

Date: \_\_\_\_\_ 17 October 2021

**MERGER IMPLEMENTATION AGREEMENT**

GAZIT HERCULES 2020 LIMITED

and

ATRIUM EUROPEAN REAL ESTATE LIMITED

**KIRKLAND & ELLIS INTERNATIONAL LLP**

30 St. Mary Axe  
London EC3A 8AF  
Tel: +44 (0)20 7469 2000  
Fax: +44 (0)20 7469 2001  
[www.kirkland.com](http://www.kirkland.com)

## Table of Contents

	Page
1	DEFINITIONS AND INTERPRETATION .....1
2	ANNOUNCEMENTS .....8
3	THE MERGER .....8
4	CONDITIONS PRECEDENT TO CLOSING OF MERGER .....9
5	SATISFACTION .....11
6	UNDERTAKINGS .....11
7	ACKNOWLEDGEMENTS OF NEWCO .....13
8	CONDUCT OF ATRIUM BUSINESS .....14
9	EFFECT OF THE MERGER .....14
10	EMPLOYEE INCENTIVES .....15
11	ADMINISTRATIVE MATTERS RELATING TO THE MERGED COMPANY .....15
12	WARRANTIES .....16
13	TERMINATION .....16
14	CONFIDENTIALITY .....16
15	MISCELLANEOUS .....17
16	GOVERNING LAW AND JURISDICTION .....19
	Schedule 1 Deliverables .....20
	Schedule 2 Warranties .....21
	Schedule 3 Share Schemes and Share Based Remunerations .....22
	Appendix to Schedule 3 .....23
	Schedule 4 Indicative Merger Completion Timeline .....25
	Annex A .....30

THIS AGREEMENT is made on

17 October 2021

**BETWEEN**

- (1) **GAZIT HERCULES 2020 LIMITED**, a company incorporated under the laws of Jersey with registered number 131305 and having its registered office at Fifth Floor, 37 Esplanade, St Helier, Jersey JE1 2TR (“**Newco**”); and
- (2) **ATRIUM EUROPEAN REAL ESTATE LIMITED**, a company incorporated under the laws of Jersey with registered number 70371 and having its registered office at 11-15 Seaton Place, St. Helier, Jersey JE4 0QH (“**Atrium**”).

**WHEREAS**

- (A) Newco and Atrium have agreed the terms on which Newco proposes to procure the acquisition of the entire issued and to be issued share capital of Atrium (other than the Excluded Shares (as defined below)) (the “**Acquisition**”);
- (B) upon the terms and conditions set forth in this Agreement, the Parties (as defined below) wish to effect the Acquisition by way of a Merger (as defined below) between Newco and Atrium so that Atrium continues as the survivor body for the purposes of the Law (as defined below);
- (C) as at the date of this Agreement, Newco is a wholly owned indirect subsidiary of Gazit (as defined below);
- (D) the Independent Committee (as defined below) of Atrium and the board of directors of Newco have determined that the Merger is in the best interests of the applicable Parties and approved the Merger upon the terms and subject to the conditions set forth in this Agreement; and
- (E) the Parties acknowledge that the Acquisition does not constitute a takeover offer for the purposes of the Takeover Directive and no European takeover regulation applies.

Now, therefore, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the Parties agree as follows:

**1 DEFINITIONS AND INTERPRETATION**

**1.1.1 Definitions**

In this Agreement, unless the context otherwise requires:

**Acquisition** has the meaning given in recital (A);

**AFFO** means Atrium’s adjusted funds from operations calculated in accordance with commonly accepted industry standards;

**Agreed Dividend Policy** means distributing an amount each quarter equal to the AFFO as determined by the board of directors of Atrium, as derived from the management accounts for Atrium and its subsidiaries for the relevant financial quarter;

**Agreed Form** means, in relation to any document, the form of that document which has been agreed between Atrium and Newco and initialled for the purpose of identification by Atrium (or Atrium’s Solicitors on behalf of Atrium) or Newco (or Newco’s Solicitors on behalf of Newco);

**Announcement** means the announcement, in the Agreed Form, to be issued by Newco and Atrium in connection with the signing of this Agreement;

**Articles** means the articles of association of Atrium from time to time;

**Atrium Conditions** means the Conditions set out in Clauses 4.1.1(a), 4.1.1(c), 4.1.1(d), 4.1.1(f), 4.1.1(i) and 4.1.1(k);

**Atrium Group** means Atrium and its subsidiaries and subsidiary undertakings from time to time;

**Atrium Group Companies** means the members of the Atrium Group and **Atrium Group Company** shall mean any one of them;

**Atrium Shares** means (i) Ordinary Atrium Shares, and (ii) the Reduction of Capital Share when issued;

**Atrium Shareholders** means the beneficial holders of Atrium Shares from time to time;

**Atrium's Solicitors** means Allen & Overy LLP;

**Business** means the entire business (including the assets) of the Atrium Group;

**Business Day** means any day on which commercial banks are normally open for full banking business in Israel, Jersey, Austria, the Netherlands and the United States;

**Cash Consideration Amount** means the Consideration Amount less an amount equal to the Special Dividend Amount (as defined below);

**CEO Share Remuneration** means the share remuneration of the CEO, equal to an amount of EUR 240,000, payable in four annual instalments, as set out in his employment agreement;

**Certificated** means an Ordinary Atrium Share which is not Uncertificated and reference to an Atrium Share being held in certificated form shall be construed accordingly;

**Closing** means completion of the Merger in accordance with Article 127FM(2)(b) of the Law;

**Closing Date** means the date on which Closing occurs;

**Companies Act 2006** means the Companies Act 2006 of England and Wales;

**Condition** or **Conditions** means the conditions precedent to Closing as set out in Clause 4.1.1;

**Consideration Amount** means EUR 3.63 per Merger Share;

**Court** means the Royal Court of Jersey;

**Creditors** has the meaning ascribed to it in Clause 6.1.1(d);

**Data Dissemination Channel** means a channel through which information is actually made available to the public or is likely to be made available such as Reuters, Bloomberg or Dow Jones Newswire;

**Directors' Share Remuneration** means the share remuneration of each Independent Committee member, equal to an amount of EUR 50,000, allocated in semi-annual instalments each year and payable on the expiry of two years from the date of allocation of the Shares;

**Distribution** means any distribution or repayment made by Atrium to an Atrium Shareholder with respect to any Atrium Shares, whether in cash, property or securities and whether by distribution, dividend, liquidating distribution, or otherwise;

**ESOP 2013** means Atrium's "Employee Share Option Plan" adopted by the directors of Atrium on, and dated, 23 May 2013;

**ESOP 2020** means Atrium's "Employee Share Option Plan" adopted by the directors of Atrium on, and dated, 5 November 2020;

**ESPP** means Atrium's "Employee Share Participation Plan" adopted by the directors of Atrium on 20 March 2018;

**Euroclear** means Nederlands Centraal Instituut Voor Giraal Effectenverkeer (trading as Euroclear);

**Exchanges** means the Euronext Amsterdam and the Vienna Stock Exchange;

**Excluded Shares** means the Gaia Shares, the Midas Shares and any other Atrium Shares which are held or acquired by or on behalf of Gazit or any direct or indirect subsidiaries of Gazit, but excluding any Atrium Shares beneficially held or acquired by a Gazit Connected Person;

**Fairness Opinion** means an opinion addressed to the Independent Committee from UBS to the effect that the Consideration Amount is fair from a financial point of view;

**Fiduciary Duty Exercise** has the meaning ascribed to it in Clause 4.1.4;

**Filing Date** has the meaning given to it in Clause 6.1.1(o);

**Gaia** means Gazit Gaia Limited, a company incorporated under the laws of Jersey with registered number 100846;

**Gaia Shares** means, at the relevant date, all Atrium Shares beneficially owned by Gaia;

**Gazit** means Gazit-Globe Ltd, a company incorporated under the laws of Israel with registered office at 10 Nissim Aloni Street, Tel-Aiv 62919 Israel;

**Gazit Connected Person** means a director, officer or employee of Gazit or any of Gazit's wholly owned subsidiaries, or any spouse, parent, sibling or child of any such person;

**Government Authority** means any local, domestic, foreign or multinational court, arbitral tribunal, mediator, administrative agency or commission or other governmental or regulatory body, agency, instrumentality or authority;

**Independent Committee** means the independent directors of Atrium, each of whom does not have a material or pecuniary relationship with Atrium or Newco (except for their fees payable pursuant to their engagement or appointment letters with Atrium);

