

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): July 14, 2021



Phillips Edison & Company, Inc.
(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction
of incorporation)

000-54691

(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	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 1.01. Entry Into a Material Definitive Agreement.

Underwriting Agreement

On July 19, 2021, Phillips Edison & Company, Inc. (the "Company") closed its registered underwritten public offering (the "Offering") of 17,000,000 shares of common stock, \$0.01 par value per share (the "Common Stock"), pursuant to the Company's registration statement on Form S-11 (File No. 333-255846) (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"). In connection with the Offering, the Company entered into the Underwriting Agreement, dated July 14, 2021, by and among the Company, Phillips Edison Grocery Center Operating Partnership I, L.P. (the "Partnership"), and Morgan Stanley & Co. LLC, BofA Securities, Inc. and J.P. Morgan Securities LLC, as representatives of the several underwriters named therein (the "Underwriting Agreement").

The Underwriting Agreement contains customary representations, warranties, covenants and agreements by the Company and the Partnership, customary conditions to closing, indemnification obligations of the Company, the Partnership and the underwriters, including for liabilities under the Securities Act, certain other obligations of the parties and termination provisions. The underwriters have a 30-day option to purchase 2,550,000 additional shares of Common Stock.

Tax Protection Agreement

As disclosed in the Registration Statement, we and the Partnership entered into a tax protection agreement on October 4, 2017 (the "2017 TPA"), with, among others, Jeffrey S. Edison, our Chairman and Chief Executive Officer, and certain entities controlled by him, pursuant to which if the Partnership: (i) sells, exchanges, transfers or otherwise disposes of certain shopping centers in a taxable transaction, or undertakes any taxable merger, combination, consolidation or similar transaction (including a transfer of all or substantially all assets), for a period of ten years commencing on October 4, 2017; or (ii) fails, prior to the expiration of such period, to maintain certain minimum levels of indebtedness that would be allocable to each protected partner for tax purposes or, under certain circumstances, fails to offer such protected partners the opportunity to guarantee certain types of the Partnership's indebtedness, then the Partnership will indemnify each affected protected partner, including Mr. Edison, against certain resulting tax liabilities. Our tax indemnification obligations include a tax gross-up.

As disclosed in the Registration Statement, we and the Partnership entered into an additional tax protection agreement (the "2021 TPA"), on July 19, 2021 with Mr. Edison, Mr. Devin I. Murphy, our President; and Mr. Robert F. Myers, our Chief Operating Officer, which will become effective upon the expiration of the 2017 TPA. The 2021 TPA generally has the following terms: (i) the 2021 TPA will severally provide to Mr. Edison, Mr. Murphy and Mr. Myers the same protection provided under the 2017 TPA until 2031, so long as (a) Mr. Edison, Mr. Murphy or Mr. Myers (or their permitted transferees), as applicable, individually owns at least 65% of the OP units owned by him as of the date of the execution of the 2021 TPA and (b) in the case of Mr. Murphy or Mr. Myers, Mr. Edison individually owns at least 65% of the OP units owned by him as of the date of the execution of the 2021 TPA; and (ii) the 2021 TPA will provide that following the expiration of the four-year tax protection period under the 2021 TPA, for so long as Mr. Edison holds at least \$5 million in value of OP units, (a) Mr. Edison will have the opportunity to guarantee debt of the Partnership or enter into a "deficit restoration" obligation, and (b) the Partnership will provide reasonable notice to Mr. Edison before effecting a significant transaction reasonably likely to result in the recognition of more than one-third of the built-in gain allocated to Mr. Edison that is protected under the 2017 TPA as of the date that the 2021 TPA is executed, and will consider in good faith any proposal made by Mr. Edison relating to structuring such transaction in a manner to avoid or mitigate adverse tax consequences to him.

The summaries above are qualified in their entirety by reference to the full text of the Underwriting Agreement and the 2021 TPA, which are filed as Exhibits 1.1 and 10.1, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

As disclosed in the Registration Statement, in connection with the Offering, the Company's board of directors (the "Board") authorized the Company to grant LTIP units and/or restricted stock units ("RSUs"), to certain of our associates, including our named executive officers, and restricted stock awards to certain of our directors, subject to and effective upon the listing of our Common Stock.

The awards granted to our associates, including our named executive officers, include, in the aggregate, 484,061 RSUs and LTIP units, and will vest as to 50% of the award on the eighteen month anniversary of the date of grant and 50% of the award on the thirty-six month anniversary of the date of grant (or, in the case of Mr. Murphy, 50% of the award on the eighteen month anniversary of the date of grant and 50% of the award on December 31, 2023), subject to the grantee's continued employment through the applicable vesting date. Of these awards, the awards granted to Messrs. Edison, Murphy, Myers and John P. Caulfield and Ms. Tanya E. Brady represent 99,153, 73,729, 53,390, 33,898 and 33,898 RSUs and/or LTIP units, respectively.

The Board authorized the Company to grant 3,390 shares of restricted stock to each of our directors, other than Mr. Edison. The restricted stock awards granted to our directors will vest as to 50% of the award on the eighteen month anniversary of the date of grant and 50% of the award on the thirty-six month anniversary of the date of grant, subject to the grantee's continued service through the applicable vesting date.

The summary above is qualified in its entirety by reference to the full text of the award agreements, which are filed as Exhibits 10.2, 10.3, 10.4 and 10.5 to this Current Report on Form 8-K, and incorporated by reference herein.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Fifth Amended and Restated Bylaws

As disclosed in the Registration Statement, on June 18, 2021, subject to the closing of the Offering, the Board authorized and approved the Fifth Amended and Restated Bylaws (the "Amended and Restated Bylaws"), which became effective on July 19, 2021. Among other things, the Amended and Restated Bylaws were amended to provide that (i) our stockholders that meet certain ownership and eligibility requirements under the Securities Exchange Act of 1934, as amended, may alter or repeal any provision of our bylaws and adopt new bylaws if any such alteration, repeal, or adoption is approved by the affirmative vote of a majority of the votes entitled to be cast on the matter and (ii) unless we consent in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland, or, if that court does not have jurisdiction, the United States District Court for the District of Maryland, Baltimore Division, will be the sole and exclusive forum for certain actions.

The summary above is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws, which is filed as Exhibit 3.1 to this Current Report on Form 8-K, and is incorporated herein by reference.

MUTA Opt-Out

As disclosed in the Registration Statement, on July 16, 2021, the Company filed Articles Supplementary with the State Department of Assessments and Taxation of Maryland ("MD SDAT"), which prohibit the Company from unilaterally electing to be subject to Section 3-803 of Title 3, Subtitle 8 of the Maryland General Corporation Law (the "MGCL"), commonly referred to as the Maryland Unsolicited Takeovers Act ("MUTA"). As a result of the Articles Supplementary and the Board's previously adopted resolutions, the Company is prohibited from electing to be subject to Section 3-803 of the MGCL, which would permit us to classify our Board without stockholder approval, and such prohibition may not be repealed unless a proposal to repeal such prohibition is approved by the affirmative vote of at least a majority of the votes cast on the matter by the Company's stockholders.

The summary above is qualified in its entirety by reference to the full text of the Articles Supplementary, which is filed as Exhibit 3.2 to this Current Report on Form 8-K, and is incorporated herein by reference.

Item 8.01. Other Events

As disclosed in the Registration Statement, on June 8, 2021, the Company's Compensation Committee approved certain revisions to its director compensation program, conditioned upon the initial listing of our Common Stock on a national securities exchange. Under the revised director compensation program, effective as of July 15, 2021, each non-employee director is entitled to receive an annual cash retainer equal to \$60,000. In addition, committee members and chairpersons and the Company's Lead Independent Director are entitled to receive the following additional annual cash retainers (as applicable):

- Chair of Audit Committee: \$25,000
- Chair of Compensation Committee: \$15,000
- Chair of Nominating and Governance Committee: \$15,000
- Non-Chair Audit Committee Member: \$15,000
- Non-Chair Compensation Committee Member: \$10,000
- Non-Chair Nominating and Governance Committee Member: \$10,000
- Lead Independent Director: \$40,000

In addition to cash retainers, commencing with the Company's 2022 annual meeting of stockholders, each non-employee director elected at such annual meeting will, on the date of such annual meeting, receive a grant of restricted stock covering a number of shares equal to \$110,000 divided by the closing price of a share of Common Stock on the grant date. Each annual grant will vest in full on the earlier of (i) the date of the next annual meeting of the Company's stockholders following the grant date or (ii) the first anniversary of the grant date, subject to the director's continued service through the vesting date.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description of Exhibit</u>
1.1	Underwriting Agreement, dated June 14, 2021 by and among the Phillips Edison & Company, Inc., Phillips Edison Grocery Center Operating Partnership I, L.P., and Morgan Stanley & Co. LLC, BofA Securities, Inc. and J.P. Morgan Securities LLC, as representatives of the several underwriters named therein
3.1	Fifth Amended and Restated Bylaws of Phillips Edison & Company, Inc.
3.2	Articles Supplementary of Phillips Edison & Company, Inc. dated July 16, 2021
10.1	Tax Protection Agreement, dated July 19, 2021, by and among Phillips Edison & Company, Inc., Phillips Edison Grocery Center Operating Partnership I, L.P., and each Protected Partner identified as a signatory on Schedule I
10.2	Form of LTIP Listing Equity Grant (incorporated by reference to Exhibit 10.32 to the Pre-Effective Amendment No. 2 to the Company's Registration Statement on Form S-11 (No. 333-255846) filed on July 7, 2021)

10.3	<u>Form of LTIP Listing Equity Grant (Murphy) (incorporated by reference to Exhibit 10.33 to the Pre-Effective Amendment No. 2 to the Company's Registration Statement on Form S-11 (No. 333-255846) filed on July 7, 2021).</u>
10.4	<u>Form of RSU Listing Equity Grant (incorporated by reference to Exhibit 10.34 to the Pre-Effective Amendment No. 2 to the Company's Registration Statement on Form S-11 (No. 333-255846) filed on July 7, 2021).</u>
10.5	<u>Form of Restricted Stock Listing Equity Grant (incorporated by reference to Exhibit 10.35 to the Pre-Effective Amendment No. 2 to the Company's Registration Statement on Form S-11 (No. 333-255846) filed on July 7, 2021).</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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.

Dated: July 19, 2021

PHILLIPS EDISON & COMPANY, INC.

By: /s/ Tanya E. Brady

Tanya E. Brady

General Counsel and Secretary

17,000,000 Shares

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

UNDERWRITING AGREEMENT

July 14, 2021

July 14, 2021

Morgan Stanley & Co. LLC
BofA Securities, Inc.
J.P. Morgan Securities LLC

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

c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

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**”), propose, subject to the conditions set forth in this agreement (this “**Agreement**”), that the Company issue and sell to the several Underwriters named in Schedule I hereto (the “**Underwriters**”) 17,000,000 shares of its common stock, par value \$0.01 per share (the “**Firm Shares**”). The Company also proposes to issue and sell to the several Underwriters not more than an additional 2,550,000 shares of its common stock, par value \$0.01 per share (the “**Additional Shares**”), if and to the extent that Morgan Stanley & Co. LLC, BofA Securities, Inc. and J.P. Morgan Securities LLC, as representatives of the offering (collectively, the “**Representatives**”), shall have determined to exercise, on behalf of the Underwriters, the right to purchase such shares of common stock granted to the Underwriters in Section 2 hereof. The Firm Shares and the Additional Shares are hereinafter collectively referred to as the “**Shares**”. The shares of common stock, par value \$0.01 per share, of the Company to be outstanding after giving effect to the sales contemplated hereby are hereinafter referred to as the “**Common Stock**”.

The Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated (“**Merrill Lynch**”, an affiliate of BofA Securities, Inc.) agree that up to 5% of the Firm Shares to be purchased by the Underwriters (the “**Reserved Securities**”) shall be reserved for sale by Merrill Lynch to certain persons designated by the Company (the “**Invitees**”), as part of the distribution of the Shares by the Underwriters, subject to the terms of this Agreement, the applicable rules, regulations and interpretations of FINRA and all other applicable laws, rules and regulations. The Company has solely determined, without any direct or indirect participation by the

Underwriters or Merrill Lynch, the Invitees who will purchase Reserved Securities (including the amount to be purchased by such persons) sold by Merrill Lynch. To the extent that such Reserved Securities are not orally confirmed for purchase by Invitees by 11:59 PM. (New York City time) on the date of this Agreement, such Reserved Securities may be offered to the public as part of the public offering contemplated hereby.

The Company has filed with the Securities and Exchange Commission (the “**Commission**”) a registration statement on Form S-11 (File No. 333- 255846), including a preliminary prospectus, relating to the Shares. The registration statement as amended at the time it becomes effective, including the information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A under the Securities Act of 1933, as amended (the “**Securities Act**”), is hereinafter referred to as the “**Registration Statement**”; the prospectus in the form first used to confirm sales of Shares (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act) is hereinafter referred to as the “**Prospectus**”. If the Company has filed an abbreviated registration statement to register additional shares of Common Stock pursuant to Rule 462(b) under the Securities Act (a “**Rule 462 Registration Statement**”), then any reference herein to the term “**Registration Statement**” shall be deemed to include such Rule 462 Registration Statement.

For purposes of this Agreement, “**free writing prospectus**” has the meaning set forth in Rule 405 under the Securities Act, “**preliminary prospectus**” shall mean each prospectus used prior to the effectiveness of the Registration Statement, and each prospectus that omitted information pursuant to Rule 430A under the Securities Act that was used after such effectiveness and prior to the execution and delivery of this Agreement, “**Time of Sale Prospectus**” means the preliminary prospectus contained in the Registration Statement at the time of its effectiveness together with the documents and pricing information set forth in Schedule II hereto, and “**broadly available road show**” means a “bona fide electronic road show” as defined in Rule 433(h)(5) under the Securities Act that has been made available without restriction to any person.

1. *Representations and Warranties.* Each of the Transaction Entities, jointly and severally, represents and warrants to and agrees with each of the Underwriters that:
 - (a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose or pursuant to Section 8A under the Securities Act are pending before or, to the knowledge of the Transaction Entities, threatened by the Commission.
 - (b) (i) The Registration Statement, when it became effective, did not contain and, as amended or supplemented, if applicable, will not contain any 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) the Registration Statement and the Prospectus comply and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder, (iii) the Time of Sale Prospectus does not, and at the time of each sale of the Shares in connection

with the offering when the Prospectus is not yet available to prospective purchasers and at the Closing Date (as defined in Section 4) and any Option Closing Date (as defined in Section 2), the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (iv) each broadly available road show, if any, when considered together with the Time of Sale Prospectus, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and (v) the Prospectus does not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Registration Statement, the Time of Sale Prospectus or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use therein.

- (c) The Company is not an “ineligible issuer” in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Except for the free writing prospectuses, if any, identified in Schedule II hereto, and electronic road shows, if any, each furnished to the Representatives before first use, the Company has not prepared, used or referred to, and will not, without the Representatives’ prior consent, prepare, use or refer to, any free writing prospectus.
- (d) 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 Registration Statement, the Time of Sale Prospectus 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 Transaction Entities of their respective obligations under this Agreement (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.

- (e) 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 Registration Statement, the Time of Sale Prospectus 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.
- (f) 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, at the Closing Date or any Option Closing Date, as the case may be, the aggregate percentage interests of the Company in the Operating Partnership will be as set forth in the Registration Statement, the Time of Sale Prospectus and the Prospectus; provided that, to the extent any portion of the Underwriters' option to purchase the Additional Shares is exercised hereunder, the percentage interests of the Company in the Operating Partnership will be adjusted accordingly. At the Closing Date or any Option Closing Date, as the case may be, the Company will contribute the proceeds from the sale of the Firm Shares and, to the extent any portion of the Underwriters' option is exercised, the Additional Shares, to the Operating Partnership in exchange for a number of units of limited partnership interest ("**OP Units**") equal to the number of Firm Shares and Additional Shares issued. All of the OP Units issued to the Company in consideration of the contribution of the proceeds from the sale of the Firm Shares and the Additional Shares (if any) have been duly authorized and, at the Closing Date or any Option Closing Date, as the case may be, 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 Registration Statement, the Time of Sale Prospectus and the Prospectus. Except as disclosed in the Registration Statement, the Time of Sale Prospectus 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.

- (g) 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 Registration Statement, the Time of Sale Prospectus 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. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21.1 to the Registration Statement and certain other subsidiaries which, considered in the aggregate as a single subsidiary, do not constitute a significant subsidiary. The only “significant subsidiaries” of the Company within the meaning of Section 1-02 of Regulation S-X promulgated under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), are the Operating Partnership, Phillips Edison Grocery Center Operating Partnership II, L.P. and Phillips Edison Institutional REIT LLC.
- (h) Except as disclosed in the Registration Statement, the Time of Sale Prospectus 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.

- (i) This Agreement has been duly authorized, executed and delivered by each of the Transaction Entities.
- (j) The statements in the Registration Statement, the Time of Sale Prospectus and the Prospectus under the headings “Certain Relationships and Related Transactions,” “Description of Capital Stock,” “Shares Eligible for Future Sale,” “Certain Provisions of Maryland Law and Our Charter and Bylaws,” “The Operating Partnership and the Partnership Agreement,” and “Federal Income Tax Considerations,” insofar as such statements summarize legal matters, agreements, documents or legal or governmental proceedings discussed therein, are accurate and fair summaries of such legal matters, agreements, documents or legal or governmental proceedings, in all material respects.
- (k) The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus.
- (l) The shares of capital stock of the Company outstanding prior to the issuance of the Shares 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 Registration Statement, the Time of Sale Prospectus 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.
- (m) 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.
- (n) The Recapitalization (as defined in the Registration Statement) has been duly and validly authorized and has been consummated. The shares of Class B common stock, par value \$0.01 per share (“**Class B Common Stock**”), outstanding prior to the issuance of the Shares have been duly authorized and are validly issued, fully paid and non-assessable.
- (o) The execution and delivery by each of the Company and the Operating Partnership of, and the performance by each of the Transaction Entities of their respective obligations under, this Agreement will not contravene, and the consummation of the Recapitalization has not contravened, (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 contravention 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, 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, and such as have been obtained under the laws and regulations of jurisdictions outside the United States in which the Reserved Securities were offered.

- (p) 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 clauses (ii) above, for any such default or violation that would not, singly or in the aggregate, have a Material Adverse Effect.
- (q) 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 that set forth in the Time of Sale Prospectus.
- (r) 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 Registration Statement, the Time of Sale Prospectus 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 Registration Statement, the Time of Sale Prospectus or 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 Registration Statement, the Time of Sale Prospectus or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.

- (s) 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 Registration Statement, the Time of Sale Prospectus 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.
- (t) 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.
- (u) 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.
- (v) 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 Registration Statement, the Time of Sale Prospectus and the Prospectus, or to require the Company to include such securities with the Shares registered pursuant to the Registration Statement.
- (w)(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 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.

- (x) 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.
- (y) 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 Registration Statement, the Time of Sale Prospectus and the Prospectus and that is not so described.
- (z) (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, Her 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, 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.

(aa) Subsequent to the respective dates as of which information is given in and as otherwise disclosed in each of the Registration Statement, the Time of Sale Prospectus 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 any 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.

(bb) (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 Registration Statement, the Time of Sale Prospectus or 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 Registration Statement, the Time of Sale Prospectus 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 Registration Statement, the Time of Sale Prospectus 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 Registration Statement, the Pricing 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.

- (cc) (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.
- (dd) (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.

- (ee) 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.
- (ff) 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.
- (gg) (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 4001(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.

- (hh) 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.
- (ii) 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.
- (jj) The financial statements included in each of the Registration Statement, the Time of Sale Prospectus 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 Registration Statement, the Time of Sale Prospectus 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.
- (kk) The statistical, industry-related and market-related data included in each of the Registration Statement, the Time of Sale Prospectus 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.

- (ll) 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 Registration Statement, the Time of Sale Prospectus 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).
- (mm) 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.
- (nn) 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.
- (oo) The Company has not sold, issued or distributed any shares of Common Stock during the six-month period preceding the date hereof, including any sales pursuant to Rule 144A under, or Regulation D or S of, the Securities Act, other than shares issued pursuant to the Company’s dividend reinvestment plan, employee benefit plans, equity incentive plans or other employee or director compensation plans or pursuant to outstanding options, equity-based awards, rights or warrants and shares issued upon conversion of OP Units.

- (pp) 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.
- (qq) The Registration Statement, the Prospectus, the Time of Sale Prospectus and any preliminary prospectus comply, and any amendments or supplements thereto will comply, with any applicable laws or regulations of foreign jurisdictions in which the Prospectus, the Time of Sale Prospectus or any preliminary prospectus, as amended or supplemented, if applicable, are distributed in connection with the Reserved Share Program.
- (rr) No consent, approval, authorization or order of, or qualification with, any governmental body or agency, other than those obtained, is required in connection with the offering of the Reserved Shares in any jurisdiction where the Reserved Shares are being offered.
- (ss) The Common Stock has been approved for listing on the Nasdaq Stock Market LLC (“Nasdaq”), subject to official notice of issuance.
- (tt) 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.
- (uu) 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 Registration Statement, the Time of Sale Prospectus 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 a disregarded entity, a partnership or a REIT for U.S. federal income tax purposes. 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 Registration Statement, the Time of Sale Prospectus and the Prospectus are accurate in all material respects.

- (vv) The interactive data in eXtensible Business Reporting Language included in the Registration Statement 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.
- (ww) The Company (i) has not alone engaged in any Testing-the-Waters Communication with any person other than Testing-the-Waters Communications with the consent of the Representatives with entities that are reasonably believed to be qualified institutional buyers within the meaning of Rule 144A under the Securities Act or institutions that are reasonably believed to be accredited investors within the meaning of Rule 501 under the Securities Act and (ii) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communications. The Company reconfirms that the Representatives have been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act. **“Testing-the-Waters Communication”** means any communication with potential investors undertaken in reliance on Section 5(d) or Rule 163B of the Securities Act.
- (xx) As of the time of each sale of the Shares in connection with the offering when the Prospectus is not yet available to prospective purchasers, none of (i) the Time of Sale Prospectus, (ii) any free writing prospectus, when considered together with the Time of Sale Prospectus, and (iii) any individual Testing-the-Waters Communication, when considered together with the Time of Sale Prospectus, 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.
- (yy) 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.
- (zz) 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 Registration

Statement, the Time of Sale Prospectus 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.

- (aaa) 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 Underwriter for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Shares.
- (bbb) Neither the Company, the Operating Partnership nor any of their subsidiaries has any securities rated by any "nationally recognized statistical rating organization", as such term is defined in Section 3(a)(62) of the Exchange Act.
- (ccc) In connection with any offer and sale of Reserved Securities outside the United States, each Preliminary Prospectus, the Prospectus and any amendment or supplement thereto, complied and will comply in all material respects with any applicable laws or regulations of foreign jurisdictions in which the same is distributed. The Company has not offered, or caused Merrill Lynch to offer, Reserved Securities to any person with the specific intent to unlawfully influence (i) a customer or supplier of the Company or any of its affiliates to alter the customer's or supplier's level or type of business with any such entity, or (ii) a trade journalist or publication to write or publish favorable information about the Company or any of its affiliates, or their respective businesses or products.

