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

In re: **GOLDENPEAKS POLAND HOLDING LIMITED, *et al.*,** Debtors.[1]	Chapter 11 Case No. 26-90564 (ARP) Jointly Administered

OBJECTION OF THE BEGO SECURED LENDERS TO ENTRY OF FINAL ORDER AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING

Berenberg Alternative Assets Fund II S.A., SICAV-RAIF with its Sub-Funds Berenberg Green Energy Junior Debt Fund III and Berenberg Green Energy Debt Fund IV (collectively, the "BeGo Secured Lenders"), by and through their undersigned counsel, hereby submit this objection and reservation of rights (the "Objection") to the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Grant Junior and Senior Liens and Superpriority Administrative Expense Claims; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief* (the "DIP Motion") [Dkt. No. 24][2] filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking the entry of a final order authorizing the Debtors to, among other things, incur post-petition financing, and hereby state as follows:

[1] A complete list of each of the Debtors in these Chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://restructuring.ra.kroll.com/GoldenPeaks. The location of Debtor GoldenPeaks Poland LLC's principal place of business and the Debtors' service address in these Chapter 11 cases is 801 Louisiana Street, Suite 368, Houston, TX 77002.

[2] Unless otherwise indicated, capitalized terms that are not defined in this Objection have the meanings given to such terms in the DIP Motion or DIP Term Sheet.

PRELIMINARY STATEMENT

The Debtors have failed to establish any of the prerequisites for the approval of a DIP loan by this Court—that it is fair, provided under the most favorable terms available in the market to the estate, negotiated at arm's length, and necessary for a successful reorganization. The proposed DIP loan does not satisfy these requirements. The Debtors never shopped the DIP loan (or even hired a banker to try) and never asked the BeGo Secured Lenders or other lenders to consider providing DIP financing.[3] Instead, they provided this opportunity exclusively to an insider with board-level controls that was also a structurally junior secured lender whose pre-petition claims were structurally remote from the DIP loan collateral. This DIP loan should not be approved on this record, particularly when it can and will be shown that alternatives exist that could have been pursued or selected. Moreover, this is not a minor process deficiency; this DIP would provide Brookfield Asset Management Limited (together with its affiliates and designees, "Brookfield") with an approximately ***85%+ return*** on invested capital ***within three months*** following the entry of the Interim Order, which likely would be deployed as credit-bid currency to acquire the Debtors' assets, out from underneath mezzanine level lenders, including the BeGo Secured Lenders whose EUR equivalent of nearly $134 million of loans are structurally senior to Brookfield's prepetition debt as well as other structurally senior creditors. The Court cannot sanction this result.

The Debtors ceded substantial case control to an insider and obtained interim approval on an emergency basis before any meaningful stakeholder scrutiny could occur. Now, having failed to cure any of these deficiencies in the weeks since the Interim Order was entered, the Debtors ask this Court to grant final approval of the same arrangement on a permanent basis. That is not a reasonable, good-faith process, and this Court should reject it as inconsistent with the protections

[3] The BeGo Secured Lenders are not aware of any prepetition efforts on the part of the Debtors to market test the Brookfield DIP to any third parties, with or without an investment banker.

and purposes of the Bankruptcy Code. The Debtors and Brookfield are asking this Court to approve a process that undermines competitive bidding, materially impairs the structural protections negotiated by the estate's senior creditors, and delivers the Debtors' assets to the very insider whose conflicts of interest affected the process from the outset. Moreover, it will have done so with an exceptionally thin jurisdictional foundation given the almost complete absence of contacts in Houston or the United States and where nearly every single meaningful contact (operations, lenders, corporate organization, trade creditors, etc.) is in Central Europe.

This DIP Facility is a transaction that functions less as an ordinary postpetition financing than as an insider acquisition vehicle — one that, if approved, could invite similar financing structures for conflicted parties seeking to acquire companies they control through a bankruptcy case. Brookfield, the Debtors' junior secured lender, holds effective control over the Debtors through multiple overlapping positions: (i) its status as the sole corporate-level creditor, holding approximately $294 million in debt; (ii) its control of two of the five board seats; and (iii) its ongoing exercise of remedies (including delivery of an April 21, 2026 acceleration and share appropriation notice) over the pledge of the controlling equity interests in the Debtors. Brookfield used those positions to structure $150.7 million in postpetition financing that is not a DIP facility in any traditional sense—it is an acquisition vehicle structured to guarantee Brookfield an approximately ***85% return*** on invested capital ***within three months*** to be deployed as credit-bid currency to acquire the Debtors' assets. The BeGo Secured Lenders—holding the EUR equivalent of approximately $134 million in structurally senior secured debt—received no opportunity to propose alternative financing and no adequate protection in either the Interim DIP Order or (we must assume) the proposed Final Order.

The Brookfield DIP's economics speak for themselves: (i) 13% PIK interest; (ii) a 5% original issue discount ("OID"); (iii) a 5% exit premium; (iv) a 1.75x prepayment multiple ("MOIC"), which is in addition to the DIP fees and applies to both the new-money and roll-up loans; (v) a 6.5% ticking fee on all undrawn amounts—all fully earned upon first draw; and (vi) a $12.1 million roll-up, which is also subject to the MOIC. If Brookfield's plan proceeds, $150 million in new-money commitments could generate a total DIP claim of up to approximately $280 million in just three months. Each additional dollar of that claim increases Brookfield's credit-bid capacity under a credit-bid right that the Interim DIP Order preauthorized, without need for further court order, before any meaningful stakeholder scrutiny.

The governance terms are equally troubling. They award Brookfield absolute control over discretionary draws and allow it to unilaterally set sale milestones that compress any auction timeline to its advantage. This is not financing designed to maximize estate value. It is an insider effectively lending to itself, on terms that are unduly favorable to Brookfield and adverse to the estates, to boost its credit-bid currency, discourage competitive bidding, and acquire the Debtors' assets—including by leapfrogging the BeGo Secured Lenders' and their interests in collateral—at a price that may not reflect market-tested value.

This is not speculation. After the Chapter 11 Cases were filed, other lenders promptly stepped forward with better terms. At the First Day Hearing, Prime Capital—another structurally senior lender—carved out a Tranche 2 DIP facility at a lower interest rate, lower guaranteed return, and without any OID, exit premium, ticking fee, or roll-up. Likewise, the BeGo Secured Lenders have, since the First Day Hearing, provided a DIP participation proposal to the Debtors that remains under consideration by the Debtors at the time of the filing of this Objection, and Brookfield has also provided the BeGo Secured Lenders with proposals. The BeGo Secured

Lenders are prepared to fund a participation on commercially reasonable and materially superior terms to those Brookfield has extracted.[4] Had the Debtors actually tested the market before commencing their Chapter 11 Cases—or so much as contacted existing lenders other than Brookfield about postpetition financing—alternatives could have been available. The failure to determine the availability of better terms is grounds to deny the Debtors' motion. The Debtors did not disclose the DIP process to the BeGo Secured Lenders or invite their participation, instead they were preparing a U.S. chapter 11 process that was not explicitly discussed with them and that they had no reason to anticipate given the absence of any disclosed contacts with the United States.

Independent of these grounds for objection, the Court should reconsider the Interim DIP Order under Federal Rule of Civil Procedure 60(b), as the Debtors and Brookfield did not accurately represent to the Court the true nature of Brookfield's multifaceted control over the Debtors – including full equity control – a fact that was material to the Court's consideration of the DIP motion and which, given the truncated timing of the proceedings, the BeGo Secured Lenders and other stakeholders could not, with reasonable diligence, have discovered in time.

The BeGo Secured Lenders do not bring this Objection lightly. They are sophisticated European institutional lenders who extended credit in good faith, negotiated protections under European law, and are now confronted with an insider-driven U.S. bankruptcy process that would materially impair those protections. They are prepared to contest the key issues raised herein to conclusion, and they respectfully urge this Court to exercise its independent judgment—not defer

[4] The BeGo Secured Lenders continue to assess all alternatives. Providing DIP financing remains subject to the satisfactory completion of diligence (including, without limitation, a determination that providing any financing would be supported by appropriate economics). However, despite the requests made to the Debtors and their financial and legal advisors, the BeGo Secured Lenders have only received some of the information requested that is necessary to decide whether to provide DIP financing. In addition, the compressed milestones imposed by Brookfield are effectively limiting the opportunities of the BeGo Secured Lenders and others to conduct meaningful diligence and provide any DIP financing.

to the business judgment of fiduciaries whose independence is called into serious question by the record.