**JFSC** means the Jersey Financial Services Commission;

**Law** means the Companies (Jersey) Law 1991, as amended;

**Longstop Date** means, subject to clause 4.1.2, the date that is six months from the date of this Agreement, or such later date as the Parties may agree in writing;

**Longstop Date Automatic Extension Conditions** has the meaning set out in clause 4.1.2;

**Majority of the Minority Vote** means approval of the Merger Resolutions by the holders of a majority of the Certificated Atrium Shares and/or Uncertificated Atrium Shares (as the context requires) (other than the Excluded Shares or any Atrium Shares beneficially held by a Gazit Connected Person) entitled to vote and voting on the Merger Resolutions at the Merger Extraordinary General Meeting or any adjournment or postponement thereof, voting together as a single class;

**Material Adverse Change** means any effect, event, development, circumstance or change, occurring between the date of this Agreement and Closing that individually or in the aggregate, directly or indirectly: (a) has, or is reasonably likely to have, a material adverse effect on the assets, business, financial condition, results of operations or trading position of the Atrium Group taken as a whole, other than any event or action that has been taken at the written request of or with the written consent of Newco or (b) has a material adverse effect on trading conditions on any of the Relevant Markets, including any event, development, circumstance or change which (i) causes a material decrease in trading prices of shares on any of the Relevant Markets or (ii) materially disrupts trading of securities generally on any of the Relevant Markets including any irregular suspension of trading in securities generally on any such markets, provided that with respect to (a) and (b) above, any effect, event, development, circumstance or change caused by or resulting, directly or indirectly, from Covid-19 (a “**Covid Event**”), shall be deemed not to be a “Material Adverse Change” unless such Covid Event has a materially more adverse effect on the trading conditions on any of the Relevant Markets (as referred to above) or the assets, business, financial condition, results of operations or trading position of the Atrium Group taken as a whole when compared to the effects of any Covid Event which occurred prior to the date of this Agreement, in each case taking into account inter alia the length and severity of any effect, decrease, disruption or suspension as compared to any prior Covid Events which occurred prior to the date of this Agreement;

**Merger** means the proposed merger under Part 18B of the Law between Newco and Atrium to be implemented on the terms and subject to the conditions set out in this Agreement (with or subject to any modification thereof or addition thereto, or condition approved or imposed by the Court, and in each case agreed to in writing by Newco and Atrium);

**Merger Extraordinary General Meeting** means the extraordinary general meeting of Atrium Shareholders (and any adjournment thereof) to be convened by the Notice of Merger Extraordinary General Meeting to consider and if so determined pass the Merger Resolutions;

**Merger Resolutions** means the resolutions, in the form to be agreed by Newco and Atrium, to be proposed by Atrium at the Merger Extraordinary General Meeting to:

- (a) approve the terms of this Agreement;
- (b) approve the implementation of the Merger pursuant to the terms and subject to the conditions contained herein;
- (c) adopt the amended Articles to (i) ensure that any Atrium Shares issued on or after the passing of the Merger Resolutions but before Closing will, subject only to the passing of the Reduction Special Resolution, compulsorily be cancelled at Closing in consideration for a payment equal to the Consideration Amount per Atrium Share, and (ii) set out the rights and terms of the Reduction of Capital Share;
- (d) authorise the allotment and issuance of the Reduction of Capital Share to the Trust Agent for EUR 1.00;
- (e) if required, irrevocably instruct the Trust Agent to vote the Reduction of Capital Share in favour of the Reduction Special Resolution at the Reduction Extraordinary Meeting; and
- (f) authorise the Independent Committee to take all such action as they may consider necessary or appropriate for giving full effect to the Merger;

**Merger Shareholders** means holders of Merger Shares at the relevant time;

**Merger Shares** means any Atrium Shares:

- (a) in issue at the date of this Agreement;

- (b) (if any) issued after the date of this Agreement and prior to the Merger Voting Record Time; and
- (c) (if any) issued on or after the Merger Voting Record Time and at or prior to Closing either on terms that the original or subsequent holder thereof shall be bound by the Merger or in respect of which the holder thereof shall have agreed in writing to be bound by the Merger,

(but excluding the Excluded Shares);

**Merger Voting Record Time** means 6:00 p.m. on the day falling two days before the Merger Extraordinary General Meeting or, if the Merger Extraordinary General Meeting is adjourned, at 6:00 p.m. on the day falling two days before the time fixed for such adjourned meeting;

**Midas** means Gazit Midas Limited, a company incorporated under the laws of Jersey with registered number 100845;

**Midas Shares** means, at the relevant date, all Atrium Shares beneficially owned by Midas;

**Newco's Solicitors** means Kirkland & Ellis International LLP;

**Notice of Merger Extraordinary General Meeting** means the notice of the Merger Extraordinary General Meeting in the form to be agreed by Newco and Atrium;

**Notice of Reduction Extraordinary General Meeting** means the notice of the Reduction Extraordinary General Meeting in the form to be agreed by Newco and Atrium;

**Objection Period** means the date as set out in Article 127FJ(3) of the Law, if applicable, having passed in respect of Atrium and Newco following the Merger Extraordinary General Meeting;

**Officers' Share Remuneration** means the annual share remuneration of the CFO and the COO, respectively, as set out in their respective employment agreements;

**Options** has the meaning given to it under the ESOP 2013;

**Options Date** has the meaning given to it in paragraph 1 of Schedule 3;

**Ordinary Atrium Shares** means the ordinary shares of no par value in Atrium in issue from time to time;

**Party** means a party hereto and "**Parties**" means more than one or all of them, and a reference to Party shall include any permitted assignee or successor to such party in accordance with the terms of this Agreement;

**Paying Agent** means any reputable professional paying agent appointed by Newco in accordance with Clause 9.1.4 in order to facilitate satisfaction of the Payment Obligation;

**Payment Obligation** has the meaning ascribed to it in Clause 9.1.2(c);

**Permitted Dividend** means:

- (a) the Special Dividend;
- (b) the Pro Rata Dividend (as defined below); or
- (c) a Distribution made in accordance with the Agreed Dividend Policy;

**Posting Date** means the date of publication of the Shareholder Circular;

**Pro Rata Dividend** has the meaning ascribed to it in Clause 9.1.2(c)(ii);

**Pro Rata Dividend Ordinary Resolution** means the ordinary resolution in the form to be agreed by Atrium and Newco to be proposed by Atrium at the Reduction Extraordinary General Meeting to approve the payment of the Pro Rata Dividend;

**Pro Rata Dividend Payment Date** means the date notified in advance to the Merger Shareholders on Closing provided that such date is following the Pro Rata Dividend Record Time and no later than three Business Days after Closing;

**Pro Rata Dividend Record Time** means the time at which Closing occurs;

**Reduction Conditions** has the meaning ascribed to it in Clause 4.1.1(d)(ii);

**Reduction Extraordinary General Meeting** means the extraordinary general meeting of Atrium Shareholders and Reduction of Capital Shareholder (and any adjournment thereof) to be convened by the Notice of Reduction Extraordinary General Meeting to consider and if so determined pass the Reduction Special Resolution and the Pro Rata Dividend Ordinary Resolution;

**Reduction of Capital Share** means the ordinary share of EUR 1.00 in the capital of Atrium to be issued following the passing of the Merger Resolutions and having the rights and terms set out in the amended Articles;

**Reduction of Capital Shareholder** means the holder of the Reduction of Capital Share from time to time;

**Reduction Record Time** means 6.00 p.m. on the date the last of the Reduction Conditions is satisfied;

**Reduction Special Resolution** means the special resolution, in the form to be agreed by Newco and Atrium, to be proposed by Atrium at the Reduction Extraordinary General Meeting to approve the reduction of the issued share capital of Atrium upon the cancellation of the Merger Shares at Closing pursuant to Clause 9.1.2(b);

**Register** means the shareholder register of Atrium;

**Registrar of Companies** means the registrar of companies in Jersey;

**Relevant Markets** means the Vienna Stock Exchange and Euronext Amsterdam;

**Restricted Share Plan** means Atrium's "Restricted Share Plan" adopted by the board of directors of Atrium on, and dated, 16 May 2011;

**Scheme of Arrangement** means a scheme of arrangement under Article 125 of the Law between Atrium and the Atrium Shareholders, with or subject to any modification, addition or condition approved or imposed by the Court and agreed by Atrium and Newco, under which the Acquisition is proposed to be implemented;

