

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 OR 15(d)
of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): February 12, 2024



Phillips Edison & Company, Inc.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction
of incorporation)

001-40594
(Commission
File Number)

27-1106076
(IRS Employer
Identification No.)

11501 Northlake Drive
Cincinnati, Ohio
(Address of principal executive offices)

45249
(Zip Code)

(513) 554-1110
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock \$0.01 par value per share	PECO	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01 Other Events.

On February 12, 2024, Phillips Edison & Company, Inc. (the “Company”) and Phillip Edison Grocery Center Operating Partnership I, L.P. (the “Operating Partnership”) entered into a sales agreement (the “sales agreement”) with Morgan Stanley & Co. LLC, BMO Capital Markets Corp., BofA Securities, Inc., BTIG, LLC, Capital One Securities, Inc., Citigroup Global Markets Inc., Fifth Third Securities, Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Mizuho Securities USA LLC, Regions Securities LLC, Wedbush Securities Inc. and Wells Fargo Securities, LLC, as sales agent, forward seller and/or principal (collectively, the “Agents”), and the relevant Forward Sellers and Forward Purchasers (each, as defined below), relating to the offer and sale of shares of the Company’s common stock, \$0.01 par value per share (“common stock”), pursuant to a continuous offering program. In accordance with the terms of the sales agreement, the Company may offer and sell shares of common stock having an aggregate offering price of up to \$250.0 million (the “Shares”) from time to time through or to the Agents as our sales agents or principals, respectively, or through the Forward Sellers.

Sales of the Shares, if any, may be made by means of ordinary brokers’ transactions on the Nasdaq Global Select Market (“Nasdaq”), in negotiated transactions or in transactions that are deemed to be “at-the-market” offerings as defined in Rule 415 under the Securities Act of 1933, as amended (the “Securities Act”), including sales made to or through a market maker other than on an exchange, in block transactions or by any other method permitted by law, at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices, subject to certain minimum prices. The applicable Agent or Forward Seller, as applicable, will use its commercially reasonable efforts consistent with its normal trading and sales practices to solicit offers to purchase Shares, under the terms and subject to the conditions set forth in the sales agreement. The Company or any of the Agents or Forward Sellers may suspend the offering at any time upon proper notice and subject to other conditions.

The Company also may sell Shares to each of the Agents, as principal for its own account, at a price to be agreed upon at the time of sale. If the Company sells Shares to any of the Agents as principal, it will enter into a separate terms agreement with such Agent, and it will describe the terms agreement in a separate prospectus supplement or pricing supplement.

The Company will pay each of the Agents acting as its sales agent a commission that will not exceed, but may be lower than, 2.0% of the gross sales price per share of Shares sold through it as sales agent under the sales agreement. The compensation to each Forward Seller will be a mutually agreed commission in the form of a reduction to the initial forward price under the related forward sale agreement that will not exceed, but may be lower than, 2.0% of the gross sales price of the borrowed shares sold through such Forward Seller during the applicable forward hedge selling period for such shares (which gross sales price will be adjusted for daily accruals based on a floating interest rate and specified amounts related to expected dividends on shares of common stock if an “ex-dividend” date occurs during such forward hedge selling period).

None of the Agents or Forward Sellers is required to sell any specific number or dollar amount of Shares but each will use its commercially reasonable efforts, subject to the terms of the sales agreement, to sell the Shares offered as instructed by the Company (if an Agent) and all the shares borrowed by the relevant Forward Purchaser pursuant to the sales agreement (if a Forward Seller). The offering of the Shares pursuant to the sales agreement will terminate upon the earlier of (1) the sale of all the Shares subject to the sales agreement (including Shares sold by the Company to or through the Agents and borrowed shares sold through the Forward Sellers) or (2) termination of the sales agreement in accordance with its terms.

The sales agreement contemplates that, in addition to the issuance and sale by the Company of Shares to or through the Agents as sales agents, the Company may enter into separate forward sale agreements (each, together with any related pricing supplement, a “forward sale agreement,” and, collectively, the “forward sale agreements”), with any of, respectively, Morgan Stanley & Co. LLC, Bank of America, N.A., Bank of Montreal, Citibank, N.A. (or an affiliate thereof), Goldman Sachs & Co. LLC, Jefferies LLC, JPMorgan Chase Bank, National Association, KeyBanc Capital Markets Inc., Mizuho Markets Americas LLC, Nomura Global Financial Products, Inc., Regions Securities LLC and Wells Fargo Bank, National Association, as forward purchasers (in such capacity, each, a “Forward Purchaser,” and, collectively, the “Forward Purchasers”). If the Company enters into a forward sale agreement with any Forward Purchaser, it expects that such Forward Purchaser, acting in accordance with the mutually accepted instructions related to such forward sale agreement, will attempt to borrow and sell, through the relevant Forward Seller, acting as agent for such Forward Purchaser, shares of common stock to hedge such Forward Purchaser’s exposure under such forward sale agreement. The Company refers to an Agent, when acting as sales agent for the relevant Forward Purchaser, as, individually, a “Forward Seller” and, collectively, the “Forward Sellers”, except that with respect to Nomura Global Financial Products, Inc., the relevant Forward Seller is Nomura Securities International, Inc. (acting through BTIG, LLC as agent). Unless otherwise expressly stated or the context otherwise requires, references herein to the “related” or “relevant” Forward Purchaser mean, with respect to any Agent, the affiliate of such Agent that is acting as Forward Purchaser or, if applicable, such Agent acting in its capacity as Forward Purchaser, and vice versa mutatis mutandis with respect to references herein to the “relevant” or “applicable” Agent (except with respect to BTIG, LLC, in which case the relevant Forward Purchaser is Nomura Global Financial Products, Inc. and the relevant Forward Seller is Nomura Securities International, Inc. (acting through BTIG, LLC, as its agent)). The Company will not initially receive any proceeds from any sale of shares of our common stock borrowed by a Forward Purchaser and sold through a Forward Seller.

The Company currently expects to fully physically settle each forward sale agreement, if any, with the relevant Forward Purchaser on one or more dates specified by the Company on or prior to the maturity date of such forward sale agreement. If the Company elects to cash settle any forward sale agreement, it may not receive any proceeds and it may owe cash to the relevant Forward Purchaser. If the Company elects to net share settle any forward sale agreement, it will not receive any proceeds, and it may owe Shares to the relevant Forward Purchaser.

The Company intends to contribute the net proceeds from any sales of the Shares to or through the Agents and the net cash proceeds from the settlement of any forward sale agreement to the Operating Partnership, which will subsequently use the net proceeds received from the Company to temporarily repay borrowings outstanding under the Company's revolving credit facility, fund external growth with property acquisitions and for other general corporate purposes, including potentially for the repayment of other debt or the repurchase, redemption, or retirement of outstanding debt securities, or a combination of the foregoing.

Any Shares that may be offered and sold pursuant to the sales agreement will be offered and sold pursuant to an effective shelf registration statement filed with the Securities and Exchange Commission on February 10, 2022 (File No. 333-262627) and a prospectus supplement dated February 12, 2024 and an accompanying prospectus dated February 10, 2022 filed with the Securities and Exchange Commission pursuant to Rule 424(b) under the Securities Act. An opinion of Ballard Spahr LLP with respect to the validity of the Shares that may be issued and sold pursuant to the prospectus supplement and the accompanying prospectus is filed herewith as Exhibit 5.1.

This Current Report shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

The sales agreement (which includes, as an exhibit thereto, the form of the forward sale agreement) is filed as Exhibit 1.1 to this Current Report. The description of certain provisions of the sales agreement and the forward sale agreement appearing in this Current Report is not complete and is subject to, and qualified in its entirety by reference to, the sales agreement (including such form of forward sale agreement included therein) filed herewith as an exhibit and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

- 1.1.* [Sales Agreement, dated February 12, 2024, by and among Phillips Edison & Company, Inc., Phillip Edison Grocery Center Operating Partnership I, L.P., and Morgan Stanley & Co. LLC, BMO Capital Markets Corp., BofA Securities, Inc., BTIG, LLC, Capital One Securities, Inc., Citigroup Global Markets Inc., Fifth Third Securities, Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Mizuho Securities USA LLC, Regions Securities LLC, Wedbush Securities Inc. and Wells Fargo Securities, LLC, as sales agents, forward sellers \(except with respect to BTIG, LLC\) and/or principals, and Nomura Securities International, Inc. \(acting through BTIG, LLC as its agent\), as forward seller to Nomura Global Financial Products, Inc., its relevant forward purchaser, and Morgan Stanley & Co. LLC, Bank of America, N.A., Bank of Montreal, Citibank, N.A. \(or an affiliate thereof\), Goldman Sachs & Co. LLC, Jefferies LLC, JPMorgan Chase Bank, National Association, KeyBanc Capital Markets Inc., Mizuho Markets Americas LLC, Nomura Global Financial Products, Inc., Regions Securities LLC and Wells Fargo Bank, National Association, as forward purchasers.](#)
- 5.1 [Opinion of Ballard Spahr LLP](#)
- 23.1 [Consent of Ballard Spahr LLP \(contained in the opinion filed as Exhibit 5.1 hereto\)](#)
- 99.1 [Form of forward sale agreement, between Phillips Edison & Company, Inc. and a Forward Purchaser \(included as part of Exhibit 1.1\)](#)
- 104 Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Certain confidential information contained in this document, marked by ***, has been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K because it is both (i) not material and (ii) the type of information that the registrant treats as private or confidential.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PHILLIPS EDISON & COMPANY, INC.

Dated: February 12, 2024

By: /s/ John P. Caulfield

John P. Caulfield

Chief Financial Officer, Executive Vice President and Treasurer

PHILLIPS EDISON & COMPANY, INC.
COMMON STOCK, PAR VALUE \$0.01 PER SHARE
SALES AGREEMENT

February 12, 2024

Morgan Stanley & Co. LLC
BMO Capital Markets Corp.
BofA Securities, Inc.
BTIG, LLC
Capital One Securities, Inc.
Citigroup Global Markets Inc.
Fifth Third Securities, Inc.
Goldman Sachs & Co. LLC
Jefferies LLC
J.P. Morgan Securities LLC
KeyBanc Capital Markets Inc.
Mizuho Securities USA LLC
Nomura Securities International, Inc.
Regions Securities LLC
Wedbush Securities Inc.
Wells Fargo Securities, LLC

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

As Agents and/or Forward Sellers

Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

Bank of America, N.A.
One Bryant Park
New York, New York 10036

Bank of Montreal
55 Bloor Street West, 18th Floor
Toronto, Ontario, Canada M4W 1A5

Citibank, N.A.
388 Greenwich Street
New York, New York 10013

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

Jefferies LLC
520 Madison Avenue
New York, New York 10022

JPMorgan Chase Bank, National Association
383 Madison Avenue
New York, New York 10179

KeyBanc Capital Markets Inc.
127 Public Square, 7th Floor
Cleveland, OH 44114

Mizuho Markets Americas LLC
c/o Mizuho Securities USA LLC
1271 Avenue of the Americas
New York, New York 10020

Nomura Global Financial Products, Inc.
309 West 49th Street
New York, NY 10019

Regions Securities LLC
615 South College Street
Suite 600
Charlotte, North Carolina 28202

Wells Fargo Bank, National Association
30 Hudson Yards
New York, New York 10001

As Forward Purchasers

Ladies and Gentlemen:

Phillips Edison & Company, Inc., a Maryland corporation (the “**Company**”), and Phillips Edison Grocery Center Operating Partnership I, L.P., a Delaware limited partnership (the “**Operating Partnership**” and, together with the Company, the “**Transaction Entities**”), each confirms its agreement with each of (i) Morgan Stanley & Co. LLC, BMO Capital Markets Corp., BofA Securities, Inc., BTIG, LLC, Capital One Securities, Inc., Citigroup Global Markets Inc., Fifth Third Securities, Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Mizuho Securities USA LLC, Regions Securities LLC, Wedbush Securities Inc. and Wells Fargo Securities, LLC, as sales agent, forward seller (except with respect to BTIG, LLC) and/or principal, and Nomura Securities International, Inc. (acting through BTIG, LLC as its agent), as forward seller to Nomura Global Financial Products, Inc., its relevant Forward Purchaser (as defined below) (in any such relevant capacity, each, an “**Agent**”, and collectively, the “**Agents**”) and (ii) Morgan Stanley & Co. LLC, Bank of America, N.A., Bank of Montreal, Citibank, N.A. (or an affiliate thereof), Goldman Sachs & Co. LLC, Jefferies LLC, JPMorgan Chase Bank, National Association, KeyBanc Capital Markets Inc., Mizuho Markets Americas LLC, Nomura Global Financial Products, Inc., Regions Securities LLC and Wells Fargo Bank, National Association, as forward purchasers (in such capacity, each, a “**Forward Purchaser**”, and collectively, the “**Forward Purchasers**”), in each case on the terms set forth in this Sales Agreement (this “**Agreement**”). For purposes of clarity, it is understood and agreed by the parties hereto that, if Forward Hedge Shares (as defined below) are offered or sold through any Agent acting as forward seller for the respective Forward Purchaser, then such Agent, as forward seller, shall be acting as sales agent for such Forward Purchaser with respect to the offering and sale of such Forward Hedge Shares, and, except in cases where this Agreement expressly refers to the Agent acting as sales agent for the Company or unless otherwise expressly stated or the context otherwise requires, references in this Agreement to an Agent acting as sales agent shall also be deemed to apply to an Agent when acting as forward seller, *mutatis mutandis*. Unless the context requires otherwise, references herein to the “relevant” or “applicable” Forward Purchaser mean, with respect to any Agent, the affiliate of such Agent that is acting as a Forward Purchaser or, if applicable, such Agent acting as a Forward Purchaser, and vice versa *mutatis mutandis* with respect to references herein to the “relevant” or “applicable” Agent.

The Company agrees that whenever it determines to sell shares (the “**Shares**”) of common stock of the Company, \$0.01 par value (“**Common Stock**”), directly to any Agent as principal, it and the Operating Partnership will enter into a separate written Terms Agreement (each, a “**Terms Agreement**”), in substantially the form of Annex I hereto, relating to such sale in accordance with Section 2(l) hereof. References herein to this “**Agreement**” or to matters contained “**herein**” or “**hereunder**”, or words of similar import, mean this Sales Agreement and any applicable Terms Agreement.

The Company may also enter into one or more forward stock purchase transactions (each, a “**Forward**”) with one or more Forward Purchasers, as set forth in one or more separate letter agreements, in substantially the form of Annex II hereto, relating to the applicable Forward (each, a “**Confirmation**”, and together, the “**Confirmations**”). Subject to the terms of the conditions herein and therein, under each Confirmation, the Company will deliver to the applicable Forward Purchaser, or a respective agent or affiliate thereof (including the applicable Agent), up to the number of Shares as may be sold in accordance with this Agreement in connection with such Confirmation. In connection therewith, it is contemplated that, at the Company’s direction, such Forward Purchaser will offer and sell through the applicable Agent, as forward seller and sales agent on behalf of such Forward Purchaser on the terms set forth in Section 2 of this Agreement, Forward Hedge Shares to be borrowed by such Forward Purchaser.

The Company proposes to (i) issue, offer and sell Shares from time to time to or through any Agent, acting as sales agent on behalf of the Company and/or acting as principal, and (ii) instruct any Agent, acting as forward seller, to offer and sell Shares borrowed by the applicable Forward Purchaser (any such Shares, “**Forward Hedge Shares**”), in each case, on the terms and subject to the conditions set forth in this Agreement, any Confirmation and any Terms Agreement, as applicable. The Company, the Agents and the Forward Purchasers understand that the aggregate gross sales price of Shares to be sold pursuant to this Agreement (including Forward Hedge Shares but not including any Confirmation Shares (as defined below)) shall not exceed \$250,000,000 in the aggregate (the “**Maximum Amount**”). Any Shares issued and sold by the Company through any Agent, acting as sales agent for the Company, or to any Agent, acting as principal, pursuant to this Agreement and, if applicable, any Terms Agreement, are hereinafter sometimes called “**Primary Shares**.” Any Shares to be delivered by the Company to any Forward Purchaser in settlement of all or any portion of the Company’s obligations under any Confirmation are hereinafter sometimes called “**Confirmation Shares**”.

The Company has prepared and filed with the Securities and Exchange Commission (the “**Commission**”) an automatic shelf registration statement on Form S-3 (File No. 333-262627) to be used in connection with the public offering and sale of certain securities of the Company, including the Shares. Such registration statement (the “**Registration Statement**”), as of any time, means such registration statement as amended by any post-effective amendments thereto at such time, including the financial statements, exhibits and schedules thereto at such time and the documents incorporated or deemed to be incorporated by reference therein pursuant to Rule 430B (“**Rule 430B**”) under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the “**Securities Act**”); provided, however, that “**Registration Statement**” without reference to a time means such registration statement as amended by any post-effective amendments thereto as of the time of the first contract of sale for the Shares, which time shall be considered the “**new effective date**” of the Registration Statement with respect to the Shares within the meaning of paragraph (f)(2) of Rule 430B (“**Rule 430B(f)(2)**”), including the financial statements, exhibits and schedules thereto at such time and the documents incorporated or deemed to be incorporated by reference therein. The base prospectus filed as part of the Registration Statement, as amended in the form in which it has been filed most recently with the Commission in accordance with Section 3(b) or 3(c) hereof, including the documents incorporated or deemed incorporated by reference therein, is referred to herein as the “**Base Prospectus**”.

Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus supplement relating to the Shares in accordance with the provisions of Rule 424(b) under the Securities Act (“**Rule 424(b)**”). Such final prospectus supplement, as amended by the prospectus supplement filed most recently with the Commission in accordance with Section 3(b), 3(c) or 3(n) hereof, as the case may be, including the documents incorporated or deemed to be incorporated by reference therein, is referred to herein as the “**Prospectus Supplement**”. The Base Prospectus, as amended by the Prospectus Supplement and any applicable pricing supplement thereto, in the form the Base Prospectus, the Prospectus Supplement and any such pricing supplement are first furnished to the Agents for use in connection with the offering and sale of Shares, are collectively referred to herein as the “**Prospectus**”. For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus or the Prospectus or any amendment or supplement thereto shall be deemed to include the copy filed with the Commission on its Electronic Data Gathering, Analysis and Retrieval system (or any successor system)(“**EDGAR**”).

As used in this Agreement:

“**Applicable Time**” means, with respect to any offer and sale of Shares, the first time that a purchaser shall agree to purchase Shares through the Agent, acting as sales agent or forward seller, or from the Agent, acting as principal, pursuant to this Agreement or any relevant Terms Agreement, or such other time as agreed by the Company and the applicable Agent.

“**General Disclosure Package**” means each Issuer General Use Free Writing Prospectus, if any, issued prior to the Applicable Time, the most recent Prospectus filed with the Commission in accordance with Section 3(b), 3(c) or 3(n) hereof that is delivered to investors prior to the Applicable Time and the number of Shares and the initial offering price per Share, all considered together.

“**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus,” as defined in Rule 433 under the Securities Act (“**Rule 433**”), including, without limitation, any “free writing prospectus” (as defined in Rule 405 under the Securities Act (“**Rule 405**”)) relating to the Shares that is (i) required to be filed with the Commission by the Company, (ii) a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, or (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Shares or of the offering thereof that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“**Issuer General Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus approved by the Agents or, in the case of a specific offer and sale of Shares, the applicable Agents pursuant to Section 3(l) hereof that is furnished to the Agents or such Agents, as the case may be, for general public sale to investors, as evidenced by communications between the Company and the Agents or such Agents, as the case may be.

“**Issuer Limited Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

All references in this Agreement to financial statements and schedules and other information which is “contained”, “included”, “made”, “stated” or “referred to” (or other references of like import) in the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include all such financial statements and schedules and other information incorporated or deemed incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, prior to the Applicable Time relating to the particular Shares; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include the filing of any document under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the “**Exchange Act**”) incorporated or deemed to be incorporated by reference in the Registration Statement, such preliminary prospectus or the Prospectus, as the case may be, at or after the Applicable Time relating to the particular Shares.

Section 1. *Representations and Warranties.* Each of the Transaction Entities, jointly and severally, represents and warrants to each Agent and Forward Purchaser at the date of this Agreement, each Registration Statement Amendment Date (as defined in Section 3(o) hereof), each Company Periodic Report Date (as defined in Section 3(n) hereof), each Company Earnings Report Date (as defined in Section 3(o) hereof), each Request Date (as defined in Section 3(o) hereof), each Applicable Time and each Settlement Date (as defined in Section 2(i) hereof) (collectively, a “**Representation Date**”), and agrees with each Agent and Forward Purchaser, as follows:

- (a) The Registration Statement and any post-effective amendment thereto have become effective under the Securities Act. The Registration Statement is an automatic shelf registration statement under Rule 405 and the Shares have been and remain eligible for registration by the Company on such automatic shelf registration statement. No notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company. No order suspending the effectiveness of the Registration Statement has been issued by the Commission and, to the knowledge of the Company, no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company has been initiated or threatened by the Commission. Each of the Registration Statement and any post-effective amendment thereto, at the time of effectiveness and as of each deemed effective date with respect to the Agents pursuant to Rule 430B(f)(2), complied and will comply in all material respects with the Securities Act. Each of any preliminary prospectus and the Prospectus and any amendment or supplement thereto, at the time it was filed with the Commission, complied in all material respects with the requirements of the Securities Act.
- (b) At each Applicable Time, neither (A) the General Disclosure Package nor (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b) or at each Settlement Date, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, at the time the Registration Statement became effective or when such documents incorporated by reference were or hereafter are filed with the Commission, as the case may be, when read together with the other information in the Registration Statement, the General Disclosure Package or the Prospectus, as the case may be, when filed with the Commission, conformed, conform and will conform in all material respects to the requirements of the Exchange Act, and none of such documents contained, contain or will contain any untrue statement of a material fact or omitted, omit or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations in this Section 1(b) do not apply to any statements or omissions made in reliance upon and in conformity with information relating to any Agent or Forward Purchaser furnished to the Company in writing by such Agent or Forward Purchaser expressly for use in any such document and any amendment or supplement thereto, it being understood and agreed that the information furnished by any Agent or Forward Purchaser consists only of the information described as such in Section 6(b) hereof.

- (c) No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or any amendment or supplement thereto, including any document incorporated by reference therein, that has not been superseded or modified. Any offer that is a written communication relating to the Shares made prior to the initial filing of the Registration Statement by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) under the Securities Act) has been filed with the Commission in accordance with the exemption provided by Rule 163 under the Securities Act (“**Rule 163**”) and otherwise complied in all material respects with the requirements of Rule 163, including, without limitation, the legending requirement, to qualify such offer for the exemption from Section 5(c) of the Securities Act provided by Rule 163.
- (d) (i) At the original effectiveness of the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Shares in reliance on the exemption of Rule 163, (iv) at the date of this Agreement, and (v) at each Applicable Time, the Company was and is a “well-known seasoned issuer”, as defined in Rule 405.
- (e) The Company has at all relevant times met, meets and will at all relevant times meet the requirements of Rule 164 for the use of any free writing prospectus (as defined in Rule 405) in connection with the offering of the Shares.
- (f) (i) At the time of filing the Registration Statement and any post-effective amendment thereto, (ii) at the earliest time thereafter that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Shares, (iii) at the date of this Agreement and (iv) at each Applicable Time, the Company was not and is not an “ineligible issuer,” as defined in Rule 405, without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer.
- (g) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own or lease its property and to conduct its business as described in each of the General Disclosure Package and the Prospectus, and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not, singly or in the aggregate, have a material adverse effect on the Transaction Entities and their subsidiaries, taken as a whole, or on the performance by the Company of their respective obligations under this Agreement and any Confirmation (collectively, a “**Material Adverse Effect**”). As used herein, “subsidiary” or “subsidiaries” means the direct and indirect subsidiary or subsidiaries of the Company and/or the Operating Partnership, as applicable, but not, for the avoidance of doubt, any unconsolidated joint venture of the Company or the Operating Partnership.

