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): **December 14, 2020**

American Finance Trust, Inc.

(Exact Name of Registrant as Specified in Charter)

Maryland	**001-38597**	**90-0929989**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

650 Fifth Avenue, 30th Floor
New York, New York 10019

(Address, including zip code, of Principal Executive Offices)

Registrant's telephone number, including area code: (212) 415-6500

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:**
Class A Common Stock, $0.01 par value per share	AFIN	The Nasdaq Global Select Market
7.50% Series A Cumulative Redeemable Perpetual Preferred Stock, $0.01 par value per share	AFINP	The Nasdaq Global Select Market
7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, $0.01 par value per share	AFINO	The Nasdaq Global Select Market
Preferred Stock Purchase Rights		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 December 14, 2020, American Finance Trust, Inc. (the "Company") and American Finance Operating Partnership, L.P. (the "Operating Partnership"), the Company's operating partnership, entered into an underwriting agreement (the "Underwriting Agreement") with BMO Capital Markets Corp., as representative of the underwriters listed on Schedule I thereto (collectively, the "Underwriters") pursuant to which the Company agreed to issue and sell 3,200,000 shares of the Company's new class of 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, $0.01 par value per share, with a liquidation preference of $25.00 per share (the "Series C Preferred Stock"), in an underwritten public offering at a gross offering price of $25.00 per share (the "Preferred Stock Offering"). Pursuant to the Underwriting Agreement, the Company also granted the Underwriters a 30-day overallotment option to purchase up to an additional 480,000 shares of Series C Preferred Stock.

In the Underwriting Agreement, the Company and the Operating Partnership made certain customary representations, warranties and covenants and agreed to indemnify the Underwriters against certain liabilities. The issuance and sale of the shares is expected to close on or about December 18, 2020, subject to satisfaction of customary closing conditions. The Company's total net proceeds from the Preferred Stock Offering, after deducting the underwriting discount but not other estimated offering expenses payable by the Company, are expected to be approximately $77.5 million (assuming no exercise of the Underwriters' option to purchase additional shares of Series C Preferred Stock).

The Company intends to contribute these net proceeds to the Operating Partnership in exchange for a new class of 7.375% Series C Cumulative Redeemable Perpetual Preferred Units (the "Series C Preferred Units"), which will have economic interests that are substantially similar to the designations, preferences and other rights of Series C Preferred Stock. The Company, acting through the Operating Partnership, intends to use the net proceeds from this contribution for general corporate purposes, which may include purchases of additional properties.

The Preferred Stock Offering is being conducted pursuant to the Company's prospectus supplement dated December 14, 2020 (the "Prospectus Supplement"), which supplements the Company's prospectus filed with the Securities and Exchange Commission (the "SEC") as part of the Company's Registration Statement on Form S-3 (File No. 333-226252), filed with the SEC on July 20, 2018.

BMO Capital Markets Corp. acted as joint lead arranger and book runner for, and an affiliate of BMO Capital Markets Corp. is a co-syndication agent and lender under, the Company's revolving credit facility, and certain of the other Underwriters or their affiliates are also lenders thereunder. BMO Capital Markets Corp. and certain of the other Underwriters are agents under the Company's "at the market" equity offering programs for its Class A Common Stock, $0.01 par value per share ("Class A Common Stock), and its Series A Cumulative Redeemable Perpetual Preferred Stock, $0.01 par value per share ("Series A Preferred Stock").

The foregoing description does not purport to be a complete description and is qualified in its entirety by reference to the Underwriting Agreement, which is filed herewith as Exhibit 1.1 and incorporated by reference into this Item 1.01. For a more detailed description of the Underwriting Agreement, see the disclosure under the caption "Underwriting" contained in the Prospectus Supplement, which disclosure is hereby incorporated by reference into this Item 1.01.

A copy of the opinion of Venable LLP relating to Preferred Stock Offering is attached to this Current Report on Form 8-K as Exhibit 5.1.

Amendment to the Operating Partnership Agreement

On December 16, 2020, in connection with the Preferred Stock Offering, the Company, in its capacity as the general partner of the Operating Partnership, entered into a Sixth Amendment to the Second Amended and Restated Agreement of Limited Partnership of the Operating Partnership (the "Sixth Amendment"), designating and classifying the Series C Preferred Units.

The foregoing description does not purport to be a complete description and is qualified in its entirety by reference to the Sixth Amendment, which is filed herewith as Exhibit 10.1 and incorporated by reference into this Item 1.01.

Item 3.03. Material Modifications to Rights of Security Holders.

Series C Preferred Stock

On December 16, 2020, in connection with the Preferred Stock Offering, the Company filed Articles Supplementary (the "Articles Supplementary") with the State Department of Assessments and Taxation of the State of Maryland, which became effective upon acceptance for record. The Articles Supplementary classified 3,680,000 shares of the Company's authorized shares of preferred stock, $0.01 par value per share, as Series C Preferred Stock.

Holders of Series C Preferred Stock are entitled to cumulative dividends in the amount of $1.84375 per share each year, which is equivalent to the rate of 7.375% of the $25.00 liquidation preference per share per annum. The Series C Preferred Stock has no stated maturity and will remain outstanding indefinitely unless redeemed or otherwise repurchased.

On and after December 18, 2025, at any time and from time to time, the Series C Preferred Stock will be redeemable in whole, or in part, at the Company's option, at a cash redemption price of $25.00 per share, plus an amount equal to all dividends accrued and unpaid (whether or not declared), if any, to, but not including, the redemption date.

In addition, upon the occurrence of a Delisting Event or a Change of Control (each as defined in the Articles Supplementary), the Company may, subject to certain conditions, at its option, redeem the Series C Preferred Stock, in whole but not in part, within 90 days after the first date on which the Delisting Event occurred or within 120 days after the first date on which the Change of Control occurred, as applicable, by paying the liquidation preference of $25.00 per share, plus an amount equal to all dividends accrued and unpaid (whether or not declared), if any, to, but not including, the redemption date. If the Company does not exercise these redemption rights upon the occurrence of a Delisting Event or a Change of Control, the holders of Series C Preferred Stock will have certain rights to convert Series C Preferred Stock into shares of Class A Common Stock.

The Series C Preferred Stock ranks senior to Class A Common Stock and the Company's Series B Preferred Stock, $0.01 par value per share, with respect to dividend rights and rights upon the Company's voluntary or involuntary liquidation, dissolution or winding up, and on parity with Series A Preferred Stock.

Voting rights for holders of Series C Preferred Stock exist primarily with respect to the ability to elect two additional directors to the Board if six or more quarterly dividends (whether or not consecutive) payable on the Series C Preferred Stock are in arrears, and with respect to voting on amendments to the Company's charter (which includes the Articles Supplementary) that materially and adversely affect the rights of the Series C Preferred Stock or create additional classes or series of shares of the Company's capital stock that are senior to the Series C Preferred Stock. Other than the limited circumstances described above and in the Articles Supplementary, holders of Series C Preferred Stock do not have any voting rights.

The foregoing description does not purport to be a complete description and is qualified in its entirety by reference to the Articles Supplementary, which is filed herewith as Exhibit 3.1 and incorporated by reference into this Item 3.03.

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

The information about the Articles Supplementary set forth under Item 3.03 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 5.03.

Item 7.01. Regulation FD Disclosure.

Press Release

On December 15, 2020, the Company issued a press release announcing the pricing of the Preferred Stock Offering.

A copy of the press release is attached as Exhibits 99.1 and is hereby incorporated by reference into this Item 7.01. Such press release shall not be deemed "filed" for any purpose, including for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that Section. The information in Item 7.01, including Exhibit 99.1, shall not be deemed incorporated by reference into any filing under the Exchange Act or the Securities Act, regardless of any general incorporation language in such filing.

Forward-Looking Statements

The statements in this Current Report on Form 8-K that are not historical facts may be forward-looking statements. These forward-looking statements involve risks and uncertainties that could cause the outcome to be materially different. In addition, words such as "may," "will," "seeks," "anticipates," "believes," "estimates," "expects," "plans," "intends," "should" or similar expressions indicate a forward-looking statement, although not all forward-looking statements include these words. These forward-looking statements are subject to risks, uncertainties and other factors, many of which are outside of the Company's control, which could cause actual results to differ materially from the results contemplated by the forward-looking statements. These risks and uncertainties include the potential adverse effects of the ongoing global COVID-19 pandemic, including actions taken to contain or treat COVID-19, on the Company, the Company's tenants and the global economy and financial markets and that the information about rent collections may not be indicative of any future period, as well as those set forth in the Risk Factors section of the Company's most recent Annual Report on Form 10-K for the year ended December 31, 2019 filed on February 27, 2020, the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2020 filed on May 7, 2020, the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020 filed on August 6, 2020, the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2020 filed on November 5, 2020 and all other filings filed with the Securities and Exchange Commission after that date. Further, forward-looking statements speak only as of the date they are made, and the Company undertakes no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or changes to future operating results over time, unless required by law.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
1.1	Underwriting Agreement, dated December 14, 2020, by and among American Finance Trust, Inc., American Finance Operating Partnership, L.P. and the underwriters listed on Schedule I attached thereto, for whom BMO Capital Markets Corp. acted as representative.
3.1	Articles Supplementary designating and classifying shares of 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, $0.01 par value per share (incorporated by reference to Exhibit 3.11 of the Company's registration statement on Form 8-A filed with the SEC on December 16, 2020).
5.1	Opinion of Venable LLP.
10.1	Sixth Amendment, dated December 16, 2020, to the Second Amended and Restated Agreement of Limited Partnership of American Finance Operating Partnership, L.P., dated July 19, 2018.
23.1	Consent of Venable LLP (included in Exhibit 5.1 hereto).
99.1	Press release, dated December 15, 2020.
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document

SIGNATURES

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

AMERICAN FINANCE TRUST, INC.

Date: December 16, 2020

By: /s/ Edward M. Weil, Jr.
Edward M. Weil, Jr.
Chief Executive Officer and President

Exhibit 1.1

Execution Version

AMERICAN FINANCE TRUST, INC.

UNDERWRITING AGREEMENT

3,200,000 Shares of
7.375% Series C Cumulative Redeemable Perpetual Preferred Stock
(Liquidation Preference $25.00 Per Share)

December 14, 2020

BMO Capital Markets Corp.
As Representative of the Underwriters
named in Schedule I hereto

c/o BMO Capital Markets Corp.
3 Times Square, 25th Floor
New York, New York 10036

Ladies and Gentlemen:

American Finance Trust, Inc., a Maryland corporation (the "Company"), and American Finance Operating Partnership, L.P., a Delaware limited partnership (the "Operating Partnership"), jointly and severally, confirm their agreement with the underwriters named in Schedule I hereto (collectively, the "Underwriters"), for whom BMO Capital Markets Corp. is acting as representative (the "Representative"), with respect to the issue and sale by the Company and the purchase by the Underwriters, acting severally and not jointly, subject to the terms and conditions stated in this agreement (this "Agreement"), of an aggregate of 3,200,000 shares (the "Firm Shares") of the Company's 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, $0.01 par value per share (the "Preferred Stock"). The Company has also agreed to grant to the Underwriters an overallotment option to purchase up to an additional 480,000 shares of Preferred Stock (the "Option Shares"). The Firm Shares and the Option Shares are hereinafter collectively referred to as the "Shares."

The Company and the Operating Partnership understand that the Underwriters propose to make a public offering of the Shares as soon as the Representative deems advisable.

The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") an "automatic shelf registration statement" as defined in Rule 405 under the Securities Act of 1933, as amended (the "Securities Act"), on Form S-3 (File No. 333-226252) covering the public offer and sale of certain securities, including the Shares, under the Securities Act and the rules and regulations of the Securities Act (the "Rules and Regulations") of the Commission thereunder. Such registration statement, as of any time (the "Registration Statement"), means such registration statement as amended by any post-effective amendments thereto to such time, including the exhibits and any schedules thereto at such time, the documents incorporated or deemed to be incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the Securities Act and the documents otherwise deemed to be a part thereof as of such time pursuant to Rule 430B under the Rules and Regulations; *provided*, *however*, that the "Registration Statement" without reference to a time means such registration statement as amended by any post-effective amendments thereto as of the time of the first contract of sale for the Shares, which time shall be considered the "new effective date" of such registration statement with respect to the Shares within the meaning of paragraph (f)(2) of Rule 430B, including the exhibits and schedules thereto as of such time, the documents incorporated or deemed incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the Securities Act and the documents otherwise deemed to be a part thereof as of such time pursuant to the Rule 430B; provided, further, that if a Rule 462(b) Registration Statement is filed with the Commission, then the term "Registration Statement" shall include such Rule 462(b) Registration Statement from and after the time of such filing, *mutatis mutandis*. The preliminary prospectus relating to the Shares (the "Preliminary Prospectus Supplement") and the related base prospectus, dated July 20, 2018 and filed with the Commission as part of the Registration Statement on July 20, 2018 (the "Base Prospectus"), in the form first furnished (electronically or otherwise) to the Underwriters for use in connection with the offering of the Shares or, if not furnished to the Underwriters, in the form first filed by the Company pursuant to Rule 424(b), together with the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, are collectively referred to herein as a "Preliminary Prospectus." Promptly after execution and delivery of this Agreement, the Company will prepare and file a final prospectus relating to the Shares (the "Prospectus Supplement") in accordance with the provisions of Rule 424(b) under the Rules and Regulations. The final prospectus, in the form first furnished or made available to the Underwriters for use in connection with the offering of the Shares, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, are collectively referred to herein as the "Prospectus." For purposes of this Agreement, all references to the Registration Statement, any Preliminary Prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system (or any successor system) ("EDGAR").

At the Closing Time (as defined below) and on each Option Closing Date (as defined below), if any, the Company will contribute the net proceeds from the sale of the Shares to the Operating Partnership in exchange for units of limited partnership interest of the Operating Partnership designated as "7.375% Series C Cumulative Redeemable Perpetual Preferred Units" (the "Preferred Units").

1. Agreement to Sell and Purchase.

(a) *Purchase of Firm Shares*. On the basis of the representations, warranties and agreements of the Company and the Operating Partnership herein contained and subject to all the terms and conditions of this Agreement, the Company agrees to sell to the Underwriters and each of the Underwriters, severally and not jointly, agrees to purchase from the Company, at the purchase price per share of $24.2125, the respective number of Firm Shares set forth opposite such Underwriter's name on Schedule I hereto, plus such additional number of Firm Shares which such Underwriter may become obligated to purchase pursuant to the provisions of Section 8 hereof, bears to the total number of Firm Shares, subject in each case, to such adjustments among the Underwriters as the Representative in its sole discretion shall make to eliminate any sales or purchases of fractional shares.

(b) *Purchase of Option Share*s. In addition, on the basis of the representations, warranties and agreements of the Company and the Operating Partnership herein contained and subject to all the terms and conditions of this Agreement, the Company grants an option to the Underwriters to purchase, severally and not jointly, up to 480,000 Option Shares from the Company at the same price per share as the Underwriters shall pay for the Firm Shares; provided that the price per share for any Option Shares shall be reduced by an amount per share equal to any dividend or distributions declared and payable by the Company on the Firm Shares but not payable on the Option Shares. The option hereby granted may be exercised only to cover overallotment in the Firm Shares by the Underwriters and may be exercised in whole or in part at any time on or before the 30th day after the date of this Agreement, upon written notice (the "Option Shares Notice") by the Representative to the Company no later than 12:00 p.m., New York City time, at least two and no more than five business days before the date specified for closing in the Option Shares Notice (an "Option Closing Date"), setting forth the aggregate number of Option Shares to be purchased and the time and date for such purchase. On the Option Closing Date, the Company shall issue and sell to each Underwriter the number of Option Shares set forth in the Option Shares Notice, and the Underwriters shall purchase from the Company such percentage of the Option Shares as is equal to the percentage of Firm Shares that such Underwriter is purchasing, subject, however, to such adjustments to eliminate fractional shares as the Representative in its sole discretion shall make.

2. Delivery and Payment.

(a) *Closing*. Delivery of the Firm Shares shall be made to BMO Capital Markets Corp. through the facilities of the Depository Trust Company ("DTC") for the respective accounts of the Underwriters against payment of the purchase price by wire transfer of immediately available funds to the order of the Company at the offices of Mayer Brown LLP, 1221 Avenue of the Americas, New York, New York 10020 (or such other place as may be agreed by the Representative and the Company). Such payment shall be made at 10:00 a.m., New York City time, on December 18, 2020, or at such time on such other date as may be agreed upon by the Company and the Representative (such time and date is hereinafter referred to as the "Closing Time"). The Company shall pay and hold each Underwriter and any subsequent holder of the Shares harmless from any and all liabilities with respect to or resulting from any failure or delay in paying Federal and state stamp and other transfer taxes, if any, which may be payable or determined to be payable in connection with the original issuance or sale to such Underwriter of the Shares.

(b) *Option Closing*. Delivery of the Option Shares against payment by the Representative (in the manner and at the location specified above) shall take place at the time and date (which may be the Closing Time) specified in the Option Shares Notice.