**Special Dividend** means the dividend to be declared by Atrium of the Special Dividend Amount;

**Special Dividend Payment Date** means a date notified to Atrium Shareholders in advance provided that such date is following the Special Dividend Record Time but at least 10 Business Days prior to the Filing Date;

**Special Dividend Amount** means EUR 0.60 per Share;

**Special Dividend Record Time** means 6.00 p.m. GMT on a date which occurs after satisfaction of the Conditions in Clause 4.1.1(b), 4.1.1(c), 4.1.1(d), 4.1.1(e), 4.1.1(f) and 4.1.1(g);



**Share Based Remuneration** means each of (i) the Restricted Share Plan, (ii) the Directors' Share Remuneration, (iii) the CEO Share Remuneration and (iv) the Officers' Share Remuneration, together the "Share Based Remunerations";

**Share Scheme** means each of (i) the ESOP 2013, (ii) the ESOP 2020 and (iii) the ESPP, together the "Share Schemes";

**Shareholder Circular** means the circular to be issued by Atrium to Atrium Shareholders incorporating, *inter alia*, the Notice of Merger Extraordinary General Meeting to approve the Merger Resolutions;

**Superior Proposal** means a *bona fide* Third Party Proposal which the Independent Committee determines, acting reasonably and in good faith and after consultation with their legal and financial advisers to be more beneficial to Atrium and in the best interests of the Atrium Shareholders;

**Takeover Directive** means Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as amended from time to time;

**Tax** means all forms of taxation (other than deferred tax) and statutory, governmental, state, provincial, local government or municipal impositions, duties, contributions and levies, whether levelled by reference to income, profits, gains, net wealth, asset values, turnover, added value or otherwise and shall further include payments to a Tax Authority, court or tribunal on account of Tax, in each case whether of Jersey, Israel, the Netherlands, Austria, United States or elsewhere in the world whenever imposed and whether chargeable directly or primarily against or attributable directly or primarily to an Atrium Group Company or any other person and all penalties and interest relating thereto;

**Tax Authority** means a taxing or other authority competent to impose any liability in respect of Tax or responsible for the administration and/or collection of Tax or enforcement of any law in relation to Tax;

**Third Party Buyer** means any party other than Newco, Newco's subsidiaries, and entities controlled by, or under joint control with, Newco or Newco's subsidiaries;

**Third Party Proposal** means any offer or proposal from, or on behalf of, a Third Party Buyer with a view to such person, directly or indirectly, acquiring (i) all of the Atrium Shares or (ii) all or substantially all of the consolidated assets of the Business;

**Trust Agent** means such independent provider of nominee shareholder services as Atrium and Newco shall, acting reasonably, agree in writing;

**UBS** means UBS AG London Branch, financial advisers to Atrium;

**Uncertificated** means an interest in an Ordinary Atrium Share held through Euroclear and title to which may be transferred by means of any Uncertificated System, and reference to an Ordinary Atrium Share being held in uncertificated form should be construed accordingly;

**Uncertificated System** means a transfer, settlement and clearing system for securities in Atrium approved by the Directors in accordance with the Law; and

**Warranties** means the warranties set out at Clause 12,

- 1.1.2 Except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting a gender include every gender and references to persons include bodies corporate and unincorporate.
- 1.1.3 References to "Recitals", "Clauses", "Annexes" and "Schedules" are, unless the context otherwise requires, references to recitals and clauses hereof and to annexes and schedules hereto.

- 1.1.4 The Recitals and Schedules form part of this Agreement and shall have the same force and effect as if they were expressly set out in the body of this Agreement and any reference to this Agreement shall include the Recitals and Schedules.
- 1.1.5 Any reference to this Agreement or to any agreement or document referred to in this Agreement shall be construed as a reference to such agreement or document as amended, varied, modified, supplemented, restated, novated or replaced from time to time.
- 1.1.6 Any reference to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision as the same may have been, or may be, amended, varied, modified, extended, consolidated, supplemented, re-enacted or replaced and shall be deemed also to refer to any statutory instrument, regulation or order made thereunder.
- 1.1.7 The word “may” shall be construed as being permissive and the word “shall” shall be construed as being mandatory.
- 1.1.8 Headings and the table of contents are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.1.9 Any reference to a time of day is to London time, unless otherwise specified in this Agreement.
- 1.1.10 In construing this Agreement the so called “ejusdem generis” rule does not apply and, accordingly, the interpretation of general words is not restricted by (i) being preceded by words indicating a particular class of acts, matters or things, or (ii) being followed by particular examples.
- 1.1.11 The words “**holding body**” and “**subsidiary**” shall have the same meaning in this Agreement as their respective definitions in the Law and “**parent undertaking**” and “**subsidiary undertaking**” shall have the same meaning in this Agreement as their respective definitions in the Companies Act 2006.

## 2 ANNOUNCEMENTS

Each of Atrium and Newco undertakes to procure the release of the Announcement no later than 07.00 a.m. (Central European Time) on the date of this Agreement or such later time and/or date as Atrium and Newco may agree in writing.

## 3 THE MERGER

- 3.1.1 On and subject to the terms of this Agreement, and subject to satisfaction or waiver of the Conditions, with effect from Closing and in accordance with Article 127FN of the Law:
- (a) Newco and Atrium shall merge and continue as one merged body, with Atrium being the survivor company and Newco ceasing to be incorporated as a separate company;
  - (b) all property and rights to which Newco and Atrium were entitled immediately before Closing shall become the property and rights of Atrium; and
  - (c) Atrium shall become subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which each of Newco and Atrium were subject immediately before Closing and all actions and other legal proceedings which, immediately before Closing, were pending by or against Newco and/or Atrium, shall be continued by or against Atrium.
- 3.1.2 The Parties agree that, if at any time from the date hereof to and including the date falling seven Business Days before the original Merger Voting Record Time:

- (a) Newco and the Independent Committee are of the reasonable opinion that a sufficient proportion of the Merger Shareholders is likely to vote in support of the Acquisition such that the Acquisition could be successfully implemented by way of a Scheme of Arrangement; and
- (b) Newco serves a notice to Atrium at least seven Business Days prior to the Merger Voting Record Time, informing Atrium of its desire to proceed with the Acquisition by way of a Scheme of Arrangement instead of by way of the Merger; and
- (c) the Independent Committee agrees that the Acquisition should proceed by way of a Scheme of Arrangement,

the Parties will use their best efforts to agree terms pursuant to and in accordance with which the Acquisition can proceed by way of a Scheme of Arrangement, in which case the terms of this Agreement, absent an express agreement otherwise, shall apply *mutatis mutandis*.

#### 4 CONDITIONS PRECEDENT TO CLOSING OF MERGER

4.1.1 The Parties agree and acknowledge that the Merger is conditional upon satisfaction, approval or waiver (as applicable) of the following conditions on or before the Longstop Date, or their satisfaction subject only to Closing:

- (a) the Independent Committee, having received the Fairness Opinion, providing a unanimous and unqualified recommendation of the Merger to Atrium Shareholders in the Shareholder Circular and there being no subsequent withdrawal or qualification of such recommendation prior to Closing;
- (b) Newco having given notice to all of its Creditors in accordance with Article 127FC(1) of the Law and having published the contents of the notice in accordance with Article 127FC(5) of the Law, and each applicable date as set out in Article 127FJ(3)(c) of the Law having passed;
- (c) Atrium having given notice to all of its Creditors in accordance with Article 127FC(1) of the Law and having published the contents of the notice in accordance with Article 127FC(5) of the Law, and each applicable date as set out in Article 127FJ(3)(c) of the Law having passed;
- (d) all resolutions in connection with or required to approve and implement the Merger as set out in:
  - (i) the Notice of the Merger Extraordinary General Meeting (including the Merger Resolutions) having been duly passed by the requisite majority of Atrium Shareholders required to pass such resolutions at the Merger Extraordinary General Meeting and by a Majority of the Minority Vote (without necessitating a separate vote); and
  - (ii) the Notice of the Reduction Extraordinary General Meeting (including the Reduction Special Resolution and the Pro Rata Dividend Ordinary Resolution) having been duly passed by the requisite majority of Atrium Shareholders and Reduction of Capital Shareholder required to pass such resolutions at the Reduction Extraordinary General Meeting following the satisfaction of the last of the Conditions set out in Clauses 4.1.1(c), 4.1.1(d)(i), and 4.1.1(e) (together, the “**Reduction Conditions**”) to be satisfied;
- (e) the passing of a special resolution in writing of Newco approving this Agreement and the implementation of the Merger pursuant to the terms and subject to the conditions contained herein;

- (f) the issue and allotment by Atrium of the Reduction of Capital Share to the Trust Agent pursuant to the Merger Resolutions, prior to the expiry of the Objection Period;
- (g) the date as set out in Article 127FJ(3)(a) of the Law having passed (if applicable);
- (h) no Material Adverse Change having occurred;
- (i) the delivery to the Registrar of Companies of all documents required in accordance with Article 127FJ of the Law for the purposes of effecting the Merger;
- (j) there being no outstanding judgment, injunction, order or decree of a competent Government Authority which shall prohibit or frustrate the undertaking of the Merger; and
- (k) Atrium having paid the Special Dividend to all Atrium Shareholders on the Special Dividend Payment Date.

