

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): **January 13, 2021**

American Finance Trust, Inc.
(Exact Name of Registrant as Specified in Charter)

Maryland

(State or other jurisdiction
of incorporation)

001-38597

(Commission File Number)

90-0929989

(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.

Implementation of “At-the-Market” Program for Series C Preferred Stock

On January 13, 2021, American Finance Trust, Inc. (the “Company”) and American Finance Operating Partnership, L.P. (the “Operating Partnership”), the Company’s operating partnership, entered into an Equity Distribution Agreement (the “Series C Preferred Stock Equity Distribution Agreement”) with BMO Capital Markets Corp., BBVA Securities Inc., B. Riley Securities, Inc., Citizens Capital Markets, Inc., D.A. Davidson & Co., KeyBanc Capital Markets Inc., Ladenburg Thalmann & Co. Inc. and Truist Securities, Inc. (each, a “Series C Agent” and collectively, the “Series C Agents”), pursuant to which the Company may, from time to time, offer, issue and sell to the public, through the Series C Agents, shares (the “Series C Shares”) of the Company’s 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, \$0.01 par value per share (“Series C Preferred Stock”) having a maximum aggregate offering price of up to \$200,000,000.

Subject to the terms and conditions of the Series C Preferred Stock Equity Distribution Agreement, the Series C Agents will use their commercially reasonable efforts to sell, on the Company’s behalf, the Series C Shares offered by the Company under and in accordance with the Series C Preferred Stock Equity Distribution Agreement. The sales, if any, of the Series C Shares, made under the Series C Preferred Stock Equity Distribution Agreement will be made by means of ordinary brokers’ transactions or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices. Actual sales will depend on a variety of factors to be determined by the Company from time to time.

The Company intends to use the net proceeds from this offering for general corporate purposes, which may include purchases of additional properties.

The Series C Shares will be issued pursuant to the Company’s shelf registration statement on Form S-3 (Registration No. 333-226252). The Company filed a prospectus supplement (the “Prospectus Supplement”), dated January 13, 2021, with the Securities and Exchange Commission in connection with the offer and sale of the Series C Shares.

The Series C Preferred Stock Equity Distribution Agreement contains customary representations, warranties, and agreements of the Company and the Series C Agents, including indemnification rights and obligations of the parties and termination provisions. The foregoing description of the Series C Preferred Stock Equity Distribution Agreement does not purport to be a complete description and is qualified in its entirety by reference to the Series C Preferred Stock Equity Distribution Agreement, which is filed as Exhibit 1.1 to this Current Report on Form 8-K and incorporated herein by reference.

Certain of the Series C Agents or their affiliates are or have been lenders under the Company’s credit facility or agents under the Company’s existing “at-the-market” programs for its Class A common stock, \$0.01 par value per share (“Class A Common Stock”), and its 7.50% Series A Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share (the “Series A Preferred Stock”).

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any security nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

A copy of the opinion of Venable LLP relating to the offering of the Series C Shares is attached to this Current Report on Form 8-K as Exhibit 5.1.

Amendment to Equity Distribution Agreement for Series A Preferred Stock

On January 13, 2021, the Company entered into a third amendment (the “Series A Preferred Stock EDA Amendment”) to the Equity Distribution Agreement dated May 8, 2019, as amended on June 25, 2019 and October 4, 2019 (as amended to date, the “Series A Preferred Stock Equity Distribution Agreement”), among the Company and the Operating Partnership, on the one hand, and BMO Capital Markets Corp., BBVA Securities Inc., B. Riley Securities, Inc., Citizens Capital Markets, Inc., KeyBanc Capital Markets Inc., Ladenburg Thalmann & Co. Inc., Truist Securities, Inc. and D.A. Davidson & Co. (each, a “Series A Agent” and collectively, the “Series A Agents”) for the purpose of increasing the maximum aggregate offering price of Series A Preferred Stock that may be offered and sold from time to time by the Company pursuant to the Series A Preferred Stock Equity Distribution Agreement from up to \$100 million to up to \$200 million.

Certain of the Series A Agents or their affiliates are or have been lenders under the Company’s credit facility or agents under the Company’s “at-the-market” programs of Class A Common Stock and the Series C Preferred Stock.

A copy of the Series A Preferred Stock EDA Amendment is filed as Exhibit 1.2 to this Current Report on Form 8-K, and the description of the material terms of the Series A Preferred Stock EDA Amendment in this Item 1.01 is qualified in its entirety by reference to the Series A Preferred Stock EDA Amendment, which is incorporated herein by reference.

A copy of the opinion of Venable LLP relating to the offering of the additional shares of Series A Preferred Stock is attached to this Current Report on Form 8-K as Exhibit 5.2.

Amendment to the Operating Partnership Agreement

On January 13, 2021, the Company, in its capacity as the general partner of the Operating Partnership, entered into a Seventh Amendment to the Second Amended and Restated Agreement of Limited Partnership of the Operating Partnership (the “Seventh Amendment”), for the purposes of (i) increasing the number of authorized 7.50% Series A Cumulative Redeemable Perpetual Preferred Units, which are units of limited partnership in the Operating Partnership that have economic interests that are substantially similar to the designations, preferences and other rights of the Series A Preferred Stock, to be equal to the number of authorized shares of Series A Preferred Stock, and (ii) increasing the number of authorized 7.375% Series C Cumulative Redeemable Perpetual Preferred Units, which are units of limited partnership in the Operating Partnership that have economic interests that are substantially similar to the designations, preferences and other rights of the Series C Preferred Stock, to be equal to the number of authorized shares of Series C Preferred Stock.

The foregoing description of the Seventh Amendment does not purport to be a complete description and is qualified in its entirety by reference to the Seventh Amendment, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 3.03. Material Modifications to Rights of Security Holders.

On January 13, 2021, the Company filed Articles Supplementary (the “Articles Supplementary”) with the State Department of Assessments and Taxation of Maryland, which became effective upon acceptance for record. The Articles Supplementary: (i) reclassified and designated 26,264,698.1465 authorized but unissued shares of the Company’s Class B-1 Common Stock, \$0.01 par value per share, and 26,264,698.1465 authorized but unissued shares of the Company’s Class B-2 Common Stock, \$0.01 par value per share, as shares of Class A Common Stock, (ii) classified and designated 4,000,000 authorized but unissued shares of preferred stock, \$0.01 par value per share, as additional shares of Series A Preferred Stock, and (iii) classified and designated 7,856,000 authorized but unissued shares of the Company’s preferred stock, \$0.01 par value per share, as additional shares of Series C Preferred Stock.

The foregoing description of the Articles Supplementary does not purport to be a complete description and is qualified in its entirety by reference to the Articles Supplementary, which is filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated herein by reference.

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 9.01. Financial Statements and Exhibits.

(d) Exhibits

**Exhibit
No.**

Description

1.1	Equity Distribution Agreement, dated January 13, 2021, by and among American Finance Trust, Inc., American Finance Operating Partnership, L.P. and BMO Capital Markets Corp., BBVA Securities Inc., B. Riley Securities, Inc., Citizens Capital Markets, Inc., D.A. Davidson & Co., KeyBanc Capital Markets Inc., Ladenburg Thalmann & Co. Inc. and Truist Securities, Inc.
1.2	Amendment No. 3, dated as of January 13, 2021, to Equity Distribution Agreement, dated May 8, 2019, among American Finance Trust, Inc., American Finance Operating Partnership, L.P., and BMO Capital Markets Corp., BBVA Securities Inc., B. Riley Securities, Inc., Citizens Capital Markets, Inc., KeyBanc Capital Markets Inc., Ladenburg Thalmann & Co. Inc., Truist Securities, Inc. and D.A. Davidson & Co.
3.1	Articles Supplementary relating to reclassification of common stock, classification of additional shares of 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, \$0.01 par value per share, and classification of additional shares of 7.50% Series A Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, filed on January 13, 2021.
5.1	Opinion of Venable LLP.
5.2	Opinion of Venable LLP.
10.1	Seventh Amendment, dated January 13, 2021, 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).
23.2	Consent of Venable LLP (included in Exhibit 5.2 hereto).
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, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

American Finance Trust, Inc.

Date: January 13, 2021

By: /s/ Edward M. Weil, Jr.

Name: Edward M. Weil, Jr.

Title: *Chief Executive Officer and President*

AMERICAN FINANCE TRUST, INC.

\$200,000,000

Shares of 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock

EQUITY DISTRIBUTION AGREEMENT

January 13, 2021

BMO Capital Markets Corp.
3 Times Square
New York, New York 10036

D.A. Davidson & Co.
757 Third Ave., Suite 1902
New York, New York 10017

BBVA Securities Inc.
1345 Avenue of the Americas, 44th Floor
New York, New York 10105

KeyBanc Capital Markets Inc.
127 Public Square, 11th Floor
Cleveland, Ohio 44114

B. Riley Securities, Inc.
299 Park Avenue, 21st Floor
New York, New York 10171

Ladenburg Thalmann & Co., Inc.
277 Park Avenue, 26th Floor
New York, New York 10172

Citizens Capital Markets, Inc.
600 Washington Blvd., 11th Floor
Stamford, Connecticut 06901

Truist Securities, Inc.
3333 Peachtree Road NE, 11th Floor
Atlanta, Georgia 30326

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"), each confirms its agreement (this "Agreement") with BMO Capital Markets Corp., BBVA Securities Inc., B. Riley Securities, Inc., Citizens Capital Markets, Inc., D.A. Davidson & Co., KeyBanc Capital Markets Inc., Ladenburg Thalmann & Co. Inc., and Truist Securities, Inc. (each an "Agent" and collectively, the "Agents"), with respect to the issuance and sale from time to time by the Company of shares (the "Shares") of the Company's 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock ("Preferred Stock") having an aggregate offering price of up to \$200,000,000 (the "Maximum Amount") through or to the Agents, acting as sales agent or principal, on the terms and subject to the conditions set forth in this Agreement.