- (h) The Operating Partnership has been duly formed, is validly existing as a limited partnership in good standing under the laws of the jurisdiction of its formation, has the limited partnership power and authority to own or lease its property and to conduct its business as described in each of the General Disclosure Package and the Prospectus, and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not, singly or in the aggregate, have a Material Adverse Effect. Phillips Edison Grocery Center OP GP I LLC, a wholly-owned subsidiary of the Company, is the sole general partner of the Operating Partnership and has the power and authority to cause the Operating Partnership to enter into and perform the Operating Partnership's obligations under this Agreement.
- (i) The Fourth Amended and Restated Agreement of Limited Partnership of the Operating Partnership, dated March 31, 2018 (the "**Operating Partnership Agreement**"), is in full force and effect and, as of the most recent Company Periodic Report Date, the aggregate percentage interests of the Company in the Operating Partnership are as set forth in the General Disclosure Package and the Prospectus. The Company will contribute the proceeds from the sale of the Shares to the Operating Partnership in exchange for a number of units of limited partnership interest ("**OP Units**") equal to the number of Shares sold. All of the OP Units to be issued to the Company in consideration of the contribution of the proceeds from the sale of the Shares will be duly and validly authorized and issued, owned by the Company free and clear of all liens, encumbrances, equities or claims, and none of such OP Units will be issued in violation of any preemptive rights, resale rights, rights of first offer or refusal or other similar rights. The terms of the OP Units conform in all material respects to the description thereof contained in the General Disclosure Package and the Prospectus. Except as disclosed in the General Disclosure Package and the Prospectus, (A) no OP Units are reserved for any purpose, (B) there are no outstanding securities convertible into or exchangeable for any OP Units or any other ownership interests of the Operating Partnership, and (C) there are no outstanding options, rights (preemptive or otherwise) or warrants to purchase or subscribe for OP Units or any other ownership interests of the Operating Partnership.
- (j) Each subsidiary of the Company (other than the Operating Partnership) has been duly incorporated, organized or formed, is validly existing as a corporation or other business entity in good standing under the laws of the jurisdiction of its incorporation, organization or formation, has the corporate or other business entity power and authority to own or lease its property and to conduct its business as described in each of the General Disclosure Package and the Prospectus, and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not, singly or in the aggregate, have a Material Adverse Effect; and all of the issued shares of capital stock or other equity interests of each subsidiary of the Company have been duly and validly authorized and issued and are fully paid (in the case of any subsidiaries that are organized as limited liability companies, limited partnerships or other business entities, to the extent required under the applicable limited liability company, limited partnership or other organizational agreement) and non-assessable (except in the case of interests held by general partners or similar entities under the applicable laws of other jurisdictions, in the case of any subsidiaries that are organized as limited liability companies, as such non-assessability may be affected by Section 18-607 or Section 18-804 of the Delaware Limited Liability Company Act or similar provisions under the applicable laws of other jurisdictions or the applicable limited liability company agreement and, in the case of any subsidiaries that are organized as limited partnerships, as such non-assessability may be affected by Section 17-607 or Section 17-804 of the Delaware Revised Uniform Limited Partnership Act or similar provisions under the applicable laws of other jurisdictions or the applicable limited partnership agreement), and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims.

- (k) Except as disclosed in the General Disclosure Package and the Prospectus, no subsidiary of the Company (including the Operating Partnership) is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or similar ownership interest, from repaying to the Company any loans or advances to such subsidiary from the Company, or, except as prohibited by any mortgage or other loan documents, from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.
- (l) This Agreement has been duly authorized, executed and delivered by each of the Transaction Entities.
- (m) Each Confirmation has been duly authorized and, when executed and delivered by the Company (assuming due authorization, execution and delivery by the applicable Forward Purchaser), will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws relating to or affecting creditors' rights and general principles of equity and except as rights to indemnity and contribution thereunder may be limited by applicable law or policies underlying such law.
- (n) The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in each of the General Disclosure Package and the Prospectus.
- (o) The issued and outstanding shares of capital stock of the Company have been duly authorized and are validly issued, fully paid and non-assessable, are not subject to any preemptive or similar rights and have been offered and sold in compliance with U.S. federal and applicable securities laws. Except as described in or expressly contemplated by the General Disclosure Package and the Prospectus, there are no outstanding rights (including, without limitation, preemptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options.
- (p) The Shares have been duly authorized and, when issued, delivered and paid for in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, and the issuance of the Shares will not be subject to any preemptive or similar rights. The Confirmation Shares have been duly authorized for issuance under any Confirmation and, when the Confirmation Shares, if any, are issued and delivered by the Company to the applicable Forward Purchaser pursuant to any Confirmation against payment of any consideration required to be paid by the Forward Purchaser pursuant to the terms of such Confirmation, such Confirmation Shares will be validly issued, fully paid and non-assessable, and the issuance thereof will not be subject to the preemptive or other similar rights. The Common Stock has been registered pursuant to Section 12(b) of the Exchange Act.

- (q) The execution and delivery by each of the Transaction Entities of, and the performance by each of the Transaction Entities of their respective obligations under, this Agreement and any Confirmation will not conflict with, result in a breach or violation of, or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries, including the Operating Partnership, pursuant to, (i) any provision of applicable law or the certificate of incorporation or bylaws of the Company, the certificate of limited partnership of the Operating Partnership and the Operating Partnership Agreement, (ii) any agreement or other instrument binding upon the Transaction Entities or any of their subsidiaries that is material to the Transaction Entities and their subsidiaries, taken as a whole, or (iii) any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Transaction Entities or any of their subsidiaries, except, in the case of clauses (ii) and (iii) above, for any such conflicts, breaches, violations, liens charges or encumbrances that would not, singly or in the aggregate, have a Material Adverse Effect; and no consent, approval, authorization or order of, or qualification with, any governmental body, agency or court is required for the performance by the Transaction Entities of their respective obligations under this Agreement and any Confirmation, except for the registration of the Shares under the Securities Act and such as may be required by the Financial Industry Regulatory Authority, Inc. (“FINRA”) or the securities or Blue Sky laws of the various states in connection with the offer and sale of the Shares.
- (r) Neither the Transaction Entities nor any of their subsidiaries is (i) in violation of its certificate of incorporation or bylaws or similar organizational documents, or (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company, the Operating Partnership or any of their subsidiaries is a party or by which the Company, the Operating Partnership or any of their subsidiaries is bound or to which any of the property or assets of the Company, the Operating Partnership or any of their subsidiaries is subject, except, in the case of clause (ii) above, for any such default or violation that would not, singly or in the aggregate, have a Material Adverse Effect.
- (s) There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Transaction Entities and their subsidiaries, taken as a whole, from those set forth in the General Disclosure Package and the Prospectus.
- (t) There are no legal, governmental or regulatory proceedings, actions, investigations, demands, claims, suits, arbitrations or inquiries (collectively, “**Proceedings**”) pending or, to the knowledge of the Transaction Entities, threatened to which the Transaction Entities or any of their subsidiaries is a party or to which any of the properties of the Transaction Entities or any of their subsidiaries is subject (i) other than Proceedings accurately described in all material respects in each of the General Disclosure Package and the Prospectus and proceedings that would not, singly or in the aggregate, have a Material Adverse Effect or (ii) that are required to be described in the General Disclosure Package and the Prospectus and are not so described; and there are no statutes, regulations, contracts or other documents that are required to be described in the General Disclosure Package and the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.
- (u) None of the Transaction Entities is, and after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described in each of the General Disclosure Package and the Prospectus, none of the Transaction Entities will be, required to register as an “investment company” or an entity “controlled” by an “investment company” as such terms are defined in the Investment Company Act of 1940, as amended.
- (v) The Transaction Entities and each of their subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, “**Environmental Laws**”), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, have a Material Adverse Effect.

- (w) There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, have a Material Adverse Effect.
- (x) There are no contracts, agreements or understandings between the Transaction Entities and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company, except as described in the General Disclosure Package and the Prospectus, or to require the Company to include such securities with the Shares registered pursuant to the Registration Statement.
- (y) (i) None of the Transaction Entities, any of their subsidiaries or any director or officer thereof or, to the Transaction Entities' knowledge, any affiliate, employee, agent or representative of the Transaction Entities or of any of their subsidiaries has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment, giving or receipt of money, property, gifts or anything else of value, directly or indirectly, to any government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) ("**Government Official**") in order to influence official action, or to any person in violation of any applicable anti-corruption laws, (ii) the Transaction Entities and each of their subsidiaries have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with such laws, and (iii) neither the Transaction Entities nor any of their subsidiaries will use, directly or indirectly, the proceeds of the offering in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any applicable anti-corruption laws.
- (z) The operations of the Transaction Entities and each of their subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where each of the Transaction Entities and their subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Transaction Entities or any of their subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Transaction Entities, threatened.
- (aa) No relationship, direct or indirect, exists between or among either of the Transaction Entities or any of their subsidiaries, on the one hand, and the directors, officers, stockholders, customers, suppliers or other affiliates of the Transaction Entities or any of their subsidiaries, on the other, that is required by the Securities Act to be described in each of the General Disclosure Package and the Prospectus and that is not so described.

- (bb) (i) None of the Transaction Entities, any of their subsidiaries or any director or officer thereof or, to the Transaction Entities' knowledge, any agent, affiliate, employee or representative of the Transaction Entities or any of their subsidiaries is an individual or entity ("**Person**") that is, or is owned or controlled by one or more Persons that are:
- (A) the subject of any sanctions administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"), or
 - (B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, or any other Covered Region of Ukraine identified pursuant to Executive Order 14065, Crimea, Cuba, Iran, North Korea and Syria).
- (ii) The Transaction Entities will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:
- (A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or
 - (B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).
- (iii) For the past five years, the Transaction Entities and each of their subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.
- (cc) Subsequent to the respective dates as of which information is given in and as otherwise disclosed in each of the General Disclosure Package and the Prospectus, (i) the Transaction Entities and their subsidiaries, taken as a whole, have not incurred any material liability or obligation, direct or contingent, nor entered into any material transaction, (ii) neither of the Transaction Entities has purchased or redeemed a material amount of its outstanding capital stock or partnership interests, nor declared, paid or otherwise made any dividend or distribution of any kind other than ordinary and customary dividends, and (iii) there has not been any material change in the capital stock, partnership interests, short term debt or long term debt of the Transaction Entities and their subsidiaries, taken as a whole.

- (dd) (i) The Transaction Entities and each of their subsidiaries have good and marketable title in fee simple to, or leasehold interest under a lease in, the real properties owned or leased by the Transaction Entities and their respective subsidiaries (collectively, the “**Properties**”), in each case, free and clear of all security interests, mortgages, pledges, liens, encumbrances, claims or equities of any kind other than those that (A) are described in the General Disclosure Package and the Prospectus or (B) do not, singly or in the aggregate, materially affect the value of such Property and do not materially interfere with the use made and proposed to be made of such Property by the Transaction Entities and any of their respective subsidiaries; (ii) except as would not, singly or in the aggregate, result in a Material Adverse Effect, (A) each of the leases under which a Transaction Entity or one of its subsidiaries is a tenant relating to a Property are in full force and effect and no default or event of default has occurred under any such lease with respect to such Property none of the Transaction Entities or any of their respective subsidiaries has received any notice of any event which, whether with or without the passage of time or the giving of notice, or both, would constitute a default under such lease and (B) none of the Transaction Entities or any of their respective subsidiaries has received any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Transaction Entities or any of their respective subsidiaries under any of the leases mentioned above, or affecting or questioning the rights of the Transaction Entities and any of their respective subsidiaries to the continued possession of the leased premises under any such lease; (iii) except as disclosed in the General Disclosure Package and the Prospectus, no tenant under any of the leases of the Properties to which a Transaction Entity or any of its subsidiaries is a party (as a landlord) (the “**Leases**”) has a right of first refusal or an option to purchase any Property, which, if exercised, would reasonably be expected to have a Material Adverse Effect; (iv) the Transaction Entities have no knowledge that any Property fails to comply with all applicable codes, laws and regulations (including, without limitation, building and zoning codes, laws and regulations and laws relating to access to such Property), except for such failures to comply that would not, singly or in the aggregate, result in a Material Adverse Effect; (v) except as disclosed in the General Disclosure Package and the Prospectus, no mortgage or deed of trust encumbering any Property is convertible into ownership interests in a Transaction Entity or any of its subsidiaries; and (vi) except as described in the General Disclosure Package and the Prospectus, none of the Transaction Entities or any of their respective subsidiaries or, to the knowledge of either of the Transaction Parties, any lessee under a Lease is in default under any of the Leases, and none of the Transaction Entities or any of their respective subsidiaries knows of any event which, whether with or without the passage of time or the giving of notice, or both, would constitute a default under any of the Leases, except in each case, for such defaults that would not, singly or in the aggregate, result in a Material Adverse Effect.
- (ee) (i) The Transaction Entities and their subsidiaries own or have a valid license to all patents, inventions, copyrights, know how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names (collectively, “**Intellectual Property Rights**”) used in or reasonably necessary to the conduct of their businesses, except where the failure to own or license such Intellectual Property Rights would not, singly or in the aggregate, have a Material Adverse Effect on the Transaction Entities and their subsidiaries, taken as a whole, (ii) neither the Transaction Entities nor any of their subsidiaries has received any written notice alleging any infringement, misappropriation or other violation of Intellectual Property Rights of others which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect, (iii) to the Transaction Entities’ knowledge, neither the Transaction Entities nor any of their subsidiaries infringes, misappropriates or otherwise violates, or has infringed, misappropriated, or otherwise violated any Intellectual Property Rights of others, and (iv) the Transaction Entities and their subsidiaries use, and have used, commercially reasonable efforts to appropriately maintain all information intended to be maintained as a trade secret.
- (ff) (i) Except as would not, singly or in the aggregate, have a Material Adverse Effect, the Transaction Entities and each of their subsidiaries have complied and are presently in compliance with all internal privacy policies, contractual obligations, applicable laws, statutes, judgments, orders, rules and regulations of any court or arbitrator or other governmental or regulatory authority and any other legal obligations, in each case, relating to the collection, use, transfer, import, export, storage, protection, disposal and disclosure by the Transaction Entities or any of their subsidiaries of personal, personally identifiable, household, sensitive, confidential or regulated data (“**Data Security Obligations**”, and such data, “**Data**”), and (ii) the Transaction Entities have not received any written notification of or written complaint regarding and are unaware of any other facts that, individually or in the aggregate, would reasonably indicate non-compliance with any Data Security Obligation and that, singly or in the aggregate, would have a Material Adverse Effect.

- (gg) The Transaction Entities and each of their subsidiaries have taken all commercially reasonable technical and organizational measures necessary to protect the information technology systems and Data used in connection with the operation of the Transaction Entities' and their subsidiaries' businesses. There has been no breach, destruction, loss, unauthorized distribution, use, access, disablement, misappropriation or modification, or other compromise or misuse of or relating to any information technology system or Data used in connection with the operation of the Transaction Entities and their subsidiaries' businesses, except for those that have been remedied without material cost, liability or obligation.
- (hh) Except as would not, individually or in the aggregate, have a Material Adverse Effect, no labor dispute with the employees of the Transaction Entities or any of their subsidiaries exists, or, to the knowledge of the Transaction Entities, is imminent that would, singly or in the aggregate, have a Material Adverse Effect; and the Transaction Entities are not aware of any existing, threatened or imminent labor disturbance by the employees of any of their principal suppliers, manufacturers or contractors that would, singly or in the aggregate, have a Material Adverse Effect.
- (ii) (i) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), for which the Company or any subsidiary of the Company would have any liability (each, a "Plan") has been maintained in compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the "Code"), (ii) with respect to any Plan, to the knowledge of the Transaction Entities, no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any "benefit plan investor" within the meaning of the Department of Labor regulation at 29 C.F.R. § 2510.3-101, as modified by Section 3(42) of ERISA, excluding transactions effected pursuant to a statutory or administrative exemption, (iii) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified, and, to the knowledge of the Transaction Entities, nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification, and (iv) none of the Company or any member of its "Controlled Group" (defined as any entity, whether or not incorporated, that is under common control with the Company within the meaning of Section 401(a)(14) of ERISA or any entity that would be regarded as a single employer with the Company under Section 414(b),(c),(m) or (o) of the Code) has any liability under Title IV of ERISA, except in each case with respect to the events or conditions set forth in (i) through (iv) hereof, as would not, singly or in the aggregate, have a Material Adverse Effect.
- (jj) The Transaction Entities and each of their subsidiaries have insurance policies issued by insurers of recognized financial responsibility covering the Transaction Entities' and each of their subsidiaries' respective Properties, operations, personnel and businesses, including business interruption insurance, which insurance insures against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged, except as would not, singly or in the aggregate, result in a Material Adverse Effect; and neither the Transaction Entities nor any of their subsidiaries has any reason to believe that they will not be able to renew their existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue their business at a cost that would not, singly or in the aggregate, have a Material Adverse Effect.

- (kk) The Transaction Entities and each of their subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective businesses, and neither the Transaction Entities nor any of their subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect.
- (ll) The financial statements included in each of the General Disclosure Package and the Prospectus, together with the related schedules and notes thereto, comply as to form in all material respects with the applicable accounting requirements of the Securities Act and present fairly the consolidated financial position of the Company and its consolidated subsidiaries as of the dates shown and its results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with generally accepted accounting principles in the United States (“**U.S. GAAP**”) applied on a consistent basis throughout the periods covered thereby except for any normal year-end adjustments in the Company’s quarterly financial statements. The other financial information of the Company and its consolidated subsidiaries included in each of the General Disclosure Package and the Prospectus has been derived from the accounting records of the Company and its consolidated subsidiaries and presents fairly in all material respects the information shown thereby.
- (mm) The statistical, industry-related and market-related data, if any, included in each of the General Disclosure Package and the Prospectus are based on or derived from sources that the Transaction Entities reasonably and in good faith believe are reliable and accurate and such data is consistent with the sources from which they are derived, in each case in all material respects.
- (nn) Deloitte & Touche LLP, who have certified certain financial statements of the Company and its subsidiaries and delivered its report with respect to the audited consolidated financial statements and schedules filed with the Commission as part of the Registration Statement and included in each of the General Disclosure Package and the Prospectus, is an independent registered public accounting firm with respect to the Transaction Entities within the meaning of the Securities Act and the applicable rules and regulations thereunder adopted by the Commission and the Public Company Accounting Oversight Board (United States).
- (oo) The Company and its consolidated subsidiaries maintain “internal control over financial reporting” (as defined in Rule 13a-15(f) of the Exchange Act) that complies with the applicable requirements of the Exchange Act and a system of accounting controls that provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management’s general or specific authorization, (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences, and (v) the interactive data in eXtensible Business Reporting Language included in the Registration Statement is accurate. Since the end of the Company’s most recent audited fiscal year, there has been (A) no material weakness in the Company’s internal control over financial reporting (whether or not remediated) and (B) no change in the Company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s control over financial reporting.

- (pp) The Company and its consolidated subsidiaries maintain an effective system of “disclosure controls and procedures” (as defined in Rule 13a-15(e) of the Exchange Act) that complies with the applicable requirements of the Exchange Act and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure. The Company and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.
- (qq) There is and has been no failure on the part of either of the Transaction Entities or any of their respective directors or officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated in connection therewith with which the Company is required to comply, including Section 402 related to loans and Sections 302 and 906 related to certifications.
- (rr) The Shares have been approved for listing on the Nasdaq Stock Market LLC (“**Nasdaq**”), subject to official notice of issuance.
- (ss) Each of the Transaction Entities and their subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date of this Agreement or have requested extensions thereof (except where the failure to file would not, singly or in the aggregate, have a Material Adverse Effect) and have paid all taxes required to be paid by the Transaction Entities and their subsidiaries thereon (except for cases in which the failure to file or pay would not, singly or in the aggregate, have a Material Adverse Effect, or, except as currently being contested in good faith and for which reserves required by U.S. GAAP have been created in the financial statements of the Company), and no tax deficiency has been determined adversely to the Transaction Entities or any of their subsidiaries which, singly or in the aggregate, has had (nor do the Transaction Entities nor any of their subsidiaries have any notice or knowledge of any tax deficiency which could reasonably be expected to be determined adversely to the Transaction Entities or their subsidiaries and which could reasonably be expected to have) a Material Adverse Effect.
- (tt) Commencing with its taxable year ended December 31, 2010, the Company has been organized and has operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a “**REIT**”) under Sections 856 through 860 of the Code, and its form of organization and proposed method of operation, as described in the General Disclosure Package and the Prospectus, will enable it to continue to meet the requirements for qualification and taxation as a REIT under the Code. Each of the Company’s corporate subsidiaries that has elected, together with the Company, to be a taxable REIT subsidiary of the Company is in compliance with all requirements applicable to a “taxable REIT subsidiary” within the meaning of Section 856(l) of the Code and all applicable regulations under the Code. Each of the Company’s subsidiaries that is not a “taxable REIT subsidiary” of the Company is, and has been at all times in which it was a subsidiary of the Company, classified as a disregarded entity, a partnership or a REIT for U.S. federal income tax purposes (for the avoidance of doubt, “subsidiary” does not include any homeowners association or other similar association or organization in which the Company or any of its subsidiaries is a member in connection with property owned by the Company or such subsidiary, provided that any interest of the Company or such subsidiary in such association or organization constitutes a “real estate asset” within the meaning of Section 856(c)(5)(B) of the Code). All statements regarding the Company’s qualification and taxation as a REIT and descriptions of the Company’s organization and proposed method of operation (to the extent they relate to the Company’s qualification and taxation as a REIT) set forth in the General Disclosure Package and the Prospectus are accurate in all material respects.
- (uu) The interactive data in eXtensible Business Reporting Language included in the Registration Statement, the General Disclosure Package and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission’s rules and guidelines applicable thereto.

- (vv) Neither of the Transaction Entities nor any of their respective subsidiaries or affiliates has taken, directly or indirectly, any action designed to or that would reasonably be expected to cause or result in any stabilization or manipulation of the price of the Shares.
- (ww) Neither the issuance, sale and delivery of the Shares nor the application of the proceeds thereof by the Company as described in each of the General Disclosure Package and the Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.
- (xx) Neither of the Transaction Entities nor any of their respective subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any of them or any Agent or Forward Purchaser for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Shares.
- (yy) All documents filed by the Company pursuant to Sections 12, 13, 14 or 15 of the Exchange Act, when they became or, prior to any Representation Date, become effective or were or, prior to any Representation Date, are filed with the Commission, as the case may be, complied or will comply in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable.

Section 2. Sale and Delivery of Shares.

