

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

ESJ TOWERS, INC.

Debtor.

Case No. 22-01676 (ESL)

Chapter 11

**JOINT MOTION FOR ENTRY OF AN ORDER APPROVING AGREEMENT
REGARDING AUTHORIZATION OF ATTENURE TO NEGOTIATE AND LITIGATE
INSURANCE CLAIM AGAINST CHUBB INSURANCE COMPANY OF PUERTO RICO
AND TO RATIFY THE ASSIGNMENT DOCUMENTS, AS AMENDED**

TO THE HONORABLE ENRIQUE S. LAMOUTTE
UNITED STATES BANKRUPTCY JUDGE:

COME NOW, ESJ Towers, Inc. (the “Debtor”), Attenure Holdings Trust 1 And HRH Property Holdings, LLC (jointly “Attenure”), and Oriental Bank (“Oriental”), by and through their respective undersigned attorneys, and file this joint motion (the “Rule 9019 Motion”) for entry of an order substantially in the form attached as **Exhibit C**.

In support hereof, the Debtor, Attenure and Oriental¹ (jointly the “Movants or the Parties”) respectfully state and request as follows:

PRELIMINARY STATEMENT

Through this 9019 Motion, the Movants request entry of an order (i) approving the agreement attached as **Exhibit A** hereto (the “Agreement”) authorizing Attenure to negotiate and litigate on behalf of the Debtor and the Council in the case captioned Consejo de Titulares de ESJ Towers Condominium et al. v Chubb Insurance Company of Puerto Rico, CA2019CV03427 (the “State Court Action”) as to the insurance proceeds under Policy Number 08-95PR-00100607-0 (the “Insurance Claim”) issued by Chubb Insurance Company of Puerto Rico (“Chubb”), and (ii)

¹ The Council of Co-Owners of ESJ Towers Condominium, also known as the ESJ Towers Condominium Homeowners Association (the “Council”) has not joined, at this time, the relief requested through the 9019 Motion. Nonetheless, considering the importance of said relief to the Debtor’s estate, the Parties also understand that the joinder of the Council hereto is not necessary due to the clear language in the Assignment Documents and the reasons detailed in this 9019 Motion.

ratifying the Assignment Documents², except as specifically amended through the Agreement, pursuant to Sections 105(a) and 363(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), Local Bankruptcy Rule 9013-1(c)(2)(A) (the “LBR”); and Rules 9019 and 4001(d)(1)(A)(ii) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

In essence, the Agreement resolves the contested matters between the Parties regarding Attenure’s authorization to litigate and negotiate on behalf of the Council and the Debtor the Insurance Claim and the State Court Action. While Attenure already has exactly these rights under the Assignment Documents, the Agreement ratifies this and provides a mechanism for Attenure to litigate to judgment, or settle, the Insurance Claim, while preserving Oriental, the Debtor, and the Council’s rights to claim their respective interests in the proceeds of the Insurance Claim – after payment to Attenure. Specifically, the Agreement provides that the proceeds received from the Insurance Claim – either through a judgment or settlement – after payment is made to Attenure, will be deposited in the Bankruptcy Court. Oriental, the Debtor, and the Council would be able to present their respective positions as to their entitlement, if any, to such proceeds. Further, while Attenure is authorized to negotiate and litigate the State Court Action, and to present to the Bankruptcy Court for approval any settlement, any such settlement of the Insurance Claim and/or the State Court Action would be subject to Bankruptcy Court approval.

Thus, the Agreement provides a mechanism – already provided for and agreed to by the Council and the Debtor in the Assignment Documents – to finally resolve the Insurance Claim and State Court Action while also preserving Oriental, the Debtor and the Council’s potential rights to claim their respective interests over the proceeds paid from the Insurance Claim, after payment to Attenure. For these reasons and those set forth below, the Parties request that the Court approve the Agreement.

² As listed in Schedule 1 of the Agreement.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue as to this 9019 Motion is proper in this district pursuant to 28 U.S.C. §§ 1408(1) and 1409(1). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K)(M)&(O). The statutory basis for the relief requested herein are Sections 105(a), 1107(a) and 1108 of the Bankruptcy Code, and Fed. R. Bank. P. 9019.

II. BACKGROUND

2. On September 6 and 20, 2017, Hurricanes Irma and María respectively caused damages to the ESJ Towers Condominium (the “Condominium”), as to which, the Debtor filed a claim with Chubb on its behalf and that of the Council (the “Claim”). See Docket No. 138.

3. On February 28, 2019, the Debtor entered into an agreement, *inter alia*, authorizing Attenure Holdings Trust 1, a Puerto Rico trust, to negotiate and litigate the Claim on its behalf and that of the Council. See Docket No. 138, **Exhibit B**.