2. *Agreements to Sell and Purchase.* The Company hereby agrees to sell to the several Underwriters, and each Underwriter, upon the basis of the representations and warranties herein contained, but subject to the terms and conditions hereinafter stated, agrees, severally and not jointly, to purchase from the Company the respective numbers of Firm Shares set forth in Schedule I hereto opposite its name at \$26.25 a share (the "**Purchase Price**").

On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to sell to the Underwriters the Additional Shares, and the Underwriters shall have the right to purchase, severally and not jointly, up to 2,550,000 Additional Shares at the Purchase Price, provided, however, that the amount paid by the Underwriters for any Additional Shares shall be reduced by an amount per share equal to any dividends declared by the Company and payable on the Firm Shares but not payable on such Additional Shares. The Representatives may exercise this right on behalf of the Underwriters in whole or from time to time in part by giving written notice not later than 30 days after the date of this Agreement. Any exercise notice shall specify the number of Additional Shares to be purchased by the Underwriters and the date on which such shares are to be purchased. Each purchase date must be at least one business day after the written notice is given and may not be earlier than the closing date for the Firm Shares or later than ten business days after the date of such notice. As used herein, "business day" means a day on which Nasdaq is open for trading and on which banks in New York are open for business and are not permitted by law or executive order to be closed. Additional Shares may be purchased as provided in Section

hereof solely for the purpose of covering over-allotments made in connection with the offering of the Firm Shares. On each day, if any, that Additional Shares are to be purchased (an “**Option Closing Date**”), each Underwriter agrees, severally and not jointly, to purchase the number of Additional Shares (subject to such adjustments to eliminate fractional shares as the Representatives may determine) that bears the same proportion to the total number of Additional Shares to be purchased on such Option Closing Date as the number of Firm Shares set forth in Schedule I hereto opposite the name of such Underwriter bears to the total number of Firm Shares.

3. *Terms of Public Offering.* The Company is advised by the Representatives that the Underwriters propose to make a public offering of their respective portions of the Shares as soon after the Registration Statement and this Agreement have become effective as in the Representatives’ judgment is advisable. The Company is further advised by the Representatives that the Shares are to be offered to the public initially at \$28.00 a share (the “**Public Offering Price**”) and to certain dealers selected by the Representatives at a price that represents a concession not in excess of \$1.05 a share under the Public Offering Price.
4. *Payment and Delivery.* Payment for the Firm Shares shall be made to the Company in Federal or other funds immediately available in New York City against delivery of such Firm Shares for the respective accounts of the several Underwriters at 10:00 a.m., New York City time, on July 19, 2021, or at such other time on the same or such other date, not later than five business days thereafter, as shall be designated in writing by the Representatives. The time and date of such payment are hereinafter referred to as the “**Closing Date**”.

Payment for any Additional Shares shall be made to the Company in Federal or other funds immediately available in New York City against delivery of such Additional Shares for the respective accounts of the several Underwriters at 10:00 a.m., New York City time, on the date specified in the corresponding notice described in Section 2 or at such other time on the same or on such other date, in any event not later than five business days thereafter, as shall be designated in writing by the Representatives.

The Firm Shares and Additional Shares shall be registered in such names and in such denominations as the Representatives shall request not later than one full business day prior to the Closing Date or the applicable Option Closing Date, as the case may be. The Firm Shares and Additional Shares shall be delivered to the Representatives on the Closing Date or an Option Closing Date, as the case may be, for the respective accounts of the several Underwriters, with any transfer taxes payable in connection with the transfer of the Shares to the Underwriters duly paid, against payment of the Purchase Price therefor.

5. *Conditions to the Underwriters’ Obligations.* The obligations of the Company to sell the Shares to the Underwriters and the several obligations of the Underwriters to purchase and pay for the Shares on the Closing Date are subject to the condition that the Registration Statement shall have become effective not later than 4:30 p.m. (New York City time) on the date hereof.

The several obligations of the Underwriters are subject to the following further conditions:

- (a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:
 - (i) no order suspending the effectiveness of the Registration Statement shall be in effect, and no proceeding for such purpose or pursuant to Section 8A under the Securities Act shall be pending before or threatened by the Commission; and
 - (ii) there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus that, in the Representatives' judgment, is material and adverse and that makes it, in the Representatives' judgment, impracticable to market the Shares on the terms and in the manner contemplated in the Time of Sale Prospectus.
- (b) The Underwriters shall have received on the date of execution and delivery of this Agreement and on the Closing Date a certificate, dated the date of execution and delivery of this Agreement and the Closing Date and signed by the chief financial officer of the Company, to the effect set forth in Exhibit E hereto.
- (c) The Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company, in form and substance reasonably satisfactory to the Representatives, to the effect that:
 - (i) the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that 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 the Closing Date;
 - (ii) no order suspending the effectiveness of the Registration Statement shall be in effect, and no proceeding for such purpose or pursuant to Section 8A under the Securities Act shall be pending before or threatened by the Commission; and
 - (iii) 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, from that set forth in the Time of Sale Prospectus.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

- (d) The Underwriters shall have received on the Closing Date an opinion and negative assurance letter of Latham & Watkins LLP, outside counsel for the Transaction Entities, dated the Closing Date, to the effect set forth in Exhibit A hereto.
- (e) The Underwriters shall have received on the Closing Date an opinion letter of Latham & Watkins LLP, tax counsel for the Transaction Entities, dated the Closing Date, to the effect set forth in Exhibit B hereto.
- (f) The Underwriters shall have received on the Closing Date an opinion letter of Venable LLP, Maryland counsel for the Transaction Entities, dated the Closing Date, to the effect set forth in Exhibit C hereto.
- (g) The Underwriters shall have received on the Closing Date an opinion and negative assurance letter of Goodwin Procter LLP, counsel for the Underwriters, dated the Closing Date, in form and substance reasonably satisfactory to the Representatives.

With respect to the negative assurance letters to be delivered pursuant to Sections 5(d) and 5(g) above, Latham & Watkins LLP and Goodwin Procter LLP may state that their opinions and beliefs are based upon their participation in the preparation of the Registration Statement, the Time of Sale Prospectus 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 Venable LLP referenced in Sections 5(d), 5(e) and 5(f) above shall be rendered to the Underwriters at the request of the Transaction Entities and shall so state therein.

- (h) The Underwriters shall have received, on each of the date hereof and the Closing Date, a letter dated the date hereof or the Closing Date, as the case may be, in form and substance satisfactory to the Underwriters, from Deloitte & Touche LLP, independent public accountants, 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 Time of Sale Prospectus and the Prospectus; *provided* that the letter delivered on the Closing Date shall use a "cut-off date" not earlier than the date hereof.
- (i) The "lock-up" agreements, each substantially in the form of Exhibit D-1 hereto, between the Representatives and the directors and officers of the Company relating to restrictions on sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to the Representatives on or before the date hereof (the "**Lock-up Agreements**"), shall be in full force and effect on the Closing Date.

- (j) The several obligations of the Underwriters to purchase Additional Shares hereunder are subject to the delivery to the Representatives on the applicable Option Closing Date of the following:
- (i) a certificate, dated the Option Closing Date and signed by the chief financial officer of the Company, confirming that the certificate delivered on the Closing Date pursuant to Section 5(b) hereof remains true and correct as of such Option Closing Date;
 - (ii) a certificate, dated the Option Closing Date and signed by an executive officer of the Company, confirming that the certificate delivered on the Closing Date pursuant to Section 5(c) hereof remains true and correct as of such Option Closing Date;
 - (iii) an opinion and negative assurance letter of Latham & Watkins LLP, outside counsel for the Transaction Entities, dated the Option Closing Date, relating to the Additional Shares to be purchased on such Option Closing Date and otherwise to the same effect as the opinion required by Section 5(d) hereof;
 - (iv) an opinion letter of Latham & Watkins LLP, tax counsel for the Transaction Entities, dated the Option Closing Date, to the same effect as the opinion required by Section 5(e) hereof;
 - (v) an opinion letter of Venable LLP, Maryland counsel for the Transaction Entities, dated the Option Closing Date, relating to the Additional Shares to be purchased on such Option Closing Date and otherwise to the same effect as the opinion required by Section 5(f) hereof;
 - (vi) an opinion and negative assurance letter of Goodwin Procter LLP, counsel for the Underwriters, dated the Option Closing Date, relating to the Additional Shares to be purchased on such Option Closing Date and otherwise to the same effect as the opinion required by Section 5(g) hereof;
 - (vii) a letter dated the Option Closing Date, in form and substance satisfactory to the Underwriters, from Deloitte & Touche LLP, independent public accountants, substantially in the same form and substance as the letter furnished to the Underwriters pursuant to Section 5(h) hereof; *provided* that the letter delivered on the Option Closing Date shall use a “cut-off date” not earlier than two business days prior to such Option Closing Date; and
 - (viii) such other documents as the Representatives may reasonably request with respect to the good standing of the Company, the due authorization and issuance of the Additional Shares to be sold on such Option Closing Date and other matters related to the issuance of such Additional Shares.

6. *Covenants of the Company.* Each of the Transaction Entities, jointly and severally, covenants with each Underwriter as follows:
- (a) To furnish to the Representatives, without charge, signed copies of the Registration Statement (including exhibits thereto) and for delivery to each other Underwriter a conformed copy of the Registration Statement (without exhibits thereto) and to furnish to the Representatives in New York City, without charge, prior to 10:00 a.m. New York City time on the business day next succeeding the date of this Agreement and during the period mentioned in Section 6(e) or 6(f) below, as many copies of the Time of Sale Prospectus, the Prospectus and any supplements and amendments thereto or to the Registration Statement as the Representatives may reasonably request.
 - (b) Before amending or supplementing the Registration Statement, the Time of Sale Prospectus or the Prospectus, to furnish to the Representatives an electronic copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which either of the Representatives reasonably objects, and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.
 - (c) To furnish to the Representatives an electronic copy of each proposed free writing prospectus (including electronic road shows) to be prepared by or on behalf of, used by, or referred to by the Company and not to use or refer to any proposed free writing prospectus to which any of the Representatives reasonably objects.
 - (d) Not to take any action that would result in an Underwriter or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Underwriter that the Underwriter otherwise would not have been required to file thereunder.
 - (e) If the Time of Sale Prospectus is being used to solicit offers to buy the Shares at a time when the Prospectus is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Prospectus in order to make the statements therein, in the light of the circumstances, not misleading, or if any event shall occur or condition exist as a result of which the Time of Sale Prospectus conflicts with the information contained in the Registration Statement then on file, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Time of Sale Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any dealer upon request, either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not, in the light of the circumstances when the Time of Sale Prospectus is delivered to a prospective purchaser, be misleading or so that the Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the Registration Statement, or so that the Time of Sale Prospectus, as amended or supplemented, will comply with applicable law.

- (f) If, during such period after the first date of the public offering of the Shares as in the opinion of counsel for the Underwriters the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is required by law to be delivered in connection with sales by an Underwriter or dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to the dealers (whose names and addresses the Representatives will furnish to the Company) to which Shares may have been sold by the Representatives on behalf of the Underwriters and to any other dealers upon request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law.
- (g) To use its reasonable best efforts to list, subject to notice of issuance, the Shares on Nasdaq.
- (h) To endeavor to qualify the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives shall reasonably request.
- (i) To make generally available to the Company's security holders and to the Representatives as soon as practicable an earnings statement covering a period of at least the prior twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder, which requirement shall be satisfied by a filing with the Commission containing this information.
- (j) To comply with all applicable securities and other laws, rules and regulations in each jurisdiction in which the Reserved Securities are offered in connection with the Reserved Share Program.
- (k) To use its best efforts to cause the Company to meet the requirements to qualify, for the taxable year ending December 31, 2021, for taxation as a REIT under the Code, and to use its best efforts to cause the Company to continue to qualify for taxation as a REIT under the Code, 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.

- (l) To use the net proceeds received from the sale of the Shares pursuant to this Agreement in the manner specified in the Time of Sale Prospectus under the caption "Use of Proceeds."
- (m) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Transaction Entities' counsel and the Transaction Entities' 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 Time of Sale Prospectus, the Prospectus, any 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 printing costs associated therewith, and the mailing and delivering of copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (ii) all costs and expenses related to the transfer and delivery of the Shares to the Underwriters, 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 6(g) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters 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 Underwriters (in an amount not to exceed \$30,000) incurred in connection with the review and qualification of the offering of the Shares by FINRA, (v) all fees and expenses in connection with the preparation and filing of the registration statement on Form 8-A relating to the Common Stock and all costs and expenses incident to listing the Shares on Nasdaq, (vi) the cost of printing certificates representing the Shares, (vii) the costs and charges of any transfer agent, registrar or depository, (viii) 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, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of any aircraft chartered in connection with the road show, (ix) the document production charges and expenses associated with printing this Agreement, (x) all costs and expenses of Merrill Lynch, including the fees and disbursements of counsel for Merrill Lynch, in connection with matters related to the Reserved Securities which are designated by the Company for sale to Invitees and (xi) 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. It is understood, however, that except as provided in this Section, Section 8 entitled

“Indemnity and Contribution”, Section 9 entitled “Reserved Share Program Indemnification” and the last paragraph of Section 11 below, the Underwriters 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.

- (n) If at any time following the distribution of any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act there occurred or occurs an event or development as a result of which such Testing-the-Waters Communication 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 Representatives and will promptly amend or supplement, at its own expense, such Testing-the-Waters Communication to eliminate or correct such untrue statement or omission.
- (o) The Company will deliver to each Underwriter (or its agent), on the date of execution of this Agreement, a properly completed and executed Certification Regarding Beneficial Owners of Legal Entity Customers, together with copies of identifying documentation, and the Company undertakes to provide such additional supporting documentation as each Underwriter may reasonably request in connection with the verification of the foregoing Certification.

The Company hereby agrees that it will ensure that the Reserved Securities will be restricted as required by FINRA or the FINRA rules from sale, transfer, assignment, pledge or hypothecation for a period of three months following the date of this Agreement. Merrill Lynch will notify the Company as to which persons will need to be so restricted. At the request of the Underwriters, the Company will direct the transfer agent to place a stop transfer restriction upon such securities for such period of time. Should the Company release, or seek to release, from such restrictions any of the Reserved Securities, the Company agrees to reimburse Merrill Lynch for any reasonable expenses (including, without limitation, legal expenses) they incur in connection with such release.

The Company also covenants with each Underwriter that, without the prior written consent of the Representatives on behalf of the Underwriters, it will not, and will not publicly disclose an intention to, during the period ending 180 days after the date of the listing of the Common Stock for trading on a national securities exchange (the “**Restricted Period**”), (1) 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, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, or (3) file any registration statement with the Commission relating to the offering of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock. The Company further covenants with each Underwriter that, without the prior written

consent of the Representatives on behalf of the Underwriters, it will not approve the conversion of any outstanding shares of Class B Common Stock into shares of Common Stock during the period ending 180 days after the date of the Common Stock begins trading on Nasdaq.

The restrictions contained in the preceding paragraph shall not apply to (A) the Shares to be sold hereunder, (B) the issuance by the Company of shares of Common Stock upon the exercise of an option or warrant or the conversion or exchange of a security (including OP Units and restricted stock units) outstanding on the date hereof, or issued as described in each of the Time of Sale Prospectus and Prospectus, in each case as described in each of the Time of Sale Prospectus and Prospectus, (C) facilitating the establishment of a trading plan on behalf of a shareholder, officer or director of the Company pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock, *provided* that (i) such plan does not provide for the transfer of Common Stock during the Restricted Period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Common Stock may be made under such plan during the Restricted Period, (D) the exchange of the shares of the Company's common stock, \$0.01 par value per share, outstanding immediately before the issuance of the Shares into shares of Class B Common Stock in connection with the Recapitalization in accordance with the terms described in the Registration Statement, Time of Sale Prospectus and Prospectus, (E) any shares of Common Stock or securities convertible into or exercisable or exchangeable for shares of Common Stock (including OP Units and restricted stock units), in the aggregate not to exceed 10% of the total number of shares of Common Stock issued and outstanding immediately following the completion of the transactions contemplated by this Agreement (assuming full conversion, exchange or exercise of all outstanding securities convertible into or exercisable or exchangeable for shares of Common Stock (including OP Units and restricted stock units)), issued in connection with property acquisitions, mergers or acquisitions, joint ventures, commercial relationships or other strategic transactions, *provided, however*, that the recipient of such shares of Common Stock or securities convertible into or exercisable or exchangeable for shares of Common Stock shall be required to execute a Lock-up Agreement in substantially the form attached as Exhibit D-2 hereto for the duration of the Restricted Period or (F) the filing of a registration statement or amendment thereto relating to any employee benefit plan, qualified stock option plan or other employee compensation plan of the Company and/or the Operating Partnership referred to in the Registration Statement, Time of Sale Prospectus and Prospectus.

If the Representatives, in their sole discretion, agree to release or waive the restrictions on the transfer of Shares set forth in a Lock-up Agreement for an officer or director of the Company and provide the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver substantially in the form of Exhibit D-2, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Exhibit D-3 hereto through a major news service at least two business days before the effective date of the release or waiver.

7. *Covenants of the Underwriters.* Each Underwriter, severally and not jointly, covenants with the Company not to take any action that would result in the Company being required to file with the Commission under Rule 433(d) a free writing prospectus prepared by or on behalf of such Underwriter that otherwise would not be required to be filed by the Company thereunder, but for the action of the Underwriter.

8. *Indemnity and Contribution.* (a) The Transaction Entities, jointly and severally, agree to indemnify and hold harmless each Underwriter, each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of any Underwriter within the meaning of Rule 405 under the Securities Act 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 or any amendment thereof, any preliminary prospectus, the Time of Sale Prospectus or any amendment or supplement thereto, any issuer free writing prospectus as defined in Rule 433(h) under the Securities Act, any information relating to the Transaction Entities that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, any road show as defined in Rule 433(h) under the Securities Act (a “road show”), the Prospectus or any amendment or supplement thereto, or any Testing-the-Waters Communication, 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 Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use therein, it being understood and agreed that the only such information furnished by the Underwriters through the Representatives consists of the information described as such in paragraph (b) below.
- (b) Each Underwriter 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 Underwriter, but only with reference to information relating to such Underwriter furnished to the Transaction Entities in writing by such Underwriter through the Representatives expressly for use in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, any issuer free writing prospectus, road show or the Prospectus or any amendment or supplement thereto, it being understood and agreed upon that the only such information furnished by any Underwriter consists of the following information in the Prospectus furnished on behalf of each Underwriter under the caption “Underwriting”: (i) the names of the Underwriters and their respective participation in the sale of the Shares, (ii) the concession figure appearing in the third paragraph thereunder and (iii) the information regarding stabilization, syndicate covering transactions and penalty bids appearing in the thirteenth paragraph thereunder.
- (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 8(a) or 8(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 Representatives, in the case of parties indemnified pursuant to Section 8(a), and by the Transaction Entities, in the case of parties indemnified pursuant to Section 8(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 8(a) or 8(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 Underwriters on the other hand from the offering of the Shares or (ii) if the allocation provided by clause 8(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 8(d)(i) above but also the relative fault of the Transaction Entities on the one hand and of the Underwriters 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 Underwriters 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 and the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate Public Offering Price of the Shares. The relative fault of the Transaction Entities on the one hand and the Underwriters 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 Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Underwriters' respective obligations to contribute pursuant to this Section 8 are several in proportion to the respective number of Shares they have purchased hereunder, and not joint.

- (e) The Transaction Entities and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 8 were determined by *pro rata* allocation (even if the Underwriters 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 8(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 8(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 8, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter 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 8 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 8 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 Underwriter, any person controlling any Underwriter or any affiliate of any Underwriter 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.

9. *Reserved Share Program Indemnification.* (a) In connection with the offer and sale of the Reserved Securities, the Company agrees to indemnify and hold harmless Merrill Lynch, its Affiliates and selling agents and each person, if any, who controls Merrill Lynch within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act (collectively, the “**BofA Securities Entities**”), from and against any and all loss, liability, claim, damage and expense (including, without limitation, any legal or other expenses reasonably incurred in connection with defending, investigating or settling any such action or claim), as incurred, (i) arising out of the violation of any applicable laws or regulations of foreign jurisdictions where Reserved Securities have been offered, (ii) arising out of any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the consent of the Company for distribution to Invitees in connection with the offering of the Reserved Securities or caused by 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, (iii) caused by the failure of any Invitee to pay for and accept delivery of Reserved Securities which have been orally confirmed for purchase by any Invitee by 11:59 P.M. (New York City time) on the date of the Agreement or (iv) related to, or arising out of or in connection with, the offering of the Reserved Securities

- (b) In case any proceeding (including any governmental investigation) shall be instituted involving any BofA Securities Entity in respect of which indemnity may be sought pursuant to Section 9(a), the BofA Securities Entity seeking indemnity, shall promptly notify the Transaction Entities in writing and the Company, upon request of the BofA Securities Entity, shall retain counsel reasonably satisfactory to the BofA Securities Entity to represent the BofA Securities Entity and any others the Company may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any BofA Securities Entity shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such BofA Securities Entity unless (i) the Company shall have agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the Company and the BofA Securities Entity and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. The Company shall not, in respect of the legal expenses of the BofA Securities Entities 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 BofA Securities Entities. Any such separate firm for the BofA Securities Entities shall be designated in writing by BofA

Securities. The Company 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 Company agrees to indemnify the BofA Securities Entities from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time a BofA Securities Entity shall have requested the Company to reimburse it for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the Company 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 the Company of the aforesaid request and (ii) the Company shall not have reimbursed the BofA Securities Entity in accordance with such request prior to the date of such settlement. The Company shall not, without the prior written consent of BofA Securities, effect any settlement of any pending or threatened proceeding in respect of which any BofA Securities Entity is or could have been a party and indemnity could have been sought hereunder by such BofA Securities Entity, unless such settlement includes an unconditional release of the BofA Securities Entities from all liability on claims that are the subject matter of such proceeding.

- (c) To the extent the indemnification provided for in Section 9(a) is unavailable to a BofA Securities Entity or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then the Company in lieu of indemnifying the BofA Securities Entity thereunder, shall contribute to the amount paid or payable by the BofA Securities Entity 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 Company on the one hand and the BofA Securities Entities on the other hand from the offering of the Reserved Securities or (ii) if the allocation provided by clause 9(c)(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 9(c)(i) above but also the relative fault of the Company on the one hand and of the BofA Securities Entities on the other hand in connection with any 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 Company on the one hand and the BofA Securities Entities on the other hand in connection with the offering of the Reserved Securities shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Reserved Securities (before deducting expenses) and the total underwriting discounts and commissions received by the BofA Securities Entities for the Reserved Securities, bear to the aggregate Public Offering Price of the Reserved Securities. If the loss, claim, damage or liability is caused by an untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact, the relative fault of the Company on the one hand and the BofA Securities Entities on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement or the omission or alleged omission relates to information supplied by the Company or by the BofA Securities Entities and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

- (d) The Company and the BofA Securities Entities agree that it would not be just or equitable if contribution pursuant to this Section 9 were determined by pro rata allocation (even if the BofA Securities Entities 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 9(c). The amount paid or payable by the BofA Securities Entities as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by the BofA Securities Entities in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 9, no BofA Securities Entity shall be required to contribute any amount in excess of the amount by which the total price at which the Reserved Securities distributed to the public were offered to the public exceeds the amount of any damages that such BofA Securities Entity has otherwise been required to pay. The remedies provided for in this Section 9 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.
- (e) The indemnity and contribution provisions contained in this Section 9 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 BofA Securities Entity or the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Reserved Securities.