(a)

(i) Subject to the terms and conditions set forth herein, the Company may issue and sell Shares through any applicable Agent acting as sales agent or directly to the applicable Agent acting as principal from time to time. Sales of the Shares, if any, through an Agent acting as sales agent or directly to an Agent acting as principal will be made by means of ordinary brokers' transactions on Nasdaq, in negotiated transactions or in transactions that are deemed to be "at-the-market" offerings as defined in Rule 415 under the Securities Act, including sales made to or through a market maker other than on an exchange, in block transactions or by any other method permitted by law, at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices.

(ii) In addition, subject to the terms and conditions set forth herein and provided that the Company enters into a Confirmation with a Forward Purchaser with respect to a relevant Forward in accordance with Section 2(b), the Company may, in consultation with the Forward Purchaser and the applicable Agent, instruct such Agent, acting as forward seller on behalf of such Forward Purchaser, to offer and sell the Shares borrowed by such Forward Purchaser from third parties to hedge such Forward Purchaser's exposure under the Forward, as contemplated by the relevant Forward Instruction Notice (as defined in Section 2(b)). Sales of the Shares, if any, through the Agents acting as forward seller for the Forward Purchasers will be made by means of ordinary brokers' transactions on Nasdaq, in negotiated transactions or in transactions that are deemed to be "at-the-market" offerings as defined in Rule 415 under the Securities Act, including sales made to or through a market maker other than on an exchange, in block transactions or by any other method permitted by law, at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices.

(b) Such instructions may be given and the Shares may be sold through an Agent on an agented basis on any day (other than a day on which Nasdaq is scheduled to close prior to its regular weekday closing time) (each, a “**Trading Day**”) on which (i) the Company has instructed such Agent to make such sales, on behalf of the Company or on behalf of the applicable Forward Purchaser as forward seller, and (ii) the Company has satisfied or such Agent (and if applicable, such Forward Purchaser) has waived the covenants and conditions specified in Sections 3 and 5 hereof. On any Trading Day, the Company may sell Shares through only one Agent; provided that the foregoing shall not prohibit the Company and the Operating Partnership from entering into a Terms Agreement with two or more Agents providing for such Agents, each acting severally as principal, to offer and sell Shares as set forth in the Terms Agreement or prohibit or limit in any respect the offer or sale of Shares purchased by any Agent, as principal, from the Company pursuant to the Terms Agreement. If the Company determines to sell Shares through an Agent, it shall (i) in the case of sales on behalf of the Company, instruct the applicable Agent by telephone (confirmed promptly by facsimile transmission or email, which confirmation will be promptly acknowledged by such Agent, including whether such Agent accepts or declines such instructions in its sole discretion) as to the maximum number and the maximum aggregate gross sales price of Shares to be sold on such Trading Day and the minimum price per Share at which such Shares may be sold, or (ii) in the case of a Forward, propose to the applicable Forward Purchaser and such Agent acting as forward seller, by delivery of an instruction by email, to execute a Forward with the parameters specified in the next sentence. If the Company desires that a Forward Purchaser enter into a Confirmation and that the applicable Agent sell Forward Hedge Shares as forward seller on behalf of such Forward Purchaser pursuant to such Confirmation in accordance with Section 2(a)(ii), the Company’s instruction shall be substantially in the form set forth in Annex II (or such other form as the Company, such Forward Purchaser and the relevant Agent shall agree) (the “**Forward Instruction Notice**”) and shall include: (A) the maximum number, maximum aggregate gross sales price and minimum sales price per share of Forward Hedge Shares to be sold by the relevant Agent over the Forward Hedge Selling Period specified in such Forward Instruction Notice (such maximum aggregate gross sales price, the “**Aggregate Maximum Forward Hedge Amount**”) and (B) the desired terms for the related Confirmation. The relevant Forward Purchaser and/or the Agent shall promptly, and in any event prior to the opening of trading on the Trading Day following the Trading Day on which such Forward Instruction Notice was delivered, choose to (A) accept the terms proposed in such Forward Instruction Notice, (B) decline to participate in the proposed Forward or (C) propose amended terms upon which the Forward Purchaser and/or the Agent would participate in the proposed Forward; provided, however, that in the case of clause (C), the Company may accept or reject such amended terms in its sole discretion no later than on the Trading Day immediately following the Trading Day on which the Forward Purchaser and/or the Agent proposed such amended terms. Promptly upon the acceptance of a Forward Instruction Notice (or its amended terms, as applicable, and in any event prior to the opening of trading on the immediately following Trading Day), the Company and the Forward Purchaser shall enter into a Confirmation substantially in the form of Exhibit E hereto and consistent with such Forward Instruction Notice.

“**Forward Hedge Selling Period**” means the period of such number of consecutive Trading Days (as determined by the Company in the Company’s sole discretion and specified in the applicable Forward Instruction Notice), beginning on the date specified in the such Forward Instruction Notice or, if such date is not a Trading Day, the next Trading Day following such date and ending on the last such Trading Day or such earlier date on which the Agent, as forward seller, shall have completed the sale of Forward Hedge Shares in connection with the relevant Confirmation; provided, however, that if, prior to the scheduled end of any Forward Hedge Selling Period (x) any event occurs that would permit the Forward Purchaser to designate a “Scheduled Trading Day” as a “Termination Settlement Date” (as each such term is defined in the relevant Confirmation) under, and pursuant to the provisions of Section 7 of the relevant Confirmation or (y) a “Bankruptcy Termination Event” (as such term is defined in the relevant Confirmation) occurs, then the Forward Hedge Selling Period shall, upon the relevant Agent, as forward seller, becoming aware of such occurrence, immediately terminate as of the first such occurrence; and provided, further, that any Forward Hedge Selling Period then in effect shall immediately terminate upon the termination of this Agreement.

(c) Subject to the terms and conditions specified herein (including, without limitation, the accuracy of the representations and warranties of the Company and the performance by the Company of its covenants and other obligations, contained herein and the satisfaction of the additional conditions specified in Section 5 hereof), (A) the relevant Agent shall use its commercially reasonable efforts to sell all of the Shares so designated by the Company as sales agent and to which such Agent has agreed to act as sales agent (whether acting on behalf of the Company or as forward seller on behalf of the applicable Forward Purchaser) in accordance with the Company's instruction pursuant to Section 2(b) or the Forward Hedge Shares borrowed by the relevant Forward Purchaser pursuant to clause (B) below at such prices and in such amounts as contemplated by the Forward Instruction Notice, as applicable, and (B) the applicable Forward Purchaser shall use its commercially reasonable efforts to borrow or cause its affiliate to borrow at such times as required to settle such sales a number of Forward Hedge Shares sufficient to have an aggregate gross sale price as close as reasonably practicable to the Aggregate Maximum Forward Hedge Amount. On any Trading Day, the Company shall give at least one business day's prior written notice by facsimile transmission or email to the Agents as to any change of the Agent through whom sales of Shares as sales agent will be made. For the avoidance of doubt, the foregoing limitation shall not apply to sales solely to employees or security holders of the Company or its subsidiaries or to a trustee or other person acquiring Shares for the accounts of such persons in which either of the Agents is acting for the Company in a capacity other than as Agent under this Agreement. The Company, the Agents and the Forward Purchasers each acknowledge and agree that (i) there can be no assurance that any Agent will be successful in selling any Shares on an agented basis or that any Forward Purchaser will be successful in borrowing any Forward Hedge Shares, (ii) no Agent will incur any liability or obligation to the Company if it fails to sell Shares for any reason other than a failure to use its respective commercially reasonable efforts to sell such Shares as required by this Agreement (whether acting as sales agent on behalf of the Company or as forward seller on behalf of the Forward Purchaser) and (iii) other than to the extent set forth in the applicable Confirmation, no Forward Purchaser will incur any liability or obligation to the Company if it or its affiliate fails to borrow Forward Hedge Shares for any reason other than a failure by such Forward Purchaser to use its commercially reasonable efforts to borrow or cause its affiliate to borrow such Forward Hedge Shares as required by clause (B) above in this paragraph.

(d) The Company or the Agent through whom the sale of Shares are to be made as sales agent on any Trading Day may, upon notice to the other relevant parties by telephone (confirmed promptly by facsimile transmission or email, which confirmation will be promptly acknowledged by each receiving party), suspend the offering of Shares with respect to which such Agent is acting as sales agent for any reason and at any time; provided, however, that such suspension shall not affect or impair the parties' respective obligations with respect to (i) the Shares sold hereunder prior to the giving of such notice or (ii) any Confirmation executed and delivered by the Company and the relevant Forward Purchaser prior to the giving of such notice.

(e) The gross sales price of any Shares sold pursuant to this Agreement by the applicable Agent acting as sales agent of the Company or as forward seller shall be equal to, in the discretion of such Agent but subject to the specific instructions of the Company, the market price prevailing at the time of sale for the Shares sold by such Agent on Nasdaq or otherwise, at prices related to prevailing market prices or at negotiated prices. In connection with sales pursuant to Section 2(a)(i) of this Agreement, the compensation payable to an Agent for sales of Shares with respect to which such Agent acts as sales agent shall be at a mutually agreed rate, not to exceed 2.0% of the gross sales price for such Shares. The foregoing rate of compensation shall not apply when the Agent acts as principal pursuant to a Terms Agreement, in which case the Company may sell Shares to the Agent as principal at a price set forth in such Terms Agreement. In connection with sales pursuant to Section 2(a)(ii) of this Agreement, the compensation payable to the Agent for sales of Forward Hedge Shares with respect to which the Agent acts as forward seller, shall be reflected in a reduction not to exceed 2.0% from the Initial Forward Price (as such term is defined in the applicable Confirmation). The remaining proceeds, after further deduction for any transaction fees, transfer taxes or similar taxes or fees imposed by any Governmental Entity or self-regulatory organization in respect of such sales, shall constitute the net proceeds to the Company or the Forward Purchaser, as applicable, for such sales (the "**Net Proceeds**"). The applicable Agent shall notify the Company as promptly as practicable if any deduction referenced in the preceding sentence will be made. Notwithstanding the foregoing, in the event the Company engages an Agent as sales agent for the sale of Shares that would constitute a "distribution" within the meaning of Rule 100 of Regulation M under the Exchange Act, the Company and such Agent will agree to compensation for such Agent that is customary for such sales.

(f) If acting as sales agent hereunder, the applicable Agent shall provide written confirmation to the Company following the close of trading on Nasdaq on each Trading Day on which Shares are sold under this Agreement setting forth: (i) the number of Primary Shares and Forward Hedge Shares sold on such day, (ii) the aggregate gross sales proceeds of such Shares, (iii) the aggregate Net Proceeds to the Company or the Forward Purchaser, as applicable, (iv) the Initial Forward Price (as defined in the applicable Confirmation) as of such day under any Confirmation pursuant to which the Forward Hedge Shares were sold on such day, and (v) the aggregate compensation payable by the Company to such Agent with respect to such sales. If sales of Forward Hedge Shares are made by the Agent under a Confirmation, promptly, and in no event later than the opening of the first Trading Day following the Hedge Completion Date (as defined in such Confirmation), the Forward Purchaser shall execute and deliver to the Company a Pricing Supplement (as defined in such Confirmation).

(g) Under no circumstances shall the aggregate gross sales price or number, as the case may be, of Shares offered or sold pursuant to this Agreement, or which are the subject of instructions to an Agent as sales agent pursuant to Section 2(b) hereof (including offers and sales of Forward Hedge Shares on behalf of any relevant Forward Purchaser, but excluding Confirmation Shares), exceed the aggregate gross sales price or number, as the case may be, of Shares (i) referred to in the preamble paragraph of this Agreement, as reduced by prior sales of Shares under this Agreement, (ii) available for sale under the Registration Statement or (iii) duly authorized from time to time to be issued and sold under this Agreement by the Company or approved for listing on Nasdaq, and, in each case referred to in clause (ii) and (iii), notified to the Agents in writing. In addition, under no circumstances shall any Shares with respect to which the Agent acts as sales agent or principal be offered or sold, or be the subject of instructions to an Agent as sales agent pursuant to Section 2(b) hereof, at a price lower than the minimum price therefor duly authorized from time to time by the Company and notified to the Agents in writing. The Agents shall have no responsibility for maintaining records with respect to Shares available for sale under the Registration Statement or for determining the aggregate gross sales price, number or minimum price of Shares duly authorized by the Company.

(h) If the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the Exchange Act are not satisfied with respect to the Company or the Shares, the Company shall promptly notify the Agents and future offers and sales of Shares through the Agents on an agented basis under this Agreement shall be suspended until that or other exemptive provisions have been satisfied in the judgment of each party; provided, however, that such suspension shall not affect or impair the parties' respective obligations with respect to any Confirmation executed and delivered by the Company and the relevant Forward Purchaser prior to the giving of such notice.

(i) Each Settlement Date (as defined below) will occur on the second business day (or such earlier day as is industry practice for regular-way trading) that is also a Trading Day following the trade date on which such sales are made, unless another date shall be agreed to in writing by the Company and the applicable Agent (each such day, a “**Direct Settlement Date**”). On each Direct Settlement Date for the sale of Shares through an Agent as sales agent pursuant to Section 2(a)(i) hereof, such Shares shall be delivered by the Company to such Agent in book-entry form to such Agent’s account at The Depository Trust Company against payment by such Agent of the Net Proceeds from the sale of such Shares in same day funds delivered to an account designated by the Company. On each date of settlement for the sale of Forward Hedge Shares through the Agent as forward seller pursuant to Section 2(a)(ii) hereof (each such day, a “**Forward Settlement Date**,” and together with the Direct Settlement Date, a “**Settlement Date**”), such Shares shall be delivered by the applicable Forward Purchaser to the Agent in book entry form to the Agent’s account at The Depository Trust Company against payment by such Agent of the Net Proceeds from the sale of such Shares in same day funds delivered to an account designated by the applicable Forward Purchaser. If the Company shall default on its obligation to deliver Shares to the relevant Agent acting as sales agent on behalf of the Company on any Direct Settlement Date (and not including, for the avoidance of doubt, any Forward Hedge Shares intended to be borrowed and delivered by the relevant Forward Purchaser under a Confirmation on a Forward Settlement Date), the Company shall (i) indemnify and hold such Agent harmless against any loss, claim or damage arising from or as a result of such default by the Company and (ii) pay such Agent any commission to which it would otherwise be entitled absent such default. The applicable Net Proceeds on any Settlement Date shall always be delivered substantially simultaneously with the Shares delivered by the Company or the Forward Purchaser, as applicable.

(j) Notwithstanding any other provision of this Agreement, the Company shall not offer or sell, or instruct an Agent to offer or sell, any Shares through an Agent as sales agent (and, by notice to the Agents given by telephone (confirmed promptly by facsimile transmission or email), shall cancel any instructions for any such offer or sale of any Shares prior to the commencement of the periods referenced below), and no Agent shall be obligated to make any such offer or sale of Shares, (i) during any period in which the Company is, or could be deemed to be, in possession of material non-public information or (ii) except as provided in Section 2(k) hereof, at any time during the period commencing on the 10th business day prior to the time the Company issues a press release containing, or shall otherwise publicly announce, its earnings, revenues or other operating results for a fiscal period or periods (each, an “**Earnings Announcement**”) through and including the time that is 24 hours after the time that the Company files a Quarterly Report on Form 10-Q or an Annual Report on Form 10-K (a “**Filing Time**”) that includes consolidated financial statements as of and for the same fiscal period or periods, as the case may be, covered by such Earnings Announcement.

(k) Notwithstanding clause (ii) of Section 2(j) hereof, if the Company wishes to offer or sell Shares to an Agent as sales agent at any time during the period from and including an Earnings Announcement through and including the corresponding Filing Time, the Company shall first (i) prepare and deliver to such Agent and the applicable Forward Purchaser (with a copy to counsel for the Agents and the Forward Purchasers) a Current Report on Form 8-K that includes substantially the same financial and related information that was included in such Earnings Announcement (other than any earnings projections and similar forward-looking data and officers’ quotations) (each, an “**Earnings 8-K**”), in form and substance reasonably satisfactory to such Agent and the applicable Forward Purchaser, and, prior to its filing, obtain the written consent of such Agent to such filing (which consent shall not be unreasonably withheld, conditioned or delayed), (ii) provide such Agent and the applicable Forward Purchaser with the officers’ certificate, opinions and letters of counsel and accountants’ letter specified in Section 3(o), (p) and (q), respectively, hereof, (iii) afford such Agent and the applicable Forward Purchaser the opportunity to conduct a due diligence review in accordance with Section 3(t) hereof prior to filing such Earnings 8-K and (iv) file such Earnings 8-K with the Commission. For purposes of clarity, the parties hereto agree that (A) the delivery of any officers’ certificate, opinion or letter of counsel or accountants’ letter pursuant to this Section 2(k) shall not relieve the Company from any of its obligations under this Agreement with respect to any Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as the case may be, including, without limitation, the obligation to deliver officers’ certificates, opinions and letters of counsel and accountants’ letters as provided in Section 3(o), (p) and (q), respectively, hereof, and (B) this Section 2(k) shall in no way affect or limit the operation of clause (i) of Section 2(j) hereof, which shall have independent application.

(l) The Agents shall not have any obligation to purchase Shares as principal, whether from the Company or otherwise, unless the Company and the applicable Agents agree as set forth below. Shares purchased from the Company by the applicable Agents, individually or in a syndicate, as principal shall be made in accordance with terms agreed upon between such Agents and the Company as evidenced by a Terms Agreement. The applicable Agents' commitment to purchase Shares from the Company as principal shall be deemed to have been made on the basis of the accuracy of the representations and warranties of the Company, and performance by the Company of its covenants and other obligations, herein contained and shall be subject to the terms and conditions herein set forth. At the time of each Terms Agreement, the applicable Agents shall specify the requirements, if any, for the officers' certificate, opinions and letters of counsel and accountants' letter pursuant to Section 3(o), (p) and (q), respectively, hereof. In the event of a conflict between the terms of this Agreement and a Terms Agreement, the terms of such Terms Agreement shall control.

(m) Notwithstanding anything herein to the contrary, in the event that either (i) the relevant Forward Purchaser is unable to borrow and deliver a number of Forward Hedge Shares equal to the Aggregate Maximum Forward Hedge Amount for sale under this Agreement, as set forth in the relevant Forward Instruction Notice pursuant to Section 2(b), or (ii) in the good faith, commercially reasonable judgment of the Forward Purchasers, it is either impracticable to do so or the Forward Purchaser would incur a stock loan cost that is equal to or greater than 200 basis points per annum to do so, then the Agent, as forward seller, shall be required to sell on behalf of the Forward Purchaser only the aggregate number of Forward Hedge Shares that the Forward Purchaser is able to, and that in the commercially reasonable judgment of the Forward Purchaser it is practicable to, borrow below such cost.

Section 3. Covenants. The Company agrees with the Agents and the Forward Purchasers:

(a) *Compliance with Securities Regulations and Commission Requests*. During the period in which a prospectus relating to the Shares is required to be delivered under the Securities Act (whether physically or through compliance with Rules 153 or 172 under the Securities Act, or in lieu thereof, a notice referred to in Rule 173(a) under the Securities Act), the Company, subject to Section 3(b) and 3(c) hereof, will comply with the requirements of Rule 430B, and will notify the Agents and the Forward Purchasers as promptly as possible, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement or any new registration statement relating to the Shares shall become effective or any amendment or supplement to the Prospectus shall have been filed (other than an amendment or supplement providing solely for the determination of the terms of an offering of securities unless related to an offering of Shares as to which the Company will only be obligated to notify the applicable Agents), (ii) of the receipt of any comments from the Commission that are related to the Registration Statement or the Prospectus (including any information incorporated by reference therein), (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus, including any document incorporated by reference therein, or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or any notice of objection to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) or of the issuance of any order preventing or suspending the use of any preliminary prospectus or the Prospectus or any amendment or supplement thereto, or of the suspension of the qualification of any Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the Securities Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the Securities Act in connection with any offering of Shares. If the Company is in receipt of unresolved or open comments from the Commission regarding the Registration Statement or any new registration statement relating to the Shares, including any document incorporated by reference therein, then, prior to giving any instructions to any Agent to sell Shares pursuant to Section 2 hereof, the Company shall give the Agent one Trading Day's notice of such comments. In connection with a Terms Agreement, the Company will prepare and file with the Commission, subject to Section 3(c) hereof, a pricing supplement with respect to the offer and sale of Shares covered by such Terms Agreement. The Company will effect all filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the issuance of any stop, prevention or suspension order and, if any such order is issued, to obtain the lifting thereof at the earliest practicable moment. In the event of any issuance of a notice of objection, by the Commission, the Company shall use its reasonable best efforts to permit offers and sales of Shares by or through the Agents, including, without limitation, amending the Registration Statement or filing a new shelf registration statement relating thereto. The Company shall pay the required Commission filing fees relating to the Shares prior to the time the initial Prospectus Supplement is filed with the Commission or the time any subsequent Prospectus Supplement that increases gross offering price or number of Shares that may offered and sold under this Agreement from that referenced in the immediately preceding Prospectus Supplement filed with the Commission.

(b) *Continued Compliance with Securities Laws*. The Company will comply with the Securities Act and the Exchange Act so as to permit the completion of sales of Shares as contemplated in this Agreement and in the Registration Statement, the General Disclosure Package and the Prospectus. During the period in which a prospectus relating to the Shares is required to be delivered under the Securities Act (whether physically or through compliance with Rules 153 or 172 under the Securities Act, or in lieu thereof, a notice referred to in Rule 173(a) under the Securities Act), if any event shall occur or condition shall exist as a result of which it is necessary, in the reasonable opinion of counsel for the Agents and the Forward Purchasers or counsel to the Company, to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) amend or supplement the General Disclosure Package or the Prospectus in order that the General Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the General Disclosure Package or the Prospectus, as the case may be, including, without limitation, the filing of any document incorporated by reference therein, in order to comply with the requirements of the Securities Act or the Exchange Act, the Company will promptly (A) give the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents written notice of such event or condition, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents, as the case may be, with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement and use its best efforts to have any amendment to the Registration Statement declared effective by the Commission as soon as possible if the Company is no longer eligible to file an automatic shelf registration statement; provided, however, that the Company shall not file or use any such amendment or supplement to which the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents, as the case may be, or counsel for the Agents and the Forward Purchasers shall reasonably object.

(c) *Filing or Use of Amendments and Supplements.* During the period in which a prospectus relating to the Shares is required to be delivered under the Securities Act (whether physically or through compliance with Rules 153 or 172 under the Securities Act, or in lieu thereof, a notice referred to in Rule 173(a) under the Securities Act), the Company will give the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents, as the case may be, written notice of its intention to file or use (i) any amendment to the Registration Statement or any amendment or supplement to the General Disclosure Package or the Prospectus (other than an amendment or supplement thereto relating solely to an offering of securities other than an offering of Shares), whether pursuant to the Securities Act, the Exchange Act or otherwise, or (ii) any new Prospectus Supplement that includes information in addition to the information referred to in Section 3(n) hereof or (iii) a pricing supplement disclosing the offer and sale of Shares covered by a Terms Agreement, will furnish the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents, as the case may be, with copies of any such document a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file or use any such document to which the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents, as the case may be, or counsel for the Agents and the Forward Purchasers shall reasonably object.