4. On September 5, 2019, Attenure, together with the Debtor and the Council, filed the State Court Action claiming \$21,600,462.85 against Chubb (the “Insurance Proceeds”).See, Docket No. 138.

5. On June 10, 2022 (“Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with this Court. See Docket No. 1.

6. On October 3, 2022, the Debtor and Attenure filed the Joint Motion. See Docket No. 138.

7. The Official Creditors Committee (the “Committee”) submitted a qualified objection to the Joint Motion on various grounds. See Docket No. 291.

8. Oriental Bank and the Council also responded to the Joint Motion, *inter alia*, expressing having an interest in the Insurance Proceeds and submitting a qualified objection thereto on various grounds (Docket Nos. 150 and 308).

9. The Debtor and Attenure filed an Omnibus Reply to Oriental Bank's, the Council's and the Committee's responses to the Joint Motion. See Docket No. 363.

10. The Movants agree that Attenure should continue negotiating and litigating the State Court Action on behalf of the Debtor and the Council and have therefore executed the Agreement for the benefit of the bankruptcy estate and all parties in interest.

11. Moreover, the Parties agree that the ratification of the Assignment Documents (as listed in **Schedule 1** of the Agreement), as specifically amended through the Agreement, is in the best interests of the estate, creditors and all parties-in-interest.

III. BASIS FOR RELIEF

A. Standard for the Requested Relief

12. Bankruptcy Rule 9019(a) provides that a court may approve a debtor's "compromise and settlement" after notice and a hearing. See Bankruptcy Rule 9019(a). The First Circuit has emphasized that "[s]tipulations of settlement are favored by the courts, and they will rarely be set aside absent fraud, collusion, mistake or other such factor." In re Indian Motorcycle Co., 289 B.R. 269, 282 (B.A.P. 1st Cir. 2003); See also, In re Healthco Int'l, Inc., 136 F.3d 45, 50 n.5 (1st Cir. 1998).

13. A court should consider four factors in striking the balance between the value of the compromise and the value of the claim:

- (i) the probability of success in the litigation being compromised;
- (ii) the difficulties, if any, to be encountered in the matter of collection;
- (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and,
- (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premise.

See, In re C.P. del Caribe, Inc., 140 B.R. 320, 325, (Bankr. D.P.R. 1992); In re Robotic Vision Sys., Inc., No. 04-14151-JMD, 2006 WL 929322, at *4 (B.A.P. 1st Cir. Apr. 11, 2006) (citing Jeremiah v. Richardson, 148 F.3d 17, 23 (1st Cir.1998)).

14. “The court's consideration of these factors should demonstrate whether the compromise is fair and equitable, and whether the claim the debtor is giving up is outweighed by the advantage to the debtor's estate.” In re Robotic Vision Sys., Inc., 2006 WL 929322, at *4.

15. The standard for approving a settlement, whether it is in the best interest of the estate, entails an examination of the settlement's terms with the litigation's probable cost and benefits. When an agreement provides tangible benefits to the estate in return for sacrifice of uncertain claims against a creditor, the bankruptcy court does not err in approving the settlement. In re Bond, 16 F.3d 408, 30 C.B.C.2d 784 (4th Cir. 1994).

16. Entering into a settlement agreement under Rule 9019 must be accorded some deference by the courts. See, In re Healthco Int'l, Inc., 136 F.3d 45, 54 at fn. 5 (1st Cir. 1998) (citing In re Moorhead Corp., 208 B.R. 87, 89 (B.A.P. 1st Cir. 1997) (“the [bankruptcy] judge...is not to substitute her judgment for that of the trustee [debtor-in-possession], and the trustee's judgment is to be accorded some deference.”). Furthermore, “[c]ompromises are favored in bankruptcy.” See, Richard Levin & Henry J. Sommer, 10 *Collier on Bankruptcy* ¶9019.01 (16th ed. 2020).

17. The Movants submit that the Agreement should be approved as it constitutes a sound exercise of the Debtors' business judgment, is in the best interest of the creditors, the estate and all parties in interest, resolves the controversy regarding whether Attenure is authorized to negotiate and litigate the State Court Action, and paves the way towards the repair of the damages caused by Hurricanes Irma and María to the Condominium (where some of the estate's assets are located), for the benefit of the Debtor, the bankruptcy estate, aiding in the prompt filing of a plan of reorganization in this case.

B. The Agreement Should be Approved Pursuant to Rule 9019

18. The Movants submit the following in support of the approval of the Agreement.

19. First, the Agreement is a sound exercise of the Debtor's business judgment and provides numerous benefits to the estate, the creditors, and all parties-in-interest in the captioned case, as it provides a path to collect and ultimately resolve, through litigation or settlement, the Insurance Proceeds, the Insurance Claim and the State Court Action³.