Accordingly, this Court should deny entry of the proposed Final DIP Order unless the Brookfield DIP is replaced or materially restructured to eliminate Brookfield's conflicts, provide meaningful adequate protection to the BeGo Secured Lenders, and restore the competitive restructuring process the Bankruptcy Code demands.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Debtors and their Capital Structure

1. GoldenPeaks Poland Holding Limited ("GoldenPeaks Poland") is a private, exempt, single-member limited liability company incorporated under Maltese law. As part of a larger, complex, multi-jurisdictional corporate structure spanning Malta, Germany, Luxembourg, Poland, and Hungary, GoldenPeaks Poland operates—or is constructing—a portfolio of solar-energy projects solely in Poland. All of the Debtors' operating assets and business operations are located in Poland, the company is headquartered and organized in Malta, and the Debtors' creditors are predominantly European financial institutions based in Germany and Luxembourg or trade creditors and contract counterparties located in Poland and to some extent in China.

2. The Debtors' only tangible U.S. connections were created shortly before, and relied on to commence, these Chapter 11 Cases: (i) a new Texas LLC recently established in Houston without any meaningful business purpose; (ii) approximately $35,000 deposited into a new bank account in Houston; and (iii) retainers paid to a noticing agent and U.S. restructuring advisors on the eve of filing. At the First Day Hearing, Debtors' counsel confirmed the recent timing and limited nature of these asserted jurisdictional hooks: "[T]here was nothing effectively in the United States before sometime in May of this year" [Tr. 19:4-8]—when the Debtors began arranging, over

the course of approximately a one-month period, to subordinate their senior lenders through a U.S. filing and DIP financing motion that would channel all restructuring or sale economics to Brookfield. The Debtors' own counsel further acknowledged at the First Day Hearing that "we had to do this as a crash" filing, confirming the absence of any deliberate, good-faith process. Tr. 23:21-22.

3. The Debtors' capital structure is a classic multi-project renewable energy platform: equity and junior corporate debt at the top, multiple tiers of senior project debt in the middle, and operating companies and their lenders at the bottom. Brookfield sits at the apex, holding effective control of GoldenPeaks Poland (the "TopCo Debtor") through its security interests and approximately $294 million in junior, parent-level secured debt, comprising both the Prepetition Credit Facility (approximately $271 million) and the Prepetition Incremental Facilities (approximately $12 million in bridge and incremental loans extended in May 2026). Brookfield is not a passive investor—it is an insider in every meaningful sense. It appointed two of five board members at the TopCo Debtor. The other three directors include two ostensibly independent directors—Mr. Donath (appointed April 8, 2026) and Mr. Rotenberg (appointed April 24, 2026)—whose appointments came only weeks before the filing and, given the timing, would have limited (to no) opportunity to provide a genuine check on Brookfield's control before the DIP was negotiated.

4. Brookfield's prepetition debt is structurally junior to mezzanine-level secured debt held by the BeGo Secured Lenders. This mezzanine debt funds early-stage development and construction of valuable renewable-energy projects in specific portfolio groups. The BeGo Secured Lenders hold the EUR equivalent of approximately $134 million in project debt secured by pledges of MidCo equity interests in the Helios, Iris, Juno, Leto, Sierra, and Timber portfolio

groups (the "BeGo Portfolio Groups"), together with additional security interests in certain project-level collateral, including OpCo/SPV-level equity pledges, bank account security, and PPA contract rights in the Sierra silo. The BeGo Secured Lenders' facilities are guaranteed by non-Debtor GoldenPeaks Capital Holding Limited, the sponsor of the BeGo Portfolio Groups.

5. The BeGo Secured Lenders' structural priority is central to these Chapter 11 Cases. They extended senior credit to certain Debtor borrowers—MidCo entities in the BeGo Portfolio Groups—in good faith and negotiated security interests designed to protect their investment, all under European law. Because their liens attach to MidCo equity interests, any value realized at the portfolio groups' MidCo or OpCo levels must first satisfy the BeGo Secured Lenders' secured claims before flowing up to satisfy Brookfield's corporate-level debt (let alone its TopCo Debtor equity). Under any legitimate restructuring or sale process, the BeGo Secured Lenders would receive value from the projects they financed ahead of Brookfield, not behind it. Yet the Brookfield DIP would invert that priority, subordinating the BeGo Secured Lenders' structural seniority through priming liens, superpriority claims, credit-bid rights, and control provisions that sharply favor Brookfield.

B. Prepetition Events Leading to Debtors' Chapter 11 Filings

6. The events leading to the commencement of these Chapter 11 Cases reveal a coordinated strategy by Brookfield and the Debtors to neutralize the BeGo Secured Lenders and other MidCo lenders while creating a process that would leave Brookfield with a substantial structural advantage. In early 2026, the Debtors faced liquidity pressure across their Polish project portfolio. Rather than engage in transparent negotiations with all stakeholders, in hindsight it is apparent that Brookfield and the Debtors pursued a dual-track strategy: on one hand, entering into a standstill agreement with lenders dated May 4, 2026 (the "Standstill Agreement") that purported

to create a negotiating window (including discussions around providing additional emergency funding wholly-unrelated to a bankruptcy filing) while, on the other hand, preparing for a Chapter 11 filing in the United States that would give Brookfield substantial control of these Chapter 11 Cases—with the practical effect of positioning Brookfield to acquire the Debtors' assets.

7. The Standstill Agreement, governed by German law with Hamburg jurisdiction, required all lenders—including the BeGo Secured Lenders—to forbear from enforcement actions through May 31, 2026. The BeGo Secured Lenders honored that agreement in good faith, entering into the Standstill Agreement on May 4, 2026, governed by German law with exclusive jurisdiction in Hamburg, Germany, based on the representation that the standstill period would be used for "an evaluation of strategic alternatives, including the potential commencement of insolvency proceedings," [First Day Decl. ¶ 68]—not a highly fast-tracked U.S. chapter 11 filing that would position Brookfield to control the estate (a junior TopCo creditor (and now controlling party of the debtors) whose claims were structurally junior to several layers of debt and claims). The BeGo Secured Lenders entered into the Standstill Agreement and agreed to refrain from exercising their contractual rights while expecting that the standstill period would be used for genuine, transparent negotiations toward a consensual restructuring. That expectation was not met. While the BeGo Secured Lenders and other lenders remained bound by the Standstill Agreement, Brookfield and the Debtors were not pursuing good-faith negotiations; they were creating a minimal predicate for U.S. jurisdiction and preparing to upend the agreed capital structure.

8. Shortly before the filings, for example, as part of the Standstill Agreement, Brookfield structured a prepetition transaction to further enhance its bankruptcy position at the BeGo Secured Lenders' expense. Eighty-five percent of a valuable company, NES (North Energy System), was transferred from the non-Debtor parent (GoldenPeaks Capital Holding Limited) to

beneath the TopCo Debtor as a condition subsequent of the Standstill Agreement—a transaction that the BeGo Secured Lenders were required to facilitate under Clause 6.1(e) of that agreement, without any disclosure that the transaction would expand the collateral pool available to secure a DIP facility that would be used against them. Given the apparent motivations of Brookfield and the Debtors for entering into the Standstill Agreement, this transaction had no legitimate business purpose identified in the record apart from enhancing Brookfield's leverage and credit-bid quantum.

C. Debtors' Filings, DIP Motion, and Prime Capital Settlement

9. The Debtors filed these Chapter 11 Cases on May 29, 2026—two days before the Standstill Agreement was set to expire. They presented the Brookfield DIP as an emergency measure necessary to preserve going-concern value. But the terms reveal its true purpose is to entrench Brookfield's control and create the conditions for a credit-bid acquisition while impairing competitive bidding. Under the Brookfield DIP as modified at the First Day Hearing, the Debtors would incur approximately $117.7 million in Tranche 1 new money commitments (plus $33 million in Tranche 2 for the DEFG projects)—$92.9 million of the Tranche 1 commitments available only as Discretionary Delayed Draws at Brookfield's option—plus approximately $12.1 million in Rollup Loans converting Brookfield's Prepetition Incremental Facility debt into DIP Loans with superpriority status. The roll-up takes debt that Brookfield extended in May 2026—weeks before the filing—and elevates it to the highest priority in the capital structure ahead of the BeGo Secured Lenders' structurally senior claims.

10. The DIP process was marked by insider conflicts and self-dealing concerns throughout. To BeGo Secured Lenders' knowledge, the Debtors retained no investment banker to solicit or help them negotiate DIP financing. No competing proposals were solicited. No DIP-

specific declaration was filed—though the Debtors' restructuring advisor testified that the DIP was "fair, reasonable and appropriate" without disclosing the basis for that conclusion. Tr. 69:22–70:6. The BeGo Secured Lenders hold the EUR equivalent of approximately $134 million in secured claims, yet the Debtors did not contact them to provide DIP financing. The record supports the inference that the Debtors, controlled or unduly influenced by Brookfield, knew that a legitimate marketing process would produce better terms—and did not pursue one before Brookfield imposed its excessive economics and governance conditions on the estates.