10. *Termination.* The Underwriters may terminate this Agreement by notice given by the Representatives to the Transaction Entities, if after the execution and delivery of this Agreement and prior to or on the Closing Date or any Option Closing Date, as the case may be, (i) 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 Market, the Chicago Board of Options Exchange, the Chicago Mercantile Exchange or the Chicago Board of Trade, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred, (iv) any moratorium on commercial banking activities shall have been declared by Federal or New York State authorities or (v) there shall have occurred any outbreak or escalation of hostilities, or any change in financial markets or any calamity or crisis that, in the Representatives' judgment, is material and adverse and which, singly or together with any other event specified in this clause (v), makes it, in the Representatives' 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 Time of Sale Prospectus or the Prospectus.
11. *Effectiveness; Defaulting Underwriters.* This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date or an Option Closing Date, as the case may be, any one or more of the Underwriters shall fail or refuse to purchase Shares that it has or they have agreed to

purchase hereunder on such date, and the aggregate number of Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate number of the Shares to be purchased on such date, the other Underwriters shall be obligated severally in the proportions that the number of Firm Shares set forth opposite their respective names in Schedule I bears to the aggregate number of Firm Shares set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as the Representatives may specify, to purchase the Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date; *provided* that in no event shall the number of Shares that any Underwriter has agreed to purchase pursuant to this Agreement be increased pursuant to this Section 11 by an amount in excess of one-ninth of such number of Shares without the written consent of such Underwriter. If, on the Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Firm Shares and the aggregate number of Firm Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Firm Shares to be purchased on such date, and arrangements satisfactory to the Representatives and the Transaction Entities for the purchase of such Firm Shares are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Transaction Entities. In any such case either the Representatives or the Transaction Entities shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement, in the Time of Sale Prospectus, in the Prospectus or in any other documents or arrangements may be effected. If, on an Option Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Additional Shares and the aggregate number of Additional Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Additional Shares to be purchased on such Option Closing Date, the non-defaulting Underwriters shall have the option to (i) terminate their obligation hereunder to purchase the Additional Shares to be sold on such Option Closing Date or (ii) purchase not less than the number of Additional Shares that such non-defaulting Underwriters would have been obligated to purchase in the absence of such default. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

If this Agreement shall be terminated by the Underwriters, or any of them, because of any failure or refusal on the part of the Transaction Entities to comply with the terms or to fulfill any of the conditions of this Agreement (which, for the purposes of this Section 11, shall not include termination by the Underwriters under items (i), (iii), (iv) or (v) of Section 10 or this Section 11), or if for any reason the Transaction Entities shall be unable to perform their respective obligations under this Agreement, the Transaction Entities will reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by such Underwriters in connection with this Agreement or the offering contemplated hereunder.

12. *Entire Agreement.* (a) This Agreement, together with any contemporaneous written agreements and any prior written agreements (to the extent not superseded by this Agreement) that relate to the offering of the Shares, represents the entire agreement between the Transaction Entities and the Underwriters with respect to the preparation of any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, the conduct of the offering, and the purchase and sale of the Shares.

(b) The Transaction Entities acknowledge that in connection with the offering of the Shares: (i) the Underwriters 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 Underwriters 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 Underwriters may have interests that differ from those of the Transaction Entities, and (iv) none of the activities of the Underwriters in connection with the transactions contemplated herein constitutes a recommendation, investment advice, or solicitation of any action by the Underwriters 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 Underwriters arising from an alleged breach of fiduciary duty in connection with the offering of the Shares.

13. *Recognition of the U.S. Special Resolution Regimes.* (a) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter 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 Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter 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.

14. 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.

15. *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 Underwriters 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 Underwriters to properly identify their respective clients.

16. *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 pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., www.docusign.com) or facsimile transmission shall constitute valid and sufficient delivery thereof.
17. *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.
18. *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.
19. *Notices.* All communications hereunder shall be in writing and effective only upon receipt and if to the Underwriters shall be delivered, mailed or sent to:

Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036
Attention: Equity Syndicate Desk
Copy to: Legal Department

BofA Securities, Inc.
One Bryant Park
New York, New York 10036
Attention: Syndicate Department
Fax: (646) 855-3073
Copy to: ECM Legal
Fax: (212) 230-8730

J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179
Fax: (212) 622-8358
Attention: Equity Syndicate Desk

Copy to:

Goodwin Procter LLP
The New York Times Building

620 Eighth Avenue
New York, New York 10018
Attention: Yoel Kranz

and if to the Company and the Operating Partnership shall be delivered, mailed or sent 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

Very truly yours,

PHILLIPS EDISON & COMPANY, INC.

By: /s/ John P. Caulfield

Name: John P. Caulfield

Title: Chief Financial Officer, Senior Vice
President & 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, Senior Vice
President & Treasurer

Accepted as of the date hereof

Morgan Stanley & Co. LLC

BofA Securities, Inc.

J.P. Morgan Securities LLC

Acting severally on behalf of themselves and the several
Underwriters named in Schedule I hereto.

By: Morgan Stanley & Co. LLC

By: /s/ Eric Rosenblum

Name: Eric Rosenblum

Title: Vice President

By: BofA Securities, Inc.

By: /s/ Jeffrey Horowitz
Name: Jeffrey Horowitz
Title: Managing Director

By: J.P. Morgan Securities LLC

By: /s/ Haley Trethaway
Name: Haley Trethaway
Title: Vice President

SCHEDULE I**Underwriter****Number of Firm Shares To Be Purchased**

Morgan Stanley & Co. LLC	3,570,000
BofA Securities, Inc.	3,570,000
J.P. Morgan Securities LLC	3,570,000
BMO Capital Markets Corp.	841,500
Goldman Sachs & Co. LLC	841,500
KeyBanc Capital Markets Inc.	841,500
Mizuho Securities USA LLC	841,500
Wells Fargo Securities, LLC	841,500
BTIG, LLC	416,500
Capital One Securities, Inc.	416,500
Fifth Third Securities, Inc.	416,500
PNC Capital Markets LLC	416,500
Regions Securities LLC	416,500
Total:	<u><u>17,000,000</u></u>

SCHEDULE II

Time of Sale Prospectus

1. Preliminary Prospectus issued July 7, 2021
2. Free writing prospectuses filed by the Company on May 10, 2021, May 12, 2021 and May 12, 2021 under Rule 433(d) of the Securities Act

FORM OF OPINION OF LATHAM & WATKINS LLP

[], 2021
Morgan Stanley & Co. LLC BofA Securities, Inc.
J.P. Morgan Securities LLC

c/o Morgan Stanley & Co. LLC 1585 Broadway New York, New York 10036
c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

Re: Phillips Edison & Company, Inc.

Ladies and Gentlemen:

We have acted as counsel to Phillips Edison & Company, Inc., a Maryland corporation (the “**Company**”), in connection with the sale to you (the “**Underwriters**”) by the Company of [] shares (the “**Shares**”) of common stock of the Company, par value \$0.01 per share (the “**Common Stock**”), pursuant to a registration statement on Form S-11 under the Securities Act of 1933, as amended (the “**Act**”), filed with the Securities and Exchange Commission (the “**Commission**”) on May 6, 2021 (Registration No. 333-255846) (as so filed and as amended, the “**Registration Statement**”), a preliminary prospectus dated July 7, 2021 (the “**Preliminary Prospectus**”), each document that the Company has identified as an “issuer free writing prospectus” (as defined in Rules 433 and 405 under the Act) and that is described on Exhibit A hereto (each, a “**Specified IFWP**”), a Prospectus dated [], 2021 (the “**Prospectus**”) and an underwriting agreement dated [], 2021 between you, Phillips Edison Grocery Center Operating Partnership I, L.P., a Delaware limited partnership (the “**Operating Partnership**”), and the Company (the “**Underwriting Agreement**”). This letter is being delivered to you pursuant to Section 5(c) of the Underwriting Agreement.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter, except where a specified fact confirmation procedure is stated to have been performed (in which case we have with your consent performed the stated procedure). We have examined, among other things, the following:

1. The Underwriting Agreement, the Registration Statement, the Preliminary Prospectus, the Specified IFWP and the Prospectus;
2. The Certificate of Limited Partnership of Phillips Edison Grocery Center Operating Partnership I, L.P. dated [] and the Fourth Amended and Restated Agreement of

Limited Partnership of Phillips Edison Grocery Center Operating Partnership I, L.P. dated March 31, 2018, which, with your consent, we have assumed is (i) a valid and binding agreement of the parties thereto, enforceable in accordance with the plain meaning of its terms, (ii) in full force and effect and (iii) the entire agreement of the parties pertaining to the subject matter thereof (collectively, the “**Governing Documents**”) and certain resolutions of the sole member of Phillips Edison Grocery Center OP GP I LLC, a Delaware limited liability company (the “**General Partner**”), in its capacity as the sole general partner of the Operating Partnership; and

3. The agreements and instruments identified to us by an officer of the Company as material to the Company and listed in Exhibit B hereto (“**Specified Agreements**”).

Except as otherwise stated herein, as to factual matters we have, with your consent, relied upon the foregoing and upon oral and written statements and representations of officers and other representatives of the Company and others, including the representations and warranties of the Company in the Underwriting Agreement. We have not independently verified such factual matters.

In our examination, we have assumed the genuineness of all signatures, including any endorsements, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies.

We are opining as to the effect on the subject transaction only of the federal laws of the United States, and the internal laws of the State of New York and, in paragraphs 1, 3, and 4(i), (iii) and (iv) of this letter, the Delaware Revised Uniform Limited Partnership Act (the “**DRULPA**”), and we express no opinion with respect to the applicability to the opinions expressed herein, or the effect thereon, of the laws of any other jurisdiction or, in the case of Delaware, any other laws, or as to any matters of municipal law or the laws of any local agencies within any state.

Except as otherwise stated herein, our opinions herein are based upon our consideration of only those statutes, rules and regulations which, in our experience, are normally applicable to the registered public offerings of common stock. We express no opinion as to any state or federal laws or regulations applicable to the subject transactions because of the legal or regulatory status of any parties to the Underwriting Agreement or the legal or regulatory status of any of their affiliates. Various issues pertaining to Maryland law are addressed in the opinion of Venable LLP, separately provided to you. We express no opinion with respect to those matters, and to the extent elements of the opinion of Venable LLP are necessary to the conclusions expressed herein, we have, with your consent, assumed such elements.

Subject to the foregoing and the other matters set forth herein, as of the date hereof:

1. The Operating Partnership is a limited partnership under the DRULPA with limited partnership power and authority to own its properties and to conduct its business as described in the Registration Statement, the Preliminary Prospectus and the Prospectus. With your consent, based solely on certificates from public officials, we confirm that the

Operating Partnership is qualified to do business and is in good standing in the State of Delaware.

2. With your consent, based solely on certificates from public officials, we confirm that Phillips Edison & Company Ltd. is validly existing and in good standing under the laws of the State of Ohio and is qualified to do business in Utah.
3. The execution, delivery and performance of the Underwriting Agreement have been duly authorized by all necessary limited partnership action of the Operating Partnership, and the Underwriting Agreement has been duly executed and delivered by the Operating Partnership.
4. The execution and delivery of the Underwriting Agreement and the issuance and sale of the Shares by the Company to you and the other Underwriters pursuant to the Underwriting Agreement do not on the date hereof:
 - (i) violate the Governing Documents;
 - (ii) result in breach of or a default under any of the Specified Agreements;
 - (iii) violate any federal or New York statute, rule or regulation applicable to the Company or the Operating Partnership or violate the DRULPA; or
 - (iv) require any consents, approvals, or authorizations to be obtained by the Company or the Operating Partnership from, or any registrations, declarations or filings to be made by the Company or the Operating Partnership with, any governmental authority under any federal or New York statute, rule or regulation applicable to the Company or the Operating Partnership or the DRULPA on or prior to the date hereof that have not been obtained or made.
5. The Registration Statement has become effective under the Act. With your consent, based solely on a review of a list of stop orders on the Commission's website at <http://www.sec.gov/litigation/stoporders.shtml> on the date hereof, we confirm that no stop order suspending the effectiveness of the Registration Statement has been issued under the Act and no proceedings therefor have been initiated by the Commission. The Preliminary Prospectus has been filed in accordance with Rule 424(b) under the Act, the Prospectus has been filed in accordance with Rule 424(b) and 430A under the Act, and the specified IFWPs have been filed in accordance with Rule 433(d) under the Act.
6. The Registration Statement at [], 2021, including the information deemed to be a part thereof pursuant to Rule 430A under the Act, and the Prospectus, as of its date, each appeared on their face to be appropriately responsive in all material respects to the applicable form requirements for registration statements on Form S-11 under the Act and the rules and regulations of the Commission thereunder; it being understood, however, that we express no view with respect to Regulation S-T or the financial statements, schedules, or other financial data, included in, or omitted from, the Registration Statement or the Prospectus. For purposes of this paragraph, we have assumed that the statements made in the Registration Statement and the Prospectus are correct and complete.

7. The statements in the Preliminary Prospectus and the Prospectus under the captions “The Operating Partnership and the Partnership Agreement,” “Compensation Discussion and Analysis —Employment, Severance, Change in Control, and Other Arrangements—Vesting Agreement with Devin Murphy,” “Certain Relationships and Related Transactions—Tax Protection Agreements,” “Shares Eligible for Future Sale” and “ERISA Considerations,” insofar as they purport to describe or summarize certain provisions of the documents or U.S. federal and New York laws referred to therein, are accurate descriptions or summaries in all material respects.
8. Each of the Company and the Operating Partnership is not, and immediately after giving effect to the sale of the Shares in accordance with the Underwriting Agreement and the application of the proceeds as described in the Prospectus under the caption “Use of Proceeds,” will not be, required to be registered as an “investment company” within the meaning of the Investment Company Act of 1940, as amended.
9. With your consent, based solely on written advice from the Nasdaq Global Select Market, the Shares to be delivered in accordance with the provisions of the Underwriting Agreement have been approved for listing, subject to official notice of issuance, on the Nasdaq Global Select Market.

Our opinions are subject to:

- (a) the effects of bankruptcy, insolvency, reorganization, preference, fraudulent transfer, moratorium or other similar laws relating to or affecting the rights or remedies of creditors; and
- (b) (i) the effects of general principles of equity, whether considered in a proceeding in equity or at law (including the possible unavailability of specific performance or injunctive relief), (ii) concepts of materiality, reasonableness, good faith and fair dealing and (iii) the discretion of the court before which a proceeding is brought.

We express no opinion or confirmation as to federal or state securities laws (except as expressly set forth in paragraphs 4, 5 and 7 as to federal securities laws), tax laws (except as set forth in our letter to you of even date with respect to certain tax matters), antitrust or trade regulation laws, insolvency or fraudulent transfer laws, antifraud laws, compliance with fiduciary duty requirements, pension or employee benefit laws, usury laws, environmental laws, margin regulations, laws and regulations relating to commodities trading, futures and swaps; Financial Industry Regulatory Authority rules; National Futures Association rules; or the rules of any stock exchange, clearing organization, designated contract market or other regulated entity for trading, processing, clearing or reporting transactions in securities, commodities, futures or swaps, export control, anti-money laundering, and anti-terrorism laws, and laws governing foreign investments in the United States (without limiting other laws or rules excluded by customary practice).

Insofar as our opinions require interpretation of the Specified Agreements, with your consent, (i) we have assumed that all courts of competent jurisdiction would enforce such agreements in accordance with their plain meaning, (ii) we express no opinion with respect to a

breach or default under any Specified Agreement that would occur only upon the happening of a contingency and (iii) we express no opinion with respect to any matters which require the performance of a mathematical calculation or the making of a financial or accounting determination.

This letter is furnished only to you in your capacity as Representatives of the several Underwriters in their capacity as underwriters under the Underwriting Agreement and is solely for the benefit of the Underwriters in connection with the transactions referred to in the first paragraph of this letter. This letter may not be relied upon by you or them for any other purpose, or furnished to, assigned to, quoted to, or relied upon by any other person, firm or other entity for any purpose (including any person, firm or other entity that acquires Shares or any interest therein from you or the other Underwriters) without our prior written consent, which may be granted or withheld in our sole discretion.

Very truly yours,

DRAFT

EXHIBIT A

SPECIFIED ISSUER FREE WRITING PROSPECTUSES

- Free Writing Prospectus, dated May 12, 2021 confirming the filing of a registration statement.
- Free Writing Prospectus, dated May 12, 2021 disclosing the Presentation for Existing Stockholders Discussing Potential Listing and Liquidity Plan.
- Free Writing Prospectus, dated May 7, 2021 disclosing the press release for a webinar presentation of the Existing Stockholders Discussing Potential Listing and Liquidity Plan.

Exhibit B

SPECIFIED AGREEMENTS

- Tax Protection Agreement dated as of October 4, 2017 by and among Phillips Edison & Company, Inc., Phillips Edison Grocery Center Operating Partnership I, L.P. and each Protected Partner identified as a signatory on Schedule I, as amended from time to time.
- Equityholder Agreement dated October 4, 2017 by and among Phillips Edison & Company, Inc., Phillips Edison Grocery Center Operating Partnership I, L.P. and each of the individuals signatory thereto
- Contribution Agreement, dated as of May 18, 2017, between Phillips Edison Grocery Center REIT I, Inc., Phillips Edison Grocery Center Operating Partnership I, L.P., and the Contributors Listed Therein.
- Credit Agreement among Phillips Edison Grocery Center Operating Partnership II, L.P., Phillips Edison Grocery Center REIT II, Inc., the Lenders and Capital One, National Association, as administrative agent, dated September 25, 2017
- First Amendment to Credit Agreement, by and among Phillips Edison Grocery Center Operating Partnership I, L.P., Phillips Edison & Company, Inc., the Lenders and Capital One, National Association, as administrative agent, dated November 16, 2018
- Second Amendment to Credit Agreement, by and among Phillips Edison Grocery Center Operating Partnership I, L.P., Phillips Edison & Company, Inc., the Lenders and Capital One, National Association, as administrative agent, dated September 25, 2019
- Credit Agreement among Phillips Edison Grocery Center Operating Partnership I, L.P., Phillips Edison Grocery Center REIT I, Inc., the lenders party thereto and KeyBank National Association, as administrative agent, dated October 4, 2017
- First Amendment to Credit Agreement, dated as of November 16, 2018, by and among Phillips Edison Grocery Center Operating Partnership I, L.P., Phillips Edison & Company, Inc., the lenders party thereto and KeyBank National Association, as administrative agent
- Second Amendment to Credit Agreement, by and among Phillips Edison Grocery Center Operating Partnership I, L.P., Phillips Edison & Company, Inc., the Lenders and KeyBank National Association, as administrative agent, dated October 4, 2019
- Credit Agreement among Phillips Edison Grocery Center Operating Partnership I, L.P., Phillips Edison Grocery Center REIT I, Inc., the lenders party thereto and Wells Fargo Bank, National Association, as administrative agent, dated October 4, 2017

- First Amendment to Credit Agreement, dated as of November 16, 2018, by and among Phillips Edison Grocery Center Operating Partnership I, L.P., Phillips Edison & Company, Inc., the lenders party thereto and Wells Fargo Bank, National Association, as administrative agent
- Amended and Restated Credit Agreement among Phillips Edison Grocery Center Operating Partnership I, L.P., Phillips Edison & Company, Inc., the lenders party thereto, and Bank of America, N.A., as administrative agent, dated November 16, 2018
- Loan Agreement by and among the Borrowers and Teachers Insurance and Annuity Association of America, dated October 4, 2017
- Form of Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing
- Tax Protection Agreement by and among Phillips Edison & Company, Inc., Phillips Edison Grocery Center Operating Partnership I, L.P., and each Protected Partner identified as a signatory on Schedule I thereto, dated [●], 2021
- Credit Agreement among Phillips Edison Grocery Center Operating Partnership I, L.P., Phillips Edison & Company, Inc., the lenders party thereto, and PNC Bank, National Association as administrative agent, dated July 2, 2021.

FORM OF NEGATIVE ASSURANCE LETTER OF LATHAM & WATKINS LLP

[], 2021

Morgan Stanley & Co. LLC BofA Securities, Inc.
J.P. Morgan Securities LLC

c/o Morgan Stanley & Co. LLC 1585 Broadway New York, New York 10036
c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

Re: Phillips Edison & Company, Inc.

Ladies and Gentlemen:

We have acted as counsel to Phillips Edison & Company, Inc., a Maryland corporation (the “**Company**”), in connection with the sale to you and the other Underwriters for whom you are acting as representatives (the “**Underwriters**”) by the Company of [] shares (the “**Shares**”) of common stock of the Company, par value \$0.01 per share (the “**Common Stock**”), pursuant to a registration statement on Form S-11 under the Securities Act of 1933, as amended (the “**Act**”), filed with the Securities and Exchange Commission (the “**Commission**”) on May 6, 2021 (Registration No. 333-255846) (as so filed and as amended, the “**Registration Statement**”), a preliminary prospectus dated July 7, 2021 (the “**Preliminary Prospectus**”), each document that the Company has identified as an “issuer free writing prospectus” (as defined in Rules 433 and 405 under the Act) and that is described on Exhibit A hereto (each, a “**Specified IFWP**”), [the Pricing Information Annex attached hereto as Exhibit B hereto, a prospectus dated July [14], 2021 (the “**Prospectus**”) and an underwriting agreement dated [], 2021 between you, Phillips Edison Grocery Center Operating Partnership I, L.P., a Delaware limited partnership (the “**Operating Partnership**”), and the Company (the “**Underwriting Agreement**”). This letter is being delivered to you pursuant to Section 5(c) of the Underwriting Agreement.

The primary purpose of our professional engagement was not to establish or confirm factual matters or financial or quantitative information. Therefore, we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in, the Registration Statement, the Preliminary Prospectus, any Specified IFWP, the Pricing Information Annex, or the Prospectus (except to the extent expressly set forth in the numbered paragraph 7 of our letter to you of even date and in our letter to you of even date with respect to certain tax matters) and have not made an independent check or verification thereof (except as aforesaid). However, in the course of acting as counsel to the Company in connection with the preparation by the Company of the Registration Statement, the Preliminary Prospectus, each Specified IFWP, the Pricing Information Annex and the Prospectus, we reviewed the

Registration Statement, the Preliminary Prospectus, each Specified IFWP, [the Pricing Information Annex] and the Prospectus and participated in conferences and telephone conversations with officers and other representatives of the Company, the independent public accountants for the Company, your representatives and your counsel, during which conferences and conversations the contents of the Registration Statement, the Preliminary Prospectus, each Specified IFWP, the Pricing Information Annex and the Prospectus and related matters were discussed. We also reviewed and relied upon certain corporate records and documents, letters from counsel and accountants, and oral and written statements of officers and other representatives of the Company and others as to the existence and consequence of certain factual and other matters.

Based on our participation, review and reliance as described above, we advise you that no facts came to our attention that caused us to believe that:

- the Registration Statement, at the time it became effective on [], 2021, including the information deemed to be a part of the Registration Statement pursuant to Rule 430A under the Act, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading;
- the Preliminary Prospectus, as of [], 2021, when taken together with the Specified IFWPs and the Pricing Information Annex, contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; or
- the Prospectus, as of its date or as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

it being understood that we express no belief with respect to the financial statements, schedules, or other financial data included in, or omitted from, the Registration Statement, the Preliminary Prospectus, the Specified IFWPs, the Pricing Information Annex or the Prospectus.

