

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>  <b>CBL &amp; ASSOCIATES PROPERTIES, INC., et al.,</b>  <b>Debtors.<sup>1</sup></b>	§ § § § § §	<b>Chapter 11</b>   <b>Case No. 20-35226 (DRJ)</b>  <b>(Jointly Administered)</b>
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**JOINT MOTION OF DEBTOR  
BROOKFIELD SQUARE ANCHOR S, LLC AND  
ASSOCIATED BANK, NATIONAL ASSOCIATION  
FOR ENTRY OF AN ORDER APPROVING (I) SETTLEMENT  
AGREEMENT AND (II) AGREED DISMISSAL OF CHAPTER 11 CASE**

**IF YOU OBJECT TO THE RELIEF REQUESTED YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

Brookfield Square Anchor S, LLC, as a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Debtor**” or “**Brookfield**”), and Associated Bank, National Association, as agent for the lenders under the Brookfield Loan Agreement<sup>2</sup> (“**Associated Bank**,” and together with Brookfield, the “**Movants**”), respectfully represent as follows in support of this motion (the “**Motion**”):

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<sup>1</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/CBLProperties>. The Debtors’ service address for the purposes of these chapter 11 cases is 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421.

<sup>2</sup> Capitalized terms used but not otherwise defined in these opening paragraphs shall have the meanings ascribed to such terms in the body of the Motion or the Settlement (as defined below), as applicable.

**Preliminary Statement**

1. As the Court is aware, despite prior negotiations over a long-term solution with respect to the Brookfield Loan, the Movants had been unable to reach a consensual agreement. Consequently, the Debtor commenced its chapter 11 case (the “**Brookfield Chapter 11 Case**”) with the hopes of restructuring using the tools available under the Bankruptcy Code. At the first day hearing on October 19, 2021, the Movants agreed to participate in a mediation before the Honorable Marvin Isgur (the “**Mediator**”) to attempt to reach a consensual resolution to accomplish the goal of maximizing value of the Brookfield Property for the benefit of all stakeholders.

2. The Mediation was successful. The Movants agreed to a comprehensive settlement, which includes, among other things: (i) a two-year extension of the term of the Brookfield Loan, with an option for a third year; (ii) the reinstatement of the Guaranties; (iii) an agreed-upon Loss Reserve to cover projected losses in fiscal years 2022 and 2023; (iv) an appraisal arrangement in the event that Brookfield refinances or sells certain outparcels adjacent to the Brookfield Property; and (v) certain other agreed-upon modifications to the Brookfield Loan. To avoid the expense associated with prosecuting a formal plan of reorganization, the Movants agreed to effectuate the settlement through a stipulated dismissal of the Brookfield Chapter 11 Case.

3. The Debtor believes that the Settlement is in the best interests of the Debtor, its estate, and its creditors as it will, among other things, avoid costly and protracted litigation between the Movants. Moreover, holders of general unsecured claims against Brookfield will not be adversely impacted by the Settlement and stipulated dismissal, as they will continue to be paid in the ordinary course.

4. Accordingly, for the reasons set forth herein, the Movants request that the Court approve the Settlement and dismiss the Brookfield Chapter 11 Case.

### **Background**

5. On October 18, 2021 (the “**Brookfield Petition Date**”), the Debtor commenced with the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) the Brookfield Chapter 11 Case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Brookfield Chapter 11 Case is being jointly administered with the chapter 11 cases of CBL & Associates Properties, Inc. and its debtor affiliates (the “**Initial Debtors**,” and, together with Brookfield, the “**Debtors**”).

6. With respect to the Initial Debtors, on August 11, 2021, the Court entered the *Findings of Fact, Conclusions of Law, and Order (I) Confirming Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and its Affiliated Debtors and (II) Granting Related Relief* [Docket No. 1397] (the “**Confirmation Order**”) confirming the *Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and its Affiliated Debtors (with Technical Modifications)* [Docket No. 1369] (as amended, supplemented, and modified, including pursuant to the Bankruptcy Court’s order entered on October 26, 2021, at Docket No. 1521, the “**Plan**”). On November 1, 2021, the Effective Date (as defined in the Plan) occurred.