11. It did not take long for Brookfield's financing strategy to be revealed. Prime Capital AG ("Prime Capital"), similar to the BeGo Secured Lenders, is directly or through funds managed by third parties, a senior secured mezzanine debt holder whose approximately $52 million claims are also structurally senior to Brookfield's prepetition claims. It holds mezzanine-tier debt in the Delta, Echo, Foxtrot, and Gamma (DEFG) projects. At the First Day Hearing, Prime Capital negotiated with Brookfield an opportunity to carve a $33 million, Tranche 2 facility out of the Brookfield DIP on materially better terms than Brookfield's Tranche 1. Prime Capital's Tranche 2 financing has a 12.5% interest rate (versus 13%), a 1.50x MOIC (versus 1.75x), no exit premium (versus 5%), no OID (versus 5%), no ticking fee (versus 6.5%), and no roll-up (versus $12.1 million of roll-up loans that also receive a 1.75x MOIC). Cross-collateralization protections ensure that Prime Capital and any other Tranche 2 lenders have no recourse to Tranche 1 collateral, and vice versa. Even still, Prime Capital had to scramble to achieve these terms only *after* the Debtors had filed their Chapter 11 Cases and DIP Motion. There is no legitimate reason why negotiations like these with senior lenders did not take place beforehand, and why even at the First Day Hearing the BeGo Secured Lenders were still not offered the same terms or better. The record supports an inference that Brookfield and the Debtors deliberately excluded the BeGo Secured Lenders to

prevent them from obtaining similar protections (and releases) and thereby reducing the economics that Brookfield arranged for itself.

12. The Brookfield DIP's control provisions complete the picture. The "Required DIP Lenders"—meaning Brookfield alone—must consent to virtually all material case decisions. DIP Term Sheet, § "Parties", § DIP Lenders at 1-2; "Voting", § Required DIP Lenders at 22 (*and passim*). Brookfield controls whether and when $92.9 million in "Discretionary Delayed Draws" are made available, allowing it to calibrate funding to serve its acquisition strategy rather than operational needs. DIP Term Sheet, "Availability", § Delayed Draws at 5-6. The Brookfield DIP includes "electable" sale milestones giving Brookfield unilateral authority to compress any auction timeline to its advantage while deterring third-party bidders [DIP Term Sheet, "Events of Default", § Milestones, ¶¶ (p)(2), (4) at 19], despite the fact that the Debtors did not, to the BeGo Secured Lenders' knowledge, engage an investment banker to advise them on an appropriate marketing and sale process and timeline or conducted any prepetition marketing process. And the Brookfield DIP makes it an Event of Default for the Debtors to pursue alternative financing without Brookfield's consent—discouraging competing proposals before they are even made. DIP Term Sheet, "Events of Default", § Alternate Financing, ¶ (e) at 18.

13. The Interim DIP Order [Dkt. 89] also preauthorizes Brookfield to credit bid in any sale "without the need for any further court order." [Interim DIP Order ¶ 33 at 47]. Combined with its rapidly accruing DIP claims—projected to reach up to approximately $280 million by late August 2026—Brookfield would be able to credit bid hundreds of millions of dollars at any auction (which the Debtors are now seeking to hold 30 days after entry of the Final DIP hearing), while competing bidders must pay cash sufficient to take out Brookfield's prepetition and DIP obligations. This asymmetry—the need to put up real money to counter credit-bid currency

generated for Brookfield by its DIP terms—will deter rational third-party bidders. The $3 million expense reimbursement that Brookfield is now seeking as stalking horse will further deter competitive bidding. In short, the Brookfield DIP functions less as ordinary financing than as a loan-to-own acquisition vehicle on non-market terms, structured to ensure that Brookfield is uniquely positioned to emerge from these Chapter 11 Cases with ownership of the Debtors' assets.

14. As further evidence of Brookfield's effort to control key aspects of the Debtors' Chapter 11 Cases and limit third-party participation, the Debtors have now filed a motion seeking to approve bidding procedures and Brookfield as the stalking horse purchaser and requiring that bids be submitted by July 27th and the auction be held by July 30th – *just 30 days after the Debtors are seeking final approval of the DIP*. [Dkt No. 124]. In addition, it is the BeGo Secured Lenders' understanding that the investment banker being engaged by the Debtors is just now beginning its work and it has yet to complete a financial model or customary confidential information memorandum for use by potential purchasers-all of which strongly supports this Court requiring a longer marketing and sale process than proposed by the Debtors.

OBJECTIONS

15. Brookfield is an insider, and the DIP facility it orchestrated for itself demands heightened scrutiny. Under any standard, however, the Brookfield DIP does not survive scrutiny on multiple grounds, each of which independently warrants denial or material modification of the proposed Brookfield DIP: First, the Debtors failed to market-test the Brookfield DIP Facility or demonstrate that they could not obtain postpetition financing on better terms. The excessive, off-market DIP terms (including the MOIC and fees) reflect this and should be adjusted. Second, the Brookfield DIP, Interim Order, and we assume the proposed Final Order, provides no adequate protection to the BeGo Secured Lenders on account of the diminution in value of its structurally

senior liens and security interests or collateral. Third, Brookfield's credit-bidding strategy must be limited or denied for cause (or, at the very least, not preauthorized). Fourth, the alternative financing Event of Default must be removed. Fifth, the BeGo Secured Lenders' structural seniority and protections must be preserved. Finally, the discretionary draws, DIP sizing, and roll-up are unsupported and should be limited or reversed.

A. Heightened Scrutiny Applies to Insider DIP Facilities

16. A debtor bears the burden to establish that it has met the statutory requirements to incur DIP financing and to grant DIP liens and superpriority claims. Courts also require evidence that the DIP was negotiated at arm's length and represents the best available terms. *See In re Vanderra Res., LLC*, No. 12-45137, 2010 WL 11831342, at *5 (Bankr. N.D. Tex. Apr. 30, 2010); *see also In re Jevic Holding Corp.*, 787 F.3d 173 (3d Cir. 2015); *In re Lyondell Chem. Co.*, 402 B.R. 571 (Bankr. S.D.N.Y. 2009).

17. In evaluating such evidence, courts defer to a debtor's business judgment only where the financing does not unduly benefit a party in interest at the expense of the estate. *See In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 768 (Bankr. S.D.N.Y. 2020); *see also In re Ames Dep't Stores*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990). The business judgment rule does not, however, apply to transactions between a debtor and an insider. *In re Wythe Berry Fee Owner LLC*, No. 22-11340, 2024 WL 2767121, at *17 (Bankr. S.D.N.Y. May 29, 2024); *see also In re Pilgrim's Pride Corp.*, 401 B.R. 229, 237 (Bankr. N.D. Tex. 2009) ("when a transaction is proposed between a debtor and its insiders, the court cannot simply rely on the debtor's business judgment to ensure creditors and the debtor's estate are being properly cared for"). Rather, courts apply heightened scrutiny. *See Matter of Fabricators, Inc.*, 926 F.2d 1458, 1465 (5th Cir. 1991) ("A claim arising from the dealings between a debtor and an insider is to be rigorously scrutinized by the courts.");

In re Innkeepers USA Trust, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010) (examining "whether the process and price of a proposed transaction not only appear fair but are fair and whether fiduciary duties were properly taken into consideration"); *In re LATAM Airlines Grp. S.A.*, No. 20-11254, 2022 WL 272167, at *14 (Bankr. S.D.N.Y. Jan. 28, 2022) (same).

18. Section 101(31)(B) of the Bankruptcy Code defines an "insider" of a corporate debtor to include directors, officers, persons in control, and related parties. 11 U.S.C. §§ 101(31)(B)(i)–(vi). Congress did not limit insider status to this statutory list, however, and courts retain discretion to recognize "non-statutory insiders" based on the facts and circumstances of each case. *See In re A. Tarricone, Inc.*, 286 B.R. 256, 262 (Bankr. S.D.N.Y. 2002); *In re Friedman*, 126 B.R. 63, 69–71 (B.A.P. 9th Cir. 1991); *In re Chapman*, 628 B.R. 512, 528 (Bankr. S.D. Tex. Mar. 5, 2021) ("Persons not included in the statutory list of "insiders" provided in § 101(31) may nonetheless qualify as a "non-statutory insider" under certain circumstances. The list is non-exclusive and courts have designated entities not listed in § 101(31) as non-statutory insiders."); *see Matter of Holloway*, 955 F.2d 1008, 1010–11 (5th Cir. 1992). Whether an entity qualifies as an insider is a question of fact. *See In re A. Tarricone*, 286 B.R. at 262–63; *Floyd v. Hefner*, 556 F. Supp. 2d 617, 658 (S.D. Tex. 2008); *In re Chapman*, 628 B.R. at 528; *see Matter of Holloway*, 955 F.2d at 1011.