For the avoidance of doubt, no breach shall be deemed to occur under Clause 4.1.1(h) if the relevant action or omission has been approved in advance and in writing by Newco.

4.1.2 If:

- (a) the Merger Resolutions have been passed;
- (b) there is (i) an unfair prejudice claim by a member pursuant to Article 127FB of the Law in Jersey or (ii) an application by an objecting creditor pursuant to Article 127FE(2)(b), which has not been dismissed; and
- (c) Newco confirms that it is using its reasonable endeavours to complete the Acquisition, (the “**Longstop Date Automatic Extension Conditions**”), then the Longstop Date shall be automatically extended until the first anniversary of this Agreement.

4.1.3 Each Party shall promptly co-operate with and provide all necessary information and other assistance reasonably required by any other Party in connection with the satisfaction of the Conditions (including the preparation of the Shareholder Circular).

4.1.4 Atrium shall use its reasonable endeavours to ensure satisfaction of the Atrium Conditions as soon as reasonably practicable following the date of this Agreement but in any event before the Longstop Date. The obligations set forth in this Clause 4.1.4 shall not apply if:

- (a) Atrium receives a Superior Proposal; and
- (b) the Independent Committee determines that, due to the receipt by Atrium of a Superior Proposal, a recommendation of the Acquisition should (i) not be given, or (ii) should be qualified or amended. Atrium shall, to the extent practicable and permitted by law, consult with Newco prior to reaching such determination and shall promptly notify Newco in writing upon such determination (a “**Fiduciary Duty Exercise**”).

4.1.5 With respect to the Condition set out in Clause 4.1.1(d), Atrium hereby confirms that, as of the date hereof, the Independent Committee have resolved that it will unanimously (and on an unqualified basis) (i) recommend to the Merger Shareholders to vote in favour of the Merger Resolutions at the Merger Extraordinary General Meeting, and (ii) vote any Merger Shares beneficially held by them in favour of such Merger Resolutions, and, unless there is a Fiduciary Duty Exercise, Atrium shall procure that such recommendation will be included in the Shareholder Circular.

- 4.1.6 Newco shall use its reasonable endeavours to ensure satisfaction of the Conditions set out in Clauses 4.1.1(b) and 4.1.1(e) as soon as reasonably practicable following the date of this Agreement but in any event before the Longstop Date.
- 4.1.7 Atrium and Newco shall give notice and provide evidence reasonably satisfactory to the other Parties of the satisfaction of the relevant Conditions for which they are responsible pursuant to Clauses 4.1.4 and 4.1.6 promptly after becoming aware of the same and shall disclose to the other Parties in writing promptly upon becoming aware of any matter, fact or circumstance which will or which would reasonably be expected to prevent any of the Conditions from being satisfied prior to the Longstop Date.

## **5 SATISFACTION**

- 5.1.1 Newco may at any time waive in whole or in part and conditionally or unconditionally the Conditions set out in Clauses 4.1.1(h), 4.1.1(j) and 4.1.1(k) by notice in writing to Atrium, signed on behalf of Newco.
- 5.1.2 If one or more of the Conditions:
- (a) remains unsatisfied as at the Longstop Date or has not been waived on or before the Longstop Date in accordance with this Agreement; or
  - (b) becomes impossible to satisfy before the Longstop Date and, if it is a Condition which can be waived solely by Newco, has not been waived within five Business Days of Newco becoming aware of such Condition becoming impossible to satisfy,
- this Agreement will automatically terminate at the relevant time and Clause 13 shall apply.

## **6 UNDERTAKINGS**

- 6.1.1 Atrium undertakes to Newco that unless there is a Fiduciary Duty Exercise:
- (a) within two Business Days of the signing of this Agreement, it will notify the JFSC of the execution of this Agreement in accordance with the Listed Funds Guide issued by the JFSC;
  - (b) immediately prior to the Posting Date, it shall procure that each of the members of the Independent Committee shall sign the certificates required under Article 127E(5) of the Law and prior to Closing, it shall procure that each of the members of the Independent Committee shall sign the certificates required under Article 127FJ(4)(d) of the Law;
  - (c) it shall use reasonable endeavours to prepare the Shareholder Circular as soon as possible following the date of this Agreement and shall (i) despatch the Shareholder Circular to those Atrium Shareholders on the Register at the Posting Date so as to inform them of the Merger and convene the Merger Extraordinary General Meeting, and (ii) publish notice that the Merger Extraordinary General Meeting has been convened via a Data Dissemination Channel;
  - (d) it will procure that the Atrium directors make reasonable enquiries to identify all of Atrium's actual, contingent and prospective creditors to whom notice of the proposed Merger must be sent in accordance with Article 127FC(1) of the Law (the "Creditors");
  - (e) it will send written notice of the proposed Merger to each of the Creditors at the time and in the manner required under Article 127FC(1) of the Law, in each case of which the Atrium directors are aware having made reasonable enquiries in accordance with Clause 6.1.1(d);

- (f) it will, within the time limit set out in Article 127FC(6) of the Law, publish the contents of the notice of the Merger at least once in a newspaper circulating in Jersey;
- (g) it will procure that the Independent Committee unanimously and unqualifiedly recommend to the Atrium Shareholders to vote in favour of the Merger Resolutions at the Merger Extraordinary General Meeting and vote any shares beneficially held by them in favour of such Merger Resolutions;
- (h) upon the passing of the Merger Resolutions, it will issue and allot the Reduction of Capital Share to the Trust Agent for EUR 1.00 with no conditions or restrictions;
- (i) subject to the Law and to the unanimous approval of the members of the board of directors of Atrium voting at the relevant board meeting to approve the Special Dividend, it will pay the Special Dividend to all Atrium Shareholders on the Special Dividend Payment Date;
- (j) on the date two Business Days following the date the last of the Reduction Conditions is satisfied, it will (i) despatch the Notice of Reduction Extraordinary General Meeting to those Atrium Shareholders and Reduction of Capital Shareholder on the Register at the Reduction Record Time so as to convene the Reduction Extraordinary General Meeting, and (ii) publish notice that the Reduction Extraordinary General Meeting has been convened via a Data Dissemination Channel;
- (k) it will use all reasonable endeavours to ensure that each of the individuals listed at Clause 11.1.1(a) and any person to be appointed as a director of Atrium upon Closing shall sign the certificates required under Article 127E(6) of the Law;
- (l) it will administer and minute the proceedings at both the Merger Extraordinary General Meeting and the Reduction Extraordinary General Meeting in accordance with the Law and the Articles and it will notify Newco of the outcome of such meetings as soon as possible thereafter and will provide Newco with copies of such minutes within ten Business Days of such meeting;
- (m) other than providing information in response to a *bona fide* Third Party Proposal which in the opinion of the Independent Committee, acting reasonably and in good faith, may lead to a Superior Proposal, it will not (and will procure that no member of the Atrium Group will) undertake, or instruct the undertaking of, any act the effect of which is reasonably likely to prejudice the satisfaction of the Atrium Conditions in a timely manner, or at all;
- (n) not more than 15 days before the passing of the Reduction Special Resolution, it will, subject to the discretion of the Directors of Atrium procure that each of the directors of Atrium authorising the reduction of capital of Atrium pursuant to the Reduction Special Resolution shall pass a statement of solvency in accordance with Article 61A of the Law;
- (o) it will, within 15 days of the passing of the Reduction Special Resolution, file with the Registrar of Companies in Jersey the solvency statements obtained pursuant to paragraph (n) above and a minute in relation to the Reduction Special Resolution in accordance with Article 61B(1)(b) of the Law (the “**Filing Date**”);
- (p) it will use all reasonable endeavours to ensure that:
  - (i) the documents filed in accordance with paragraph (o) above shall be filed by the Registrar of Companies in Jersey;
  - (ii) the Registrar of Companies in Jersey shall enter the details specified in Article 127FM(3) of the Law into the register of Newco; and

(iii) the Registrar of Companies in Jersey shall enter the details specified in Article 127FM(4) of the Law into the register of Atrium.