#### **A. General Background**

7. Brookfield owns a first-class, open-air entertainment development in Brookfield, Wisconsin (the “**Brookfield Property**”) that is home to eleven (11) tenants, including Marcus Theater, Whirlyball, and Orange Theory Fitness.

8. On October 23, 2018, Brookfield, Associated Bank, and West Suburban Bank (and with Associated Bank, the “**Brookfield Lenders**”) entered into that certain Syndicated Construction Loan Agreement (as amended and as may be further amended, restated, modified and/or supplemented from time to time, the “**Brookfield Loan Agreement**”). Under the

Brookfield Loan Agreement, the Brookfield Lenders agreed to extend credit to Brookfield in the aggregate principal amount of up to \$29,400,000 (the “**Brookfield Loan**”).

9. In connection with the Brookfield Loan Agreement, Brookfield provided two notes dated October 23, 2018: (i) a promissory note in the principal amount of \$20,900,000 in favor of Associated Bank; and (ii) a promissory note in the principal amount of \$8,500,000 in favor of West Suburban Bank (together with all extensions, renewals, modifications, substitutions and replacements thereof, the “**Notes**”).

10. The Notes are secured by (i) that certain Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of October 23, 2018 (as amended, restated, modified and/or supplemented from time to time, the “**Mortgage**”), made and executed by Brookfield for the benefit of Associated Bank, as a lender and administrative agent. In connection with the Brookfield Loan Agreement, CBL & Associates Limited Partnership (the “**CBL Guarantor**”) made and executed (i) that certain Payment Guaranty Agreement dated as of October 23, 2019, as amended by that certain Amendment No. 1 dated as of March 1, 2019 and effective as of January 30, 2019 (as amended, restated, modified and/or supplemented from time to time, the “**Payment Guaranty**”) and (ii) that certain Completion Guaranty Agreement dated as of October 23, 2019, as amended by that certain Amendment No. 1 dated as of March 1, 2019 and effective as of January 30, 2019 (as amended, restated, modified and/or supplemented from time to time, the “**Completion Guaranty**”, and together with the Payment Guaranty, the “**Guaranties**”).

11. As of the Brookfield Petition Date, the amount outstanding under the Brookfield Loan Agreement is \$27,461,203.78 (including unpaid principal, accrued and unpaid interest, and certain fees, costs and other expenses, but excluding professional fees). In connection

with the Brookfield Loan Agreement and the Guaranties, Associated Bank filed a proof of claim against the CBL Guarantor (Proof of Claim No. 20526) (the “**Proof of Claim**”).

## **B. Mediation**

12. As announced at Brookfield’s first day hearing, the Movants agreed to mediation to negotiate a consensual resolution of the issues related to the Brookfield Loan and the commencement of the Brookfield Chapter 11 Case. The mediation (the “**Mediation**”) was held on November 5, 2021.<sup>3</sup> With the help of the Mediator, the Movants reached a comprehensive settlement of all issues relating to the Brookfield Loan and the Brookfield Chapter 11 Case.

## **C. Summary of Settlement**

13. The term sheet memorializing the agreement reached in the Mediation between Associated Bank and Brookfield (the “**Settlement**”) is annexed as Exhibit 1 to the Proposed Order (as defined below). The Settlement will be implemented through a modification to the Brookfield Loan Agreement (the “**Loan Modification**”). As noted above, the Settlement has the support of Brookfield’s major stakeholder—Associated Bank—and will not affect its unsecured creditors. The key terms of the Settlement are as follows:

<b>Term</b>	<b>Description</b>
<b>Loan Amount</b>	The Brookfield Loan shall be reinstated in the principal amount of \$27,461,203.78.
<b>Interest Rate</b>	<ul style="list-style-type: none"> <li>The Brookfield Loan shall bear interest as follows: <ul style="list-style-type: none"> <li>LIBOR + 2.90%, with a 50 basis point floor, per annum until December 31, 2023.</li> <li>If the Brookfield Loan is extended for one additional year until December 31, 2024 in accordance with the Settlement, LIBOR + 2.90%, with a 75 basis point floor, per annum until the maturity of the Brookfield Loan.</li> </ul> </li> </ul>

<sup>3</sup> See Agreed Mediation Order Appointing Judge Marvin Isgur as Mediator as to Chapter 11 Issues Related to Brookfield Square Anchor S, LLC [Docket No. 1516].