3. Representations and Warranties of the Company and the Operating Partnership.

The Company and the Operating Partnership, jointly and severally, represent and warrant to, and covenant with, each Underwriter, as of the date hereof, as of the Applicable Time, as of the Closing Time, and as of each Option Closing Date (if any) and agree with each Underwriter as follows:

(a) *Compliance with Registration Requirements*. The Company meets the requirements to use Form S-3. The Registration Statement (i) has been prepared by the Company under the provisions of the Securities Act and the Rules and Regulations of the Commission thereunder, (ii) has been filed with the Commission under the Securities Act, and (iii) has become effective under the Securities Act. No stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose have been instituted or are pending or, to the knowledge of the Company or the Operating Partnership, are contemplated or threatened by the Commission. Copies of the Registration Statement and of each amendment thereto, if any, including the related Preliminary Prospectuses, heretofore filed by the Company with the Commission have been delivered to the Representative. As used in this Agreement:

(i) "Applicable Time" means 5:30 pm (New York City time) on December 14, 2020.

(ii) "Issuer Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433 of the Rules and Regulations, including as identified on Schedule III and Schedule IV hereto and, without limitation, any "free writing prospectus" (as defined in Rule 405 of the Rules and Regulations) relating to the Shares that is (i) required to be filed with the Commission by the Company; (ii) a "road show that is a written communication" within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission; or (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

(iii) "Disclosure Package" means, as of the Applicable Time, the most recent Preliminary Prospectus (including any documents incorporated or deemed incorporated therein), together with each Issuer Free Writing Prospectus filed or used by the Company at or before the Applicable Time, other than a road show that is an Issuer Free Writing Prospectus under Rule 433 of the Rules and Regulations.

(b) *Accuracy of Registration Statement*. Each of the Registration Statement, and any post-effective amendment thereto, at the time each became effective and as of the applicable filing date as to the Prospectus and any amendment or supplement thereto, complied and will comply in all material respects with the Securities Act and the Rules and Regulations, and did not and 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. Each Preliminary Prospectus, at the time each was filed with the Commission, complied in all material respects with the Securities Act and the Rules and Regulations and did not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Disclosure Package did not and will not, as of the Applicable Time, as of the Closing Time, and as of each Option Closing Time, if any, contain an untrue statement of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Prospectus, as of its date, as of the Closing Time, and as of each Option Closing Time, if any, complied and will comply in all material respects with the Securities Act and the Rules and Regulations and did not or will not contain any untrue statement of a material fact or 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. Each Preliminary Prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering is identical to the electronically transmitted copies thereof filed with the Commission on EDGAR, except to the extent permitted by Regulation S-T. The foregoing representations and warranties in this Section 3(b) do not apply to any statements or omissions made in reliance on and in conformity with the Underwriter Content.

(c) *Documents Incorporated by Reference*. The documents incorporated by reference in the Registration Statement, the Prospectus and the Disclosure Package, at the time they were or hereinafter filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and did not, do not and will not contain an untrue statement of a material fact or 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.

(d) *Company Not Ineligible Issuer*. The Company is not an "ineligible issuer" (as defined in Rule 405 under the Securities Act) as of the eligibility determination date for purposes of Rules 164 and 433 under the Securities Act with respect to the offering of the Shares contemplated by the Registration Statement.

(e) *Issuer Free Writing Prospectuses*. Each Issuer Free Writing Prospectus (including, without limitation, any road show that is a free writing prospectus under Rule 433 of the Rules and Regulations), when considered together with the Disclosure Package as of the Applicable Time, did not and will not contain an untrue statement of a material fact or 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. No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement, the Disclosure Package or the Prospectus, including any document incorporated by reference therein, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified. The foregoing representations and warranties in this Section 3(e) do not apply to any statements or omissions made in reliance on and in conformity with the Underwriter Content.

Each Issuer Free Writing Prospectus conformed or will conform in all material respects to the requirements of the Securities Act and the Rules and Regulations on the date of first use and at all subsequent times through the completion of the public offer and sale of the Shares (which completion shall be promptly communicated by the Representative to the Company) or until any earlier date that the Company notified or notifies the Representative as described in Section 4(b), and the Company has complied with any filing requirements applicable to such Issuer Free Writing Prospectus pursuant to the Rules and Regulations. Other than the Registration Statement, the Preliminary Prospectus and the Prospectus, the Company and the Operating Partnership have not made any offer relating to the Shares that would constitute an Issuer Free Writing Prospectus without the prior written consent of the Representative, except as set forth on Schedule III and Schedule IV hereto. The Company and the Operating Partnership have retained in accordance with the Rules and Regulations all Issuer Free Writing Prospectuses that were not required to be filed pursuant to the Rules and Regulations.

(f) *Distribution of Offering Material by the Company*. Without limitation of the provisions of Section 4(g) hereof, the Company has not distributed and will not distribute, directly or indirectly (other than through the Underwriters), any "written communication" (as defined in Rule 405 under the Securities Act) or other offering materials in connection with the offering or sale of the Shares, other than the Preliminary Prospectus that is included in the Disclosure Package, the Prospectus, any amendment or supplements to any of the foregoing and any Permitted Free Writing Prospectuses (as defined below).

(g) *Duly Authorized.* All of the issued and outstanding shares of capital stock, including the Company's Class A common stock, $0.01 par value per share (the "Common Stock"), 7.50% Series A Cumulative Redeemable Perpetual Preferred Stock, $0.01 par value per share (the "Series A Preferred Stock"), and the Preferred Stock, have been duly authorized and validly issued and are fully paid and non-assessable, have been issued in compliance with all applicable securities laws and were not issued in violation of any preemptive right, resale right, right of first refusal or similar right. The Shares have been duly and validly authorized and, when issued and delivered against payment therefor as provided herein, will be duly and validly issued, fully paid and non-assessable and free of statutory and contractual preemptive rights, resale rights, rights of first refusal and similar rights. The Shares, when issued and delivered against payment therefor as provided herein, will be free of any restriction upon the voting or transfer thereof pursuant to the Company's charter or bylaws or any agreement or other instrument to which the Company is a party other than the restrictions on ownership and transfer set forth in the Company's charter. The Preferred Units that will be received in exchange for the net proceeds from the sale of the Shares by the Company hereunder have been duly authorized for issuance and delivery by the Operating Partnership to the Company and, when issued and delivered by the Operating Partnership to the Company, will be duly and validly issued and unitholders have no obligation to make any further payments for the purchase of such units or contributions to the Operating Partnership solely by reason of their ownership of such units, free and clear of any pledge, lien, encumbrance, security interest or other claim; the issuance and delivery of such Preferred Units by the Operating Partnership are not subject to any preemptive right, co-sale right, registration right, right of first refusal or other similar right of unitholders arising by operation of law, under the Operating Partnership Agreement (as defined below), under any agreement to which the Operating Partnership is a party or otherwise.

(h) *Reserved for Future Issuance*. The Company has reserved for future issuance, and will keep available at all times, a sufficient number of shares of Common Stock, to be issued upon conversion of the shares of Preferred Stock then outstanding and the shares of Common Stock when issued upon conversion and surrender of such shares of Preferred Stock in accordance with the Series C Articles Supplementary (as defined below) will be validly issued, fully paid and non-assessable, will have been issued in compliance with all applicable state and federal securities laws and will not have been issued in violation of or subject to any preemptive, first refusal or similar right.

(i) *Series C Articles Supplementary*. The Series C Articles Supplementary set forth the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Preferred Stock and reflect the classification of 3,680,000 shares as shares of Preferred Stock (the "Series C Articles Supplementary"). The Series C Articles Supplementary have been filed with the State Department of Assessments and Taxation of Maryland (the "SDAT") and have become effective under the Maryland General Corporation Law (the "MGCL").

(j) *Operating Partnership Agreement Amendment*. An amendment to the Second Amended and Restated Agreement of Limited Partnership of the Operating Partnership, dated as of July 19, 2018 (as amended from time to time, the "Operating Partnership Agreement"), setting forth the designations, preferences and other rights and terms of the Preferred Units will be, prior to the Closing Time, duly authorized, executed and delivered by the Company, as the sole general partner of the Operating Partnership.

(k) *Due Incorporation; Subsidiaries.*

(i) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Maryland, with full corporate power and authority to own, lease and operate its properties and conduct its business as described in the Registration Statement, the Disclosure Package and the Prospectus and to issue, sell and deliver the Shares as contemplated herein.

(ii) The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, (A) have a material adverse effect on the business, properties, financial condition, results of operations or prospects of the Company and the Subsidiaries (as defined below) taken as a whole; (B) prevent or materially interfere with the consummation of the transactions contemplated hereby; or (C) result in the delisting of shares of Common Stock, the Series A Preferred Stock or the Preferred Stock from The Nasdaq Global Select Market ("Nasdaq") (the occurrence of any such effect or any such prevention or interference or any such result described in the foregoing clauses (A), (B) and (C) being herein referred to as a "Material Adverse Effect").

(iii) The Company has no subsidiaries (as defined under the Securities Act) other than those subsidiaries listed on Schedule II hereto (collectively, the "Subsidiaries"). The Company has no "significant subsidiary," as that term is defined in Rule 1-02(w) of Regulation S-X under the Securities Act, other than Subsidiaries that are listed on Exhibit 21.1 of the Company's Annual Report on Form 10-K for the year ended December 31, 2019.

(iv) Except for the units of limited partnership interest of the Operating Partnership designated as "LTIP Units" ("LTIP Units") and the units of limited partnership interest of the Operating Partnership designated as "Class A Units" ("Class A Units") as described in the Registration Statement, the Disclosure Package and the Prospectus, the Company owns all of the issued and outstanding capital stock or other equity interests of each of the Subsidiaries, including the Operating Partnership; other than the capital stock or other equity interests of the Subsidiaries, the Company and the Operating Partnership do not own, directly or indirectly, any shares of stock or any other equity interests or long-term debt securities of any corporation, firm, partnership, joint venture, association or other entity. Complete and correct copies of the charters and the bylaws of the Company and the charters, the bylaws, the limited liability company agreements, partnerships agreements or other organizational documents of each Subsidiary and all amendments thereto have been delivered to the Underwriters. Each Subsidiary has been duly incorporated or organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with full corporate or partnership (as applicable) power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Disclosure Package and the Prospectus. Each Subsidiary is duly qualified to do business as a foreign entity and is in good standing in each jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, have a Material Adverse Effect. All of the outstanding shares of capital stock or other equity interests of each of the Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable, have been issued in compliance with all applicable securities laws, were not issued in violation of any preemptive right, resale right, right of first refusal or similar right and are owned by the Company subject to no security interest, other encumbrance or adverse claims. Other than with respect to the LTIP Units and the Class A Units, no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligation into shares of capital stock or other equity interests in the Subsidiaries are outstanding.

(l) *Capital Stock.* The capital stock of the Company, including the Shares, conforms in all material respects to each description thereof contained or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus and the certificates for the Shares, if any, are in due and proper form.

(m) *Underwriting Agreement.* The Company and the Operating Partnership have full power and authority to enter into this Agreement. This Agreement has been duly authorized, executed and delivered by the Company and the Operating Partnership. This Agreement constitutes a valid and binding agreement of the Company and the Operating Partnership and is enforceable against the Company and the Operating Partnership in accordance with its terms, except as the enforceability hereof and thereof may be limited by applicable bankruptcy, insolvency, reorganization and similar laws affecting creditors' rights generally and moratorium laws in effect from time to time and by equitable principles restricting the availability of equitable remedies.

(n) *Compliance*. Neither the Company nor any of the Subsidiaries is in breach or violation of or in default under (nor has any event occurred that, with notice, lapse of time or both, would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (A) its charter or bylaws; or (B) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected; or (C) any federal, state, local or foreign law, regulation or rule; or (D) any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the rules and regulations of Nasdaq); or (E) any decree, judgment or order applicable to it or any of its properties, except for any of the foregoing in (B), (C), (D) or (E) as would not, individually or in the aggregate, have a Material Adverse Effect.

(o) *Conflicts*. The execution, delivery and performance of this Agreement, the issuance and sale of the Shares and the consummation of the transactions contemplated hereby will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event that, with notice, lapse of time or both, would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of the Company or any Subsidiary pursuant to) (A) the charter or bylaws of the Company or the charters, the bylaws, the limited liability company agreements, partnerships agreements or other organizational documents of any of the Subsidiaries; or (B) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound or affected; or (C) any federal, state, local or foreign law, regulation or rule; or (D) any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the rules and regulations of Nasdaq); or (E) any decree, judgment or order applicable to the Company or any of the Subsidiaries or any of their respective properties, except for any of the foregoing in (B), (C), (D) or (E) as would not, individually or in the aggregate, have a Material Adverse Effect.

(p) *Consents*. No approval, authorization, consent or order of or filing with any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or of or with any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, Nasdaq), or approval of the stockholders of the Company, is required in connection with the execution, delivery and performance of this Agreement, the issuance and sale of the Shares or the consummation by the Company and the Operating Partnership of the transactions contemplated hereby, other than (i) registration of the Shares under the Securities Act and the filing of the Series C Articles Supplementary, which have been effected, and the filing of any necessary notifications regarding the listing of the Shares on Nasdaq; (ii) any necessary notice or qualification under the securities or blue sky laws of the various jurisdictions in which the Shares are being offered by the Underwriters; or (iii) under the Conduct Rules of the Financial Industry Regulatory Authority, Inc. ("FINRA").

(q) *Rights*. Except as described in the Registration Statement (excluding the exhibits thereto), the Disclosure Package and the Prospectus (i) no person has the right, contractual or otherwise, to cause the Company to issue or sell to it any shares of Common Stock or shares of any other capital stock or other equity interests of the Company; (ii) no person has any preemptive rights, resale rights, rights of first refusal or other rights to purchase any shares of Common Stock or shares of any other capital stock of or other equity interests in the Company; (iii) no person has the right to act as an underwriter, agent, financial advisor to the Company or in any similar capacity in connection with the offer and sale of the Shares; and (iv) no person has the right, contractual or otherwise, to cause the Company to register under the Securities Act any shares of Common Stock or shares of any other capital stock of or other equity interests in the Company, or to include any such shares or interests in the Registration Statement or the offering contemplated thereby.

(r) *Licenses*. Each of the Company and the Subsidiaries has all necessary licenses, authorizations, consents and approvals and has made all necessary filings required under any applicable law, regulation or rule and has obtained all necessary licenses, authorizations, consents and approvals from other persons, in order to conduct their respective businesses, except where failure to obtain or maintain such licenses, authorizations, consents or approvals or make such filings would not, individually or in the aggregate, have a Material Adverse Effect. Neither the Company nor any of the Subsidiaries is in violation of, or in default under, or has received notice of any proceedings relating to revocation or modification of, any such license, authorization, consent or approval or any federal, state, local or foreign law, regulation or rule or any decree, order or judgment applicable to the Company or any of the Subsidiaries, except where such violation, default, revocation or modification would not, individually or in the aggregate, have a Material Adverse Effect.

(s) *Litigation*. Except as described in the Registration Statement (excluding the exhibits thereto), the Disclosure Package and the Prospectus, there are no actions, suits, claims, investigations or proceedings pending or, to the Company's or the Operating Partnership's knowledge, threatened to which the Company or any of the Subsidiaries or any of their respective directors or officers is or would be a party or of which any of their respective properties is or would be subject at law or in equity, before or by any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or before or by any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, Nasdaq), except any such action, suit, claim, investigation or proceeding that, if resolved adversely to the Company or any Subsidiary, would not, individually or in the aggregate, have a Material Adverse Effect.

(t) *Auditors*. KPMG LLP ("KPMG"), whose report on the consolidated financial statements of the Company and the Subsidiaries is included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus; and PricewaterhouseCoopers LLP (together with KPMG, the "Accountants" and each individually, an "Accountant") are each independent registered public accountants as required by the Securities Act and by the rules of the Public Company Accounting Oversight Board.

(u) *Financial Statements*. The financial statements included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus, together with the related notes and schedules, present fairly the consolidated financial position of the Company and the Subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company and the Subsidiaries for the periods specified and have been prepared in compliance with the applicable requirements of the Securities Act and Exchange Act and in conformity with U.S. generally accepted accounting principles ("GAAP") applied on a consistent basis during the periods involved; all pro forma financial statements or data, if any, included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus comply with the applicable requirements of the Securities Act and the Exchange Act, and the assumptions used in the preparation of such pro forma financial statements and data are reasonable, the pro forma adjustments used therein are appropriate to give effect to the transactions or circumstances described therein, and the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements and data. The other financial and statistical data contained or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus are accurately and fairly presented and prepared on a basis consistent with the financial statements and books and records of the Company and the Subsidiaries; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Registration Statement, the Disclosure Package or the Prospectus that are not included or incorporated by reference as required. Neither the Company nor any of the Subsidiaries has any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations), required to be disclosed in the Registration Statement, not described in the Registration Statement (excluding the exhibits thereto), the Disclosure Package and the Prospectus; and all disclosures contained or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Exchange Act and Item 10 of Regulation S-K under the Securities Act, to the extent applicable.