19. In the Fifth Circuit, an insider is any "entity whose close relationship with the debtor subjects any transactions made between the debtor and such entity to heavy scrutiny." *Matter of Holloway*, 955 F.2d at 1010–11. The court of appeals established a two-prong test: (1) the closeness of the relationship between the entity and the debtor, and (2) whether the transactions between them were conducted at arm's length. *Id.*; *In re Chapman*, 628 B.R. at 528. Both prongs establish Brookfield as an archetypical insider.

20. First, Brookfield's relationship with the Debtors is extraordinarily close. Brookfield simultaneously occupies the roles of: (1) holder of prepetition security interests over the parent entity's shares giving it effective operational control; (2) prepetition junior secured lender holding approximately $294 million in corporate-level debt; (3) holder of two of five board seats at the TopCo Debtor; (4) interim DIP lender with express authority to elect sale milestones unilaterally (which are now be implemented in the Debtors' proposed bid procedures); and (5) stalking horse and presumptive credit bidder in any sale. These overlapping roles—controlling both sides of the DIP and sale negotiations—exemplify the "close relationship" that satisfies the first *Holloway* prong. Prepetition lenders may qualify as insiders when they "exercise sufficient authority over the corporate debtors so as to unquantifiably [sic] dictate corporate policy and the disposition of assets." *In re Exide Techs., Inc.*, 299 B.R. 732, 743 (Bankr. D. Del. 2003) (quoting *In re Aluminum Mills Corp.*, 132 B.R. 869, 894 (Bankr. N.D. Ill. 1991)). The Brookfield DIP is the product of exactly that level of influence and control.

21. Second, the Debtors and Brookfield did not negotiate the DIP in good faith or at arm's length. A transaction is at arm's length only when it is "conducted as though the two parties were strangers." *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 397 (2018). Brookfield structured a closed, non-market-tested transaction after ensuring it was the only potential financing partner invited to the table. As revealed by the written resolutions of the board of directors of GoldenPeaks Poland adopted on June 1, 2026, no independent check existed on Brookfield's exercise of its considerable influence as the Debtors' Special Committee of ostensibly independent directors was not formed until three days *after* these Chapter 11 Cases were filed. The result is a proposed DIP with terms that give Brookfield, their dominant creditor, substantial control over key aspects of the Chapter 11 Cases. Brookfield would

have unilateral authority to dictate the timing and structure of any restructuring or asset sale – which is now being revealed through the bidding procedures and stalking horse motion filed by the Debtors - and its consent would be necessary on virtually all material case decisions, discretionary draws, or alternative financing proposals.

22. The Debtors' failure to market-test the Brookfield DIP and the absence of any adequate protection for the BeGo Secured Lenders, among other failures, demonstrate a process and price that cannot withstand the heightened scrutiny applicable here. Moreover, because Brookfield and the Debtors have an extraordinarily close relationship and the Brookfield DIP was not arranged at arm's length, heightened scrutiny applies. The Debtors thus bear the burden to establish—and this Court must carefully examine—that both the process followed and terms achieved are actually fair to the estates and their stakeholders. *See In re TMT Procurement Corp.*, 764 F.3d 512, 521–22 (5th Cir. 2014) (holding that § 364(e) protection depends on good faith, which is absent in cases involving fraud, collusion, or an attempt to take grossly unfair advantage of other parties); *cf. In re Gulf Coast Oil Corp.*, 404 B.R. 407, 421–23 (Bankr. S.D. Tex. 2009) (declining to defer to debtor's business judgment where transaction was negotiated by potentially conflicted fiduciaries and sale process did not ensure fair value); *see also In re Performance Nutrition, Inc.*, 239 B.R. 93, 112–13 (Bankr. N.D. Tex. 1999) (applying heightened scrutiny to insider transactions and examining fairness, disclosure, and adequacy of consideration); *In re CNC Payroll, Inc.*, 491 B.R. 454, 461 (Bankr. S.D. Tex. 2013) (recognizing heightened scrutiny and close judicial review where a fiduciary is conflicted or appears to favor its own interests).

B. The Debtors Failed to Market-Test the DIP

23. Under section 364 of the Bankruptcy Code, before a debtor may obtain secured DIP financing with superpriority claims and liens, it must demonstrate that other financing was

unavailable. "The cases clearly establish that although a debtor is not required to seek credit from every possible source, a debtor must show that it has made a reasonable effort to seek other sources of credit available under section 364(a) & (b)." *In re Ames Dep't Stores, Inc.*, 115 B.R. at 40. This "reasonable effort" requirement ensures that the protections of sections 364(c) and (d) are granted only when genuinely necessary and that existing creditors are not primed or subordinated without justification. *Id.*

24. The Debtors acknowledge they did not seek other DIP financing sources. They cannot identify any entity, other than Brookfield, that they approached about providing or participating in DIP financing before filing. Most notably, they made no outreach to any senior secured creditor—the very creditors that would be primed and subordinated by the Brookfield DIP about providing DIP financing. The BeGo Secured Lenders, holding the EUR equivalent of approximately $134 million in secured claims against certain Debtors under the BeGo Portfolio Groups, were never contacted concerning providing DIP financing. Nor, to the BeGo Secured Lenders' knowledge, were any senior secured OpCo lenders contacted about the possibility of providing DIP financing.

25. This lack of outreach reflects a closed process in which the Debtors did not retain an investment banker or run any solicitation process to market-test Brookfield's proposed terms. Notably, no declarant has testified in support of the Brookfield DIP by explaining how and why the Debtors concluded that no alternatives were available. In his First Day Declaration, the Debtors' outside restructuring advisor states, without supporting detail, that the Brookfield DIP was "negotiated in good faith and at arm's length." *See* Decl. of Edward Manning [ECF 19], First Day Decl. ¶ 75. He declares, again without supporting detail, that the Brookfield DIP was "the best financing option[] that the Debtors could obtain under the circumstances" and that other

potential financing sources were "unavailable." *Id.* ¶ 77. Notably, Mr. Manning also acknowledges that A&M has "not had an opportunity to determine the true cause of the sudden and significant financial and operational distress," that "accounting ledgers have not been closed since December 2025," and that the "compressed timeframe" has "not allowed A&M to paint a comprehensive picture of the Debtors' financial state as of the Petition Date." *Id.* ¶¶ 13, 60. It is difficult to reconcile a conclusion that the Brookfield DIP was "the best available financing" when the declarant simultaneously admits he lacked the financial visibility to evaluate whether alternatives existed or what the estates actually needed.

26. A debtor's unsupported assertion that alternative financing was unavailable does not satisfy Bankruptcy Code section 364. In *SunTrust Bank v. Den-Mark Construction, Inc.*, 406 B.R. 683, 690–93 (E.D.N.C. 2009), the district court reversed a bankruptcy court's approval of priming DIP financing where the debtor failed to identify *any* specific lender it had approached other than the prepetition lender that became the priming DIP lender. The court held that section 364(d)(1) "requires the debtor affirmatively to demonstrate, not merely assume, that less onerous post-petition financing was unavailable." *Id.* at 690 (citing *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626 (Bankr. S.D.N.Y. 1992)). Although a debtor need not "seek credit from every possible source," it must show that it "made a 'reasonable effort' to obtain post-petition financing from other potential lenders on less onerous terms and that such financing was unavailable." *Id.* at 691 (citing *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986)); *Ames*, 115 B.R. at 40. Where the debtor "identified no specific investor or lending institution it approached," its unsupported insistence that it had "beat down about every door there is" did not satisfy its burden. *Id.* at 691–92; *see also In re Phase-I Molecular Toxicology, Inc.*, 285 B.R. 494, 496 (Bankr. D.N.M. 2002) (debtor's reasonable belief that it would be unable to obtain alternative financing

did not establish that it "attempted to do so but was unsuccessful"); *In re Plabell Rubber Products, Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992) (debtor's conclusion that further inquiries would be futile did not satisfy burden); *In re Crouse Group, Inc.*, 71 B.R. 544, 550–51 (Bankr. E.D. Pa. 1987) ("feeble showing" on inability-to-obtain element was fatal).

27. The Debtors invoke *In re Sky Valley, Inc.*, 100 B.R. 107 (Bankr. N.D. Ga. 1988), for the proposition that "where few lenders can or will extend the necessary credit to a debtor, 'it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.'" Mot. 34 (quoting *id.* at 113). That reliance is misplaced. *Sky Valley* excuses some debtors from an "exhaustive search" for alternative financing; it does not excuse these Debtors from having conducted ***no search at all***. Nor did *Sky Valley* involve insider conflicts—the DIP lenders in that case were true third parties with no equity stake, no board representation, and no prepetition secured debt.