An “automatic shelf registration statement” (the “registration statement”) as defined in Rule 405 under the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively called the “Act”), on Form S-3 (File No. 333-226252) in respect of the Shares, including a form of prospectus, has been prepared and filed by the Company not earlier than three years prior to the date hereof, in conformity with the requirements of the Act, and the rules and regulations of the Securities and Exchange Commission (the “Commission”) thereunder (the “Rules and Regulations”). The registration statement contains, or incorporates by reference to documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the “Exchange Act”), certain information concerning the offering and sale of the Preferred Stock, including the Shares, and contains or incorporates by reference additional information concerning the Company and its business; the Commission has not issued an order preventing or suspending the use of the Basic Prospectus (as defined below), the Prospectus Supplement (as defined below), the Prospectus (as defined below) or any Permitted Free Writing Prospectus (as defined below), or the effectiveness of the Registration Statement, and no proceeding for that purpose or pursuant to Section 8A of the Act has been instituted or, to the Company’s or the Operating Partnership’s knowledge, threatened by the Commission. Except where the context otherwise requires, the term “Registration Statement” means the registration statement, as amended at the time of the registration statement’s effectiveness for purposes of Section 11 of the Act, as such section applies to the Agents, including (i) all documents filed as a part thereof or incorporated, or deemed to be incorporated, by reference therein and (ii) any information contained or incorporated by reference in a prospectus filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations, to the extent such information is deemed, pursuant to Rule 430B or Rule 430C of the Rules and Regulations, to be part of the registration statement at the effective time. Except where the context requires, the term “Basic Prospectus” means the prospectus dated July 20, 2018, filed as part of the Registration Statement, including the documents incorporated by reference therein as of the date of such prospectus. Except where the context otherwise requires, the term “Prospectus Supplement” means the prospectus supplement relating to the Shares, to be filed by the Company with the Commission pursuant to Rule 424(b) of the Rules and Regulations on or before the second business day after the date hereof (or such earlier time as may be required under the Act), in the form furnished by the Company to the Agents in connection with the offering of the Shares. Except where the context otherwise requires, the term “Prospectus” means the Prospectus Supplement (and any additional prospectus supplement prepared in accordance with the last sentence of Section 3(cc) and filed in accordance with the provisions of Rule 424(b) of the Rules and Regulations), together with the Basic Prospectus attached to or used with the Prospectus Supplement. “Permitted Free Writing Prospectus” has the meaning set forth in Section 3(g). Any reference herein to the Registration Statement, the Basic Prospectus, the Prospectus Supplement, the Prospectus and any Permitted Free Writing Prospectus shall, unless otherwise stated, be deemed to refer to and include the documents, if any, incorporated, or deemed to be incorporated, by reference therein (the “Incorporated Documents”), including, unless the context otherwise requires, the documents, if any, filed as exhibits to such Incorporated Documents. Any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, the Basic Prospectus, the Prospectus Supplement, the Prospectus or any Permitted Free Writing Prospectus shall, unless stated otherwise, be deemed to refer to and include the filing of any document under the Exchange Act on or after the initial effective date of the Registration Statement or the date of the Basic Prospectus, the Prospectus Supplement, the Prospectus or such Permitted Free Writing Prospectus, as the case may be, and deemed to be incorporated therein by reference.

In connection with any sale of Shares under this Agreement, 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”).

The Company and the Operating Partnership each confirm their agreement with the Agents as follows:

1. Sale and Delivery of the Shares.

(a) *Agency Transactions.* On the basis of the representations, warranties and agreements of the Company and the Operating Partnership herein contained, but subject to the terms and conditions herein set forth, the Company and each Agent agree that the Company may issue and sell through each Agent, acting as sales agent for the Company, the Shares (an “Agency Transaction”) as follows:

(i) The Company may, from time to time, propose to such Agent the terms of an Agency Transaction by means of a telephone call confirmed promptly by electronic mail in a form substantially similar to Exhibit A hereto (an “Agency Transaction Notice”) from any of the individuals listed as authorized representatives of the Company on Schedule 1 hereto (each, an “Authorized Company Representative”), such proposal to include: the trading day(s) for The Nasdaq Global Select Market (“Nasdaq”) (which may not be a day on which Nasdaq is scheduled to close prior to its regular weekday closing time) on which the Shares are to be sold (each, a “Trading Day”); the maximum number of Shares that the Company wishes to sell in the aggregate and on each Trading Day; and the minimum price at which the Company is willing to sell the Shares (the “Floor Price”).

(ii) If such proposed terms for an Agency Transaction are acceptable to such Agent, it shall confirm the terms by countersigning the Agency Transaction Notice for such Agency Transaction and emailing it to an Authorized Company Representative.

(iii) Subject to the terms and conditions hereof, such Agent shall use its commercially reasonable efforts to sell all of the Shares designated in, and subject to the terms of, such Agency Transaction Notice. The Company acknowledges that the Agents will conduct the sale of the Shares in compliance with applicable law, rules and regulations, including, without limitation, Regulation M under the Exchange Act, and applicable Nasdaq rules and that such compliance may include a delay in commencement of sales efforts after receipt of an Agency Transaction Notice. The Company and the Agents agree that any such delay and the potential length of such delay shall be promptly disclosed by, as applicable, either the Company to the Agents or the Agents to the Company. The Agents shall not sell any Share at a price lower than the Floor Price. The Company and the Operating Partnership acknowledge and agree with the Agents that (x) there can be no assurance that any Agents will be successful in selling all or any of such Shares, (y) no Agent will incur any liability or obligation to the Company or any other person or entity if it does not sell any Shares for any reason and (z) each Agent shall be under no obligation to purchase any Shares on a principal basis pursuant to this Agreement except in the case of a Principal Transaction (as defined below) pursuant to this Agreement and the relevant Terms Agreement (as defined below).

(iv) The Company, acting through an Authorized Company Representative, or an Agent may, upon notice to the other party hereto by telephone (confirmed promptly by electronic mail), suspend an offering of Shares (including for Shares that have been sold but have not yet settled) pursuant to an Agency Transaction; *provided, however*, that such suspension shall not affect or impair the parties' respective obligations with respect to the Shares sold hereunder prior to the giving of such notice.

(v) If the terms of any Agency Transaction as set forth in an Agency Transaction Notice contemplate that the Shares shall be sold on more than one Trading Day, then the Company and such Agent shall mutually agree to such additional terms and conditions as they deem necessary in respect of such multiple Trading Days, and such additional terms and conditions shall be binding to the same extent as any other terms contained in the relevant Agency Transaction Notice.

(vi) Each Agent, as sales agent in an Agency Transaction, shall not make any sales of the Shares on behalf of the Company, pursuant to this Agreement, other than (x) by means of ordinary brokers' transactions that qualify for delivery of the Prospectus in accordance with Rule 153 of the Rules and Regulations and meet the definition of an "at the market offering" under Rule 415(a)(4) of the Rules and Regulations and (y) such other sales of the Shares on behalf of the Company in its capacity as agent of the Company as shall be agreed by the Company and such Agent in writing. Further, each agent hereby covenants and agrees not to make any sale of the shares not in accordance with the applicable instructions provided by the Company.

(vii) The amount of any discount, commission or other compensation to be paid by the Company to the Agents in connection with the sale of the Shares in an Agency Transaction shall be calculated in accordance with the terms set forth in Schedule 5 hereto and the applicable Agency Transaction Notice. Each Agent shall provide written confirmation to the Company (which may be provided by email to an Authorized Company Representative) following the close of trading on Nasdaq on each Trading Day on which Shares are sold in an Agency Transaction under this Agreement, setting forth (i) the number of Shares sold on such Trading Day, (ii) the gross offering proceeds received from such sales, (iii) the commission payable by the Company to the Agents with respect to such sales and (iv) the net offering proceeds (being the gross offering proceeds for such sales less the commission payable for such sales) (the "Net Offering Proceeds").

(viii) Settlement for sales of the Shares in an Agency Transaction pursuant to this Agreement shall occur on the second Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each such day, an "Agency Settlement Date"). On each Agency Settlement Date, the Shares sold through such Agent in Agency Transactions for settlement on such date shall be issued and delivered by the Company to such Agent against payment by the Agent to the Company of the Net Offering Proceeds from the sale of such Shares. Settlement for all such Shares shall be effected by free delivery of the Shares by the Company or its transfer agent to such Agent's or its designee's account (*provided* that such Agent shall have given the Company written notice of such designee prior to the relevant Agency Settlement Date) at The Depository Trust Company or by such other means of delivery as may be mutually agreed upon by the parties hereto, which in all cases shall be freely tradable, transferable, registered shares of Preferred Stock in good deliverable form, in return for payment in same-day funds delivered to the account designated by the Company. If the Company, or its transfer agent (if applicable), shall default on its obligation to deliver the Shares on any Agency Settlement Date, the Company shall (i) hold such Agent harmless against any loss, claim, damage, or expense (including, without limitation, reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company and (ii) pay such Agent any commission, discount or other compensation to which it would otherwise be entitled absent such default.

(ix) The Company agrees that any offer to sell Shares, any solicitation of an offer to buy Shares, or any sales of Shares shall only be effected by or through only one Agent on any single given day, but in no event by more than one, and the Company shall in no event request that multiple Agents sell Shares on the same day.