(v) *No Material Adverse Changes*. Subsequent to the respective dates as of which information is given in the Registration Statement, the Disclosure Package, and the Prospectus, there has not been (i) any material adverse change, or any development involving a prospective material adverse change, in the business, properties, management, financial condition or results of operations or prospects of the Company and the Subsidiaries taken as a whole; (ii) any transaction which is material to the Company and the Subsidiaries taken as a whole; (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company or any Subsidiary, which is material to the Company and the Subsidiaries taken as a whole; (iv) any material change in the capital stock or outstanding indebtedness of the Company or any Subsidiaries; or (v) any dividend or other distribution of any kind declared, paid or made on the capital stock of the Company or any Subsidiary, except in each case as otherwise disclosed in the Registration Statement, the Disclosure Package and the Prospectus, and except as would not, individually or in the aggregate, have a Material Adverse Effect.

(w) *Investment Company*. Neither the Company nor any Subsidiary is, and at no time during which a prospectus is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) in connection with any sale of Shares will any of them be, and, after giving effect to the offering and sale of the Shares, neither of them will be, 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.

(x) *Title to Real and Personal Property*. The Company, directly or through its Subsidiaries, has good and marketable title to all property (real and personal) described in the Registration Statement, the Disclosure Package and the Prospectus as being owned by it, free and clear of all liens, claims, security interests or other encumbrances; all the property described in the Registration Statement, the Disclosure Package, and the Prospectus, as being held under lease by the Company or a Subsidiary, is held thereby under valid, subsisting and enforceable leases.

(y) *Title to Intellectual Property*. The Company and the Subsidiaries own or possess sufficient trademarks, trade names, patent rights, copyrights, domain names, licenses, approvals, trade secrets and other similar rights (collectively, "Intellectual Property") reasonably necessary to conduct their businesses as now conducted. Neither the Company nor any of the Subsidiaries has received any notice of infringement or conflict with asserted Intellectual Property of others. The Company is not a party to or bound by any options, licenses or agreements with respect to the Intellectual Property Rights of any other person or entity that are required to be described in the Registration Statement, the Disclosure Package or the Prospectus and are not described therein. None of the technology employed by the Company or any of the Subsidiaries has been obtained or is being used by the Company or any of the Subsidiaries in violation of any contractual obligation binding on the Company or any of the Subsidiaries or any of its or the Subsidiaries' officers, directors or employees or otherwise in violation of the rights of any persons, except for such violations that would not, individually or in the aggregate, have a Material Adverse Effect.

(z) *Defined Benefit Plans*. Neither the Company nor any of the Subsidiaries is engaged in any unfair labor practice. Except for matters that would not, individually or in the aggregate, have a Material Adverse Effect, (i) there is (A) no unfair labor practice complaint pending or, to the Company's or the Operating Partnership's knowledge, threatened against the Company or any of the Subsidiaries before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements is pending or, to the Company's or the Operating Partnership's knowledge, threatened; (B) no strike, labor dispute, slowdown or stoppage pending or, to the Company's or the Operating Partnership's knowledge, threatened against the Company or any of the Subsidiaries; and (C) no union representation dispute currently existing concerning the employees of the Company or any of the Subsidiaries; (ii) to the Company's or the Operating Partnership's knowledge, no union organizing activities are currently taking place concerning the employees of the Company or any of the Subsidiaries; and (iii) there has been no violation of any federal, state, local or foreign law relating to discrimination in the hiring, promotion or pay of employees, any applicable wage or hour laws or any provision of the Employee Retirement Income Security Act of 1974 ("ERISA") or the rules and regulations promulgated thereunder concerning the employees of the Company or any of the Subsidiaries.

(aa) *Environmental Matters*. The Company and the Subsidiaries and their respective properties, assets and operations are in compliance with, and the Company and each of the Subsidiaries hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals would not, individually or in the aggregate, have a Material Adverse Effect; except as would not, individually or in the aggregate, be expected to have a Material Adverse Effect, there are no past, present or, to the Company's or the Operating Partnership's knowledge, reasonably anticipated future events, conditions, circumstances, activities, practices, actions, omissions or plans that could reasonably be expected to give rise to any costs or liabilities to the Company or any Subsidiary under, or to interfere with or prevent compliance by the Company or any Subsidiary with, Environmental Laws; except as would not, individually or in the aggregate, have a Material Adverse Effect, neither the Company nor any of the Subsidiaries (i) is, to the Company's or the Operating Partnership's knowledge, the subject of any investigation; (ii) has received any notice or claim; (iii) is a party to or affected by any pending or, to the Company's or the Operating Partnership's knowledge, threatened action, suit or proceeding; (iv) is bound by any judgment, decree or order; or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "Environmental Law" means any federal, state or local law, statute, ordinance, rule, regulation, order, decree, judgment or injunction, or common law, relating to the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "Hazardous Materials" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law).

(bb) *Taxes*. All income and other material foreign, federal, state and local tax returns that are filed or required to be filed by the Company or any of the Subsidiaries have been timely filed (taking into account any extension of time within which to file such tax returns), and all such returns are true, complete and accurate in all material respects. All material foreign, federal, state and local taxes and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax or penalties applicable thereto due or claimed to be due from such entities, have been timely paid, other than those being contested in good faith which have not been finally determined and for which adequate reserves have been provided in accordance with GAAP, or that would not be required to be disclosed in the Registration Statement.

(cc) *REIT Status of the Company and Partnership Status of the Operating Partnership*. Commencing with the Company's taxable year ended on December 31, 2013, the Company has been organized 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 all applicable regulations under the Code, and its actual method of operation through the date hereof has enabled it to meet, and its proposed method of operation will enable it to continue to meet, the requirements for qualification and taxation as a REIT under the Code and all applicable regulations under the Code for its taxable year ending December 31, 2020, and thereafter. All statements in the Registration Statement and the Base Prospectus under the caption "Material U.S. Federal Income Tax Considerations," as supplemented in the Preliminary Prospectus Supplement and Prospectus Supplement under the caption "Supplemental Material U.S. Federal Income Tax Considerations" regarding its qualification and taxation as a REIT are correct in all material respects. The Company intends to continue to qualify as a REIT under the Code and all applicable regulations under the Code for all subsequent years, and the Company, after reasonable inquiry and diligence, does not know of any event that would reasonably be expected to cause the Company to fail to qualify as a REIT at any time. The Operating Partnership has been and will be taxed as a partnership or as a "disregarded entity" (within the meaning of Treasury Regulation Section 301.7701-2(c)(2)(i)) and not as an association or publicly traded partnership (within the meaning of Section 7704) subject to tax as a corporation, for U.S. federal income tax purposes beginning with its first taxable year; the Company does not know of any event that would cause or would reasonably be expected to cause the Operating Partnership to cease being taxed as a partnership or as a "disregarded entity" (within the meaning of Treasury Regulation Section 301.7701-2(c)(2)(i)) for U.S. federal income tax purposes, and the Company does not know of any event that would cause or would reasonably be expected to cause the Operating Partnership to be treated as an association or publicly traded partnership subject to tax as a corporation for U.S. federal income tax purposes.

(dd) *Insurance*. The Company and each of the Subsidiaries maintain insurance covering their respective properties, operations, personnel and businesses as the Company reasonably deems adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice to protect the Company and the Subsidiaries and their respective businesses. All such insurance is fully in force and effect. Neither the Company nor any Subsidiary has reason to believe that it will not be able to renew any such insurance as and when such insurance expires.

(ee) *Interference with Business.* Neither the Company nor any of the Subsidiaries has sustained since the date of the last audited consolidated financial statements of the Company, included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus, any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, except as would not, individually or in the aggregate, be expected to have a Material Adverse Effect.

(ff) *Documents Described in the Registration Statement*. Except as described in the Registration Statement, the Disclosure Package and the Prospectus, neither the Company nor any Subsidiary has sent or received any communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in the Prospectus or the Disclosure Package, or referred to or described in, or filed as an exhibit to, the Registration Statement or any document incorporated by reference therein, and no such termination or non-renewal has been threatened by the Company or any Subsidiary or, to the Company's or the Operating Partnership's knowledge, any other party to any such contract or agreement.

(gg) *Regulation M.* The Common Stock is an "actively-traded security" excepted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of such rule.

(hh) *Internal Accounting Controls*. The Company and each of the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(ii) *Disclosure Controls and Procedures*. The Company has established and maintains and evaluates "disclosure controls and procedures" (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act) and "internal control over financial reporting" (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company and the Subsidiaries is made known to the Company's Chief Executive Officer and its Chief Financial Officer by others within those entities, and such disclosure controls and procedures are effective to perform the functions for which they were established. The Company's independent auditors and the Audit Committee of the Company's board of directors have been advised of: (i) all significant deficiencies, if any, in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data; and (ii) all fraud, if any, whether or not material, that involves management or other employees who have a role in the Company's internal controls; all material weaknesses, if any, in internal controls have been identified to the Company's independent auditors. Since the date of the most recent evaluation of such disclosure controls and procedures and internal controls, there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses. The principal executive officers (or their equivalents) and principal financial officers (or their equivalents) of the Company have made all applicable certifications required by the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and any related rules and regulations promulgated by the Commission, and the statements contained in each such certification are complete and correct; the Company, the Subsidiaries and the Company's directors and officers are each in compliance in all material respects with all applicable effective provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission and Nasdaq promulgated thereunder.

(jj) *Forward-Looking Statements.* Each "forward-looking statement" (within the meaning of Section 27A of the Securities Act or Section 21E of the Exchange Act) contained or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus has been made with a reasonable basis and in good faith.

(kk) *No Untrue Statement; Statistical and Market Data*. All statistical or market-related data included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate, and the Company has obtained the written consent to the use of such data from such sources to the extent required.

(ll) *No Unlawful Contributions or Payments*. Neither the Company, nor any of the Subsidiaries, nor any director or officer of the Company or the Subsidiaries, nor, to the knowledge of the Company, any agent, employee or representative of the Company or the Subsidiaries, affiliate or other person associated with or acting on behalf of the Company or the Subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment of corporate funds or benefit to any foreign or domestic government or regulatory official or employee, including, without limitation, of any 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; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offense under any other applicable anti-bribery or anti-corruption laws; or (iv) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Company has instituted, maintained and enforced, and will continue to maintain and enforce policies and procedures designed to promote and ensure compliance with all applicable anti-bribery and anti-corruption laws.

(mm) *Compliance with Anti-Money Laundering Laws*. The operations of the Company and the Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, 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 money laundering statutes of all jurisdictions in which the Company and the Subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory agency (collectively, the "Money Laundering Laws"); and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator or non-governmental authority involving the Company or any of the Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(nn) *No Conflicts with Sanction Laws*. Neither the Company, nor any of the Subsidiaries, nor any director or officer of the Company or the Subsidiaries, nor, to the knowledge of the Company, any agent, employee or representative of the Company or the Subsidiaries, affiliate or other person associated with or acting on behalf of the Company, or any of the Subsidiaries is currently the subject or target of any sanctions administered or enforced by the U.S. government (including, without limitation, the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC") or the U.S. Department of State and including, without limitation, the designation as a "specially designated national" or "blocked person"), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority (collectively, "Sanctions"), nor is the Company or any of the Subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria (each, a "Sanctioned Country"); and the Company will not directly or indirectly use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or the target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, principal, advisor, investor or otherwise) of Sanctions. For the past five years, the Company and the Subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(oo) *No Prohibition on Subsidiaries from Paying Dividends or Making Other Distributions*. No Subsidiary is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Subsidiary's capital stock, from repaying to the Company any loans or advances to such Subsidiary from the Company or from transferring any of such Subsidiary's property or assets to the Company or any other Subsidiary of the Company, except as described in the Registration Statement (excluding the exhibits thereto), the Disclosure Package and the Prospectus, and except as such limitations would not, taken as a whole, be material to the Company.

(pp) *Restrictions*. The issuance and sale of the Shares as contemplated hereby will not cause any holder of any shares of capital stock, securities convertible into or exchangeable or exercisable for capital stock or options, warrants or other rights to purchase capital stock or any other securities of the Company to have any right to acquire any shares of preferred stock of the Company.

(qq) *Nasdaq*. The Company is in compliance in all material respects with the rules of Nasdaq, including, without limitation, the requirements for continued listing of the Common Stock and the Series A Preferred Stock on Nasdaq, and the Company has not received any notice from Nasdaq regarding the delisting of the Common Stock or the Series A Preferred Stock from Nasdaq.

(rr) *Brokers and Finders*. Except pursuant to this Agreement, neither the Company nor any of the Subsidiaries has incurred any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby or by the Registration Statement, the Disclosure Package and the Prospectus.

(ss) *No Stabilization or Manipulation*. Neither the Company nor any of its directors, officers or controlling persons has taken, directly or indirectly, any action intended to cause or result in, or which might reasonably be expected to cause or result in, or which has constituted, stabilization or manipulation, under the Securities Act or otherwise, of the price of any security of the Company to facilitate the sale or resale of the Shares.

(tt) *No Affiliations*. To the Company's and the Operating Partnership's knowledge, there are no affiliations or associations between (i) any member of the FINRA; and (ii) the Company or any of the Company's officers, directors or 5% or greater security holders or any beneficial owner of the Company's unregistered equity securities that were acquired at any time on or after the 180th day immediately preceding the date the Registration Statement was initially filed with the Commission.

(uu) *No Indebtedness*. There are no outstanding loans, extensions of credit or advances or guarantees of indebtedness by the Company or any of the Subsidiaries to or for the benefit of any of the officers or directors of the Company or any of the Subsidiaries or any of the members of the families of any of them.

(vv) *Related Party Transactions*. There is no relationship, direct or indirect, that exists between or among the Company or any of the Subsidiaries on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of the Subsidiaries on the other hand, which is required by the Securities Act to be described in the Registration Statement, the Disclosure Package or the Prospectus, which is not so described.

(ww) *Advisory Agreement*. The Third Amended and Restated Advisory Agreement among the Company, the Operating Partnership and American Finance Advisors, LLC and all amendments thereto have been duly authorized, executed and delivered by the Company, and that agreement, as so amended, is a legal, valid and binding agreement of the Company enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, and by general equitable principles.

(xx) *Descriptions of Legal Matters.* The statements set forth in the Registration Statement, the Disclosure Package and Prospectus under the captions "Description of the Series C Preferred Stock," "Description of Capital Stock," "Certain Provisions of the Maryland General Corporation Law and Our Charter and Bylaws," "Material U.S. Federal Income Tax Considerations," as supplemented in the Preliminary Prospectus Supplement and Prospectus Supplement under the caption "Supplemental Material U.S. Federal Income Tax Considerations," and "Underwriting," insofar as they purport to describe the provisions of the laws and documents referred to therein, are accurate, complete and fair in all material respects.

(yy) *Lending Relationships*. Except as disclosed in the Registration Statement, the Disclosure Package and the Prospectus, neither the Company nor any of the Subsidiaries has any lending or similar relationship with any Underwriter or any bank of other lending institution affiliated with any Underwriter.

(zz) *FINRA Matters*. All of the information provided to the Representative or to counsel for the Underwriters in connection with any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rule 5110 or 5121 is true, complete and correct in all material respects.

(aaa) *Changes in Management.* Except as disclosed in the Registration Statement, the Disclosure Package and the Prospectus, none of the persons who were executive officers or directors of the Company as of the date of the Preliminary Prospectus included as part of the Disclosure Package has given oral or written notice to the Company or any of the Subsidiaries of his or her resignation (or otherwise indicated to the Company or any of the Subsidiaries an intention to resign within the next 12 months), nor has any such officer or director been terminated by the Company or otherwise removed from his or her office or from the board of directors, as the case may be (including, without limitation, any such termination or removal which is to be effective as of a future date) nor is any such termination or removal under consideration by the Company or its board of directors.

(bbb) *Transfer Taxes.* There are no stock or other transfer taxes, stamp duties, capital duties or other similar duties, taxes or charges payable in connection with the execution or delivery of this Agreement or the issuance or sale by the Company of the Shares to be sold by the Company to the Underwriters hereunder.

(ccc) *WKSI*. (a) At the time of filing the Registration Statement, (b) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), (c) at the time the Company made any offer relating to the Shares in reliance on the exemption of Rule 163 of the Rules and Regulations and (d) at the date hereof, the Company was and is a "well-known seasoned issuer" as defined in Rule 405 of the Rules and Regulations ("Rule 405"). The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405, and the Shares, since their registration on the Registration Statement, have been and remain eligible for registration by the Company on a Rule 405 "automatic shelf registration statement." The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) of the Rules and Regulations objecting to the use of the automatic shelf registration statement form.

