

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

This agreement (the “Agreement”) is made as of February \_\_\_\_, 2024, by and between ESJ TOWERS, INC. (the “Debtor”), ATTENURE HOLDINGS TRUST I AND HRH PROPERTY HOLDINGS, LLC (jointly “Attenure”), ORIENTAL BANK, the OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ESJ TOWERS, INC. (the “COMMITTEE”), and the COUNCIL OF CO-OWNERS OF ESJ TOWERS CONDOMINIUM (ESJ HOA or the “COUNCIL”) (all of them jointly the “Parties” and individually a “Party”).

RECITALS

WHEREAS, on June 10, 2022, Debtor filed a chapter 11 petition with the United States Bankruptcy Court for the District of Puerto Rico (the “Petition Date”), under case num. 22-01676 (ESL) (the “Bankruptcy Case”) pending before the United States Bankruptcy Court for the District of Puerto Rico (the “Bankruptcy Court”);

WHEREAS, as of the Petition Date, the Debtor and 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, certain disputes arose between the parties including Oriental Bank regarding the Ratification of Certain Pre Petition Agreements Regarding Authorizaton of Attenure to Negotiate and litigate Insurance Claims against Chubb Insurance company of Puerto Rico.

WHEREAS, the Debtor, the Council, 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 (as that term is defined in the *Joint Motion for Order Granting Ratification of Certain Pre-Petition Agreements among the Debtor and the Attenure Entities* filed in Docket Entry 138 of the Bankruptcy Case Joint Motion (the “Joint Motion” filed in Docket Entry 138 of the Bankruptcy Case), as specifically amended through the Agreement;

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 the State Court Action and to ratify 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 on behalf of the Debtor and the Council the State Court Action, the Insurance Claim, and the Insurance Proceeds. 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.

2. The Parties stipulate and agree that, as set forth above, Attenure may negotiate and accept, as set forth in the Assignment Documents, 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: (a) subject to the approval of Council (the “Council Approval”) in accordance with Article 63 of Act 129 of 2020 (the Puerto Rico Condominium Act of 2020), 31 L.P.R.A. § 1923h; and (b) conditioned on and subject to approval by the Bankruptcy Court, pursuant to Bankruptcy Rule 9019. For the avoidance of doubt, upon obtaining the Council Approval, Attenure may file and request 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. 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 reimburse the sums previously advanced to the Debtor pursuant to the Assignment Documents (the “Mitigation Payment”); in addition, Attenure shall receive a payment in the amount of 29% of the difference between (the “Attenure Percentage”) (a) the total Insurance Payment and (b) the \$1,000,000.00 reimbursement of the Mitigation Payment, as total compensation and in full satisfaction for its services and reimbursement of litigation costs and Mitigation Payments (collectively, the Attenure Percentage with the Mitigation Payment, the “First Deduction”); (ii) after satisfaction in full of the First Deduction, the remaining amount of the proceeds resulting therefrom will be directed to the needed repairs to the Condominium (the “Remaining Proceeds”). The Remaining Proceeds will be deposited in an escrow account with Banco Popular de Puerto Rico on behalf of the Council and will be exclusively used by the Council for the repair of the Condominium. The escrow account will be managed and controlled by the Board of Directors of the Council and a certified and licensed CPA to be selected by the Council and shall only be used as approved by the Council in accordance with Article 63 of Act 129 of 2020 (the Puerto Rico Condominium Act of 2020), 31 L.P.R.A. §1923h.

4. Neither Debtor nor any new purchaser of Debtor’s assets will be a beneficiary of insurance proceeds from the insurance claim against Chubb.

5. . 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. The Remaining Proceeds shall be paid directly to the Council and all other Parties waive any claim, argument, or defense regarding the Remaining Proceeds.