20. Second, although the Council is not a party, at this time, to the Agreement, the Agreement should still be approved, as the Council already validly entered into the Assignment Documents relating to the Council, which give Attenure the right to litigate, negotiate, or settle the Insurance Claim and the State Court Action on behalf of the Council. Specifically:

- a. The Assignment Documents are valid and binding between the Debtor, the Council and Attenure, as has been already determined by a judgment of the Puerto Rico Court of Appeals. Specifically, the Puerto Rico Court of Appeals in the case of Consejo de Titulares del Condominio ESJ Towers v. Chubb Ins. Co. of Puerto Rico, 2020 WL 8460377 (P.R. Cir. Dec. 18, 2020) confirmed the validity of the Assignment Documents, affirming a judgment finding that the Assignment Documents did not contravene any laws of Puerto Rico. See, **Exhibit F** to Docket Entry 363-8, *Certified Translation of Puerto Rico Court of Appeals Ruling*. The Council was a party to such litigation and appeal, thus, under principles of estoppel, law of the case, res judicata and preclusion, the Council is precluded from arguing otherwise in this forum.
- b. Prior to, and after the ruling of the Puerto Rico Court of Appeals, Attenure has continued prosecuting the State Court Action on behalf of the Debtor and the Council and defraying the litigation expenses in connection therewith, for the benefit of the Debtor and the Council and at no cost for the Council. The Council has accepted the benefits of the Assignment Documents, accepting payment from Attenure for its representation, costs of litigation, expert witnesses and other fees.
- c. Finally, the Assignment Documents were signed for the Council by Mr. Keith St. Clair, as administrator for the Council at the time the documents were signed.

21. Third, and critically, while the Assignment Documents are clear and provide substantial rights to Attenure to settle, litigate, or negotiate the Insurance Claim on behalf of the Council, through the Agreement, the Council's rights are not being impaired. Specifically, the

³ Movants further note that Attenure has successfully resolved all of the other insurance claims assigned thereto against Chubb in connection with damages caused by the passing of Hurricanes Irma and María.

Agreement provides that after payment to Attenure, the balance of the recovery from the Insurance Claim and Insurance Proceeds shall be paid into the Bankruptcy Court. Accordingly, the Council – as well as Oriental and the Debtor – will be able to present their respective positions as to their entitlement to any portion of such Insurance Proceeds. Without the Agreement, there simply is no clear path to continue with the State Court Action and be able to liquidate the Insurance Claim to judgment or through settlement.

22. Fourth, the approval of the Agreement does not curtail the rights of any party-in-interest regarding the Debtor’s ultimate use of the funds to be received from the Insurance Proceeds, as parties-in-interest will have the opportunity to be heard in connection therewith and the safeguards of 11 U.S.C. §§1125 and 1129.

23. Therefore, the facts and circumstances of Debtor’s Chapter 11 show an overwhelming need to expedite the resolution of the State Court Action and to finally resolve the controversies regarding Attenure’s authorization to negotiate and litigate the State Court Action on behalf of the Debtor and the Council.

IV. PROCEDURE

24. The Movants will provide notice of this 9019 Motion (i) through the CM/ECF system, to all CM/ECF participants in this case; (ii) by U.S. mail and, where practicable, by email, to the creditors and parties in interest listed in the Notice List in **Exhibit B** and (iii) by publication to any unknown parties in interest.

25. The Movants shall file a certificate of notice as soon as such notice is completed.

26. A proposed order granting the requested relief is attached as **Exhibit C** hereto.

V. CONCLUSION AND PRAYER FOR RELIEF

As the facts and circumstances of the Debtor’s Chapter 11 show, there is an overwhelming need to resolve the controversies regarding Attenure’s authorization to negotiate and litigate on behalf of the Debtor and the Council the State Court Action, and the ratification of the Assignment

Documents, as amended through the Agreement. As the Agreement satisfies the standards under Rule 9019 and resolves all of the controversies regarding Attenure's authorization to negotiate and litigate on behalf of the Debtor and the Council, which would otherwise delay the confirmation of any plan that may be filed in this case, without any benefit to the Debtor, the estate, the secured and unsecured creditors or any of other parties in interest, this Court should grant the requested Rule 9019 Order, substantially as set forth in **Exhibit C**.

WHEREFORE, the Debtor, Attenure and Oriental respectfully request that this Court enter a Rule 9019 Order substantially in the form attached hereto as **Exhibit C**, granting the 9019 Motion; approving the Agreement set forth in **Exhibit A**, in its entirety; and authorizing Attenure to negotiate and litigate the State Court Action on behalf of the Debtor and the Council, granting such other and further relief as the Court may deem proper and just.