(ddd) *Cybersecurity*. (i)(x) Except as disclosed in the Registration Statement, the Disclosure Package and the Prospectus, to the knowledge of the Company, there has been no security breach or other compromise of or relating to any of the Company's information technology and computer systems, networks, hardware, software, data (including the data of their respective customers, employees, suppliers, vendors and any third party data maintained by or on behalf of them), equipment or technology (collectively, "IT Systems and Data") and (y) the Company has not been notified of, and has no knowledge of, any event or condition that would reasonably be expected to result in, any security breach or other compromise to their IT Systems and Data; (ii) the Company is presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification, except as would not, in the case of this clause (ii), individually or in the aggregate, have a Material Adverse Effect; and (iii) the Company has implemented backup and disaster recovery technology consistent with industry standards and practices.

In addition, any certificate signed by any officer of the Company or any of the Subsidiaries and delivered to any of the Underwriters or counsel for such Underwriters in connection with the offering of the Shares shall be deemed to be a representation and warranty by the Company and the Operating Partnership, as to matters covered thereby, to such Underwriters.

4. Agreements of the Company and the Operating Partnership. The Company and the Operating Partnership, jointly and severally, agree with each Underwriter as follows:

(a) *Amendments and Supplements to Registration Statement*. The Company shall not, either prior to any effective date or thereafter during such period as the Prospectus is required by law to be delivered (the "Prospectus Delivery Period") in connection with sales of the Shares by an Underwriter or dealer, amend or supplement the Registration Statement, the Disclosure Package or the Prospectus, unless a copy of such amendment or supplement thereof shall first have been submitted to the Representative within a reasonable period of time prior to the filing or, if no filing is required, the use thereof and the Representative shall not have objected thereto in good faith.

(b) *Amendments and Supplements to the Registration Statement, the Disclosure Package and the Prospectus and Other Securities Act Matters*. If, during the Prospectus Delivery Period, any event or development shall occur or condition exist as a result of which the Disclosure Package (prior to the availability of the Prospectus) or the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it shall be necessary to amend or supplement the Disclosure Package or the Prospectus, or to file under the Exchange Act any document incorporated by reference in the Disclosure Package or the Prospectus, in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if in the opinion of the Representative it is otherwise necessary to amend or supplement the Registration Statement, the Disclosure Package or the Prospectus, or to file under the Exchange Act any document incorporated by reference in the Prospectus, in order to comply with law, including in connection with the delivery of the Prospectus, the Company agrees to (i) promptly notify the Representative of any such event or condition; and (ii) promptly prepare (subject to Section 4(a) hereof), file with the Commission (and use its best efforts to have any amendment to the Registration Statement declared effective) and furnish at its own expense to the Underwriters and to dealers, amendments or supplements to the Disclosure Package or the Prospectus, necessary in order to make the statements in the Disclosure Package or the Prospectus as so amended or supplemented, in the light of the circumstances under which they were made, not misleading or so that the Prospectus will comply with law.

(c) *Notifications to the Representative*. The Company shall notify the Representative promptly, and shall confirm such advice in writing, (i) when any post-effective amendment to the Registration Statement has become effective; (ii) of any request by the Commission for amendments or supplements to the Registration Statement or the Prospectus, including any document incorporated by reference therein, or for additional information; (iii) of the commencement by the Commission or by any state securities commission of any proceedings for the suspension of the qualification of any of the Shares for offering or sale in any jurisdiction or of the initiation, or the threatening, of any proceeding for that purpose, including, without limitation, the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose or the threat thereof; (iv) of the happening of any event during the Prospectus Delivery Period that in the judgment of the Company makes any statement made in the Registration Statement or the Prospectus untrue or that requires the making of any changes in the Registration Statement or the Prospectus in order to make the statements therein, in the light of the circumstances under which they are made, not misleading; and (v) of receipt by the Company or any representative of the Company of any other communication from the Commission relating to the Company, the Registration Statement, the Preliminary Prospectus or the Prospectus. If at any time the Commission shall issue any order suspending the effectiveness of the Registration Statement, the Company shall use best efforts to obtain the withdrawal of such order at the earliest possible moment. The Company shall use its best efforts to comply with the provisions of and make all requisite filings with the Commission pursuant to Rules 430A, 430B, 430C or 462(b) of the Rules and Regulations and to notify the Representative promptly of all such filings.

(d) *Executed Registration Statements*. The Company shall furnish to the Representative, without charge and upon request, for transmittal to each of the other Underwriters, a signed copy of the Registration Statement and of any post-effective amendment thereto, including financial statements and schedules, and all exhibits thereto (including any document filed under the Exchange Act and deemed to be incorporated by reference into the Prospectus), and shall furnish to the Representative, without charge and upon request, for transmittal to each of the other Underwriters, a copy of the Registration Statement and any post-effective amendment thereto, including financial statements and schedules but without exhibits.

(e) *Undertakings*. The Company and the Operating Partnership shall comply with all the provisions of any undertakings contained and required to be contained in the Registration Statement.

(f) *Prospectus*. No later than 10:00 a.m., New York City time, on December 16, 2020, the second business day following the date of this Agreement, and thereafter from time to time, the Company shall deliver to each of the Underwriters, without charge, as many copies of the Prospectus and any amendment or supplement thereto as the Representative may reasonably request. The Company and the Operating Partnership consent to the use of the Prospectus and any amendment or supplement thereto by the Underwriters and by all dealers to whom the Shares may be sold, both in connection with the offering or sale of the Shares and for any period of time thereafter during the Prospectus Delivery Period. If during the Prospectus Delivery Period any event shall occur that in the judgment of the Company or counsel to the Underwriters should be set forth in the Prospectus in order to make any statement therein, in the light of the circumstances under which it was made, not misleading, or if it is necessary to supplement or amend the Prospectus to comply with law, the Company shall forthwith prepare and duly file with the Commission an appropriate supplement or amendment thereto and shall deliver to each of the Underwriters, without charge, such number of copies thereof as the Representative may reasonably request. The Company shall not file any document under the Exchange Act before the termination of the offering of the Shares by the Underwriters if such document would be deemed to be incorporated by reference into the Prospectus unless a copy thereof shall first have been submitted to the Representative within a reasonable period of time prior to the filing thereof and the Representative shall not have objected thereto in good faith.

(g) *Permitted Free Writing Prospectuses*. The Company and the Operating Partnership represent and agree that they have not made and, unless it obtains the prior consent of the Representative, will not make any offer relating to the Shares that would constitute a "free writing prospectus," as defined in Rule 405 of the Rules and Regulations, required to be filed with the Commission or retained by the Company under Rule 433 of the Rules and Regulations; provided that the prior written consent of the Representative hereto shall be deemed to have been given in respect of the Issuer Free Writing Prospectuses included in Schedule III and Schedule IV hereto. Any such free writing prospectus consented to by the Representative is herein referred to as a "Permitted Free Writing Prospectus." The Company agrees that (i) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus and (ii) has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 of the Securities Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

(h) *Compliance with Blue Sky Laws*. Prior to any public offering of the Shares by the Underwriters, the Company and the Operating Partnership shall cooperate with the Representative and counsel to the Underwriters in connection with the registration or qualification (or the obtaining of exemptions from the application thereof) of the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representative may request; *provided, however*, that in no event shall the Company or the Operating Partnership be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action which would subject it to general service of process or taxation in any jurisdiction where it is not now so subject.

(i) *Delivery of Financial Statements*. During the period of five years commencing on the effective date of the Registration Statement applicable to the Underwriters, the Company and the Operating Partnership shall furnish to the Representative and each other Underwriter who may so request copies of such financial statements and other periodic and special reports as the Company may from time to time distribute generally to the holders of Common Stock or Preferred Stock and will furnish to the Representative and each other Underwriter who may so request a copy of each annual or other report it shall be required to file with the Commission; *except that* the Company will be deemed to have furnished such reports and financial statements to the Representative and any Underwriter to the extent they are filed on EDGAR.

(j) *Availability of Earnings Statements*. The Company shall make generally available to holders of its securities as soon as may be practicable but in no event later than the last day of the fifteenth full calendar month following the calendar quarter in which the most recent effective date occurs in accordance with Rule 158 of the Rules and Regulations an earnings statement (which need not be audited but shall be in reasonable detail) for a period of 12 months commencing after the effective date, and satisfying the provisions of Section 11(a) of the Securities Act (including Rule 158 of the Rules and Regulations).

(k) *Reimbursement of Certain Expenses*. Whether or not any of the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company and the Operating Partnership, jointly and severally agree, that they shall pay, or reimburse if paid by the Representative, all costs and expenses incident to the performance of the obligations of the Company and the Operating Partnership under this Agreement, including but not limited to costs and expenses of or relating to (i) the preparation, printing and filing of the Registration Statement and exhibits to it, each Preliminary Prospectus, each Permitted Free Writing Prospectus, the Prospectus and any amendment or supplement to the Registration Statement, or the Prospectus; (ii) the preparation and delivery of certificates representing the Shares, if any; (iii) the printing of this Agreement, any agreement among Underwriters and any dealer agreements, and any Underwriters' questionnaire; (iv) furnishing (including costs of shipping, mailing and courier) such copies of the Registration Statement, the Prospectus, any Preliminary Prospectus and any Permitted Free Writing Prospectus, and all amendments and supplements thereto, as may be requested for use in connection with the offering and sale of the Shares by the Underwriters or by dealers to whom Shares may be sold; (v) the listing or quotation of the Shares on Nasdaq; (vi) any filings required to be made by the Representative with FINRA and the fees, disbursements and other charges of counsel for the Underwriters in connection therewith in an amount not to exceed $3,000; (vii) the registration or qualification of the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions designated pursuant to Section 4(h) hereof, and, if requested by the Representative, the preparation and printing of preliminary, supplemental and final Blue Sky memoranda and the fees, disbursements and other charges of counsel for the Underwriters in connection therewith; (viii) counsel to the Company; (ix) DTC and the transfer agent for the Shares; (x) the Accountants; (xi) the marketing of the offering by the Company, including, without limitation, all costs and expenses of commercial airline tickets, hotels, meals and other travel expenses of officers, employees, agents and other representatives of the Company (but not officers, employees, agents or other representatives of the Representative); and (xii) all fees, costs and expenses for consultants used by the Company in connection with the offering.

(l) *Reimbursement of Expenses upon Termination of Agreement*. If this Agreement shall be terminated by the Company and the Operating Partnership pursuant to any of the provisions hereof or if for any reason the Company and the Operating Partnership shall be unable to perform its obligations or to fulfill any conditions hereunder or if the Underwriters shall terminate this Agreement pursuant to Section 7 or if the Agreement is terminated pursuant to the second sentence of Section 8, the Company and the Operating Partnership shall reimburse the Underwriters for all out of pocket expenses (including the fees, disbursements and other charges of counsel to the Underwriters) reasonably incurred by them in connection herewith; *provided*, *however*, that the Company and the Operating Partnership shall not be obligated to reimburse the expenses of any defaulting Underwriter under Section 8.

(m) *No Stabilization or Manipulation*. Other than permitted activity pursuant to Regulation M under the Exchange Act, the Company and the Operating Partnership shall not at any time, directly or indirectly, take any action intended to cause or result in, or which might reasonably be expected to cause or result in, stabilization or manipulation, under the Securities Act or otherwise, of any security of the Company to facilitate the sale or resale of any of the Shares.

(n) *Use of Proceeds*. The Company and the Operating Partnership shall apply the net proceeds from the offering and sale of the Shares to be sold by the Company in the manner set forth in the Registration Statement and the Prospectus under the caption "Use of Proceeds."

(o) *Listing*. Prior to the Closing Time, the Company shall have filed any necessary notifications regarding the listing of the Shares on Nasdaq, and the Company further agrees that for the period of time during which the Shares are outstanding, the Company will use its reasonable best efforts to maintain the listing of the Shares on Nasdaq or another national securities exchange.

(p) *Restriction on Sale of Securities*. During the period beginning from the date hereof and continuing to and including the date 60 days after the date of the Prospectus (the "Lock-Up Period"), the Company and the Operating Partnership will not (A) offer, sell, contract to sell, pledge, grant any option, right or warrant to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, or file with the Commission a registration statement, prospectus or prospectus supplement under the Securities Act relating to the Preferred Stock or any securities of the Company that are substantially similar to the Preferred Stock (excluding, for the avoidance of doubt, Common Stock), including but not limited to any options or warrants to purchase the Preferred Stock or any equity securities similar to the Preferred Stock or any securities that are convertible into or exchangeable for, or that represent the right to receive, the Preferred Stock or any such substantially similar securities, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing or (B) enter into any swap or other agreement or any transaction that transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of the Preferred Stock or any such other securities, whether any such swap or transaction described in clause (A) or (B) above is to be settled by delivery of the Preferred Stock or such other securities, in cash or otherwise without the prior written consent of the Representative.

Notwithstanding the provisions set forth in the immediately preceding paragraph, the Company may, without the prior written consent of the Representative:

(1) issue the Shares to the Underwriters pursuant to this Agreement;

(2) issue shares, and options to purchase shares, of Preferred Stock pursuant to stock option plans, stock purchase or other equity incentive plans or any dividend or distribution reinvestment plan or stock incentive plan described in the Registration Statement, the Disclosure Package and the Prospectus, as those plans are in effect on the date of this Agreement;

(3) issue shares of Preferred Stock upon the exercise of stock options issued under stock option or other equity incentive plans referred to in clause (2) above, as those plans are in effect on the date of this Agreement, or upon the exercise of warrants or convertible securities outstanding on the date of this Agreement, as those warrants and convertible securities are in effect on the date of this Agreement; and

(4) offer, issue and sell shares of Series A Preferred Stock to the public, through sales agents, pursuant to the Company's "at the market" equity offering program for Series A Preferred Stock.

(q) *REIT Qualification*. The Company will use its best efforts to continue to meet the requirements for qualification and taxation as a REIT under the Code, subject to any future determination by the Company's board of directors that it is no longer in the Company's best interests to qualify as a REIT.

5. Conditions of the Obligations of the Underwriters. The obligations of each Underwriter hereunder are subject to the accuracy of the representations and warranties of the Company and the Operating Partnership contained in this Agreement or in certificates of any officer of the Company delivered pursuant to the provisions hereof, to the performance by the Company and the Operating Partnership of its covenants and other obligations hereunder and to the following conditions:

(a) *Prospectus Filings.* All filings made pursuant to Rule 424 of the Rules and Regulations and Rule 430B shall have been made or will be made prior to the Closing Time in accordance with all such applicable rules.

(b) *No Stop Orders, Requests for Information and No Amendments.* (i) No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall be pending or are, to the knowledge of the Company or the Operating Partnership, threatened by the Commission; (ii) no order suspending the qualification or registration of the Shares under the securities or Blue Sky laws of any jurisdiction shall be in effect, and no proceeding for such purpose shall be pending before or threatened or contemplated by the authorities of any such jurisdiction; (iii) any request for additional information on the part of the staff of the Commission or any such authorities shall have been complied with to the satisfaction of the staff of the Commission or such authorities; and (iv) after the date hereof no amendment or supplement to the Registration Statement, the Disclosure Package or the Prospectus shall have been filed unless a copy thereof was first submitted to the Representative, and the Representative did not object thereto in good faith, and the Representative shall have received certificates, dated the Closing Time and the Option Closing Date and signed by the Chief Executive Officer and the Chief Financial Officer of the Company (who may, as to proceedings threatened, rely upon the best of their information and belief), to the effect of clauses (i), (ii) and (iii).

(c) *No Material Adverse Changes.* Since the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, except as set forth in the Registration Statement, the Disclosure Package and the Prospectus (i) there shall not have been a Material Adverse Change; (ii) the Company and the Operating Partnership shall not have incurred any material liabilities or obligations, direct or contingent; (iii) the Company and the Operating Partnership shall not have entered into any material transactions not in the ordinary course of business other than pursuant to this Agreement and the transactions referred to herein; (iv) the Company and the Operating Partnership have not issued any securities (other than the Shares) or declared or paid any dividend or made any distribution in respect of its capital stock of any class or debt (long-term or short-term); and (v) no material amount of the assets of the Company, or any of the Subsidiaries shall have been pledged, mortgaged or otherwise encumbered.

(d) *Opinions of Counsel to the Company*. The Representative shall have received the favorable opinions and letters, each dated the Closing Time and, with respect to the Option Shares, the Option Closing Date, reasonably satisfactory in form and substance to counsel for the Underwriters, from each of Proskauer Rose LLP, counsel to the Company, and Venable LLP, Maryland counsel to the Company, to the effect set forth in Schedules V-1, V-2 and V-3 hereto, respectively, and to such further effect as counsel to the Underwriters may reasonably request. In addition, at Closing Time, the Representative shall have received the favorable opinion, dated as of the Closing Time, reasonably satisfactory in form and substance to counsel for the Underwriters, of Proskauer Rose LLP, tax counsel to the Company, to the effect set forth in Schedule V-4 hereto and to such further effect as counsel to the Underwriters may reasonably request.