(d) *Delivery of Registration Statements.* The Company has furnished or will deliver to the Agents and the Forward Purchasers and counsel for the Agents and the Forward Purchasers, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein) and signed copies of all consents and certificates of experts. The signed copies of the Registration Statement and each amendment thereto furnished to the Agents and the Forward Purchasers and counsel for the Agents and the Forward Purchasers will be identical to the electronically transmitted copies thereof filed with the Commission on EDGAR, except to the extent permitted by Regulation S-T.

(e) *Delivery of Prospectuses.* The Company will furnish to the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents, as the case may be, without charge, upon execution of this Agreement and thereafter during the period in which a prospectus is (or, but for the exception afforded by Rule 172 of the Securities Act (“**Rule 172**”), would be) required by the Securities Act to be delivered in connection with any offer or sale of Shares, such number of copies of the Prospectus (as amended or supplemented) as the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents, as the case may be, may reasonably request. The Company will also furnish, upon request of the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents, as the case may be, copies of the Prospectus (as amended or supplemented) to each exchange or market on which sales of Shares were made as may be required by the rules and regulations of such exchange or market. The Prospectus and any amendments or supplements thereto furnished in accordance with this Section will be identical to the electronically transmitted copies thereof filed with the Commission on EDGAR, except to the extent permitted by Regulation S-T.

(f) *Reporting Requirements.* The Company, during the period in which a prospectus is (or, but for the exception afforded by Rule 172, would be) required by the Securities Act to be delivered in connection with any offer or sale of Shares, will file all documents required to be filed with the Commission pursuant to the Exchange Act within the time periods prescribed by, and meeting the requirements of, the Exchange Act. Additionally, the Company shall report the use of the net proceeds from the sale of any Shares as may be required under the Securities Act, including, if applicable, Rule 463 under the Securities Act.

(g) *Blue Sky Qualifications.* If required by applicable law, the Company will use its reasonable best efforts, in cooperation with the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents, as the case may be, to qualify the Shares for offering and sale under the applicable securities laws of such states and non-U.S. jurisdictions as the Agents and the Forward Purchasers or, in the case of an offer and sale of Shares to the applicable Agents as principal, such Agents, as the case may be, may, from time to time, reasonably request and to maintain such qualifications in effect so long as required to complete the sale of the Shares contemplated by this Agreement; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(h) *Earnings Statement.* The Company will timely file such reports pursuant to the Exchange Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Agents and the Forward Purchasers the benefits contemplated by, the last paragraph of Section 11(a) of the Securities Act; provided that the Company will be deemed to have furnished such statement to its securityholders to the extent it is filed with the Commission on EDGAR.

(i) *Use of Proceeds.* The Company will use the Net Proceeds received by it from the sale of the Shares pursuant to this Agreement, if any, and the Net Proceeds, if any, received by it upon settlement of the Forwards (if any), in each case in the manner specified in the Registration Statement, the General Disclosure Package and the Prospectus under “Use of Proceeds.”

(j) *Listing.* The Company will use its reasonable best efforts to effect and maintain the listing of the Shares on, and satisfy the requirements of, Nasdaq.

(k) *Notice of Certain Actions.* At any time that sales of the Shares have been made but not settled or at any time the Company has outstanding with an Agent any instructions to sell Shares but such instructions have not been fulfilled or cancelled, the Company will not, without the prior written consent of such Agent, unless it gives such Agent at least two business days’ prior written notice, (i) directly or indirectly offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for shares of Common Stock or file any registration statement under the Securities Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap, agreement or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Shares to be offered and sold and any Confirmation Shares to be issued and delivered pursuant to, as applicable, this Agreement, any Terms Agreement and any Confirmation, (B) grants of stock options, restricted stock, restricted stock units or long-term incentive Units in the Operating Partnership (“**LTIP Units**”) to employees, consultants or directors pursuant to the terms of a plan in effect as of the date of the Prospectus, (C) issuances of Common Stock or OP Units, as applicable pursuant to: (x) the exercise, vesting, settlement, conversion or redemption, as applicable, of such options, restricted stock units and LTIP Units; (y) the redemption of OP Units outstanding on the date of the Prospectus, including OP Units issued upon conversion of LTIP Units outstanding on the date of the Prospectus or (z) the exercise, vesting, settlement, conversion or redemption, as applicable, of any stock options, restricted stock units or LTIP Units outstanding as of the date of the Prospectus, (D) issuances of Common Stock pursuant to the Company’s dividend reinvestment plan (if any), (E) issuances of Common Stock pursuant to the Company’s employee stock purchase plan (if any), (F) issuances of (x) Common Stock or securities convertible into or exchangeable or exercisable for shares of Common Stock in connection with other acquisitions of real property or real property companies and (y) Common Stock upon conversion or exchange of any securities issued pursuant to (F)(x) above, and (G) filing of shelf registration statements (including any amendments or supplements thereto) in connection with existing contractual commitments (if any). Upon receipt of any written notice contemplated above, an Agent may suspend its activity under this Agreement for such period of time as deemed appropriate by such Agent.

(l) *Issuer Free Writing Prospectuses.* The Company agrees that, unless it obtains the prior written consent of the applicable Agents (such consent not to be unreasonably withheld, delayed or conditioned), it will not make any offer relating to the Shares that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus”, or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433. The Company represents that it has treated or agrees that it will treat each such free writing prospectus consented to by the applicable Agents as an “issuer free writing prospectus,” as defined in Rule 433, and that it will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus any event shall occur or condition shall exist as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the applicable Agents and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(m) *No Stabilization or Manipulation.* The Company agrees that neither it nor any affiliate of the Company will take, directly or indirectly, any action which is designed, or would be expected, to cause or result in, or which constitutes, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any Shares or to result in a violation of Regulation M under the Exchange Act.

(n) *Update of Activity under this Agreement.* The Company shall disclose (i) in each Annual Report on Form 10-K or Quarterly Report on Form 10-Q filed by the Company in respect of any fiscal quarterly period (which, in the case of an Annual Report on Form 10-K, would mean the last quarterly period of the fiscal year) in which sales of Shares were made by or through an Agent under this Agreement (each date on which any such document or amendment thereto is filed, a “**Company Periodic Report Date**”), or (ii) to the extent required by applicable law and/or interpretations of the Commission, in Prospectus Supplements for each such fiscal quarterly period, the number of Shares sold by or through the Agents under this Agreement during such fiscal quarterly period and the net proceeds received by the Company and the aggregate compensation paid by the Company to the Agents with respect to such sales.

(o) *Delivery of Future Certificates.* Upon commencement of the offering of Shares under this Agreement (which shall not occur until after the satisfaction of the conditions specified in Section 5 hereof) (A) each time Shares are delivered to the applicable Agents as principal on a Direct Settlement Date, and (B) promptly after each (i) date on which the Registration Statement shall be amended or a new registration statement relating to the Shares shall become effective or the Prospectus shall be amended or supplemented (other than (1) by an amendment or supplement providing solely for the determination of the terms of securities, including the Shares, (2) in connection with the filing of a Prospectus Supplement that contains solely the information referred to in Section 3(n) hereof, or (3) in connection with the filing of any Current Report on Form 8-K (other than an Earnings 8-K and any other Current Report on Form 8-K which contains financial statements, supporting schedules or other financial data, including any Current Report on Form 8-K under Item 2.02 of such form that is considered “filed” under the Exchange Act) (each such date, a “**Registration Statement Amendment Date**”), (ii) date on which an Earnings 8-K shall be filed with the Commission as contemplated by Section 2(k) hereof (a “**Company Earnings Report Date**”), (iii) Company Periodic Report Date, and (iv) reasonable request by the Agents or the Forward Purchasers (each date of any such request by the Agents or the Forward Purchasers, a “**Request Date**”), the Company will furnish or cause to be furnished to the Agents and the Forward Purchasers or, in the case of clause (A) above, the applicable Agents, an officers’ certificate, dated such Direct Settlement Date, such Registration Statement Amendment Date, such Company Earnings Report Date, such Company Periodic Report Date or such Request Date, as the case may be, in form and substance reasonably satisfactory to the Agents and the Forward Purchasers or, in the case of clause (A) above, such Agents, as the case may be, to the effect that the statements contained in the officers’ certificate referred to in Section 5(g) hereof that was last furnished to the Agents and the Forward Purchasers or, in the case of clause (A) above, such Agents, are true and correct as of the date of such certificate as though made at and as of the date of such certificate (except that such statements shall be deemed to relate to the Registration Statement, the General Disclosure Package and the Prospectus as amended and supplemented at the date of such certificate) or, in lieu of such certificate, a certificate of the same tenor as the certificate referred to in Section 5(g) hereof, but modified as necessary to relate to the Registration Statement, the General Disclosure Package and the Prospectus as amended and supplemented at the date of such certificate. The requirement to provide a certificate pursuant to clause (B) of the first sentence of this Section 3(o) shall be waived for any Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date and Request Date occurring at a time at which no instruction to any Agent to sell Shares pursuant to Section 2(b) has been delivered by the Company or is pending. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following any Registration Statement Amendment Date, Company Earnings Report Date or Company Periodic Report Date when the Company relied on such waiver and did not provide the Agents a certificate pursuant to clause (B) of the first sentence of this Section 3(o), then before the Company instructs the Agents to sell Shares pursuant to Section 2(b), the Company shall provide the Agent such certificate. As used in this Section 3(o), to the extent there shall be a sale of Shares on or following any Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date or Request Date, “promptly” shall be deemed to be at or prior to the Applicable Time for such sale.

Additionally, upon commencement of the offering of Shares under this Agreement (which shall not occur until after the satisfaction of the conditions specified in Section 5 hereof), (A) each time Shares are delivered to the applicable Agents as principal on a Direct Settlement Date and (B) promptly after each Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date or Request Date, the Company will furnish or cause to be furnished to the Agents and the Forward Purchasers or, in the case of clause (A) above, the applicable Agents, such further certificates and documents as the Agents and the Forward Purchasers may reasonably request in connection with the offering of the Shares contemplated hereby.

(p) *Delivery of Future Opinions and Letters of Counsel.* Upon commencement of the offering of Shares under this Agreement (which shall not occur until after the satisfaction of the conditions specified in Section 5 hereof), (A) each time Shares are delivered to the applicable Agents as principal on a Direct Settlement Date and (B) promptly after each Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date or Request Date, the Company will furnish or cause to be furnished to the Agents and the Forward Purchasers or, in the case of clause (A) above, the applicable Agents, the written opinions and letters of each of counsel to the Company or, in the case of clause (A) above, such Agents, as the case may be, dated such Direct Settlement Date, such Registration Statement Amendment Date, such Company Earnings Report Date, such Company Periodic Report Date or such Request Date, as the case may be, in form and substance reasonably satisfactory to the Agents and the Forward Purchasers or, in the case of clause (A) above, such Agents, as the case may be, of the same tenor as the respective opinions and letters referred to in Section 5(b), 5(c), 5(d) and 5(e), as applicable, hereof but modified as necessary to relate to the Registration Statement, the General Disclosure Package and the Prospectus, as amended and supplemented to the date of such opinion and letter, or, in lieu of any such opinion and letter, counsel last furnishing such opinion and letter to the Agents and the Forward Purchasers or, in the case of clause (A) above, such Agents, as the case may be, shall furnish the Agents and the Forward Purchasers or, in the case of clause (A) above, such Agents, as the case may be, with a letter substantially to the effect that the Agents and the Forward Purchasers or, in the case of clause (A) above, such Agents, as the case may be, may rely on such counsel’s last opinion and letter to the same extent as though each were dated the date of such letter authorizing reliance (except that statements in such last opinion and letter shall be deemed to relate to the Registration Statement, the General Disclosure Package and the Prospectus as amended and supplemented to the date of such letter authorizing reliance). The requirement to provide opinions and letters pursuant to clause (B) of the first sentence of this Section 3(p) shall be waived for any Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date and Request Date occurring at a time at which no instruction to any Agent to sell Shares pursuant to Section 2(b) has been delivered by the Company or is pending. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following any Registration Statement Amendment Date, Company Earnings Report Date or Company Periodic Report Date when the Company relied on such waiver and did not provide the Agents opinions and letters pursuant to clause (B) of the first sentence of this Section 3(p), then before the Company instructs the Agents to sell Shares pursuant to Section 2(b), the Company shall provide the Agent such opinions and letters. As used in this Section 3(p), to the extent there shall be a sale of Shares on or following any Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date or Request Date, “promptly” shall be deemed to be at or prior to the Applicable Time for such sale.

(q) *Delivery of Future Accountants' Letters.* Upon commencement of the offering of Shares under this Agreement (which shall not occur until after the satisfaction of the conditions specified in Section 5 hereof), (A) each time Shares are delivered to the applicable Agents as principal on a Direct Settlement Date and (B) promptly after each Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date or Request Date, the Company will cause its independent accountants to furnish to the Agents and the Forward Purchasers or, in the case of clause (A) above, the applicable Agents, a letter, dated such Direct Settlement Date, such Registration Statement Amendment Date, such Company Earnings Report Date, such Company Periodic Report Date or such Request Date, as the case may be, in form and substance reasonably satisfactory to the Agents and the Forward Purchasers, or, in the case of clause (A) above, such Agents, as the case may be, of the same tenor as the letter referred to in Section 5(f) hereof but modified as necessary to relate to the Registration Statement, the General Disclosure Package and the Prospectus as amended and supplemented to the date of such letter. The requirement that the Company's independent accountants furnish a letter to the Agents pursuant to clause (B) of the first sentence of this Section 3(q) shall be waived for any Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date and Request Date occurring at a time at which no instruction to any Agent to sell Shares pursuant to Section 2(b) has been delivered by the Company or is pending. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following any Registration Statement Amendment Date, Company Earnings Report Date or Company Periodic Report Date when the Company relied on such waiver and did not furnish to the Agents a letter from the Company's independent accountants pursuant to clause (B) of the first sentence of this Section 3(q), then before the Company instructs the Agents to sell Shares pursuant to Section 2(b), the Company shall furnish to the Agents such letter from the Company's independent accountants. As used in this paragraph, to the extent there shall be a sale of Shares on or following any Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date or Request Date, "promptly" shall be deemed to be at or prior to the Applicable Time for such sale.

(r) *Trading in the Common Stock.* The Company consents to the Agents and the Forward Purchasers trading in Common Stock for their own account and for the account of their clients at the same time as sales of Shares occur pursuant to this Agreement.

(s) *Non-Consummation Offer.* If, to the knowledge of the Company, any filing required by Rule 424 in connection with an offering of Shares shall not have been made or the representations and warranties of the Company contained in this Agreement shall not be true and correct on the applicable Settlement Date, the Company will offer to any person who has agreed to purchase Shares from or through an Agent the right to refuse to purchase and pay for such Shares.

(t) *Due Diligence Review*. The Company will cooperate with any due diligence review reasonably requested by the Agents and the Forward Purchasers or counsel for the Agents and the Forward Purchasers, fully and in a timely manner, in connections with offers and sales of Shares from time to time, including, without limitation:

- (i) on or immediately after (A) Shares are delivered to the applicable Agents as principal on a Direct Settlement Date and (B) each Registration Statement Amendment Date, Company Earnings Report Date or Company Periodic Report Date, the Agents and the Forward Purchasers expect to conduct a due diligence call with the appropriate business, financial and legal representatives of the Company; and
- (ii) in the event that the Company requests an Agent to sell on any one Trading Day an amount of Shares that would be equal to or greater than 15% of the average daily trading volume (calculated based on the most recent three completed Trading Days) of Common Stock, such Agent expects to conduct a due diligence call with the appropriate business, financial, accounting and legal representatives of the Company and that the Company shall provide the certificate referred to in Section 5(g) of the Agreement.

The foregoing is an expression of current intent only, and shall not in any manner limit the Agents' and the Forward Purchasers' rights under this Agreement, including such Agents' and Forward Purchasers' right to require such additional due diligence procedures as they may reasonably request.

(u) *Renewal Deadline*. If, immediately prior to the third anniversary of the initial effective date of the Registration Statement (the "**Renewal Deadline**"), this Agreement is still in effect or any Shares purchased by the Agent as principal remain unsold, the Company will, prior to the Renewal Deadline, (i) promptly notify the applicable Agents and (ii) promptly file, if it is eligible to do so, a new automatic shelf registration statement relating to the Shares, in a form and substance reasonably satisfactory to such Agents. If, at the time the Company intends to file such a new automatic shelf registration statement, it is not eligible to do so, the Company will, prior to the Renewal Deadline, (i) promptly notify the Agents, (ii) promptly file a new shelf registration statement on the proper form relating to the Shares, in a form and substance reasonably satisfactory to the Agents, (iii) use its reasonable best efforts to cause such new shelf registration statement to be declared effective within 60 days after the Renewal Deadline and (iv) promptly notify the Agents of such effectiveness. The Company will use its reasonable best efforts to take all other action necessary or appropriate to permit the offering and sale of the Shares to continue as contemplated in the expired Registration Statement. References herein to the "Registration Statement" shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be.

(v) *Ceasing Eligibility For Use of Automatic Shelf Registration Statement Form*. If, at any time, during the term of this Agreement or otherwise when Shares purchased by the Agent as principal remain unsold, the Company receives a notice from the Commission pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Agents and the Forward Purchasers or, in the case of the Shares purchased by the Agent as principal remaining unsold, the applicable Agent, (ii) promptly file a new shelf registration statement or post-effective amendment on the proper form relating to such Shares, in form and substance reasonably satisfactory to the Agents and the Forward Purchasers or, in the case of the Shares purchased by the Agent as principal remaining unsold, the applicable Agent, (iii) use its reasonable best efforts to cause such new shelf registration statement or post-effective amendment to be declared effective as soon as practicable and (iv) promptly notify the Agents and the Forward Purchasers or, in the case of the Shares purchased by the Agent as principal remaining unsold, the applicable Agent of such effectiveness. The Company will use its reasonable best efforts to take all other action necessary or appropriate to permit the offering and sale of the Shares to continue as contemplated in the Registration Statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the "Registration Statement" shall include such new shelf registration statement or post-effective amendment, as the case may be.

(w) *REIT Qualification.* The Company will use its best efforts to continue to meet the requirements to qualify for taxation as a REIT under the Code for subsequent tax years that include any portion of the term of this Agreement, unless the Company's board of directors determines in good faith that it is no longer in the best interests of the Company and its stockholders to so qualify or to be so qualified.

Section 4. Payment of Expenses. Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, the Company agrees to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement and the Confirmations, including: (i) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the registration and delivery of the Shares under the Securities Act, and all other fees or expenses in connection with the preparation and filing of the Registration Statement, any preliminary prospectus, the Prospectus, any Issuer Free Writing Prospectus prepared by or on behalf of, used by, or referred to by the Company and amendments and supplements to any of the foregoing, including all costs associated with electronic delivery of any of the foregoing therewith by the Agents to investors, (ii) all costs and expenses related to the transfer and delivery of the Shares to the Agents, including any transfer or other taxes payable thereon, (iii) the cost of printing or producing any Blue Sky or any legal investment memorandum in connection with the offer and sale of the Shares under state securities laws and all expenses in connection with the qualification of the Shares for offer and sale under state securities laws as provided in Section 3(g) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Agents in connection with such qualification and in connection with the Blue Sky or any legal investment memorandum (in an amount not to exceed \$5,000), (iv) all filing fees and reasonably incurred fees and disbursements of counsel to the Agents and the Forward Purchasers (in an amount not to exceed \$5,000) incurred in connection with the review and qualification of the offering of the Shares by FINRA, (v) the cost of printing certificates representing the Shares, if any, (vi) the costs and charges of any transfer agent, registrar or depository, (vii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, (viii) the document production charges and expenses associated with printing this Agreement, (ix) the fees and expenses incurred in connection with the listing of the Shares on Nasdaq, and (x) all other costs and expenses incident to the performance of the obligations of the Transaction Entities hereunder for which provision is not otherwise made in this Section. If this Agreement is terminated by the Company in accordance with the provisions of Section 8 and, at the time of the Company's notice of termination, the gross purchase price of the Shares sold pursuant to this Agreement is less than \$25,000,000, the Company shall reimburse the Agents and the Forward Purchasers for the reasonable fees and disbursements of counsel for the Agents and the Forward Purchasers incurred by them in connection with the offering contemplated by this Agreement (other than fees and disbursements relating specifically to purchases of Shares by the Agents as principal) not to exceed \$150,000 in the aggregate. It is understood, however, that except as provided in this Section and Section 6 entitled "Indemnification and Contribution", the Agents and the Forward Purchasers will pay all of their costs and expenses, including fees and disbursements of their counsel, stock transfer taxes payable on resale of any of the Shares by them and any advertising expenses connected with any offers they may make.

Section 5. Conditions of Agents' and Forward Purchasers' Obligations. The obligations of the Agents and the Forward Purchasers hereunder are subject to the accuracy of the representations and warranties of the Company contained herein or in certificates of any officer of the Company or any of its subsidiaries delivered pursuant to the provisions hereof at each Representation Date, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement and Filing of Prospectus*. The Company shall have filed the Registration Statement with the Commission not earlier than three years prior to the date hereof and the Registration Statement became effective upon filing in accordance with Rule 462(e). The Company shall have filed with the Commission the Prospectus on or prior to the date of this Agreement and any subsequent Base Prospectus or Prospectus Supplement prior to any Applicable Time and related Settlement Date, as applicable, in each case in the manner and within the time period required by Rule 424(b), and each Issuer Free Writing Prospectus, if any, in the manner and within the time period required by Rule 433. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the Securities Act, no notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) has been received by the Company, no order preventing or suspending the use of any preliminary prospectus or the Prospectus or any amendment or supplement thereto has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company's knowledge, contemplated. The Company shall have complied with any and all requests for additional information on the part of the Commission to the reasonable satisfaction of the Agents and the Forward Purchasers. The Company shall have paid the required Commission filing fees relating to the Shares as specified in Section 3(a) hereof.

(b) *Opinion and Negative Assurance Letter of Counsel for the Agents and the Forward Purchasers*. The Agents and the Forward Purchasers shall have received an opinion and negative assurance letter of Goodwin Procter LLP, dated such date, in form and substance reasonably satisfactory to the Agents and the Forward Purchasers. In giving such opinion and negative assurance letter, such counsel may rely, as to all matters governed by the laws of jurisdictions other than the laws of the State of New York, the General Corporation Law of the State of Delaware and the federal securities laws of the United States, upon the opinions of counsel satisfactory to the Agents and the Forward Purchasers. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers and other representatives of the Company and its subsidiaries and certificates of public officials.

(c) *Corporate Opinion and Negative Assurance Letter of Counsel to the Company*. The Agents and the Forward Purchasers shall have received an opinion and negative assurance letter of Latham & Watkins LLP, counsel to the Transaction Entities, dated such date, to the effect set forth in Exhibit A and Exhibit B hereto.

(d) *Tax Opinion of Counsel to the Company*. The Agents and the Forward Purchasers shall have received an opinion of Latham & Watkins LLP, tax counsel to the Transaction Entities, dated such date, to the effect set forth in Exhibit C hereto.

(e) *Opinion of Maryland Counsel to the Company*. The Agents and the Forward Purchasers shall have received an opinion of Ballard Spahr LLP, Maryland counsel to the Transaction Entities, dated such date, to the effect set forth in Exhibit D hereto.

With respect to the negative assurance letters to be delivered pursuant to Sections 5(b) and 5(c) above, Goodwin Procter LLP and Latham & Watkins LLP may state that their opinions and beliefs are based upon their participation in the preparation of the Registration Statement and the Prospectus and any amendments or supplements thereto and review and discussion of the contents thereof, but are without independent check or verification, except as specified.