This letter is furnished only to you in your capacity as underwriter as representatives of the several Underwriters in their capacity as underwriters under the Underwriting Agreement and is solely for the benefit of the Underwriters in connection with the transactions referred to in the

first paragraph of this letter. This letter may not be relied upon by you or them for any other purpose, or furnished to, assigned to, quoted to, or relied upon by any other person, firm or other entity for any purpose (including any person, firm or other entity that acquires Shares or any interest therein from you or the other Underwriters) without our prior written consent, which may be granted or withheld in our sole discretion.

Very truly yours,

DRAFT

EXHIBIT A

SPECIFIED ISSUER FREE WRITING PROSPECTUSES

- Free Writing Prospectus, dated May 12, 2021 confirming the filing of a registration statement.
- Free Writing Prospectus, dated May 12, 2021 disclosing the Presentation for Existing Stockholders Discussing Potential Listing and Liquidity Plan.
- Free Writing Prospectus, dated May 7, 2021 disclosing the press release for a webinar presentation of the Existing Stockholders Discussing Potential Listing and Liquidity Plan.

EXHIBIT B

PRICING INFORMATION ANNEX

Public offering price: \$28.00 per share

FORM OF TAX OPINION OF LATHAM & WATKINS LLP

[], 2021

Morgan Stanley & Co. LLC BofA Securities, Inc.
J.P. Morgan Securities LLC

c/o Morgan Stanley & Co. LLC 1585 Broadway New York, New York 10036
c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

Re: Phillips Edison & Company, Inc.

Ladies and Gentlemen:

We have acted as tax counsel to Phillips Edison & Company, Inc., a Maryland corporation (the “Company”), in connection with the sale to you and the other underwriters for whom you are acting as representatives (the “Underwriters”) by the Company of [] shares of common stock of the Company, par value \$0.01 per share (the “Shares”), pursuant to a registration statement on Form S-11 under the Securities Act of 1933, as amended, filed with the Securities and Exchange Commission on May 6, 2021 (Registration No. 333-255846) (as so filed and as amended, the “Registration Statement”), a preliminary prospectus dated July 7, 2021 (the “Preliminary Prospectus”), a prospectus dated July 14, 2021 (the “Prospectus”), and an underwriting agreement dated [], 2021, among you, Phillips Edison Grocery Center Operating Partnership I, L.P., a Delaware limited partnership, and the Company (the “Underwriting Agreement”). This letter is being delivered to you pursuant to Section 5(e) of the Underwriting Agreement.

You have requested our opinion concerning certain of the federal income tax considerations relating to the Company. This opinion is based on various facts and assumptions, including the facts set forth in the Registration Statement, the Preliminary Prospectus and the Prospectus concerning the business, assets and governing documents of the Company and its subsidiaries. We have also been furnished with, and with your consent have relied upon, certain representations made by the Company and its subsidiaries with respect to certain factual matters through a certificate of an officer of the Company, dated as of the date hereof (the “Officer’s Certificate”).

In our capacity as tax counsel to the Company, we have made such legal and factual examinations and inquiries, including an examination of originals or copies certified or otherwise identified to our satisfaction of such documents, corporate records and other instruments as we have deemed necessary or appropriate for purposes of this opinion. For the purposes of our

opinion, we have not made an independent investigation or audit of the facts set forth in the above referenced documents or in the Officer's Certificate. In addition, in rendering this opinion we have assumed the truth and accuracy of all representations and statements made to us that are qualified as to knowledge or belief, without regard to such qualification. In our examination, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures thereon, the legal capacity of natural persons executing such documents and the conformity to authentic original documents of all documents submitted to us as copies.

We are opining herein only as to the federal income tax laws of the United States, and we express no opinion with respect to the applicability thereto, or the effect thereon, of other federal laws or the laws of any state or other jurisdiction, or as to any matters of municipal law or the laws of any other local agencies within any state.

Based on such facts, and subject to the qualifications, assumptions, representations and limitations set forth herein, we hereby confirm that:

1. 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 the Internal Revenue Code of 1986, as amended (the "Code"), and the Company's proposed method of operation will enable it to meet the requirements for qualification and taxation as a REIT under the Code for its taxable year ending December 31, 2021 and thereafter; and
2. The statements set forth in the Registration Statement, the Preliminary Prospectus and the Prospectus under the caption "Federal Income Tax Considerations," insofar as they purport to describe or summarize certain provisions of the statutes or regulations referred to therein, are accurate descriptions or summaries in all material respects.
No opinion is expressed as to any matter not discussed herein.

This opinion is rendered to you as of the date of this letter, and we undertake no obligation to update this opinion subsequent to the date hereof. This opinion is based on various statutory provisions, regulations promulgated thereunder and interpretations thereof by the Internal Revenue Service and the courts having jurisdiction over such matters, all of which are subject to change either prospectively or retroactively. Any such change may affect the conclusions stated herein. Also, any variation or difference in the facts from those set forth in the Registration Statement, the Preliminary Prospectus, the Prospectus or the Officer's Certificate may affect the conclusions stated herein. As described in the Registration Statement, the Preliminary Prospectus and the Prospectus, the Company's qualification and taxation as a REIT depend upon the Company's ability to meet the various requirements imposed under the Code, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership, the results of which have not been and will not be reviewed by Latham & Watkins LLP. Accordingly, no assurance can be given that the actual results of the Company's operation for any particular taxable year will satisfy such requirements. In addition, the opinion set forth above does not foreclose the possibility that the Company may have to pay a deficiency dividend, or an excise or penalty tax, which could be significant in amount, in order to maintain its REIT qualification.

This letter is furnished only to you in your capacity as representatives of the several Underwriters in their capacity as underwriters under the Underwriting Agreement and is solely for the benefit of the Underwriters in connection with the transactions referred to in the first paragraph of this letter. This letter may not be relied upon by you or them for any other purpose, or furnished to, assigned to, quoted to, or relied upon by any other person, firm or other entity for any purpose (including any person, firm or other entity that acquires Shares or any interest therein from you or the other Underwriters), without our prior written consent, which may be granted or withheld in our sole discretion.

Very truly yours,

DRAFT

FORM OF OPINION OF VENABLE LLP

[], 2021

Morgan Stanley & Co. LLC BofA Securities, Inc.
J.P. Morgan Securities LLC

c/o Morgan Stanley & Co. LLC 1585 Broadway New York, New York 10036
c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

as Representatives of the several Underwriters

Re: Phillips Edison & Company, Inc.

Ladies and Gentlemen:

We have served as Maryland counsel to Phillips Edison & Company, Inc., a Maryland corporation (the “Company”), in connection with certain matters of Maryland law arising out of the issuance and sale of up to 19,550,000 shares (the “Shares”) of the Company’s common stock, \$0.01 par value per share (the “Common Stock”), including up to 2,550,000 shares of Common Stock that the Underwriters (as defined below) have the option to purchase, in the underwritten public offering of the Common Stock (the “Offering”), pursuant to the Underwriting Agreement, dated as of [], 2021 (the “Underwriting Agreement”), among the Company and Phillips Edison Grocery Center Operating Partnership I, L.P., a Delaware limited partnership (the “Operating Partnership”), and Morgan Stanley & Co. LLC, BofA Securities, Inc. and J.P. Morgan Securities LLC, as representatives of the several Underwriters named in Schedule I thereto (collectively, the “Underwriters”). This firm did not participate in the negotiation or drafting of the Underwriting Agreement. This opinion is being delivered to you pursuant to Section 5(f) of the Underwriting Agreement.

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (hereinafter collectively referred to as the “Documents”):

1. The Registration Statement on Form S-11 (Registration No. 333-255846), of the Company, and all amendments thereto (the “Registration Statement”), relating to the Offering, in the form in which it was declared effective by the U.S. Securities and

Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”);

2. The Company’s Preliminary Prospectus, dated [], 2021 (the “Preliminary Prospectus” and, together with the information included on Schedule II to the Underwriting Agreement, the “General Disclosure Package”), that forms a part of the Registration Statement, and the Company’s Prospectus, dated [], 2021 (the “Prospectus”), in the form in which it was filed with the Commission pursuant to Rule 424(b) promulgated under the Securities Act;^[1]
3. The charter of the Company (the “Charter”), certified by the State Department of Assessments and Taxation of Maryland (the “SDAT”);
4. The Fourth Amended and Restated Bylaws of the Company (the “Bylaws”), certified as of the date hereof by an officer of the Company;
5. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;
6. Resolutions (the “Resolutions”) adopted by the Board of Directors of the Company (the “Board”), or a duly-authorized committee thereof, relating to, among other matters, (i) the sale and issuance of the Shares, (ii) the issuance of the [] shares (the “Outstanding Shares”) of the Company’s Class B Common Stock, \$0.01 par value per share (the “Class B Common Stock”), outstanding as of [], 2021 and (ii) the Underwriting Agreement, certified as of the date hereof by an officer of the Company;
7. The Underwriting Agreement;
8. The form of specimen Common Stock certificate (the “Form Certificate”), certified as of the date hereof by an officer of the Company;
9. The 2020 Omnibus Incentive Plan, in the form filed with the Commission on August 13, 2020, pursuant to the Securities Exchange Act of 1934, as amended;
10. The Amended and Restated 2010 Long-Term Incentive Plan, in the form filed with the Commission on March 12, 2018, pursuant to the Securities Exchange Act of 1934, as amended;
11. The Amended and Restated 2010 Independent Director Stock Plan, in the form filed with the Commission on August 3, 2016, pursuant to the Securities Exchange Act of 1934, as amended;
12. A certificate executed by an officer of the Company, dated as of the date hereof; and
13. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.
2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.
3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and the obligations of each such party set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.
4. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written 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.
5. The Outstanding Shares have not been, and none of the Shares will be, issued or transferred in violation of the restrictions or limitations contained in Article V of the Charter.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company has been duly incorporated and is validly existing as a corporation under the laws of the State of Maryland and is in good standing with the SDAT.
2. The Company has the corporate power to own, lease and operate its properties, and to conduct its business, as described in the Registration Statement, the General Disclosure Package and the Prospectus under the heading "Prospectus Summary – Company Overview" and "Our Business and Properties" and to enter into and perform its obligations under the Underwriting Agreement.
3. The Company has authorized capital consisting of 1,000,000,000 shares of Common Stock, of which 350,000,000 shares have been designated as Class B Common Stock, and 10,000,000 shares of preferred stock, \$0.01 par value per share.
4. The issuance and sale of the Shares to the Underwriters pursuant to the Underwriting Agreement have been duly authorized by all necessary corporate action on the part of the Company and, when and if issued and delivered to and paid for by the Underwriters pursuant to the Underwriting Agreement, the Shares will be validly issued, fully paid and

nonassessable, and will not be subject to any preemptive or similar rights of any securityholder of the Company arising under the Maryland General Corporation Law (the “MGCL”), the Charter or the Bylaws.

5. The Outstanding Shares have been duly authorized and validly issued and are fully paid and nonassessable and none of the Outstanding Shares were issued in violation of any preemptive or other similar rights arising under the MGCL, the Charter or the Bylaws.
6. The execution, delivery and performance by the Company of the Underwriting Agreement, including the Company’s issuance of the Shares and sale of such Shares to the Underwriters, have been duly authorized by all necessary corporate action on the part of the Company.
7. The Company has duly executed and, to the extent governed by Maryland law, delivered the Underwriting Agreement.
8. The Form Certificate complies in all material respects with the MGCL, the Charter and the Bylaws.
9. The information in the Registration Statement, the General Disclosure Package and the Prospectus under the headings “Risk Factors – Risks Related to our Corporate Structure and Organization – Our charter, bylaws and Maryland law contain terms that may discourage a third party from acquiring us in a manner that could result in a premium price to our stockholders,” “– Our rights and the rights of our stockholders to recover claims against our officers and directors are limited, which could reduce our stockholders’ and our recovery against them if they cause us to incur losses,” “Description of Capital Stock,” “Certain Provisions of Maryland Law and of Our Charter and Bylaws,” and in Item 34 of Part II of the Registration Statement, to the extent that it constitutes summaries of Maryland law, the Charter or the Bylaws, has been reviewed by us and is correct in all material respects.
10. Except for such consents, approvals, authorizations, orders, registrations or filings, if any, as may be required under the securities laws of the State of Maryland, as to which we express no opinion, no consent, approval, authorization or other order of, or registration or filing with, any governmental authority or agency of the State of Maryland is required for the Company’s execution, delivery and performance of the Underwriting Agreement and the consummation of the transactions contemplated thereby.
11. The execution, delivery and performance of the Underwriting Agreement by the Company, and the consummation of the transactions contemplated in the Underwriting Agreement and the Prospectus under the headings “Use of Proceeds” and “Underwriting” (including the issuance and sale of the Shares and the use of the proceeds from the sale of the Shares as described in the Prospectus under the heading “Use of Proceeds”), and the compliance by the Company with its obligations under the Underwriting Agreement do not and will not result in any violation of (a) the Charter or the Bylaws or (b) any Maryland statute, regulation or rule to which the Company may be subject.

The foregoing opinion is limited to the substantive laws of the State of Maryland and we do not express any opinion herein concerning any federal or other state law. We express no opinion as to the applicability or effect of federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers or the laws, codes or regulations of any municipality or other local jurisdiction. 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. Our opinion expressed in paragraph 10 above is based upon our consideration of only those consents, approvals, authorizations or orders of, or registrations or filings with, any governmental authority or agency of the State of Maryland, if any, which, in our experience, are normally applicable to transactions of the type contemplated by the Underwriting Agreement. For purposes of our opinion expressed in paragraph 11, above, we have assumed that, on the date hereof, any proceeds to be used for unspecified general corporate uses will be invested in interest-bearing, short-term investment-grade securities, money-market accounts, and our opinion set forth in paragraph 11 does not address the application of such proceeds after the date hereof. Our opinion expressed in paragraph 11(b) above is based upon our consideration of only those statutes, regulations or rules of the State of Maryland, if any, which, in our experience, are normally applicable to transactions of the type contemplated by the Registration Statement or the Underwriting Agreement. The opinion expressed herein is subject to the effect of any judicial decision which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you solely for your benefit in connection with the Offering. Accordingly, it may not be relied upon by, quoted in any manner to, or delivered to any other person or entity without, in each instance, our prior written consent, except that, without the necessity for any such consent, this opinion may be relied upon by (i) Latham & Watkins, LLP, counsel to the Company, and (ii) Goodwin Procter LLP, counsel to the Underwriters, in each case, in connection with its opinion, dated as of the date hereof, with respect to the Offering, as if it were addressed to such party and had been delivered to it on the date hereof.

Very truly yours,

DRAFT

FORM OF LOCK-UP AGREEMENT

_____, 2021

Morgan Stanley & Co. LLC
BofA Securities, Inc.
J.P. Morgan Securities LLC

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

c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

Ladies and Gentlemen:

The undersigned understands that Morgan Stanley & Co. LLC, BofA Securities, Inc. and J.P. Morgan Securities LLC (collectively, the “**Representatives**”) propose to enter into an Underwriting Agreement (the “**Underwriting Agreement**”) with Phillips Edison & Company, Inc., a Maryland corporation (the “**Company**”), providing for the public offering (the “**Public Offering**”) by the several Underwriters (the “**Underwriters**”), of shares (the “**Shares**”) of common stock, par value \$0.01 per share, of the Company (the “**Common Stock**”).

To induce the Underwriters that may participate in the Public Offering to continue their efforts in connection with the Public Offering, the undersigned hereby agrees that, without the prior written consent of the Representatives on behalf of the Underwriters, he or she will not, will not cause any direct or indirect affiliate to, and will not publicly disclose an intention to, during the period commencing on the date hereof and ending 180 days after the date of listing of the Common Stock for trading on a national securities exchange (the “**Restricted Period**”), (1) 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, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock beneficially owned (as such term is used in Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), by the undersigned or any other securities so owned convertible into or exercisable or exchangeable for Common Stock (including, for the avoidance of doubt, shares of Class B common stock, par value \$0.01 per share, of the Company and units of limited partnership interest (“**OP Units**”) in Phillips Edison Grocery Center Operating Partnership I, L.P. (the “**Operating Partnership**”)), whether now owned or hereafter acquired by the undersigned or

with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the “**Restricted Securities**”), or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The undersigned acknowledges and agrees that the foregoing precludes the undersigned from engaging in any hedging or other transaction designed or intended, or which could reasonably be expected to lead to or result in, a sale or disposition of any shares of Common Stock, or any securities convertible into or exercisable or exchangeable for Common Stock, even if any such sale or disposition transaction or transactions would be made or executed by or on behalf of someone other than the undersigned.

The foregoing restrictions shall not apply to:

(a) transactions relating to shares of Common Stock or other securities acquired in open market transactions after the completion of the Public Offering, *provided* that no filing under Section 16(a) of the Exchange Act shall be required or shall be voluntarily made in connection with subsequent sales of Common Stock or other securities acquired in such open market transactions;

(b) transfers of shares of Common Stock or any security convertible into Common Stock as a bona fide gift or charitable contribution;

(c) transfers of shares of Common Stock or any security convertible into Common Stock to an immediate family member of the undersigned or any trust or other entity for the direct or indirect benefit of the undersigned or the immediate family of the undersigned (for purposes of this lock-up agreement, “immediate family” shall mean any relationship by blood, marriage or adoption, not more remote than first cousin);

(d) an exchange, redemption or split by the Company of any securities pursuant to the reclassification and reverse stock split transactions described in the final prospectus relating to the Public Offering (the “**Prospectus**”);

(e) transfers by will, other testamentary document or intestate succession upon the death of the undersigned or for bona fide estate planning purposes;

(f) transfers by operation of law, such as pursuant to an order of a court or regulatory agency (for purposes of this lock-up agreement, a “court or regulatory agency” means any domestic or foreign, federal, state or local government, including any political subdivision thereof, any governmental or quasi-governmental authority, department, agency or official, any court or administrative body or any national securities exchange or similar self-regulatory body or organization, in each case of competent jurisdiction) or pursuant to a domestic order or in connection with a divorce settlement;

(g) transfers to the Company or its subsidiaries pursuant to any redemption or conversion right relating to OP Units, Class B units of limited partnership interest in the Operating Partnership or Class C units of limited partnership interest in the Operating Partnership;

(h) transfers to the Company or its subsidiaries pursuant to (i) the exercise on a net issuance basis by the undersigned of any award granted pursuant to the Company's employee benefit plans as described in the Prospectus, or (ii) share withholdings to cover applicable taxes in connection with the vesting or settlement of any award granted pursuant to the Company's employee benefit plans as described in the Prospectus;

(i) transfers to a bona fide third party pursuant to a merger, consolidation, tender offer or other similar transaction pursuant to an offer made to all holders of Common Stock and involving a change of control of the Company and approved by the Company's board of directors, provided, that (i) in the event that such change of control is not completed, the undersigned's Restricted Securities shall remain subject to the restrictions contained herein, and (ii) any shares of Common Stock not transferred in such merger, consolidation, tender offer or similar transaction shall remain subject to the restrictions contained herein. "**Change of control**" shall mean the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter pursuant to the offering), of the Company's voting securities if, after such transfer, such person or group of affiliated persons would hold more than 50% of the outstanding voting securities of the Company (or the surviving entity);

provided that in the case of any transfer or distribution pursuant to clauses (b), (c), (e) and (f), each donee or distributee shall sign and deliver a lock-up agreement substantially in the form of this agreement; *provided further* that in the case of any transfer or distribution pursuant to clauses (b), (c) and (g), no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of shares of Common Stock, shall be required or shall be voluntarily made during the Restricted Period; and *provided further* that in connection with any filing under Section 16A of the Exchange Act reporting a reduction in beneficial ownership of shares of Common Stock resulting from a transaction pursuant to clause (h), such filing shall indicate that such transaction has been net share settled; or

(j) establishing a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock, *provided* that (i) such plan does not provide for the transfer of Common Stock during the Restricted Period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Common Stock may be made under such plan during the Restricted Period.

In addition, the undersigned agrees that, without the prior written consent of the Representatives on behalf of the Underwriters, he or she will not, during the Restricted Period, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the undersigned's shares of Common Stock except in compliance with the foregoing restrictions.

The undersigned further agrees that the foregoing restrictions shall be equally applicable to any issuer-directed Shares the undersigned may purchase in the Public Offering.

The Representatives agree that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of shares of Common Stock, the Representatives will notify the Company of the impending release or waiver, and the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by the Representatives hereunder to the undersigned shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if (a) the release or waiver is effected solely to permit a transfer not for consideration or to an immediate family member as defined in FINRA Rule 5130(i)(5), and (b) the transferee has agreed in writing to be bound by the same terms described in this agreement to the extent and for the duration that such terms remain in effect at the time of the transfer.

The undersigned understands that the Company and the Underwriters are relying upon this agreement in proceeding toward consummation of the Public Offering. The undersigned further understands that this agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

The undersigned acknowledges and agrees that the Underwriters have not provided any recommendation or investment advice nor have the Underwriters solicited any action from the undersigned with respect to the Public Offering, and the undersigned has consulted their own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate. The undersigned further acknowledges and agrees that, although the Underwriters may provide certain Regulation Best Interest and Form CRS disclosures or other related documentation to them in connection with the Public Offering, the Underwriters are not making a recommendation to them to participate in the Public Offering or sell any Shares at the price determined in the Public Offering, and nothing set forth in such disclosures or documentation is intended to suggest that any Underwriter is making such a recommendation.

Whether or not the Public Offering actually occurs depends on a number of factors, including market conditions. Any Public Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters.

This agreement shall be governed by and construed in accordance with the laws of the State of New York.

Very truly yours,

(Name)

FORM OF WAIVER OF LOCK-UP

_____, 2021

[Name and Address of
Officer or Director
Requesting Waiver]

Dear Mr./Ms. [Name]:

This letter is being delivered to Morgan Stanley & Co. LLC, BofA Securities, Inc., J.P. Morgan Securities LLC (collectively, the “**Representatives**”) in connection with the offering by Phillips Edison & Company, Inc. (the “**Company**”) of _____ shares of common stock, \$__ par value (the “**Common Stock**”), of the Company and the lock-up agreement dated ____, 20__ (the “**Lock-up Agreement**”), executed by you in connection with such offering, and your request for a [waiver] [release] dated ____, 20__, with respect to _____ shares of Common Stock (the “**Shares**”).

The Representatives hereby agrees to [waive] [release] the transfer restrictions set forth in the Lock-up Agreement, but only with respect to the Shares, effective ____, 20__; provided, however, that such [waiver] [release] is conditioned on the Company announcing the impending [waiver] [release] by press release through a major news service at least two business days before effectiveness of such [waiver] [release]. This letter will serve as notice to the Company of the impending [waiver] [release].

Except as expressly [waived] [released] hereby, the Lock-up Agreement shall remain in full force and effect.

Very truly yours,
Morgan Stanley & Co. LLC
BofA Securities, Inc.
J.P. Morgan Securities LLC Acting severally on behalf
of themselves and the several Underwriters named in
Schedule I hereto

By:

Name:

Title:

cc: Company

FORM OF PRESS RELEASE

[Name of Company]

[Date]

[Name of Issuer] (the “**Company**”) announced today that Morgan Stanley & Co. LLC, the lead book-running manager in the Company’s recent public sale of _____ shares of its common stock is [waiving][releasing] a lock-up restriction with respect to _____ shares of the Company’s common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver][release] will take effect on _____, 20____, and the shares may be sold on or after such date.