(b) *Principal Transactions.* If the Company wishes to issue and sell the Shares in a transaction pursuant to this Agreement in which an Agent would act as principal in connection with any offer and sale of Shares and not an agent as set forth in subsection (a) of this Section 1 (each, a “Principal Transaction”), the Company will notify an Agent of the proposed terms of such Principal Transaction. If such Agent, acting as principal, wishes to accept such proposed terms (which it may decline to do for any reason in its sole discretion) or, following discussions with the Company, wishes to accept amended terms, such Agent and the Company will enter into an agreement in substantially the form of Exhibit B hereto (each, a “Terms Agreement”) that sets forth the terms of such Principal Transaction, including, without limitation, the time, date and place of delivery of and payment for the Shares to be sold pursuant to such Principal Transaction (each of such date and each Agency Settlement Date, a “Settlement Date”). The terms set forth in a Terms Agreement shall not be binding on the Company or such Agent unless and until each of the Company and such Agent has executed such Terms Agreement accepting all of such terms. The commitment of such Agent to purchase the Shares pursuant to any Terms Agreement shall be deemed to have been made on the basis of the representations and warranties of the Company herein contained and shall be subject to the terms and conditions herein set forth. In the event of a conflict between the terms of this Agreement and the terms of any Terms Agreement, the terms of such Terms Agreement shall control.

(c) *Maximum Number of Shares.* Under no circumstances shall the Company propose to the Agents, or the Agents effect, a sale of Shares in an Agency Transaction or a Principal Transaction pursuant to this Agreement if such sale would (i) cause the aggregate gross sales proceeds of the Shares sold pursuant to this Agreement to exceed the Maximum Amount, (ii) cause the number of Shares sold to exceed the number of shares of Preferred Stock available for offer and sale under the then effective Registration Statement or (iii) cause the number of Shares sold pursuant to this Agreement to exceed the number of Shares authorized from time to time to be issued and sold pursuant to this Agreement by the Company’s board of directors, or a duly authorized committee thereof, and notified to the Agents in writing.

(d) *Regulation M.* Each of the Company and the Agents will, and shall use commercially reasonable efforts to cause each of their respective affiliates to, comply with all applicable provisions of Regulation M. Following the time when the Preferred Stock becomes an “actively-traded security” excepted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of Rule 101 of Regulation M, if either the Company or any Agent has reason to believe the Preferred Stock is not an “actively-traded security” excepted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of Rule 101 of Regulation M, as applicable, either the Company will notify the Agents or the Agents will notify the Company.

(e) *Black-out Periods.* Notwithstanding any other provision of this Agreement, no sales of Shares shall take place, the Company shall not request the sales of any Shares that would be sold and the Agents shall not be obligated to sell or offer to sell any Shares, during any period in which the Company's insider trading or similar policy, as it exists on the date of this Agreement, would prohibit the purchase or sale of Preferred Stock by persons subject to such policy, or during any other period in which the Company is, or could be deemed to be, in possession of material non-public information with respect to the Company.

(f) *Continuing Accuracy of Representations and Warranties.* Any obligation of the Agents to use their commercially reasonable efforts to sell the Shares on behalf of the Company as sales agents shall be subject to the continuing accuracy of the representations and warranties of the Company herein, to the performance by the Company of its obligations hereunder and to the continuing satisfaction of the conditions specified in Section 4 of this Agreement.

2. Representations and Warranties of the Company and the Operating Partnership. The Company and the Operating Partnership, jointly and severally, represent and warrant to and agree with each Agent that:

(a) *Effectiveness of Registration.* The Registration Statement and any post-effective amendment thereto have become effective. The Company has responded to all requests, if any, of the Commission for additional or supplemental information. 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 best knowledge of the Company or the Operating Partnership, are contemplated or threatened by the Commission. (i) At the time of filing the Registration Statement, (ii) at the time of the most recent amendment thereto for purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by filing of a post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or a form of prospectus) and (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the Rules and Regulations) made any offer relating to the Shares in reliance on the exemption of Rule 163 of the Rules and Regulations, the Company was and is a "well-known seasoned issuer" as defined in Rule 405 of the Rules and Regulations. The Registration Statement is an "automatic shelf registration statement" as defined in Rule 405 of the Rules and Regulations, and the Shares, since their registration on the Registration Statement, have been and remain eligible for registration by the Company on an "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 use of the automatic shelf registration statement form and the Company has not otherwise ceased to be eligible to use the automatic shelf registration statement form.

(b) *Accuracy of the Registration Statement, the Prospectus and any Permitted Free Writing Prospectus.* (i) At the respective times the Registration Statement and any post-effective amendment thereto became effective, (ii) at each deemed effective date with respect to the Agents pursuant to Rule 430B(f)(2) under the Act, (iii) as of each Time of Sale (as defined below), (iv) at each Settlement Date and (v) at all times during such period as the Prospectus is required by law to be delivered (whether physically, deemed to be delivered pursuant to Rule 153 or through compliance with Rule 172 of the Rules and Regulations or any similar rule) in connection with sales of the Shares (the “Prospectus Delivery Period”), the Registration Statement complied and will comply in all material respects with the Act and the Rules and Regulations, and did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of each Time of Sale and each Settlement Date and at all times during the Prospectus Delivery Period, the Prospectus, as amended or supplemented, complied and will comply in all material respects with the Act and the Rules and Regulations, and, together with all Permitted Free Writing Prospectuses, if any, did not and 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. The Basic Prospectus (including any amendment thereto) complied when so filed in all material respects with the Rules and Regulations, and the Prospectus (including the Basic Prospectus included therein) delivered to the Agents for use in connection with the transactions contemplated by this Agreement is identical to the electronically transmitted copy thereof filed with the Commission on EDGAR, except to the extent permitted by Regulation S-T. The foregoing representations and warranties in this Section 2(b) do not apply to any statements contained in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus in reliance upon and in conformity with information relating to any Agent and furnished in writing to the Company by or on behalf of such Agent specifically for inclusion in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus (or any amendment or supplement thereto), which constitutes the information set forth in Schedule 2 hereto. “Time of Sale” means, (i) with respect to an Agency Transaction, the time of such Agent’s initial entry into contracts with investors for the sale of such Shares and (ii) with respect to a Principal Transaction, the time of sale of such Shares.

(c) *Documents Incorporated by Reference.* The Incorporated Documents, at the time they were or hereafter are filed with the Commission, conformed and will conform in all material respects to the requirements of the Act or the Exchange Act, as applicable, and, when read together with the other information in the Prospectus, at the time the Registration Statement and any amendments thereto become effective, as of each Time of Sale and each Settlement Date and at all times during the Prospectus Delivery Period, will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) *Company Not Ineligible Issuer.* (i) At the time of filing the Registration Statement, (ii) at the earliest time that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) of the Rules and Regulations) of the Shares and (iii) at the date hereof, the Company was not and is not an “ineligible issuer” (as defined in Rule 405 of the Rules and Regulations).

(e) *Free Writing Prospectuses.* Prior to the execution of this Agreement, the Company has not, directly or indirectly, offered or sold any Shares by means of any “prospectus” or “free writing prospectus” (in each case within the meaning of the Act) or used any “prospectus” or “free writing prospectus” (in each case within the meaning of the Act) in connection with the offer or sale of the Shares, and from and after the execution of this Agreement, the Company will not, directly or indirectly, offer or sell any Shares by means of any “prospectus” or “free writing prospectus” (in each case within the meaning of the Act) or use any “prospectus” or “free writing prospectus” (in each case within the meaning of the Act) in connection with the offer or sale of the Shares, other than the Prospectus, as amended or supplemented from time to time in accordance with the provisions of this Agreement, and any Permitted Free Writing Prospectuses; the Company has not, directly or indirectly, prepared, used or referred to any Permitted Free Writing Prospectus except in compliance with Rule 163 or with Rules 164 and 433 under the Act; assuming that any such Permitted Free Writing Prospectus is so sent or given after the Registration Statement was filed with the Commission (and after such Permitted Free Writing Prospectus was, if required pursuant to Rule 433(d) under the Act, filed with the Commission), the sending or giving, by each Agent, of any Permitted Free Writing Prospectus will satisfy the provisions of Rule 164 or Rule 433 (without reliance on subsections (b), (c) and (d) of Rule 164); the conditions set forth in one or more of subclauses (i) through (iv), inclusive, of Rule 433(b)(1) under the Act are satisfied, and the Registration Statement relating to the offering of the Shares contemplated hereby, as initially filed with the Commission, includes a prospectus that, other than by reason of Rule 433 or Rule 431 under the Act, satisfies the requirements of Section 10 of the Act; the Company is not disqualified, by reason of subsection (f) or (g) of Rule 164 under the Act, from using, in connection with the offer and sale of the Shares, “free writing prospectuses” (as defined in Rule 405 under the Act) pursuant to Rules 164 and 433 under the Act; the Company is not an “ineligible issuer” (as defined in Rule 405 under the Act) as of the eligibility determination date for purposes of Rules 164 and 433 under the Act with respect to the offering of the Shares contemplated by the Registration Statement.

(f) *Reserved for Future Issuance.* The Company has reserved for future issuance, and will keep available at all times, a sufficient number of shares of Class A common stock, \$0.01 par value per share (the “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 New 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.

(g) *Series C Articles Supplementary.* The Series C Articles Supplementary, dated December 16, 2020, 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 new Articles Supplementary classify 7,856,000 additional shares of authorized but unissued preferred stock, \$0.01 par value per share, of the Company as additional shares of Preferred Stock (the “New Articles Supplementary”). The New Articles Supplementary will have been filed with the State Department of Assessments and Taxation of Maryland (the “SDAT”), will have become effective under the Maryland General Corporation Law (the “MGCL”) and will comply with all applicable requirements under the MGCL on or prior to any sale under this Agreement.