NOTICE TO CREDITORS AND PARTIES IN INTEREST

Within twenty-one (21) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank P. 9006(f) if you were served by mail, any party against whom this motion has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, this 9019 Motion will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

WE HEREBY CERTIFY that, on this same date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants in this case and that, once the Movants notify those parties listed in **Exhibit B** by mail and e-mail, a certificate of service will be filed.

RESPECTFULLY SUBMITTED,

San Juan, PR, this 11th day of May 2023.

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Exhibit A
Agreement

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN RE:

ESJ TOWERS, INC.

Debtor.

Case No. 22-01676 (ESL)

Chapter 11

**AGREEMENT REGARDING AUTHORIZATION OF ATTENURE TO NEGOTIATE
AND LITIGATE INSURANCE CLAIM AGAINST CHUBB INSURANCE COMPANY
OF PUERTO RICO AND TO RATIFY THE ASSIGNMENT DOCUMENTS, AS
AMENDED HEREIN**

This agreement (the “Agreement”) is entered into as of the 11th day of May 2023, by and between ESJ Towers, Inc. (the “Debtor”), Attenure Holdings Trust 1 and HRH Property Holdings LLC (jointly “Attenure”), and Oriental Bank (“Oriental”) (all of them jointly the “Parties” and individually a “Party”).

RECITALS

WHEREAS, on June 10, 2022, the Debtor filed a chapter 11 petition with the United States Bankruptcy Court for the District of Puerto Rico (the “Petition Date”);

WHEREAS, since before the Petition Date, the Debtor and the Council of Co-Owners of ESJ Towers Condominium (the “Council”) are co-Plaintiffs in the case captioned Consejo de Titulares de ESJ Towers Condominium et al. v Chubb Insurance Company of Puerto Rico, CA2019CV03427 (the “State Court Action”), before the Court of First Instance of Puerto Rico, Carolina Section (the “State Court”) as to the insurance proceeds arising from Insurance Policy Number 08-95PR-00100607-0 issued by Chubb Insurance Company of Puerto Rico (“Chubb”) (the “Insurance Claim”);

WHEREAS, in the State Court Action, the Debtor, the Council and Attenure filed a claim for the payment of insurance proceeds with respect to damages caused to the ESJ Towers Condominium (the “Condominium”) by Hurricanes Irma and María, requesting that the State

Court order Chubb to pay \$21,600,462.85 to the Debtor, Attenure and the Council regarding the Insurance Claim (the “Insurance Proceeds”);

WHEREAS, on October 3, 2022, the Debtor and Attenure filed a *Joint Motion for Order Granting Ratification of Certain Pre-Petition Agreements among the Debtor and the Attenure Entities* (the “Joint Motion”) (Dkt. 138), which requested the ratification of such agreements only as to the Debtor;

WHEREAS, the Committee submitted a qualified objection to the Joint Motion on various grounds. Dkt. 291.

WHEREAS, Oriental Bank and the Council responded to the Joint Motion and expressed having an interest in the Insurance Proceeds and presented a qualified objection to the Joint Motion (Dkts. 150 and 308). The Debtor and Attenure filed at Dkt. 363 an Omnibus Reply to Oriental Bank, the Council and the Committee’s responses to the Joint Motion at Dkt. 138;

WHEREAS, the Debtor, Oriental Bank and the Committee agree that Attenure should continue negotiating and litigating the State Court Action on behalf of the Debtor and the Council;

WHEREAS, the Parties also agree, to enable and facilitate the prosecution and negotiation of the State Court Action, to ratify the Assignment Documents (listed in **Schedule 1** of this Agreement), as specifically amended through the Agreement;

WHEREAS, the Council has not joined and is not a signatory to this Agreement; nonetheless, the Parties understand that the joinder or execution by the Council of this Agreement is not necessary, considering the language of the Assignment Documents already authorizing Attenure to negotiate, settle, and litigate the Insurance Claim, Insurance Proceeds, and State Court Action on behalf of the Council, and the ruling of the Puerto Rico Court of Appeals in the case of Consejo de Titulares del Condominio ESJ Towers v. Chubb Ins. Co. of Puerto Rico, 2020 WL 8460377 (P.R. Cir. Dec. 18, 2020);

WHEREAS, the Parties have reached an agreement, as set forth herein, to authorize Attenure to negotiate and litigate, on behalf of the Debtor and the Council, the Insurance Claim and/or the State Court Action under the terms of the Assignment Documents, as amended herein.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by the Parties as follows:

1. The Parties hereby stipulate and agree that Attenure shall be authorized to negotiate and litigate the State Court Action, the Insurance Claim, and the Insurance Proceeds on behalf of the Debtor, the Council and all parties that have or could have an interest in the Insurance Proceeds, the Insurance Claim and/or the State Court Action. Attenure agrees to provide written notice to all Parties through the undersigned attorneys of any and all settlement offers related to the Insurance Claim received or exchanged with Chubb within five (5) days of receipt or submittal of any such settlement offer or demand. The Parties agree that a common interest exists between them regarding the Insurance Claim, State Court Action and Insurance Proceeds, and accordingly will treat any such settlement offer exchanged pursuant to this paragraph as confidential.