This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.

PHILLIPS EDISON & COMPANY, INC.

FORM OF CERTIFICATE OF CHIEF FINANCIAL OFFICER

[●], 2021

Pursuant to Section 5(b) of the Underwriting Agreement (the “Underwriting Agreement”), dated [●], 2021, by and among Phillips Edison & Company, Inc., a Maryland corporation (the “Company”), Phillips Edison Grocery Center Operating Partnership I, L.P., a Delaware limited partnership, and Morgan Stanley & Co. LLC, BofA Securities, Inc. and J.P. Morgan Securities LLC, acting as representatives of the several underwriters (the “Underwriters”) named in Schedule I to the Underwriting Agreement, I, John P. Caulfield, do hereby certify that I am the Chief Financial Officer of the Company and, in my capacity as such and not in any personal capacity, do hereby certify that, as of the date hereof:

1. I have reviewed (i) the Company’s registration statement (No. 333-255846) on Form S-11 (as amended, the “Registration Statement”) filed by the Company under the Securities Act of 1933, as amended, [and] (ii) the Company’s preliminary prospectus, dated July 7, 2021[and (iii) the Company’s final prospectus, dated [●], 2021].
2. I am knowledgeable with respect to the accounting records and internal accounting practices, policies, procedures and controls of the Company and its subsidiaries, and as Chief Financial Officer have responsibility for overseeing financial and accounting matters with respect to the Company and its subsidiaries, including, among other things: (i) the preparation of quarterly and annual financial statements and related disclosure for the Company in conformity with generally accepted accounting principles in the United States and (ii) the maintenance of internal control over financial reporting.
3. I have reviewed such of the Company’s available accounting and other books and records and made such further investigations as I have deemed necessary to make the certifications set forth herein. There are presently no unaudited combined consolidated financial statements available for any period subsequent to March 31, 2021.
4. I have supervised the preparation of, and reviewed, the circled information (the “Circled Information”) on Exhibit A attached hereto, and such Circled Information, as of the date hereof, matches or is accurately derived from the applicable internal accounting or financial records of the Company.

The undersigned acknowledges and agrees that this certificate is being furnished to the Underwriters solely to assist them as part of their due diligence review in connection with the offering of the Shares (as defined in the Underwriting Agreement). This certificate may not be used, quoted or otherwise referred to by any other person without the prior written consent of the Company.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has duly executed this certificate as of the date first set forth above.

PHILLIPS EDISON & COMPANY, INC.

By:

Name: John P. Caulfield

Title: Chief Financial Officer, Senior Vice
President & Treasurer

Exhibit A
[Attached]

**FIFTH AMENDED
AND RESTATED BYLAWS
OF
PHILLIPS EDISON & COMPANY, INC.**

**ARTICLE I
OFFICES**

Section 1.01. PRINCIPAL OFFICES. The principal office of Phillips Edison & Company, Inc. (the “Corporation”), shall be located at such place or places as the board of directors may designate from time to time.

Section 1.02. ADDITIONAL OFFICES. The Corporation may have additional offices, including a principal executive office, at such places as the board of directors may from time to time determine or otherwise as the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01. PLACE. All meetings of stockholders shall be held at the principal executive office of the Corporation or at such other place as shall be set in accordance with these Bylaws and stated in the notice of the meeting.

Section 2.02. ANNUAL MEETING. An annual meeting of the stockholders for the election of directors and the transaction of any business within the powers of the Corporation shall be held on a date and at the time set by the board of directors, beginning in the year 2011.

Section 2.03. SPECIAL MEETINGS.

- (a) General. Each of the chair of the board, chief executive officer, president and board of directors may call a special meeting of stockholders. Except as provided in subsection (b)(4) of this Section 2.03, a special meeting of stockholders shall be held on the date and at the time and place set by the chair of the board, chief executive officer, president or board of directors, whoever has called the meeting. Subject to subsection (b) of this Section 2.03, a special meeting of stockholders shall also be called by the secretary of the Corporation to act on any matter that may properly be considered at a meeting of stockholders upon the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast on such matter at such meeting (the “Special Meeting Percentage”).
- (b) Stockholder-Requested Special Meetings. (1) Any stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the secretary (the “Record Date Request Notice”) by registered mail, return receipt requested, request the board of directors to fix a record date to determine the stockholders entitled to request a special meeting (the “Request Record Date”). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more stockholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such stockholder (or such agent) and shall set forth all information relating to each such stockholder, each individual whom the stockholder proposes to nominate for election or reelection as a director and each matter proposed to be acted on at the meeting that would be required to be disclosed in connection with the solicitation of proxies for the election of directors or the election of each such individual, as applicable, in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the “Exchange Act”). Upon receiving the Record Date Request Notice, the board of directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is

adopted by the board of directors. If the board of directors, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which a Record Date Request Notice is received by the secretary.

- (2) In order for any stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the “Special Meeting Request”) signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than the Special Meeting Percentage shall be delivered to the secretary. In addition, the Special Meeting Request shall (a) set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the secretary), (b) bear the date of signature of each such stockholder (or such agent) signing the Special Meeting Request, (c) set forth (i) the name and address, as they appear in the Corporation’s books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed), (ii) the class, series and number of all shares of stock of the Corporation which are owned (beneficially or of record) by each such stockholder and (iii) the nominee holder for, and number of, shares of stock of the Corporation owned beneficially but not of record by such stockholder, (d) be sent to the secretary by registered mail, return receipt requested, and (e) be received by the secretary within 60 days after the Request Record Date. Any requesting stockholder (or agent duly authorized in a writing accompanying the revocation of the Special Meeting Request) may revoke his, her or its request for a special meeting at any time by written revocation delivered to the secretary.
- (3) The secretary shall inform the requesting stockholders of the reasonably estimated cost of preparing and mailing or delivering the notice of the meeting (including the Corporation’s proxy materials). The secretary shall not be required to call a special meeting upon stockholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 2.03(b), the secretary receives payment of such reasonably estimated cost prior to the preparation and mailing or delivery of such notice of the meeting.
- (4) In the case of any special meeting called by the secretary upon the request of stockholders (a “Stockholder-Requested Meeting”), such meeting shall be held at such place, date and time as may be designated by the board of directors; *provided*, however, that the date of any Stockholder-Requested Meeting shall be not more than 90 days after the record date for such meeting (the “Meeting Record Date”); and *provided further* that if the board of directors fails to designate, within ten days after the date that a valid Special Meeting Request is actually received by the secretary (the “Delivery Date”), a date and time for a Stockholder-Requested Meeting, then such meeting shall be held at 2:00 p.m., local time, on the 90th day after the Meeting Record Date or, if such 90th day is not a Business Day (as defined below), on the first preceding Business Day; and *provided further* that in the event that the board of directors fails to designate a place for a Stockholder-Requested Meeting within ten days after the Delivery Date, then such meeting shall be held at the principal executive office of the Corporation. In fixing a date for a Stockholder-Requested Meeting, the board of directors may consider such factors as it deems relevant, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the board of directors to call an annual meeting or a special meeting. In the case of any Stockholder-Requested Meeting, if the board of directors fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30th day after the Delivery Date shall be the Meeting Record Date. The board of directors may revoke the notice for any Stockholder- Requested Meeting in the event that the requesting stockholders fail to comply with the provisions of paragraph (3) of this Section 2.03(b).
- (5) If written revocations of the Special Meeting Request have been delivered to the secretary and the result is that stockholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting on the matter to the secretary: (i) if the notice of meeting has not already been delivered, the secretary shall refrain from delivering the notice of the meeting

and send to all requesting stockholders who have not revoked such requests written notice of any revocation of a request for a special meeting on the matter, or (ii) if the notice of meeting has been delivered and if the secretary first sends to all requesting stockholders who have not revoked requests for a special meeting on the matter written notice of any revocation of a request for the special meeting and written notice of the Corporation's intention to revoke the notice of the meeting or for the chair of the meeting to adjourn the meeting without action on the matter, (A) the secretary may revoke the notice of the meeting at any time before ten days before the commencement of the meeting or (B) the chair of the meeting may call the meeting to order and adjourn the meeting from time to time without acting on the matter. Any request for a special meeting received after a revocation by the secretary of a notice of a meeting shall be considered a request for a new special meeting.

- (6) The chair of the board, chief executive officer, president or board of directors may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the secretary. For the purpose of permitting the inspectors to perform such review, no such purported Special Meeting Request shall be deemed to have been received by the secretary until the earlier of (i) five Business Days after actual receipt by the secretary of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the secretary represent, as of the Request Record Date, stockholders of record entitled to cast not less than the Special Meeting Percentage. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any request, whether during or after such five Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).
- (7) For purposes of these Bylaws, "Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

Section 2.04. NOTICE FOR MEETINGS. Except as provided otherwise in Section 2.03 of this Article II, the secretary shall, not less than ten nor more than 90 days before each meeting of stockholders, give to each stockholder entitled to vote at the meeting and each other stockholder entitled to notice of the meeting, notice in writing or by electronic transmission stating the time and place of the meeting and, in the case of a special meeting or as otherwise required by the Maryland General Corporation Law (the "MGCL"), the purpose of the meeting. Notice shall be deemed delivered to a stockholder upon being: (i) personally delivered to the stockholder; (ii) left at the stockholder's residence or usual place of business; (iii) mailed to the stockholder at the stockholder's address as it appears on the records of the Corporation, in which case such notice shall be deemed to be given when deposited in the United States mail with postage prepaid thereon; or (iv) transmitted to the stockholder by an electronic transmission to any address or number of the stockholder at which the stockholder receives electronic transmissions. A single notice to all stockholders who share an address, which single notice shall be effective as to any stockholder at such address, unless such stockholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article II, or the validity of any proceedings at any such meeting. The Corporation may postpone or cancel a meeting of stockholders by making a public announcement (as defined in Section 2.12(c)(3)) of such postponement or cancellation prior to the meeting. Notice of the date to which the meeting is postponed shall be given not less than ten days prior to such date and otherwise in the manner set forth in this Section 2.04.

Section 2.05. SCOPE OF NOTICE. Any business of the Corporation may be transacted at an annual meeting of stockholders without being specifically designated in the notice, except as otherwise set forth in Section 2.12(a) of this Article II and except for such business as is required by the MGCL or any other relevant statute to be stated in such notice. No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice.

Section 2.06. ORGANIZATION AND CONDUCT. Every meeting of stockholders shall be conducted by an individual appointed by the board of directors to be chairman of the meeting or, in the absence of such appointment, by the chairman of the board, as applicable, or, in the case of a vacancy in the office or absence of the chairman of the board, by one of the following officers present at the meeting: the vice chairman of the board, if there be one, the president, the vice presidents in their order of rank and seniority, the secretary, or, in the absence of such officers, a chairman chosen by the stockholders by the vote of a majority of the votes cast by stockholders present in person or by proxy. The secretary, or, in the secretary's absence or the secretary's appointment as chairman of the meeting, an assistant secretary, or, in the absence of both the secretary and assistant secretaries, an individual appointed by the board of directors or, in the absence of such appointment, an individual appointed by the chairman of the meeting, as applicable, shall act as secretary. In the event that the secretary presides at a meeting of the stockholders, an assistant secretary, or, in the absence of an assistant secretary, an individual appointed by the secretary shall record the minutes of the meeting. Even if present at the meeting, the person holding the office named herein may delegate to another person the power to act as chair or secretary of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting, as applicable. The chairman of the meeting, as applicable, may prescribe such rules, regulations and procedures and take such action as, in the discretion of such chairman and without any action by the stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to stockholders of record of the Corporation, their duly authorized proxies or other such persons as the chairman of the meeting, as applicable, may determine; (c) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies or other such persons as the chairman of the meeting, as applicable, may determine; (d) limiting the time allotted to questions or comments by participants; (e) determining when and for how long the polls should be opened and when the polls should be closed; (f) maintaining order and security at the meeting; (g) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting, as applicable; (h) concluding a meeting or recessing or adjourning the meeting to a later date and time and place announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chairman of the meeting, as applicable, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 2.07. QUORUM; ADJOURNMENT. At any meeting of the stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of all the votes entitled to be cast at such meeting shall constitute a quorum except as otherwise provided by law, the Charter or these bylaws; but this section shall not affect any requirement under any statute or the Charter for the vote necessary for the approval of any matter. If a quorum shall not be present at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting from time to time to a date not more than 120 days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally noticed. The stockholders present either in person or by proxy, at a meeting which has been duly called and convened, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave fewer than required to establish a quorum.

Section 2.08. VOTING. A nominee for director shall be elected as a director only if such nominee receives the affirmative vote of a majority of the total votes cast for and against such nominee at a meeting of stockholders duly called and at which a quorum is present. However, directors shall be elected by a plurality of votes cast at a meeting of stockholders duly called and at which a quorum is present for which (i) the secretary of the Corporation receives notice that a stockholder has nominated an individual for election as a director in compliance with the requirements of advance notice of stockholder nominees for director set forth in Article II, Section 2.12 of these Bylaws, and (ii) such nomination has not been withdrawn by such stockholder on or before the close of business on the tenth day before the date of filing of the definitive proxy statement of the Corporation with the Securities and Exchange Commission, and, as a result of which, the number of nominees is greater than the number of directors to be elected at the meeting. Each share may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to be voted. Except as otherwise required by law, the Charter or these bylaws, a majority of the votes cast at a meeting of the stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting. Unless otherwise provided in the Charter, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of the stockholders.

Section 2.09. PROXIES. A stockholder may cast the votes entitled to be cast by the shares of stock owned of record by the stockholder in person or by proxy executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the secretary of the Corporation before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

Section 2.10. VOTING OF STOCK BY CERTAIN HOLDERS. Stock registered in the name of a corporation, partnership, limited liability company, joint venture, trust or other entity, if entitled to be voted, may be voted by the president, a vice president, a general partner, a manager, a managing member or a trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any director or other fiduciary may vote stock registered in his name in his capacity as such fiduciary, either in person or by proxy. Shares of the Corporation's stock owned directly or indirectly by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case, they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The board of directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the board of directors considers necessary or desirable. On receipt of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the stockholder of record of the specified stock in place of the stockholder who makes the certification.

Section 2.11. INSPECTORS.

(a) The board of directors or the chairman of the meeting, as applicable, may, but need not,

appoint one or more individual inspectors or one or more entities that designate individuals as inspectors to act at the meeting or any adjournment thereof. If an inspector or inspectors are not appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the board of directors in advance of the meeting or at the meeting by the chairman of the meeting, as applicable.

(b) The inspectors, if any, shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote fairly. Each such report shall be in writing and signed by him or her or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 2.12. ADVANCE NOTICE OF STOCKHOLDER NOMINEES FOR DIRECTOR AND OTHER STOCKHOLDER PROPOSALS.

(a) Annual Meetings of Stockholders. (1) Nominations of individuals for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record at the record date set by the Board of Directors for the purpose of determining

stockholders entitled to vote at the annual meeting, at the time of giving of notice by the stockholder as provided for in this Section 2.12(a) and at the time of the annual meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated or on any such other business and who has complied with this Section 2.12(a).

- (2) For any nomination or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 2.12, the stockholder must have given timely notice thereof in writing to the secretary of the Corporation and any such other business must otherwise be a proper matter for action by the stockholders. To be timely, a stockholder's notice shall set forth all information required under this Section 2.12 and shall be delivered to the secretary at the principal executive office of the Corporation not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the first anniversary of the date of the proxy statement (as defined in Section 2.12(c)(3) of this Article II) for the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year's annual meeting, in order for notice by the stockholder to be timely, such notice must be so delivered not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern Time, on the later of the 120th day prior to the date of such annual meeting, as originally convened, or the tenth day following the day on which public announcement of the date of such meeting is first made. The public announcement of a postponement or adjournment of an annual meeting shall not commence a new time period for the giving of a stockholder's notice as described above.
- (3) Such stockholder's notice shall set forth:
- i. as to each individual whom the stockholder proposes to nominate for election or reelection as a director (each, a "Proposed Nominee"), all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act;
 - ii. as to any other business that the stockholder proposes to bring before the meeting, a description of such business, the stockholder's reasons for proposing such business at the meeting and any material interest in such business of such stockholder or any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the stockholder or the Stockholder Associated Person therefrom;
 - iii. as to the stockholder giving the notice, any Proposed Nominee and any Stockholder Associated Person,
 - (A) the class, series and number of all shares of stock or other securities of the Corporation or any affiliate thereof (collectively, the "Company Securities"), if any, which are owned (beneficially or of record) by such stockholder, Proposed Nominee or Stockholder Associated Person, the date on which each such Company Security was acquired and the investment intent of such acquisition, and any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person,
 - (B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such stockholder, Proposed Nominee or Stockholder Associated Person,
 - (C) whether and the extent to which such stockholder, Proposed Nominee or Stockholder Associated Person, directly or indirectly (through brokers, nominees or otherwise), is subject to or during the last six months has engaged in any hedging, derivative or other transaction or series of transactions or entered into any other agreement, arrangement or understanding (including any short interest, any borrowing or lending of securities or any proxy or voting agreement), the effect or intent of which is to (I) manage risk or benefit of changes in the price of Company Securities for such stockholder, Proposed Nominee

or Stockholder Associated Person or (II) increase or decrease the voting power of such stockholder, Proposed Nominee or Stockholder Associated Person in the Corporation or any affiliate thereof disproportionately to such person's economic interest in the Company Securities, and

(D) any substantial interest, direct or indirect (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, of such stockholder, Proposed Nominee or Stockholder Associated Person, in the Corporation or any affiliate thereof, other than an interest arising from the ownership of Company Securities where such stockholder, Proposed Nominee or Stockholder Associated Person receives no extra or special benefit not shared on a *pro rata* basis by all other holders of the same class or series;

iv. as to the stockholder giving the notice, any Stockholder Associated Person with an interest or ownership referred to in clauses (ii) or (iii) of this paragraph (3) of this Section 2.12(a) and any Proposed Nominee,

(A) the name and address of such stockholder, as they appear on the Corporation's stock ledger, and the current name and address, if different, of each such Stockholder Associated Person and any Proposed Nominee and

(B) the investment strategy or objective, if any, of such stockholder and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person;

v. the name and address of any person who contacted or was contacted by the stockholder giving the notice or any Stockholder Associated Person about the Proposed Nominee or other business proposal; and

vi. to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the nominee for election or reelection as a director or the proposal of other business.

(4) Such stockholder's notice shall, with respect to any Proposed Nominee, be accompanied by a written undertaking executed by the Proposed Nominee (i) that such Proposed Nominee (a) is not, and will not become, a party to any agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director that has not been disclosed to the Corporation and (b) will serve as a director of the Corporation if elected; and (ii) attaching a completed Proposed Nominee questionnaire (which questionnaire shall be provided by the Corporation, upon request by the stockholder providing the notice, and shall include all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act, or would be required pursuant to the rules of any national securities exchange on which any securities of the Corporation are listed or over-the-counter market on which any securities of the Corporation are traded).

(5) Notwithstanding anything in this subsection (a) of this Section 2.12 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased, and there is no public announcement of such action at least 130 days prior to the first anniversary of the date of the proxy statement (as defined in Section 2.12(c)(3) of this Article II) for the preceding year's annual meeting, a stockholder's notice required by this Section 2.12(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary at the principal executive office of the Corporation not later than 5:00 p.m., Eastern Time, on the tenth day following the day on which such public announcement is first made by the Corporation.

- (6) For purposes of this Section 2.12, “Stockholder Associated Person” of any stockholder shall mean (i) any person acting in concert with such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depository) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person.
- (b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation’s notice of meeting and, except as contemplated by and in accordance with the next two sentences of this Section 2.12(b), no stockholder may nominate an individual for election to the Board of Directors or make a proposal of other business to be considered at a special meeting. Nominations of individuals for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected only (i) by or at the direction of the Board of Directors, (ii) by a stockholder that has requested that a special meeting be called for the purpose of electing directors in compliance with Section 2.03 of this Article II and that has supplied the information required by Section 2.03 of this Article II about each individual whom the stockholder proposes to nominate for election of directors or (iii) provided that the special meeting has been called in accordance with Section 2.03(a) of this Article II for the purpose of electing directors, by any stockholder of the Corporation who is a stockholder of record at the record date set by the Board of Directors for the purpose of determining stockholders entitled to vote at the special meeting, at the time of giving of notice provided for in this Section 2.12 and at the time of the special meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the notice procedures set forth in this Section 2.12. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more individuals to the Board of Directors, any stockholder may nominate an individual or individuals (as the case may be) for election as a director as specified in the Corporation’s notice of meeting, if the stockholder’s notice, containing the information required by paragraphs (a)(3) and (4) of this Section 2.12, is delivered to the secretary at the principal executive office of the Corporation not earlier than the 120th day prior to such special meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected at such meeting. The public announcement of a postponement or adjournment of a special meeting shall not commence a new time period for the giving of a stockholder’s notice as described above.
- (c) General. (1) If information submitted pursuant to this Section 2.12 by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders shall be inaccurate in any material respect, such information may be deemed not to have been provided in accordance with this Section 2.12. Any such stockholder shall notify the Corporation of any inaccuracy or change (within two Business Days of becoming aware of such inaccuracy or change) in any such information. Upon written request by the secretary or the board of directors, any such stockholder shall provide, within five Business Days of delivery of such request (or such other period as may be specified in such request), (A) written verification, satisfactory, in the discretion of the board of directors or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 2.12, and (B) a written update of any information (including, if requested by the Corporation, written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting) submitted by the stockholder pursuant to this Section 2.12 as of an earlier date. If a stockholder fails to provide such written verification or written update within such period, the information as to which written verification or a written update was requested may be deemed not to have been provided in accordance with this Section 2.12.
- (2) Only such individuals who are nominated in accordance with this Section 2.12 shall be eligible for election by stockholders as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with this Section 2.12. The chair of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 2.12.
- (3) For purposes of this Section 2.12, “the date of the proxy statement” shall have the same meaning as “the date of the company’s proxy statement released to shareholders” as used in Rule 14a-8(e) promulgated

under the Exchange Act, as interpreted by the Securities and Exchange Commission from time to time. "Public announcement" shall mean disclosure (A) in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated news or wire service or (B) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to the Exchange Act.

- (4) Notwithstanding the foregoing provisions of this Section 2.12, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act with respect to the matters set forth in this Section 2.12. Nothing in this Section 2.12 shall be deemed to affect any right of a stockholder to request inclusion of a proposal in, or the right of the Corporation to omit a proposal from, any proxy statement filed by the Corporation with the Securities and Exchange Commission pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act. Nothing in this Section 2.12 shall require disclosure of revocable proxies received by the stockholder or Stockholder Associated Person pursuant to a solicitation of proxies after the filing of an effective Schedule 14A by such stockholder or Stockholder Associated Person under Section 14(a) of the Exchange Act.
- (5) Notwithstanding anything in these Bylaws to the contrary, except as otherwise determined by the chair of the meeting, if the stockholder giving notice as provided for in this Section 2.12 does not appear in person or by proxy at such annual or special meeting to present each nominee for election as a director or the proposed business, as applicable, such matter shall not be considered at the meeting.

Section 2.13. VOTING BY BALLOT. Voting on any question or in any election may be viva voce unless the presiding officer shall order, or any stockholder shall demand, that voting be by ballot.