Term	Description
<b>Amortization</b>	<ul style="list-style-type: none"> <li>• Brookfield shall make monthly amortization payments of \$75,000.</li> </ul>
<b>Maturity</b>	<ul style="list-style-type: none"> <li>• Unless otherwise extended in accordance with the following paragraph, the Brookfield Loan will mature on December 31, 2023.</li> <li>• The Brookfield Loan may be extended, at Brookfield's option, as follows: <ul style="list-style-type: none"> <li>○ Brookfield may obtain an extension of the maturity of the Brookfield Loan until December 31, 2024 if, prior to December 31, 2023, Brookfield makes a principal payment in the amount of \$2,000,000 (the "<b>Extension Prepayment</b>").</li> <li>○ Beginning on January 1, 2024 and through December 31, 2024, Brookfield may obtain monthly extensions of the Brookfield Loan in exchange for (i) a one-time 50 basis point fee payable by January 1, 2024 and (ii) with respect to each monthly extension, payment of an amount equal to 1% of the loan balance that exceeds \$17,000,000.</li> </ul> </li> </ul>
<b>Covenants</b>	<ul style="list-style-type: none"> <li>• The terms of the Brookfield Loan shall remain the same, provided that the Brookfield Loan shall be amended to waive covenants as necessary and appropriate to implement the terms of the Settlement, including to account for projections. <ul style="list-style-type: none"> <li>○ Covenant waivers to be agreed upon in connection with definitive documentation.</li> </ul> </li> <li>• Any loan-to-value covenants ("<b>LTV</b>") shall be waived, provided that Associated Bank may require appraisals in accordance with the Brookfield Loan Agreement, but such appraisals shall not give rise to any defaults relating to LTV.</li> <li>• All covenants relating to debt service coverage ratio shall be waived.</li> <li>• Any debt yield ratio requirement for a Brookfield Loan extension shall be waived.</li> </ul>
<b>Loss Reserve</b>	<ul style="list-style-type: none"> <li>• As a condition to closing, Brookfield will fund \$690,000 into a reserve account (the "<b>Loss Reserve</b>") at Associated Bank to cover projected losses for fiscal years 2022 and 2023. At or prior to closing, Brookfield will deliver a projection showing monthly projected revenue and expenses.</li> <li>• On the date that Brookfield makes a monthly interest payment to Associated Bank in accordance with the Brookfield Loan, Brookfield shall be entitled to withdraw cash from the Loss Reserve to cover the projected loss (if any) for the month in which such payment is made; provided that the Loss Reserve at all times shall contain funds sufficient to cover projected losses for the remaining periods of 2022 and 2023.</li> </ul>