28. The facts here more closely parallel *In re Innkeepers USA Trust*, 442 B.R. 227 (Bankr. S.D.N.Y. 2010), where the court refused to approve a plan support agreement with a dominant creditor that "was not 'shopped' in the market prior to signing," where the debtors "did not run any marketing process," where the debtors' investment banker "was told not to pursue other bidders," and where the debtors did not "meaningfully interact[] with their secured creditors" about alternative deal terms. *Id.* at 231–32. The court emphasized that "the transaction not only has to be fair, but it has to look fair as well." *Id.* at 231.

29. Brookfield, like the dominant creditor in *Innkeepers*, "wielded great power in the negotiations"—as the dominant secured lender, sole DIP lender, and holder of effective control—and the Debtors appear to have "succumbed to virtually all of [its] demands." *Id.* at 232–33. Here too there was no marketing process to the knowledge of the BeGo Secured Lenders. Rather than

put guardrails on an investment banker's work, the Debtors simply did not retain one to run any bidding process at all. And, to the knowledge of the BeGo Secured Lenders, the Debtors did not approach the BeGo Secured Lenders or any other senior secured lenders about alternative DIP financing.

30. Nor does this Court need to speculate about whether real negotiations with entities other than Brookfield might have borne fruit. Prime Capital—another senior secured mezzanine lender at the same structural tier as the BeGo Secured Lenders—negotiated and reached a settlement with the Debtors and Brookfield during the First Day Hearing. Under that agreement, Prime Capital will participate in a $33 million Tranche 2 DIP Facility carved out of the Brookfield DIP that covers portfolio groups in which Prime Capital is already invested. Prime Capital is extending Tranche 2 on materially better terms than Brookfield continues to demand for its Tranche 1.

31. The disparity between the Tranche 2 terms negotiated by Prime Capital and the Tranche 1 terms imposed by Brookfield is stark. Every term Prime Capital negotiated is more favorable than those imposed by Brookfield:

GoldenPeaks Poland LLC (TX), et al. - Summary

Term / Assumption	Brookfield Tranche 1	Brookfield Tranche 2	Prime Capital
Interest Rate	13.0%	12.5%	12.5%
OID	5.0%	--%	--%
Exit Premium	5.0%	--%	--%
MOIC	1.75x	1.50x	1.50x
Ticking Fee	6.5%	--%	--%
Maturity	Up to 3 Months	Up to 3 Months	Up to 3 Months
New Money Invested (excl. Discretionary)	**$24.8**	**$23.0**	**$10.0**
Total Estimated Fees (incl. MOIC & Roll-Up on Tranche 1)	21.2	11.5	5.0

Total MOIC (incl fees)	1.85x	1.50x	1.50x
Implied IRR (over 90 days)	112.0%	58.8%	50.0%
New Money Invested (incl. Discretionary)	**$117.7**	**$23.0**	**$10.0**
Total Estimated Fees (incl. MOIC)	100.5	11.5	5.0
Total MOIC (incl fees)	1.85x	1.50x	1.50x
Implied IRR (over 90 days)	128.6%	58.8%	50.0%
Memo: Roll-Up Amount	*$12.1*	*$--*	*$--*
MOIC on Roll-Up Loans	*1.75x*	*--x*	*--x*
Implied Cost of Roll-Up Amount	*9.1*		

32. The BeGo Secured Lenders hold a substantially larger secured claim (EUR equivalent of approximately $134 million) than Prime Capital (approximately $52 million). Like Prime Capital's debt, the BeGo Secured Lenders' debt enjoys structural seniority over Brookfield's prepetition claims as they pertain to the BeGo Portfolio Groups. Given these circumstances, the BeGo Secured Lenders are entitled, at minimum, to participate in postpetition financing respecting the BeGo Portfolio Groups on terms no less favorable than Prime Capital received for its DEFG projects.

33. Accordingly, the BeGo Secured Lenders are willing to consider providing committed DIP financing to the Debtors on commercially reasonable, arm's-length terms. However, the BeGo Secured Lenders believe that the cost to replace the Brookfield DIP may be prohibitively high given the excessive take out fees that Brookfield has layered into its DIP and which were approved pursuant to the Interim Order – all of which stand as a barrier to the Debtors obtaining DIP financing on market terms.[5] That willingness, along with the Tranche 2 facility,

[5] The willingness of the BeGo Secured Lenders to provide or participate in the DIP Facility is subject to, among other things, (i) the BeGo Secured Lenders' satisfaction with the results of its legal, financial and tax diligence, (ii) entry by the parties into definitive documentation in form and substance satisfactory to the BeGo Secured Lenders, (iii) entry by the Bankruptcy Court of one or more DIP orders in form and substance satisfactory to the BeGo Secured Lenders authorizing and approving such DIP financing, (iv) satisfaction of all applicable conditions in such

confirms that bona fide alternatives to the Brookfield DIP exist and that the Debtors' failure to market-test Brookfield's demands deprived the estates of superior financing. That failure is grounds to deny final approval of the insider Brookfield DIP.

34. The evidentiary record is equally deficient on DIP sizing and uses. The Debtors have not explained why the initial draw and requested additional loans are necessary, why they must rush the DIP and sale process, how proceeds will be deployed, or whether the proposed draws benefit the estates as a whole rather than Brookfield's collateral and acquisition strategy. The First Day Declaration acknowledges that accounting ledgers have not been closed since December 2025, fiscal-year 2025 accounts have not been signed, and the compressed timeframe has not allowed A&M to "paint a comprehensive picture of the Debtors' financial state as of the Petition Date." Against this backdrop of admitted financial opacity, the Debtors ask the Court to approve a facility with aggregate commitments of approximately $162.8 million on a final basis. The Court should not grant final approval absent competent evidence regarding DIP sizing, projected uses of proceeds, the allocation of the costs of the Chapter 11 Cases between Tranche 1 and Tranche 2, and each material category of expenditure in the Approved Budget.

35. The Court should condition any Final Order on the Debtors' good-faith consideration of the BeGo Secured Lenders' proposal; the retention of an independent investment banker to solicit and negotiate competing DIP proposals; participation rights for the BeGo Secured Lenders and other adversely impacted lenders on materially modified terms; or competent evidence that Brookfield's terms are the best available (together with adequate protection for all primed prepetition lenders).

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documentation and DIP orders to the BeGo Secured Lenders' obligation to fund DIP loans, and (v) internal approvals, including credit committee approval.

C. No Adequate Protection for the BeGo Secured Lenders

36. The DIP Facility provides no adequate protection for the BeGo Secured Lenders. The Interim Order states only that adequate protection is "subject to ongoing diligence and negotiation"—which provides no present adequate protection.

37. The BeGo Secured Lenders hold liens on MidCo equity interests in the BeGo Portfolio Groups, and they also hold liens provided by the Sierra and Juno OpCos. The Debtors have granted Brookfield DIP Liens and superpriority claims that prime the BeGo Secured Lenders' liens and that will be satisfied ahead of the BeGo Secured Lenders in any sale, plan, or enforcement of rights and remedies. Under sections 361, 363(e), and 364(d) of the Bankruptcy Code, adequate protection is mandatory when a creditor's collateral is being used, sold, or primed. The Debtors cannot ignore this statutory obligation or defer it indefinitely. *See In re First Brands Grp., LLC*, No. BR 25-90399, 2026 WL 253634, at *2 (S.D. Tex. Jan. 31, 2026) (confirming that secured creditors are entitled to adequate protection); *In re Quality Beverage Co., Inc.*, 181 B.R. 887, 896 (Bankr. S.D. Tex. 1995) ("The protection afforded a creditor…is whatever condition is deemed necessary to provide adequate protection of the creditor's interest.");

38. The value of the BeGo Secured Lenders' collateral is being diminished from multiple sources: (a) the imposition of the automatic stay; (b) the DIP Liens granted to Brookfield; (c) the DIP superpriority claims granted to Brookfield, which erode the equity cushion at MidCo entities comprising the BeGo Secured Lenders' collateral; (d) cash leakage to service DIP interest, and fees and premiums, which reduce distributable value; (e) the economics of the DIP—producing in excess of a 100% return on invested capital for Tranche 1, with the total DIP claim (including both tranches) projected to reach up to approximately $280 million by late August 2026—extracting returns far exceeding any risk-adjusted market rate; (f) the Rollup, which means

even more secured debt must be cleared before the BeGo Secured Lenders can recover; (g) construction delays at in-construction and ready-to-build projects within the BeGo Portfolio Groups; (h) operational disruption from the Spectris-to-Ergy O&M transition; and (i) Polish grid curtailments reducing project revenue while the BeGo Secured Lenders are prevented from exercising their collateral rights. *See In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("Given the fact that super priority financing displaces liens on which creditors have relied in extending credit, a court that is asked to authorize such financing must be particularly cautious when assessing whether the creditors so displaced are adequately protected."); *In re Packard Square LLC*, 574 B.R. 107, 117–18, 121–24 (Bankr. E.D. Mich. 2017) (requiring adequate protection and denying priming lien where adequate protection rested on speculative projections of future value and equity cushion was insufficient); *In re Stoney Creek Techs., LLC*, 364 B.R. 882, 891–92 (Bankr. E.D. Pa. 2007) (denying priming lien despite substantial equity cushion where debtor's dim operational prospects made it likely primed secured creditor would be impaired); *cf. In re JER/Jameson Mezz Borrower II, LLC*, 461 B.R. 293, 305–06 (Bankr. D. Del. 2011) (finding proposed adequate protection was inadequate where accruing interest and fees and operating-level cash flow was not being made available to existing secured creditor).