2. The Parties stipulate and agree that, as set forth above, they have resolved all contested matters between them regarding Attenure's authority to negotiate and accept, as set forth in the Assignment Documents (and, particularly, *Subsections A and B of the Second Section of the Powers of Attorney* detailed paragraphs 5 and 6 of the Joint Motion, both of which were executed by Mr. Keith St. Clair on behalf of the Debtor and the Council, respectively), a settlement transaction regarding the Insurance Claim, Insurance Proceeds, and/or the State Court Action (any such settlement, the "Insurance Claim Settlement"), conditioned on and subject to Bankruptcy Court Approval pursuant to Bankruptcy Rule 9019. For the avoidance of doubt, Attenure may file a request for approval of any such Insurance Claim Settlement without seeking or obtaining the prior approval of any other Party to this Agreement. To the extent not otherwise settled as part of

the terms of this Agreement, all other Parties reserve any and all other objections to any such Insurance Claim Settlement, and may file the same as appropriate with the Bankruptcy Court.

3. The Parties agree that pursuant to Bankruptcy Rule 9019, only the Bankruptcy Court's approval is required with regards to the Debtor's interest in the Insurance Proceeds.

4. Whether the Insurance Claim is settled as indicated above or determined by a judgment of the State Court in the State Court Action or otherwise by a Court with jurisdiction, the Parties agree and stipulate that the Insurance Proceeds actually received from the Insurance Claim (such amount, the "Insurance Payment") shall be distributed as follows: (i) first, Attenure shall receive \$1,000,000.00 to satisfy the sums previously advanced pursuant to the Assignment Documents (the "Mitigation Payment"); in addition, Attenure shall receive a payment in the amount of 32% of the difference between (a) the total Insurance Payment and (b) the sum of the Mitigation Payment (\$1,000,000.00), as total compensation and in full satisfaction for its services and reimbursement of litigation costs and mitigation payments (collectively, the "First Deduction"); (ii) then, the remaining proceeds after the First Deduction, shall be deposited with the Clerk of the Bankruptcy Court in the captioned case and shall be disbursed as determined by the Bankruptcy Court, each Party (except Attenure) reserving all rights, arguments and defenses raised or which may be raised in reference thereto, before the determination is made by the Bankruptcy Court. For the avoidance of doubt, the First Deduction shall be paid directly to Attenure and all other Parties waive any claim, argument, or defenses regarding the First Deduction.

5. Pursuant to Bankruptcy Rule 9019, this Agreement is subject to the approval of the Bankruptcy Court and, upon the entry of an order (the "Rule 9019 Order") by the Court approving a motion for approval of the same (the "Rule 9019 Motion"), this Agreement will become binding on the Parties.

6. The Parties acknowledge and affirm that prior to entering into this Agreement, they have reviewed and become acquainted with all relevant documents; that they have consulted with their attorneys; and that they have agreed to all the terms and conditions thereof freely and voluntarily.

7. Each of the Parties hereby ratifies, reaffirms, confirms, consents to and acknowledges all of the terms and conditions of the Assignment Documents (as such term is defined in the Joint Motion), except as amended in this Agreement.

8. Further, concurrently with the filing of the Rule 9019 Motion, the Debtor shall provide notice, in form and substance as set forth on **Exhibit B** to the Rule 9019 Motion (the “Rule 9019 Notice”), of the Rule 9019 Motion, the Agreement (with all exhibits) and the proposed Rule 9019 Order to all creditors, parties in interest, all Persons (meaning any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership or other entity) that have filed a notice of appearance in the Bankruptcy Case, all parties to litigations or any adversary proceeding directly or indirectly related to the Bankruptcy Case, the State Court Action, the Insurance Claim and the Insurance Proceeds (collectively, the “Rule 9019 Notice Parties”).

9. Upon entry of the Rule 9019 Order, this Agreement shall be binding on the Parties, and shall inure to the benefit of and bind their respective successors and assigns. Further, upon entry of the Rule 9019 Order, this Agreement shall be binding upon each of the Rule 9019 Notice Parties, excluding solely the United States Trustee. Accordingly, the entry of the Rule 9019 Order shall constitute a factual and legal determination, binding on each of the Parties and Rule 9019 Notice Parties, excluding solely the United States Trustees, finding and decreeing that: (i) Attenure is authorized to negotiate and litigate the State Court Action, Insurance Claim, and/or Insurance Proceeds on behalf of the Debtor, the Council and its own behalf, subject to the terms of this

