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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:
In re:	: Chapter 11
	:
1141 REALTY OWNER LLC, <u>et al.</u> ,	: Case No. 18-12341 (SMB)
	:
Debtors.	: Joint Administration Pending
	:
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**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS AUTHORIZING, BUT NOT DIRECTING, FLATIRONHOTEL OPERATIONS
LLC TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS**

1141 Realty Owners LLC (“Owner”) and Flatironhotel Operations LLC (“Operator” and together with Owner, the “Debtors”)¹, the debtors and debtors in possession in the above captioned cases (the “Chapter 11 Cases”) hereby move (the “Motion”) for entry of an order in substantially the form annexed hereto authorizing, but not directing, Operator to pay certain prepetition claims held by certain critical vendors. In support of the Motion, the Debtors rely upon the First Day Declaration (defined below), and respectfully represent as follows:

¹ The Debtors herein and the last four digits of their respective tax identification number are: 1141 Realty Owner LLC (1804) and Flatironhotel Operations LLC (4773). The Debtors’ principal place of business is 9 West 26th Street a/k/a 1141 Broadway, New York, New York.

JURISDICTION, VENUE AND STATUTORY PREDICATE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are sections 105(a), 363, 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, et. seq. (“Bankruptcy Code”), and Rule 6004 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”).

BACKGROUND

4. On the date hereof (the “Petition Date”), the Debtors each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their respective businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
5. The Court and interested parties are respectfully referred to the Declaration of James Katchadurian Pursuant to Local Bankruptcy Rules 1007-2 and 9007-1 (the “First Day Declaration”)² for a detailed description of the Debtors’ businesses and events leading to the commencement of the Chapter 11 Cases.
6. The United States Trustee has not appointed an official creditors’ committee in the Chapter 11 Cases. No trustee or examiner has been appointed in the Chapter 11 Cases.

THE CRITICAL VENDORS

7. In connection with the day-to-day operation of its business, Operator relies upon a network of vendors and essential service providers critical to the Debtors’ business (the “Critical

² Capitalized terms not defined herein shall have the meaning ascribed to them in the First Day Declaration.

Vendors”),³ the loss of which could immediately and irreparably harm the Debtors’ business, disrupt operations, and significantly impair the Debtors’ going-concern value.

8. The Critical Vendors include companies that provide critical goods and/or services to Operator in order for it to run its operations. Operator has identified approximately seven (7) service providers and suppliers that may be Critical Vendors. Operator pays these Critical Vendors approximately \$50,000.00 per month and estimates that approximately \$169,134.00 is currently owed to the Critical Vendors. The services provided by the Critical Vendors and the approximate amount each is owed is as follows:

Name	Service Description	Proposed Payment
Critical Vendor 1	Air-conditioning/heating service	\$ 5,063.00
Critical Vendor 2	House keeping	\$ 12,000.00
Critical Vendor 3	Booking/reservation platform	\$ 4,602.00
Critical Vendor 4	Property management system	\$ 8,062.00
Critical Vendor 5	IT/cloud support	\$ 9,407.00
Critical Vendor 6	Booking/reservation platform	\$ 65,000.00
Critical Vendor 7	Booking/reservation platform	\$ 65,000.00
	Total	\$ 169,134.00

NECESSITY OF PAYMENT TO CRITICAL VENDORS

9. It is essential to the Debtors’ business that Operator is able to maintain ongoing operations in the ordinary course so as to maximize the value of the Debtors’ business as a going concern. If Operator fails to pay the claims of the Critical Vendors, (collectively, the “Critical Vendor Claims”), certain of the Critical Vendors may stop providing essential services.⁴ Even if

³ Debtors will provide the list of Critical Vendors to the United States Trustee, and to any Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases, provided that such information is treated as confidential.

⁴ Nothing contained herein is intended or shall be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors’ rights to dispute any claim on any grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular claim against the Debtors would constitute a Critical Vendor Claim or that any creditor is a Critical Vendor.

suitable alternatives were available, the time necessary to identify these replacements and integrate them into operations likely would cause a significant disruption to the business.

10. Accordingly, authorizing the Debtors to pay the Critical Vendor Claims will ensure the continued operation of Operator's business and preserve value of the business for the benefit of all stakeholders.

11. Operator proposes to condition the payment of any Critical Vendor Claim on the agreement of the Critical Vendor to provide good and services to Operator on the most favorable trade terms that such Critical Vendor offered to Operator in the six (6) months prior to the Petition Date ("Customary Trade Terms"). Subject to the objection rights of the Critical Vendors, if any Critical Vendor accepts payment on account of a Critical Vendor Claim and does not continue to provide postpetition good or services to Operator on Customary Trade Terms, any payment made to such Critical Vendor hereunder may be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and may be recoverable by the estate.