6.1.2 Newco undertakes to Atrium that:

- (a) immediately prior to the Posting Date, it shall procure that each of the directors of Newco shall sign the certificates required under Article 127E(5) of the Law and prior to Closing, it shall procure that each of the directors of Newco shall sign the certificates required under Article 127FJ(4)(d) of the Law;
- (b) it will procure that Newco's directors make reasonable enquiries to identify all of its actual, contingent and prospective creditors to whom notice of the proposed Merger must be sent in accordance with Article 127FC(1) of the Law (the "**Newco Creditors**");
- (c) it will send written notice of the proposed Merger to each of the Newco Creditors at the time and in the manner required under Article 127FC(1) of the Law, in each case of which the Newco directors are aware having made reasonable enquiries in accordance with Clause 6.1.2(b);
- (d) it will, within the time limit set out in Article 127FC(6) of the Law, publish the contents of the notice of the Merger at least once in a newspaper circulating in Jersey; and
- (e) it will procure that each of the directors of Newco shall sign such further declarations in accordance with Article 127E of the Law as may be required by the JFSC or the Registrar of Companies, in the form as set out at Annex A.

6.1.3 Each of Atrium and Newco shall negotiate in good faith to agree the form of each of the following documents as soon as reasonably practicable and in any event prior to the Posting Date:

- (a) Shareholder Circular;
- (b) Merger Resolutions;
- (c) Notice of Merger Extraordinary General Meeting;
- (d) Reduction Special Resolution; and
- (e) Notice of Reduction Extraordinary General Meeting.

6.1.4 Each Party undertakes to comply with their respective obligations specified in Schedule 1.

## **7 ACKNOWLEDGEMENTS OF NEWCO**

7.1.1 Newco undertakes to Atrium that Gazit Globe Limited ("**Gazit**") has confirmed that it may be willing to procure the sale of the Atrium Shares held by Gaia and Midas in connection with a Superior Proposal and that Gazit has confirmed that it will consider in good faith any Superior Proposals.

7.1.2 Notwithstanding Clause 7.1.1, Atrium acknowledges that Gazit shall be under any no obligation to procure the sale of the Atrium Shares held by Gaia and Midas at any price and any decision to sell shall be at the sole discretion of Gazit.

7.1.3 The Parties agree that reference to Gazit's confirmations set out in Clauses 7.1.1 and 7.1.2 will be included in the Announcement and the Shareholder Circular.

## 8 CONDUCT OF ATRIUM BUSINESS

- 8.1.1 Atrium undertakes to procure that during the period between the date of this Agreement and Closing each Atrium Group Company shall carry on its business as a going concern in the ordinary and usual course.
- 8.1.2 Atrium and Newco undertake:
- (a) to use all reasonable endeavours to procure the final resolution of all and any objections arising out of or in connection with Article 127FB, Article 127FE and/or Article 143 of the Law and/or the common law as quickly as possible and in any event before the expiry of the Longstop Date; and
  - (b) in relation to Clause 8.1.2(a) above, and without prejudice to its generality, to seek to resolve any application to the Royal Court of Jersey using wherever reasonably practicable any or all legal and/or procedural rights, remedies, mechanisms or devices, whether interlocutory or final, as may be available under the law of Jersey, the Royal Court Rules 2004 and/or any Practice Direction to expedite final resolution or abridge time as far as possible including but not limited to seeking to have any such application heard as a *cause de brièveté*.

## 9 EFFECT OF THE MERGER

- 9.1.1 From and after Closing, the Merger Shareholders shall cease to have any rights with respect to the Atrium Shares except the right to the Pro Rata Dividend and as otherwise provided in this Agreement or by Law.
- 9.1.2 At Closing, as a consequence of the Merger becoming effective (upon the registration by the Registrar of Companies of Atrium as a merged company under Article 127FN of the Law) and without any other action on the part of any Atrium Shareholder or Reduction of Capital Shareholder or any other Party to this Agreement, the following steps shall occur contemporaneously:
- (a) Newco and Atrium shall merge and continue as one merged body, with Atrium being the survivor company and Newco ceasing to be incorporated as a separate company;
  - (b) Atrium shall cancel the Merger Shares and Reduction of Capital Share and they shall cease to exist; and
  - (c) Atrium shall pay each Merger Shareholder an aggregate amount equal to the sum of:
    - (i) the Cash Consideration Amount per Merger Share held by them; and
    - (ii) a dividend in respect of the period from the date of the most recently paid Permitted Dividend to and including the Closing Date (the “**Relevant Period**”), the amount of such dividend shall be the amount of the Permitted Dividend that was paid in the quarter immediately preceding the Relevant Period, reduced on a *pro rata* basis to reflect the number of days by which the Relevant Period is shorter than a calendar quarter (the “**Pro Rata Dividend**”),(together the “**Payment Obligation**”).
- 9.1.3 Atrium undertakes to procure payment of the Pro Rata Dividend by the Pro Rata Dividend Payment Date.
- 9.1.4 In order to facilitate satisfaction of the Payment Obligation at Closing, Newco undertakes to:



- (a) appoint a Paying Agent as soon as reasonably practicable after the date of this Agreement and in any case prior to the Special Dividend Payment Date;
  - (b) on the date falling two Business Days prior to the Filing Date, transfer the Cash Consideration Amount to the Paying Agent; and
  - (c) irrevocably instruct the Paying Agent to apply the Cash Consideration Amount in part satisfaction of the Payment Obligation immediately after Closing.
- 9.1.5 Save that the Atrium Shares will be delisted from the Exchanges, the Excluded Shares shall not be transferred, changed or affected in any way whatsoever as a result of the Merger and all rights, privileges, immunities, powers, liabilities and obligations connected to the Excluded Shares shall continue unaffected.

## **10 EMPLOYEE INCENTIVES**

The Parties agree that the provisions of Schedule 3 shall apply in respect of the Share Schemes and Share Based Remunerations.

## **11 ADMINISTRATIVE MATTERS RELATING TO THE MERGED COMPANY**

- 11.1.1 The Parties agree that, as at Closing:
- (a) the directors of Atrium shall be:
    - (i) Chaim Katzman;
    - (ii) Lucy Lilley; and
    - (iii) Andrew Wignall.
  - (b) the secretary of Atrium shall, subject to the Articles, be Aztec Financial Services (Jersey) Limited;
  - (c) the registered office of Atrium shall be such address as Newco and Atrium shall agree prior to the Closing Date;
  - (d) the date to which the first accounts of Atrium as surviving body shall be produced following the Closing Date shall be 31 December 2021; and
  - (e) the registered number of Atrium shall be 70371.
- 11.1.2 Newco shall have the right to amend the details set out in Clause 11.1.1 by written notice to Atrium not less than five Business Days prior to Closing.
- 11.1.3 As soon as reasonably practicable following the Closing Date, applications shall be made to Euronext Amsterdam and proceedings shall be aligned with the Vienna Stock Exchange to effect the de-listing of the Atrium Shares from the Exchanges.
- 11.1.4 Following successful completion of the de-listing pursuant to Clause 11.1.3 above, Atrium will be re-registered as a private company in Jersey.
- 11.1.5 For 10 years from the Closing Date, Newco and Atrium irrevocably undertake to procure that Atrium maintains in force such “run-off” directors’ and officers’ liability insurance policies as will enable Atrium and each of the members of the Independent Committee to make claims arising out of any matter, cause or event occurring on or before Closing under those policies on terms and conditions that are, in every material respect, no less advantageous to the

members of the Independent Committee than the directors' and officers' liability insurance policies maintained by Atrium as at the date of this Agreement.

## **12 WARRANTIES**

- 12.1.1 Atrium warrants to Newco that the warranties set out at Schedule 2, Part A are accurate in all respects at the date of this Agreement
- 12.1.2 Newco warrants to Atrium that each of the warranties set out in Schedule 2, Part B is accurate in all respects at the date of this Agreement.
- 12.1.3 Each warranty is separate and independent, and is not to be limited by reference to any other warranty or by anything in this Agreement.