Term	Description
	<ul style="list-style-type: none"> <li>Beginning on April 10, 2022, and, thereafter, no later than fifteen (15) calendar days after the end of each fiscal quarter, Brookfield shall provide to Associated Bank a report of the variance between actual and projected losses, on a cash basis, for the prior quarter.</li> <li>Any remaining amounts in the Loss Reserve as of December 31, 2023 shall be returned to Brookfield.</li> </ul>
<b>Appraisal Arrangement</b>	<ul style="list-style-type: none"> <li>At any time prior to the maturity of the Brookfield Loan, Brookfield may sell or refinance the two outparcels that are collateral for the Brookfield Loan (the “<b>Outparcels</b>,” and any sale or refinancing thereof, an “<b>Outparcel Transaction</b>”).</li> <li>In connection with an Outparcel Transaction, upon written request of Brookfield provided at least forty-five (45) days in advance of the closing of any sale or refinancing (the “<b>Notice Date</b>”), Associated Bank must obtain an independent appraisal (the “<b>Outparcel Appraisal</b>”) of the Outparcels in accordance with the following procedures: <ul style="list-style-type: none"> <li>No later than five (5) business days of the Notice Date, Associated Bank shall provide Brookfield with a list of approved, nationally recognized appraisal firms (the “<b>Appraiser List</b>”).</li> <li>No later than (3) three business days after receiving the Appraiser List, Brookfield shall select three (3) firms from the Appraiser List (the “<b>Brookfield Appraisers</b>”).</li> <li>No later than three (3) business days after receiving the Brookfield Appraisers, Associated Bank shall select and order one (1) of the Brookfield Appraisers to conduct the Outparcel Appraisal (the “<b>Appraiser</b>”).</li> </ul> </li> <li>In connection with an Outparcel Transaction, Associated Bank shall release its lien on the Outparcels if Brookfield pays to Associated Bank, at Brookfield’s election, either: <ul style="list-style-type: none"> <li>85% or more of the value of the Outparcels as determined by the Appraiser (the “<b>Appraised Value</b>”); or</li> <li>At least 80% but less than 85% of the Appraised Value plus an additional \$2,000,000 (which shall not be paid from proceeds of the Outparcel Transaction), provided that such payment shall constitute an Extension Prepayment.</li> </ul> </li> </ul>

Term	Description
<b>Guaranties</b>	The Guaranties shall remain in place on a fully recourse basis (reinstated as Class 6 Property-Level Guarantee Settlement Claim in accordance with the Plan <sup>4</sup> ).
<b>Fees and Expense Reimbursement</b>	<p>At closing of the Loan Modification, Brookfield shall pay to Associated Bank:</p> <ul style="list-style-type: none"> <li>• A one-time fee of 25 basis points of the Loan amount;</li> <li>• All accrued interest at the non-default rate;</li> <li>• A reimbursement of all documented expenses incurred by Associated Bank (including reasonable counsel fees) in connection with the Loan; and</li> <li>• Outstanding appraisal fees, provided that Associated Bank shall provide Brookfield with appropriate invoices relating to such fees.</li> </ul>
<b>DACA</b>	Brookfield shall (a) enter into a Deposit Account Control Agreement (in form and substance reasonably acceptable to Associated Bank) for the Citizens Bank account ending in X4622, and (b) continue to maintain its “Operating Account” at Associated Bank, in accordance with the terms of the Brookfield Loan.
<b>Transferability</b>	The Banks may transfer the Brookfield Loan to any party without Brookfield’s or CBL Guarantor’s consent.

14. The Settlement also contemplates certain fee and expense reimbursement payable by Brookfield to Associated Bank, as well as other customary closing and documentation conditions.

### **Jurisdiction**

15. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>4</sup> The “Plan” means the *Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and its Affiliated Debtors (with Technical Modifications)* [Docket No. 1369] (as amended, supplemented, and modified, including pursuant to the Bankruptcy Court’s order entered on October 26, 2021, at Docket No. 1521), as confirmed by the Court [Docket No. 1397].



**Relief Requested**

16. By this Motion, pursuant to sections 105(a), 305(a), and 349 of the Bankruptcy Code and Rules 1017 and 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Movants request entry of an order (a) authorizing the Debtor to enter into the Settlement and Loan Modification, (b) approving the Settlement’s terms and authorizing the Debtor’s performance thereunder, (c) approving the agreed dismissal of the Brookfield Chapter 11 Case, and (d) granting related relief.

17. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “**Proposed Order**”).