The opinions of Latham & Watkins LLP and Ballard Spahr LLP referenced in Sections 5(c), 5(d) and 5(e) above shall be rendered to the Agents and the Forward Purchasers at the request of the Transaction Entities and shall so state therein.

(f) *Deloitte & Touche LLP Letter*. The Agents and the Forward Purchasers shall have received a letter from Deloitte & Touche LLP, independent public accountants, dated as of such date, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the General Disclosure Package and the Prospectus.

(g) *Officers' Certificate for the Company*. The Agents and the Forward Purchasers shall have received a certificate of the Chief Executive Officer of the Company and the Chief Financial Officer of the Company, dated such date, in form and substance reasonably satisfactory to the Representatives, to the effect that:

(A) the representations and warranties of the Company contained in this Agreement are true and correct as of such date;

(B) the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before such date;

(C) no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the Securities Act, no notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) has been received by the Company, no order preventing or suspending the use of any preliminary prospectus or the Prospectus or any amendment or supplement thereto has been issued and no proceedings for any of those purposes have been instituted or are pending or, to their knowledge, contemplated;

(D) any Prospectus Supplement and each Issuer Free Writing Prospectus have been timely filed with the Commission under the Securities Act (in the case of an Issuer Free Writing Prospectus, to the extent required by Rule 433), and all requests for additional information on the part of the Commission have been complied with or otherwise satisfied; and

(E) since the date of the latest audited financial statements included in the Registration Statement, the General Disclosure Package and the Prospectus or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package and the Prospectus, there shall not have occurred any material and adverse change, or any development involving a prospective material and adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole.

(h) *Other Documents*. Such further certificates and documents as counsel for the Agents and Forward Purchasers may reasonably request for the purposes of enabling them to pass upon the issuance and sale of the Shares as contemplated herein.

(i) *Listing*. The Shares shall have been approved for listing, subject to official notice of issuance, on Nasdaq.

(j) *Actively-Traded Security*. The Common Stock shall be an "actively-traded security" excepted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of Rule 101.

(k) *Termination of this Agreement.* If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by the applicable Agents and the Forward Purchasers by notice to the Company at any time, and any such termination shall be without liability of any party to any other party except the provisions of Sections 1, 2(h), 4, 6, 7, 10, 11, 12 and 14 hereof shall remain in full force and effect notwithstanding such termination.

Section 6. Indemnification and Contribution.

(a) *Indemnification of the Agents and the Forward Purchasers.* The Transaction Entities, jointly and severally, agree to indemnify and hold harmless each Agent and Forward Purchaser, each person, if any, who controls any Agent or Forward Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of any Agent and Forward Purchaser within the meaning of Rule 405 under the Securities Act (each, an “**Affiliate**”) from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) that arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus or any amendment or supplement thereto, or any road show as defined in Rule 433(h) under the Securities Act, or arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any such untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Agent and Forward Purchaser furnished to the Company in writing by such Agent and Forward Purchaser expressly for use therein, it being understood and agreed that the only such information furnished by the Agents and the Forward Purchasers consists of the information described as such in paragraph (b) below.

(b) *Indemnification of Company, Directors and Officers.* Each Agent and Forward Purchaser agrees, severally and not jointly, to indemnify and hold harmless the Transaction Entities, their directors, officers who sign the Registration Statement and each person, if any, who controls the Transaction Entities within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Transaction Entities to such Agent or Forward Purchaser, but only with reference to information relating to such Agent or Forward Purchaser furnished to the Transaction Entities in writing by such Agent or Forward Purchaser expressly for use in the Registration Statement, any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus or any amendment or supplement thereto. The Company acknowledges that the names of the Agents and the Forward Purchasers in the Prospectus constitute the only information furnished in writing by or on behalf of the Agents and the Forward Purchasers for inclusion in the Prospectus.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 6(a) or 6(b), such person (the “indemnified party”) shall promptly notify the person against whom such indemnity may be sought (the “indemnifying party”) in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them and/or the indemnifying party and the indemnified party have different available defenses, and (iii) the indemnifying party has not retained counsel on a reasonably timely basis. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by the Agents and the Forward Purchasers, in the case of parties indemnified pursuant to Section 6(a), and by the Transaction Entities, in the case of parties indemnified pursuant to Section 6(b). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding, and (ii) does not include an admission of wrongdoing by the indemnified party.

(d) To the extent the indemnification provided for in Section 6(a) or 6(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Transaction Entities on the one hand and the applicable Agent and/or Forward Purchaser on the other hand from the offering of the Shares or (ii) if the allocation provided by clause 6(d)(i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 6(d)(i) above but also the relative fault of the Transaction Entities on the one hand and of the applicable Agent and/or Forward Purchaser on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Transaction Entities on the one hand and the applicable Agent and/or Forward Purchaser on the other hand in connection with the offering of the Shares shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Shares (before deducting expenses) received by the Transaction Entities (which shall be deemed to include the proceeds that would be received by the Company upon physical settlement of the Confirmations assuming that the aggregate amount payable by the applicable Forward Purchaser under the Confirmations is equal to the aggregate amount of the net proceeds realized upon the sale of the Shares) bear to the total commissions or discounts received by the applicable Agent and/or the aggregate net spread (net of any related hedging and other costs) received by the Forward Purchaser, on the other hand. The relative fault of the Transaction Entities, on the one hand, and the applicable Agent and/or Forward Purchaser, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Transaction Entities or by the Agents and the Forward Purchasers and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Agents’ and Forward Purchasers’ respective obligations to contribute pursuant to this Section 6 are several in proportion to the respective number of Shares sold in the applicable offering by such Agents, in their capacity as agents or as forward sellers on behalf of such Forward Purchasers, and not joint.

(e) Each of the Transaction Entities, the Agents and the Forward Purchasers agree that it would not be just or equitable if contribution pursuant to this Section 6 were determined by pro rata allocation (even if the applicable Agents were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 6(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 6(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6, no Agent or Forward Purchaser shall be required to contribute any amount in excess of the amount by which the total price at which the Shares sold by such Agent, in its capacity as agent or as forward seller on behalf of such Forward Purchaser, were sold to the public exceeds the amount of any damages that such Agent or Forward Purchaser, as the case may be, has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(f) The indemnity and contribution provisions contained in this Section 6 and the representations, warranties and other statements of the Transaction Entities contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Agent or Forward Purchaser, any person controlling any Agent or Forward Purchaser or any affiliate of any Agent or Forward Purchaser or by or on behalf of the Transaction Entities, their officers or directors or any person controlling the Transaction Entities and (iii) acceptance of and payment for any of the Shares.

Section 7. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of an Agent or its Affiliates, selling agents, officers or directors or any person controlling such Agent, or the Company or its officers or directors, or any person controlling the Company and (ii) delivery of and payment for the Shares.

Section 8. Termination.

(a) This Agreement may be terminated for any reason, at any time, by (i) the Company or (ii) as to itself, an Agent or a Forward Purchaser, upon the giving of one (1) business day prior written notice to the other parties hereto; provided, however, that if a Pricing Supplement required to be executed and delivered by the relevant Forward Purchaser pursuant to the last sentence of Section 2(f) hereof has not been executed and delivered on or prior to such date, then the provisions of this Agreement as they relate to the applicable Confirmation shall survive such termination until such time as such Pricing Supplement has been executed and delivered pursuant to such Confirmation. This Agreement will automatically terminate following the sale of Shares having an aggregate gross sales price of \$250,000,000.

(b) The applicable Agents may terminate a Terms Agreement to which they are a party, at any time at or prior to the Direct Settlement Date, (i) if there has been, in such judgment of such Agents, since the time of execution of such Terms Agreement or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any material and adverse change, or any development involving a prospective material and adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, (ii) if trading generally shall have been suspended or materially limited on, or by, as the case may be, any of the New York Stock Exchange, the NYSE American, the NASDAQ Global Select Market, the NASDAQ Global Market, the Chicago Board of Options Exchange, the Chicago Mercantile Exchange or the Chicago Board of Trade, (iii) if trading of any securities of the Company shall have been suspended on any exchange or in any over the counter market, (iv) if a material disruption in securities settlement, payment or clearance services in the United States shall have occurred, (v) if any moratorium on commercial banking activities shall have been declared by Federal or New York State authorities or (vi) there shall have occurred any outbreak or escalation of hostilities, or any change in financial markets or any calamity or crisis that, in the Agents' judgment, is material and adverse and which, singly or together with any other event specified in this clause (vi), makes it, in the Agents' judgment, impracticable or inadvisable to proceed with the offer, sale or delivery of the Shares on the terms and in the manner contemplated in the General Disclosure Package or the Prospectus

(c) If the Company and two or more Agents enter into a Terms Agreement pursuant to which such Agents agree to purchase Shares from the Company as principal and one or more of such Agents shall fail at the Settlement Date to purchase the Shares which it or they are obligated to purchase (the "Defaulted Shares"), then the nondefaulting Agents shall have the right, within 24 hours thereafter, to make arrangements for one of them or one or more other Agents or underwriters to purchase all, but not less than all, of the Defaulted Shares in such amounts as may be agreed upon and upon the terms herein set forth; provided, however, that if such arrangements shall not have been completed within such 24-hour period, then:

(i) if the number of Defaulted Shares does not exceed 10% of the number of Shares to be so purchased by all of such Agents on the Settlement Date, the nondefaulting Agents shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective initial purchase obligation bears to the purchase obligations of all nondefaulting Agents; or

(ii) if the number of Defaulted Shares exceeds 10% of the number of Shares to be so purchased by all of such Agents on the Settlement Date, such Terms Agreement shall terminate without liability on the part of any nondefaulting Agent.

No action taken pursuant to this Section 8(c) shall relieve any defaulting Agent from liability in respect of its default. In the event of any such default which does not result in a termination of such Terms Agreement, either the nondefaulting Agents or the Company shall have the right to postpone the Settlement Date for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements.

(d) In the event of any termination under this Section 8, neither party will have any liability to the other party hereto, except that (i) the Agents shall be entitled to any commissions earned in accordance with Section 2(b) hereof, (ii) if at the time of termination (a) the Agent shall own any Shares purchased by it as principal or (b) an offer to purchase any Shares has been accepted by the Company but the Settlement Date has not occurred, the covenants set forth in Section 3 hereof shall remain in effect until such Shares are resold or so delivered, as the case may be, and (iii) the representation and warranties in Section 1, the indemnity and contribution agreements of Section 6, and the provisions of Sections 4, 7, 10, 11, 12 and 14 hereof shall remain in effect.

Section 9. No Advisory or Fiduciary Relationship. The Transaction Entities acknowledge that in connection with the offering of the Shares: (i) the Agents have acted at arm's length, are not agents of, and owe no fiduciary duties to, the Transaction Entities or any other person, (ii) the Agents owe the Transaction Entities only those duties and obligations set forth in this Agreement, any contemporaneous written agreements and prior written agreements (to the extent not superseded by this Agreement), if any, (iii) the Agents may have interests that differ from those of the Transaction Entities, and (iv) none of the activities of the Agents in connection with the transactions contemplated herein constitutes a recommendation, investment advice, or solicitation of any action by the Agents with respect to any entity or natural person. Each of the Transaction Entities waives to the full extent permitted by applicable law any claims it may have against the Agents arising from an alleged breach of fiduciary duty in connection with the offering of the Shares.

Section 10. Parties. This Agreement shall each inure to the benefit of and be binding upon the Agents, the Forward Purchasers and the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Agents and Forward Purchasers, their respective Affiliates and selling agents, the Company and their respective successors and the controlling persons and officers and directors referred to in Section 6 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Agents and Forward Purchasers, their respective Affiliates and selling agents, the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Shares shall be deemed to be a successor by reason merely of such purchase.

Section 11. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that any Agent or Forward Purchaser that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Agent or Forward Purchaser of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Agent or Forward Purchaser that is a Covered Entity or a BHC Act Affiliate of such Agent or Forward Purchaser becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Agent or Forward Purchaser are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For purposes of this Section a “**BHC Act Affiliate**” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k). “**Covered Entity**” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b). “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable. “**U.S. Special Resolution Regime**” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

Section 12. Compliance with USA Patriot Act. In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Agents and the Forward Purchasers are required to obtain, verify and record information that identifies their respective clients, including the Company and the Operating Partnership, which information may include the name and address of their respective clients, as well as other information that will allow the Agents and the Forward Purchasers to properly identify their respective clients.

Section 13. Counterparts. For the convenience of the parties hereto, any number of counterparts of this Agreement may be executed by the parties hereto, each of which shall be an original instrument and all of which taken together shall constitute one and the same Agreement. Delivery of a signed counterpart of this Agreement by e-mail (including electronic signatures complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) or facsimile transmission shall constitute valid and sufficient delivery thereof.

Section 14. Applicable Law. This Agreement, and any claim, controversy or dispute relating to or arising out of this Agreement, shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of New York.

Section 15. Headings. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

Section 16. Notices. All communications hereunder shall be in writing and effective only upon receipt.

Notices to the Agents and Forward Purchasers shall be directed to:

Agent and Forward Purchaser:

Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036
Attention: Jon Sierant, Managing Director
E-mail: ***
Copy to: Legal Department

Agent:

BMO Capital Markets Corp.
Equity-Linked Capital Markets
151 W 42nd Street, 32nd Floor
New York, New York 10036
Attention: Brian Riley
Telephone: ***
Facsimile: ***

Forward Purchaser:

Bank of Montreal
55 Bloor Street West, 18th Floor
Toronto, Ontario, Canada M4W 1A5
Attention: Manager, Derivatives Operations
Telephone: ***
Facsimile: ***

with a copy to:

Bank of Montreal
100 King Street West, 20th Floor
Toronto, Ontario, Canada M5X 1A1
Attention: Associate General Counsel & Managing Director, Derivatives Legal Group
Facsimile: ***

Agent:

BofA Securities, Inc.
One Bryant Park
New York, New York 10036
Attention: ATM Execution
Email: ***
with a copy to ECM Legal: ***

Forward Purchaser:

Bank of America, N.A.
c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036
Attention: Rohan Handa
Email: ***

Agent:

BTIG, LLC
65 East 55th Street
New York, New York 10022
Attention: ATM Trading Desk
Email: ***

with a copy (which shall not constitute notice) to:

BTIG, LLC
600 Montgomery Street
San Francisco, CA 94111
Attention: General Counsel and Chief Compliance Officer
Email: ***
Email: ***

Forward Seller:

Nomura Securities International, Inc.
309 West 49th Street New York, NY 10019
Attention: Structured Equity Solutions
Email: ***

with a copy (which shall not constitute notice) to:

Nomura Securities International, Inc.
309 West 49th Street New York, NY 10019
Attention: Equities Legal Email: ***

and to:

BTIG, LLC as agent of the forward seller, at the Sales Agreement Notice Addresses for BTIG, LLC provided above

Forward Purchaser:

Nomura Global Financial Products, Inc.
309 West 49th Street
New York, NY 10019
Attention: Structured Equity Solutions
Email: ***

with a copy (which shall not constitute notice) to:

Nomura Global Financial Products, Inc.
309 West 49th Street
New York, NY 10019
Attention: Equities Legal
Email: ***

and to:

BTIG, LLC, at the Sales Agreement Notice Addresses for BTIG, LLC provided above

Agent:

Capital One Securities, Inc.,
201 St. Charles Ave, Suite 1830
New Orleans, Louisiana 70170
Attention: Gabrielle Halprin
Email: ***

Agent:

Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013
Copy to: setg.Origination@citi.com
Attention: Robert G. Leonard, Matthew T. Morris, Eric Natelson, Theodore Finkelstein
Email: ***

Forward Purchaser:

Citibank, N.A.
388 Greenwich Street
New York, New York 10013
Copy to: ***
Attention: Robert G. Leonard, Matthew T. Morris, Eric Natelson, Theodore Finkelstein
Email: ***

Agent:

Fifth Third Securities, Inc.
38 Fountain Square Plaza
Cincinnati, Ohio 45263
Fax No. ***
Attention: Legal Department c/o Glenn Goggins

Agent and Forward Purchaser:

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282
Attention: Registration Department
Facsimile: ***

Agent:

Jefferies LLC
520 Madison Avenue
New York, New York 10022
Attention: General Counsel

Forward Purchaser:

Jefferies LLC
520 Madison Avenue
New York, New York 10022
Attention: Colyer Curtis
Telephone: ***
Email: ***

Agent:

J.P. Morgan Securities LLC
383 Madison Avenue 6th floor
New York, New York 10179
Attention: Sanjeet Dewal
Telephone: ***
Email: ***

Forward Purchaser:

JPMorgan Chase Bank, National Association
EDG Marketing Support
Email: ***

Copy to: Sanjeet Dewal
Telephone: 212-622-8783
Email: ***

Agent and Forward Purchaser:

KeyBanc Capital Markets Inc.
127 Public Square, 7th Floor
Cleveland, OH 44114
Attention: ***

Agent:

Mizuho Securities USA LLC
1271 Avenue of the Americas
New York, New York 10020
Attention: Stephen Roney
Telephone: ***
Email: ***
Copy to: ***

Forward Purchaser:

Mizuho Markets Americas LLC
c/o Mizuho Securities USA LLC, as agent
1271 Avenue of the Americas
New York, New York 10020
Attention: US Equity Derivatives Notices
Telephone: ***
Email: ***

Agent and Forward Purchaser:

Regions Securities LLC
615 South College Street, Suite 600
Charlotte, NC 28202
Attention: ECM Desk
Email: ***
Email: ***
Email: ***
Email: ***

Agent:

Wedbush Securities Inc.
600 Montgomery Street, 29th Floor
San Francisco, CA 94111
Attention: Equity Capital Markets
Email: ***
Email: ***
Email: ***

Copy to:

Wedbush Securities Inc.
142 W 57th Street, 12th Floor
New York, NY 10019
Attention: FIG Investment Banking
Email: ***
Email: ***

with a copy (which shall not constitute notice) to:

Wedbush Securities Inc.
1000 Wilshire Blvd
Los Angeles, CA 90017
Attention: Legal
Email: ***

Agent:

Wells Fargo Securities, LLC
500 West 33rd Street 14th Floor
New York, New York 10001
Attention: Equity Syndicate Department and Special Equities Desk
Facsimile: ***

Forward Purchaser:

Wells Fargo Bank, National Association
500 West 33rd Street, 14th Floor New York, New York 10001
Email: ***
Attention: Structuring Services Group
Facsimile: ***

Copy to:

Goodwin Procter LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018
Attention: Yoel Kranz, David Roberts

Notices to the Company and the Operating Partnership shall be directed to:

Phillips Edison & Company, Inc.
3247 Santa Fe Road
Park City, Utah 84098
Attention: Tanya E. Brady

Copy to:

Latham & Watkins LLP
355 S Grand Avenue
Suite 100
Los Angeles, California 90071
Attention: Julian T.H. Kleindorfer, Lewis W. Kneib

[Signature page follows]

Very truly yours,

PHILLIPS EDISON & COMPANY, INC.

By: /s/ John P. Caulfield

Name: John P. Caulfield

Title: Chief Financial Officer, Executive Vice President
and Treasurer

PHILLIPS EDISON GROCERY CENTER OPERATING
PARTNERSHIP I, L.P.

By: PHILLIPS EDISON GROCERY CENTER OP GP
I LLC, its General Partner

By: /s/ John P. Caulfield

Name: John P. Caulfield

Title: Chief Financial Officer, Executive Vice President
and Treasurer

Accepted as of the date hereof:

By: MORGAN STANLEY & CO. LLC
As Agent

By: /s/ Eric Rosenblum

Name: Eric Rosenblum

Title: Executive Director

By: BMO CAPITAL MARKETS CORP.
As Agent

By: /s/ Eric Benedict

Name: Eric Benedict

Title: Co-Head, Global Equity Capital Markets

By: BOFA SECURITIES, INC.
As Agent

By: /s/ Luke Toland

Name: Luke Toland

Title: Managing Director

[Signature Page to Sales Agreement]

By: BTIG, LLC
As Agent

By: /s/ Michael Passaro

Name: Michael Passaro
Title: Managing Director

By: CAPITAL ONE SECURITIES, INC.
As Agent

By: /s/ Phil Winiacki

Name: Phil Winiacki
Title: Managing Director

By: CITIGROUP GLOBAL MARKETS INC.
As Agent

By: /s/ Jared M Nutt

Name: Jared M Nutt
Title: Managing Director

By: FIFTH THIRD SECURITIES, INC.
As Agent

By: /s/ Clayton Greene

Name: Clayton Greene
Title: Head of Equity Capital Markets

By: GOLDMAN SACHS & CO. LLC
As Agent

By: /s/ Ryan Cunn

Name: Ryan Cunn
Title: Managing Director

[Signature Page to Sales Agreement]

By: JEFFERIES LLC
As Agent

By: /s/ Michael Magarro

Name: Michael Magarro
Title: Managing Director

By: J.P. MORGAN SECURITIES LLC
As Agent

By: /s/ Brett Chalmers

Name: Brett Chalmers
Title: Executive Director

By: KEYBANC CAPITAL MARKETS INC.
As Agent

By: /s/ Jaryd Banach

Name: Jaryd Banach
Title: Managing Director, Equity Capital Markets

By: MIZUHO SECURITIES USA LLC
As Agent

By: /s/ Ivana Rupcic-Hulin

Name: Ivana Rupcic-Hulin
Title: Managing Director

By: NOMURA SECURITIES INTERNATIONAL, INC.
As forward seller

By: /s/ Jason Eisenhauer

Name: Jason Eisenhauer
Title: Managing Director

By: REGIONS SECURITIES LLC
As Agent

By: /s/ Edward L. Armstrong

Name: Edward L. Armstrong
Title: Managing Director - ECM

[Signature Page to Sales Agreement]

By: WEDBUSH SECURITIES INC.
As Agent

By: /s/ Burke Dempsey
Name: Burke Dempsey
Title: EVP Head of IBCM

By: WELLS FARGO SECURITIES, LLC
As Agent

By: /s/ Elizabeth Alvarez
Name: Elizabeth Alvarez
Title: Managing Director

By: MORGAN STANLEY & CO. LLC
As Forward Purchaser

By: /s/ Eric Rosenblum
Name: Eric Rosenblum
Title: Executive Director

By: BANK OF MONTREAL
As Forward Purchaser

By: /s/ Brian Riley
Name: Brian Riley
Title: Managing Director, Global Markets

By: BANK OF AMERICA, N.A.
As Forward Purchaser

By: /s/ Rohan Handa
Name: Rohan Handa
Title: Managing Director

By: CITIBANK, N.A.
As Forward Purchaser

By: /s/ Eric Natelson
Name: Eric Natelson
Title: Authorize Signatory

[Signature Page to Sales Agreement]

By: GOLDMAN SACHS & CO. LLC
As Forward Purchaser

By: /s/ Ryan Cunn

Name: Ryan Cunn
Title: Managing Director

By: JEFFERIES LLC
As Forward Purchaser

By: /s/ Michael Magarro

Name: Michael Magarro
Title: Managing Director

By: JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION
As Forward Purchaser