Section 2.14. EXEMPTION FROM CONTROL SHARE ACQUISITION STATUTE. Notwithstanding any other provision of the Charter or these bylaws or any contrary provision of law, the Maryland Control Share Acquisition Statute, found in Title 3, Subtitle 7 of the MGCL, as amended from time to time, or any successor statute thereto, shall not apply to any acquisition of shares of stock of the Corporation by any person. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

ARTICLE III DIRECTORS

Section 3.01. GENERAL POWERS. The business and affairs of the Corporation shall be managed under the direction of its board of directors.

Section 3.02. NUMBER, TENURE AND QUALIFICATIONS. At any regular meeting or at any special meeting called for that purpose, a majority of the members then serving on the board of directors may establish, increase, or decrease the number of directors, provided that, except as otherwise provided in the Charter, the number thereof shall never be less than the minimum number required by the MGCL or the Charter (whichever is greater), nor more than the maximum number of directors set forth in the Charter, and further provided that, except as may be provided in the terms of any preferred stock issued by the Corporation, the tenure of office of a director shall not be affected by any decrease in the number of directors. Any director of the Corporation may resign at any time by delivering his or her resignation to the board of directors, the chairman of the board or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation.

Section 3.03. ANNUAL AND REGULAR MEETINGS. An annual meeting of the board of directors may be held immediately after and at the same place as the annual meeting of stockholders, no notice other than this bylaw being necessary. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors. The board of directors may provide, by resolution, the time and place, either within or without the State of Maryland, for the holding of regular meetings of the board of directors without other notice than such resolution.

Section 3.04. SPECIAL MEETINGS. Special meetings of the board of directors may be called by or at the request of the chairman of the board or the president or by a majority of the board of directors. The person or persons authorized to call special meetings of the board of directors may fix any place, either within or without the

State of Maryland, as the place for holding any special meeting of the board of directors called by them. The board of directors may provide, by resolution, the time and place for the holding of special meetings of the board of directors without other notice than such resolution.

Section 3.05. NOTICE. Notice of any special meeting of the board of directors shall be delivered personally, or by telephone, electronic mail, facsimile transmission, United States mail, or courier to each director at his business or residence address. Notice by personal delivery, telephone, electronic mail, or facsimile transmission shall be given at least two days prior to the meeting. Notice by United States mail shall be given at least five days prior to the meeting and shall be deemed to be given when deposited in the United States mail properly addressed, with postage prepaid thereon. Telephone notice shall be deemed to be given when the director or his agent is personally given such notice in a telephone call to which he or his agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the director and receipt of a completed answer-back indicating receipt. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the board of directors need be stated in the notice, unless specifically required by statute or these bylaws.

Section 3.06. QUORUM. A majority of the directors then serving shall constitute a quorum for transaction of business at any meeting of the board of directors, provided that if less than a majority of such directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, and provided further that, if pursuant to the Charter or these bylaws, the vote of a majority of a particular group of directors is required for action, a quorum must also include a majority of such group. The directors present at a meeting which has been duly called and at which a quorum was established may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave fewer than required to establish a quorum.

Section 3.07. VOTING. The action of a majority of the directors present at a meeting at which a quorum is present shall be the action of the board of directors, unless the concurrence of a greater proportion is required for such action by the MGCL, the Charter or these Bylaws. If enough directors have withdrawn from a meeting to leave fewer than required to establish a quorum but the meeting is not adjourned, the action of the majority of that number of directors necessary to constitute a quorum at such meeting shall be the action of the board of directors, unless the concurrence of a greater proportion is required for such action by the MGCL, the Charter or these Bylaws.

Section 3.08. ORGANIZATION. At each meeting of the board of directors, the chairman of the board or, in the absence of the chairman, the vice chairman of the board, if any, shall act as chairman. In the absence of the chairman and vice chairman of the board, the chief executive officer or, in the absence of the chief executive officer, the president or, in the absence of the president, a director chosen by a majority of the directors present, shall act as chairman. The secretary or, in his or her absence, an assistant secretary of the Corporation or, in the absence of the secretary and all assistant secretaries, an individual appointed by the chairman, shall act as secretary of the meeting.

Section 3.09. ACTION BY WRITTEN CONSENT OR BY ELECTRONIC TRANSMISSION; INFORMAL ACTION. Any action required or permitted to be taken at any meeting of the board of directors may be taken without a meeting, if a consent to such action is given in writing or by electronic transmission by each director, and such consent is filed in paper or electronic form with the minutes of proceedings of the board of directors.

Section 3.10. TELEPHONE MEETINGS. Directors may participate in a meeting of the board of directors by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 3.11. REMOVAL. At any meeting of stockholders called expressly, but not necessarily solely, for that purpose, any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote on the election of directors.

Section 3.12. VACANCIES. If for any reason any or all the directors cease to be directors, such event shall not terminate the Corporation or affect these bylaws or the powers of the remaining directors hereunder (even if fewer

than the statutory minimum remain). Except as may be provided by the board of directors in setting the terms of any class or series of preferred stock, any vacancy on the board of directors may be filled only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum, and any director elected to fill a vacancy shall serve for the remainder of the full term of the directorship in which the vacancy occurred and until a successor is elected and qualifies.

Section 3.13. COMPENSATION. The directors may, in the discretion of the board of directors, receive annual or monthly salary for their services as directors, fixed sums per meeting and/or per visit to real property or other facilities owned or leased by the Corporation, and/or for any service or activity performed or engaged in as directors on behalf of the Corporation. Directors may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the board of directors or of any committee thereof and for their reasonable out-of-pocket expenses, if any, in connection with each such meeting, property visit, and/or other service or activity they performed or engaged in as directors on behalf of the Corporation. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.14. LOSS OF DEPOSITS. No director shall be liable for any loss which may occur by reason of the failure of the bank, trust company, savings and loan association, or other institution with whom monies or stock have been deposited.

Section 3.15. SURETY BONDS. Unless required by law, no director shall be obligated to give any bond or surety or other security for the performance of any of his duties.

Section 3.16. CERTAIN RIGHTS OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS. The directors shall have no responsibility to devote their full time to the affairs of the Corporation. Any director or officer of the Corporation, in his personal capacity or in a capacity as an affiliate, employee, or agent of any other person, or otherwise, may have business interests and engage in business activities similar to, in addition to, or in competition with those of or relating to the Corporation.

Section 3.17. RELIANCE. Each director and officer of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented, by a lawyer, certified public accountant or other person, as to a matter which the director or officer reasonably believes to be within the person's professional or expert competence, or, with respect to a director, by a committee of the board of directors on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.

Section 3.18. RATIFICATION. The board of directors or the stockholders may ratify and make binding on the Corporation any action or inaction by the Corporation or its officers to the extent that the board of directors or the stockholders could have originally authorized the matter. Moreover, any action or inaction questioned in any stockholders' derivative proceeding or any other proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a director, officer or stockholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting, or otherwise, may be ratified, before or after judgment, by the board of directors or by the stockholders, and if so ratified, shall have the same force and effect as if the questioned action or inaction had been originally duly authorized, and such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned action or inaction.

Section 3.19. EMERGENCY PROVISIONS. Notwithstanding any other provision in the Charter or these bylaws, this Section 3.19 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the board of directors under Article III of these bylaws cannot readily be obtained (an "Emergency"). During any Emergency, unless otherwise provided by the board of directors, (a) a meeting of the board of directors or a committee thereof may be called by any director or officer by any means feasible under the circumstances; (b) notice of any meeting of the board of directors during such an Emergency may be given less than 24 hours prior to the meeting to as many directors and by such means as may be feasible at the time, including publication, television or radio, and (c) the number of directors necessary to constitute a quorum shall be one-third of the entire board of directors.

ARTICLE IV COMMITTEES

Section 4.01. NUMBER; QUALIFICATIONS. The board of directors may designate one or more committees composed of at least one director.

Section 4.02. POWERS. The board of directors may delegate to any committee appointed under Section 1 of this Article any of the powers of the board of directors, except as prohibited by law. Except as may be otherwise provided by the board of directors, any committee may delegate some or all of its power and authority to one or more subcommittees, composed of one or more directors, as the committee deems appropriate in its sole discretion.

Section 4.03. COMPOSITION. Except as provided in the Charter, such committees shall serve at the pleasure of the board of directors.

Section 4.04. MEETINGS. Notice of committee meetings shall be given in the same manner as notice for special or regular meetings of the board of directors. Proper notice of any meeting of the board of directors shall also constitute notice of a meeting of the Conflicts Committee that may be held contemporaneously and/or immediately following the board meeting. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. Except as provided in these bylaws, the act of a majority of the committee members present at a meeting shall be the act of such committee. The board of directors may designate a chairman of any committee, and such chairman or, in the absence of a chairman, any two members of any committee may fix the time and place of its meeting unless the board shall otherwise provide. In the absence of any member of any such committee, the members thereof present at any meeting, whether or not they constitute a quorum, may appoint another director to act in the place of such absent member.

Section 4.05. TELEPHONE MEETINGS. Members of a committee of the board of directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 4.06. ACTION BY WRITTEN CONSENT OR BY ELECTRONIC TRANSMISSION; INFORMAL ACTION. Any action required or permitted to be taken at any meeting of a committee of the board of directors may be taken without a meeting, if a consent to such action is given in writing or by electronic transmission by each member of the committee and such consent is filed in paper or electronic form with the minutes of proceedings of such committee.

Section 4.07. VACANCIES. Subject to the provisions hereof, and the Charter, the board of directors shall have the power at any time to change the membership of any committee, to fill any vacancy, to designate an alternate member to replace any absent or disqualified member or to dissolve any such committee.

ARTICLE V OFFICERS

Section 5.01. GENERAL PROVISIONS. The officers of the Corporation shall include a president, a secretary and a treasurer and may include the chairman of the board, a vice chairman of the board, one or more vice presidents, a chief operating officer, a chief financial officer, one or more assistant secretaries and one or more assistant treasurers. In addition, the board of directors may from time to time elect such other officers with such powers and duties as they shall deem necessary or desirable. The officers of the Corporation shall be elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of stockholders, except that the president may from time to time appoint one or more vice presidents, assistant secretaries and assistant treasurers. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office until his successor is elected and qualifies or until his death or his resignation or removal in the manner hereinafter provided. Any two or more offices, except president and vice president, may be held by the same person. In its discretion, the board of directors may leave unfilled any office except that of president, treasurer and secretary. Election of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent.

Section 5.02. REMOVAL AND RESIGNATION. Any officer or agent of the Corporation may be removed by the board of directors if in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by delivering his resignation to the board of directors, the chairman of the board, as applicable, the president or the secretary. Any resignation shall take effect at the time specified therein or, if the time when it shall become effective is not specified therein, immediately upon its receipt. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

Section 5.03. VACANCIES. A vacancy in any office may be filled by the board of directors or, to the extent permitted in Section 5.01, the president for the balance of the term.

Section 5.04. CHIEF EXECUTIVE OFFICER. The board of directors may designate a chief executive officer. In the absence of such designation, the president shall be the chief executive officer of the Corporation. The chief executive officer shall have general responsibility for implementation of the policies of the Corporation, as determined by the board of directors, and for the management of the business and affairs of the Corporation. He may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the board of directors or by these bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of chief executive officer and such other duties as may be prescribed by the board of directors from time to time.

Section 5.05. CHIEF OPERATING OFFICER. The board of directors may designate a chief operating officer. The chief operating officer shall have the responsibilities and duties as determined by the board of directors or the chief executive officer.

Section 5.06. CHIEF FINANCIAL OFFICER. The board of directors may designate a chief financial officer. The chief financial officer shall have the responsibilities and duties as determined by the board of directors or the chief executive officer.

Section 5.07. CHAIRMAN OF THE BOARD. The board of directors may designate a chairman of the board. The chairman of the board shall preside over the meetings of the board of directors and, unless the board of directors designates another officer to so preside, meetings of the stockholders at which he or they shall be present. The chairman shall perform such other duties as may be assigned to him or them by the board of directors.

Section 5.08. PRESIDENT. In the absence of a chief executive officer, the president shall in general supervise and control all of the business and affairs of the Corporation. In the absence of a designation of a chief operating officer by the board of directors, the president shall be the chief operating officer. He may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the board of directors or by these bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board of directors from time to time.

Section 5.09. VICE PRESIDENTS. In the absence of the president or in the event of a vacancy in such office, the vice president (or in the event there be more than one vice president, the vice presidents in the order designated at the time of their election or, in the absence of any designation, then in the order of their election) shall perform the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president; and shall perform such other duties as from time to time may be assigned to him by the president or the board of directors. The board of directors may designate one or more vice presidents as executive vice president, senior vice president or vice president for particular areas of responsibility.

Section 5.10. SECRETARY. The secretary shall (a) keep the minutes of the proceedings of the stockholders, the board of directors and committees of the board of directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation; (d) keep a register of the post office address of each stockholder which shall be furnished to the secretary by such stockholder; (e) have general charge of the share transfer books of the Corporation; and (f) in general perform such other duties as from time to time may be assigned to him by the chief executive officer, the president or the board of directors.

Section 5.11. TREASURER. The treasurer shall have the custody of the funds and securities of the Corporation and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the board of directors. In the absence of a designation of a chief financial officer by the board of directors, the treasurer shall be the chief financial officer of the Corporation.

The treasurer shall disburse the funds of the Corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render to the president and board of directors, at the regular meetings of the board of directors or whenever it may so require, an account of all his transactions as treasurer and of the financial condition of the Corporation.

Section 5.12. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the president or the board of directors.

Section 5.13. COMPENSATION. The compensation of the officers shall be fixed from time to time by the board of directors and no officer shall be prevented from receiving such compensation by reason of the fact that he is also a director.

ARTICLE VI

CONTRACTS, CHECKS AND DEPOSITS

Section 6.01. CONTRACTS. The board of directors may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when authorized or ratified by action of the board of directors and executed by an authorized person.

Section 6.02. CHECKS AND DRAFTS. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or agent of the Corporation in such manner as shall from time to time be determined by the board of directors.

Section 6.03. DEPOSITS. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation as the board of directors, the chief executive officer, the chief financial officer or any other officer designated by the board of directors may determine.

ARTICLE VII STOCK

Section 7.01. CERTIFICATES. Unless otherwise provided by the board of directors, the Corporation shall not issue stock certificates. In the event that the Corporation issues shares of stock represented by certificates, such certificates shall be in such form as prescribed by the board of directors or a duly authorized officer, shall contain the statements and information required by the MGCL and shall be signed by the officers of the Corporation in the manner permitted by the MGCL. In the event that the Corporation issues shares of stock without certificates, to the extent then required by the MGCL, the Corporation shall provide to the record holders of such shares a written statement of the information required by the MGCL to be included on stock certificates. There shall be no differences in the rights and obligations of stockholders based on whether or not their shares are represented by certificates.

Section 7.02. TRANSFERS; REGISTERED STOCKHOLDERS. Transfers of shares of any class of stock will be subject in all respects to the Charter and all of the terms and conditions contained therein. The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Maryland. All transfers of shares of stock shall be made on the books of the Corporation, by the holder of the shares, in person or by his attorney, in such manner as the board of directors or any officer of the Corporation may prescribe and, if such shares are certificated, upon surrender of certificates duly endorsed. The issuance of a new certificate

upon the transfer of certificated shares is subject to the determination of the board of directors that such shares shall no longer be represented by certificates. Upon the transfer of uncertificated shares, to the extent then required by the MGCL, the Corporation shall provide to record holders of such shares a written statement of the information required by the MGCL to be included on stock certificates.

Section 7.03. REPLACEMENT CERTIFICATES. The Corporation shall issue a new certificate in place of any certificate for shares previously issued if the registered owner of the certificate satisfies the following requirements:

- a. Claim. The registered owner makes proof in affidavit form that a previously issued certificate for shares has been lost, destroyed, stolen or mutilated;
- a. Timely Request. The registered owner requests the issuance of a new certificate before the Corporation has notice that the certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;
- a. Bond. Unless otherwise determined by an officer of the Corporation, the registered owner gives a bond in such form, and with such surety or sureties, with fixed or open penalty, as the board of directors may direct, in its discretion, to indemnify the Corporation (and its transfer agent and registrar, if any) against any claim that may be made on account of the alleged loss, destruction, or theft of the certificate; and
- a. Other Requirements. The registered owner satisfies any other reasonable requirements imposed by the board of directors or any officer of the Corporation.

When a certificate has been lost, destroyed, stolen or mutilated and the stockholder of record fails to notify the Corporation within a reasonable time after he has notice of it, if the Corporation registers a transfer of the shares represented by the certificate before receiving such notification, the stockholder of record is precluded from making any claim against the Corporation for the transfer or for a new certificate. In addition, if the shares represented by the certificate have ceased to be certificated, no new certificate shall be issued unless requested in writing by the stockholder of record and the board of directors has determined that such certificates may be issued.

Section 7.04. FIXING OF RECORD DATE. The board of directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose (such record date, in any case, may not be prior to the close of business on the day the record date is fixed and shall be not more than 90 days before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken).

When a record date for the determination of stockholders entitled to notice of and to vote at any meeting of stockholders has been set as provided in this section, such record date shall continue to apply to the meeting if adjourned or postponed, except if the meeting is adjourned to a date more than 120 days or postponed to a date more than 90 days after the record date originally fixed for the meeting, in which case a new record date for such meeting may be determined as set forth herein.

Section 7.05. STOCK LEDGER. The Corporation shall maintain at one or more of its principal offices or at the office of its counsel, accountants, or transfer agent, an original or duplicate share ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 7.06. FRACTIONAL STOCK; ISSUANCE OF UNITS. The Corporation may issue fractional stock or provide for the issuance of scrip, all on such terms and under such conditions as the board of directors may determine. Notwithstanding any other provision of the Charter or these bylaws, the board of directors may issue units consisting of different securities of the Corporation. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Corporation, except that the board of directors may provide that for a specified period securities of the Corporation issued in such unit may be transferred on the books of the Corporation only in such unit.

ARTICLE VIII

ACCOUNTING YEAR

The board of directors shall have the power, from time to time, to fix the fiscal year of the Corporation by a duly adopted resolution.

ARTICLE IX

DISTRIBUTIONS

Section 9.01. AUTHORIZATION. Dividends and other distributions upon the stock of the Corporation may be authorized by the board of directors, subject to the provisions of law and the Charter. Dividends and other distributions may be paid in cash, property or stock of the Corporation, subject to the provisions of law and the Charter.

Section 9.02. CONTINGENCIES. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the board of directors may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends, for repairing or maintaining any property of the Corporation or for such other purpose as the board of directors shall determine, and the board of directors may modify or abolish any such reserve.

ARTICLE X

INVESTMENT POLICY

Subject to the provisions of the Charter, the board of directors may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Corporation as it shall deem appropriate in its sole discretion.

ARTICLE XI

SEAL

Section 11.01. SEAL. The board of directors may authorize the adoption of a seal by the Corporation. The seal shall contain the name of the Corporation and the year of its incorporation and the words "Incorporated Maryland." The board of directors may authorize one or more duplicate seals and provide for the custody thereof.

Section 11.02. AFFIXING SEAL. Whenever the Corporation is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place "[SEAL]" adjacent to the signature of the person authorized to execute the document on behalf of the Corporation.

ARTICLE XII

WAIVER OF NOTICE

Whenever any notice of a meeting is required to be given pursuant to the Charter or these bylaws or pursuant to applicable law, a waiver thereof in writing or by electronic transmission, given by the person or persons

entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE XIII

AMENDMENT OF BYLAWS

The board of directors shall have the exclusive power to adopt, alter or repeal any provision of these bylaws and to make new bylaws; except that stockholders that satisfy the ownership and eligibility requirements of Rule 14a-8 under the Exchange Act for the periods and as of the dates specified therein shall have the power, by the affirmative vote of a majority of all votes entitled to be cast on the matter, to adopt, alter or repeal any provision of these bylaws.

ARTICLE XIV

EXCLUSIVE FORUM FOR CERTAIN LITIGATION

Unless the Corporation consents in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland, or, if that Court does not have jurisdiction, the United States District Court for the District of Maryland, Northern Division, shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, other than actions arising under federal securities laws, (b) any Internal Corporate Claim, as such term is defined in the MGCL, or any successor provision thereof, including, without limitation, (i) any action asserting a claim of breach of any duty owed by any director or officer or other employee of the Corporation to the Corporation or to the stockholders of the Corporation or (ii) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation arising pursuant to any provision of the MGCL, the Charter or these Bylaws, or (c) any other action asserting a claim against the Corporation or any director or officer or other employee of the Corporation that is governed by the internal affairs doctrine. None of the foregoing actions, claims or proceedings may be brought in any court sitting outside the State of Maryland unless the Corporation consents in writing to such court.

PHILLIPS EDISON & COMPANY, INC.

ARTICLES SUPPLEMENTARY

Phillips Edison & Company, Inc., a Maryland corporation (the “Company”), hereby certifies to the State Department of Assessments and Taxation of Maryland, that:

FIRST: Under a power contained in Section 3-802(c) of the Maryland General Corporation Law (the “MGCL”), the Company, by resolution of its Board of Directors (the “Board of Directors”), (i) elected to be subject to Section 3-804(c) of the MGCL and (ii) prohibited the Company from electing to be subject to Section 3-803 of the MGCL as provided herein.

SECOND: The resolution referred to above provides that the Company is prohibited from electing to be subject to the provisions of Section 3-803 of the MGCL and that the foregoing prohibition may be repealed, in whole or in part, only if such repeal is approved by the stockholders of the Company by the affirmative vote of at least a majority of the votes cast on the matter by stockholders entitled to vote generally in the election of directors.

THIRD: The election to (i) be subject to Section 3-804(c) of the MGCL and (ii) prohibit the Company from becoming subject to Section 3-803 of the MGCL without the stockholder approval referenced above has been approved by the Board of Directors in the manner and by the vote required by law.

FOURTH: The undersigned officer acknowledges these Articles Supplementary to be the act of the Company and, as to all matters or facts required to be verified under oath, the undersigned officer acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

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IN WITNESS WHEREOF, the Company has caused these Articles Supplementary to be executed under seal in its name and on its behalf by its Chairman and Chief Executive Officer and attested by its General Counsel and Secretary on this 16th day of July, 2021.

ATTEST: PHILLIPS EDISON & COMPANY, INC.

By: /s/ Tanya E. Brady By: /s/ Jeffrey S. Edison

Name: Tanya E. Brady Name: Jeffrey S. Edison

Title: General Counsel and Secretary Title: Chairman and Chief Executive Officer

TAX PROTECTION AGREEMENT

This TAX PROTECTION AGREEMENT (this "Agreement") is entered into as of July 19, 2021 (the "Signing Date"), by and among Phillips Edison & Company, Inc., a Maryland corporation (the "REIT"), Phillips Edison Grocery Center Operating Partnership I, L.P., a Delaware limited partnership (the "Operating Partnership"), Jeffrey S. Edison ("Edison"), Devin I. Murphy ("Murphy"), Robert F. Myers ("Myers") and each other signatory hereto identified as a Protected Partner on Schedule I, as amended from time to time.