(h) *Operating Partnership Agreement Amendment.* The Second Amendment, dated as of March 22, 2019, 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”), sets forth the designations, preferences and other rights and terms of the Preferred Units. An amendment to the Operating Partnership Agreement increasing the number of authorized Preferred Units (the “Operating Partnership Agreement Amendment”) will be, prior to any sale under this Agreement, duly authorized, executed and delivered. The Company, as the sole general partner of the Operating Partnership, will duly authorize, execute and deliver the Operating Partnership Agreement Amendment.

(i) *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 Prospectus and the Permitted Free Writing Prospectuses, if any, and, in the case of the Company and the Operating Partnership, to execute and deliver this Agreement 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 consummation of the transactions contemplated hereby or (C) result in the delisting of shares of Preferred Stock from 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”); and (iii) as of the date of this Agreement, the Company has no subsidiaries (as defined under the Act) other than those subsidiaries listed on Schedule 4 hereto (collectively, the “Subsidiaries”).

(j) *Capitalization.* The authorized, issued and outstanding capital stock, including the Preferred Stock, of the Company is as set forth in the Registration Statement and the Prospectus. 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, first refusal rights or 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. All of the other issued and outstanding shares of capital stock, including the Common 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 capital stock of the Company, including the Shares, conforms in all material respects to each description thereof, if any, contained or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus; and the certificates for the Shares, if any have been issued, are in due and proper form. The description of the Preferred Stock included or incorporated by reference in the Registration Statement and the Prospectus is complete and accurate in all material respects. Except as described in the Registration Statement and the Prospectus, the Company does not have outstanding any options to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible into, or any contracts or commitments to issue or sell, any shares of capital stock of the Company or of any subsidiary of the Company or any such warrants, convertible securities or obligations. All of the issued and outstanding shares of capital stock of the Company 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 are duly listed, and admitted and authorized for trading, subject to official notice of issuance, on Nasdaq.

(k) *Financial Statements.* The financial statements included or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing 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 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 Prospectus or any Permitted Free Writing Prospectus comply with the applicable requirements of the 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 Prospectus or any Permitted Free Writing 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 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) and the Prospectus; and all disclosures contained or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing 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 Act, to the extent applicable.

(l) *Independent Accountants.* KPMG LLP, whose report on the consolidated financial statements of the Company and the Subsidiaries is included or incorporated by reference in the Registration Statement and the Prospectus, are independent registered public accountants as required by the Act and by the rules of the Public Company Accounting Oversight Board. PricewaterhouseCoopers LLP are independent registered public accountants as required by the Act and by the rules of the Public Company Accounting Oversight Board.

(m) *No Material Adverse Effect.* Subsequent to the respective dates as of which information is given in the Registration Statement, the Prospectus and the Permitted Free Writing Prospectuses, if any, 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 and the Prospectus, and, with respect to clauses (ii), (iii), (iv) and (v) of this sentence, except as would not, individually or in the aggregate, have a Material Adverse Effect.

(n) *Investment Company.* Neither the Company nor any Subsidiary is, and at no time during which a prospectus is required by the Act to be delivered (whether physically or through compliance with Rule 172 under the 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.

(o) *Litigation.* 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 nongovernmental regulatory authority (including, without limitation, Nasdaq), except any such action, suit, claim, investigation or proceeding which, if resolved adversely to the Company or any Subsidiary, would not, individually or in the aggregate, have a Material Adverse Effect.

(p) *Necessary Licenses, Compliance with Laws and Regulations and Performance of Obligations and Contracts.* 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. 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 which, 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) (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) (i) the charter or bylaws, the limited liability company agreements, the partnership agreements or other organizational documents of the Company or any of the Subsidiaries, or (ii) 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 (iii) any federal, state, local or foreign law, regulation or rule, or (iv) 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 (v) 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 (ii), (iii), (iv) or (v) as would not, individually or in the aggregate, have a Material Adverse Effect.

(q) *No Consent of Governmental Body Needed.* 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 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 Act and filing of the New Articles Supplementary with the SDAT, which has been or will be effected, (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 Agents or (iii) under the Conduct Rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”).

(r) *Agreement Duly Authorized and No Breach of Obligations or Charter.* 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. Neither the Company nor any of the Subsidiaries is in breach or violation of or in default under (nor has any event occurred which, 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) (i) its charter or bylaws, or (ii) 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 (iii) any federal, state, local or foreign law, regulation or rule, or (iv) 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 (v) any decree, judgment or order applicable to it or any of its properties, except for any of the foregoing in (ii), (iii), (iv) or (v) as would not, individually or in the aggregate, have a Material Adverse Effect.

(s) *Title to Real and Personal Property.* The Company and each of the Subsidiaries have good and marketable title to all property (real and personal) described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus as being owned by any of them, free and clear of all liens, claims, security interests or other encumbrances; all the property described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus as being held under lease by the Company or a Subsidiary is held thereby under valid, subsisting and enforceable leases.

(t) *Documents Described in Registration Statement.* Except as described in the Registration Statement and 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 any Permitted Free Writing Prospectus, or referred to or described in, or filed as an exhibit to, the Registration Statement or any Incorporated Document, 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.

(u) *No Untrue Statement; Statistical and Market Data.* All statistical or market-related data included or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing 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.

(v) *No Price 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 Act or otherwise, of the price of any security of the Company to facilitate the sale or resale of the Shares.

(w) *No Registration Rights.* Except as described in the Registration Statement (excluding the exhibits thereto) 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 Preferred 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 Preferred 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 Act any shares of Preferred 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 any offering contemplated thereby.

(x) *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.

(y) *No Similar Arrangements.* The Company has not entered into any other sales agency or distribution agreements or similar arrangements with any agent or other representative similar in nature to the equity shelf program established by this Agreement for the offer and sale of shares of Preferred Stock.

(z) *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.

(aa) *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 on the date hereof and will be fully in force at each Time of Sale and Settlement Date; 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. 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 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.

(bb) *Defined Benefit Plans.* Neither the Company nor any of the Subsidiaries is engaged in any unfair labor practice; except for matters which 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 or the rules and regulations promulgated thereunder concerning the employees of the Company or any of the Subsidiaries.

(cc) *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 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.

(dd) *Real Estate Investment Trust.* 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 Basic Prospectus under the caption “Material U.S. Federal Income Tax Considerations,” as supplemented in the 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.

(ee) *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.

(ff) *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 Act to be described in the Registration Statement or the Prospectus, which is not so described.

(gg) *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).

(hh) *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) and the Prospectus, and except as such limitations would not, taken as a whole, be material to the Company.

(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) *No Unlawful Contributions or Payments.* Neither the Company nor any of its Subsidiaries, nor any director or officer of the Company or its Subsidiaries, nor, to the knowledge of the Company, any agent, employee or representative of the Company or its Subsidiaries, affiliate or other person associated with or acting on behalf of the Company or its 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.

(kk) *Compliance with Anti-Money Laundering Laws.* The operations of the Company and its 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 its 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 involving the Company or its Subsidiaries with respect to the Money Laundering Laws is pending or, to the Company’s knowledge, threatened.

(ll) *No Conflicts with Sanctions Laws.* Neither the Company nor any of its Subsidiaries, nor any director or officer of the Company or its Subsidiaries, nor, to the knowledge of the Company, any agent, employee or representative of the Company or its Subsidiaries, affiliate or other person associated with or acting on behalf of the Company or its 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 its Subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Cuba, Iran, North Korea, Sudan, Syria and Crimea (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 agent, principal, advisor, investor or otherwise) of Sanctions. For the past five years, the Company and its 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.

(mm) *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.

(nn) *Forward-Looking Statements.* Each “forward-looking statement” (within the meaning of Section 27A of the Act or Section 21E of the Exchange Act) contained or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus has been made with a reasonable basis and in good faith.

(oo) *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.

(pp) *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 it 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.

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

(rr) *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 Agents.

(ss) *Cybersecurity.* (i)(x) Except as disclosed in the Registration Statement 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 Agents or counsel for such Agents in connection with the offering of the Shares shall be deemed to be a representation and warranty by the Company or the Operating Partnership, as to matters covered thereby, to such Agents.

3. Agreements of the Company and the Operating Partnership. The Company and the Operating Partnership, jointly and severally, covenant and agree with each Agent:

(a) *Amendments and Supplements to the Registration Statement, the Prospectus and any Permitted Free Writing Prospectus.* The Company shall not, during the Prospectus Delivery Period, amend or supplement the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus (including, without limitation, by filing any document under the Exchange Act if such document would be deemed to be incorporated by reference into the Prospectus), unless a copy of such amendment or supplement thereto (or such document) shall first have been submitted to the Agents within a reasonable period of time prior to the filing or, if no filing is required, the use thereof and the Agents shall not have objected thereto.