(e) *All Representations True and Correct and All Conditions Fulfilled*. (i) To the extent such representations and warranties of the Company and the Operating Partnership contained herein are subject to qualifications and exceptions contained therein relating to "materiality" or Material Adverse Effect, such representations and warranties will be true and correct (1) at the Closing Date and (2) with respect to any purchase of Option Shares only, the Option Closing Date and (ii) to the extent such representations and warranties of the Company and the Operating Partnership contained herein are not subject to any such qualifications or exceptions, such representations and warranties will be true and correct in all material respects (1) at the Closing Date and (2) with respect to any purchase of Option Shares only, the Option Closing Date. All covenants and agreements contained herein to be performed by the Company and all conditions contained herein to be fulfilled or complied with by the Company at or prior to the Closing Date and, with respect to any purchase of Option Shares only, the Option Closing Date, shall have been duly performed, fulfilled or complied with.

(f) *No Material Actions, Suits or Proceedings*. Since the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, there shall have been no material actions, suits or proceedings instituted or, to the Company's or the Operating Partnership's knowledge, threatened against or affecting the Company, the Operating Partnership, or any of its officers in their capacity as such, before or by any Federal, state or local court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign.

(g) *Opinion of Counsel to the Underwriters.* The Representative shall have received an opinion, dated the Closing Time and the Option Closing Date, from Mayer Brown LLP, counsel to the Underwriters, with respect to the Registration Statement, the Disclosure Package, the Prospectus and this Agreement, which opinion shall be satisfactory in all respects to the Representative.

(h) *Accountants' Comfort Letters.* On the date of this Agreement, the Representative shall have received from each Accountant a letter dated the date of its delivery, addressed to the Representative, in form and substance reasonably satisfactory to the Representative, containing statements and information of the type ordinarily included in accountant "comfort letters" to underwriters, delivered according to Statement of Auditing Standards No. 72 (or any successor bulletin), with respect to the audited and unaudited financial statements and certain financial information contained in the Registration Statement, the Disclosure Package and the Prospectus. At the Closing Time and, as to the Option Shares, the Option Closing Date, the Representative shall have received from each Accountant a letter dated such date, in form and substance reasonably satisfactory to the Representative, to the effect that they reaffirm the statements made in the letter furnished by such Accountant pursuant to the preceding sentence, except that the specified date referred to therein for the carrying out of procedures shall be no more than three business days prior to the Closing Time.

(i) *Officers' Certificates.* At the Closing Time and, as to the Option Shares, the Option Closing Date, there shall be furnished to the Representative an accurate certificate, dated the date of its delivery, signed by each of the Chief Executive Officer and the Chief Financial Officer of the Company, in form and substance satisfactory to the Representative, to the effect that:

(i) there has not been a Material Adverse Change since the date hereof, since the Applicable Time or since the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus;

(ii) each of the representations and warranties of the Company and the Operating Partnership contained in this Agreement are, at the time such certificate is delivered, true and correct in all material respects with the same force and effect as though expressly made as of the Closing Time or the Option Closing Date, as applicable;

(iii) the Company and the Operating Partnership have complied with all agreements and satisfied all conditions on their part to be performed or satisfied hereunder at or prior to the Closing Time or the Option Closing Date, as applicable; and

(iv) no stop order suspending the effectiveness of the Registration statement has been issued and no proceedings for that purpose have been instituted or are pending or, to their knowledge, contemplated by the Commission.

(j) *Series C Articles Supplementary*. The Company shall have filed the Series C Articles Supplementary with the SDAT.

(k) *Operating Partnership Agreement Amendment*. The Company shall have delivered to the Underwriters a copy of the duly authorized and executed Operating Partnership Agreement Amendment.

(l) *Compliance with Blue Sky Laws.* The Shares shall be qualified for sale in such states and jurisdictions as the Representative may reasonably request, and each such qualification shall be in effect and not subject to any stop order or other proceeding on the Closing Time and the Option Closing Date.

(m) *Stock Exchange Listing.* The Company shall have filed any necessary notifications regarding the listing of the Shares on Nasdaq and shall have received no objection thereto from Nasdaq.

(n) *Company Certificates.* The Company shall have furnished to the Representative such certificates, in addition to those specifically mentioned herein, as the Representative may have reasonably requested as to the accuracy and completeness at the Closing Time and the Option Closing Date of any statement in the Registration Statement, the Disclosure Package or the Prospectus, as to the accuracy at the Closing Time and the Option Closing Date of the representations and warranties of the Company herein, as to the performance by the Company of its obligations hereunder, or as to the fulfillment of the conditions concurrent and precedent to the obligations hereunder of the Representative.

6. Indemnification.

(a) *Indemnification of the Underwriters.* The Company and the Operating Partnership, jointly and severally, shall indemnify and hold harmless each Underwriter, the directors, officers, employees, counsel, agents and affiliates of each Underwriter and each person, if any, who controls each Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, liabilities, expenses and damages (including any and all investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding between any of the indemnified parties and any indemnifying parties or between any indemnified party and any third party, or otherwise, or any claim asserted) to which they, or any of them, may become subject under the Securities Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, liabilities, expenses or damages arise out of or are based on (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rules 430A, 430B or 430C, as applicable, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, any Issuer Free Writing Prospectus, the Disclosure Package or the Prospectus (or any amendment or supplement thereto) or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; or (iii) any untrue statement or alleged untrue statement of a material fact contained in any materials or information provided to investors by, or with the approval of, the Company and the Operating Partnership in connection with the marketing of the offering of the Shares, including any roadshow or investor presentations made to investors by the Company and the Operating Partnership (whether in person or electronically) or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that the Company and the Operating Partnership shall not be liable to the extent that such loss, claim, liability, expense or damage arises from the sale of the Shares in the public offering to any person by an Underwriter and is based on an untrue statement or omission or alleged untrue statements or omissions made in reliance on and in conformity with the Underwriter Content. This indemnity agreement will be in addition to any liability that the Company and the Operating Partnership might otherwise have.

(b) *Indemnification of the Company and the Operating Partnership.* Each Underwriter, severally and not jointly, shall indemnify and hold harmless the Company and the Operating Partnership, their respective agents, each person, if any, who controls the Company and the Operating Partnership within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, each director of the Company and each officer of the Company who signs the Registration Statement to the same extent as the foregoing indemnity from the Company and Operating Partnership to each Underwriter, but only insofar as losses, claims, liabilities, expenses or damages arise out of or are based on any untrue statement or omission or alleged untrue statement made in reliance on and in conformity with the Underwriter Content. This indemnity will be in addition to any liability that each Underwriter might otherwise have.

(c) *Indemnification Procedures.* Any party that proposes to assert the right to be indemnified under this Section 6 shall, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 6, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party shall not relieve the indemnifying party from any liability that it may have to any indemnified party under the foregoing provisions of this Section 6 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (i) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (ii) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (iii) the indemnified party has reasonably concluded (based on advice of counsel) that a conflict or potential conflict exists between the indemnified party and the indemnifying party (in which case the indemnifying party shall not have the right to direct the defense of such action on behalf of the indemnified party), or (iv) the indemnifying party has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel shall be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges shall be reimbursed by the indemnifying party promptly following receipt of notice of their incurrence. An indemnifying party shall not be liable for any settlement of any action or claim effected without its written consent (which consent will not be unreasonably withheld or delayed). No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 6 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising or that may arise out of such claim, action or proceeding and does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party. Notwithstanding the foregoing, 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 this Section 6, 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 60 days after receipt by such indemnifying party of the aforesaid request, (ii) the indemnifying party or parties shall have received written notice of the terms of such settlement at least 30 days before such settlement is entered into, and (iii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement.

(d) *Contribution.* In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 6 is applicable in accordance with its terms but for any reason is held to be unavailable from the Company, the Operating Partnership or the Underwriters, the Company, the Operating Partnership and the Underwriters shall contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company and the Operating Partnership from persons other than the Underwriters, such as persons who control the Company within the meaning of the Securities Act, officers of the Company who signed the Registration Statement and directors of the Company, who also may be liable for contribution) to which the Company and the Underwriters may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company and the Operating Partnership on the one hand and the Underwriters on the other. The relative benefits received by the Company and the Operating Partnership on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company and the Operating Partnership bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company and the Operating Partnership, on the one hand, and the Underwriters, on the other, with respect to the statements or omissions which resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, the Operating Partnership or the Representative on behalf of the Underwriters, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company, the Operating Partnership and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 6(d) were to be determined by pro rata allocation or by any other method of allocation (even if the Underwriters were treated as one entity for such purpose) that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense or damage, or action in respect thereof, referred to above in this Section 6(d) shall be deemed to include, for purpose of this Section 6(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6(d), no Underwriter shall be required to contribute any amount in excess of the underwriting discounts and commissions received by it, and no person found 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 Underwriters' obligation to contribute as provided in this Section 6(d) are several in proportion to their respective underwriting obligations and not joint. For purposes of this Section 6(d), any person who controls a party to this Agreement within the meaning of the Securities Act will have the same rights to contribution as that party, and each officer of the Company who signed the Registration Statement and each director of the Company will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 6(d), will notify any such party or parties from whom contribution may be sought, but the omission so to notify will not relieve the party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 6(d). No party will be liable for contribution with respect to any action or claim settled without its written consent (which consent will not be unreasonably withheld).

(e) *Survival.* The indemnity and contribution agreements contained in this Section 6 and the representations and warranties of the Company and the Operating Partnership contained in this Agreement shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Underwriters, (ii) acceptance of any of the Shares and payment therefor, or (iii) any termination of this Agreement.

7. Termination. The obligations of the Underwriters under this Agreement may be terminated at any time prior to the Closing Time (or, with respect to the Option Shares, on or prior to the Option Closing Date) by notice to the Company and the Operating Partnership from the Representative, without liability on the part of any Underwriter to the Company and the Operating Partnership (except as provided in Section 4(l)), if, prior to delivery and payment for the Firm Shares (or the Option Shares, as the case may be), in the sole judgment of the Representative, any of the following shall occur:

(a) trading or quotation in any of the equity securities of the Company shall have been suspended or limited by the Commission or by an exchange or otherwise;

(b) trading in securities generally on the New York Stock Exchange or Nasdaq shall have been suspended or limited or minimum or maximum prices shall have been generally established on such exchange, or additional material governmental restrictions, not in force on the date of this Agreement, shall have been imposed upon trading in securities generally by such exchange or by order of the Commission or any court or other governmental authority;

(c) a general banking moratorium shall have been declared by any of Federal or New York State authorities;

(d) the United States shall have become engaged in new hostilities, there shall have been an escalation in hostilities involving the United States or there shall have been a declaration of a national emergency or war by the United States or there shall have occurred such a material adverse change in general economic, political or financial conditions, including, without limitation, as a result of terrorist activities after the date hereof (or the effect of international conditions on the financial markets in the United States shall be such), or any other calamity or crisis shall have occurred, the effect of any of which is such as to make it impracticable or inadvisable to market the Shares on the terms and in the manner contemplated by the Prospectus;

(e) if the Company shall have sustained a loss material or substantial to the Company by reason of flood, fire, accident, hurricane, earthquake, theft, sabotage, or other calamity or malicious act, whether or not such loss shall have been insured, the effect of any of which is such as to make it impracticable or inadvisable to market the Shares on the terms and in the manner contemplated by the Prospectus;

(f) if there shall have been a Material Adverse Change or any development that could reasonably be expected to result in a Material Adverse Change, the effect of which is such as to make, in the judgment of the Representative, it impracticable or inadvisable to market the Shares on the terms and in the manner contemplated by the Prospectus; or

(g) if there shall have occurred, since the time of execution of this Agreement, any downgrading in the rating of any debt securities or preferred stock of the Company, or of the securities of any Subsidiary or subsidiary trust of the Company, by any "nationally recognized statistical rating organization" (as defined by the Commission for purposes of Rule 436 under the Securities Act) or any public announcement that any such organization has placed its rating on the Company or any such debt securities or preferred stock under surveillance or review or on a so-called "watch list" (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) or any announcement by any such organization that the Company or any such debt securities or preferred stock has been placed on negative outlook.

8. Substitution of Underwriters. If any one or more of the Underwriters shall fail or refuse to purchase any of the Firm Shares that it or they have agreed to purchase hereunder, and the aggregate number of Firm Shares that such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate number of Firm Shares, the other Underwriters shall be obligated, severally, to purchase the Firm Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase, in the proportions as the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto bears to the aggregate number of Firm Shares that all such non-defaulting Underwriters have so agreed to purchase, or in such other proportions as the Representative may specify; *provided* that in no event shall the maximum number of Firm Shares which any Underwriter has become obligated to purchase pursuant to Section 1 be increased pursuant to this Section 8 by more than one-ninth of the number of Firm Shares agreed to be purchased by such Underwriter without the prior written consent of such Underwriter. If any Underwriter or Underwriters shall fail or refuse to purchase any Firm Shares and the aggregate number of Firm Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase exceeds one-tenth of the aggregate number of the Firm Shares and arrangements satisfactory to the Company and the Representative for the purchase of such Firm Shares are not made within 48 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter, or the Company (except as provided in Section 4(l)) for the purchase or sale of any Shares under this Agreement). In any such case either the Representative or the Company shall have the right to postpone the Closing Time, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement and in the Prospectus or in any other documents or arrangements may be effected. Any action taken pursuant to this Section 8 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement. As used in this Agreement, the term "Underwriter" includes, for all purposes of this Agreement unless the context otherwise requires, any person not listed in Schedule I hereto that, pursuant to this Section 8, purchases Shares that a defaulting Underwriter agreed but failed to purchase.

9. Miscellaneous.

(a) Notices. Notice given pursuant to any of the provisions of this Agreement shall be in writing and, unless otherwise specified, shall be mailed, hand delivered or telecopied (a) if to the Company, at the office of the Company, American Finance Trust, Inc., 605 Fifth Avenue, 30th Floor, New York, New York 10019, Attention: Legal Department, Fax No. (646) 861-7743, with a copy to (which shall not constitute notice) Proskauer Rose LLP, 70 West Madison, Suite 3800, Chicago, IL 60602-4342, Attention: Michael J. Choate, Esq., or (b) if to the Underwriters to, BMO Capital Markets Corp., 3 Times Square, 25th Floor, New York, New York 10036, Attention: Equity Capital Markets Desk, with a copy to (which shall not constitute notice) Mayer Brown LLP, 1221 Avenue of the Americas, New York, New York 10020, Attention: Anna T. Pinedo. Any such notice shall be effective only upon receipt. Any notice under Section 6 may be made by telecopy or telephone, but if so made shall be subsequently confirmed in writing.

(b) *No Third Party Beneficiaries*. This Agreement has been and is made solely for the benefit of the Underwriters, the Company, the Operating Partnership and of the controlling persons, directors and officers referred to in Section 6, and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. The term "successors and assigns" as used in this Agreement shall not include a purchaser of Shares from the Underwriters in his, her or its capacity as such a purchaser, as such purchaser of Shares from any of the Underwriters.

(c) *Survival of Representations and Warranties*. All representations, warranties and agreements of the Company and the Operating Partnership contained herein or in certificates or other instruments delivered pursuant hereto, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any Underwriter or any of their controlling persons and shall survive delivery of and payment for the Shares hereunder.

(d) *Disclaimer of Fiduciary Relationship*. The Company and the Operating Partnership acknowledge and agree that (i) the purchase and sale of the Shares pursuant to this Agreement, including the determination of the public offering price of the Shares and any related discounts and commissions, is an arm's-length commercial transaction between the Company and the Operating Partnership, on the one hand, and the Underwriters, on the other hand; (ii) in connection with the offering contemplated by this Agreement and the process leading to such transaction, each of the Underwriters is and has been acting solely as a principal and is not the agent or fiduciary of the Company, the Operating Partnership, or their securityholders, creditors, employees or any other party; (iii) none of the Underwriters has assumed nor will it assume any advisory or fiduciary responsibility in favor of the Company and the Operating Partnership with respect to the offering of the Shares contemplated by this Agreement or the process leading thereto (irrespective of whether any Underwriter or its affiliates has advised or is currently advising the Company on other matters) and the Underwriters have no obligation to the Company and the Operating Partnership with respect to the offering of the Shares contemplated by this Agreement except the obligations expressly set forth in this Agreement; (iv) each of the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and the Operating Partnership; and (v) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated by this Agreement and the Company and the Operating Partnership have consulted their own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate.

(e) *Research Analyst Independence*. The Company and the Operating Partnership acknowledge that the Underwriters' research analysts and research departments are required to be independent from its investment banking division and is subject to certain regulations and internal policies, and that Underwriter's research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company, the Operating Partnership and/or the offering that differ from the views of their respective investment banking divisions. The Company and the Operating Partnership each hereby waives and releases, to the fullest extent permitted by law, any claims that the Company and the Operating Partnership may have against the Underwriters with respect to any conflict of interest that may arise from the fact that the views expressed by its research analysts and research department may be different from or inconsistent with the views or advice communicated to the Company and the Operating Partnership by Underwriters' investment banking division. The Company and the Operating Partnership acknowledge that each Underwriter is a full-service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the Company, the Operating Partnership and any other companies that may be the subject of the transactions contemplated by this Agreement.