## **13 TERMINATION**

Other than in accordance with Clause 5.1.2, no Party shall be entitled to rescind or terminate this Agreement in any circumstances whatsoever (whether before or after Closing). Where this Clause applies pursuant to the operation of Clauses 5.1.2, this Agreement other than Clauses 1 (*Definitions and Interpretation*), 4 (*Conditions precedent to Closing of the Merger*), 14 (*Confidentiality*), 15.1.1 (*Third Party Rights*), 15.1.3 (*Invalidity*), 15.1.6 (*Costs and Expense*), 15.1.7 (*Whole Agreement*), 15.1.8 (*Counterparts*) and 16 (*Governing Law*) shall automatically terminate with immediate effect and each Party's rights and obligations under this Agreement other than those specified above shall cease immediately on termination, provided that such termination shall not affect the rights and obligations of any Party existing before termination and shall be without prejudice to a Party's right to claim damages or other compensation for failure by another Party to comply with its obligations under this Agreement. This Clause shall not exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

## **14 CONFIDENTIALITY**

### **14.1.1 Announcements**

With the exception of the Announcement, the Shareholder Circular and the Notice of Reduction Extraordinary General Meeting, no announcement, communication or circular in connection with the existence or the subject matter of this Agreement or the Merger shall be made or issued by or on behalf of any Party or any member of Atrium's Group without the prior written approval of the relevant other Party. This shall not affect any announcement, communication or circular (other than the Shareholder Circular) required by law or any governmental or regulatory body, court order or the rules of any relevant stock exchange, but then only to the extent so required and the Party with an obligation to make an announcement or communication or issue a circular shall consult with the other Parties insofar as is reasonably practicable before complying with such an obligation.

### **14.1.2 Confidentiality**

- (a) Subject to Clause 14.1.2(b), other than in the Announcement, the Shareholder Circular and the Notice of Reduction Extraordinary General Meeting, each Party shall treat as strictly confidential and shall not disclose or use any information received or obtained as a result of entering into this Agreement (or any agreement entered into pursuant to this Agreement) that relates to:
  - (i) the provisions of this Agreement or any ancillary agreement; or
  - (ii) the other Party.
- (b) Notwithstanding Clause 14.1.2(a), a Party may disclose or use information if and to the extent:

- (i) required by applicable law of any relevant jurisdiction or for the purposes of any legal proceedings;
- (ii) required by any securities exchange or regulatory or governmental body or any Tax Authority to which that Party is subject or submits, wherever situated, whether or not the requirement for information has the force of law;
- (iii) that the disclosure is made to the professional advisers, auditors and actual or *bona fide* prospective providers of financing (including for the purposes of hedging, and in connection with any offering or syndication documents) of that Party (and any of their professional advisers and group undertakings) on a need to know basis and provided they have a duty (whether contractual or otherwise) to keep such information confidential;
- (iv) that the information has come into the public domain through no fault of that Party; or
- (v) that the other Party has given prior written consent to the disclosure,

provided that any information disclosed pursuant to Clause 14.1.2(b)(i) or 14.1.2(b)(ii) shall be disclosed (where reasonably practicable and not otherwise prohibited by applicable law or regulation) only after notice has been given to the other Party of such requirement with a view to providing the other Party with the opportunity to contest such disclosure or use or otherwise agreeing to the content and timing of such disclosure.

## 15 MISCELLANEOUS

### 15.1.1 Third Party Rights

The members of the Independent Committee shall have the right to enforce the terms of Clause 11.1.5 as if they were parties to this Agreement. Other than in relation to Clause 11.1.5, a person who is not a Party to this Agreement has no right to enforce any term of, or enjoy any benefit under, this Agreement and the rights of Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person who is not a Party to this Agreement.

### 15.1.2 Notices

- (a) All notices with respect to this Agreement shall be delivered by hand or sent by first class post to the address of the addressee as set out in this Agreement or to such other address as the addressee may from time to time have notified for the purpose of this clause, or sent by facsimile transmission (“**fax**”) to the following numbers:

- (i) in the case of Newco,

Gazit Hercules 2020 Limited  
 Fifth Floor  
 37 Esplanade  
 St Helier  
 Jersey JE1 2TR  
 Attn: Chaim Katzman

and by email to [ckatzman@gazitgroup.com](mailto:ckatzman@gazitgroup.com) and [zgordon@gazitgroup.com](mailto:zgordon@gazitgroup.com)

with a copy (which shall not constitute notice) to Matthew Elliott and Stuart Boyd at Kirkland & Ellis International LLP, 30 St. Mary Axe, London, EC3A 8AF; and

- (ii) in the case of Atrium,

Atrium European Real Estate Limited  
4th Floor, Channel House  
Green Street  
St Helier  
Jersey JE24UH  
Attn: The Independent Directors

and by email to sharon.Lecrivain@aztegroup.co.uk and atrium@aztegroup.co.uk,

with a copy (which shall not constitute notice) to Richard K.J. Browne at Allen & Overy LLP, One Bishops Square, London E1 6AD or by fax to +44 20 3088 9999; and

- (b) Such notices shall be deemed to have been received:
  - (i) if sent by first class prepaid post, two Business Days after posting;
  - (ii) if delivered by hand, on the day of delivery; and
  - (iii) if sent by fax, at the time of transmission provided that the sender shall receive a successful transmission report.

#### 15.1.3 **Invalidity**

Each of the provisions of this Agreement are severable. If any such provision is held to be or becomes invalid or unenforceable in any respect under the laws of any jurisdiction, it shall have no effect in that respect and the Parties shall use all reasonable efforts to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible.

#### 15.1.4 **Variation**

Any amendment of this Agreement (or of any other) shall be valid, effective and binding upon all Parties hereto (including any that have not explicitly agreed to it) if it is in writing and duly executed by or on behalf of all of the Parties to it.

#### 15.1.5 **Assignment**

- (a) No Party may assign, hold on trust, transfer, sub-contract, delegate, charge or otherwise deal with all or any part of its rights or obligations under this Agreement without the prior written consent of the other Parties.
- (b) The maximum liability of any Party for breach of this Agreement shall be limited to the liability that would have arisen in the absence of any assignment in accordance with the terms of Clause 15.1.5(a).
- (c) Any purported assignment, declaration of trust, transfer, sub-contracting, delegation, charging or dealing in contravention of this Clause 15.1.5 shall be ineffective.

#### 15.1.6 **Costs and Expenses**

Each Party shall bear its own costs and expenses in relation to the negotiation, preparation, execution and implementation of this Agreement, but this Clause 15.1.6 shall not prejudice any Party's right to seek to recover costs in any litigation or other dispute resolution procedure arising in connection with this Agreement.

#### 15.1.7 **Whole Agreement**

- (a) This Agreement contains the whole Agreement between the Parties relating to the subject matter of this Agreement at the date of this Agreement to the exclusion of any implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to matters dealt with in this Agreement.
- (b) Each Party acknowledges that, in entering into this Agreement, it is not relying on any representation, warranty or undertaking not expressly incorporated into it.
- (c) Each Party agrees and acknowledges that its only right and remedy in relation to any warranty made or given in Clause 12 shall be for breach of the terms of this Agreement and each of the Parties waives all other rights and remedies (including those in tort or arising under statute) in relation to any such representation, warranty or undertaking.
- (d) Nothing in this Clause 15.1.7 excludes or limits liability for fraud.

#### 15.1.8 **Counterparts**

This Agreement may be executed in any number of counterparts and by each Party on a separate counterpart each of which counterparts when so executed and delivered shall be an original but all such counterparts shall together constitute one and the same instrument.

### **16 GOVERNING LAW AND JURISDICTION**

- 16.1.1 This Agreement and any dispute, claim or controversy (including non-contractual disputes, claims or controversies) arising out of or in connection with it or its subject matter (collectively, "**Disputes**") shall be governed by and shall be construed in accordance with the laws of the Island of Jersey.
- 16.1.2 Each Party irrevocably submits any Dispute to the exclusive jurisdiction of the Jersey courts and agrees not to object to the exclusive jurisdiction of the Court.

## **Schedule 1 Deliverables**

### **Part I**

Promptly and in any event within 10 Business Days following the date of the relevant declaration, Newco shall deliver or make available to the other Parties copies of the executed declarations by the directors of Newco pursuant to Article 127E(5) of the Law and any further declarations pursuant to Article 127E(5) of the Law as may be required by the JFSC or the Registrar of Companies.