(b) *Material Misstatements or Omissions and Other Compliance with Applicable Law.* If, after the date hereof and during the Prospectus Delivery Period, any event or development shall occur or condition shall exist as a result of which the Prospectus or any Permitted Free Writing Prospectus, as amended or supplemented at that time, 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 Prospectus or any Permitted Free Writing Prospectus, or to file any document in order to comply with the Act or the Exchange Act, 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 Agents it is otherwise necessary to amend or supplement the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus or to file any document in order to comply with the Act or the Exchange Act, including, without limitation, in connection with the delivery of the Prospectus, the Company shall promptly (i) notify the Agents of any such event, development or condition (and confirm such notice in writing) and (ii) instruct the Agent to suspend the sale of any Shares (including Shares that have been sold but have not yet settled). The Company may thereafter send a new Agency Transaction Notice if and when it (A) prepares (subject to subsections (a) and (g) of this Section 3) an amendment or supplement to the Prospectus or such Permitted Free Writing Prospectus, necessary in order to make the statements in the Prospectus or such Permitted Free Writing Prospectus as so amended or supplemented, in the light of the circumstances under which they were made, not misleading or so that the Registration Statement, the Prospectus or such Permitted Free Writing Prospectus, as amended or supplemented, will comply with the Act or the Exchange Act, (B) files with the Commission such amendment, supplement or document in order to comply with the Act or the Exchange Act and (C) furnishes at its own expense to the Agents as many copies as the Agents may reasonably request of such amendment, supplement or document. Notwithstanding the foregoing, nothing herein shall require the Company to file any such amendment or supplement.

(c) *Notifications to the Agents.* The Company shall notify the Agents promptly, and shall confirm such notice in writing, (i) when any post-effective amendment to the Registration Statement becomes effective, (ii) of any request by the Commission for an amendment or supplement to the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus 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 amendment or supplement to the Prospectus or any Permitted Free Writing Prospectus in order to make the statements therein, in the light of the circumstances in which they were 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 Prospectus or any Permitted Free Writing Prospectus. If at any time the Commission shall issue any stop order suspending the effectiveness of the Registration Statement, the Company shall use its best efforts to obtain the withdrawal of the stop 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 424(b), 430A, 430B, 430C and 462(b) of the Rules and Regulations and to notify the Agents promptly of all such filings.

(d) *[Reserved]*.

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

(f) *Prospectus.* The Company shall furnish to the Agents, without charge, as many copies of the Prospectus and any amendment or supplement thereto as the Agents may reasonably request (to the extent not previously delivered or filed on the Commission's Electronic Data Gathering, Analysis and Retrieval system or any successor system thereto) via electronic mail in ".pdf" format and, at the Agents' request, to furnish copies of the Prospectus to Nasdaq and each other exchange or market on which sales of the Shares were or are expected to be effected, in each case, as may be required by the rules or regulations of Nasdaq or such other exchange or market. The Company consents to the use of the Prospectus and any amendment or supplement thereto by the Agents during the Prospectus Delivery Period. If the Agents are required to deliver, under the Act (whether physically, deemed to be delivered pursuant to Rule 153 or through compliance with Rule 172 under the Act or any similar rule), a prospectus relating to the Shares after the nine-month period referred to in Section 10(a)(3) of the Act, or after that time a post-effective amendment to the Registration Statement is required pursuant to Item 512(a) of Regulation S-K under the Act, then, upon the request of the Agents, and at the Company's own expense, the Company shall prepare and deliver to the Agents as many copies as the Agents may request of an amended Registration Statement or amended and supplemented Prospectus complying with Item 512(a) of Regulation S-K or Section 10(a)(3) of the Act, as the case may be.

(g) *Permitted Free Writing Prospectuses.* The Company and the Operating Partnership represents and agrees that it has not made and, unless it obtains the prior written consent of the Agents, shall 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, which is required to be retained by the Company under Rule 433 of the Rules and Regulations; *provided* that the prior written consent of the Agents hereto shall be deemed to have been given in respect of each of the free writing prospectuses set forth in Schedule 3 hereto. Any such free writing prospectus consented to by the Agents is herein referred to as a "Permitted Free Writing Prospectus." The Company represents and agrees that (i) it has treated and shall treat, as the case may be, each Permitted Free Writing Prospectus as a "free writing prospectus" as defined in Rule 405 of the Rules and Regulations and (ii) it has complied and shall comply, as the case may be, with the requirements of Rules 164 and 433 of the Act applicable to any Permitted Free Writing Prospectus, including, without limitation, in respect of timely filing with the Commission, legending and record keeping. The Company agrees not to take any action that would result in the Agents or the Company being required to file pursuant to Rule 433(d) under the Act a free writing prospectus prepared by or on behalf of the Agents that the Agents otherwise would not have been required to file thereunder.

(h) *Registration Statement Renewal Deadline.* If, immediately prior to the third anniversary of the initial effective date of the Registration Statement relating to the Shares (the “Renewal Deadline”), any of the Shares remain unsold by the Agents, the Company shall prior to the Renewal Deadline (i) file, if it has not already done so (subject to subsection (a) of this Section 3), a new shelf registration statement relating to the Shares or a new shelf registration statement together with a new prospectus supplement relating to the Shares, in either case in a form satisfactory to the Agents, (ii) use its best efforts to cause such registration statement to be declared effective within 60 days after the Renewal Deadline (if the Company is not then eligible to file an automatic shelf registration statement) and (iii) take all other action necessary or appropriate to permit the public offering and sale of the Shares to continue as contemplated herein and in the expired registration statement relating to the Shares. References herein to the Registration Statement relating to the Shares shall include any new shelf registration statement contemplated by this Section 3(h) and references to the Prospectus Supplement relating to the Shares shall include any new prospectus supplement contemplated by this Section 3(h).

(i) *Notice of Inability to Use Automatic Shelf Registration Statement Form.* If, at any time when the Shares remain unsold by the Agents, the Company receives from the Commission a notice pursuant to Rule 401(g)(2) of the Rules and Regulations or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company shall (i) promptly notify the Agents, (ii) promptly file a new registration statement or post-effective amendment to the existing Registration Statement on the proper form relating to the Shares, in a form satisfactory to the Agents and subject to subsection (a) of this Section 3, (iii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable, and (iv) promptly notify the Agents upon such effectiveness. The Company shall take all other action necessary or appropriate to permit the public offering and sale of the Shares to continue as contemplated herein and in the Registration Statement that was the subject of the notice pursuant to Rule 401(g)(2) or for which the Company has otherwise become ineligible to use. References herein to the Registration Statement relating to the Shares shall include such new registration statement or post-effective amendment, as the case may be.

(j) *Filing Fees.* The Company agrees to pay the required Commission filing fees relating to the Shares within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

(k) *Compliance with Blue Sky Laws.* The Company and the Operating Partnership shall cooperate with the Agents and counsel therefor in connection with the registration or qualification (or the obtaining of exemptions therefrom) of the Shares for the offering and sale under the securities or Blue Sky laws of such jurisdictions as the Agents may request, including, without limitation, the provinces and territories of Canada and other jurisdictions outside the United States, and to continue such registration or qualification in effect so long as necessary under such laws for the distribution of the Shares; *provided, however,* that in no event shall the Company 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 in any jurisdiction where it is not now so subject (except service of process with respect to the offering and sale of the Shares).

(l) *Delivery of Financial Statements.* During the period of five years commencing on the later of the date hereof and the effective date of the Registration Statement for the distribution of the Shares, the Company and the Operating Partnership shall furnish to the Agents 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 any class of its capital stock, and shall furnish to the Agents a copy of each annual or other report it shall be required to file with the Commission.

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

(n) *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 Agents, all costs and expenses incident to the performance of the obligations of the Company under this Agreement, including, without limitation, costs and expenses of or relating to (i) the preparation, printing and filing of the Registration Statement and exhibits to it, each Permitted Free Writing Prospectus, the Prospectus and any amendment or supplement to the Registration Statement or the Prospectus (including the filing fees payable to the Commission relating to the Shares within the time required by Rule 456 of the Rules and Regulations), (ii) the preparation and delivery of certificates representing the Shares, (iii) the printing of this Agreement, (iv) furnishing (including costs of shipping, mailing and courier) such copies of the Registration Statement, the 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 Agents, (v) the listing of the Shares on Nasdaq, (vi) any filings required to be made by the Agents with FINRA, and the fees, disbursements and other charges of counsel for the Agents in connection therewith, (vii) the registration or qualification of the Shares for offer and sale under the Act and the securities or Blue Sky laws of such jurisdictions designated pursuant to subsection (k) of this Section 3, including the fees, disbursements and other charges of counsel to the Agents in connection therewith, and, if requested by the Agents, the preparation and printing of preliminary, supplemental and final Blue Sky or Legal Investment memoranda, (viii) counsel to the Company, (ix) The Depository Trust Company and any other depository, transfer agent or registrar for the Shares, (x) KPMG LLP and PricewaterhouseCoopers LLP (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, (xii) all out-of-pocket fees, disbursements and other charges of the Agents incurred in connection with the offering, including, without limitation, the fees and disbursements of counsel to the Agents and (xiii) all fees, costs and expenses for consultants used by the Company in connection with the offering; *provided, however* the fees and expenses of Agents' counsel subject to reimbursement by the Company pursuant to clause (xii) of this Section 3(n): (A) shall not exceed \$100,000 with respect to the establishment of the at-the-market program contemplated by this Agreement, including the negotiation, preparation and execution of this Agreement, and (B) shall not exceed \$25,000 per year (with the first such year commencing on the date of execution of this Agreement) with respect to the ongoing implementation of the at-the-market program contemplated by this Agreement. For the avoidance of doubt, the parties acknowledge that except as provided in this Section 3(n) and Section 7 hereof, the Agents will pay all of their own out-of-pocket costs and expenses incurred in connection with entering into this Agreement and the transactions contemplated by this Agreement.

(o) *No Stabilization or Manipulation.* The Company shall not at any time, directly or indirectly (including, without limitation, through the Subsidiaries), take any action intended to cause or result in, or which might reasonably be expected to cause or result in, or which will constitute, stabilization or manipulation, under the Act or otherwise, of the price of the shares of Preferred Stock to facilitate the sale or resale of any of the Shares.