Agreement; (ii) the Assignment Documents are valid and binding, as amended through this Agreement; and (iii) the distributions of the Insurance Proceeds shall be made as set forth in this Agreement. Further, the entry of the Rule 9019 Order shall constitute a factual and legal determination, binding on all Rule 9019 Notice Parties, that: (a) the Rule 9019 Notice constitutes adequate and appropriate notice to the Rule 9019 Notice Parties under the circumstances; (b) no other or further notice of the Agreement or Rule 9019 Motion is required; (c) the Rule 9019 Notice Parties served with the Rule 9019 Notice have been provided adequate and appropriate notice of the Agreement and Rule 9019 Motion and afforded an opportunity to be heard with respect to the Rule 9019 Motion, any potential objection to the Agreement, and all other relief otherwise requested therein; and (d) that the persons executing this Agreement are duly authorized to execute this Agreement on behalf of the Party.

10. Except for Attenure's authorization to negotiate and litigate on behalf of the Debtor and the Council and as otherwise provided herein, including the ratification of the Assignment Documents as amended herein, all Parties reserve and preserve all other rights and obligations, claims, arguments, positions and defenses with respect to any other existing or future controversies not settled herein, including, but not limited to, those regarding the correct distribution of the Insurance Proceeds after the First Deduction, as agreed to herein and as to the prepetition use of any advance payments by Chubb to any Party.

11. Nothing contained in this Agreement shall operate as a waiver, lifting or modification of the automatic stay so as to permit the prosecution against the Debtor of any claim by anyone, except as expressly provided for herein, and the Debtor reserves all rights, defenses, and protections with respect to any other matters pending in its Chapter 11 Case.

12. The Parties, individually, represent and warrant that they are properly and fully empowered to enter into and execute this Agreement; that they know of no contractual commitment or legal limitation, impediment, or prohibition against their entry into this Agreement; and that this Agreement shall be legal, valid, and binding upon them upon the required approvals set forth herein.

13. Neither this Agreement, nor the compromise, settlement or stipulation provided for herein, nor any statement made, action, or position taken, or document prepared or executed in connection with the negotiation, execution, or implementation thereof shall be deemed to be, or construed as, an admission by any Party of any liability, wrongdoing, act, or matter or that any claim or defense has or lacks merit.

14. This Agreement contains the entire agreement by and between the Parties with respect to the subject matter thereof. This Agreement shall be construed and interpreted in accordance with the laws of Puerto Rico. For purposes of construing this Agreement, none of the Parties shall be deemed to have been drafting Party.

15. This Agreement may be executed in counterparts, each of which will be deemed an original, but when taken together will constitute one and the same document.

16. This Agreement, which shall be immediately effective and enforceable upon entry of the Rule 9019 Order by the Bankruptcy Court (which shall not be stayed), may not be modified other than by a signed written agreement executed by all the Parties and approved by the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

17. The Bankruptcy Court shall retain jurisdiction to hear and determine any and all matters or disputes (a) arising from or related to the implementation, enforcement, or interpretation of this Agreement; (b) the approval of any Insurance Settlement Offer; and (c) as to the execution or enforcement in the Debtor's Chapter 11 Case of any judgment entered regarding the Insurance Proceeds or the Insurance Claim.

IN WITNESS WHEREOF and in agreement herewith, the Parties have executed and delivered this Agreement as of the date first above written.

ESJ TOWERS, INC.

/s/ Stephen Nalley

Stephen Nalley
General Manager

ATTENURE HOLDINGS TRUST I

/s/ José L. Blanco LaTorre

José L. Blanco LaTorre
Vice President

**HRH PROPERTY
HOLDINGS LLC**

/s/ José L. Blanco LaTorre

José L. Blanco LaTorre
Vice President

ORIENTAL BANK

/s/ Marangeli López-Reyes

MARANGELÍ LÓPEZ REYES
Director, Special Asset-Unit Oriental Bank

Schedule 1
Assignment Documents

The Assignment Documents to which the Agreement refers to are the following:

1. *Purchase And Sale, Assignment And Conveyance Agreement* dated February 28, 2019, executed by ESJ Towers, Inc., ESJ Towers Condominium, Attenure Holdings I LLC, authenticated under affidavit numbers 674, 675 and 676 of Notary Public Rubén G. Fernández Agramonte (the “Assignment Agreement”);
2. *Side Letter to the Assignment Agreement* dated February 28, 2019, executed by Attenure Holdings I LLC, ESJ Towers, Inc. and ESJ Towers Condominium regarding Additional Mitigation Payment of \$1,250,000.00;
3. *Deed of Special Power of Attorney* dated February 28, 2019, executed by ESJ Towers, Inc., deed number 4 of Notary Public Rubén G. Fernández Agramonte;
4. *Deed of Special Power of Attorney* dated February 28, 2019, executed by The Council of Owners of ESJ Towers Condominium, deed number 3 of Notary Public Rubén G. Fernández Agramonte;
5. *Deed of Delegation of Authority* dated August 30, 2019, executed by Oriental Bank and HRH Property Holdings LLC, appointing HRH Property Holdings LLC as Agent of Attenure Holdings Trust 1.