By: /s/ Brett Chalmers

Name: Brett Chalmers
Title: Executive Director

By: KEYBANC CAPITAL MARKETS INC.
As Forward Purchaser

By: /s/ Jaryd Banach

Name: Jaryd Banach
Title: Managing Director, Equity Capital Markets

By: MIZUHO MARKETS AMERICAS LLC
As Forward Purchaser

By: /s/ Matthew E. Chiavaroli

Name: Matthew Chiavaroli
Title: Authorized Signatory

By: NOMURA GLOBAL FINANCIAL PRODUCTS, INC.
As Forward Purchaser

By: /s/ Jeffrey Petillo

Name: Jeffrey Petillo
Title: Authorized Representative

[Signature Page to Sales Agreement]

By: REGIONS SECURITIES LLC
As Forward Purchaser

By: /s/ Edward L. Armstrong
Name: Edward L. Armstrong
Title: Managing Director - ECM

By: WELLS FARGO BANK, NATIONAL ASSOCIATION
As Forward Purchaser

By: /s/ Elizabeth Alvarez
Name: Elizabeth Alvarez
Title: Managing Director

[Signature Page to Sales Agreement]

FORM OF OPINION OF LATHAM & WATKINS LLP

[INTENTIONALLY OMITTED]

FORM OF NEGATIVE ASSURANCE LETTER OF LATHAM & WATKINS LLP

[INTENTIONALLY OMITTED]

FORM OF TAX OPINION OF LATHAM & WATKINS LLP

[INTENTIONALLY OMITTED]

FORM OF OPINION OF BALLARD SPAHR LLP

[INTENTIONALLY OMITTED]

FORM OF REGISTERED FORWARD CONFIRMATION

Date: []

To: Phillips Edison & Company, Inc.
3247 Santa Fe Road
Park City, UT 84098

From: [DEALER NAME AND NOTICE INFORMATION]

Re: Registered Forward Transaction

Ladies and Gentlemen:

The purpose of this letter agreement is to confirm the terms and conditions of the Transaction entered into between [DEALER NAME] (“**Dealer**”) and Phillips Edison & Company, Inc., a Maryland corporation (“**Counterparty**”) on the Trade Date specified below (the “**Transaction**”) in accordance with and subject to the terms of the Sales Agreement dated as of February 12, 2024 between Counterparty and its subsidiary Phillips Edison Grocery Center Operating Partnership I, L.P., a Delaware limited partnership and each of (i) Morgan Stanley & Co. LLC, BMO Capital Markets Corp., BofA Securities, Inc., BTIG, LLC, Capital One Securities, Inc., Citigroup Global Markets Inc., Fifth Third Securities, Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Mizuho Securities USA LLC, Regions Securities LLC, Wedbush Securities Inc. and Wells Fargo Securities, LLC, as sales agent, forward seller (except with respect to BTIG, LLC) and/or principal, and Nomura Securities International, Inc. (acting through BTIG, LLC as its agent), as forward seller to Nomura Global Financial Products, Inc., its relevant Forward Purchaser (as defined in the Sales Agreement) and (ii) Morgan Stanley & Co. LLC and Bank of America, N.A., Bank of Montreal, Citibank, N.A. (or an affiliate thereof), Goldman Sachs & Co. LLC, Jefferies LLC, JPMorgan Chase Bank, National Association, KeyBanc Capital Markets Inc., Mizuho Markets Americas LLC, Nomura Global Financial Products, Inc., Regions Securities LLC and Wells Fargo Bank, National Association, as forward purchasers (the “**Sales Agreement**”). This letter agreement constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below. This letter agreement, as supplemented by the pricing supplement setting forth certain additional terms of the Transaction determined in accordance with the terms of this Confirmation and the Sales Agreement in substantially the form of Annex A hereto (as executed and delivered by the parties hereto, the “**Pricing Supplement**”), shall be a “Confirmation” for purposes of the Agreement specified below.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties’ entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation, as supplemented by the Pricing Supplement, evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation, along with the related Pricing Supplement, shall supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (without any Schedule but with the elections set forth in this Confirmation). In the event of any inconsistency between provisions of the Agreement, this Confirmation, the Pricing Supplement and the Equity Definitions, the following will prevail for the purposes of the Transaction in the order of precedence indicated: (i) the Pricing Supplement; (ii) this Confirmation; (iii) the Equity Definitions; and (iv) the Agreement. The parties hereby agree that, other than the Transaction to which this Confirmation relates, no Transaction shall be governed by the Agreement. For purposes of the Equity Definitions, this Transaction is a Share Forward Transaction.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	[] ¹
Effective Date:	The first Clearance System Business Day on or after the Trade Date on which Shares sold in accordance with the terms and conditions of the Sales Agreement through [DEALER] or its affiliate acting as forward seller for Dealer pursuant to the Sales Agreement have settled.
Seller:	Counterparty
Buyer:	Dealer
Shares:	The common stock of Counterparty, USD 0.01 par value per share (Ticker Symbol: “PECO”)
Number of Shares:	Until the first Settlement Date, the Initial Number of Shares; <i>provided that</i> , on each Settlement Date, the Number of Shares shall be reduced by the number of Settlement Shares to be settled on such date (in the case of Physical Settlement) or the number of Settlement Shares for the applicable Settlement (in the case of Cash Settlement or Net Share Settlement).
Hedge Completion Date:	The earliest of (i) the date specified in writing as the Hedge Completion Date by Dealer in accordance with the Sales Agreement, (ii) any Settlement Date and (iii) [] ² . Promptly after the Hedge Completion Date, Dealer will furnish Counterparty with a Pricing Supplement specifying the aggregate number of Shares sold through Dealer or its affiliate acting as a forward seller pursuant to the Sales Agreement during the period from and including the Trade Date through and including the Hedge Completion Date (the “ Initial Number of Shares ”) and the Initial Forward Price, all determined by Dealer in accordance with the terms hereof.

¹ To be the date on which the forward confirmation is executed.

² To be as set forth in the Forward Instruction Notice.

Initial Forward Price: As specified in the Pricing Supplement, to be the product of (i) 100% *minus* the Forward Seller Commission, and (ii) the per-Share volume weighted average price at which sales of Shares are executed on behalf of Dealer as forward purchaser pursuant to the Sales Agreement (for the avoidance of doubt, giving effect to any reductions in respect of any commissions) during the period from and including the Trade Date through and including the Hedge Completion Date (adjusted as the Calculation Agent determines appropriate in a commercially reasonable manner to (i) reflect the application on each day during such period of the Daily Rate for such day to the then-Initial Forward Price as of such day (except in respect of the sale prices for the Hedge Completion Date) and (ii) reduce the then-Initial Forward Price by the relevant Forward Price Reduction Amount on any Forward Price Reduction Date occurring on or before the Hedge Completion Date, in each case in the same manner as adjustments are made to the Forward Price pursuant to the definition thereof).

Forward Seller Commission []%³

Forward Price: (a) On the Hedge Completion Date, the Initial Forward Price; and
(b) on each calendar day thereafter, (i) the Forward Price as of the immediately preceding calendar day multiplied by (ii) the sum of 1 and the Daily Rate for such day; *provided* that, on each Forward Price Reduction Date, the Forward Price in effect on such date shall be the Forward Price otherwise in effect on such date, minus the Forward Price Reduction Amount for such Forward Price Reduction Date.

Notwithstanding the foregoing, to the extent Counterparty delivers Shares hereunder on or after a Forward Price Reduction Date and at or before the record date for an ordinary cash dividend with an ex-dividend date corresponding to such Forward Price Reduction Date, the Calculation Agent shall adjust the Forward Price to the extent it determines, in good faith and its commercially reasonable discretion, that such an adjustment is practicable and appropriate to preserve the economic intent of the parties (taking into account Dealer's commercially reasonable Hedge Positions in respect of the Transaction).

Daily Rate: For any day, a rate (which may be positive or negative) equal to (i) (a) Overnight Bank Rate (or if the Overnight Bank Rate is no longer available, a successor rate selected by the Calculation Agent in its commercially reasonable discretion) for such day minus (b) the Spread divided by (ii) 360.

³ To be as set forth in the Forward Instruction Notice.

Overnight Bank Rate:	For any day, the rate set forth for such day opposite the caption “Overnight bank funding rate”, as such rate is displayed on Bloomberg Screen “OBFR01 <Index> <GO>”, or any successor page; <i>provided</i> that, if no rate appears for a particular day on such page, the rate for the immediately preceding day for which a rate does so appear shall be used for such day.
Spread:	[]% ⁴
Prepayment:	Not Applicable
Variable Obligation:	Not Applicable
Forward Price Reduction Dates:	As set forth on Schedule I ⁵
Forward Price Reduction Amounts:	For each Forward Price Reduction Date, the Forward Price Reduction Amount set forth opposite such date on Schedule I.
Exchange:	The Nasdaq Global Select Market
Related Exchange(s):	All Exchanges
Clearance System:	The Depository Trust Company
Market Disruption Event:	Section 6.3(a) of the Equity Definitions is hereby amended by replacing the first sentence in its entirety with the following: “‘Market Disruption Event’ means in respect of a Share or an Index, the occurrence or existence of (i) a Trading Disruption, (ii) an Exchange Disruption, (iii) an Early Closure or (iv) a Regulatory Disruption, in each case that the Calculation Agent determines is material”.
Early Closure:	Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.
Regulatory Disruption:	Any event that Dealer, based on the advice of counsel, determines makes it reasonably necessary or appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures that generally apply to transactions of a nature and kind similar to the Transaction for Dealer to refrain from or decrease any market activity in connection with the Transaction.

Settlement:

⁴ To be as set forth in the Forward Instruction Notice.

⁵ To be as set forth in the Forward Instruction Notice.

- Settlement Currency: USD (all amounts shall be converted to the Settlement Currency in good faith and in a commercially reasonable manner by the Calculation Agent)
- Settlement Date: Any Scheduled Trading Day following the Effective Date and up to and including the Final Date that is either:
- (a) designated by Counterparty as a “Settlement Date” by a written notice (a “**Settlement Notice**”) that satisfies the Settlement Notice Requirements and is delivered to Dealer no less than (i) two Scheduled Trading Days prior to such Settlement Date, which may be the Final Date, if Physical Settlement applies, and (ii) []⁶ Scheduled Trading Days prior to such Settlement Date, which may be the Final Date, if Cash Settlement or Net Share Settlement applies; *provided* that, if Dealer shall fully unwind its hedge with respect to the portion of the Number of Shares to be settled during an Unwind Period by a date that is more than two Scheduled Trading Days prior to a Settlement Date specified above, Dealer may, by written notice to Counterparty, specify any Scheduled Trading Day prior to such original Settlement Date as the Settlement Date (with prior notice to Counterparty at least two Scheduled Trading Days prior to such specified Settlement Date); or
 - (b) designated by Dealer as a “Settlement Date” pursuant to the “Termination Settlement” provisions of Paragraph 7(g) below;

provided that the Final Date will be a Settlement Date if on such date the Number of Shares for which a Settlement Date has not already been designated is greater than zero, and *provided further* that, following the occurrence of at least three consecutive Disrupted Days during an Unwind Period and while such Disrupted Days are continuing, Dealer may designate any subsequent Scheduled Trading Day as the Settlement Date with respect to the portion of the Settlement Shares, if any, for which Dealer has determined an Unwind Purchase Price during such Unwind Period, it being understood that the Unwind Period with respect to the remainder of such Settlement Shares shall, subject to clause (ii) in “Settlement Method Election” below, recommence on the next succeeding Exchange Business Day that is not a Disrupted Day in whole.

Final Date: []⁷ (or if such day is not a Scheduled Trading Day, the next following Scheduled Trading Day).

⁶ To be as set forth in the Forward Instruction Notice.

⁷ To be as set forth in the Forward Instruction Notice.

Settlement Shares:

- (a) With respect to any Settlement Date other than the Final Date, the number of Shares designated as such by Counterparty in the relevant Settlement Notice or designated by Dealer pursuant to the “Termination Settlement” provisions of Paragraph 7(g) below, as applicable; *provided* that the Settlement Shares so designated shall (i) not exceed the Number of Shares at that time and (ii) in the case of a designation by Counterparty, be at least equal to the lesser of 10,000 and the Number of Shares at that time; and
- (b) with respect to the Settlement Date on the Final Date, a number of Shares equal to the Number of Shares at that time;

in each case with the Number of Shares determined taking into account pending Settlement Shares.

Settlement Method Election:

Physical Settlement, Cash Settlement, or Net Share Settlement, at the election of Counterparty as set forth in a Settlement Notice that satisfies the Settlement Notice Requirements; *provided* that Physical Settlement shall apply (i) if no Settlement Method is validly selected, (ii) with respect to any Settlement Shares in respect of which Dealer is unable, in good faith and in its commercially reasonable discretion, to unwind its hedge by the end of the Unwind Period (taking into account any restrictions on Dealer resulting from any Overlap Unwind Period (as defined below)) (A) in a manner that, in the reasonable discretion of Dealer, based on advice of counsel, is consistent with the requirements for qualifying for the safe harbor provided by Rule 10b-18 (“**Rule 10b-18**”) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) or (B) due to the occurrence of Disrupted Days or to the lack of sufficient liquidity in the Shares on any Exchange Business Day during the Unwind Period, (iii) to any Termination Settlement Date (as defined under “Termination Settlement” in Paragraph 7(g) below) and (iv) if the Final Date is a Settlement Date other than as the result of a valid Settlement Notice, in respect of such Settlement Date; *provided further* that, if Physical Settlement applies under clause (ii) immediately above, Dealer shall provide written notice to Counterparty at least two Scheduled Trading Days prior to the applicable Settlement Date.

Settlement Notice Requirements:

Notwithstanding any other provision hereof, a Settlement Notice delivered by Counterparty that specifies Cash Settlement or Net Share Settlement will not be effective to establish a Settlement Date or require Cash Settlement or Net Share Settlement unless Counterparty delivers to Dealer with such Settlement Notice a representation, dated as of the date of such Settlement Notice and signed by Counterparty, in the form set forth in clause (i) under the heading “Additional Representations and Agreements of Counterparty” in Paragraph 7(e) below.

- Physical Settlement: If Physical Settlement is applicable, then Counterparty shall deliver to Dealer through the Clearance System a number of Shares equal to the Settlement Shares for such Settlement Date, and Dealer shall pay to Counterparty, by wire transfer of immediately available funds to an account designated by Counterparty, an amount equal to the Physical Settlement Amount for such Settlement Date. If, on any Settlement Date, the Shares to be delivered by Counterparty to Dealer hereunder are not so delivered (the “**Deferred Shares**”), and a Forward Price Reduction Date occurs during the period from, and including, such Settlement Date to, but excluding, the date such Shares are actually delivered to Dealer, then the portion of the Physical Settlement Amount payable by Dealer to Counterparty in respect of the Deferred Shares shall be reduced by an amount equal to the Forward Price Reduction Amount for such Forward Price Reduction Date, multiplied by the number of Deferred Shares.
- Physical Settlement Amount: For any Settlement Date for which Physical Settlement is applicable, an amount in cash equal to the product of (a) the Forward Price in effect on the relevant Settlement Date multiplied by (b) the Settlement Shares for such Settlement Date.
- Cash Settlement: On any Settlement Date in respect of which Cash Settlement applies, if the Cash Settlement Amount is a positive number, Dealer will pay the Cash Settlement Amount to Counterparty. If the Cash Settlement Amount is a negative number, Counterparty will pay the absolute value of the Cash Settlement Amount to Dealer. Such amounts shall be paid on such Settlement Date by wire transfer of immediately available funds.
- Cash Settlement Amount: An amount determined by the Calculation Agent equal to:
- (a) (i)(A) the weighted average (weighted on the same basis as clause (B)) of the Forward Prices on each day during the applicable Unwind Period (calculated assuming no reduction to the Forward Price for any Forward Price Reduction Date that occurs during such Unwind Period, which is accounted for in clause (b) below), minus USD 0.02, minus (B) the weighted average price (the “**Unwind Purchase Price**”) at which Dealer purchases Shares during the Unwind Period to unwind its hedge with respect to the portion of the Number of Shares to be settled during the Unwind Period (including, for the avoidance of doubt, purchases on any Disrupted Day in part), taking into account Shares anticipated to be delivered or received if Net Share Settlement applies, and the restrictions of Rule 10b-18 under the Exchange Act agreed to hereunder, multiplied by (ii) the Settlement Shares for the relevant Settlement Date; minus

- (b) the product of (i) the Forward Price Reduction Amount for any Forward Price Reduction Date that occurs during such Unwind Period, *and* (ii) the number of Settlement Shares for such Settlement Date with respect to which Dealer has not unwound its hedge, including the settlement of such unwinds, as of such Forward Price Reduction Date.

Net Share Settlement:	On any Settlement Date in respect of which Net Share Settlement applies, if the Cash Settlement Amount is a (i) positive number, Dealer shall deliver a number of Shares to Counterparty equal to the Net Share Settlement Shares, or (ii) negative number, Counterparty shall deliver a number of Shares to Dealer equal to the Net Share Settlement Shares; <i>provided</i> that, if Dealer determines in its commercially reasonable judgment that it would be required to deliver Net Share Settlement Shares to Counterparty, Dealer may elect to deliver a portion of such Net Share Settlement Shares on one or more dates prior to the applicable Settlement Date.
Net Share Settlement Shares:	With respect to a Settlement Date, the absolute value of the Cash Settlement Amount <u>divided by</u> the Unwind Purchase Price, with the number of Shares rounded up in the event such calculation results in a fractional number.
Unwind Period:	The period from and including the first Exchange Business Day following the date Counterparty validly elects Cash Settlement or Net Share Settlement in respect of a Settlement Date through the second Scheduled Trading Day preceding such Settlement Date, subject to "Termination Settlement" as described in Paragraph 7(g) below.
Failure to Deliver:	Applicable if Dealer is required to deliver Shares hereunder; otherwise, Not Applicable.
Share Cap:	Notwithstanding any other provision of this Confirmation, in no event will Counterparty be required to deliver to Dealer on any Settlement Date, whether pursuant to Physical Settlement, Net Share Settlement or any Private Placement Settlement, a number of Shares in excess of (i) 1.5 times the Initial Number of Shares, subject to adjustment from time to time in accordance with the provisions of this Confirmation or the Equity Definitions <u>minus</u> (ii) the aggregate number of Shares delivered by Counterparty to Dealer hereunder prior to such Settlement Date.

Adjustments:

Method of Adjustment: Calculation Agent Adjustment. Section 11.2(e) of the Equity Definitions is hereby amended by deleting clause (iii) thereof, and Section 11.2(e)(vii) of the Equity Definitions is hereby amended by adding the words “that is within the Issuer’s control” immediately after the word “event”. For the avoidance of doubt, the declaration or payment of a cash dividend will not constitute a Potential Adjustment Event.

Additional Adjustment: If, in Dealer’s commercially reasonable judgment, the stock loan fee to Dealer (or an affiliate of Dealer), excluding the federal funds rate component payable by the relevant stock lender to Dealer or such affiliate, over any 20 consecutive Scheduled Trading Days, of borrowing a number of Shares equal to the Number of Shares to hedge in a commercially reasonable manner its exposure to this Transaction exceeds a weighted average rate equal to []⁸ basis points per annum, the Calculation Agent shall reduce the Forward Price in order to compensate Dealer for the amount by which such cost exceeded a weighted average rate equal to []⁹ basis points per annum during such period.

Extraordinary Events:

Extraordinary Events: In lieu of the applicable provisions contained in Article 12 of the Equity Definitions, the consequences of any Extraordinary Event (including, for the avoidance of doubt, any Merger Event, Tender Offer, Nationalization, Insolvency, Delisting, or Change In Law) shall be as specified below under the headings “Acceleration Events” and “Termination Settlement” in Paragraphs 7(f) and 7(g), respectively. Notwithstanding anything to the contrary herein or in the Equity Definitions, no Additional Disruption Event will be applicable except to the extent expressly referenced in Section 7(f)(iv) below. The definition of “Tender Offer” in Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “15%.”

Non-Reliance: Applicable

Agreements and Acknowledgments Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

⁸ To be as set forth in the Forward Instruction Notice.

⁹ To be as set forth in the Forward Instruction Notice.

Transfer: Notwithstanding anything to the contrary herein or in the Agreement, Dealer may assign, transfer and set over all rights, title and interest, powers, privileges and remedies of Dealer under this Transaction, in whole or in part, to any affiliate of Dealer, whose obligations hereunder are fully and unconditionally guaranteed by Dealer or Dealer's ultimate parent entity, without the consent of Counterparty; *provided* that, at all times, Dealer or any transferee or assignee or other recipient of rights, title and interest, powers, privileges and remedies shall be eligible to provide a U.S. Internal Revenue Service Form W-9 or W-8ECI with respect to any payments or deliveries under the Agreement.

3. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner; provided that, following the occurrence and during the continuance of an Event of Default of the type described in Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, if the Calculation Agent fails to timely make any calculation, adjustment or determination required to be made by the Calculation Agent hereunder or to perform any obligation of the Calculation Agent hereunder and such failure continues for five (5) Exchange Business Days following notice to the Calculation Agent by Counterparty of such failure, Counterparty shall have the right to designate a nationally recognized third-party dealer in over-the-counter corporate equity derivatives to act, during the period commencing on the date such Event of Default occurred and ending on the Early Termination Date with respect to such Event of Default, as the Calculation Agent. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Counterparty, the Calculation Agent shall promptly (but in any event within three Scheduled Trading Days) provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary or confidential models or other proprietary or confidential information used by it for such determination or calculation.

4. Account Details:

- (a) Account for delivery of Shares to Dealer: To be furnished
- (b) Account for delivery of Shares to Counterparty: To be furnished
- (c) Account for payments to Counterparty: To be advised under separate cover or telephone confirmed prior to each Settlement Date
- (d) Account for payments to Dealer: To be advised under separate cover or telephone confirmed prior to each Settlement Date

5. Offices:

The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party

The Office of Dealer for the Transaction is: []

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

Phillips Edison & Company, Inc.
3247 Santa Fe Road
Park City, Utah 84098
Attention: Tanya E. Brady
Email: tbrady@phillipsedison.com

(b) Address for notices or communications to Dealer:

[DEALER NAME]
[ADDRESS]
[ADDRESS]
Attention: []
Telephone: []
Email: []

7. Other Provisions:

(a) Conditions to Effectiveness. This Transaction shall be effective if and to the extent that Shares are sold on or after the Trade Date and on or prior to the Hedge Completion Date by Dealer or its affiliate acting as forward seller for Dealer pursuant to the Sales Agreement. If the Sales Agreement is terminated prior to any such sale of Shares thereunder, the parties shall have no further obligations in connection with this Transaction, other than in respect of breaches of representations or covenants on or prior to such date.

(b) Sales Agreement Representations, Warranties and Covenants. On the Trade Date and on each date on which Dealer or its affiliates makes a sale pursuant to a prospectus in connection with a hedge of this Transaction, Counterparty repeats and reaffirms as of such date all of the representations and warranties contained in the Sales Agreement. Counterparty hereby agrees to comply with its covenants contained in the Sales Agreement as if such covenants were made in favor of Dealer.