(p) *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 Prospectus under “Use of Proceeds.”

(q) *Clear Market.* The Company shall not offer to sell, sell, pledge, hypothecate, contract or agree to sell, purchase any option to sell, grant any option for the purchase of, lend, or otherwise dispose of, directly or indirectly, any shares of Preferred Stock or any securities convertible into or exercisable or exchangeable for Preferred Stock or warrants or other rights to acquire shares of Preferred Stock or any other securities of the Company that are substantially similar to the Preferred Stock (excluding, for the avoidance of doubt, Common Stock) or permit the registration under the Act of any shares of Preferred Stock, in each case without giving the Agents at least three business days’ prior written notice specifying the nature and date of such proposed transaction. Notwithstanding the foregoing, the Company may (i) register the offering and sale of the Shares through the Agents pursuant to this Agreement, (ii) issue shares of Preferred Stock upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof and referred to in the Prospectus, (iii) offer, issue and sell shares of 7.50% Series A Cumulative Redeemable Perpetual Preferred Stock, \$0.01 par value per share (the “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, (iv) issue shares of Preferred Stock, options to purchase Preferred Stock or other permitted awards granted pursuant to existing equity incentive compensation plans of the Company or (v) issue shares of Preferred Stock pursuant to any non-employee director stock plan, dividend reinvestment plan or stock purchase plan of the Company. If notice of a proposed transaction is provided by the Company pursuant to this subsection (q), the Agents may suspend activity of the transactions contemplated by this Agreement for such period of time as may be requested by the Company or as may be deemed appropriate by the Agents.

(r) *Stock Exchange Listing.* The Company shall use its best efforts to cause the Shares to be listed on Nasdaq and to maintain such listing.

(s) *Additional Notices.* The Company shall notify the Agents immediately after it shall have received notice or obtained knowledge of any information or fact that would alter or affect any opinion, certificate, letter or any other document provided to the Agents pursuant to Section 4 below.

(t) *Representation Date Certificates.* Upon commencement of the offering of the Shares under this Agreement (and upon the commencement of the offering of the Shares under this Agreement following the termination of a suspension of sales hereunder), and each time that (i) the Registration Statement or the Prospectus is amended or supplemented (other than by the filing with the Commission of any document incorporated by reference therein (excluding supplements not related to the Shares), which shall be subject to the provisions of subclause (ii) below, and other than a prospectus supplement filed pursuant to Rule 424(b) under the Act, relating solely to the offering of securities pursuant to the Registration Statement other than the Shares), (ii) there is filed with the Commission any document incorporated by reference into the Prospectus (other than a Current Report on Form 8-K, unless the Agents shall otherwise reasonably request), (iii) the Agents may reasonably request and (iv) Shares are delivered to the Agents pursuant to a Terms Agreement (such commencement date, any such recommencement date, if applicable, and each such date referred to in clauses (i), (ii), (iii) and (iv) above, except as otherwise agreed between the Company and the Agents, a “Representation Date”), to furnish or cause to be furnished to the Agents forthwith a certificate dated and delivered as of such date, in form reasonably satisfactory to the Agents, to the effect that the statements contained in the certificate(s) referred to in Section 4(c) are true and correct at the time of such commencement, recommencement, amendment, supplement or filing, as the case may be, as though made at and as of such time and modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such certificate.

(u) *Company Counsel Legal Opinions.* On each Representation Date, the Company shall cause to be furnished to the Agents, addressed to the Agents and in form and substance satisfactory to the Agents, written opinions of Proskauer Rose LLP, outside counsel for the Company, and a written opinion of Venable LLP, Maryland counsel for the Company, as described in Section 4(d), to the effect set forth in Exhibit C-1, Exhibit C-2, Exhibit C-3 and Exhibit C-4 hereto but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion. In lieu of delivering such an opinion for dates subsequent to the commencement of the offering of the Shares under this Agreement such counsel may furnish the Agents with a letter (a “Reliance Letter”) to the effect that the Agents may rely on a prior opinion delivered under this Section 3(u) to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of such subsequent date).

(v) *Comfort Letters.* On each Representation Date, the Company shall cause the Accountants to deliver to the Agents the comfort letter(s) described in Section 4(f).

(w) *Due Diligence.* The Company shall reasonably cooperate with any reasonable due diligence review requested by the Agents or their counsel from time to time in connection with the transactions contemplated hereby or any Terms Agreement, including, without limitation, (i) prior to the open of trading on each intended Purchase Date and any Time of Sale or Settlement Date, making available appropriate corporate officers of the Company and, upon reasonable request, representatives of the Accountants for an update on diligence matters with representatives of the Agents and their counsel and (ii) at each Representation Date or otherwise as the Agents may reasonably request, providing information and making available documents and appropriate corporate officers of the Company and representatives of the Accountants for one or more due diligence sessions with representatives of the Agents and their counsel.

(x) *Reservation of the Shares.* The Company shall reserve and keep available at all times, free of preemptive rights, Shares for the purpose of enabling the Company to satisfy its obligations hereunder.

(y) *Trading.* The Company hereby consents to any Agent trading in the Preferred Stock for such Agent's own account and for the account of its clients at the same time as sales of the Shares pursuant to this Agreement.

(z) *Deemed Representations and Warranties.* The Company hereby agrees that each acceptance by it of an offer to purchase Shares hereunder shall be deemed to be (i) an affirmation to the Agents that the representations and warranties of the Company contained in or made pursuant to this Agreement are true and correct as of the date of such acceptance as though made at and as of such date and (ii) an undertaking that such representations and warranties will be true and correct as of the Time of Sale and the Settlement Date for the Shares relating to such acceptance as though made at and as of each of such dates (except that such representations and warranties shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to the date of such acceptance, such Time of Sale or such Settlement Date, as the case may be).

(aa) *Board Authorization.* Prior to delivering notice of the proposed terms of an Agency Transaction or a Principal Transaction pursuant to Section 1 (or at such time as otherwise agreed between the Company and the Agents), the Company shall have (i) obtained from its board of directors or a duly authorized committee established thereby all necessary corporate authority for the sale of the Shares pursuant to the relevant Agency Transaction or Principal Transaction, as the case may be, and (ii) provided to the Agents a copy of the relevant board resolutions or other authority.

(bb) *Offer to Refuse to Purchase.* If to the knowledge of the Company any condition set forth in Section 4(a) of this Agreement shall not have been satisfied on the applicable Settlement Date, the Company shall offer to any person who has agreed to purchase Shares from the Company as the result of an offer to purchase solicited by the Agents the right to refuse to purchase and pay for such Shares.

(cc) *Exchange Act Reports.* The Company shall, subject to subsection (a) of this Section 3, (i) timely file all reports and any definitive proxy or information statements required to be filed by the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date hereof and for the duration of the Prospectus Delivery Period and (ii) disclose in its quarterly reports on Form 10-Q and in its annual report on Form 10-K a summary detailing, for the relevant reporting period, the number of Shares sold through or to the Agents under this Agreement, the net proceeds received by the Company from such sales and the compensation paid by the Company to the Agents with respect to such sales. In lieu of compliance with the requirement set forth in clause (ii) of the immediately preceding sentence, the Company may prepare a prospectus supplement with such summary information and, at least once a quarter and subject to subsection (a) of this Section 3, file such prospectus supplement pursuant to Rule 424(b) under the Act (and within the time periods required by Rule 424(b) and Rule 430A, 430B or 430C under the Act).

(dd) *REIT Qualification.* The Company will use its reasonable 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.

4. *Conditions of the Agents' Obligations.* The obligations of each Agent hereunder are subject to (i) the accuracy of the representations and warranties of the Company and the Operating Partnership on the date hereof, on each Representation Date and as of each Time of Sale and Settlement Date, (ii) the performance by the Company and the Operating Partnership of their obligations hereunder and (iii) the following additional conditions:

(a) *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 best knowledge of the Company, threatened by the Commission, and the Company shall not have received from the Commission any notice pursuant to Rule 401(g)(2) of the Act objecting to use of the automatic shelf registration statement form, (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 or the Prospectus shall have been filed unless a copy thereof was first submitted to the Agents and the Agents did not object thereto.

(b) *No Material Adverse Effect.* Since the date of the most recent financial statements of the Company included or incorporated by reference in the Registration Statement and the Prospectus, except as described in the Registration Statement and the Prospectus, there shall not have been a Material Adverse Effect.

(c) *Officers' Certificates.* The Agents shall have received, on each Representation Date, one or more accurate certificates, signed by an executive officer of the Company, in form and substance satisfactory to the Agents, to the effect set forth in clauses (a) and (b) above and to the effect that:

(i) each signer of such certificate has carefully examined the Registration Statement, the Prospectus (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Prospectus) and each Permitted Free Writing Prospectus, if any;

(ii) as of such date and as of each Time of Sale subsequent to the immediately preceding Representation Date, if any, neither the Registration Statement, the Prospectus nor any Permitted Free Writing Prospectus contained any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(iii) each of the representations and warranties of the Company and the Operating Partnership contained in this Agreement are, as of such date and each Time of Sale subsequent to the immediately preceding Representation Date, if any, true and correct, except to the extent such representation or warranty speaks as of a specific date, in which case, such representation or warranty was true and correct as of such specific date; and

(iv) each of the covenants and agreements required herein to be performed by the Company and the Operating Partnership on or prior to such date has been duly, timely and fully performed and each condition herein required to be complied with by the Company and the Operating Partnership on or prior to such date has been duly, timely and fully complied with.