(f) *Governing Law.* THIS AGREEMENT AND ANY CONTROVERSY, CLAIM OR DISPUTE RELATING TO OR ARISING OUT OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE. Each party hereto hereby irrevocably submits for purposes of any action arising from this Agreement brought by the other party hereto to the jurisdiction of the courts of New York State located in the Borough of Manhattan and the U.S. District Court for the Southern District of New York. This Agreement may be signed in two or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

(g) *Underwriter Information.* The parties acknowledge and agree that, for purposes of Section 3(b), Section 3(e), Section 6(a) and Section 6(b) hereof, the information provided by or on behalf of any Underwriter to the Company for use in the Registration Statement, any Issuer Free Writing Prospectus, any Preliminary Prospectus or the Prospectus (or any amendment or supplement thereto) consists solely of the following material included under the caption "Underwriting" in such documents: the first sentence of the tenth paragraph regarding purchases of shares on the open market, the second sentence of the tenth paragraph regarding stabilization, the third sentence of the tenth paragraph regarding covering short positions, the eighth sentence of the tenth paragraph regarding covering naked short positions, the first sentence of the eleventh paragraph regarding penalty bids and the fourteenth paragraph regarding electronic prospectuses (collectively, the "Underwriter Content").

(h) *Severability*. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(i) *Waiver of Jury Trial*. The Company, the Operating Partnership, and the Underwriters each hereby irrevocably waive any right they may have to a trial by jury in respect of any claim based upon or arising out of this Agreement or the transactions contemplated hereby.

(j) *Titles and Subtitles*. The titles of the sections and subsections of this Agreement are for convenience and reference only and are not to be considered in construing this Agreement.

(k) *Entire Agreement*. This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof. This Agreement may not be amended or otherwise modified, nor any provision hereof waived, except by an instrument in writing signed by the Representative, the Company and the Operating Partnership.

(l) *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other party may be made by facsimile transmission.

[*Signature page follows*.]

Please confirm that the foregoing correctly sets forth the agreement among the Company, the Operating Partnership and the Representative.

Very truly yours,

AMERICAN FINANCE TRUST, INC.

By: /s/ Edward M. Weil, Jr.
Name: Edward M. Weil, Jr.
Title: Chief Executive Officer and President

AMERICAN FINANCE OPERATING PARTNERSHIP, L.P.

By: /s/ Katie P. Kurtz
Name: Katie P. Kurtz
Title: Chief Financial Officer, Secretary and Treasurer

[Signature Page to the Underwriting Agreement]

Confirmed as of the date first above mentioned:

BMO CAPITAL MARKETS CORP.

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

Acting on behalf of itself and as the Representative of the Underwriters named in Schedule I hereof

SCHEDULE I

Underwriter	Total Number of Firm Shares to be Purchased
BMO Capital Markets Corp.	608,000
B. Riley Securities, Inc.	608,000
Truist Securities, Inc.	608,000
D.A. Davidson & Co.	384,000
Janney Montgomery Scott LLC	288,000
Ladenburg Thalmann & Co. Inc.	288,000
William Blair & Company, L.L.C.	288,000
Boenning & Scattergood, Inc.	64,000
National Securities Corporation	64,000
Total	3,200,000

SCHEDULE III

Issuer Free Writing Prospectuses

Issuer Free Writing Prospectus, dated December 14 2020, filed with the Commission pursuant to Rule 433, substantially in the form of Schedule IV to this Agreement.

SCHEDULE IV

Final Term Sheet

AMERICAN FINANCE TRUST, INC.
7.375% SERIES C CUMULATIVE REDEEMABLE PERPETUAL PREFERRED STOCK
($25.00 LIQUIDATION PREFERENCE PER SHARE)
Final Term Sheet
December 14, 2020

Issuer:	American Finance Trust, Inc. (the "Issuer")
Security:	7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, $0.01 par value per share (the "Series C Preferred Stock")
Number of Shares:	3,200,000 shares (3,680,000 shares if the underwriters' overallotment option to purchase additional Series C Preferred Stock is exercised in full)
Trade Date:	December 15, 2020
Settlement Date:	December 18, 2020 (T+3). The Company expects that delivery of the Series C Preferred Stock will be made to investors on or about December 18, 2020, which will be the fourth business day following the date of this term sheet (such settlement being referred to as "T+3"). Under Rule 15c6-1 under the Exchange Act, trades in the secondary market are required to settle in two business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade Series C Preferred Stock prior to December 18, 2020, will be required, by virtue of the fact that the Series C Preferred Stock initially settle in T+3, to specify an alternate settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of the Series C Preferred Stock who wish to trade the Series C Preferred Stock prior to their date of delivery hereunder should consult their advisors.
Public Offering Price:	$25.00 per share (assuming the overallotment option to purchase additional Series C Preferred Stock is not exercised).
Underwriting Discount:	$0.7875 per share; $2,520,000 total (assuming the overallotment option to purchase additional Series C Preferred Stock is not exercised).
Net Proceeds (before expenses):	$24.2125 per share; $77,480,000 total (assuming the overallotment option to purchase additional Series C Preferred Stock is not exercised).
Dividend Rate:	7.375% per annum on the $25.00 liquidation preference (equivalent to $1.84375 per annum per share).
Dividend Payment Date:	On or about the 15th day of January, April, July and October. The first quarterly dividend for the Series C Preferred Stock sold in this offering will be paid on April 15, 2021 in an amount equal to $0.53033 per share, covering the period from December 18, 2020 to March 31, 2021.
Liquidation Preference:	$25.00 per share, plus an amount equal to all dividends accrued and unpaid (whether or not declared), if any, to, but not including, the date of payment.
Optional Redemption:	On and after December 18, 2025, the Series C Preferred Stock is redeemable at the Issuer's option for cash, in whole or in part, at any time or from time to time, at a price per share equal to $25.00, plus an amount equal to all dividends accrued and unpaid (whether or not declared), if any, to, but not including, the redemption date (unless the redemption date is after a dividend record date and prior to the corresponding dividend payment date, in which case no additional amount for the accrued and unpaid dividend will be included in the redemption price), on each share of Series C Preferred Stock to be redeemed.

Special Optional Redemption:

Upon the occurrence of a Delisting Event (as defined below), the Issuer will have the option, subject to certain conditions, to redeem the outstanding Series C Preferred Stock, in whole but not in part, within 90 days after the Delisting Event, for a redemption price of $25.00 per share, plus an amount equal to all dividends accrued and unpaid (whether or not declared), if any, to, but not including, the redemption date (unless the redemption date is after a dividend record date and prior to the corresponding dividend payment date, in which case no additional amount for the accrued and unpaid dividend will be included in the redemption price), on each share of Series C Preferred Stock to be redeemed.

Upon the occurrence of a Change of Control (as defined below), the Issuer may, at its option, redeem the shares of Series C Preferred Stock, in whole but not in part and within 120 days after the first date on which the Change of Control occurred, by paying $25.00 per share, plus an amount equal to all dividends accrued and unpaid (whether or not declared), if any, to, but not including, the redemption date (unless the redemption date is after a dividend record date and prior to the corresponding dividend payment date, in which case no additional amount for the accrued and unpaid dividend will be included in the redemption price).

Delisting Event:

Occurs when, after the original issuance of the Series C Preferred Stock (whether before or after December 18, 2025), both (i) the Series C Preferred Stock is not listed on The Nasdaq Global Select Market ("Nasdaq"), the New York Stock Exchange (the "NYSE") or the NYSE American LLC or listed or quoted on an exchange or quotation system that is a successor to Nasdaq, the NYSE or the NYSE American LLC and (ii) the Issuer is not subject to the reporting requirements of the Exchange Act, but any Series C Preferred Stock is outstanding.

Change of Control:

Occurs when, after the original issuance of the Series C Preferred Stock, the following have occurred and are continuing:

- the acquisition by any person, including any syndicate or group deemed to be a "person" under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger, conversion or other acquisition transaction or series of purchases, mergers, conversions or other acquisition transactions, of shares of the Issuer's stock entitling that person to exercise more than 50% of the total voting power of all outstanding shares of the Issuer's stock entitled to vote generally in the election of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and
- following the closing of any transaction referred to in the bullet point above, neither the Issuer nor the acquiring or surviving entity has a class of common equity securities listed on Nasdaq, the NYSE or the NYSE American LLC, or listed or quoted on an exchange or quotation system that is a successor to Nasdaq, the NYSE or the NYSE American LLC.

Conversion Rights:

Upon the occurrence of a Delisting Event or a Change of Control, each holder of Series C Preferred Stock will have the right (unless, prior to the applicable conversion date, the Issuer provides notice of its election to redeem the Series C Preferred Stock) to convert all or part of the shares of Series C Preferred Stock held by such holder on the applicable conversion date, into a number of shares of the Issuer's common stock per share of Series C Preferred Stock to be converted equal to the lesser of:

- the quotient of (i) the sum of the $25.00 liquidation preference per share plus the amount of any accrued and unpaid dividends to, but not including, the applicable conversion date (unless the applicable conversion date is after a dividend record date and prior to the corresponding dividend payment date, in which case no additional amount for the accrued and unpaid dividend will be included in this sum), divided by (ii) the Common Stock Price (as defined below); and

· 6.605, or the Share Cap (subject to pro rata adjustments for any share splits (including those effected pursuant to a common share dividend), subdivisions or combinations with respect to shares of the Issuer's common stock as described in the Issuer's preliminary prospectus supplement).

The "Common Stock Price" for any Change of Control will be (i) if the consideration to be received in the Change of Control by holders of shares of the Issuer's common stock is solely cash, the amount of cash consideration per share of common stock, and (ii) if the consideration to be received in the Change of Control by holders of shares of the Issuer's common stock is other than solely cash, the average of the closing price per share of the Issuer's common stock on the 10 consecutive trading days immediately preceding, but not including, the effective date of the Change of Control.

The "Common Stock Price" for any Delisting Event will be the average of the closing price per share of the Issuer's common stock on the 10 consecutive trading days immediately preceding, but not including, the effective date of the Delisting Event.

If the Issuer elects, prior to the conversion date, to redeem shares of Series C Preferred Stock that would otherwise be converted on the applicable conversion date, such shares of Series C Preferred Stock will not be so converted and the holders of such shares will be entitled to receive on the applicable redemption date the redemption price for such shares.

Nasdaq Listing Symbol:	AFINO
CUSIP:	02607T 505
ISIN:	US02607T5056
Joint Book-Running Managers:	BMO Capital Markets Corp. B. Riley Securities, Inc. Truist Securities, Inc.
Joint Lead Managers	D.A. Davidson & Co. Janney Montgomery Scott LLC Ladenburg Thalmann & Co. Inc. William Blair & Company, L.L.C.
Co-Managers:	Boenning & Scattergood, Inc. National Securities Corporation

The Issuer has filed a registration statement (including a prospectus and a preliminary prospectus supplement) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement, the related preliminary prospectus supplement and the other documents the Issuer has filed with the SEC for more complete information about the Issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC's web site at www.sec.gov. Alternatively, the Issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus and related preliminary prospectus supplement if you request it by contacting: BMO Capital Markets Corp. at 1-800-414-3627.

Exhibit 5.1

VENABLE® LLP

750 E. PRATT STREET SUITE 900 BALTIMORE, MD 21202
T 410.244.7400 F 410.244.7742 www.Venable.com

December 16, 2020

American Finance Trust, Inc.
650 Fifth Avenue, 30th Floor
New York, New York 10022

Re: Registration Statement on Form S-3 (File No. 333-226252)

Ladies and Gentlemen:

We have served as Maryland counsel to American Finance Trust, Inc., a Maryland corporation (the "Company"), in connection with certain matters of Maryland law arising out of the registration of up to 3,680,000 shares (the "Shares") of 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, $0.01 par value per share, of the Company, including up to 480,000 Shares that the underwriters in the Offering (as defined herein) have the option to purchase, in an underwritten public offering (the "Offering") covered by the above-referenced Registration Statement, and all amendments thereto (the "Registration Statement"), filed by the Company with the United States Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "1933 Act").

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 (collectively, the "Documents"):

1. The Registration Statement and the related form of prospectus included therein in the form in which it was transmitted to the Commission under the 1933 Act;

2. The charter of the Company (the "Charter"), certified by the State Department of Assessments and Taxation of Maryland (the "SDAT");

3. The Amended and Restated Bylaws of the Company, certified as of the date hereof by an officer of the Company;

4. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;

5. Resolutions adopted by the Board of Directors of the Company, and a duly authorized committee thereof, relating to, among other matters, the issuance of the Shares (the "Resolutions"), certified as of the date hereof by an officer of the Company;

6. A certificate executed by an officer of the Company, dated as of the date hereof; and

7. 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 such party's obligations 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 Shares will not be issued or transferred in violation of the restrictions on ownership and transfer set forth in the Charter.

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

1. The Company is a corporation duly incorporated and existing under and by virtue of the laws of the State of Maryland and is in good standing with the SDAT.

2. The issuance of the Shares has been duly authorized and, when and if issued and delivered by the Company pursuant to the Resolutions and the Registration Statement against payment of the consideration set forth therein, the Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the substantive laws of the State of Maryland and we do not express any opinion herein concerning federal law or the laws of any other state. We express no opinion as to compliance with any federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of judicial decisions 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 for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the Offering (the "Current Report"). We hereby consent to the filing of this opinion as an exhibit to the Current Report and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Very truly yours,

/s/ Venable LLP

Exhibit 10.1

SIXTH AMENDMENT TO
SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
OF AMERICAN FINANCE OPERATING PARTNERSHIP, L.P.

THIS SIXTH AMENDMENT TO SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF AMERICAN FINANCE OPERATING PARTNERSHIP, L.P. (this "**Amendment**"), dated as of December 16, 2020, is entered into by AMERICAN FINANCE TRUST, INC., a Maryland corporation, as general partner (the "**General Partner**") of AMERICAN FINANCE OPERATING PARTNERSHIP, L.P., a Delaware limited partnership (the "**Partnership**"), for itself and on behalf of any limited partners of the Partnership. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings given to such terms in the Second Amended and Restated Agreement of Limited Partnership of the Partnership entered into on July 19, 2018 (as now or hereafter amended, restated, modified, supplemented or replaced, the "Partnership Agreement").

WHEREAS, Section 4.02(a) of the Partnership Agreement authorizes the General Partner to cause the Partnership to issue additional Partnership Units in one or more classes, or one or more series of any such classes, with such designations, preferences and relative, participating, optional or other special rights, powers, preferences and duties, including rights, powers, preferences an duties senior and superior to the then-outstanding Partnership Units as shall be determined by the General Partner, in its sole and absolute discretion without the approval of any Limited Partner or other Person;

WHEREAS, the General Partner has authorized the issuance and sale of up to 3,680,000 shares of its 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, par value $0.01 per share (the "**Series C Preferred Stock**"), at a gross offering price of $25.00 per share of Series C Preferred Stock and, in connection therewith, the General Partner, pursuant to Section 4.02(b) of the Partnership Agreement, is contributing the net proceeds of such issuance and sale to the Partnership in exchange for, and is causing the Partnership to issue to the General Partner, the Series C Preferred Units (as hereinafter defined); and

WHEREAS, pursuant to the authority granted to the General Partner pursuant to Section 4.02(a) and Article 11 of the Partnership Agreement, and as authorized by the unanimous written consent of the offering committee of the Board of Directors of the General Partner, which has been delegated certain power and authority of the Board of Directors of the General Partner, dated as of December 14, 2020, the General Partner desires to amend the Partnership Agreement (i) to set forth the designations, rights, powers, preferences and duties and other terms of the Series C Preferred Units and (ii) to issue the Series C Preferred Units to the General Partner.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the General Partner hereby amends the Partnership Agreement as follows:

1. The Partnership Agreement is hereby amended by the addition of a new annex thereto, entitled "Annex B," in the form attached hereto as **Annex B**, which sets forth the designations, allocations, preferences, conversion or other special rights, powers and duties of the Series C Preferred Units, which exhibit shall be attached to and made a part of, and shall be an exhibit to, the Partnership Agreement.

2. Pursuant to Sections 4.02(a) and 4.02(b) of the Partnership Agreement, effective as of the applicable issuance date of any issuance of shares of Series C Preferred Stock by the General Partner, the Partnership will issue Series C Preferred Units to the General Partner in an amount that will be reflected on Schedule A to the Partnership Agreement, as such Schedule A may be amended or restated by the General Partner in its sole discretion from time to time to the extent necessary to reflect such issuances, but in no event shall the aggregate number of Series C Preferred Units issued pursuant to this Amendment exceed 3,680,000 or such greater number of shares of Series C Preferred Stock as may be hereafter authorized for issuance by the General Partner. The Series C Preferred Units have been created and are being issued in conjunction with the General Partner's issuance and sale of the Series C Preferred Stock, and as such, the Series C Preferred Units are intended to have designations, preferences and other rights and terms that are substantially the same as those of the Series C Preferred Stock, all such that the economic interests of the Series C Preferred Units and the Series C Preferred Stock are substantially similar, and the provisions, terms and conditions of this Amendment, including without limitation the attached Annex B, shall be interpreted in a fashion consistent with this intent. In return for the issuance to the General Partner of the Series C Preferred Units, the General Partner has contributed to the Partnership the net proceeds from its issuance and sale of the Series C Preferred Stock (the General Partner's capital contribution shall be deemed to equal the amount of the gross proceeds of that share issuance (i.e., the net proceeds actually contributed, plus any underwriter's discount or other expenses incurred, with any such discount or expense deemed to have been incurred by the General Partner on behalf of the Partnership)).