### **Part II**

Promptly and in any event within 10 Business Days following each relevant event below, Atrium shall deliver or make available to the other Parties the following:

1. copies of executed declarations by the directors of Atrium pursuant to Articles 127E(5) and 127E(6) of the Law and any further declarations pursuant to Articles 127E(5) or 127E(6) of the Law as may be required by the JFSC or the Registrar of Companies;
2. evidence of the delivery of all relevant documents to Registrar of Companies in accordance with Article 127FJ of the Law;
3. copies of the executed declarations by the directors of Atrium authorising the reduction of capital pursuant to the Reduction Special Resolution pursuant to Article 61A of the Law; and
4. a copy of the minute in relation to the Reduction Special Resolution in accordance with Article 61B(1)(b) of the Law.

## **Schedule 2 Warranties**

### **Part A - Atrium Warranties**

#### **1 Capacity**

- 1.1 Atrium has full power and authority to enter into, deliver and perform its obligations under this Agreement and all other documents to be executed by it pursuant to or in connection with this Agreement.
- 1.2 The obligations of Atrium under each document referred to in paragraph 1.1 will, when executed, constitute valid and binding obligations of Atrium in accordance with their terms.
- 1.3 The execution and delivery of, and the performance by Atrium of its obligations under, this Agreement and all other documents to be executed by it pursuant to or in connection with this Agreement will not:
- (a) conflict with or result in a breach of any provision of Atrium's memorandum and articles of association;
  - (b) conflict with, result in a breach of or constitute a default under any material agreement or instrument to which Atrium is a party;
  - (c) result in a breach of any law or regulation, or of any order, injunction, judgement or decree of any court, that applies to any Atrium Group Company; or
  - (d) require the consent of any person other than the shareholders of Atrium.

### **Part B - Newco Warranties**

#### **1 Capacity**

- 1.1 Newco has full power and authority to enter into, deliver and perform its obligations under this Agreement and all other documents to be executed by it pursuant to or in connection with this Agreement.
- 1.2 The obligations of Newco under each document referred to in Part B paragraph 1.1 will, when executed, constitute valid and binding obligations of Newco in accordance with its terms.
- 1.3 The execution and delivery of, and the performance by Newco of its obligations under, this Agreement and all other documents to be executed by it pursuant to or in connection with this Agreement will not:
- (a) conflict with or result in a breach of any provision of the constitutional documents of Newco;
  - (b) conflict with, result in a breach of or constitute a default under any material agreement or instrument to which Newco is a party;
  - (c) conflict with or result in a breach of any law or regulation, or of any order, injunction, judgement or decree of any court, that applies to Newco; or
  - (d) require the consent of any person other than the shareholders of Newco.

**Schedule 3**  
**Share Schemes and Share Based Remunerations**

- 1.1 The Appendix to this Schedule sets out details of all Shares subject to subsisting options or awards under each Share Scheme and the Share Based Remuneration as at 12 October 2021 (the “**Options Date**”).
- 1.2 Atrium confirms that:
- (a) no options or awards have been granted under the Share Schemes and the Share Based Remunerations since the Options Date; and
  - (b) there are no outstanding rights to acquire Shares granted by any member of the Atrium Group other than under the Share Schemes and the Share Based Remunerations.
- 1.3 Atrium undertakes to Newco to co-operate with Newco and to provide such details to Newco in relation to the Share Schemes, the Share Based Remunerations as Newco may reasonably require. The Parties will agree any amendments to the Share Schemes and the Share Based Remunerations reasonably required to effect the Merger, subject always to the rules of the Share Schemes and the Share Based Remunerations.
- 1.4 Options may be exercised and awards will vest in accordance with the rules of the Share Schemes and the Share Based Remuneration. The treatment of the Share Schemes and the Share Based Remunerations described in Part 2, Part 3 and Part 4 of the Appendix to this Schedule is acknowledged and agreed by the Parties.
- 1.5 Atrium undertakes to take all necessary steps to prepare, in a form to be agreed between Atrium and Newco, letters to each of the participants in the Share Schemes and the Share Based Remuneration, and to post such letters no later than two days after posting of the Shareholder Circular. The letters will inform participants of their rights under the Share Schemes and the Share Based Remunerations, as applicable, including details of any lapse provisions in relation to their options and awards and explaining the impact of the Merger on the Shares they will receive on the exercise or vesting of their options and/or awards.
- 1.6 Atrium and Newco agree that the Merger Resolutions will propose an amendment to the articles of association of Atrium to (i) ensure that any Atrium Shares issued on or after the passing of the Merger Resolutions but before Closing will, subject only to the passing of the Reduction Special Resolution, compulsorily be cancelled at Closing in consideration for a payment equal to the Consideration Amount per Atrium Share, and (ii) set out the rights and terms of the Reduction of Capital Share.



### Appendix to Schedule 3

#### Part 1 Overview

Share Scheme / Share Based Remuneration	Outstanding (vested and unvested) entitlements to Shares (assuming (i) Completion at 31:12:21 and (ii) a transaction price of €3.63)
ESOP 2013	643,333
ESPP– 2019 Grant	281,541
ESPP– 2020 Grant	229,601
ESPP– 2021 Grant	186,172
ESOP 2020	1,525,000
Directors' Share Remuneration	160,979
CEO Share Remuneration	12,453
Officers' Share Remuneration	8,989

#### Part 2 Treatment Share Schemes

Share Scheme	Acknowledged and agreed treatment
ESOP 2013	Vest in full (but options underwater as strike price is €3.96)
ESPP 2019 Grant	Vest in full and shares acquired as part of Merger
ESPP 2020 Grant	Vest in full and shares acquired as part of Merger
ESPP 2021	Vest in full and shares acquired as part of Merger
ESOP 2020	Vest in full, options exercised and shares acquired as part of Merger

#### Part 3 Treatment Share Based Remunerations Independent Committee

Share Based Remuneration	Acknowledged and agreed treatment
Directors' Share Remuneration	Paid in full (to Closing) and shares acquired as part of Merger and, for the avoidance of doubt, the Directors will be issued with a pro rata number of shares for the period from the end of the last six month period up until Closing and such shares will be acquired as part of the Merger

#### Part 4 Treatment Share Based Remunerations Officers

Share Based Remuneration	Acknowledged and agreed treatment
CEO Share Remuneration	Paid in full (to Closing) and shares acquired as part of Merger

Officers' Share Remuneration	Paid in full and shares acquired as part of Merger
---------------------------------	--

**Schedule 4**  
**Indicative Merger Completion Timeline**

The following indicative timeline has been prepared on the basis that Newco and Atrium would agree in the shortest timeframe possible the terms of the Merger.

<i>Step One</i>	<b>October 2021</b>	<u>Execution of Merger Agreement</u>  <b>Merger Agreement</b> – to be executed. <b>Board meetings of Atrium and Newco</b> – approving entry into Merger Agreement
<i>Step Two</i>	<b>November 2021</b>	<u>Solvency Statements</u>  <b>Director Solvency Statements</b> - signed by directors of Atrium and Newco. Atrium solvency statements to be signed before the circulation of the Shareholder Circular.  <u>Posting of Shareholder Circular</u>  <b>Atrium Shareholder Circular (incorporating the Notice of Merger Extraordinary General Meeting)</b> – within timeframe required under the Merger Agreement, the Shareholder Circular (including the notice convening the Merger Extraordinary General Meeting is posted to the Atrium shareholders. This commences the notice period for this meeting.  <u>Giving of notice to Creditors</u>  <b>Notice given to each creditor</b> – Atrium and Newco must provide notice to each of its creditors of the proposed merger and that the merger agreement and special resolution are available for inspection on request; and <b>Publication of notice in Jersey Gazette</b> – the notices provided to individual creditors above should also be published in the Jersey Gazette (this should be done as soon as practicable after each of Atrium and Newco send out the last of <b>any</b> individual notices). This commences the Creditor Objection Period.
<i>Step Three</i>	<b>[TBD]</b>	<u>Shareholder Meeting / Approval</u>  <b>Atrium First Shareholder Meeting</b> – Merger Extraordinary General Meeting held and resolution to approve the Merger Resolutions is voted on. This commences the Shareholder Objection Period. <b>Newco Shareholder Approval</b> – this can be done by way of a written resolution, no meeting is required to be called. This is a technical requirement and can be achieved in short order as Newco will be controlled by Gazit (and likely wholly owned by Midas).  <b>Timing:</b> 14 clear days from the date of posting of Atrium Notice of Merger Extraordinary General Meeting, plus one day for deemed delivery of the notice.