RECITALS

WHEREAS, the REIT is a real estate investment trust within the meaning of Section 856 of the Code;

WHEREAS, the REIT is the sole member of Phillips Edison Grocery Center OP GP I LLC, a Delaware limited liability company and general partner of the Operating Partnership, and a limited partner of the Operating Partnership;

WHEREAS, the REIT and the Operating Partnership are parties to that certain Tax Protection Agreement, dated as of October 4, 2017 (the "Existing TPA"), by and among the REIT, the Operating Partnership and certain limited partners of the Operating Partnership;

WHEREAS, the REIT is preparing for its initial public offering and the listing of its common stock on the Nasdaq Stock Market, and as part of that process Edison, in his capacity as the REIT's largest stockholder, has supported certain governance enhancements;

WHEREAS, the REIT, the Operating Partnership and Edison are parties to the Equity Holder Agreement dated October 4, 2017, by and among the REIT, the Operating Partnership and Edison (the "Equity Holder Agreement"), which provides Edison rights to nominate a director to the REIT's board of directors; and

WHEREAS, the REIT, the Operating Partnership and the Protected Partners desire to enter into this Agreement, among other reasons, to extend the effective period of certain tax liability protections under the Existing TPA with respect to the Protected Partners for a period of time after the expiration of the Existing TPA, subject to the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINED TERMS

For purposes of this Agreement the following terms shall apply:

Section 1.1“65% Termination” means, with respect to any Covered Executive, that such Covered Executive owns less than sixty-five percent (65%) of the OP Units held by such Covered Executive as of the Signing Date.

Section 1.2“Affiliate” means, with respect to any Person, any Person directly or indirectly controlling or controlled by or under common control with such Person. For the purposes of this definition, “control” when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

Section 3.3“Allocation Shortfall” has the meaning set forth in Section 2.4(b).

Section 1.4“Agreement” has the meaning set forth in the preamble.

Section 1.5“Approval of the Partners’ Representative” means the written approval of the Partners’ Representative with respect to any matter or transaction (for the avoidance of doubt, no vote in favor of any transaction by the Partners’ Representative or any of its Affiliates in its capacity as owner of shares of the REIT or OP Units shall constitute such approval).

Section 1.6“Approved Liability” means:

- (a) A liability of the Operating Partnership (or of an entity whose separate existence from the Operating Partnership is disregarded for U.S. federal income tax purposes) with respect to which all of the following requirements are satisfied:
 - (i) the liability is secured by real property or other assets (the “Collateral”) owned directly by the Operating Partnership or by an entity whose separate existence from the Operating Partnership is disregarded for U.S. federal income tax purposes;
 - (ii) on the date on which the Operating Partnership designated such liability as an Approved Liability, the outstanding principal amount (and any accrued and unpaid interest) of the liability and any other Approved Liabilities secured by such Collateral at such time was no more than 65% of the fair market value (as reasonably determined in good faith by the Operating Partnership) of the Collateral at such time, *provided* that if interest on such liability is “pay in kind” or otherwise not required to be paid (in cash) at least annually or if the documents evidencing such liability permit the borrower to borrow additional amounts that are secured by the Collateral, the outstanding principal amount of such liability shall include the maximum amount that could be so added to the principal amount of such liability without a default;

- (iii) no other Person has executed any guarantees with respect to such liability other than: (A) guarantees by the Protected Partners; (B) guarantees by Affiliates of the Operating Partnership, provided that each applicable Protected Partner indemnifies each such Affiliate against any liability of such Affiliate (to the extent such liability does not exceed such Protected Partner's Required Liability Amount) arising solely from the existence or performance of such guarantee; and (C) non-recourse carve out guarantees (i.e., bad-boy guarantees);
- (iv) the Collateral does not provide security for another liability (other than another Approved Liability) that ranks senior to, or *pari passu* with, the liability described in clause (i) above; and
- (v) the liability is a Guarantee Permissible Liability.

For purposes of determining whether clause (ii) has been satisfied in situations where one or more potential Approved Liabilities are secured by more than one item of Collateral, the Operating Partnership shall allocate such liabilities among such items of Collateral in proportion to their relative fair market values (as reasonably determined in good faith by the Operating Partnership); or

(b) Any other indebtedness approved by the Partners' Representative (or its successor or designee) in its sole and absolute discretion.

Section 1.7 "Board" means the board of directors of the REIT.

Section 1.8 "Code" means the Internal Revenue Code of 1986, as amended.

Section 1.9 "Collateral" has the meaning set forth in the definition of "Approved Liability."

Section 1.10 "Contribution Agreement" means the Contribution Agreement by and among the REIT, the Operating Partnership, PELP and certain other parties, dated as of May 18, 2017, pursuant to which the Operating Partnership acquired, among other things, a portfolio of properties owned, directly or indirectly, by certain entities as set forth in such agreement.

Section 1.11 "Contribution Transactions" means the acquisition of a portfolio of properties pursuant to the Contribution Agreement.

Section 1.12 "Covered Executive" means each of Edison, Murphy and Myers. For the avoidance of doubt, any OP Units held by a Covered Executive shall be deemed to include OP Units held by (a) any trusts or other Pass Through Entities affiliated with the Covered Executive as identified on Schedule I hereto and (b) any Person who acquires OP Units from or through a Covered Executive or other Person described in the preceding clause (a) in a Permitted Disposition (subject to the limitations set forth in the definition thereof).

- Section 1.13 “Debt Gross Up Amount” has the meaning set forth in the definition of “Make Whole Amount.”
- Section 1.14 “Debt Notification Event” means, with respect to a Nonrecourse Liability or an Approved Liability, any transaction (a) in which such liability shall be refinanced, otherwise repaid, or guaranteed by any of the REIT, the Operating Partnership, or one or more of their Affiliates, or guaranteed by one or more partners of the Operating Partnership, or (b) that would otherwise result in any reduction in the amount of Nonrecourse Liabilities or Approved Liabilities allocated to a Protected Partner; in each case other than fixed scheduled payments of principal occurring prior to the maturity date of such liability.
- Section 1.15 “Deficit Restoration Obligation” means, with respect to a Protected Partner, a written obligation by such Person, on a form provided by Edison and approved by the Operating Partnership (which approval shall not be unreasonably withheld), to restore part or all of any deficit balance in such Person’s capital account in the Operating Partnership upon the occurrence of certain events.
- Section 1.16 “DownREIT OP Units” has the meaning set forth in Section 3.2(a)(ii).
- Section 1.17 “Edison” has the meaning set forth in the preamble.
- Section 1.18 “Effective Date” means the expiration date of the Existing TPA, which is October 4, 2027.
- Section 1.19 “Equity Holder Agreement” has the meaning set forth in the recitals.
- Section 1.20 “Exchange” has the meaning set forth in Section 2.1(b).
- Section 1.21 “Existing TPA” has the meaning set forth in the recitals.
- Section 1.22 “Fundamental Transaction” means, with respect to any entity, a merger, combination, consolidation or similar transaction (including a transfer of all or substantially all of the assets of such entity).
- Section 1.23 “Fundamental Transaction Gross Up Amount” has the meaning set forth in the definition of “Make Whole Amount.”
- Section 1.24 “Gain Transaction” has the meaning set forth in Section 2.1(a).
- Section 1.25 “Gross Up Amount” has the meaning set forth in the definition of “Make Whole Amount.”
- Section 1.26 “Guarantee” has the meaning set forth in Section 2.4(b).

- Section 1.27 “Guarantee Opportunity” has the meaning set forth in Section 2.4(b).
- Section 1.28 “Guarantee Permissible Liability” means a liability with respect to which the lender permits a guarantee.
- Section 1.29 “Make Whole Amount” means:
- (a) with respect to any Protected Partner that recognizes income or gain under Section 704(c) of the Code as a result of a Tax Protection Period Transfer, *the sum of (i) the product of (A) the amount of income or gain recognized by such Protected Partner under Section 704(c) of the Code in respect of such Tax Protection Period Transfer (taking into account any adjustments under Section 743 of the Code to which such Protected Partner is entitled) multiplied by (B) the Make Whole Tax Rate, plus (ii) an amount equal to the combined U.S. federal and applicable state income taxes (calculated using the Make Whole Tax Rate) imposed on such Protected Partner as a result of the receipt by such Protected Partner of a payment under Section 2.2 (the “Gross Up Amount”)*;
 - (b) with respect to any Protected Partner that recognizes income or gain as a result of a breach by the Operating Partnership of the provisions of Section 2.4 hereof, *the sum of (i) the product of (A) the amount of income or gain recognized by such Protected Partner by reason of such breach, multiplied by (B) the Make Whole Tax Rate, plus (ii) an amount equal to the combined U.S. federal and applicable state income taxes (calculated using the Make Whole Tax Rate) imposed on such Protected Partner as a result of the receipt by such Protected Partner of a payment under Section 2.4 (the “Debt Gross Up Amount”); and*
 - (c) with respect to any Protected Partner that recognizes income or gain as a result of a Fundamental Transaction described in clause (ii) of Section 2.1(a) or as a result of the receipt of consideration payable pursuant to Section 3.5, *the sum of (i) the product of (A) the amount of income or gain recognized by such Protected Partner in respect of such transaction, multiplied by (B) the Make Whole Tax Rate, plus (ii) an amount equal to the combined U.S. federal and applicable state income taxes (calculated using the Make Whole Tax Rate) imposed on such Protected Partner as a result of the receipt by such Protected Partner of a payment under Section 2.2 or Section 3.5, as applicable (the “Fundamental Transaction Gross Up Amount”)*.

For the avoidance of doubt, each Make Whole Amount shall be calculated pursuant to the formula set forth above, and the actual taxes or tax attributes of the Protected Partners shall not be taken into account. For purposes of calculating the amount of Section 704(c) gain that is allocated to a Protected Partner, (i) subject to clause (ii) below, any “reverse Section 704(c) gain” allocated to such Protected Partner pursuant to Treasury Regulations Section 1.704-3(a)(6) shall not be taken into account, provided, however, that (ii) if, as a result of adjustments to the Gross

Asset Value (as defined in the OP Agreement) of the Protected Properties pursuant to clause (b) of the definition of Gross Asset Value as set forth in the OP Agreement, all or a portion of the gain recognized by the Operating Partnership that would have been Section 704(c) gain without regard to such adjustments becomes or is treated as “reverse Section 704(c) gain” or Section 704(b) gain under Section 704 of the Code, then such gain shall continue to be treated as Section 704(c) gain.

Section 1.30 “Make Whole Tax Rate” means, with respect to a Protected Partner who is entitled to receive a payment under Section 2.2, Section 2.4 or Section 3.5, the highest combined statutory U.S. federal and state tax rate in respect of the income or gain that gave rise to such payment, taking into account the character of the income and gain in the hands of such Protected Partner, for the taxable year in which such gain or income is recognized.

Section 1.31 “Murphy” has the meaning set forth in the preamble.

Section 1.32 “Myers” has the meaning set forth in the preamble.

Section 1.33 “Nonrecourse Liability” means a liability that is a “nonrecourse liability” for purposes of Section 752 of the Code and the Treasury Regulations thereunder and “qualified nonrecourse financing” as defined in Section 465(b)(6) of the Code.

Section 1.34 “OP Agreement” means the Fourth Amended and Restated Agreement of Limited Partnership of the Operating Partnership, as amended from time to time.

Section 1.35 “OP Units” means common units of partnership interest in the Operating Partnership.

Section 1.36 “Operating Partnership” has the meaning set forth in the preamble.

Section 1.37 “Partners’ Representative” means any Person designated as the “Partners’ Representative” pursuant to Section 4.16(a).

Section 1.38 “Pass Through Entity” means an entity treated as a partnership, grantor trust, or S corporation for U.S. federal income tax purposes.

Section 1.39 “PELP” means Phillips Edison Limited Partnership, a Delaware limited partnership, or its permitted assigns.

Section 1.40 “Permitted Disposition” means a sale, exchange or other disposition of OP Units (a) by a Protected Partner: (i) to such Protected Partner’s children, spouse or issue; (ii) to a trust solely for the benefit of (A) such Protected Partner, (B) such Protected Partner’s children, spouse or issue, and/or (C) a spouse of any of such Protected Partner’s children; (iii) in the case of a trust which is a Protected Partner, solely to its beneficiaries, or any of them, whether current or remainder beneficiaries; (iv) to an *inter vivos* or testamentary trust of

which such Protected Partner and/or the spouse or child of such Protected Partner is the trustee; (v) in the case of any partnership or limited liability company which is a Protected Partner, solely to its direct partners or members; and/or (vi) in the case of any corporation which is a Protected Partner, to its shareholders, and (b) by a party described in clauses (i), (ii), (iii) or (iv) to a partnership, limited liability company or corporation of which the only partners, members or shareholders, as applicable, are parties described in clauses (i), (ii), (iii) or (iv); *provided*, that for purposes of a 65% Termination, such Protected Partner shall be treated as continuing to own any OP Units which were subject to a Permitted Disposition unless and until there has been a sale, exchange or other disposition of such OP Units by a permitted transferee which is not another Permitted Disposition.

Section 1.41 “Person” means an individual or a corporation, partnership, trust, unincorporated organization, association, limited liability company or other entity.

Section 1.42 “Protected Partner” means: (a) each signatory on Schedule I attached hereto, as amended from time to time; (b) any Person who holds OP Units and who acquired such OP Units from another Protected Partner in a Permitted Disposition in which such Person’s adjusted basis in such OP Units, as determined for U.S. federal income tax purposes, is determined, in whole or in part, by reference to the adjusted basis of the other Protected Partner in such OP Units; and (c) with respect to a Protected Partner that is Pass Through Entity, and solely for purposes of computing the amount to be paid under Section 2.2, Section 2.4 or Section 3.5, as applicable, with respect to such Protected Partner, any Person who (i) holds an interest in such Protected Partner, either directly or through one or more Pass Through Entities, and (ii) is required to include all or a portion of the income of such Protected Partner in its own gross income.

Section 1.43 “Protected Property” means each property identified on Exhibit A hereto and each property and/or interest acquired in Exchange for a Protected Property as set forth in Section 2.1(b). On or prior to the Effective Date, the Operating Partnership shall provide to the Partners’ Representative an updated list of Protected Properties.

Section 1.44 “Public DownREIT” means a real estate investment trust (within the meaning of Section 856 of the Code) (a) that holds some, but not substantially all, of its assets through a single subsidiary operating partnership that is treated as a partnership for U.S. federal income tax purposes and (b) whose common equity interests are listed on the New York Stock Exchange or another national securities exchange.

Section 1.45 “Public UPREIT” means a real estate investment trust (within the meaning of Section 856 of the Code) (a) that holds all or substantially all of its assets through a single subsidiary operating partnership that is treated as a partnership for U.S. federal income tax purposes and (b) whose common equity interests are listed on the New York Stock Exchange or another national securities exchange.

Section 1.46 “Required Liability Amount” means, with respect to any Protected Partner, the “Required Liability Amount” (as defined in the Existing TPA) determined for such Protected Partner under the Existing TPA.

Section 1.47 “REIT” has the meaning set forth in the preamble.

Section 1.48 “Section 2.4 Notice” has the meaning set forth in Section 2.4(c).

Section 1.49 “Tax Protection Period” means the period commencing on the Effective Date and ending on the fourth (4th) anniversary of the Effective Date; *provided, however*, that (a) such period shall end with respect to any Protected Partner (i) if there is a 65% Termination with respect to such Person or (ii) with respect to any OP Units acquired by such Protected Partner as a result of the death of another Protected Partner, if such death results in a step-up in the adjusted basis in such OP Units, and (b) such period shall end with respect to all Protected Partners if there is a 65% Termination with respect to Edison and his Affiliates. For the avoidance of doubt, if any event described in clause (a) or clause (b) in the preceding sentence occurs with respect to any Protected Partner, or the Existing TPA is terminated with respect to any Protected Partner, in each case prior to the Effective Date, then the Tax Protection Period shall be considered terminated with respect to such Person effective as of the date of such event.

Section 1.50 “Tax Protection Period Transfer” has the meaning set forth in Section 2.1(a).

Section 1.51 “Transfer” means any direct or indirect sale, exchange, transfer or other disposition, whether voluntary or involuntary.

Section 1.52 “Treasury Regulations” means the income tax regulations under the Code, whether such regulations are in proposed, temporary or final form, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

ARTICLE II

TAX MATTERS

Section 2.1 Taxable Transfers.

- (a) Unless the Operating Partnership receives the Approval of the Partners’ Representative with respect to a Tax Protection Period Transfer or an applicable Fundamental Transaction, during the Tax Protection Period, if the Operating Partnership or any entity in which the Operating Partnership holds a direct or indirect interest shall cause or permit or suffer to occur (i) any Transfer of all or any portion of a Protected Property (including any interest therein or in the entity owning, directly or indirectly, the Protected Property) in a transaction that would result in the recognition of taxable

income or gain by any Protected Partner under Section 704(c) of the Code (a “Tax Protection Period Transfer”), or (ii) any Fundamental Transaction with respect to the Operating Partnership that would result in the recognition of taxable income or gain by any Protected Partner (a “Gain Transaction”), then subject to ARTICLE III below, the Operating Partnership shall make a payment to each applicable Protected Partner as required under Section 2.2.

- (b) Subject to ARTICLE III below, Section 2.1(a) shall not apply to any Tax Protection Period Transfer of a Protected Property (including any interest therein or in the entity owning, directly or indirectly, the Protected Property) or any Fundamental Transaction with respect to the Operating Partnership, in each case in a transaction in which no income or gain is required to be recognized by a Protected Partner (an “Exchange”), including a transaction qualifying under Section 1031 or Section 721(a) (or any successor statutes) of the Code; *provided, however*, that any property and/or interests acquired by the Operating Partnership in any Exchange shall remain subject to the provisions of this ARTICLE II in place of the exchanged Protected Property for the remainder of the Tax Protection Period.
- (c) Any successor to the Operating Partnership must expressly assume the obligations of the Operating Partnership under this ARTICLE II as a condition to becoming a successor to the Operating Partnership.

Section 2.2 Indemnification for Taxable Transfers.

- (a) Subject to ARTICLE III below, in the event of a Tax Protection Period Transfer or Fundamental Transaction described in Section 2.1(a), the Operating Partnership shall pay an amount of cash equal to the estimated Make Whole Amount to each Protected Partner (i) in the case of a Tax Protection Period Transfer, no later than the thirteenth (13th) day after the end of the quarter in which such Tax Protection Period Transfer took place, and (ii) in the case of a Fundamental Transaction, within ten (10) business days after the closing of such Fundamental Transaction. If it is later determined that the true Make Whole Amount applicable to a Protected Partner exceeds the estimated Make Whole Amount applicable to such Protected Partner, then the Operating Partnership shall pay such excess to such Protected Partner within ten (10) business days after the date of such determination, and if such estimated Make Whole Amount exceeds the true Make Whole Amount, then such Protected Partner shall pay such excess to the Operating Partnership within ten (10) business days after the date of such determination, but only to the extent such excess was actually received by such Protected Partner.
- (b) For the avoidance of doubt, a vote in favor of a Tax Protection Period Transfer or Fundamental Transaction by a Protected Partner or the Partners’ Representative in its capacity as, or acting for, an owner of OP

Units or shares of the REIT shall not constitute a waiver of such Protected Partner's right to indemnification pursuant to this Section 2.2 as a result of such Tax Protection Period Transfer or Fundamental Transaction.

Section 2.3 Section 704(c) Methodology. The Operating Partnership shall use the traditional method (without curative allocations) as set forth in Treasury Regulations Section 1.704-3(b) with respect to the Protected Properties. On or prior to the Effective Date, the Operating Partnership and the Partners' Representative shall mutually agree upon a good faith estimate of the remaining amount of Section 704(c) gain allocable to each Protected Partner with respect to each Protected Property as of the Effective Date. The parties acknowledge that the initial amount of such Section 704(c) gain may be adjusted over time, including as required by Section 704(c) of the Code and the Treasury Regulations promulgated thereunder.

Section 2.4 Nonrecourse Liability Maintenance and Debt Guarantee.

- (a) During the Tax Protection Period, the Operating Partnership shall: (i) use its commercially reasonable best efforts to maintain on a continuous basis an amount of Nonrecourse Liabilities that would be allocated to each Protected Partner under Treasury Regulations Section 1.752-3 and for purposes of Section 465(b)(6) of the Code at least equal to the Required Liability Amount with respect to such Protected Partner (provided that from time to time, and for a specified period of time, the Operating Partnership may, with the Approval of the Partners' Representative, maintain a lower amount of Nonrecourse Liabilities that would be allocated to each Protected Partner pursuant to this clause (i)); (ii) allocate excess nonrecourse liabilities (within the meaning of Treasury Regulations Section 1.752-3(a)(3)) in a manner that results in the greatest amount of excess nonrecourse liabilities being allocated to the Protected Partners; and (iii) provide the Partners' Representative, promptly upon request, with a description of the nature and amount of any Approved Liabilities that are available to be guaranteed by the Protected Partners pursuant to Section 2.4(b).
- (b) During the Tax Protection Period, in the event that the amount of Nonrecourse Liabilities allocated to any Protected Partner is, or is expected to be, less than the Required Liability Amount (unless the Operating Partnership has obtained the Approval of the Partners' Representative for such lower amount for the applicable period of time pursuant to Section 2.4(a)(i)) with respect to such Protected Partner (such shortfall, an "Allocation Shortfall"), the Operating Partnership shall provide such Protected Partner with (i) written notice of such Allocation Shortfall, which notice shall be provided no later than thirty (30) days prior to the occurrence of such Allocation Shortfall, and (ii) the opportunity to execute an enforceable guarantee (a "Guarantee") on a form provided by the Partners' Representative and approved by the Operating Partnership (which approval shall not be unreasonably withheld), of one or

more Approved Liabilities in an amount up to such Allocation Shortfall (each such opportunity, a “Guarantee Opportunity”). The Guarantee provided by any Protected Partner shall not be subordinated (i.e., have relatively higher economic risk) to any other guarantees of the same debt covered by such Protected Partner’s Guarantee. The Operating Partnership shall have the discretion to identify the Approved Liability or Approved Liabilities that shall be made available for guarantee by each Protected Partner. Each Protected Partner that is a Pass Through Entity and its indirect owners may allocate the Guarantee Opportunity afforded to such Protected Partner in any manner they choose. The Operating Partnership agrees to file its tax returns allocating any debt subject to a Guarantee to the applicable Protected Partners without disclosure (relating to the avoidance of penalties), except to the extent that the Operating Partnership is required to do otherwise as a result of (i) a final determination to the contrary within the meaning of Section 1313(a) of the Code (or comparable applicable state law) or (ii) a change in applicable tax law after the date this Agreement is executed. Each Protected Partner shall bear the costs incurred by it in connection with the execution of any Guarantee to which it is a party. To the extent a Protected Partner executes a Guarantee, the Operating Partnership shall deliver a copy of such Guarantee to the applicable lender promptly after receiving such copy from the relevant Protected Partner.

- (c) During the Tax Protection Period, the Operating Partnership shall not allow a Debt Notification Event to occur unless the Operating Partnership provides at least thirty (30) days’ written notice (a “Section 2.4 Notice”) to each Protected Partner that may be affected thereby. The Section 2.4 Notice shall describe the Debt Notification Event and designate one or more Approved Liabilities that may be guaranteed by the Protected Partners pursuant to Section 2.4(b). The Section 2.4 Notice shall be deemed to have been provided when delivered to the Protected Partner in accordance with Section 15.2 of the OP Agreement. Any Protected Partner that desires to execute a Guarantee following the receipt of a Section 2.4 Notice shall provide the Operating Partnership with notice thereof within ten (10) days after the date of the Section 2.4 Notice.
- (d) If the Operating Partnership fails to comply with any provision of this Section 2.4 (and the Operating Partnership does not receive the Approval of the Partners’ Representative with respect to such failure), the Operating Partnership shall pay an amount of cash equal to the estimated Make Whole Amount to each Protected Partner no later than the thirteenth (13th) day after the end of the quarter in which in which such failure took place. If it is later determined that the true Make Whole Amount applicable to a Protected Partner exceeds the estimated Make Whole Amount applicable to such Protected Partner, then the Operating Partnership shall pay such excess to such Protected Partner within ten (10) business days after the date of such determination, and if such estimated Make Whole Amount exceeds the true Make Whole Amount, then such Protected Partner shall

pay such excess to the Operating Partnership within ten (10) business days after the date of such determination, but only to the extent such excess was actually received by such Protected Partner.