Exhibit C
Proposed 9019 Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

ESJ TOWERS, INC.

Debtor.

Case No. 22-01676 (ESL)

Chapter 11

**ORDER APPROVING AGREEMENT REGARDING AUTHORIZATION OF
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CHUBB INSURANCE COMPANY OF PUERTO RICO AND RATIFYING THE
ASSIGNMENT DOCUMENTS, AS AMENDED**

Upon the *Joint Motion for Entry of an Order Approving Agreement regarding Authorization of Attenure to Negotiate and Litigate Insurance Claim Against Chubb Insurance Company of Puerto Rico and to Ratify the Assignment Documents, as Amended*, dated May 10, 2023 (the “9019 Motion”), filed by ESJ Towers, Inc. (“Debtor”), Attenure Holdings Trust I and HRH Property Holdings, LLC (jointly “Attenure”), Oriental Bank (“Oriental”), and the Official Committee of Unsecured Creditors for ESJ Towers, Inc. (the “Committee”), (jointly the “Movants”), requesting the entry of an order pursuant to, among others, Sections 105(a) and 363(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”) approving the Agreement submitted as **Exhibit A** to the 9019 Motion, in which the Movants agree to, except as otherwise provided in the Agreement, ratify the authorization of Attenure to negotiate and litigate on behalf of the Debtor and the Council against Chubb Insurance Company of Puerto Rico, the case titled Consejo de Titulares de ESJ Towers Condominium et al. v Chubb Insurance Company of Puerto Rico, CA2019CV03427 (the “State Court Action”) regarding the Insurance Proceeds under Policy Number 08-95PR-00100607-0 and for related relief, as more fully described in the 9019 Motion; the Court having found it has subject matter jurisdiction over this matter and that the relief requested in the 9019 Motion is in the best interests of the Debtor, its creditors and other parties in interest, in accordance with 28 U.S.C. §§ 157 and 1334; considering that the 9019 Motion and the relief requested therein constitute

a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K)(M)&(O), venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; the Court having found that adequate, due and proper notice of the 9019 Motion was given to all known parties-in-interest regarding the Insurance Proceeds, the Insurance Claim and/or in the State Court Action and to all of the Rule 9019 Notice Parties (as that term is defined in the Agreement); the Court further having found that no other or further notice is required; and having reviewed the 9019 Motion and all responses thereto; the Court has determined that the legal and factual bases set forth therein establish just cause for the relief granted herein; any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT¹:

1. The recitals, determinations, conclusions, and findings set forth above are hereby incorporated into this Order.

2. The 9019 Motion is GRANTED, and the Agreement submitted as **Exhibit A** to the 9019 Motion is APPROVED in its entirety. Any capitalized term that is not otherwise defined shall have the meaning ascribed to such term in the Agreement.

3. As set forth in the Agreement and pursuant to the terms therein, Attenure is authorized to negotiate and litigate against Chubb Insurance Company (“**Chubb**”) on behalf of the Debtor and the Council, the State Court Action, the Insurance Claim, and/or the Insurance Proceeds. As set forth in the Agreement, Attenure shall provide written notice to all other Movants through their respective attorneys of any and all settlement offers related to the Insurance Claim received or exchanged with Chubb within five (5) days of receipt or submittal of any such settlement offer or demand. The Parties agree that a common interest exists between them

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See, Fed. R. Bankr. P. 7052.

regarding the Insurance Claim, State Court Action and/or Insurance Proceeds, and accordingly will treat any such settlement offer exchanged pursuant to this paragraph as confidential.

4. As set forth above and in the Agreement, Attenure may negotiate and accept, as set forth in the Assignment Documents² (and, particulary, *Subsections A and B* of the *Second Section* of the Powers of Attorney detailed paragraphs 5 and 6 of the Joint Motion, both of which were executed by Mr. Keith St. Clair on behalf of the Debtor and the Council, respectively), a settlement transaction regarding the Insurance Claim, Insurance Proceeds, and/or the State Court Action (any such settlement, the “Insurance Claim Settlement”). Any such Insurance Claim Settlement shall be conditioned on and subject to Bankruptcy Court Approval pursuant to Bankruptcy Rule 9019. For the avoidance of doubt, Attenure may file and request approval of any such Insurance Claim Settlement without seeking or obtaining the prior approval of any other Movant. To the extent not otherwise settled as part of the terms of the Agreement, all other Movants reserve any and all other objections to any such Insurance Claim Settlement, and may file the same as appropriate with the Bankruptcy Court.

