

ENTERED

December 17, 2021

Nathan Ochsner, Clerk

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

In re:	§	Chapter 11
	§	
CBL & ASSOCIATES	§	
PROPERTIES, INC., <i>et al.</i> ,	§	Case No. 20-35226 (DRJ)
	§	
Debtors. ¹	§	(Jointly Administered)
	§	Re: Docket No. 1595

**ORDER (I) APPROVING SETTLEMENT
AND (II) DISMISSING CHAPTER 11 CASE**

Upon the motion, dated November 19, 2021 (the “**Motion**”)² of Brookfield Square Anchor S, LLC, as a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Debtor**”), and Associated Bank, National Association (“**Associated Bank**”) for entry of an order authorizing the Debtor to enter into the Settlement and Loan Modification, approving the terms of such Settlement, authorizing the Debtor’s performance thereunder, and dismissing the Brookfield Chapter 11 Case, as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

held a hearing to consider the relief requested in the Motion; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and upon the record of the hearing; and this Court having determined that the legal and factual bases set forth in the Motion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 it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate and its creditors; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Debtor is authorized to enter into, perform, execute, and deliver all documents, and take all actions, necessary to immediately continue and fully implement the Settlement, annexed hereto as **Exhibit 1**, and the Loan Modification, in accordance with the agreed terms and conditions set forth therein.

2. The Proof of Claim (Claim No. 20526) shall be classified as a Class 6—Property-Level Guarantee Settlement Claim under the Plan.

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

4. Notwithstanding the provisions of Bankruptcy Rule 6004(h), to the extent they are applicable, this Order shall be immediately effective and enforceable upon its entry.

5. Pursuant to section 305(a) of the Bankruptcy Code, the Brookfield Chapter 11 Case is dismissed for cause, effective as of the entry of this Order.

6. Notwithstanding anything to the contrary, including, without limitation, section 349 of the Bankruptcy Code, the Settlement and Loan Modification shall remain in full force and effect and shall survive the dismissal of the Brookfield Chapter 11 Case.

7. From and after the date of this Order, the Debtor and Associated Bank, and with respect to each of the aforementioned parties, their directors and officers, financial advisors, attorneys, and other professionals, shall be exculpated by the Debtor and Associated Bank, as applicable, from any liability for any act taken or omitted to be taken in good faith from the Brookfield Petition Date through the date of entry of this Order in connection with or related to the Brookfield Chapter 11 Case, except for any claim or cause of action arising from the fraud, gross negligence, or willful misconduct of such party.

8. The Debtor Brookfield Square Anchor S, LLC in Case No. 21-90014, no later than thirty (30) days after entry of this Order, shall file with the Clerk of the United States Bankruptcy Court operating reports and statements of disbursements and of any fees payable under 28 U.S.C. § 1930(a)(6) for each quarter during the period from October 18, 2021, through the date of entry of this Order, and shall serve a true and correct copy of said operating reports and statements of disbursements on the U.S. Trustee.

9. The Debtor Brookfield Square Anchor S, LLC in Case No. 21-90014, no later than thirty (30) days after entry of this Order, shall pay the appropriate sum of quarterly fees due and payable under 28 U.S.C. § 1930(a)(6) by remitting payment to the United States Trustee Payment Center, P. O. Box 6200-19, Portland, Oregon, 97228-6200, and shall furnish evidence of such payment to the United States Trustee, 515 Rusk, Suite 3516, Houston, Texas. The payment shall reflect the Debtor Brookfield Square Anchor S, LLC's account number and shall be transmitted with a "Chapter 11 Quarterly Disbursement and Fee Report" available from the United States Trustee. This Court shall retain jurisdiction to enforce payment of fees assessed under 28 U.S.C. § 1930(a)(6).

10. The Debtor is authorized to take all action necessary and appropriate to effectuate the relief granted in this Order, including negotiating and entering into the Loan Modification; provided, however, that the Movants reserve the right to re-engage with the Mediator with respect to disputes regarding the Loan Modification.

11. Notwithstanding the dismissal of the Brookfield Chapter 11 Case, the Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: December 16, 2021.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Settlement

MEDIATION SETTLEMENT TERM SHEET

The following term sheet sets forth the terms of the mediated settlement relating to that certain (i) Syndicated Construction Loan Agreement (as amended, the “**Loan**”) dated October 23, 2018, by and among Brookfield Square Anchor S, LLC (“**Brookfield**”) as borrower, and Associated Bank, National Association (“**Associated**”) as lender; (ii) Guaranty of Payment dated October 23, 2018, by and between CBL & Associates Limited Partner as guarantor (the “**Guarantor**”) and Associated; and (iii) Guaranty of Completion dated October 23, 2018 by and between Guarantor and Associated (the “**Guaranty**”).