(d) *Opinions of Counsel to the Company.* The Agents shall have received, on each Representation Date, written opinions of Proskauer Rose LLP, outside counsel for the Company, and a written opinion of Venable LLP, Maryland counsel for the Company, or other counsel satisfactory to the Agents, in form and substance satisfactory to the Agents, and addressed to the Agents, to the effect set forth in Exhibit C-1, Exhibit C-2, Exhibit C-3 and Exhibit C-4.

(e) *Opinion of Counsel to the Agents.* The Agents shall have received, on each Representation Date, an opinion of Mayer Brown LLP, outside counsel for the Agents such date and addressed to the Agents, in form and substance reasonably satisfactory to the Agents.

(f) *Accountants' Comfort Letter.* The Agents shall have received, on each Representation Date, letters addressed to the Agents and in form and substance reasonably satisfactory to the Agents, (i) confirming that the Accountants are an independent registered public accounting firm within the meaning of the Act, the Exchange Act and the Public Company Accounting Oversight Board ("PCAOB"), (ii) stating, as of such date, the conclusions and information of the type ordinarily included in accountants' "comfort letters" to sales agents in connection with registered "at the market" offerings with respect to the audited and unaudited financial statements and certain other financial information contained or incorporated by reference in the Registration Statement and the Prospectus (the first such letter, the "Initial Comfort Letter") and (iii) in the case of any such letter after the Initial Comfort Letter, updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, as amended or supplemented to the date of such letter.

(g) *Due Diligence.* The Company shall have complied with all of its due diligence obligations required pursuant to Section 3(w).

(h) *Articles Supplementary.* The Company shall have filed the New Articles Supplementary with the SDAT.

(i) *Compliance with Blue Sky Laws.* The Shares shall be qualified for sale in such states and jurisdictions as the Agents may reasonably request, including, without limitation, the provinces and territories of Canada and other jurisdictions outside the United States, and each such qualification shall be in effect and not subject to any stop order or other proceeding on the relevant Representation Date.

(j) *Stock Exchange Listing.* The Shares shall have been approved for listing on Nasdaq, subject only to notice of issuance at or prior to the applicable Settlement Date.

(k) *Additional Certificates.* The Company shall have furnished to the Agents such certificate or certificates, in addition to those specifically mentioned herein, as the Agents may have reasonably requested as to the accuracy and completeness at each Representation Date of any statement in the Registration Statement or the Prospectus or any documents filed under the Exchange Act and deemed to be incorporated by reference into the Prospectus, as to the accuracy at such Representation 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 Agents.

5. Indemnification.

(a) *Indemnification of the Agents.* The Company and the Operating Partnership, jointly and severally, agree to indemnify and hold harmless each Agent, the directors, officers, employees, counsel and agents of each Agent and each person, if any, who controls such Agent within the meaning of Section 15 of the Act or Section 20 of the Exchange Act from and against any and all losses, claims, liabilities, expenses and damages (including, without limitation, 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 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 under the Act, 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 Permitted Free Writing Prospectus 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 the Agents and is based on an untrue statement or omission or alleged untrue statement or omission made in reliance on and in conformity with information relating to the Agents furnished in writing to the Company by the Agents expressly for inclusion in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus. The indemnity obligation in this Section 5(a) is in addition to any liability that the Company or the Operating Partnership might otherwise have under applicable law.

(b) *Indemnification of the Company and the Operating Partnership.* Each Agent, severally and not jointly, agrees to indemnify and hold harmless the Company and the Operating Partnership, their agents, each person, if any, who controls the Company within the meaning of Section 15 of the 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 in Section 5(a) from the Company and the Operating Partnership to the Agents, 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 or omission made in reliance on and in conformity with information relating to the Agents furnished in writing to the Company by the Agents expressly for inclusion in the Registration Statement, any Permitted Free Writing Prospectus or the Prospectus. The indemnity obligation in this Section 5(b) is in addition to any liability that the Agents might otherwise have under applicable law.

(c) *Indemnification Procedures.* Any party that proposes to assert the right to be indemnified under this Section 5 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 5, 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 5 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) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) 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 counsel (in addition to any local counsel) 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 as they are incurred. 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 5 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising or that may arise out of such claim, action or proceeding and (ii) 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 5(c), the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such 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 5 is applicable in accordance with its terms but for any reason is held to be unavailable to an indemnified party under subsections (a) and (b) of this Section 5, the Company, the Operating Partnership and the Agents shall contribute to the total losses, claims, liabilities, expenses and damages (including, without limitation, 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 or the Operating Partnership from persons other than the Agents, such as persons who control the Company within the meaning of the Act, officers of the Company and directors of the Company, who also may be liable for contribution) to which the Company and the Operating Partnership, on the one hand, and the Agents, on the other hand, 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 Agents, on the other hand. The relative benefits received by the Company and the Operating Partnership, on the one hand, and the Agents, on the other hand 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 sum of (i) the total compensation to the Agents pursuant to Section 1(a)(vii) (in the case of one or more Agency Transactions hereunder) and (ii) the underwriting discounts and commissions received by the Agents as set forth in the table on the cover page of the Prospectus (in the case of one or more Principal Transactions pursuant to Terms Agreements). 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 Agents, on the other hand, 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 Agents, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. 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 subsection (d) shall be deemed to include, for purpose of this subsection (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 subsection (d), the Agents shall not be required to contribute any amount in excess of the sum of (i) the total compensation to the Agents pursuant to Section 1(a)(vii) (in the case of one or more Agency Transactions hereunder) and (ii) the underwriting discounts and commissions received by the Agents as set forth in the table on the cover page of the Prospectus (in the case of one or more Principal Transactions pursuant to Terms Agreements), and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this subsection (d), any person who controls a party to this Agreement within the meaning of the Act will have the same rights to contribution as that party, and each officer of the Company who signed the Registration Statement 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 subsection (d), will notify any such party from whom contribution may be sought, but the omission so to notify will not relieve the party from whom contribution may be sought from any other obligation it may have under this subsection (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 obligations of the Company and the Operating Partnership under this Section 5 shall be in addition to any liability which the Company and the Operating Partnership may otherwise have and shall extend, upon the same terms and conditions, to any affiliate of each Agent and each person, if any, who controls each Agent or any such affiliate within the meaning of the Act; and the obligations of the Agents under this Section 5 shall be in addition to any liability which it may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and to each person, if any, who controls the Company within the meaning of the Act. The indemnity and contribution agreements contained in this Section 5 and the representations and warranties of the Company 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 Agents, (ii) acceptance of any of the Shares and payment therefor or (iii) any termination of this Agreement.

6. Termination.

(a) The Company may terminate this Agreement, in its entirety or as to any particular Agent, in its sole discretion at any time upon giving prior written notice to the Agents. Any such termination shall be without liability of any party to the other party, except that (i) with respect to any pending sale, the obligations of the Company, including, without limitation, in respect of compensation to the Agents, shall remain in full force and effect notwithstanding such termination; and (ii) the provisions of Sections 2, 3(n), 5, and 7(j) of this Agreement shall remain in full force and effect notwithstanding such termination. In the case of any sale by the Company pursuant to a Terms Agreement, the obligations of the Company pursuant to such Terms Agreement may not be terminated by the Company without the prior written consent of the Agents party to such Terms Agreement.

(b) Each Agent may terminate this Agreement in its sole discretion at any time upon giving prior written notice to the Company. Any such termination shall be without liability of any party to the other party, except that (i) with respect to any pending sale, the obligations of the Company, including, without limitation, in respect of compensation of the Agents, shall remain in full force and effect notwithstanding such termination; and (ii) the provisions of Sections 2, 3(n), 5, and 7(j) of this Agreement shall remain in full force and effect notwithstanding such termination. In the case of any purchase by any of the Agents pursuant to a Terms Agreement, such Agent may, by written notice to the Company, terminate its obligations pursuant to such Terms Agreement at any time prior to or on the Settlement Date if, since the time of execution of the Terms Agreement or the respective dates as of which information is given in the Registration Statement and the Prospectus:

(i) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market;

(ii) trading generally shall have been suspended or limited on or by, as the case may be, any “national securities exchange” (as defined in the Exchange Act), or minimum or maximum prices shall have been generally established on any 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 any such exchange or by order of the Commission or any court or other governmental authority;

(iii) a general banking moratorium shall have been declared by any of federal, New York or Delaware authorities;

(iv) 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;

(v) if the Company or any of the Subsidiaries shall have sustained a loss material or substantial to the Company or any of the Subsidiaries 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; or

(vi) if there shall have been a Material Adverse Effect.

(c) This Agreement shall remain in full force and effect until the earliest to occur of (i) termination of this Agreement pursuant to subsection (a) or (b) above or otherwise by mutual written agreement of the parties and (ii) such date that the aggregate gross sales proceeds of the Shares sold pursuant to this Agreement (including, without limitation, one or more Terms Agreements pursuant hereto) equals the Maximum Amount, in each case except that (x) with respect to any pending sale, the obligations of the Company, including, without limitation, in respect of compensation of the Agents, shall remain in full force and effect notwithstanding such termination; and (y) the provisions of Sections 2, 3(n), 5, and 7(j) of this Agreement shall remain in full force and effect notwithstanding such termination.

(d) Any termination of this Agreement shall be effective on the date specified in the notice of termination; *provided* that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agents or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Shares, such sale shall settle in accordance with the provisions of Section 1 (in the case of an Agency Transaction) or in accordance with the relevant Terms Agreement (in the case of a Principal Transaction).