**Relief Requested Should Be Granted**

**I. The Settlement is Fair, Reasonable, and in the Best Interest of the Debtor’s Estate**

18. Bankruptcy Rule 9019(a) provides that “[o]n motion by the [debtors in possession] and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Further, pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interests of the estate. *See Off. Comm. of Unsecured Creditors v. Moeller (In re Age Refin., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, approval of a compromise is within the discretion of the bankruptcy court. *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980) (citations omitted) (decided under the Bankruptcy Act). Settlements are considered a “normal part of the process of reorganization” and a “desirable and wise method[] of bringing to a close proceedings otherwise lengthy, complicated, and costly.” *Rivercity*, 624 F.2d at 602–03.

19. The Fifth Circuit has established a three-factor balancing test under which bankruptcy courts analyze proposed settlements. *Id.* The factors courts consider are: “(1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise.” *See Age Refin.*, 801 F.3d at 540 (internal citations omitted).

20. Under the rubric of the third factor, the Fifth Circuit has specified two additional factors that bear on a decision to approve a proposed settlement. First, the Court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the Court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Age Refin.*, 801 F.3d at 540; *Foster Mortg.*, 68 F.3d at 918 (citations omitted).

21. Generally, the role of the Bankruptcy Court is not to decide the issues in dispute when evaluating a settlement. *Watts v. Williams*, 154 B.R. 56, 59 (S.D. Tex. 1993). Rather, the Court should determine whether the settlement as a whole is fair and equitable. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968).

22. Here, the terms of the Settlement are fair and reasonable, and in the best interests of the Debtor, its estate, and its creditors, and therefore should be approved based upon the three factors considered by courts in the Fifth Circuit.

23. **First**, the likelihood of the Debtor’s success in litigating the issues in the Brookfield Chapter 11 Case—including issues relating to a potential non-consensual, “cram-up” plan of reorganization for the Debtor—is uncertain. What is not uncertain, however, is that the

litigation would likely require the expenditure of significant funds and cause substantial, detrimental impact to the Debtor. Such negative impact would be felt even if the Debtor were successful in the litigation. Having the benefit of certainty and prior agreement between the Movants is preferable to what could otherwise be costly, time-consuming, and distracting litigation that would harm the Debtor's estate.

24. **Second**, litigating the issues resolved by the Settlement could be extensive and complex. The Settlement avoids complicated disputes relating to confirming a non-consensual plan of reorganization and aids the Debtor in the efficient dismissal and resolution of the Brookfield Chapter 11 Case. Implementing the Settlement via the Loan Modification and a stipulated dismissal of the Brookfield Chapter 11 Case avoids the need to expend significant funds proposing, soliciting, and confirming a plan of reorganization. The time and cost saved by approval of the Settlement and relief requested in this Motion are significant.

25. **Third**, the Settlement is the result of arms'-length, good-faith negotiations between Brookfield, Associated Bank, and their advisors, under the supervision of the Mediator. As described above, the Settlement represents a consensual restructuring solution for the Debtor that facilitates the Debtor's swift emergence from chapter 11 and avoids costly litigation.

26. Based upon the foregoing, and under these circumstances, entry into and performance under the Settlement is in the best interests of the Debtor, its estate, and its creditors, is fair and reasonable, and is the result of extensive arms'-length negotiations. Therefore, the Movants respectfully request that the Court approve the terms of the Settlement and authorize the Debtor's performance thereunder through entry of the Proposed Order.

**II. Dismissal Is In the Best Interests of the Debtor and its Creditors and the Settlement Should Remain Binding and Continue to Have Full Force and Effect After Dismissal**

**A. Dismissal is in the Best Interests of the Debtor and its Creditors**

27. Cause exists to dismiss the Brookfield Chapter 11 Case pursuant to section 305(a) of the Bankruptcy Code, which provides that:

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

(1) the interests of creditors and the debtor would be better served by such dismissal or suspension;