Section 2.5 Post-Tax Protection Period Matters.

- (a) Following the Tax Protection Period, for so long as Edison (directly or indirectly through his Affiliates) holds at least \$5 million in value of OP Units (as reasonably determined in good faith by the Operating Partnership) (the "Ownership Minimum"), the Operating Partnership shall offer Edison the opportunity to execute a Guarantee of debt of the Operating Partnership or to enter into a Deficit Restoration Obligation. Notwithstanding the foregoing, the Operating Partnership shall not be obligated pursuant to this Section 2.5(a) to maintain, refinance, or obtain any amount or type of existing or new indebtedness, including with respect to specific properties or loans. The Operating Partnership shall have no obligation to ensure that any particular lender is willing to accept Edison's guarantee of any debt of the Operating Partnership and shall have no responsibilities or liabilities to Edison regarding the efficacy of any such debt guarantee or any Deficit Restoration Obligation to result in allocations of debt to Edison pursuant to Section 752 of the Code. For the avoidance of doubt, nothing in this Section 2.5(a) shall require the REIT or the Operating Partnership to take any action that the Board, in its sole discretion, believes is or is likely to be adverse to the best interests of the REIT.
- (b) Following the Tax Protection Period, for so long as Edison holds the Ownership Minimum, the Operating Partnership shall (i) provide written notice to Edison (subject to Edison's agreement in writing to keep such information confidential) reasonably in advance of effecting a portfolio sale of properties, a sale or liquidation of Phillips Edison Institutional REIT LLC, or a Fundamental Transaction with respect to the REIT or the Operating Partnership, in each case that is reasonably likely to result in the recognition by Edison of taxable income or gain under Section 704(c) of the Code in an amount greater than one-third (1/3) of such taxable income or gain that, with respect to Edison, was subject to indemnification under Section 2.2 of the Existing TPA as of the Signing Date (any such transaction, a "Significant Transaction"), (ii) consider in good faith any proposal made by Edison relating to structuring the disclosed Significant Transaction in a manner that would avoid or mitigate adverse tax consequences to Edison, provided that such proposal (a) is made within ten (10) business days after a notice described in clause (i) and (b) would not, in the sole discretion of the Board, adversely affect or be reasonably likely to adversely affect the REIT (including with respect to the timing or certainty of closing such Significant Transaction), and (iii) to the extent the Board determines that any proposal made by Edison relating to structuring a Significant Transaction (as described in clause (ii)) would not adversely affect the REIT, present such proposal to the counterparty

involved in the Significant Transaction and thereafter use commercially reasonable efforts to implement the proposal made by Edison. The Operating Partnership shall have no obligation to ensure that the counterparty in a Significant Transaction accepts any alternative structure proposed by Edison, and the Operating Partnership shall have no responsibilities or liabilities to Edison regarding the efficacy of any alternative structure proposed by Edison to mitigate or avoid any gain recognition. For the avoidance of doubt, nothing in this Section 2.5(b) is intended to constitute or be interpreted as a “right of first offer,” “tag along” or any similar restriction on the sale of any assets of the REIT or the Operating Partnership, including those covered by the Existing TPA.

- (c) If the Existing TPA is terminated with respect to any Protected Partner prior to the Effective Date, then the covenants set forth in this Section 2.5 shall be considered terminated with respect to such Person effective as of the date of such event.

ARTICLE III

FUNDAMENTAL TRANSACTION MATTERS

Section 3.1 Public UPREIT Surviving Company.

- (a) In the case of any Fundamental Transaction in which the REIT or the Operating Partnership is acquired by or merged with or into a Public UPREIT, each Protected Partner shall be provided with at least the following choices of consideration for each OP Unit held by such Protected Partner immediately prior to the transaction:
- (i) the same consideration that is paid with respect to each share of the REIT’s common stock in the transaction in accordance with Section 11.2(c)(i) of the OP Agreement; and
 - (ii) common units of partnership interest in the operating partnership of such Public UPREIT, with terms that are at least as favorable as the terms of the OP Units and otherwise in accordance with Section 11.2(c)(ii) of the OP Agreement.
- (b) For the avoidance of doubt, subject to compliance with the ongoing terms of this Agreement by the Public UPREIT, if the consideration choices described in Section 3.1(a) are offered to the Protected Partners and, in the case of clause (a)(ii) above, in a transaction that is not a Gain Transaction, the Operating Partnership shall not be required to pay any Make Whole Amount pursuant to Section 2.2 or Section 3.5, and no consent of OP Unit holders shall be required for the consummation of the Fundamental Transaction other than the consent described in Article 11 of the OP Agreement.

Section 3.2 Public DownREIT Surviving Company.

- (a) In the case of any Fundamental Transaction in which the REIT or the Operating Partnership is acquired by or merged with or into a Public DownREIT, each Protected Partner shall be provided with at least the following choices of consideration for each OP Unit held by such Protected Partner immediately prior to the transaction:
- (i) the same consideration that is paid with respect to each share of the REIT's common stock in the transaction in accordance with Section 11.2(c)(i) of the OP Agreement; and
 - (ii) common units of partnership interest in the operating partnership of such Public DownREIT ("DownREIT OP Units"), with terms that are at least as favorable as the terms of the OP Units and otherwise in accordance with Section 11.2(c)(ii) of the OP Agreement; provided that such partnership must (A) have and maintain at all times subordinate units of partnership interest (e.g., owned by the Public DownREIT) with a value equal to at least 100% of the value of the OP Units exchanged for DownREIT OP Units; and (B) not have at closing, or thereafter incur, debt (including debt-like preferred or senior units) that would, at the time incurred, cause such partnership to have aggregate leverage on a consolidated basis in excess of 65% of the fair market value of such partnership's assets; provided, further, that no distribution may be made by such partnership with respect to such subordinate units of partnership interest to the extent the requirement described in clause (B) of the preceding proviso would not be met immediately after such distribution.
- (b) For the avoidance of doubt, subject to compliance with the ongoing terms of this Agreement by the Public DownREIT, if the consideration choices described in Section 3.2(a) are offered to the Protected Partners and, in the case of clause (a)(ii) above, in a transaction that is not a Gain Transaction, and the leverage and distribution limitations described in Section 3.2(a) are complied with, the Operating Partnership shall not be required to pay any Make Whole Amount pursuant to Section 2.2 or Section 3.5, and no consent of OP Unit holders shall be required for the consummation of the Fundamental Transaction other than the consent described in Article 11 of the OP Agreement.

Section 3.3 Other Surviving Company.

- (a) In the case of any Fundamental Transaction (1) in which the REIT or the Operating Partnership is acquired by or merged with or into an entity other than a Public UPREIT or Public DownREIT or (2) after which the REIT's common stock will not be listed on the New York Stock Exchange or other national securities exchange, each Protected Partner shall be

provided with at least the following choices of consideration for each OP Unit held by such Protected Partner immediately prior to the transaction:

- (i) the same consideration that is paid with respect to each share of the REIT's common stock in the transaction in accordance with Section 11.2(c)(i) of the OP Agreement;
- (ii) common units in an acquiror partnership that initially acquires all or substantially all of the assets of the Operating Partnership with the following terms and conditions:
 - (A) the Protected Partner(s) must receive common units based on a value per unit equal to the value of the consideration paid by the acquiror for each share of the REIT's common stock;
 - (B) the terms of such common units are at least as favorable as the terms of the OP Units and otherwise in accordance with Section 11.2(c)(ii) of the OP Agreement;
 - (C) the acquiror partnership must (x) not have at closing, or thereafter incur, debt (including debt-like preferred or senior units) that would, at the time incurred, cause such partnership to have aggregate leverage on a consolidated basis in excess of 65% of the fair market value of such partnership's assets, and (y) not make any distribution to the extent the leverage limitation described in clause (x) would not be met immediately after such distribution; and
 - (D) until the second anniversary of the expiration of the Tax Protection Period, upon the earlier of (x) the fifth anniversary of the consummation of the relevant Fundamental Transaction or (y) the expiration of the Tax Protection Period, the holder must have a put right to the acquiror partnership for cash in an amount equal to the fair market value of such common units at the time of the exercise of the put right (without liquidity discount or minority interest discount); provided, however, that the exercise of such put right during the Tax Protection Period will not trigger the payment of any Make Whole Amount pursuant to Section 2.2 or Section 3.5, unless the acquiror partnership is in breach of the covenants set forth in clause (C) above, the Partners' Representative provides to the acquiror partnership written notice of such breach, and such breach has not been cured within ten (10) days of the date of such notice; provided, further, that after the expiration of the Tax Protection Period, the exercise of such put right

will not trigger any payment of any Make Whole Amount pursuant to Section 2.2 or Section 3.5; and

(iii) preferred units in an acquiror partnership that initially acquires all or substantially all of the assets of the Operating Partnership with the following terms and conditions:

- (A) the liquidation preference of each preferred unit must be equal to the value of the consideration paid by the acquiror for each share of the REIT's common stock;
- (B) the distribution rate on the preferred units will be set at market for the terms of the units and the acquiror partnership;
- (C) the partnership that issues the preferred units must (x) have and maintain at all times subordinate or common units with a value equal to at least 100% of the value of the OP Units exchanged for preferred units; (y) not have at closing, or thereafter incur, debt (including debt-like preferred or senior units) that would, at the time incurred, cause it to have aggregate leverage on a consolidated basis in excess of 65% of the fair market value of the issuing partnership's assets; and (z) not make any distribution with respect to subordinate or common partnership interests to the extent the leverage limitation described in clause (y) would not be met immediately after such distribution; and
- (D) until the second anniversary of the expiration of the Tax Protection Period, upon the earlier of (x) the fifth anniversary of the consummation of the relevant Fundamental Transaction or (y) the expiration of the Tax Protection Period, the holder must have a put right to the acquiror partnership for cash in an amount equal to the liquidation preference of such preferred units plus any accrued and unpaid distributions; provided, however, that the exercise of such put right during the Tax Protection Period will not trigger the payment of any Make Whole Amount pursuant to Section 2.2 or Section 3.5, unless the acquiror partnership is in breach of the covenants set forth in clause (C) above, the Partners' Representative provides to the acquiror partnership written notice of such breach, and such breach has not been cured within ten (10) days of the date of such notice; provided, further, that after the expiration of the Tax Protection Period, the exercise of such put right will not trigger any payment of any Make Whole Amount pursuant to Section 2.2 or Section 3.5.

- (b) For the avoidance of doubt, subject to compliance with the ongoing terms of this Agreement by the surviving entities, if the consideration choices described in Section 3.3(a) are offered to the Protected Partners and, in the case of clauses (a)(ii) and (a)(iii) above, as applicable, in a transaction that is not a Gain Transaction, and the leverage and distribution limitations described in Section 3.3(a) are complied with, the Operating Partnership shall not be required to pay any Make Whole Amount pursuant to Section 2.2 or Section 3.5, and no consent of OP Unit holders shall be required for the consummation of the Fundamental Transaction other than the consent described in Article 11 of the OP Agreement.

Section 3.4 Continuation of Protections. If a Protected Partner elects to receive the units described in Section 3.1(a)(ii), Section 3.2(a)(ii), Section 3.3(a)(ii) or Section 3.3(a)(iii) with respect to a Fundamental Transaction, such Protected Holder shall be entitled to the continuation of the protections set forth in this Agreement with respect to the equity interests received in the acquiror partnership, including with respect to the covenants set forth in ARTICLE II and this ARTICLE III. Any successor to the Operating Partnership must expressly assume the obligations of the Operating Partnership under this ARTICLE III as a condition to becoming a successor to the Operating Partnership.

Section 3.5 Indemnification. During the Tax Protection Period, if a Protected Partner elects to receive the units described in Section 3.1(a)(ii), Section 3.2(a)(ii), Section 3.3(a)(ii) or Section 3.3(a)(iii) with respect to a Fundamental Transaction and thereafter the REIT, the Operating Partnership or their successors fail to comply with their equity, leverage or distribution obligations set forth in this ARTICLE III (after taking into account applicable cure periods set forth in this ARTICLE III) (and the Operating Partnership does not receive the Approval of the Partners' Representative with respect to such failure), then to the extent any Protected Partner elects to, or is required to, receive the consideration payable with respect to the redemption, exchange or other liquidity rights relating to such units, the Operating Partnership shall pay, within ten (10) business days after the expiration of the applicable cure periods, to each Protected Partner an amount of cash equal to the estimated Make Whole Amount applicable to such transaction. If it is later determined that the true Make Whole Amount applicable to a Protected Partner exceeds the estimated Make Whole Amount applicable to such Protected Partner, then the Operating Partnership shall pay such excess to such Protected Partner within ten (10) business days after the date of such determination, and if such estimated Make Whole Amount exceeds the true Make Whole Amount, then such Protected Partner shall pay such excess to the Operating Partnership within ten (10) business days after the date of such determination, but only to the extent such excess was actually received by such Protected Partner. For the avoidance of doubt, a vote in favor of a Fundamental Transaction by a Protected Partner or the Partners' Representative in its capacity as, or acting for, an owner of OP Units or shares of the REIT shall not constitute a waiver of such Protected Partner's right to indemnification pursuant to this Section 3.5 as a result of such Fundamental Transaction.

ARTICLE IV

GENERAL PROVISIONS

Section 4.1 Changes in Law; Voluntary Redemptions.

- (a) Notwithstanding any provision of this Agreement to the contrary, the Operating Partnership shall not be required to make an indemnification payment to a Protected Partner pursuant to this Agreement if such obligation arises solely as a result of a change in any provision of the Code, the Treasury Regulations or any other applicable tax law or any administrative or judicial interpretation thereof (and not, for example, as a result of any Tax Protection Period Transfer or Fundamental Transaction, or any change with respect to Operating Partnership liabilities allocated to any Protected Partner if such change is attributable to any act or omission by the Operating Partnership).
- (b) For the avoidance of doubt, a Protected Partner shall not be entitled to the protections set forth in ARTICLE II and ARTICLE III with respect to a full or partial redemption of the Protected Partner's interest in the Operating Partnership pursuant to Section 15.1 of the OP Agreement; provided, however, that the foregoing limitation in this Section 4.1(b) shall not apply to such Protected Partner, and such Protected Partner shall be entitled to any Make Whole Amount payable to such Protected Partner in an amount determined under Section 3.5, in the event the REIT or the Operating Partnership engages in a Fundamental Transaction described in Section 3.1(a), Section 3.2(a) or Section 3.3(a) and either a Protected Partner is not offered the consideration described in such provisions, as applicable, or one or more compliance failures described in Section 3.5 occurs.

Section 4.2 Cooperation. The Operating Partnership and the Partners' Representative agree to furnish or cause to be furnished to the other, upon request, as promptly as practicable, such information and assistance as is reasonably necessary to effectuate the provisions of this Agreement. In the event any change in any applicable provision of the Code, the Treasury Regulations or any other applicable tax law or any administrative or judicial interpretation thereof would result in the recognition of taxable income or gain by any Protected Partner, the parties shall reasonably cooperate to minimize or avoid any resulting tax on such Protected Partner. Prior to any anticipated change (or as soon as reasonably possible following any unanticipated change) in any applicable provision of the Code, the Treasury Regulations or any other applicable tax law or any administrative or judicial interpretation thereof, or the consummation of any spin-off transaction, reorganization transaction or other transaction that would affect the Operating Partnership and the Protected Partners, the parties shall cooperate in good faith to amend this Agreement as may be necessary or appropriate to preserve the intent and effect of this Agreement.

Section 4.3 Dispute Resolution. Any controversy, dispute, or claim of any nature arising out of, in connection with, or in relation to the interpretation, performance, enforcement or breach of this Agreement (and any closing document executed in connection herewith) shall be governed by the dispute resolution provisions set forth in Section 11.11 of the Contribution Agreement.

Section 4.4 Notices. All notices, demands, declarations, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms of this Agreement shall be given in the same manner as in the OP Agreement.

Section 4.5 Titles and Captions. All Article or Section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to “Articles” and “Sections” are to Articles and Sections of this Agreement.

Section 4.6 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 4.7 Further Action. The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 4.8 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 4.9 Creditors. Other than as expressly set forth herein, none of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Operating Partnership.

Section 4.10 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any covenant, duty, agreement or condition.

Section 4.11 Counterparts. This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 4.12 Applicable Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

Section 4.13 Invalidity of Provisions. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of other remaining provisions contained herein shall not be affected thereby.

Section 4.14 Entire Agreement; Coordination with OP Agreement. This Agreement contains the entire understanding and agreement among the Partners with respect to the subject matter hereof and amends, restates and supersedes the OP Agreement and any other prior written or oral understandings or agreements among them with respect thereto. The parties hereto agree that, to the extent of any conflict between the provisions of the OP Agreement and the provisions of this Agreement with respect to the rights, obligations or remedies of any such party under this Agreement, the provisions of this Agreement shall control.

Section 4.15 No Rights as Stockholders. Nothing contained in this Agreement shall be construed as conferring upon the holders of the OP Units any rights whatsoever as stockholders of the REIT, including, without limitation, any right to receive dividends or other distributions made to stockholders of the REIT or to vote or to consent or to receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the REIT or any other matter.

Section 4.16 Partners' Representative Matters.

- (a) The Protected Partners agree that it is desirable to designate a Person to act as the Partners' Representative for purposes of this Agreement with all powers, authority, rights, privileges and protections set forth in this Agreement. Each Protected Partner hereby designates Edison as the initial Partners' Representative, and each Protected Partner acknowledges such designation. In the event the Partners' Representative is unwilling or unable to continue to act as Partners' Representative, the Protected Partners shall appoint the successor Partners' Representative. Each successor Partners' Representative shall have all of the power, authority, rights, privileges and protections conferred by this Agreement upon the initial Partners' Representative, and the term "Partners' Representative" shall include any interim or successor representative.
- (b) The Partners' Representative shall have, and each Protected Partner hereby grants to the Partners' Representative, such power, authority, rights, privileges and protections as are necessary to carry out the functions assigned to it under this Agreement; provided, however that the Partners' Representative shall have no obligation to act, except as expressly provided in this Agreement. Without limiting the generality of the foregoing, the Partners' Representative shall have full power, authority and discretion to (i) submit any Approval of the Partners' Representative with respect to the matters specified in this Agreement, and (ii) take any and all actions, or elect not to take actions, that it believes are necessary under or contemplated by this Agreement, irrespective of whether such

actions or election not to take actions may result in disparate outcomes for each Protected Partner, it being expressly agreed by each Protected Partner that, when exercising its authority under this Agreement, the Partners' Representative shall have no obligation to take into consideration the specific tax or other attributes of any single Protected Partner or group of Protected Partners, but may take into consideration only such facts, circumstances and considerations (including its own interests) as it determines in its sole and absolute discretion are relevant to such exercise of authority. All actions taken by the Partners' Representative under this Agreement shall be binding on the Protected Partners and their respective successors and assigns as if expressly confirmed and ratified in writing by each of them. The parties hereto may rely upon any decision, act, consent or instruction of the Partners' Representative as being the decision, act, consent or instruction of each of the Protected Partners.

- (c) Each Protected Partner agrees that (i) this Agreement is not intended to, and does not, create or impose any fiduciary or other similar duty on the Partners' Representative, (ii) such Protected Partner hereby disclaims and waives any and all duties owed to such Protected Partner by the Partners' Representative (including those duties that, absent such waiver, may be implied by law), (iii) the only duties and obligations of the Partners' Representative (in such capacity) to any Person are only as expressly set forth in this Agreement, (iv) actions taken (or elected not to be taken) by the Partners' Representative that are consistent with the authority and discretion granted in this Agreement shall be deemed to satisfy any covenant or good faith and/or fair dealing implied by law, (v) the Partners' Representative shall have no liability to such Protected Partner or any other party hereto with respect to actions taken or omitted to be taken in its capacity as the Partners' Representative that are consistent with the grant of authority made under this Agreement, (vi) the Partners' Representative shall at all times be entitled to rely on any directions received from the Protected Partners or any other party hereto; provided, however, that the Partners' Representative shall not be required to follow any such direction, (vii) the Partners' Representative shall have no liability for any actions (or elections not to act) taken under this Agreement, and shall be indemnified by the Protected Partners for and shall be held harmless against any loss, liability or expense incurred by the Partners' Representative relating to the Partners' Representative's conduct as Partners' Representative, in each case, other than losses, liabilities or expenses resulting from the bad faith or fraud of the Partners' Representative resulting in material harm to the Protected Partners as a whole, it being agreed that such exculpation indemnification shall survive the termination of this Agreement, (viii) the Partners' Representative shall be entitled to engage counsel, experts, accountants and advisors as it shall deem necessary in connection with exercising its powers and performing its function hereunder and shall be entitled to rely conclusively on the opinions and advice of such Persons and shall have no liability for any actions (or elections not to act) taken after consultation with such counsel,

experts, accountants and/or advisors and (ix) such Protected Partner expressly disclaims any right to bring any legal or regulatory action, and agrees for itself and its successors and assigns that such Protected Partner will not bring any such legal or regulatory action against, any representative, member, shareholder, employee, partner, affiliate, controller, officer or other agent of the Partners' Representative.

Section 4.17 Termination of Board Nomination Rights. The REIT, the Operating Partnership and Edison agree that Edison's rights set forth in Section 3.1 of the Equity Holder Agreement are hereby terminated.

Section 5.17

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

REIT:

PHILLIPS EDISON & COMPANY, INC.,
a Maryland corporation

By: /s/ John P. Caulfield
Name: John P. Caulfield
Title: Chief Financial Officer

OPERATING PARTNERSHIP:

PHILLIPS EDISON GROCERY CENTER OPERATING
PARTNERSHIP I, L.P.,
a Delaware limited partnership

By: PHILLIPS EDISON GROCERY CENTER
OP GP I LLC, a Delaware limited liability company,
its general partner

By: /s/ John P. Caulfield
Name: John P. Caulfield
Title : Chief Financial Officer

**PROTECTED PARTNERS LISTED ON SCHEDULE I
HERE TO:**

By: /s/ Jeffrey S. Edison

Jeffrey S. Edison, on behalf of the Protected
Partners listed under the heading “Edison” on
Schedule I hereto

**PROTECTED PARTNERS LISTED ON SCHEDULE I
HERE TO:**

By: /s/ Devin I. Murphy

Devin I. Murphy, on behalf of the Protected
Partners listed under the heading “Murphy” on
Schedule I hereto

**PROTECTED PARTNERS LISTED ON SCHEDULE I
HERE TO:**

By: /s/ Robert F. Myers

Robert F. Myers, on behalf of the Protected
Partners listed under the heading “Myers” on
Schedule I hereto

SCHEDULE I
PROTECTED PARTNERS

[Attached]

EXHIBIT A

PROTECTED PROPERTIES

[Attached]