<i>Step Four</i>	[TBD]	<p><u>End of Atrium Creditor Objection Period</u></p> <p><b>Creditor Objection Period</b> – Atrium creditors have a 21 day period from the date of publication of the notice to creditors in the Jersey Gazette in which to register a notice of their objections to the Merger with Atrium. Atrium creditors then have a further 21 day period from the date of the registration of the notice of objection to Atrium to register their objections to the Merger with the Jersey courts.</p> <p><b>Timing:</b> 21 days from posting of publication of the notice to creditors in the Jersey Gazette.</p>
<i>Step Five</i>	[TBD]	<p><u>End of Atrium shareholder objection period</u></p> <p><b>Shareholder Objection Period</b> – Atrium shareholders have a 21 day period from the date of Atrium Merger Extraordinary General Meeting in which to register their objections to the Merger with the Jersey courts.</p> <p><b>Timing:</b> 21 days from the passing of the Merger Resolutions.</p>
<i>Step Six</i>	[TBD]	<p><u>End of Jersey court process</u></p> <p>Jersey courts must hear and discharge all Atrium creditor and shareholder objections before the Merger can be effected.</p> <p><b>Timing:</b> The Merger process is untested and it is unknown how long this process will take (it is dependent on whether the Jersey courts will hear the claims concurrently or sequentially).</p>
<i>Step Seven</i>	[TBD]	<p><u>Posting of Notice of Reduction Extraordinary General Meeting</u></p> <p><b>Atrium Notice of Reduction Extraordinary General Meeting</b> – within timeframe required under the Merger Agreement, the notice convening the Reduction Extraordinary General Meeting is posted to the Atrium shareholders. This commences the notice period for this meeting.</p> <p><b>Timing:</b> The Merger Agreement states that this date should be the date two Business Days following the date the last of the Reduction Conditions is satisfied.</p>
<i>Step Eight</i>	[TBD]	<p><u>Reduction of Capital – Director solvency statement</u></p> <p><b>Director Solvency Statements</b> - signed by directors of Atrium in respect of the capital reduction</p> <p><b>Timing:</b> Article 61A(1) of the Law requires the directors to make this statement not more than 15 days before the Reduction Special Resolution is passed.</p>
<i>Step Nine</i>	[TBD]	<p><u>Reduction of Capital – Shareholder Meeting</u></p> <p><b>Atrium Second Shareholder Meeting</b> – Reduction Extraordinary General Meeting held and resolution to approve</p>

the Reduction Special Resolution is voted on. This commences the capital reduction process

**Timing:** 14 clear days from the date of posting of Atrium Notice of Reduction Extraordinary General Meeting, plus one day for deemed delivery of the notice.

*Step Ten* [TBD]

Payment of the Special Dividend

*Step Eleven* [TBD]

Closing under the Merger Agreement

File the solvency statement and minute with the Registrar of Companies (**Registrar**). Upon registration by the Registrar of the solvency statement and minute, the capital reduction takes effect. Article 61B(1) of the Law requires this filing to be made within 15 days of the Reduction Special Resolution being passed but will, in practice, be filed on the same day as the Reduction Special Resolution is passed.

Delivery to the Registrar of all relevant documents as required under Article 127FJ of the Law.

Registrar to approve the Merger and the Jersey Register of Companies to be updated to effect the transaction. Correspondence with the Registrar in respect of the Merger and Capital Reduction is expected to have taken place in advance of this date to enable the Registrar to approve the Merger and effect the Capital Reduction within 1 Business Day of submission of the relevant capital reduction documents. However, this is not within the parties' control.

Atrium to make payment of the consideration pursuant to the Merger Agreement.

Signed for and on behalf of Atrium European Real Estate Limited

Neil Franzraich

Signature

Neil Franzraich

Print name

Chairman, Independent Committee  
of the Board

Title

**Signed for and on behalf of Gazit Hercules 2020 Limited**

Signature

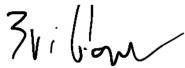


Print name

Ashley Le Feuvre on behalf of VG  
Corporate Director One Limited

Title Director

Signature



Print name

Zvi Gordon

Title Director

**Annex A**

**COMPANIES (JERSEY) LAW 1991**

**[Atrium / Newco]**

**(Company)**

**Directors Certificate**

Given pursuant to Articles 127E(5) and 127FJ(4)(d) of the Companies (Jersey) Law 1991 (as amended) (the **Law**)

The Company intends, pursuant to Part 18B of the Law, to merge with [Atrium / Newco] (the **Merger**).

We, the undersigned, being the all the present directors of the Company and having been validly appointed in accordance with the provisions of the articles of association of the Company do hereby confirm and declare that:

- (a) having made full enquiry into the affairs of the Company, we reasonably believe that the Company is, and will remain until the Merger is completed, able to discharge its liabilities as they fall due;
- (b) the Company and each director of the Company have complied with the requirements of Part 18B of the Law in respect of the Merger; and
- (c) in the opinion of each of the directors of the Company, the Merger will not unfairly prejudice any interests of any creditor of the Company.

In support of making declaration (a) above we have relied upon the financial accounts of the Company for the year ended [•].

The making of this declaration has been authorized by the directors of the Company on whose behalf it is made.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20[ ]

..... [•] Director	..... [•] Director
--------------------------	--------------------------



**Gazit Hercules 2020 Limited**

Fifth Floor  
37 Esplanade  
St Helier  
Jersey  
JE1 2TR

22 November 2021

Dear Sirs

**MERGER IMPLEMENTATION AGREEMENT - AMENDMENT LETTER**

1. **INTRODUCTION**

- 1.1 We refer to the Jersey law governed merger implementation agreement dated 17 October 2021 (**Merger Agreement**) relating to the proposed merger between Atrium European Real Estate Limited (**Atrium**) and Gazit Hercules 2020 Limited (**Newco**) pursuant to which Atrium will merge with Newco pursuant to Part 18B of the Law (the **Merger**) with Atrium being the surviving entity following the Merger.
- 1.2 Terms defined in the Merger Agreement shall have the same meaning when used in this letter.

2. **AMENDMENT TO THE MERGER AGREEMENT**

- 2.1 With effect from the date of this letter (the **Effective Date**), the Merger Agreement will be amended as follows:
- (a) Clause 9.1.2(b) be amended by the deletion of 'and' after ';'.
  - (b) Clause 9.1.2(c) be amended by the deletion of '.' after '(together the "**Payment Obligation**")' and replaced with '; and'.
  - (c) The addition of a new clause 9.1.2(d) which states:

'All of the shares in the capital of Newco in issue immediately prior to Closing shall be cancelled and Atrium shall pay to Midas as the sole shareholder of Newco an aggregate amount equal to the nominal value of each such share, being €1.00 per such issued share.'

3. **MISCELLANEOUS**

- 3.1 Notwithstanding anything to the contrary in this letter, the parties to this letter agree that the entry into this letter by Atrium and Newco shall not cause any breach of the Merger Agreement.
- 3.2 With effect from the Effective Date, the Merger Agreement and this letter shall be read and construed as a single document.

3.3 This letter may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this letter.

4. **GOVERNING LAW**

4.1 This letter and any dispute, claim or controversy (including non-contractual disputes, claims or controversies) arising out of or in connection with it or its subject matter (collectively, **Disputes**) shall be governed by and shall be construed in accordance with the laws of the Island of Jersey.

4.2 Atrium and Newco irrevocably submit any Dispute to the exclusive jurisdiction of the Jersey courts and agrees not to object to the exclusive jurisdiction of the Court.

Yours faithfully



Name: Neil Flanzraich

Position: Chair, Independent Committee of Board of Directors

For and on behalf of **Atrium European Real Estate Limited**

If you agree to the terms of this letter, please sign where indicated below:

---

Name:

Position:

For and on behalf of **Gazit Hercules 2020 Limited**

3.3 This letter may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this letter.

4. **GOVERNING LAW**

4.1 This letter and any dispute, claim or controversy (including non-contractual disputes, claims or controversies) arising out of or in connection with it or its subject matter (collectively, **Disputes**) shall be governed by and shall be construed in accordance with the laws of the Island of Jersey.

4.2 Atrium and Newco irrevocably submit any Dispute to the exclusive jurisdiction of the Jersey courts and agrees not to object to the exclusive jurisdiction of the Court.

Yours faithfully


\_\_\_\_\_

Name:

Position:

For and on behalf of **Atrium European Real Estate Limited**

If you agree to the terms of this letter, please sign where indicated below:

\_\_\_\_\_ 

Name:

Zvi Gordon

Position:

For and on behalf of **Gazit Hercules 2020 Limited**