(c) Interpretive Letter. Counterparty agrees and acknowledges that this Transaction is being entered into in accordance with the October 9, 2003 interpretive letter from the staff of the Securities and Exchange Commission to Goldman, Sachs & Co. (the “**Interpretive Letter**”) and agrees to take all actions, and to omit to take any actions, reasonably requested by Dealer for this Transaction to comply with the Interpretive Letter. Without limiting the foregoing, Counterparty agrees that neither it nor any “affiliated purchaser” (as defined in Regulation M (“**Regulation M**”) promulgated under the Exchange Act) will, directly or indirectly, bid for, purchase or attempt to induce any person to bid for or purchase, the Shares or securities that are convertible into, or exchangeable or exercisable for, Shares during any “restricted period” as such term is defined in Regulation M. In addition, Counterparty represents that it is eligible to conduct a primary offering of Shares on Form S-3, the offering contemplated by the Sales Agreement complies with Rule 415 under the Securities Act of 1933, as amended (the “**Securities Act**”), and the Shares are “actively traded” as defined in Rule 101(c)(1) of Regulation M.

(d) Agreements and Acknowledgments Regarding Shares.

(i) Counterparty agrees and acknowledges that, in respect of any Shares delivered to Dealer hereunder, such Shares shall be newly issued (unless mutually agreed otherwise by the parties) and, upon such delivery, duly and validly authorized, issued and outstanding, fully paid and nonassessable, free of any lien, charge, claim or other encumbrance and not subject to any preemptive or similar rights and shall, upon such issuance, be accepted for listing or quotation on the Exchange.

(ii) Counterparty agrees and acknowledges that Dealer (or an affiliate of Dealer) will hedge its exposure to this Transaction by selling Shares borrowed from third party securities lenders or other Shares pursuant to a registration statement, and that, pursuant to the terms of the Interpretive Letter, the Shares (up to the Number of Shares) delivered, pledged or loaned by Counterparty to Dealer (or an affiliate of Dealer) in connection with this Transaction may be used by Dealer (or an affiliate of Dealer) to return to securities lenders without further registration or other restrictions under the Securities Act, in the hands of those securities lenders, irrespective of whether such securities loan is effected by Dealer or an affiliate of Dealer. Accordingly, subject to Section 7(h) below, Counterparty agrees that the Shares that it delivers, pledges or loans to Dealer (or an affiliate of Dealer) on or prior to the final Settlement Date will not bear a restrictive legend and that such Shares will be deposited in, and the delivery thereof shall be effected through the facilities of, the Clearance System.

(iii) Counterparty agrees and acknowledges that it has reserved and will keep available at all times, free from preemptive or similar rights and free from any lien, charge, claim or other encumbrance, authorized but unissued Shares at least equal to the Share Cap, solely for the purpose of settlement under this Transaction.

(iv) Unless the provisions set forth below under “Private Placement Procedures” are applicable, Dealer agrees to use any Shares delivered by Counterparty hereunder on any Settlement Date to return to securities lenders to close out open securities loans created by Dealer or an affiliate of Dealer in the course of Dealer’s or such affiliate’s hedging activities related to Dealer’s exposure under this Transaction.

(v) In connection with bids and purchases of Shares in connection with any Cash Settlement or Net Share Settlement of this Transaction, Dealer shall use its reasonable efforts, based on the advice of counsel, to conduct its activities, or cause its affiliates to conduct their activities, in a manner consistent with the requirements of the safe harbor provided by Rule 10b-18 under the Exchange Act, as if such provisions were applicable to such purchases.

(vi) Counterparty agrees it will not treat ownership positions held by Dealer or any of its affiliates solely in its (or their) capacity as a nominee or fiduciary for unrelated persons as constituting Beneficial Ownership or Constructive Ownership (as such terms are defined in Counterparty's Fifth Articles of Amendment or Restatement) by Dealer.

(e) Additional Representations and Agreements of Counterparty. Counterparty represents, warrants and agrees as follows:

(i) Counterparty represents to Dealer on the Trade Date and on any date that Counterparty notifies Dealer that Cash Settlement or Net Share Settlement applies to this Transaction, that (A) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares, (B) each of its filings under the Securities Act, the Exchange Act or other applicable securities laws that are required to be filed have been filed and that, as of the date of this representation, when considered as a whole (with the more recent such filings deemed to amend inconsistent statements contained in any earlier such filings), there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading, and (C) Counterparty is not entering into this Confirmation nor making any election hereunder to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(ii) It is the intent of Dealer and Counterparty that following any election of Cash Settlement or Net Share Settlement by Counterparty, the purchase of Shares by Dealer during any Unwind Period comply with the prohibitions on manipulative and deceptive devices set forth under the Exchange Act, including any affirmative defenses set forth thereunder, and that this Confirmation shall be interpreted to comply with such requirements. Counterparty acknowledges that (A) during any Unwind Period Counterparty shall not have, and shall not attempt to exercise, any influence over how, when or whether to effect purchases of Shares by Dealer (or its agent or affiliate) in connection with this Confirmation and (B) Counterparty is entering into the Agreement and this Confirmation in good faith and not as part of a plan or scheme to evade compliance with federal securities laws including, without limitation, Rule 10b-5 promulgated under the Exchange Act.

(iii) Counterparty shall, at least one day prior to the first day of any Unwind Period, notify Dealer of the total number of Shares purchased in Rule 10b-18 purchases of blocks pursuant to the once-a-week block exception contained in Rule 10b-18(b)(4) by or for Counterparty or any of its affiliated purchasers during each of the four calendar weeks preceding the first day of the Unwind Period and during the calendar week in which the first day of the Unwind Period occurs ("Rule 10b-18 purchase", "blocks" and "affiliated purchaser" each being used as defined in Rule 10b-18).

(iv) During any Unwind Period, Counterparty shall (i) notify Dealer prior to the opening of trading in the Shares on any day on which Counterparty makes, or Counterparty reasonably expects in advance of the opening to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any merger, acquisition, or similar transaction involving a recapitalization relating to Counterparty (other than any such transaction in which the consideration consists solely of cash and there is no valuation period), (ii) promptly notify Dealer following any such announcement that such announcement has been made, and (iii) promptly deliver to Dealer following the making of any such announcement information indicating (A) Counterparty's average daily Rule 10b-18 purchases (as defined in Rule 10b-18) during the three full calendar months preceding the date of the announcement of such transaction and (B) Counterparty's block purchases (as defined in Rule 10b-18) effected pursuant to paragraph (b)(4) of Rule 10b-18 during the three full calendar months preceding the date of the announcement of such transaction. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders.

(v) Neither Counterparty nor any of its affiliated purchasers (within the meaning of Rule 10b-18 under the Exchange Act) shall take or refrain from taking any action (including, without limitation, any direct purchases by Counterparty or any of its affiliates, or any purchases by a party to a derivative transaction with Counterparty or any of its affiliates), either under this Confirmation, under an agreement with another party or otherwise, that might reasonably be expected to cause any purchases of Shares by Dealer or any of its affiliates in connection with any Cash Settlement or Net Share Settlement of this Transaction not to meet the requirements of the safe harbor provided by Rule 10b-18 determined as if all such foregoing purchases were made by Counterparty.

(vi) Counterparty will not engage in any “distribution” (as defined in Regulation M), other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) or 102(b)(7) of Regulation M, that would cause a “restricted period” (as defined in Regulation M) to occur during any Unwind Period.

(vii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(viii) Counterparty is not insolvent, nor will Counterparty be rendered insolvent as a result of this Transaction or its performance of the terms hereof.

(ix) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties or taking any position or expressing any view with respect to the treatment of this Transaction under any accounting standards including ASC Topic 260, Earnings Per Share, ASC Topic 815, Derivatives and Hedging, or ASC Topic 480, Distinguishing Liabilities from Equity and ASC 815-40, Derivatives and Hedging – Contracts in Entity’s Own Equity (or any successor issue statements) or under FASB’s Liabilities & Equity Project.

(x) Counterparty understands no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Dealer or any governmental agency.

(xi) To Counterparty’s actual knowledge, no federal, state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares, other than Sections 13 and 16 under the Exchange Act and Section 5.2 of Counterparty’s Fifth Articles of Amendment and Restatement.

(xii) No filing with, or approval, authorization, consent, license, registration, qualification, order or decree of, any court or governmental authority or agency, domestic or foreign, is necessary or required for the execution, delivery and performance by Counterparty of this Confirmation and the consummation of this Transaction (including, without limitation, the issuance and delivery of Shares on any Settlement Date) except (i) such as have been obtained under the Securities Act and (ii) as may be required to be obtained under state securities laws.

(xiii) Counterparty (A) has such knowledge and experience in financial and business affairs as to be capable of evaluating the merits and risks of entering into this Transaction; (B) has consulted with its own legal, financial, accounting and tax advisors in connection with this Transaction; and (C) is entering into this Transaction for a bona fide business purpose.

(xiv) Counterparty will, by the next succeeding Scheduled Trading Day notify Dealer upon obtaining knowledge of the occurrence of any event that would constitute an Event of Default, a Potential Event of Default or a Potential Adjustment Event.

(xv) In addition to any other requirement set forth herein, Counterparty agrees not to designate, or to appropriately rescind or modify a prior designation of, any Settlement Date if it is notified by Dealer that, in the reasonable determination of Dealer, based on advice of counsel, such settlement or Dealer's related market activity in respect of such date would result in a violation of any applicable federal or state law or regulation, including the U.S. federal securities laws.

(xv) Counterparty (i) is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities; (ii) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (iii) has total assets of at least USD50 million as of the date hereof.

(xvi) Counterparty agrees to provide Dealer with written notice (an "**Issuer Repurchase Notice**") prior to executing any repurchase of Shares by Counterparty or any of its subsidiaries (or entering into any contract that would require, or give the option to, Counterparty or any of its subsidiaries, to purchase or repurchase Shares), whether out of profits or capital or whether the consideration for such repurchase is cash, securities or otherwise (an "**Issuer Repurchase**"), that alone or in the aggregate would result in the Base Amount Percentage (as defined below) being greater by 0.5% or more than the Base Amount Percentage at the time of the immediately preceding Issuer Repurchase Notice (or in the case of the first such Issuer Repurchase Notice, greater than the Base Amount Percentage as of the date hereof). The "**Base Amount Percentage**" as of any day is the fraction (1) the numerator of which is the aggregate of the Number of Shares and (2) the denominator of which is the number of Shares outstanding on such day.

(f) Acceleration Events. Each of the following events shall constitute an "**Acceleration Event**":

(i) Stock Borrow Event. In the commercially reasonable judgment of Dealer (A) Dealer (or an affiliate of Dealer) is not able to hedge in a commercially reasonable manner its exposure under this Transaction because insufficient Shares are made available for borrowing by securities lenders or (B) Dealer (or an affiliate of Dealer) would incur a cost to borrow (or to maintain a borrow of) Shares to hedge in a commercially reasonable manner its exposure under this Transaction that is greater than a rate equal to 300 basis points per annum (each, a "**Stock Borrow Event**");

(ii) **Dividends and Other Distributions.** On any day occurring after the Trade Date, Counterparty declares a distribution, issue or dividend to existing holders of the Shares of (A) any cash dividend (other than an Extraordinary Dividend) to the extent all cash dividends having an ex-dividend date during the period from, and including, any Forward Price Reduction Date (with the Trade Date being a Forward Price Reduction Date for purposes of this paragraph (ii) only) to, but excluding, the next subsequent Forward Price Reduction Date exceeds, on a per Share basis, the Forward Price Reduction Amount set forth opposite the first date of any such period on Schedule I, (B) any Extraordinary Dividend, (C) any share capital or other securities of another issuer acquired or owned (directly or indirectly) by Counterparty as a result of a spin-off or other similar transaction or (D) any other type of securities (other than Shares), rights or warrants or other assets, in any case for payment (cash or other consideration) at less than the prevailing market price, as determined in a commercially reasonable manner by Dealer; “**Extraordinary Dividend**” means any dividend or distribution (that is not an ordinary cash dividend) declared by the Issuer with respect to the Shares that, in the commercially reasonable determination of Dealer, is (1) a dividend or distribution declared on the Shares at a time at which the Issuer has not previously declared or paid dividends or distributions on such Shares for the prior four quarterly periods, (2) a payment or distribution by the Issuer to holders of Shares that the Issuer announces will be an “extraordinary” or “special” dividend or distribution, (3) a payment by the Issuer to holders of Shares out of the Issuer’s capital and surplus or (4) any other “special” dividend or distribution on the Shares that is, by its terms or declared intent, outside the normal course of operations or normal dividend policies or practices of the Issuer;

(iii) **ISDA Termination.** Either Dealer or Counterparty has the right to designate an Early Termination Date pursuant to Section 6 of the Agreement, in which case, except as otherwise specified herein and except as a result of an Event of Default under Section 5(a)(i) of the Agreement, the provisions of Section 7(g) below shall apply in lieu of the consequences specified in Section 6 of the Agreement;

(iv) **Other ISDA Events.** The announcement of any event that, if consummated, would result in a Merger Event, Tender Offer, Nationalization, Insolvency or Delisting or the occurrence of any Hedging Disruption or Change in Law; *provided* that, in case of a Delisting, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or their respective successors); *provided further* that (i) the definition of “Change in Law” provided in Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (A) replacing the phrase “the interpretation” in the third line thereof with the phrase “or announcement or statement of the formal or informal interpretation” and (B) immediately following the word “Transaction” in clause (X) thereof, adding the phrase “in the manner contemplated by Dealer on the Trade Date” and (ii) any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law) or (B) the promulgation of or any change in or announcement or statement of the formal or informal interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a “Change in Law” shall be made without regard to Section 739 of the Wall Street Transparency and Accountability Act of 2010 (the “WSTAA”) or any similar provision in any legislation enacted on or after the Trade Date; or

(v) **Ownership Event.** In the good faith judgment of Dealer, on any day, the Share Amount for such day exceeds the Post-Effective Limit for such day (if any applies) (each, an “**Ownership Event**”). For purposes of this clause (v), the “**Share Amount**” as of any day is the number of Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a “**Dealer Person**”) under any law, rule, regulation or regulatory order (other than any obligations under Section 13 of the Exchange Act and the rules and regulations promulgated thereunder) or Counterparty constituent document that for any reason is, or after the Trade Date becomes, applicable to ownership of Shares (“**Applicable Provisions**”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership of under the Applicable Provisions, as determined by Dealer in its reasonable discretion. The “**Post-Effective Limit**” means (x) the minimum number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or would result in an adverse effect on a Dealer Person, under the Applicable Provisions, as determined by Dealer in its reasonable discretion, minus (y) 1.0% of the number of Shares outstanding.

(g) **Termination Settlement.** Upon the occurrence of any Acceleration Event, Dealer shall have the right to designate, upon at least one Scheduled Trading Day’s notice, any Scheduled Trading Day following such occurrence to be a Settlement Date hereunder (a “**Termination Settlement Date**”) to which Physical Settlement shall apply, and to select the number of Settlement Shares relating to such Termination Settlement Date; *provided* that (i) in the case of an Acceleration Event arising out of an Ownership Event, the number of Settlement Shares so designated by Dealer shall not exceed the number of Shares necessary to reduce the Share Amount to reasonably below the Post-Effective Limit and (ii) in the case of an Acceleration Event arising out of a Stock Borrow Event, the number of Settlement Shares so designated by Dealer shall not exceed the number of Shares as to which such Stock Borrow Event exists. If, upon designation of a Termination Settlement Date by Dealer pursuant to the preceding sentence, Counterparty fails to deliver the Settlement Shares relating to such Termination Settlement Date when due or otherwise fails to perform obligations within its control in respect of this Transaction, it shall be an Event of Default with respect to Counterparty and Section 6 of the Agreement shall apply. If an Acceleration Event occurs during an Unwind Period relating to a number of Settlement Shares to which Cash Settlement or Net Share Settlement applies, then on the Termination Settlement Date relating to such Acceleration Event, notwithstanding any election to the contrary by Counterparty, Cash Settlement or Net Share Settlement shall apply to the portion of the Settlement Shares relating to such Unwind Period as to which Dealer has unwound its hedge and Physical Settlement shall apply in respect of (x) the remainder (if any) of such Settlement Shares and (y) the Settlement Shares designated by Dealer in respect of such Termination Settlement Date. If an Acceleration Event occurs after Counterparty has designated a Settlement Date to which Physical Settlement applies but before the relevant Settlement Shares have been delivered to Dealer, then Dealer shall have the right to cancel such Settlement Date and designate a Termination Settlement Date in respect of such Shares pursuant to the first sentence hereof.

(h) **Private Placement Procedures.** If Counterparty is unable to comply with the provisions of sub-paragraph (ii) of “Agreements and Acknowledgments Regarding Shares” above because of a change in law or a change in the policy of the Securities and Exchange Commission or its staff, or Dealer otherwise determines that in its reasonable opinion any Shares to be delivered to Dealer by Counterparty may not be freely returned by Dealer or its affiliates to securities lenders as described under such sub-paragraph (ii) or otherwise constitute “restricted securities” as defined in Rule 144 under the Securities Act, then delivery of any such Shares (the “**Restricted Shares**”) shall be effected as provided below, unless waived by Dealer.

(i) If Counterparty delivers the Restricted Shares pursuant to this clause (i) (a “**Private Placement Settlement**”), then delivery of Restricted Shares by Counterparty shall be effected in accordance with private placement procedures customary for private placements of equity securities of substantially similar size with respect to such Restricted Shares reasonably acceptable to Dealer; *provided* that Counterparty may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(a)(2) of the Securities Act for the sale by Counterparty to Dealer (or any affiliate designated by Dealer) of the Restricted Shares or the exemption pursuant to Section 4(a)(1) or Section 4(a)(3) of the Securities Act for resales of the Restricted Shares by Dealer (or any such affiliate of Dealer), and if Counterparty fails to deliver the Restricted Shares when due or otherwise fails to perform obligations within its control in respect of a Private Placement Settlement, it shall be an Event of Default with respect to Counterparty and Section 6 of the Agreement shall apply. The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Restricted Shares by Dealer), opinions and certificates, and such other documentation as is customary for private placement agreements of equity securities of a substantially similar size, all reasonably acceptable to Dealer. In the case of a Private Placement Settlement, Dealer shall, in its good faith discretion, adjust the amount of Restricted Shares to be delivered to Dealer hereunder in a commercially reasonable manner to reflect the fact that such Restricted Shares may not be freely returned to securities lenders by Dealer and may only be saleable by Dealer at a discount to reflect the lack of liquidity in Restricted Shares. Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Clearance System Business Day following notice by Dealer to Counterparty of the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the date that would otherwise be applicable.

(ii) If Counterparty delivers any Restricted Shares in respect of this Transaction, Counterparty agrees that (A) such Shares may be transferred by and among Dealer and its affiliates and (B) after the minimum “holding period” within the meaning of Rule 144(d) under the Securities Act has elapsed, Counterparty shall promptly remove, or cause the transfer agent for the Shares to remove, any legends referring to any transfer restrictions from such Shares upon delivery by Dealer (or such affiliate of Dealer) to Counterparty or such transfer agent of any seller’s and broker’s representation letters customarily delivered by Dealer or its affiliates in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, each without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer).

(i) **Indemnity.** Counterparty agrees to indemnify Dealer and its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such affiliate or person being an “**Indemnified Party**”) from and against any and all losses, claims, damages and liabilities, joint and several, incurred by or asserted against such Indemnified Party arising out of, in connection with, or relating to any breach of any covenant or representation made by Counterparty in this Confirmation or the Agreement and will reimburse any Indemnified Party for all reasonable expenses (including reasonable legal fees and reasonable expenses) as they are incurred in connection with the investigation of, preparation for, or defense of any pending or threatened claim or any action or proceeding arising therefrom (whether or not such Indemnified Party is a party thereto), except to the extent determined in a final and nonappealable judgment by a court of competent jurisdiction to have resulted from Dealer’s negligence, fraud, bad faith and/or willful misconduct or from a breach of any representation or covenant of Dealer contained in this Confirmation or the Agreement. The foregoing provisions shall survive any termination or completion of the Transaction.

(j) **Waiver of Trial by Jury.** EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(k) Governing Law/Jurisdiction. This Confirmation and any claim, controversy or dispute arising under or related to this Confirmation shall be governed by the laws of the State of New York without reference to the conflict of laws provisions thereof. The parties hereto irrevocably submit to the exclusive jurisdiction of the courts of the State of New York and the United States Court for the Southern District of New York in connection with all matters relating hereto and waive any objection to the laying of venue in, and any claim of inconvenient forum with respect to, these courts.

(l) Designation by Dealer. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty only to the extent of any such performance.

(m) Insolvency Filing. Notwithstanding anything to the contrary herein, in the Agreement or in the Equity Definitions, upon any Insolvency Filing or other proceeding under the Bankruptcy Code in respect of the Issuer, this Transaction shall automatically terminate on the date thereof without further liability of either party to this Confirmation to the other party (except for any liability in respect of any breach of representation or covenant by a party under this Confirmation prior to the date of such Insolvency Filing or other proceeding), it being understood that this Transaction is a contract for the issuance of Shares by the Issuer.

(n) Disclosure. Effective from the date of commencement of discussions concerning the Transaction, each of Dealer and Counterparty and each of their employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) relating to such tax treatment and tax structure.

(o) Right to Extend. Dealer may postpone any Settlement Date or any other date of valuation or delivery, with respect to some or all of the relevant Settlement Shares, if Dealer determines, based on the advice of counsel, that such extension is reasonably necessary or appropriate to enable Dealer to effect purchases of Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements or with related policies and procedures applicable to Dealer that generally apply to transactions of a nature and kind similar to the Transaction.

(p) Counterparty Share Repurchases. Counterparty agrees not to repurchase, directly or indirectly, any Shares if, immediately following such purchase, the Outstanding Share Percentage would be equal to or greater than 4.5%. The “**Outstanding Share Percentage**” as of any day is the fraction (1) the numerator of which is the Number of Shares and (2) the denominator of which is the number of Shares outstanding on such day.

(q) **Limit on Beneficial Ownership.** Notwithstanding any other provisions hereof, Dealer shall not have the right to acquire Shares hereunder and Dealer shall not be entitled to take delivery of any Shares hereunder (in each case, whether in connection with the purchase of Shares on any Settlement Date or any Termination Settlement Date, any Private Placement Settlement or otherwise) to the extent (but only to the extent) that, after such receipt of any Shares hereunder, (i) the Share Amount would exceed the Post-Effective Limit, (ii) Dealer and each person subject to aggregation of Shares with Dealer under Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder, including any “group” of which Dealer or its affiliates is a part, (the “**Dealer Group**”) would directly or indirectly beneficially own (as such term is defined for purposes of Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder) in excess of 4.9% of the then outstanding Shares (the “**Threshold Number of Shares**”), (iii) Dealer would hold 5% or more of the number of Shares of Counterparty’s outstanding common stock or 5% or more of Counterparty’s outstanding voting power (the “**Exchange Limit**”) or (iv) such acquisition would result in a violation of any limit or restriction on transfer and ownership of Shares set forth in Section 5.2 of Counterparty’s Fifth Articles of Amendment and Restatement (the “**Counterparty Stock Ownership Restriction**”). Any purported delivery hereunder shall be void and have no effect to the extent (but only to the extent) that, after such delivery, (i) the Share Amount would exceed the Post-Effective Limit, (ii) the Dealer Group would directly or indirectly so beneficially own in excess of the Threshold Number of Shares, (iii) Dealer would directly or indirectly so beneficially own in excess of the Exchange Limit or (iv) such delivery would result in a violation of the Counterparty Stock Ownership Restriction. If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of this provision, Counterparty’s obligation to make such delivery shall not be extinguished and Counterparty shall make such delivery as promptly as practicable after, but in no event later than one Scheduled Trading Day after, Dealer gives notice to Counterparty that, after such delivery, (i) the Share Amount would not exceed the Post-Effective Limit, (ii) the Dealer Group would not directly or indirectly so beneficially own in excess of the Threshold Number of Shares, (iii) Dealer would not directly or indirectly so beneficially own in excess of the Exchange Limit or (iv) such delivery would not result in a violation of the Counterparty Stock Ownership Restriction, as applicable.