6. The following terms and language in the Purchase and Sale, Assignment and Conveyance Agreement dated February 28, 2019 are specifically amended as follows:

- a. The first paragraph is amended to state that the Agreement is between the Council of Co-Owners of ESJ Towers Condominium (“the Council” or “ESJ HOA”) and ESJ Towers Inc. (the “Company”) collectively with ESJ HOA, the “Assignor”) and Assignee as defined therein:
- b. The first WHEREAS is amended to state: “WHEREAS, the Council is composed by all Unit Owners of the condominium known as ESJ Towers which is located on 6165 Ave. Isla Verde, Carolina, PR 00979 that is recorded in Parcel 16909 in Section 101 of Carolina Section of the Puerto Rico Property Registry (the “Property”) and which is an unincorporated juridical entity formed through Deed Number 8 of February 21, 1975 and subject to the Puerto Rico Condominium Act (Act 129 of 2020) and that has the powers and duties set forth in Act 129 of 2020 and the Condominium Documents; and the Company is a corporation organized in accordance with the laws of the Commonwealth of Puerto Rico which claims to own 126 Units, 1 commercial unit, and up to 1343 intervals in deeded vacation units in the Property;
- c. The third WHEREAS is amended to add: “the Council and the Company are each a named insured party under Policy No. 08-95PR-00100607-0 with Chubb Insurance Company of Puerto

- Rico and” before “the Property” and substituting “following” with “said”;
- d. The fourth WHEREAS is amended to add “not” before “subject to” and to add “any mortgage, but individual Unit Owners may have subjected their individual units or premises interests to” before “a mortgage” and eliminate “Property” after “against the” and add “individual units or premises interests” before “;”;
  - e. In the Fifth and Seventh WHEREAS, “Assignor” is substituted by “the Company”;
  - f. In Paragraph 1, after the last sentence of section a., the following sentence is added “Notwithstanding the foregoing, Article 63 of Act 129 of 2020 shall be complied with by submitting the final settlement offer to the Council for approval at a duly convened meeting for their approval.”;
  - g. In Paragraph 1, in section b. (ii), after “under the Primary Policy” is added “except that the Council retains its claims solely against its previous administrator or manager, the Company and the members of previous boards of directors and their estates or successors in interest all claims including but not limited to those alleged in the Consolidated DACO Complaints, those related to mismanagement, misappropriation, breach and violations of the Condominium Documents and the Horizontal Property Act and the Condominium Act, which are not included in the claims sold, assigned or conveyed in this agreement. For the avoidance of

doubts, any and all claims against Attenure, including but not limited to any related to the Consolidated DACO Complaints, to the validity of the Purchase and Sale Agreement, those related to any alleged mismanagement, misappropriation, breach and violations of the Condominium Documents and the Horizontal Property Act and the Condominium Act are released and settled under the terms of this agreement.”

- h. In Paragraph 1, in section b. (ii), “Mortgage Bank” is substituted by “the mortgage bank of any Unit Owner”;
- i. Paragraph 2 is amended to state “Attenure transferred \$1,500,000 to the Company as a mitigation payment in consideration for the Conveyance stipulated in this agreement (the “Mitigation Payment”).”
- j. Paragraph 3 is substituted by the following: “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 as reimbursement of the sums previously advanced to the Debtor pursuant to the Assignment Documents (the “Mitigation Payment”); in addition, Attenure shall receive a payment in the amount of 29% of the difference between (a) the total Insurance Payment and (b) the \$1,000,000.00 reimbursement of the Mitigation Payment, as total compensation and in full satisfaction for its services and reimbursement of litigation costs and of the Mitigation Payment (the “Attenure



Percentage” and, collectively with the Mitigation Payment, the “First Deduction”); (ii) after satisfaction in full of the First Deduction, the remaining amount of the proceeds resulting therefrom will be directed to the needed repairs to the Condominium (the “Remaining Proceeds”). The Remaining Proceeds will be deposited in an escrow account with Banco Popular de Puerto Rico on behalf of the Council and will be exclusively utilized by the Council for the repair of the Condominium. The escrow account will be managed and controlled by the Board of Directors of the Council and a certified and licensed CPA to be selected by the Council and shall only be used as approved by the Council in accordance with Article 63 of Act 129 of 2020 (the Puerto Rico Condominium Act of 2020), 31 L.P.R.A § 1923h.”;

- k. In Paragraph 4, section e. and Section f. will be amended to substitute “Assignor” with “The Company”;
- l. Paragraph 1 (Purchase and Sale, Assignment and Conveyance), Paragraph 2 (Mitigation Payment), Paragraph 3 (Additional Payments), Paragraph 4 (Covenants) and Paragraph 9 are amended pursuant to paragraph 2, 3, and 4 of this Agreement.;
- m. Section k of Paragraph 4 (Covenants) is amended as follows:
  - k. The Council will carry out any and all repairs to the Property, as determined at the meeting that complies with the requirements of Article 63 of the

Condominium Act, under its full and exclusive responsibility and neither the Company nor Assignee shall have any responsibility with regards to such repairs. Furthermore, the Assignor hereby agrees to hold harmless Assignee against any and all claims arising out of such repairs.