3. The foregoing recitals are incorporated in and are made a part of this Amendment.

4. Except as specifically defined herein, all capitalized terms shall have the definitions provided in the Partnership Agreement. This Amendment has been authorized by the General Partner pursuant to Article 11 of the Partnership Agreement and does not require execution by any Limited Partner or any other Person.

[SIGNATURE PAGE FOLLOWS]

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

GENERAL PARTNER:

AMERICAN FINANCE TRUST, INC.

By: /s/ Edward M. Weil, Jr.
Name: Edward M. Weil, Jr.
Title: Chief Executive Officer and President

ANNEX B

DESIGNATION OF THE SERIES C PREFERRED UNITS OF AMERICAN FINANCE OPERATING PARTNERSHIP, L.P.

1. Designation and Number. A series of Preferred Units (as defined below) of American Finance Operating Partnership, L.P., a Delaware limited partnership (the "**Partnership**"), designated the "7.375% Series C Cumulative Redeemable Perpetual Preferred Units" (the "**Series C Preferred Units**"), is hereby established. The number of authorized Series C Preferred Units shall be 3,680,000.

2. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Second Amended and Restated Agreement of Limited Partnership of American Finance Operating Partnership, L.P. (as now or hereafter amended, restated, modified, supplemented or replaced, the "**Partnership Agreement**"). The following defined terms used herein shall have the meanings specified below:

"**Articles Supplementary**" means the Articles Supplementary of the General Partner filed with the State Department of Assessments and Taxation of the State of Maryland on December 16, 2020, designating the terms, rights and preferences of the Series C Preferred Stock.

"**Capital Gains Amount**" shall have the meaning provided in Section 5(g).

"**Change of Control**" shall have the meaning provided in the Articles Supplementary.

"**Common Stock**" shall have the meaning provided in the Articles Supplementary.

"**Delisting Event**" shall have the meaning provided in the Articles Supplementary.

"**Distribution Record Date**" shall have the meaning provided in Section 5(a).

"**Junior Preferred Units**" shall have the meaning provided in Section 4.

"**Liquidating Distribution**" shall have the meaning provided in Section 6(a).

"**Parity Preferred Units**" shall have the meaning provided in Section 4.

"**Partnership Agreement**" shall have the meaning provided above.

"**Redemption Date**" shall have the meaning provided in Section 7(a).

"**Preferred Units**" means all Partnership Units designated as preferred units by the General Partner from time to time in accordance with Section 4.02(a) of the Partnership Agreement.

"**Senior Preferred Units**" shall have the meaning provided in Section 4.

"**Series C Base Liquidation Preference**" shall have the meaning provided in Section 6(a).

"**Series C Preferred Return**" shall have the meaning provided in Section 5(a).

"**Series C Preferred Stock**" shall have the meaning provided in the Articles Supplementary.

"**Series C Preferred Unit Distribution Payment Date**" shall have the meaning provided in Section 5(a).

"**Series C Preferred Units**" shall have the meaning provided in Section 1.

"**Series C Record Date"** shall have the meaning provided in the Articles Supplementary.

"**Total Distributions**" shall have the meaning provided in Section 5(g).

3. Maturity. The Series C Preferred Units have no stated maturity and will not be subject to any sinking fund or mandatory redemption.

4. Rank. In respect of rights to the payment of distributions and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Partnership, the Series C Preferred Units shall rank (a) senior to all classes or series of Common Units and any class or series of Preferred Units issued by the Partnership, the terms of which expressly provide that such units rank junior to the Series C Preferred Units with respect to distribution rights and rights upon the voluntary or involuntary liquidation, dissolution or winding up of the Partnership (collectively, the "**Junior Preferred Units**"); (b) on parity with the Series A Preferred Units, and any other class or series of Preferred Units issued by the Partnership, the terms of which expressly provide that such units rank on parity with the Series C Preferred Units with respect to distribution rights and rights upon the voluntary or involuntary liquidation, dissolution or winding up of the Partnership (collectively, the "**Parity Preferred Units**"); and (c) junior to any class or series of Preferred Units issued by the Partnership, the terms of which expressly provide that such units rank senior to the Series C Preferred Units with respect to distribution rights and rights upon the voluntary or involuntary liquidation, dissolution or winding up of the Partnership (collectively, the "**Senior Preferred Units**"). The term "Preferred Units" does not include convertible or exchangeable debt securities of the Partnership, including convertible or exchangeable debt securities, which will rank senior to the Series C Preferred Units prior to the conversion or exchange. The Series C Preferred Units will also rank junior in right or payment to the Partnership's existing and future indebtedness. All of the Series C Preferred Units shall rank equally with one another and shall be identical in all respects.

5. Distributions.

a. Subject to the preferential rights of holders of any class or series of Senior Preferred Units of the Partnership, the holders of Series C Preferred Units shall be entitled to receive, when, as and if authorized by the General Partner and declared by the Partnership, out of assets of the Partnership legally available for payment of distributions, cumulative cash distributions in the amount of $1.84375 per unit per year, which is equivalent to the rate of 7.375% of the Series C Base Liquidation Preference (as defined below) per unit per year (the "**Series C Preferred Return**"). The Series C Preferred Return shall accrue and be cumulative from and including the date of original issue of any Series C Preferred Units and shall be payable quarterly in arrears, on or about the 15th day of each January, April, July and October of each year (or, if not a Business Day, the next succeeding business day, each a "**Series C Preferred Unit Distribution Payment Date**") for the period ending on such Series C Preferred Unit Distribution Payment Date, commencing on April 15, 2021. The amount of any distribution payable on the Series C Preferred Units for any partial distribution period will be prorated and computed, and for any full distribution period will be computed, on the basis of twelve 30-day months and a 360-day year. Distributions will be payable in arrears to holders of record of the Series C Preferred Units as they appear on the records of the Partnership at the close of business on the applicable record date, which shall be the Series C Record Date, which is the close of business on the date set by the Board of Directors as the record date for the payment of dividends on Series C Preferred Stock (each, a "**Distribution Record Date**").

b. No distributions on the Series C Preferred Units shall be authorized by the General Partner or declared and or set apart for payment by the Partnership at such time as the terms and conditions of any agreement of the General Partner or the Partnership, including any agreement relating to the indebtedness of any of them, prohibits such authorization, payment or setting apart for payment or provides that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such authorization, payment or setting apart for payment shall be restricted or prohibited by law.

c. Notwithstanding anything to the contrary contained herein, the Series C Preferred Return will accrue whether or not distributions are authorized by the General Partner or declared by the Partnership. No interest or additional distributions shall be payable in respect of any accrued and unpaid Series C Preferred Return.

d. Except provided in Section 5(e) below, no distributions shall be declared and paid or set apart for payment, and no other distribution of cash or other property may be declared and made, directly or indirectly, on or with respect to any Common Units, Parity Preferred Units or Junior Preferred Units of the Partnership (other than a distribution paid in units of, or options, warrants or rights to subscribe for or purchase units of, Common Units or Junior Preferred Units) for any period, nor shall units of any class or series of Common Units, Parity Preferred Units or Junior Preferred Units be redeemed (or assets be paid to our made available for a sinking fund for the redemption of any such units of the Partnership), purchased or otherwise acquired (except (i) by conversion into or exchange for Common Units or Junior Preferred Units, (ii) for the acquisition of units corresponding with the acquisition of shares pursuant to the provisions of Section 5.7 of Article V of the Charter, and (iii) for purchases or exchanges pursuant to a purchase or exchange offer made on the same terms to all holders of Series C Preferred Units and all holders of Parity Preferred Units), unless full cumulative distributions on the Series C Preferred Units for all past distribution periods shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment.

e. When cumulative distributions are not paid in full (or declared and a sum sufficient for such full payment is not set apart) on the Series C Preferred Units and any Parity Preferred Units, all distributions (other than (i) any acquisition of units corresponding with the acquisition of shares pursuant to the provisions of Section 5.7 of Article V of the Charter or (ii) a purchase or exchange pursuant to a purchase or exchange offer made on the same terms to all holders of Series C Preferred Units and all holders of Parity Preferred Units) declared on the Series C Preferred Units and any Parity Preferred Units shall be declared *pro rata* so that the amount of distributions declared per Series C Preferred Unit and such Parity Preferred Units shall in all cases bear to each other the same ratio that accrued distributions per Series C Preferred Unit and such Parity Preferred Units (which shall not include any accrual in respect of unpaid distributions on any Parity Preferred Units for prior distribution periods if such Parity Preferred Units do not have a cumulative distribution) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any distribution payment or payments on Series C Preferred Units which may be in arrears.

f. Holders of Series C Preferred Units shall not be entitled to any distribution, whether payable in cash, property or units of the Partnership, in excess of the Series C Preferred Return on the Series C Preferred Units as provided above. Any distribution made on the Series C Preferred Units shall first be credited against the earliest accrued but unpaid Series C Preferred Return which remains payable.

g. If, for any taxable year, the General Partner elects to designate as "capital gain dividends" (as defined in Section 857 of the Code) any portion (the "**Capital Gains Amount**") of the total distributions not in excess of the General Partner's earnings and profits (as determined for U.S. federal income tax purposes) paid or made available for such taxable year to holders of all classes and series of the General Partner's stock (the "**Total Distributions**"), then the portion of the Capital Gains Amount that shall be allocable to holders of Series C Preferred Units shall be in the same proportion that the Total Distributions paid or made available to the holders of Series C Preferred Units for such taxable year bears to the Total Distributions for such taxable year made with respect to all classes or series of Partnership Units outstanding.

6. Liquidation Preference.

a. Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Partnership, before any distribution or payment shall be made to the holders of any Common Units or Junior Preferred Units, the holders of the Series C Preferred Units then outstanding shall be entitled to be paid out of the assets of the Partnership legally available for distribution to its Partners a liquidation preference in cash of $25.00 per Series C Preferred Unit (the "**Series C Base Liquidation Preference**"), plus an amount equal to any accrued and unpaid Series C Preferred Return to, but not including, the date of payment (together with the Series C Base Liquidation Preference, the "**Liquidating Distribution**").

b. If upon any such voluntary or involuntary liquidation, dissolution or winding up of the Partnership, the available assets of the Partnership are insufficient to pay the full amount of the Liquidating Distributions on all outstanding Series C Preferred Units and the corresponding amounts payable on all outstanding Parity Preferred Units, then the holders of Series C Preferred Units and Parity Preferred Units shall share ratably in any such distribution of assets in proportion to the full Liquidating Distributions to which they would otherwise be respectively entitled.

c. After payment of the full amount of the Liquidating Distributions to which they are entitled, holders of Series C Preferred Units will have no right or claim to any of the remaining assets of the Partnership.

d. For the avoidance of doubt, the consolidation, merger or conversion of the Partnership with or into another entity, the merger of another entity with or into the Partnership, a statutory unit exchange by the Partnership or the sale, lease, transfer or conveyance of all or substantially all of the assets or business of the Partnership shall not be considered a liquidation, dissolution or winding up of the affairs of the Partnership.

7. Optional Redemption.

a. The Series C Preferred Units are not redeemable prior to December 18, 2025, except as otherwise provided in this Section 7. On and after December 18, 2025, the Partnership, at its option, upon not fewer than 30 nor more than 60 days' written notice, may redeem the Series C Preferred Units, in whole or in part, at any time or from time to time, for cash, at a redemption price equal to $25.00 per Series C Preferred Unit, plus any accrued and unpaid distributions thereon (whether or not declared) to, but not including, the date fixed for redemption (the "**Redemption Date**"), without interest. Such notice shall be deemed to have been given to the General Partner, in its capacity as holder of the Series C Preferred Units, upon the giving of any notice by the General Partner to holders of shares of Series C Preferred Stock with respect to the redemption of such shares. If fewer than all of the outstanding Series C Preferred Units are to be redeemed, the Series C Preferred Units to be redeemed may be selected *pro rata* (as nearly as practicable without creating fractional units) or by lot.

b. Unless full cumulative distributions on all Series C Preferred Units shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past distribution periods, (i) no Series C Preferred Units shall be redeemed unless all outstanding Series C Preferred Units are simultaneously redeemed, and (ii) the Partnership shall not purchase or otherwise acquire directly or indirectly for any consideration, nor shall any monies be paid to or be made available for a sinking fund for the redemption of, any Series C Preferred Units (except by conversion into or exchange for Common Units or Junior Preferred Units of the Partnership); *provided*, *however*, that the foregoing shall not prevent the redemption or purchase of Series C Preferred Units by the Partnership in connection with a redemption or purchase by the General Partner of Series C Preferred Stock pursuant to Section 5.7 of Article V of the Charter or otherwise in order to ensure that the General Partner remains qualified as a REIT for federal income tax purposes or pursuant to the terms of the Articles Supplementary, or the purchase or acquisition of Series C Preferred Units pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series C Preferred Units.

c. If a Redemption Date falls after a Distribution Record Date and on or prior to the corresponding Series C Preferred Unit Distribution Payment Date, each holder of Series C Preferred Units on such Distribution Record Date shall be entitled to the distribution payable on such units on the corresponding Series C Preferred Unit Distribution Payment Date (including any accrued and unpaid distributions for prior distribution periods) notwithstanding the redemption of such units on or prior to such Series C Preferred Unit Distribution Payment Date. Except as provided above, the Partnership will make no payment or allowance for unpaid distributions, whether or not in arrears, on Series C Preferred Units for which a notice of redemption has been given.

d. Upon the occurrence of a Delisting Event or Change of Control, if and when the General Partner exercises its option to redeem shares of Series C Preferred Stock as provided in Section 6 of the Articles Supplementary, the General Partner shall cause the Partnership to concurrently redeem an equal number of Series C Preferred Units if and when such shares of Series C Preferred Stock are so redeemed, at a redemption price per Series C Preferred Unit payable in cash and equal to the same price per share paid by the General Partner to redeem the shares of Series C Preferred Stock (i.e., a redemption price of $25.00 per share of Series C Preferred Stock, plus an amount equal to any accrued and unpaid dividends thereon (whether or not declared) to, but not including, the redemption date). No interest shall accrue for the benefit of the Series C Preferred Units to be redeemed on any cash set aside by the Partnership.

e. Notwithstanding anything to the contrary contained herein, the Partnership may redeem one Series C Preferred Unit for each share of Series C Preferred Stock purchased in the open market, through tender or by private agreement by the General Partner.

f. All Series C Preferred Units redeemed or otherwise acquired by the Partnership in any manner whatsoever shall be retired and reclassified as authorized but unissued Preferred Units, without designation as to class or series, and may thereafter be reissued as any class or series of Preferred Units in accordance with the applicable provisions of the Partnership Agreement.

g. Notwithstanding anything to the contrary contained herein, the Partnership may redeem Series C Preferred Units at any time in connection with any redemption by the General Partner of the Series C Preferred Stock.

8. Voting Rights. Holders of the Series C Preferred Units will not have any voting rights.

9. Conversion. The Series C Preferred Units are not convertible or exchangeable for any other property or securities, except as provided herein.

a. In the event that a holder of shares of Series C Preferred Stock exercises its right to convert such shares of Series C Preferred Stock into Common Stock in accordance with the terms of the Articles Supplementary, then, concurrently with any conversion that actually occurs pursuant to such exercise (i.e. such shares are not redeemed for cash prior thereto in accordance with the terms of the Articles Supplementary), an equivalent number of Series C Preferred Units of the Partnership held by the General Partner shall be automatically converted into a number of Class A Units of the Partnership equal to the number of shares of Common Stock issued upon conversion of such Series C Preferred Stock; *provided, however*, that if a holder of Series C Preferred Stock receives cash or other consideration in addition to or in lieu of Common Stock in connection with such conversion, then the General Partner, as the holder of the Series C Preferred Units, shall be entitled to receive cash or such other consideration equal (in amount and form) to the cash or other consideration to be paid by the General Partner to such holder of the Series C Preferred Stock. Any such conversion will be effective at the same time the conversion of Series C Preferred Stock into Common Stock is effective.

b. No fractional units will be issued in connection with the conversion of Series C Preferred Units into Class A Units. In lieu of fractional Class A Units, the General Partner shall be entitled to receive a cash payment in respect of any fractional unit in an amount equal to the fractional interest multiplied by the Common Stock Price (as defined in the Articles Supplementary) on the date the shares of Series C Preferred Stock are surrendered for conversion by a holder thereof.