39. If the Court is inclined to enter Debtors' proposed Final Order, the BeGo Secured Lenders must be provided with adequate protection, which the BeGo Secured Lenders require as follows: (a) current-pay adequate protection payments, including cash interest; (b) replacement liens senior to the DIP Liens and all other liens; (c) superpriority administrative expense claims under section 507(b) of the Bankruptcy Code, senior to Brookfield's superpriority claims and all other administrative claims; (d) comprehensive reporting, including monthly financials at the portfolio-group level, budget updates, and notice of all material transactions affecting Berenberg-

secured projects; (e) payment of the BeGo Secured Lenders' reasonable professional fees incurred prior to and during the course of the Chapter 11 Cases; (f) consent rights over any sale, transfer, or disposition of assets within the BeGo Portfolio Groups; and (g) limitations prohibiting Brookfield from credit-bidding on assets securing the BeGo Secured Lenders' claims without their prior consent.

D. Approval of any Brookfield Credit Bid should be Deferred or Denied

40. Section 363(k) of the Bankruptcy Code permits a secured creditor to credit bid the amount of its allowed secured claim in a sale of assets securing that claim, but expressly allows the court to limit or deny credit bidding "for cause." Courts have found cause where credit bidding would chill competitive bidding, where the creditor's lien is subject to bona fide dispute, or where the creditor's conduct reflects disqualifying conflicts of interest. *See In re Fisker Auto. Holdings, Inc.*, 510 B.R. 55, 60–61 (Bankr. D. Del. 2014) (limiting credit bid where "surrounding circumstances" indicated the bid would "chill" competition and harm the estate). Multiple features of Brookfield's position support a "for cause" finding. Therefore, the Court should defer Brookfield's credit bid until the completion of the challenge period without any successful challenge or deny it outright.

i. *The DIP Is Structured as an Impermissible Loan-to-Own Acquisition Vehicle.*

41. The DIP Facility is not merely postpetition financing—it is an acquisition vehicle. That alone is not impermissible, but the terms are off-market and designed not merely to chill competitive bidding but to foreclose it entirely. The Interim Order preauthorizes Brookfield to credit bid "without the need for any further court order." Through its DIP, Brookfield can bid hundreds of millions of dollars at any auction while third-party bidders must pay cash. This asymmetry—where the credit bidder faces no "winner's curse" risk because it has no additional

cash at stake—deters rational cash bidders from participating. The DIP Facility's structure fits the classic loan-to-own pattern: a DIP lender extends credit on terms it expects will not be repaid and that cannot reasonably be satisfied through a competing bid, intending to acquire the borrower's assets through a credit bid at below-market value.

ii. ***The Fee Structure Inflates the Credit Bid Beyond Actual Value Extended.***

42. The DIP Facility's fee structure is off-market and maximizes Brookfield's credit-bid quantum regardless of whether the full facility is drawn. The 6.5% ticking fee accrues on committed but undrawn amounts—including the $92.9 million in functionally uncommitted Discretionary Delayed Draws—meaning Brookfield accumulates DIP claims and credit-bid capacity even on money it retains sole discretion never to advance. The 13% PIK interest compounds quarterly and capitalizes into principal, steadily increasing the outstanding balance. The 5% exit premium is expressly "applied to such credit bid or purchase," directly inflating Brookfield's credit bid. The 1.75x MOIC, which is in addition to the DIP fees Brookfield has demanded, guarantees Brookfield a minimum return that further swells total DIP Obligations. Together, these fees operate as a one-way ratchet. Even if asset values decline, Brookfield's credit-bid capacity grows with the passage of time, widening the gap any competing cash bidder must bridge. This misaligned incentive structure—in which delay benefits Brookfield and compounds the freezing-out effect—supports a "for cause" limitation on credit bidding. At minimum, undrawn discretionary amounts should not accrue the ticking fee, should be excluded from any MOIC calculation, and should be excluded from the amount Brookfield may credit bid.

iii. The Compressed Timeline and Informational Advantages Chill Competition.

43. Brookfield's electable milestones, if triggered, require entry of a Bidding Procedures Order within 15 days after entry of the Interim Order, and entry of a Sale Order

approving an Acceptable Sale within 30 days after the Bidding Procedures Order, which aligns now with the bidding procedures and stalking horse motion seeking entry of the bidding procedures order not later than June 30 and requiring that the sale hearing be held not later than August 4. DIP Term Sheet, "Events of Default", § Milestones, ¶¶ (p)(2), (4) at 19; [Docket No. 124 ¶ 3]. Brookfield is seeking to impose these unreasonable DIP and sale milestones on the Debtors even though the Debtors, to the knowledge of the BeGo Secured Lenders, did not engage an investment banker prepetition to advise them on an appropriate marketing and sale process and timeline, nor did they conduct any prepetition marketing which could support a shorter sale process during the Chapter 11 Cases. Combined with the three-month maturity, this creates an unreasonably compressed auction timeline that disadvantages potential competing bidders and, if allowed to stand, ensures that Brookfield will face no meaningful competition to its inflated credit bid. This is inconsistent with market-test requirements and the Debtors' fiduciary duties, and is highly prejudicial to the Debtors' creditors and other stakeholders.

44. Potential acquirers of a complex cross-border renewable energy portfolio require extensive due diligence, regulatory analysis, and lender coordination – not 30 days. A compressed timeline set by a credit-bidding insider party with board seats and better information deters any serious competition. The DIP Term Sheet further requires the Debtors to provide Brookfield with regular sales updates, including identities of parties in the data room and terms of bids received—giving Brookfield real-time intelligence unavailable to others. This combination of timeline control and informational advantage creates an uneven playing field that constitutes cause for limiting credit bidding.

45. Given the serious risk to the integrity of any auction and sale process posed by Brookfield's DIP Facility, the proposed bidding procedures, and Brookfield's unrestrained credit-

bid rights, the BeGo Secured Lenders request that the Final Order and any bidding procedures order include the following limitations: (a) deny or defer Brookfield's credit bid, or at a minimum cap Brookfield's credit bid at new money actually advanced under the DIP Facility, excluding accrued fees, PIK interest, premiums, and the $12.1 million Rollup; (b) require Brookfield to allocate any credit bid to non-BeGo Secured Lender collateral first; (c) require cash or cash-equivalent bidding only for assets within the BeGo Portfolio Groups; (d) structure bidding on Berenberg-secured portfolio groups as discrete asset packages rather than a bulk portfolio sale against Brookfield's aggregate credit bid; (e) restrict Brookfield's access to competing bid information; (f) prohibit Brookfield from having any consent or consultation rights with respect to qualified bids, qualified bidders, auction rules or conduct, or determinations on winning and backup bids; and (g) to the extent Brookfield seeks to credit bid before expiration of the Challenge Period, require Brookfield to provide a written cash undertaking or escrow sufficient funds to pay for any assets acquired with liens or claims that are later successfully challenged.