12. Operator believes that authority to pay the Critical Vendor Claims is vital to continued operations and the success of these Bankruptcy Cases. If this Motion is not granted, Operator believes that the Critical Vendors will stop providing services to Operator on Customary Trade Terms, effectively reducing the amount of trade credit available on a postpetition basis. Moreover, if the Critical Vendor Claims are not paid, Operator believes that certain Critical Vendors will stop doing business with Operator altogether. Such a result could be disastrous to Operator and its estate.

RELIEF REQUESTED AND BASIS THEREOF

13. By this Motion, the Debtors seek authority for Operator to continue to pay, in its discretion and to the extent necessary to preserve value the Critical Vendor Claims.

14. Section 363(b)(1) of the Bankruptcy Code provides: "The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Additionally, section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent the abuse of process.

11 U.S.C. § 105(a).

15. Courts have repeatedly recognized "the existence of the judicial power to authorize a debtor . . . to pay prepetition claims where such payment is essential to the continued operations of the debtors." In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989). "Section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances." Id. at 175. To obtain approval for the use of estate assets outside the ordinary course of business, the debtors must articulate a valid business justification for the requested use. See id. When applying the "business judgment" rule, courts show great deference to a debtor's decision making. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); In re Castre, Inc., 312 B.R. 426, 430-31 (Bankr. D. Colo. 2004); Murphy v. Howison (In re Murphy), 288 B.R. 1, 5 (D. Me. 2002); In re Bakalis, 220 B.R. 525, 532 (Bankr. E.D.N.Y. 1998).

16. Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. See In re Columbia Gas Sys., Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (citing In re Lehigh & New England Rwy. Co., 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that "if payment of a prepetition claim 'is essential to the continued operation of [the debtors], payment may be authorized'").

17. The Court's exercise of its authority under the "doctrine of necessity" is appropriate to carry out specific statutory provisions of chapter 11, specifically sections 1107(a), 1108 and 363(b)(1) of the Bankruptcy Code, which collectively authorize a debtor-in-possession to maintain and operate the debtor's business and use estate property outside of the ordinary course of business.

18. The doctrine of necessity "recognizes the existence of the judicial power to authorize a debtors in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtors." Ionosphere Clubs, Inc., 98 B.R. at 176; see also In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtors "cannot survive" absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) ("[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtors."); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) ("[T]o justify payment of a pre-petition unsecured creditor, a debtors must show that the payment is necessary to avert a serious threat to the Chapter 11 process.").

19. The doctrine of necessity is an accepted component of modern bankruptcy jurisprudence. See Just For Feet, 242 B.R. at 826 (approving payment of key inventory suppliers' prepetition claims when such suppliers could destroy debtors' business by refusing to deliver new inventory on eve of debtors' key sales season); In re Payless Cashways, Inc., 268 B.R. 543, 546-47 (Bankr. W.D. Mo. 2001) (authorizing payment of critical prepetition suppliers' claims when such suppliers agree to provide postpetition trade credit); see also In re Colum. Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994); Ionosphere Clubs, Inc., 98 B.R. at 175.

20. The Debtors submit that the relief requested herein is appropriate under the doctrine of necessity. The authority to satisfy the Critical Vendor Claims in the initial days of these Bankruptcy Cases without disrupting business operations will send a clear signal to the marketplace that Debtors are willing and, importantly, able to conduct business as usual during the Bankruptcy Cases, which will aid the Debtors in maximizing value in connection with the sale of substantially all of their assets. Indeed, where a debtor has shown that the payment of prepetition claims is critical to maximize the value of its estate, courts in this district have authorized similar relief in other chapter 11 cases. See, e.g., In re Pinnacle Airlines Corp., Case No. 12-11343 (REG) (Bankr. S.D.N.Y. Apr. 23, 2012); In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011); In re The Great Atl. & Pac. Tea Co., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 12, 2010); In re Mesa Air Grp., Inc., Case No. 10-10018 (MG) (Bankr. S.D.N.Y. Jan. 26, 2010); In re Gen. Motors Corp., Case No. 09-50026 (REG) (Bankr. S.D.N.Y. June 1, 2009).⁵

21. Failure to pay the Critical Vendor Claims could materially jeopardize the continued operations of Operator. If the Critical Vendors are unwilling to continue doing business with Operator post-petition due to unpaid prepetition claims, business operations will suffer, compromising the value of the estate, to the detriment of all parties-in-interest. Even if Operator were able to replace the Critical Vendors, it is unlikely that the new providers would be able or willing to provide services in a timely manner or on terms as favorable as those currently available.

⁵ Because of the voluminous nature of the unreported orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon email request of the Debtors' counsel by contacting Tracy Klestadt at TKlestadt@klestadt.com.

