Data”) will not occur until on or about January 2, 2024. Therefore, pending the closing, all payment and performance responsibilities under the Lease and the Guaranty will continue to be borne by the applicable Debtors as administrative expense obligations.

**LIMITED OBJECTION – ADEQUATE ASSURANCE OF FUTURE PERFORMANCE**

9. The Debtors and Landlord have agreed upon the “cure” amount to be paid to the Landlord in connection with the assumption and assignment of the Lease.

10. A modification of the Lease is in the process of being negotiated; the Landlord’s expectation is that the parties will agree on the form of that document before the Confirmation Hearing as the Lease is being assumed and assigned “as modified.”

11. The Landlord and Phoenix Data are in the process of negotiating the terms of “adequate assurance of future performance” to be delivered by Phoenix Data pursuant to section 365(f)(2)(B) of the Bankruptcy Code, particularly as it relates to a replacement LC. As of the date hereof, an agreement has not been reached. It is the Landlord’s position that section 365(f)(2)(B)

of the Bankruptcy Code requires a replacement LC to be delivered to Landlord on the closing date as a condition to assumption and assignment of the Lease (as modified) to Phoenix Data.

12. Additionally, the Landlord and Phoenix Data have agreed on the parameters of the replacement guarantor's financial condition. The parties are still negotiating the form of the replacement guaranty; the Landlord's expectation is that the parties will agree on the form of that document before the Confirmation Hearing as the replacement guaranty constitutes part of the "adequate assurance of future performance" package to the Landlord.

13. Lastly, in the event the closing with Phoenix Data fails to occur, it is the Landlord's understanding that the assignment of the Lease, as modified, to Phoenix Data will be null and void.

**WHEREFORE**, Landlord respectfully requests that the Court condition any approval of the assumption and assignment of the Lease, as modified, consistent with this Limited Objection and grant Landlord such other relief as the Court deems just and appropriate under the circumstances.

Dated: November 13, 2023

**MCGRAIL & BENSINGER LLP**  
*Counsel for 1919 Park Avenue Associates, LLC*

/s/ Ilana Volkov  
Ilana Volkov