In addition, notwithstanding anything herein to the contrary, if any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of the immediately preceding paragraph, Dealer shall be permitted to make any payment due in respect of such Shares to Counterparty in two or more tranches that correspond in amount to the number of Shares delivered by Counterparty to Dealer pursuant to the immediately preceding paragraph.

(r) **Commodity Exchange Act.** Each of Dealer and Counterparty agrees and represents that it is an “eligible contract participant” as defined in Section 1a(18) of the U.S. Commodity Exchange Act, as amended (the “CEA”), the Agreement and this Transaction are subject to individual negotiation by the parties and have not been executed or traded on a “trading facility” as defined in Section 1a(51) of the CEA.

(s) **Bankruptcy Status.** Subject to Paragraph 7(m) above, Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the transactions contemplated hereby that are senior to the claims of Counterparty’s common stockholders in any U.S. bankruptcy proceedings of Counterparty; *provided, however*, that nothing herein shall be deemed to limit Dealer’s right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to this Confirmation and the Agreement; and *provided, further*, that nothing herein shall limit or shall be deemed to limit Dealer’s rights in respect of any transaction other than this Transaction.

(t) **No Collateral or Setoff.** Notwithstanding Section 6(f) or any other provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Counterparty hereunder are not secured by any collateral. Obligations in respect of this Transaction shall not be set off against any other obligations of the parties, whether arising under the Agreement, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be set off against obligations in respect of this Transaction, whether arising under the Agreement, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff.

(u) Tax Matters.

(i) For the purpose of Section 3(f) of the Agreement:

(A) Dealer makes the following representations:¹⁰

[(1) It is a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for U.S. federal income tax purposes.

(2) It is a national banking association organized and existing under the laws of the United States of America, and is an exempt recipient under Treasury Regulation Section 1.6049-4(c)(1)(ii).]

[(1) It is a “foreign person” (as that term is used in section 1.6041-4(a)(4) of the United States Treasury Regulations) for U.S. federal income tax purposes and each payment received or to be received by it under this Agreement will be effectively connected with its conduct of a trade or business in the United States.]

(B) Counterparty makes the following representations:

(1) It is a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for U.S. federal income tax purposes.

(2) It is a real estate investment trust for U.S. federal income tax purposes and is organized under the laws of the State of Maryland, and is an exempt recipient under Treasury Regulation Section 1.6049-4(c)(1)(ii)(J).

- (ii) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. “Indemnifiable Tax”, as defined in Section 14 of the Agreement, shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.
- (iii) HIRE Act. To the extent that either party to the Agreement with respect to this Transaction is not an adhering party to the ISDA 2015 Section 871(m) Protocol published by the International Swaps and Derivatives Association, Inc. on November 2, 2015 and available at www.isda.org, as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”), the parties agree that the provisions and amendments contained in the Attachment to the 871(m) Protocol are incorporated into and apply to the Agreement with respect to this Transaction as if set forth in full herein. The parties further agree that, solely for purposes of applying such provisions and amendments to the Agreement with respect to this Transaction, references to “each Covered Master Agreement” in the 871(m) Protocol will be deemed to be references to the Agreement with respect to this Transaction, and references to the “Implementation Date” in the 871(m) Protocol will be deemed to be references to the Trade Date of this Transaction. For greater certainty, if there is any inconsistency between this provision and the provisions contained in any other agreement between the parties with respect to this Transaction, this provision shall prevail unless such other agreement expressly overrides the provisions of the Attachment to the 871(m) Protocol.

¹⁰ Insert Dealer’s boilerplate Section 3(f) tax representations

- (iv) Tax documentation. For the purposes of Sections 4(a)(i) and 4(a)(ii) of the Agreement, Counterparty shall provide to Dealer a valid and duly executed U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation; (ii) promptly upon reasonable demand by the other party; and (iii) promptly upon learning that any such tax form previously provided has become invalid, obsolete, or incorrect. For the purposes of Sections 4(a)(i) and 4(a)(ii) of the Agreement, Dealer shall provide to Counterparty a valid and duly executed U.S. Internal Revenue Service Form W-9 or W-8ECI, or any successor thereto, (i) on or before the date of execution of this Confirmation; (ii) promptly upon reasonable demand by Counterparty; and (iii) promptly upon learning that any such tax form previously provided by Dealer has become invalid, obsolete or incorrect.
- (v) Change of Account. Section 2(b) of the Agreement is hereby amended by the addition of the following after the word “delivery” in the first line thereof: “to another account in the same legal and tax jurisdiction”.

(v) Wall Street Transparency and Accountability Act of 2010. The parties hereby agree that none of (i) Section 739 of the WSTAA, (ii) any similar legal certainty provision included in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (iii) the enactment of the WSTAA or any regulation under the WSTAA, (iv) any requirement under the WSTAA or (v) any amendment made by the WSTAA shall limit or otherwise impair either party’s right to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased cost, regulatory change or similar event under this Confirmation, the Equity Definitions or the Agreement (including, but not limited to, any right arising from any Acceleration Event).

(w) Other Forward(s). Dealer acknowledges that Counterparty has entered into or may enter in the future into one or more substantially identical forward transactions for the Shares (each, an “**Other Forward**” and, collectively, the “**Other Forwards**”) with one or more alternative forward purchasers. Dealer and Counterparty agree that if Counterparty designates a “Settlement Date” with respect to one or more Other Forwards for which “Cash Settlement” or “Net Share Settlement” is applicable, and the resulting “Unwind Period” for such Other Forward coincides for any period of time with an Unwind Period for this Transaction (the “**Overlap Unwind Period**”), Counterparty shall notify Dealer at least one Scheduled Trading Day prior to the commencement of such Overlap Unwind Period of the first Scheduled Trading Day and the length of such Overlap Unwind Period, and Dealer shall be permitted to purchase Shares to unwind its hedge in respect of this Transaction only on alternating Scheduled Trading Days during such Overlap Unwind Period, as notified to Dealer by Counterparty at least one Business Day prior to such Overlap Unwind Period (which alternating Scheduled Trading Days, for the avoidance of doubt, may be every other Scheduled Trading Day if there is only one Other Forward, every third Scheduled Trading Day if there are two Other Forwards, etc.).

(x) [*U.S. Stay Regulations*]. To the extent that the QFC Stay Rules are applicable hereto, then the parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”), the terms of the Protocol are incorporated into and form a part of this Confirmation, and for such purposes this Confirmation shall be deemed a Protocol Covered Agreement and each party shall be deemed to have the same status as “Regulated Entity” and/or “Adhering Party” as applicable to it under the Protocol; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “**Bilateral Agreement**”), the terms of the Bilateral Agreement are incorporated into and form a part of this Confirmation and each party shall be deemed to have the status of “Covered Entity” or “Counterparty Entity” (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “**Bilateral Terms**”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Confirmation, and for such purposes this Confirmation shall be deemed a “Covered Agreement,” Dealer shall be deemed a “Covered Entity” and Counterparty shall be deemed a “Counterparty Entity.” In the event that, after the date of this Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this paragraph. In the event of any inconsistencies between this Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “**QFC Stay Terms**”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “this Confirmation” include any related credit enhancements entered into between the parties or provided by one to the other. In addition, the parties agree that the terms of this paragraph shall be incorporated into any related covered affiliate credit enhancements, with all references to Dealer replaced by references to the covered affiliate support provider.

“*QFC Stay Rules*” means the regulations codified at 12 C.F.R. 252.2, 252.81–8, 12 C.F.R. 382.1-7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.]¹¹

(y) [*Other Matters*]. Insert any boilerplate terms or provisions applicable to Dealer]

[*Signature Page Follows*]

¹¹ Insert Dealer’s boilerplate U.S. Resolution Stay agreements, if applicable.

Please confirm your agreement to be bound by the terms stated herein by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,

[NAME OF DEALER]

By: _____

Name:

Title:

[Signature Page to Registered Forward
Transaction Confirmation]

Confirmed as of the date first above written:

PHILLIPS EDISON & COMPANY, INC.

By: _____

Name:

Title:

[Signature Page to Registered Forward
Transaction Confirmation]

Forward Price Reduction Date	Forward Price Reduction Amount
Trade Date	USD 0.00
[], 20[]	USD []
[], 20[]	USD []
[], 20[]	USD []
[], 20[]	USD []
Final Date ¹²	USD 0.00

¹² [Schedule to go at least one calendar day beyond the Final Date.]

FORM OF PRICING SUPPLEMENT

Date: []

To: Phillips Edison & Company, Inc.
 3247 Santa Fe Road
 Park City, UT 84098

From: [DEALER NAME AND NOTICE INFORMATION]

Ladies and Gentlemen:

This Pricing Supplement is the Pricing Supplement contemplated by the Registered Forward Transaction dated as of [] (the “**Confirmation**”) between Phillips Edison & Company, Inc. (“**Counterparty**”) and [DEALER NAME] (“**Dealer**”).

For all purposes under the Confirmation,

- (a) the Hedge Completion Date is [];
- (b) the Initial Number of Shares shall be [], subject to further adjustment in accordance with the terms of the Confirmation; and
- (c) the Initial Forward Price shall be USD [].

Very truly yours,

[DEALER NAME]

By: _____

Name:

Title:

Confirmed as of the date first above written:

PHILLIPS EDISON & COMPANY, INC.

By: _____

Name:

Title:

TERMS AGREEMENT

Morgan Stanley & Co. LLC
[Name(s) of Co-Agent(s)]

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

Ladies and Gentlemen:

Phillips Edison & Company, Inc., a Maryland corporation (the “**Company**”), proposes, on the basis of the representations and warranties, and subject to the terms and conditions, stated herein and in the Sales Agreement, dated as of February 12, 2024 (the “**Sales Agreement**”), between the Company, Phillips Edison Grocery Center Operating Partnership I, L.P., a Delaware limited partnership (the “**Operating Partnership**”), and, among others, the agents party thereto, to issue and sell to [[•] and [•]] as principal for resale ([collectively,] the “**Underwriter[s]**”), and the Underwriter[s severally] agree[s] to purchase from the Company the shares of Common Stock specified in the Schedule A hereto (the “[**Initial Securities**]”) [, and to grant to the Underwriter[s] the option to purchase the additional shares of Common Stock specified in the Schedule A hereto (the “**Option Securities**,” and together with the Initial Securities, the “**Securities**”), [in each case] on the terms specified in Schedule A hereto. Capitalized terms but and not defined herein have the respective meanings ascribed thereto in the Sales Agreement

[The Company grants an option to the Underwriter[s, severally and not jointly,]to purchase up to an additional [•] Option Securities at the price per share set forth in Schedule A hereto, less an amount per share equal to any dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities. The option hereby granted may be exercised for 30 days after the date hereof and may be exercised in whole or in part at any time from time to time upon notice by the Underwriter[s] to the Company setting forth the number of Option Securities as to which the [several] Underwriter[s] [is][are] then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a “**Date of Delivery**”) shall be determined by the Underwriter[s], but shall not be later than seven full business days after the exercise of said option, nor in any event prior to the Settlement Date (as defined below). [If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A hereto opposite the name of such Underwriter bears to the total number of Initial Securities, subject, in each case, to such adjustments as [•] in its sole discretion shall make to eliminate any sales or purchases of fractional shares. For purposes of clarity, the parties hereto agree that the officers’ certificate, opinions and letter of counsel and accountants’ letter referred to in Section 3(o), (p) and (q), respectively, of the Sales Agreement are required to be delivered by or on behalf of the Company on the Settlement Date.]

Payment of the purchase price for, and delivery of certificates for, the Securities shall be made at the offices of Goodwin Procter LLP, 620 Eighth Avenue, New York, New York 10018, or at such other place as shall be agreed upon by the Underwriter[s] and the Company, at 9:00 A.M. (New York City time) on the second (or third, if the pricing occurs after 4:30 P.M. (New York City time) on any given day) business day after the date hereof (unless postponed in accordance with the provisions of Section 8(c) of the Sales Agreement), or such other time not later than ten business days after such date as shall be agreed upon by the Underwriter[s] and the Company (such time and date of payment and delivery being herein called “**Settlement Date**”).

In addition, in the event that any or all of the Option Securities are purchased by the Underwriter[s], payment of the purchase price for, and delivery of certificates for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Underwriter[s] and the Company, on each Date of Delivery as specified in the notice from the Underwriter[s] to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company against delivery to the Underwriter[s] for their respective accounts for the Securities to be purchased by them. [It is understood that each Underwriter has authorized [•] as representative of the Underwriters, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. [•], individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Settlement Date or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.]

Each of the provisions of the Sales Agreement not related solely to the Agent, as agent of the Company, is incorporated herein by reference in its entirety, and shall be deemed to be part of this Terms Agreement to the same extent as if each such provision had been set forth in full herein. Each of the representations and warranties set forth in the Sales Agreement shall be deemed to have been made at and as of the date of this Terms Agreement [and][.] the Applicable Time [and any Date of Delivery].

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement between the Underwriter[s] and the Company in accordance with its terms.

THIS TERMS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS TERMS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

PHILLIPS EDISON & COMPANY, INC.

By: _____

Name:

Title:

**PHILLIPS EDISON GROCERY CENTER
OPERATING PARTNERSHIP I, L.P.**

By: PHILLIPS EDISON GROCERY CENTER OP GP I
LLC, its General Partner

By: _____

Name:

Title:

Accepted as of the date hereof:

[Underwriter[s]]

FORM OF INSTRUCTION NOTICE IN RESPECT OF A FORWARD

From: Phillips Edison & Company, Inc.

Cc: Phillips Edison Grocery Center Operating Partnership I, L.P.

To: [Forward Purchaser; Forward Seller]

Subject: Forward Instruction Notice

Ladies and Gentlemen:

Reference is made to the Sales Agreement, dated February 12, 2024 (the "Sales Agreement"), by and among the Company and, among other parties, [Forward Seller], as sales agent, forward seller and/or principal (in any such capacity, the "Agent"), and [Forward Purchaser], as forward purchaser (in such capacity, the "Forward Purchaser"). Capitalized terms used but not otherwise defined herein have the meanings set forth in the Sales Agreement or the Form of Registered Forward Confirmation set forth in Exhibit E to the Sales Agreement (the "Form Confirmation").

The Company desires to enter into a Forward, including a related Confirmation substantially consistent with the Form Confirmation, in each case on the following terms:

Forward Hedge Selling Period:	[•]-[•]
Maximum Number of Shares to be Sold:	[•]
Aggregate Maximum Forward Hedge Amount:	[\$•]
Minimum Price per Share(1):	[\$•]
Forward Seller Commission:	[•]%
Spread:	[•]%
Initial Stock Loan Rate:	[•]%
Final Date:	[•], 20[•]
Forward Price Reduction Dates / Amounts (\$):	[•], 20[•] / \$[•] [•], 20[•] / \$[•] [•], 20[•] / \$[•] [•], 20[•] / \$[•]

Number of Scheduled Trading Days in the notice period for Cash Settlement /
Net Share Settlement election:

Other Deviations from Form Confirmation: [•]

(1) Adjustable by the Company during the Forward Hedge Selling Period.

Very truly yours,

PHILLIPS EDISON & COMPANY, INC.

By: _____
Name:
Title:



111 S. Calvert Street, 27th Floor
Baltimore, MD 21202-6174
TEL 410.528.5600
FAX 410.528.5650
www.ballardspahr.com

February 12, 2024

Phillips Edison & Company, Inc.
11501 Northlake Drive
Cincinnati, Ohio 45249

Re: Phillips Edison & Company, Inc., a Maryland corporation (the "Company") – Registration of shares of common stock, par value \$0.01 per share (the "Common Stock"), of the Company having an aggregate gross sales price of up to \$250,000,000 (the "Shares") to be sold in an at-the-market offering (the "Offering") pursuant to a Registration Statement on Form S-3 (Registration Nos. 333-262627 and 333-262627-01) filed with the Securities and Exchange Commission (the "Commission") on February 10, 2022 (the "Registration Statement")

Ladies and Gentlemen:

We have acted as Maryland corporate counsel to the Company in connection with the registration of the Shares under the Securities Act of 1933, as amended (the "Act"), by the Company under the Registration Statement. You have requested our opinion with respect to the matters set forth below.

In our capacity as Maryland corporate counsel to the Company and for the purposes of this opinion, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (collectively, the "Documents"):

- (i) the corporate charter of the Company (the "Charter") represented by Articles of Amendment and Restatement filed with the State Department of Assessments and Taxation of Maryland (the "SDAT") on August 4, 2020, Articles of Amendment filed with the SDAT on July 2, 2021, Articles of Amendment filed with the SDAT on July 2, 2021, Articles Supplementary filed with the SDAT on July 2, 2021, Articles of Amendment filed with the SDAT on July 2, 2021, Articles Supplementary filed with the SDAT on July 16, 2021 and Articles Supplementary filed with the SDAT on May 5, 2022;
- (ii) the Fifth Amended and Restated Bylaws of the Company, effective as of July 19, 2021 (the "Bylaws");
- (iii) resolutions adopted by the Board of Directors of the Company (the "Board") on or as of February 12, 2024 and by the ATM Offering Committee of the Board on or as of February 12, 2024 (collectively, the "Directors' Resolutions");

- (iv) the Registration Statement filed by the Company with the Commission under the Act, the related base prospectus, dated February 10, 2022, and the related prospectus supplement, dated February 12, 2024;
- (v) a fully executed counterpart of the Sales Agreement, dated as of February 12, 2024 (the "Sales Agreement"), by and among the Company, Phillips Edison Grocery Center Operating Partnership I, L.P., a Delaware limited partnership, and each of (i) Morgan Stanley & Co. LLC, BMO Capital Markets Corp., BofA Securities, Inc., BTIG, LLC, Capital One Securities, Inc., Citigroup Global Markets Inc., Fifth Third Securities, Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Mizuho Securities USA LLC, Regions Securities LLC, Wedbush Securities Inc. and Wells Fargo Securities, LLC, as sales agent, forward seller (except with respect to BTIG, LLC) and/or principal, and Nomura Securities International, Inc. (acting through BTIG, LLC as its agent), as forward seller to Nomura Global Financial Products, Inc., its relevant forward purchaser, and (ii) Morgan Stanley & Co. LLC, Bank of America, N.A., Bank of Montreal, Citibank, N.A. (or an affiliate thereof), Goldman Sachs & Co. LLC, Jefferies LLC, JPMorgan Chase Bank, National Association, KeyBanc Capital Markets Inc., Mizuho Markets Americas LLC, Nomura Global Financial Products, Inc., Regions Securities LLC and Wells Fargo Bank, National Association, as forward purchasers;
- (vi) a status certificate of the SDAT, dated as of a recent date, to the effect that the Company is duly incorporated and existing under the laws of the State of Maryland;
- (vii) a certificate of two officers of the Company, dated as of a recent date (the "Officers' Certificate"), to the effect that, among other things, the Charter, the Bylaws and the Directors' Resolutions are true, correct and complete and have not been rescinded or modified, and that the Charter, the Bylaws and the Directors' Resolutions are in full force and effect on the date of the Officers' Certificate, and certifying as to the manner of adoption of the Directors' Resolutions, the authorization for issuance of the Shares, and the form, approval, execution and delivery of the Sales Agreement; and
- (viii) such other documents and matters as we have deemed necessary and appropriate to render the opinions set forth in this letter, subject to the limitations, assumptions, and qualifications noted below.

In reaching the opinions set forth below, we have assumed the following:

- (a) each person executing any of the Documents on behalf of any party (other than the Company) is duly authorized to do so;
- (b) each natural person executing any of the Documents is legally competent to do so;

- (c) any of the Documents submitted to us as originals are authentic; the form and content of any Documents submitted to us as unexecuted drafts do not, and will not, differ in any respect relevant to this opinion from the form and content of such documents as executed and delivered; any of the Documents submitted to us as certified, facsimile or photostatic copies conform to the original document; all signatures on all of the Documents are genuine; all public records reviewed or relied upon by us or on our behalf are true and complete; there has been no modification of, or amendment to, any of the Documents, and there has been no waiver of any provision of any of the Documents by action or omission of the parties or otherwise;
- (d) the Officers' Certificate and all other certificates submitted to us are true and correct both when made and as of the date hereof;
- (e) neither the issuance and sale of the Shares pursuant to the Sales Agreement, nor the ownership of the Shares by purchasers thereof, will violate any of the ownership or transfer restrictions or limitations contained in the Charter;
- (f) none of the Shares will be issued and sold to an Interested Stockholder of the Company or an Affiliate thereof, all as defined in Subtitle 6 of Title 3 of the Maryland General Corporation Law (the "MGCL"), in violation of Section 3-602 of the MGCL;
- (g) the aggregate gross sales price of all of the Shares sold pursuant to the Sales Agreement will not exceed \$250,000,000, and the aggregate number of Shares issued and sold pursuant to the Sales Agreement will not exceed the maximum aggregate number authorized for issuance and sale in the Directors' Resolutions;
- (h) the consideration per share to be received by the Company for each Share issued and sold pursuant to the Sales Agreement will be determined in accordance with, and will not be less than the applicable minimum consideration per share set forth in, the Directors' Resolutions; and
- (i) upon each issuance of any of the Shares subsequent to the date hereof, the total number of shares of Common Stock of the Company issued and outstanding, after giving effect to such issuance of such Shares, will not exceed the total number of shares of Common Stock that the Company is authorized to issue under the Charter.

Based on our review of the foregoing and subject to the assumptions and qualifications set forth herein, it is our opinion that, as of the date of this letter:

- (1) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Maryland.
- (2) The Shares to be issued in the Offering have been duly authorized for issuance by the Company pursuant to the Sales Agreement, and when such Shares are issued and delivered in exchange for payment of the consideration therefor, as provided in, and in accordance with the terms of, the Sales Agreement and the Directors' Resolutions, such Shares will be duly authorized, validly issued, fully paid and nonassessable.

BALLARD SPAHR LLP

Phillips Edison & Company, Inc.

February 12, 2024

Page 4

The foregoing opinion is limited to the laws of the State of Maryland, and we do not express any opinion herein concerning any other law. We express no opinion as to the applicability or effect of any federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter.

This opinion letter is issued as of the date hereof and is necessarily limited to laws now in effect and facts and circumstances presently existing and brought to our attention. We assume no obligation to supplement this opinion letter if any applicable laws change after the date hereof, or if we become aware of any facts or circumstances that now exist or that occur or arise in the future and may change the opinions expressed herein after the date hereof.

We consent to your filing this opinion as an exhibit to the Company's Current Report on Form 8-K relating to the Shares, which is incorporated by reference in the Registration Statement, and we further consent to the filing of this opinion as an exhibit to the applications to securities commissioners for the various states of the United States for registration of the Shares. We also consent to the identification of our firm as Maryland counsel to the Company in the section of the Registration Statement entitled "Legal Matters". In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Act.

Very truly yours,

/s/ Ballard Spahr LLP