E. Customary Waivers Should be Excluded

46. In many cases, waivers of certain statutory and equitable default rules are customary—particularly where the record establishes that such waivers were a necessary condition to securing the DIP financing. The Debtors seek final approval of certain such waivers, but without establishing the necessity of any of them. Nor can they, because the Debtors' process of reaching agreement with Brookfield was not conducted at arm's length. Moreover, each of the proposed waivers fails on its merits under the circumstances here.

i. The Marshaling Waiver Should be Excluded

47. The Interim Order expressly waives the equitable doctrine of marshaling with respect to Brookfield's DIP Liens and claims, and Brookfield seeks to expand that waiver to its

prepetition liens and claims in the Final Order. The marshaling doctrine is of particular importance here because Brookfield holds liens across a broad swath of the Debtors' assets, while the BeGo Secured Lenders hold liens concentrated on the BeGo Portfolio Groups. Without marshaling, Brookfield is free to satisfy its DIP and prepetition claims from any collateral in any order—including by reaching first into the assets securing the BeGo Secured Lenders' claims, even if Brookfield could be made whole from other collateral pools in which the BeGo Secured Lenders hold no interest. This risk is not hypothetical: Brookfield's credit-bid strategy is specifically designed to acquire the Debtors' assets in their entirety and, without a marshaling obligation, Brookfield has every incentive to allocate its credit bid to the most valuable assets—including those within the BeGo Portfolio Groups—leaving the BeGo Secured Lenders with residual or no recovery. In an arm's-length DIP financing transaction, a marshaling waiver may be an acceptable concession. But where, as here, the DIP lender is an insider that engineered the financing to maximize its own credit-bid position, the waiver directly enables the very overreaching the marshaling doctrine is designed to prevent. Therefore, the BeGo Secured Lenders object to this waiver and request that the Court exclude it from the Final Order.

ii. The Section 506(c) Surcharge Waiver Should be Excluded

48. The Interim Order expressly waives the Debtors' right to surcharge Brookfield's DIP Collateral under section 506(c) of the Bankruptcy Code, and Brookfield seeks to expand that waiver to its Prepetition Collateral in the Final Order. Section 506(c) permits the trustee or debtor in possession to recover from a secured creditor's collateral the reasonable and necessary costs of preserving or disposing of that collateral to the extent that the secured creditor benefits from such expenditures. The waiver is particularly problematic here because the Debtors' solar projects require ongoing operational expenditures—including the costs of the Spectris-to-Ergy O&M

transition, Polish regulatory compliance, grid interconnection maintenance, and insurance—that directly preserve the value of Brookfield's collateral. If these costs cannot be surcharged against Brookfield's collateral, they must be borne by the estates generally, effectively requiring other stakeholders—including the BeGo Secured Lenders—to subsidize the preservation of collateral that primarily benefits an insider DIP lender. This cost-shifting is inequitable under the circumstances and should not be sanctioned absent a showing that the waiver was a bona fide condition of arm's-length financing. No such showing has been or can be made here. Therefore, the BeGo Secured Lenders object to this waiver and request that the Court exclude it from the Final Order.

F. Roll-Up Should Be Limited, Reversed, or Subordinated

49. The $12.1 million roll-up should be reversed or subordinated. The roll-up converts Brookfield's recent prepetition incremental debt into DIP Loans subject to the DIP Liens and superpriority postpetition obligations, thereby leapfrogging the BeGo Secured Lenders' structurally senior mezzanine claims and inflating Brookfield's credit bid currency. There is no evidence that any independent estate fiduciary evaluated whether the roll-up was necessary or beneficial to the estates or an absolute requirement on the part of Brookfield to provide the DIP Facility. The roll-up should be "un-rolled" in the Final Order or, at minimum, subordinated to Berenberg's prepetition liens and any adequate protection liens and superpriority claims on shared collateral, and the MOIC applicable to roll-up loans, excluded from Brookfield's credit bid, and preserved for challenge until the challenge period expires.

G. The Alternative Financing Event of Default Must Be Removed

50. The DIP Term Sheet makes it an Event of Default for the Debtors to pursue alternative financing without Brookfield's consent. This provision goes beyond aggressive case

protections and conflicts with the Bankruptcy Code's requirement that a debtor act as a fiduciary for all stakeholders. A debtor's duty to maximize estate value cannot be reconciled with a contractual prohibition on exploring better terms. The BeGo Secured Lenders request that the Final Order strike this provision and expressly authorizes and directs the Debtors to solicit, consider, and negotiate alternative financing proposals without triggering a default. Notably, Brookfield already has substantial protection from refinancing by virtue of the noted excessive MOIC it has obtained for itself—that serves a significant inhibitor of replacement financing from any source.

H. The Interim DIP Order's Economic Terms are Subject to Reconsideration

51. Section 364(e) of the Bankruptcy Code provides that reversal or modification of a DIP financing authorization on appeal "does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith." 11 U.S.C. § 364(e). This protection, however, is available only to a "good faith lender." A good faith lender is one who lends for value, in good faith, and without notice of adverse claims. *In re TMT Procurement Corp.*, 764 F.3d at 522. Where the DIP lender had actual or constructive knowledge of adverse claims to the collateral or to the terms it extracted, the statutory mootness protections of section 364(e) are inapplicable—and the DIP financing orders, including any interim order, may be challenged or modified retroactively. *Id.* at 522–23.

52. In *TMT Procurement*, the Fifth Circuit vacated all DIP orders—including the interim DIP order—where the DIP lender had actual knowledge that a third party held adverse claims to the shares pledged as collateral. The bankruptcy court had expressly found good faith, but the Fifth Circuit held that this finding was reversible because the DIP lender's actual knowledge of adverse claims precluded good faith status. *Id.* The result was complete vacatur of all DIP financing orders and all economic benefits purportedly "earned" thereunder. *Id.* at 523–

24. Notably, the Fifth Circuit in *TMT Procurement* did not limit its holding to cases of fraud—in a case examining protections under sections 363(m) and 364(e) of the Bankruptcy Code, each potentially applicable here, it reaffirmed its holding that "good faith" requires the absence of "an attempt to take grossly unfair advantage of other [interested parties]." 764 F.3d at 522. The totality of Brookfield's conduct—engineering a closed DIP process, obtaining above-market returns, preauthorizing its own credit bid, and compressing the sale timeline to foreclose competition—constitutes precisely the "grossly unfair advantage" that strips section 364(e) (and, in this case, eventual section 363(m)) protections.

53. Brookfield had actual knowledge of the BeGo Secured Lenders' adverse claims before extending credit under the Interim Order. As stated above, the BeGo Secured Lenders hold the EUR equivalent of approximately $134 million in secured claims against the BeGo Portfolio Groups, secured by liens on MidCo equity interests. Brookfield—as prepetition secured lender, holder of board representation, and party to the Standstill Agreement—knew of the BeGo Secured Lenders' security interest, structural priority, and adverse claims before the Chapter 11 Cases were filed. Indeed, the Standstill Agreement itself was negotiated among Brookfield, the BeGo Secured Lenders, and other MidCo lenders—confirming Brookfield's actual knowledge. Despite this knowledge, Brookfield structured the DIP Facility that (1) offers no adequate protection to the BeGo Secured Lenders; (2) primes the BeGo Secured Lenders' secured position through DIP Liens and superpriority claims; (3) inflates Brookfield's credit bid quantum through fee ratchets, PIK interest, and prepayment premiums; and (4) compresses the sale timeline to limit the time the BeGo Secured Lenders, the creditors' committee, and all other stakeholders have to mount meaningful opposition. This is the conduct of an insider leveraging the U.S. bankruptcy process to acquire assets at the expense of a known senior creditor.

54. As described in this Objection, multiple DIP Facility terms support a finding that Brookfield is not entitled to good-faith lender protections. Because Brookfield is not a good faith lender under *TMT Procurement*, the section 364(e) protections are unavailable and the Interim Order's economic terms—including the fees, premiums, and OID purportedly "fully earned" upon first draw—are subject to reconsideration. Therefore, the BeGo Secured Lenders respectfully submit that the Court should: (i) deny final approval of the DIP Facility unless materially modified; (ii) hold that Brookfield is not entitled to section 364(e) good faith lender protections given its actual knowledge of the BeGo Secured Lenders' adverse claims and the self-dealing terms of the DIP Facility; and (iii) reconsider and modify the fee provisions of the Interim Order to remove the "fully earned" characterization, require disgorgement or offset of any premiums already booked, and condition any future fee accrual on arm's-length renegotiation that accounts for the BeGo Secured Lenders' structural priority.

I. The Interim DIP Order is Subject to Relief Under Rule 60(b) Based on the Debtors' and Brookfield's Failure to Disclose Material Facts at the First Day Hearing

55. Independent of the foregoing objections, the BeGo Secured Lenders respectfully submit that the Interim Order is subject to relief under Federal Rule of Civil Procedure 60(b), as incorporated by Federal Rule of Bankruptcy Procedure 9024, on the ground that the Debtors and Brookfield obtained the Interim Order through, at a minimum, material misrepresentation and nondisclosure of facts bearing directly on the Court's evaluation of the DIP Facility. See Fed. R. Civ. P. 60(b)(3) (authorizing relief from a judgment or order procured by "fraud . . . , misrepresentation, or misconduct by an opposing party"); see also Fed. R. Civ. P. 60(b)(2) (permitting relief based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time").