10. Allocation of Net Income and Net Loss.

Article V, Sections 5.01(a), (b) and (c) of the Partnership Agreement are hereby deleted in their entirety and replaced by Sections 5.01(a), (b) and (c) below:

"(a) Allocations of Net Income and Net Loss. Except as otherwise provided in this Agreement and subject to Sections 12.02(b) and 13.01(c)(iii), after giving effect to the special allocations in Sections 5.01(c) and 5.01(d), Net Income, Net Loss and, to the extent necessary, individual items of income, gain, loss or deduction, of the Partnership, without duplication, shall be allocated among the Partners as follows:

(i) *first*, if the Partnership has Net Income for any taxable year or portion thereof, such Net Income shall be allocated to the General Partner in respect of the Series A Preferred Units, and Series C Preferred Units until it has been allocated Net Income equal to the excess of (A) the cumulative amount of distributions of Cash Available for Distribution the General Partner has received for all prior taxable years or portions thereof with respect to the Series A Preferred Units, and Series C Preferred Units, over (B) the cumulative Net Income allocated to the General Partner, pursuant to this Section 5.01(a)(i) for all prior taxable years or portions thereof;

(ii) *second*, to the Partners holding Class A Units, Class B Units or LTIP Units, *pro rata* and *pari passu* to the extent of and in proportion to the distribution of Cash Available for Distribution to such Partners with respect to their Class A Units, Class B Units or LTIP Units in accordance with this Section 5.02(a)(ii);

(iii) *third*, to the Partners holding LTIP Units *pro rata* to the extent of and in proportion to the distribution of Cash Available for Distribution to such Partners with respect to their Vested LTIP Units in accordance with this Section 5.02(a)(iii); and

(iv) *thereafter*, to the Partners holding Class A Units, Class B Units or LTIP Units *pro rata* and *pari passu* in accordance with each such Partner's respective Percentage Interest with respect to such Class A Units, Class B Units or LTIP Units; provided, that for the avoidance of doubt, Net Loss, and to the extent necessary, individual items of loss or deductions shall be allocated (A) first to the Partners holding Class A Units, Class B Units or LTIP Units *pro rata* and *pari passu* in accordance with each such Partner's respective Percentage Interest with respect to such Class A Units, Class B Units or LTIP Units until such Partners have received cumulative allocations of Net Loss equal to the cumulative amount of Net Income allocated to them pursuant to this Section 5.01(a)(iv), (B) then to the Partners holding LTIP Units to the extent of and in a manner that has the effect of reversing the allocations of Net Income to such Partners pursuant to Section 5.01(a)(iii), (C) then to the Partners holding Class A Units, Class B Units or LTIP Units to the extent of and in a manner that has the effect of reversing the allocations of Net Income to such Partners pursuant to Section 5.01(a)(ii), (D) then to the Partners holding Class A Units, Class B Units or LTIP Units *pro rata* and *pari passu* in accordance with each such Partner's respective Percentage Interest with respect to such Class A Units, Class B Units or LTIP Units until each such Partner's Capital Account with respect to their Class A Units, Class B Units or LTIP Units has been reduced to zero, but not below zero (provided, further, that if the Capital Account of one or more such Partners, but not all such Partners, has been reduced to zero, any remaining Net Loss, and to the extent necessary, individual item of loss or deduction shall be allocated to the remaining Partners holding Class A Units, Class B Units or LTIP Units in the same manner as in this Section 5.01(a)(iv)(D) until the Capital Account of all such Partners with respect to such Class A Units, Class B Units or LTIP Units has been reduced to zero), (E) then to the General Partner in respect of its Series A Preferred Units, , and Series C Preferred Units until the Capital Account of the General Partner with respect to its Series A Preferred Units, and Series C Preferred Units has been reduced to zero, and (F) thereafter to the General Partner.

(b) Allocations of Net Property Gain and Net Property Loss. Except as otherwise provided in this Agreement, after giving effect to the special allocations in Sections 5.01(c) and 5.01(d), Net Property Gain, Net Property Loss and, to the extent necessary, individual items of gain or loss comprising Net Property Gain and Net Property Loss of the Partnership, without duplication, shall be allocated among the Partners as follows:

(i) *first*, if the Partnership has Net Property Gain for any taxable year or portion thereof, such Net Property Gain shall be allocated to the General Partner in respect of the Series A Preferred Units, and Series C Preferred Units until it has been allocated Net Property Gain equal to the excess of (A) the cumulative amount of distributions of Net Sales Proceeds the General Partner has received for all prior taxable years or portions thereof with respect to the Series A Preferred Units and Series C Preferred Units, over (B) the cumulative Net Property Gain allocated to the General Partner, pursuant to this Section 5.01(b)(i) for all prior taxable years or portions thereof;

(ii) *thereafter*, in a manner such that the Capital Account of each Partner immediately after making such allocation, is, as nearly as possible, equal proportionately to (A) the distributions that would be made to such Partner pursuant to Section 5.02(b) if the Partnership were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Value, as determined in the reasonable discretion of the General Partner, all Partnership liabilities were satisfied (limited with respect to each nonrecourse liability to the Gross Asset Value of the assets securing such liability), and the net assets of the Partnership were distributed in accordance with Section 5.02(b) to the Partners immediately after making such allocation, *minus* (ii) such Partner's share of Partnership Minimum Gain and Partner Nonrecourse Debt Minimum Gain and the amount, if any and without duplication, that the Partner would be obligated to contribute to the capital of the Partnership, all computed immediately prior to the hypothetical sale of assets.

(c) Special Allocations

(i) Special Allocations Regarding Class B Units. Notwithstanding any other provisions of this Sections 5.01, after giving effect to the regulatory allocations in Section 5.01(d) but prior to any allocations under Section 5.01(b)(ii), Net Property Gain and, to the extent necessary, individual items of income and gain comprising Net Property Gain of the Partnership, shall be allocated to the Partners holding Class B Units until their Class C Economic Capital Account Balances are equal to (A) the Class A Unit Economic Balance, multiplied by (B) the number of their Class B Units; provided, that no such Net Property Gain and, to the extent necessary, individual items of income and gain comprising Net Property Gain of the Partnership, will be allocated with respect to any particular Class B Unit unless and to the extent that the Class A Unit Economic Balance exceeds the Class A Unit Economic Balance in existence at the time such Class B Unit was issued. Any allocations made pursuant to the first sentence of this Section 5.01(c)(i) shall be made among the holders of Class B Units in proportion to the amounts required to be allocated to each under this Section 5.01(c)(i). The parties agree that the intent of this Section 5.01(c)(i) is to make the Capital Account balance associated with each Class B Unit to be economically equivalent to the Capital Account balance associated with the Class A Units outstanding (on a per-unit basis), but only if and to the extent that the Capital Account balance associated with the Class A Units outstanding, without regard to the allocations under this Section 5.01(c)(i), has increased on a per-unit basis since the issuance of the relevant Class B Unit. To the extent Net Property Loss is allocated to Partners holding Class B Units pursuant to Section 5.01(b), such Net Property Loss shall be allocated among the Partners holding Class B Units in a manner that reverses the allocation of Net Property Gain to such Partner pursuant to this Section 5.01(c)(i).

(ii) Special Allocations Regarding the Special Limited Partner Interest. Notwithstanding any other provisions of this Sections 5.01, after giving effect to the regulatory allocations in Section 5.01(d), and to the extent not previously allocated pursuant to Section 5.01(d)(ii), and the special allocations in Section 5.01(c)(i), but prior to any allocations under Section 5.01(b)(ii), Net Property Gain and, to the extent necessary, individual items of income and gain comprising Net Property Gain of the Partnership, and Liquidating Gain shall be allocated to the Special Limited Partner until the Special Limited Partner has received aggregate allocations of income for all fiscal years equal to the Listing Amount.

(iii) Special Allocations Regarding LTIP Units. Notwithstanding any other provisions of this Sections 5.01, after giving effect to the regulatory allocations in Section 5.01(d) and the special allocations in Sections 5.01(c)(i) and 5.01(c)(ii), but prior to any allocations under Section 5.01(b)(ii), Net Property Gain and, to the extent necessary, individual items of income and gain comprising Net Property Gain of the Partnership, shall be allocated to the LTIP Unitholders until their LTIP Economic Capital Account Balances are equal to (i) the Class A Unit Economic Balance, multiplied by (ii) the number of their LTIP Units; provided that no such Net Property Gain and, to the extent necessary, individual items of income and gain comprising Net Property Gain of the Partnership, will be allocated with respect to any particular LTIP Unit unless and to the extent that the Class A Unit Economic Balance exceeds the Class A Unit Economic Balance in existence at the time such LTIP Unit was issued. Any allocations made pursuant to the first sentence of this Section 5.01(c)(iii) shall be made among the LTIP Unitholders in proportion to the amounts required to be allocated to each under this Section 5.01(c)(iii). The parties agree that the intent of this Section 5.01(c)(iii) is to make the Capital Account balance associated with each LTIP Unit to be economically equivalent to the Capital Account balance associated with the Class A Units outstanding (on a per-unit basis), but only if and to the extent that the Capital Account balance associated with the Class A Units outstanding, without regard to the allocations under this Section 5.01(c)(iii), has increased on a per-unit basis since the issuance of the relevant LTIP Unit. To the extent Net Property Loss is allocated to LTIP Unitholders pursuant to Section 5.01(b)(ii), such Net Property Loss shall be allocated among the LTIP Unitholders in a manner that reverses the allocation of Net Property Gain to the LTIP Unitholders pursuant to this Section 5.01(c)(iii).”

Article V, Section 5.01 of the Partnership Agreement is hereby amended with the addition of Section 5.01(g), below:

“(g) It is the intention of the parties hereunder that the aggregate Capital Account balance of the General Partner in respect of the Series C Preferred Units at any date shall not exceed the amount of the original Capital Contributions made in respect of the Series C Preferred Units plus all accrued and unpaid distributions thereon, whether or not declared, to the extent not previously distributed. Notwithstanding anything to the contrary contained herein, in connection with the liquidation of the Partnership or the interest of a holder of Series C Preferred Units, and prior to making any other allocations of Net Income or Net Loss, items of income and gain or deduction and loss shall first be allocated to the General Partner in respect of the Series C Preferred Units in such amounts as is required to cause the General Partner’s adjusted Capital Account in respect of the Series C Preferred Units (taking into account any amounts such Partner is obligated to contribute to the capital of the Partnership or is deemed obligated to contribute pursuant to Regulations Section 1.704-1(b)(2)(ii)(c)(2)) to equal the amount the General Partner is entitled to receive pursuant to the provisions of the Partnership Agreement in respect to the Series C Preferred Units.”

11. Additional Allocation Provisions.

Article V, Section 5.06(a) of the Partnership Agreement is hereby deleted in its entirety and replaced by Section 5.06(a), below:

"(a) Upon liquidation of the Partnership, after the satisfaction of all the debts and obligations of the Partnership, to the extent permitted by law, whether by payment or the making of reasonable provision for payment thereof, any remaining assets of the Partnership shall be distributed, subject to Section 5.07(b), first to the General Partner in respect of the Series A Preferred Units, and Series C Preferred Units until its Capital Account with respect to Series A Preferred Units, and Series C Preferred Units has been reduced to zero, and then, to all Partners (including the Special Limited Partner) with positive Capital Accounts in accordance with their respective positive Capital Accounts.

Article V, Section 5.07(b) of the Partnership Agreement is hereby deleted in its entirety and replaced by Section 5.07(b), below:

"(b) Notwithstanding anything to the contrary in this Agreement, it is the intent of the Partners (including the Special Limited Partner) that the allocation provisions of Section 5.01 produce (a) a final Capital Account balance of the General Partner in respect of the Series A Preferred Units equal to the aggregate Base Liquidation Preference, and Series C Preferred Units equal to the aggregate Series C Base Liquidation Preference, plus any accrued but unpaid Series A Preferred Return and Series C Preferred Return. respectively, and (b) final Capital Account balances of the Partners (including the Special Limited Partner) equal to the amount such Partners would receive with respect to their Class A Units, Class B Units, LTIP Units or the Special Limited Partner Interest pursuant to Section 5.02(b). To the extent the allocation provisions of Section 5.01 would fail to produce such final Capital Account balances, (y) such provisions shall be amended by the General Partner if and to the extent necessary to produce such result and (z) Net Income, Net Loss, Net Property Gain, Net Property Loss and, to the extent necessary, individual items of income, gain, loss and deduction, of the Partnership for prior open years shall be reallocated by the General Partner, in its sole and absolute discretion, among the Partners to the extent it is not possible to achieve such result with allocations of Net Income, Net Loss, Net Property Gain, Net Property Loss and, to the extent necessary, individual items of income, gain, loss and deduction, of the Partnership for the current year and future years. This Section 5.07(b) shall control notwithstanding any reallocation or adjustment of taxable Net Income, Net Loss, Net Property Gain, Net Property Loss and, to the extent necessary, individual items of income, gain, loss and deduction, of the Partnership by the Service or any other taxing authority. The General Partner shall have the authority to amend this Agreement without the consent of the Limited Partners or the Special Limited Partner, as it reasonably considers advisable, to make the allocations and adjustments described in this Section 5.07(b).

12. Except as modified herein, all terms and conditions of the Partnership Agreement shall remain in full force and effect, which terms and conditions the General Partner hereby ratifies and confirms.

Exhibit 99.1

American Finance Trust
The Necessity Retail REIT

FOR IMMEDIATE RELEASE

American Finance Trust Prices Public Offering of 3,200,000 Shares of 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock

New York, NY, December 15, 2020 – American Finance Trust, Inc. (Nasdaq: AFIN) ("AFIN" or the "Company") today announced the pricing of an underwritten public offering of 3,200,000 shares of its 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock (the "Series C Preferred Stock") at a gross offering price of $25.00 per share. In addition, the Company has granted the underwriters a 30-day overallotment option to purchase up to an additional 480,000 shares of Series C Preferred Stock. The Company has applied to list the shares of Series C Preferred Stock on the Nasdaq Global Select Market. The Series C Preferred Stock will have a $25.00 liquidation preference per share.

The Company estimates that the net proceeds from this offering, after deducting the underwriting discount but not other estimated offering expenses payable by the Company, will be approximately $77.5 million (assuming the overallotment option to purchase additional shares of Series C Preferred Stock is not exercised) and expects to close the transaction on or about December 18, 2020. The Company intends to use the net proceeds from this offering for general corporate purposes, which may include purchases of additional properties.

The joint bookrunning managers for this offering are BMO Capital Markets Corp., B. Riley Securities, Inc. and Truist Securities, Inc. The joint lead managers for this offering are D.A. Davidson & Co, Janney Montgomery Scott LLC, Ladenburg Thalmann & Co. Inc. and William Blair & Company, L.L.C. The co-managers for this offering are Boenning & Scattergood, Inc. and National Securities Corporation.

The Series C Preferred Stock was offered pursuant to a prospectus supplement and accompanying prospectus under an effective shelf registration statement on file with the Securities and Exchange Commission (the "Commission").

About American Finance Trust, Inc.

American Finance Trust, Inc. (Nasdaq: AFIN) is a publicly traded real estate investment trust listed on the Nasdaq focused on acquiring and managing a diversified portfolio of primarily service-oriented and traditional retail and distribution related commercial real estate properties in the U.S. Additional information about AFIN can be found on its website at *www.americanfinancetrust.com*.

Important Notice

This communication shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or other jurisdiction. Any offer of the securities will be made only by means of a prospectus, forming part of the effective registration statement, the applicable preliminary prospectus supplement and other related documents. Copies of the prospectus and the prospectus supplement, subject to completion, relating to these securities may be obtained from BMO Capital Markets Corp. You should direct any requests to BMO Capital Markets Corp., Attention: Syndicate Department, 3 Times Square, 25th Floor, New York, New York 10036, by telephone at (800) 414-3627 or by email at bmoprospectus@bmo.com. You may also obtain a copy of the prospectus and the prospectus supplement, subject to completion, and other documents the Company has filed with the Commission for free by visiting the Commission's website at http://www.sec.gov.

The statements in this press release that are not historical facts may be forward-looking statements. These forward-looking statements involve risks and uncertainties that could cause actual results or events to be materially different. The words “anticipates,” “believes,” “expects,” “estimates,” “projects,” “plans,” “intends,” “may,” “will,” “would” and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. These forward-looking statements are subject to risks, uncertainties and other factors, many of which are outside of the Company’s control, which could cause actual results to differ materially from the results contemplated by the forward-looking statements. These risks and uncertainties include the potential adverse effects of the ongoing global COVID-19 pandemic, including actions taken to contain or treat COVID-19, on the Company, the Company’s tenants and the global economy and financial markets and that November 2020 rent collections may not be indicative of any future period, as well as those risks and uncertainties set forth in the Risk Factors section of the Company’s Annual Report on Form 10-K for the year ended December 31, 2019 filed on February 27, 2020 and all other filings with the SEC after that date, as such risks, uncertainties and other important factors may be updated from time to time in the Company’s subsequent reports. Further, forward-looking statements speak only as of the date they are made, and the Company undertakes no obligation to update or revise any forward-looking statement to reflect changed assumptions, the occurrence of unanticipated events or changes to future operating results, unless required to do so by law.

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