5. Whether the Insurance Claim is settled as indicated above or determined by a judgment of the State Court in the State Court Action or otherwise by a Court with jurisdiction, the Insurance Proceeds actually received from the Insurance Claim (such amount, the “Insurance Payment”) shall be distributed as follows: (i) first, Attenure shall receive \$1,000,000.00 to satisfy the sums previously advanced pursuant to the Assignment Documents (the “Mitigation Payment”); in addition, Attenure shall receive a payment in the amount of 32% of the difference between (a) the total Insurance Payment and (b) the sum of the Mitigation Payment (\$1,000,000.00), as total compensation and in full satisfaction for its services and reimbursement of litigation costs and mitigation payments (collectively, the “First Deduction”); (ii) then, the remaining proceeds after

² As listed in Schedule 1 of the Agreement.

the First Deduction, shall be deposited with the Clerk of the Bankruptcy Court in the captioned case and shall be disbursed as determined by the Bankruptcy Court, each Movant (except Attenure) reserving all rights, arguments and defenses raised or which may be raised in reference thereto, before the determination is made by the Bankruptcy Court. For the avoidance of doubt, the First Deduction shall be paid directly to Attenure and all other Movants waive any claim, argument, or defenses regarding the First Deduction.

6. The Assignment Documents are hereby ratified, reaffirmed, and valid and enforceable in all respects, except as amended through the Agreement.

7. The entry of this order shall constitute a factual and legal determination, binding on each of the Movants and Rule 9019 Notice Parties, excluding solely the United States Trustees, finding and decreeing that: (i) Attenure is authorized to negotiate and litigate the State Court Action, Insurance Claim, and/or Insurance Proceeds on behalf of the Debtor, the Council and its own behalf, subject to the terms of this Agreement; (ii) the Assignment Documents are valid and binding, as amended through this Agreement; and (iii) the distributions of the Insurance Proceeds shall be made as set forth in this Agreement.

8. Further, the entry of this Order shall constitute a factual and legal determination, binding on all Rule 9019 Notice Parties, that: (a) the Rule 9019 Notice constitutes adequate and appropriate notice to the Rule 9019 Notice Parties under the circumstances; (b) no other or further notice of the Agreement or Rule 9019 Motion is required; (c) the Rule 9019 Notice Parties served with the Rule 9019 Notice have been provided adequate and appropriate notice of the Agreement and Rule 9019 Motion and afforded an opportunity to be heard with respect to the Rule 9019 Motion, any potential objection to the Agreement, and all other relief otherwise requested therein;

and (d) that the persons executing the Agreement are duly authorized to execute this Agreement on behalf of the corresponding Movant.

9. Except for Attenure's authorization to negotiate and litigate on behalf of the Debtor and the Council and as otherwise provided in the Agreement, including the ratification of the Assignment Documents as amended through the Agreement, all Movants reserve and preserve all other rights and obligations, claims, arguments, positions and defenses with respect to any other existing or future controversies not settled herein, including, but not limited to, those regarding the correct distribution of the Insurance Proceeds after the First Deduction, and as to the perpetuation use of any advance payments by Chubb to any Party.

10. This Order resolves Docket Entries Nos. 138, 150, 307, 363 and 424 in Bankruptcy Case No. 22-01676, with respect to Attenure's authorization to negotiate and litigate the State Court Action on behalf of the Debtor and the Council and the ratification of the Assignment Documents, as amended through the Agreement.

11. This Order shall take effect immediately and shall not be stayed.

12. Except as otherwise provided for herein, all rights, defenses, and protections of the Movants with respect to any matters pending or that may arise in the Debtor's Chapter 11 Case, including the treatment of any claim arising under any plan of reorganization or otherwise are hereby reserved. Nothing in this Order or the Movants' consent to the relief requested in the 9019 Motion shall be deemed to be, or construed as, (a) an admission by any Movant of any liability, wrongdoing, act, or matter or that any claim or defense has or lacks merit; (b) a waiver of the rights of any Movant to dispute, contest, setoff, or recoup any claim, (c) any claims regarding the dischargeability of any of the Movants' claims in any future plan of reorganization.

13. This Court shall retain jurisdiction to hear and determine any and all matters or disputes (a) arising from or related to the implementation, enforcement, or interpretation of this

Order and the Agreement; (b) the approval of any Insurance Settlement Offer (as that term is defined in the Agreement); and (c) the execution or enforcement in the Debtor's Chapter 11 Case of any judgment entered in a civil action with regards to the Insurance Proceeds or the Insurance Claim.

IT IS SO ORDERED.

San Juan, Puerto Rico, this _____, _____, 2023.

Enrique S. Lamoutte
United States Bankruptcy Judge