- n. In Paragraph 5, in section b., “other than the Mortgage Bank” is eliminated and “but the individual Unit Owners may have mortgages or other security interests over their units and premises interests, such as the mortgages that encumber the Company’s units and premises interests” will be added after “the Property, the Policies and the Claims” and before “;”;
- o. Paragraph 8 is amended to read: “This Agreement constitutes a fully integrated agreement and contains the entire agreement of the parties with respect to the subject matter and all prior oral or written agreements are superseded.”;
- p. Paragraph 9 is amended pursuant to paragraphs 2, 3, and 4 of this Agreement.;
- q. Paragraph 10 is amended to read:
  - This Agreement shall be exclusively governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. In addition, the Parties hereto agree that the laws of the Commonwealth of Puerto Rico shall exclusively govern any and all disputes between or among the Parties directly or indirectly

arising out of this Agreement or in connection herewith or with any transaction contemplated or effected hereby or discussed herein. If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration. The Parties shall choose a mediator certified by the U.S. District Court in Puerto Rico.

- If the Parties cannot agree on a Mediator within 10 days after notice to choose one is given by either Party, or if once chosen the mediator certifies an impasse or after mediation has rendered fruitless after 30 days after such notice is given, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Arbitration Rules for Commercial disputes, and judgment on the award rendered by the arbitrator(s) may be entered by a Court of the Commonwealth of Puerto Rico.
- The arbitrator(s) shall be a resident(s) of Puerto Rico and ideally should have experience with and knowledge of the insurance industry. Alternatively, in the event that the arbitration is to be conducted by only one arbitrator, the arbitrator selected will be an attorney or a retired judge. In the event that the arbitration

is to be conducted by three arbitrators, at least one of the arbitrators selected shall be an attorney or a retired judge.

- In the event that any Party's claim exceeds \$1 million, exclusive of interest and attorneys' fees, the dispute shall be heard and determined by three arbitrators, one to be selected by each Party within 30 days from the date of the claimant's request for arbitration from a list or lists to be provided by the American Arbitration Association. The third arbitrator shall be selected as follows: The arbitrator selected by the claimant and the arbitrator selected by respondent shall, within 10 days of their appointment, select a third neutral arbitrator. In the event that they are unable to do so, the Parties or their attorneys may request the American Arbitration Association to appoint the third neutral arbitrator. Prior to the commencement of arbitration hearings, each of the arbitrators appointed shall provide an oath or undertaking of impartiality.
- In the event that any Party's claim is less than \$1 million, exclusive of interest and attorneys fees, the dispute shall be heard and determined by one arbitrator to be selected by the Parties within thirty days from the date of the claimant's request for arbitration. If the Parties are unable to do so, either Party may request the American Arbitration Association to carry out the process to appoint the arbitrator. The appointed arbitrator shall provide an oath or undertaking of impartiality.

- Any such arbitration shall take place in San Juan, Puerto Rico unless some other location is mutually agreed upon.
- The expense of the arbitration shall be equally divided between the Parties.
- The arbitrator(s) shall not be empowered to award damages in excess of compensatory damages and each Party hereby irrevocably waives any damages in excess of compensatory damages, including consequential damages.

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. 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.

9. The Parties acknowledge and affirm that prior to entering into this Agreement, they have reviewed and became 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.

10. 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** (the “Rule 9019 Notice”), of the Rule 9019 Motion, the Agreement (with all exhibits) and the proposed Rule 9019 Order to all creditors, Unit Owners in ESJ Towers Condominiums such term is defined in the Master Deed (Deed 8 dated February 21,

1975 before Notary José Luis Novas Dueño, as amended), 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”).

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. This Agreement contains the entire agreement by and between the Parties with respect to the subject matter thereof and all prior oral or written agreements inconsistent with the terms herein are superseded. 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.

17. 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.

18. 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 and Article 63 of the Puerto Rico Condominium Act, 31 Puerto Rico Laws Ann. § 1923h.

19. 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 set forth below.