11 U.S.C. § 305(a).

28. Dismissal pursuant to section 305(a) is appropriate where the court finds that both creditors and the debtor would be better served by dismissal. *In re AMC Investors, LLC*, 406 B.R. 478, 487–88 (Bankr. D. Del. 2009). Dismissal under this provision is determined on a case-by-case basis and rests in the sound discretion of the bankruptcy court. *In re Sky Group Intern, Inc.*, 108 B.R. 86, 91 (Bankr. W.D. Pa. 1989); *see also In re CorrLine Int’l, LLC*, 516 B.R. 106, 140 (Bankr. S.D. Tex. 2014) (citing *In re TPG Troy LLC*, 492 B.R. 150, 160 (Bankr. S.D.N.Y. 2013)). Many factors are considered when determining the best interests of creditors and the debtor, including (i) the economy and efficiency of administration, (ii) whether federal proceedings are necessary to reach a just and equitable solution, (iii) whether there is an alternative means of achieving an equitable distribution of assets and (iv) whether the debtor and the creditors are able to work out a less expensive, out-of-court arrangement which better serves all interests in the case. *AMC Investors*, 406 B.R. at 488.

29. The Movants submit that cause exists for dismissal. As explained above, the Settlement represents a consensual, negotiated resolution with Associated Bank and the other lenders under the Brookfield Loan Agreement—the largest secured creditor of Brookfield.

Importantly, Brookfield's unsecured creditors will not be prejudiced by the dismissal because they will retain all rights they had prepetition and will continue to be paid in the ordinary course. The relief requested herein avoids the costly and time-consuming exercise of prosecuting these cases on a non-consensual basis. Thus, the Movants submit that the dismissal of the Brookfield Chapter 11 Case, in conjunction with the relief requested herein, is in the best interests of the Debtor and its creditors.

**B. The Settlement Should Remain Binding and Continue to Have Full Force and Effect After Dismissal**

30. The Movants also request that the Settlement remain in full force and effect and survive the dismissal of the Brookfield Chapter 11 Case. Although section 349 of the Bankruptcy Code provides that dismissal will typically reinstate the prepetition state of affairs by re-vesting property in the debtor and vacating orders and judgments of the bankruptcy court, a bankruptcy judge may “for cause, orde[r] otherwise.” 11 U.S.C. § 349(b). “[T]his provision appears to be designed to give courts the flexibility to ‘make the appropriate order to protect rights acquired in reliance on the bankruptcy case.’” *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 984 (2017).

31. The Movants submit that cause exists to allow the Settlement be given continued effect notwithstanding the dismissal of the Brookfield Chapter 11 Case. The Settlement will provide Brookfield with the ability to avoid costly litigation and emerge from the Brookfield Chapter 11 Case with prospects for sustainable growth. Unless the Court orders otherwise, section 349 of the Bankruptcy Code could unravel the remarkable achievement obtained through the Mediation. By allowing the Settlement to remain in full force and effect and survive dismissal, the Court will preserve the benefits of all parties' efforts and achievements.

**C. The Relief Requested Herein Does Not Violate *Jevic***

32. To the extent that the relief sought in the Proposed Order constitutes a “structured dismissal,” it is both permissible and appropriate. Specifically, the relief requested herein does not violate the United States Supreme Court’s decision in *Cyzewski v. Jevic Holding Corp.*, 137 S.Ct. 973 (2017) because the Motion does not seek to make distributions to creditors in violation of the absolute priority rule. The Debtor’s senior lenders have agreed to the Settlement and unsecured creditors will remain unimpaired as they will be paid in the ordinary course. As a result, the relief requested in this Motion and the Proposed Order do not violate the holding in *Jevic* and should be approved.

**Bankruptcy Rules 6004(a) and 6004(h)**

33. To the extent Bankruptcy Rules 6004(a) and 6004(h) are applicable, the Movants request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay requirement under Bankruptcy Rule 6004(h). It is essential that the Debtor be able to consummate the transactions contemplated by the Motion as soon as possible to minimize expenses of its estate and thereby maximize creditor recoveries. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such stay applies.

*[Remainder of page intentionally left blank]*

WHEREFORE the Movants respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: November 19, 2021  
Houston, Texas

Respectfully submitted,

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**Certificate of Service**

I hereby certify that on November 19, 2021, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Alfredo R. Pérez

Alfredo R. Pérez