22. Based on the negative consequences that could potentially arise if the Critical Vendors ceased doing business with Operator, the Debtors submit that the relief requested herein represents a sound exercise of Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the estate and is therefore justified under sections 363(b) and 105(a) of the Bankruptcy Code.

RESERVATION OF RIGHTS

23. Nothing contained herein is intended or should be construed as (i) an admission as to the validity or priority of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any ground; (iii) a promise or requirement to pay any claim; (iv) an assumption or rejection of any agreement, contract or lease, pursuant to section 365 of the Bankruptcy Code; or (v) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Motion. Debtors expressly reserve, and do not waive, their rights under the Bankruptcy Code or any other applicable law.

REQUIREMENTS OF BANKRUPTCY RULE 6003 HAVE BEEN SATISFIED

24. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. As described herein, the relief requested is necessary in order for the Debtors to operate the business in the ordinary course and preserve the ongoing value of the operations and maximize value of its estates for the benefit of all stakeholders. Accordingly, Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

25. To implement the foregoing successfully, Debtors request that the Court determine that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen (14) day stay period under Bankruptcy Rule 6004(h).

NOTICE

26. No trustee, examiner or creditors' committee has been appointed in these Chapter 11 Cases. Notice of this Motion will be given to: (a) the Office of the U.S. Trustee; (b) known holders of secured claims; and (c) the holders of the 25 largest unsecured claims. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

27. No previous request for the relief sought herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested and such other or further relief as is just and proper.

Dated: New York, New York
July 31, 2018

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*Proposed Attorneys for the Debtors and
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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
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1141 REALTY OWNER LLC, et al., : Case No. 18-12341 (SMB)
:
Debtors. : Joint Administration Pending
:
----- X

**INTERIM ORDER AUTHORIZING, BUT NOT DIRECTING,
FALTIRONHOTEL OPERATIONS LLC TO PAY CERTAIN
PREPETITION CLAIMS OF CRITICAL VENDORS**

Upon the motion (“Motion”)¹ of 1141 Realty Owner LLC (“Owner”) and Flatironhotel Operations LLC (“Operator”, and together with Owner, the “Debtors”), the debtors and debtors in possession in the above-referenced chapter 11 cases (the “Chapter 11 Cases”) for entry of an Order authorizing, but not directing, Operator to pay certain prepetition claims of critical vendors and service providers; and this Court having jurisdiction to consider the Motion and the relief requested therein; and consideration of the Motion and the relief required being a core proceeding; and venue being proper before this Court; and due and sufficient notice of the Motion having been given under the particular circumstances to the Notice Parties; and it appearing that no other or further notice need be provided; and this Court having determined that relief requested in the Motion being in the best interest of Debtors, their creditors, and all parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

¹ All capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein pending the Court's consideration of a final Order.

2. Operator is authorized, but not directed, to pay in the ordinary course of business and consistent with its prepetition practice certain prepetition Critical Vendor Claims in an amount not to exceed \$169,134.00 on an interim basis, and provided, however that (a) any payments shall only be made as they become due, and (b) no payments shall be accelerated prior to the final hearing on the Motion.

3. In return for payment of the Critical Vendor Claims, Operator shall seek agreements from the Critical Vendors to provide services on Customary Trade Terms.

4. If any Critical Vendor accepts payment on account of a prepetition obligation of Operator and thereafter does not continue to provide goods or services on Customary Trade Terms, Operator shall have the right to assert that such payments made were avoidable postpetition transfers under section 549 of the Bankruptcy Code and recoverable by the estate. Operator is hereby authorized, but not directed, to obtain written verification before issuing payment to a Critical Vendor that such Critical Vendor will continue to provide services to Operator on Customary Trade Terms for the remaining term of the Critical Vendor's relationship with the Debtors; provided, however, that the absence of such written verification will not limit the Debtors' rights hereunder.

5. Nothing in this Order shall prohibit Debtors from seeking Court authority to increase the prepetition amounts authorized to be paid to the Critical Vendors.

6. Nothing herein shall impair the Debtors' ability to contest, without prejudice, the validity and amounts owing to the Critical Vendors.

7. Nothing herein shall be deemed to constitute the postpetition assumption of any executory contract between Debtors and the Critical Vendors.

8. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or lien, or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

10. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

11. To the extent applicable, the notice requirements of Bankruptcy Rule 6004(a) are hereby waived.

12. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

13. The Final Hearing on the Motion shall be held on _____, 2018 at _____ (Eastern Time) and any objections or responses to the Motion shall be in writing, filed with the Court, with a copy to chambers, so as to be received by Debtors' counsel, and the Office of the United States Trustee, no later than seven (7) days before the date of the Final Hearing.

14. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

15. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: New York, New York
_____, 2018

UNITED STATES BANKRUPTCY JUDGE