Term	Description
Loan Amount	The Loan shall be reinstated in the principal amount of \$27,461,203.78.
Interest Rate	<ul style="list-style-type: none"> • The Loan shall bear interest as follows: <ul style="list-style-type: none"> ○ LIBOR + 2.90%, with a 50 basis point floor, per annum until December 31, 2023. ○ If the Loan is extended for one additional year until December 31, 2024 in accordance with this term sheet, LIBOR + 2.90%, with a 75 basis point floor, per annum until the maturity of the Loan.
Amortization	<ul style="list-style-type: none"> • Brookfield shall make monthly amortization payments of \$75,000.
Maturity	<ul style="list-style-type: none"> • Unless otherwise extended in accordance with the following paragraph, the Loan will mature on December 31, 2023. • The Loan may be extended, at Brookfield’s option, as follows: <ul style="list-style-type: none"> ○ Brookfield may obtain an extension of the maturity of the Loan until December 31, 2024 if, prior to December 31, 2023, Brookfield makes a principal payment in the amount of \$2,000,000 (the “Extension Prepayment”). ○ Beginning on January 1, 2024 and through December 31, 2024, Brookfield may obtain monthly extensions of the 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.
Covenants	<ul style="list-style-type: none"> • The terms of the Loan shall remain the same, provided that the Loan shall be amended to waive covenants as necessary and appropriate to implement the terms of this settlement, including to account for projections. <ul style="list-style-type: none"> ○ Covenant waivers to be agreed upon in connection with definitive documentation.

Term	Description
	<ul style="list-style-type: none"> Any loan-to-value covenants (“LTV”) shall be waived, provided that Associated may require appraisals in accordance with the Loan Agreement, but such appraisals shall not give rise to any defaults relating to LTV. All covenants relating to debt service coverage ratio shall be waived. Any debt yield ratio requirement for Loan extension shall be waived.
Loss Reserve	<ul style="list-style-type: none"> As a condition to closing, Brookfield will fund \$690,000 into a reserve account (the “Loss Reserve”) at Associated 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. On the date that Brookfield makes a monthly interest payment to Associated Bank in accordance with the 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. 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 a report of the variance between actual and projected losses, on a cash basis, for the prior quarter. Any remaining amounts in the Loss Reserve as of December 31, 2023 shall be returned to Brookfield.
Appraisal Arrangement	<ul style="list-style-type: none"> At any time prior to the maturity of the Loan, Brookfield may sell or refinance the two outparcels that are collateral for the Loan (the “Outparcels,” and any sale or refinancing thereof, an “Outparcel Transaction”). 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 “Notice Date”), Associated must obtain an independent appraisal (the “Outparcel Appraisal”) of the Outparcels in accordance with the following procedures: <ul style="list-style-type: none"> No later than five (5) business days of the Notice Date, Associated shall provide Brookfield with a list of approved, nationally recognized appraisal firms (the “Appraiser List”).

Term	Description
	<ul style="list-style-type: none"> ○ No later than (3) three business days after receiving the Appraiser List, Brookfield shall select three (3) firms from the Appraiser List (the “Brookfield Appraisers”). ○ No later than three (3) business days after receiving the Brookfield Appraisers, Associated shall select and order one (1) of the Brookfield Appraisers to conduct the Outparcel Appraisal (the “Appraiser”). • In connection with an Outparcel Transaction, Associated shall release its lien on the Outparcels if Brookfield pays to Associated, at Brookfield’s election, either: <ul style="list-style-type: none"> ○ 85% or more of the value of the Outparcels as determined by the Appraiser (the “Appraised Value”); or ○ 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.
Guaranty	The Guaranty shall remain in place on fully recourse basis (reinstated as Class 6 Property-Level Guarantee Settlement Claim in accordance with the Plan ¹).
Fees and Expense Reimbursement	<ul style="list-style-type: none"> • At closing, Brookfield shall pay to Associated: <ul style="list-style-type: none"> ○ A one-time fee of 25 basis points of the Loan amount; ○ All accrued interest at the non-default rate; ○ A reimbursement of all documented expenses incurred by Associated (including reasonable counsel fees) in connection with the Loan; and ○ Outstanding appraisal fees, provided that Associated shall provide Brookfield with appropriate invoices relating to such fees.
DACA	Brookfield shall (a) enter into a Deposit Account Control Agreement (in form and substance reasonably acceptable to Associated) for the Citizens Bank account ending in X4622, and (b) continue to maintain its “Operating Account” at Associated, in accordance with the terms of the Loan.

¹ 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].

Term	Description
Transferability	The Banks may transfer the Loan to any party without Brookfield's or Guarantor's consent.
Definitive Documentation	Closing is subject to final, mutually agreed, definitive documents.
Implementation	The parties will jointly seek (i) approval of this settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and (ii) the dismissal of the Brookfield chapter 11 case.