56. At the First Day Hearing on June 3, 2026, when the Court was asked to approve the Brookfield DIP on an emergency interim basis, counsel for Brookfield affirmatively represented to this Court that "Brookfield is a lender only and at all times, with respect to this capital structure" Tr. 30:20–31:2. That representation was materially incomplete and misleading. In fact, Brookfield—acting in its capacity as a secured lender holding pledges over the controlling equity interests in the TopCo Debtor—had served an acceleration notice and appropriated the TopCo shares on April 21, 2026 (a fact not disclosed in the First Day Declaration), and had also exercised proxy or other contractual rights associated with those pledges to cause the appointment of two Brookfield-affiliated directors, Michael Rudnick and Mickael Deligny, to the five-member board of directors of GoldenPeaks Poland Holding Limited. *See* First Day Decl. ¶ 52. In addition, on June 1, 2026, the TopCo board, including Messrs. Rudnick and Deligny, passed a board resolution directing Brookfield or its designee to be entered in the register of TopCo's members in furtherance of the April 21, 2026 appropriation notice. Thus, at the time Brookfield's counsel told this Court that Brookfield was merely "a lender," Brookfield, in fact, controlled two of five board seats on the TopCo Debtor board—seats it had obtained by exercising rights incidental to the very security interests it held as "a lender"—and had thereby established a controlling and insider relationship with the Debtors within the meaning of section 101(31) of the Bankruptcy Code. *See Matter of Fabricators, Inc.*, 926 F.2d at 1465 (control is a sufficient basis for insider status; a formal relationship such as officer, director or shareholder, is persuasive). Neither Brookfield nor the Debtors disclosed the mechanism by which these board seats were obtained, the timing of the appointments relative to the filing, the fact that Brookfield had served an acceleration and appropriation notice for the TopCo shares on April 21, 2026, or the fact that Brookfield's exercise

of pledge-related rights had given it effective governance control over the very entity that was then seeking Court approval of a DIP facility for Brookfield's benefit.

57. This nondisclosure was material to the Court's approval of the Interim Order. A debtor seeking DIP financing bears an affirmative obligation of candor and full disclosure, particularly where the proposed DIP lender is an insider or exercises insider-level influence over the debtor's affairs. *See Azby Fund v. Wadsworth Ests., L.L.C.*, No. 22-30092, 2022 WL 17582273, at *2 (5th Cir. Dec. 12, 2022) ("a debtor in possession, like a trustee, takes on fiduciary responsibilities to all creditors"); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("A debtor in possession, like a trustee, is a fiduciary holding the bankruptcy estate and operating the business for the benefit of its creditors and…equity owners."); *In re Schlomer,* 672 B.R. 915, 922 (Bankr. W.D. Tex. 2025) (a debtor's required duty of loyalty "includes an obligation to refrain from self-dealing, to avoid conflicts of interests and the appearance of impropriety, to treat all parties to the case fairly and to maximize the value of the estate"). The Interim Order expressly found that the "DIP Financing and the use of Prepetition Collateral have been negotiated in good faith and at arm's length among the Debtors, the DIP Loan Parties, the DIP Secured Parties and the Brookfield Secured Parties" [Interim Order ¶ H(vi)]—a finding that this Court made in reliance on a record that affirmatively characterized Brookfield as "a lender only." Had the Court been informed that Brookfield had exercised stock-pledge rights to install two affiliated directors on the TopCo Debtor Board shortly before the filing—while at the same time negotiating a DIP facility with itself as the sole lender—the Court would have had before it a materially different picture: one of a secured creditor that had leveraged its collateral position to achieve governance control and then used that control to engineer DIP financing on self-serving terms without market-testing, independent oversight, or adequate protection for primed creditors. This is precisely the type of

insider self-dealing that heightened scrutiny is designed to police. *See Matter of Fabricators, Inc.*, 926 F.2d at 1465. The nondisclosure deprived the Court of the factual predicate necessary to evaluate whether the DIP Facility satisfied the statutory requirements of section 364 and whether the DIP lender's conduct warranted the protections of section 364(e).

58. Relief under Rule 60(b) is both appropriate and necessary. In the Fifth Circuit, a movant seeking relief under Rule 60(b)(3) must demonstrate by clear and convincing evidence that the opposing party engaged in fraud, misrepresentation, or other misconduct, and that the conduct prevented the movant from fully and fairly presenting its case. *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (5th Cir. 1978); *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 641 (5th Cir. 2005); *Hernandez v. Results Staffing, Inc.*, 907 F.3d 354, 364 (5th Cir. 2018). Here, the record satisfies that standard: Brookfield's counsel made an affirmative and materially incomplete representation to this Court regarding the nature of Brookfield's relationship with the Debtors at the very hearing at which the Court approved the Interim Order, and the BeGo Secured Lenders—who had retained counsel only hours before the hearing and had no opportunity to conduct meaningful diligence—were prevented from bringing these facts to the Court's attention. To the extent this information constitutes newly discovered evidence within the meaning of Rule 60(b)(2), it was not reasonably discoverable before the Interim Hearing given the compressed timeline engineered by Brookfield and the Debtors. Accordingly, the BeGo Secured Lenders respectfully request that this Court grant relief from the Interim Order under Rule 60(b) to eliminate or unwind the key benefits that Brookfield obtained thereunder, including: (a) the $12.1 million Rollup of Brookfield's Prepetition Incremental Facility debt into DIP Loans with superpriority status, which should be reversed; (b) any DIP Liens granted to Brookfield under the Interim Order, which should be vacated or subordinated to the BeGo Secured Lenders' prepetition liens and any adequate

protection liens and superpriority claims to be granted under the Final Order; (c) Brookfield's automatic credit bid right; (d) cross-collateralization; and (e) the finding that the DIP Facility was negotiated "in good faith and at arm's length" [Interim Order ¶ H(vi)], which should be stricken as unsupported by a full and accurate record. These modifications are independently warranted by the substantive objections set forth herein and are necessary to restore the integrity of these proceedings.

RESERVATION OF RIGHTS

59. The BeGo Secured Lenders reserve all rights, including to challenge the Court's subject-matter jurisdiction in this proceeding, personal jurisdiction over them, whether this is an appropriate and convenient forum, and whether these Chapter 11 Cases should be dismissed as bad-faith filings or transferred to a proper venue. The BeGo Secured Lenders further reserve all claims and defenses against Brookfield, its affiliates, and any current or former officers, directors, or fiduciaries of the Debtors arising from or relating to the insider nature of the DIP Facility, the DIP negotiation process, Brookfield's conflicting roles, and any breaches of fiduciary duty, aiding and abetting, equitable subordination, recharacterization, or related causes of action. The BeGo Secured Lenders also reserve all rights to conduct additional discovery against the Debtors, Brookfield, or any other parties in interest in these Chapter 11 Cases.

CONCLUSION

60. For the foregoing reasons, the BeGo Secured Lenders respectfully request that the Court deny final approval of the DIP Facility on the terms proposed, or condition approval on the modifications set forth herein, including to:

a. require adequate protection for the BeGo Secured Lenders' secured claims, including current-pay adequate protection payments, replacement liens, superpriority administrative expense claims, comprehensive reporting rights, and consent rights over dispositions of BeGo Secured Lender collateral;

b. deny, defer or limit Brookfield's credit bidding to new money actually advanced, require allocation of any credit bid to non-BeGo Secured Lender collateral first, require cash bidding for the BeGo Portfolio Groups, and structure the sale process to permit bidding on those projects as discrete asset packages;

c. exclude the marshaling waiver and section 506(c) surcharge waiver;

d. require the Debtors to solicit and consider alternative DIP financing, including to, among other things, offer participation rights to third parties on materially modified terms;

e. require competent evidence supporting the DIP Facility's sizing, proposed uses, and Approved Budget expenditures;

f. reverse or subordinate the $12.1 million Rollup and exclude it from Brookfield's credit bid quantum and/or reverse the 1.75x MOIC applies to the Rollup loans;

g. extend the milestones to provide a reasonable timeline for competing bidder participation, including no less than 90 days between entry of any bidding procedures Order and the sale Order, and extend the DIP maturity to at least six months from closing;

h. require independent oversight of discretionary draws and exclude uncommitted discretionary amounts from the ticking fee, MOIC, and credit bid calculation;

i. remove any Event of Default that restricts the Debtors from soliciting, considering, or negotiating alternative financing;

j. hold that Brookfield is not entitled to section 364(e) good faith lender protections and reconsider the Interim DIP Order's "fully earned" fee provisions; and

k. grant the relief requested above under Federal Rule of Civil Procedure 60(b).

Dated: June 25, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 25, 2026, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Catherine E. Bratic
Catherine E. Bratic