7. 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 and, if to the Agents, shall be sufficient in all respects if delivered or sent to (i) BMO Capital Markets Corp., 3 Times Square, 25th Floor, New York, New York 10036, Attention: Equity Capital Markets Desk, with a copy to the Legal Department, Fax No. (212) 702-1205; BBVA Securities Inc., 1345 Avenue of the Americas, 44th Floor New York, New York 10105, Attention: US Capital Markets; B. Riley Securities, Inc., 299 Park Avenue, 21st Floor, New York, New York 10171, Attention: General Counsel, Fax No. (212) 457-9947; Citizens Capital Markets, Inc., 600 Washington Blvd., 11th Floor, Stamford, Connecticut 06901, Attention: Equity Syndicate Department, Fax No. (203) 437-6913; D.A. Davidson & Co., 757 Third Avenue, suite 1902, New York, New York 10179; KeyBanc Capital Markets Inc., 127 Public Square, 4th Floor, Cleveland, Ohio 44114, Attention: Equity Capital Markets, Fax No. (216) 689-0845; Ladenburg Thalmann & Co. Inc., 277 Park Ave., 26th Floor, New York, New York 10172, Attention: Steven Kaplan, Managing Director, Fax No. (212) 409-2169; and Truist Securities, Inc., 3333 Peachtree Road NE, 11th Floor, Atlanta, Georgia 30326, Attention: Equity Capital Markets, Fax No. (404) 926-5872; and, if to the Company or the Operating Partnership it shall be sufficient in all respects if delivered or sent to the Company at the offices of the Company at American Finance Trust, Inc., 650 Fifth Avenue, New York, New York 10019, Attention: Legal Department, Fax No. (646) 861-7743. Any such notice shall be effective only upon receipt. Any notice under Section 5 may be made by telecopy or telephone, but if so made shall be subsequently confirmed in writing (which may include, in the case of the Agents, electronic mail to any Authorized Company Representative).

(b) *Recognition of U.S. Special Resolution Regimes.* In the event that any Agent that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Agent of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States. In the event that any Agent that is a Covered Entity or a BHC Act Affiliate of such Agent becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Agent are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. As used in this Section, the following terms have the respective meanings set forth below: (i) “BHC Act Affiliate” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k); (ii) “Covered Entity” means any of (x) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b), (y) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b), or (z) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b); (iii) “Default Rights” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and (iv) “U.S. Special Resolution Regime” means each of (x) the Federal Deposit Insurance Act of 1950, as amended, and the regulations promulgated thereunder and (y) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended, and the regulations promulgated thereunder.

(c) *No Third Party Beneficiaries.* The Company and the Operating Partnership acknowledge and agree that each Agent is acting solely in the capacity of an arm’s length contractual counterparty to the Company and the Operating Partnership with respect to the offering of Shares contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person. Additionally, the Agents are not advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction in connection with the transactions contemplated by this Agreement or any matters related thereto. The Company and the Operating Partnership shall consult with their own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Agents shall have no responsibility or liability to the Company with respect thereto. Any review by the Agents of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Agents and shall not be on behalf of the Company and/or the Operating Partnership.

(d) *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 (including, without limitation, any Terms Agreement) shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Agents or any of their controlling persons and shall survive delivery of and payment for the Shares hereunder.

(e) *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 terms of the offering 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 Agents, on the other hand, (ii) in connection with the offering contemplated by this Agreement and the process leading to such transaction, each Agent owes no fiduciary duties to the Company, the Operating Partnership, or its securityholders, creditors, employees or any other party, (iii) each Agent has not assumed nor will it assume any advisory or fiduciary responsibility in favor of the Company with respect to the offering of the Shares contemplated by this Agreement or the process leading thereto (irrespective of whether any Agent or its affiliates has advised or is currently advising the Company on other matters) and no Agent had any obligation to the Company with respect to the offering of the Shares contemplated by this Agreement except the obligations expressly set forth in this Agreement, (iv) each Agent and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and (v) each Agent has 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 it deemed appropriate.

(f) *Adjustments for Stock Splits.* The parties acknowledge and agree that all share related numbers contained in this Agreement shall be adjusted to take into account any stock split effected with respect to the Shares.

(g) *Governing Law.* THIS AGREEMENT AND EACH TERMS AGREEMENT, AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING UNDER OR RELATED TO THIS AGREEMENT OR SUCH TERMS 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 or any Terms 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.

(h) *Counterparts.* This Agreement and each Terms 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.

(i) *Survival of Provisions Upon Invalidity of Any Single Provision.* In case any provision in this Agreement or any Terms 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.

(j) *Waiver of Jury Trial.* Each of the Company, the Operating Partnership and the Agents hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this Agreement, any Terms Agreement or the transactions contemplated hereby or thereby.

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

(l) *Entire Agreement.* Other than the terms set forth in each Transaction Notice delivered hereunder and each Terms Agreement executed and delivered pursuant hereto, 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. Except for any termination of any particular Agent by the Company pursuant to Section 6(a), neither this Agreement nor any Terms Agreement may be amended or otherwise modified or any provision hereof waived except by an instrument in writing signed by the Agents, the Operating Partnership and the Company.

(m) *Successors and Assigns.* This Agreement shall be binding upon each Agent and the Company and the Operating Partnership and their successors and assigns and any successor or assign of any substantial portion of the Company's and the Operating Partnership's and each Agent's respective business or assets.

Please confirm that the foregoing correctly sets forth the agreement between the Company, the Operating Partnership and the Agents.

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, Treasurer and Secretary

[Signature Page to the Equity Distribution 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

BBVA SECURITIES INC.

By: /s/ Ryan Donovan

Name: Ryan Donovan

Title: Managing Director

B. RILEY SECURITIES, INC.

By: /s/ Patrice McNicoll

Name: Patrice McNicoll

Title: SMD & Co-Head of Investment Banking

CITIZENS CAPITAL MARKETS, INC.

By: /s/ Mark Sanko

Name: Mark Sanko

Title: Managing Director

D.A. DAVIDSON & CO.

By: /s/ Marge A. Sitzmann

Name: Marge A. Sitzmann

Title: Managing Director

KEYBANC CAPITAL MARKETS INC.

By: /s/ Paul Hodermarsky

Name: Paul Hodermarsky

Title: Managing Director, Equity Capital Markets

LADENBURG THALMANN & CO., INC.

By: /s/ Steve Kaplan

Name: Steve Kaplan

Title: Head of Capital Markets

TRUIST SECURITIES, INC.

By: /s/ Keith Carpenter

Name: Keith Carpenter

Title: Director

[Signature Page to the Equity Distribution Agreement]

SCHEDULE 1

AUTHORIZED COMPANY REPRESENTATIVES

Edward M. Weil, Jr.

Katie P. Kurtz

SCHEDULE 2

The fourth sentence of the first paragraph under the “Plan of Distribution; Conflicts of Interest” in the Prospectus Supplement regarding stabilization transactions.

SCHEDULE 3

ISSUER FREE WRITING PROSPECTUSES

None as of the date of the Equity Distribution Agreement to which this Schedule is attached.

SCHEDULE 5

COMPENSATION

The Agents shall be paid compensation in an agreed-upon amount not to exceed 1.5% of the gross proceeds from the sale of Shares pursuant to the terms of this Agreement.

EXHIBIT A

[Company Letterhead]

[____], 20[__]

[•]

VIA EMAIL

TRANSACTION NOTICE

Ladies and Gentlemen:

The purpose of this Transaction Notice is to propose certain terms of the Agency Transaction entered into with [•] under, and pursuant to, that certain Equity Distribution Agreement between the American Finance Trust, Inc., a Maryland corporation (the “Company”), and American Finance Operating Partnership, L.P., a Delaware limited partnership (the “Operating Partnership”), BMO Capital Markets Corp., BBVA Securities Inc., B. Riley Securities, Inc., Citizens Capital Markets, Inc., D.A. Davidson & Co., KeyBanc Capital Markets Inc., Ladenburg Thalmann & Co. Inc., and Truist Securities, Inc. (each an “Agent” and collectively, the “Agents”), dated January [•], 2021 (the “Agreement”). Please indicate your acceptance of the proposed terms below. Upon acceptance, the particular Agency Transaction to which this Transaction Notice relates shall supplement, form a part of, and be subject to, the Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

The terms of the particular Agency Transaction to which this Transaction Notice relates are as follows:

Trading Day(s) on which Shares may be Sold:	[____], 20[___], [____], 20[___] . . . [____], 20[___]
Maximum Number of Shares to be Sold in the Aggregate:	[_____]
Maximum Number of Shares to be Sold on each Trading Day:	[_____]
Floor Price:	USD[____]
Compensation:	[_____] % of the gross proceeds from the sale of Shares

[Remainder of Page Intentionally Blank]

Very truly yours,

AMERICAN FINANCE TRUST, INC.

By: _____
Name:
Title:

AMERICAN FINANCE OPERATING PARTNERSHIP, L.P.

By: _____
Name:
Title:

Accepted and agreed as of
the date first above written:

[•]

By: _____
Name:
Title:

EXHIBIT B

[NAME OF COMPANY]

7.375% Series C Cumulative Redeemable Perpetual Preferred Stock

TERMS AGREEMENT

[____], 20[__]

[•]

Ladies and Gentlemen:

American Finance Trust, Inc., a Maryland corporation (the “Company”), proposes, subject to the terms and conditions stated herein, in the Schedule hereto and in the Equity Distribution Agreement, dated January [●], 2021 (the “Equity Distribution Agreement”), between the Company and American Finance Operating Partnership, L.P., a Delaware limited partnership (the “Operating Partnership”), BMO Capital Markets Corp., BBVA Securities Inc., B. Riley Securities, Inc., Citizens Capital Markets, Inc., D.A. Davidson & Co., KeyBanc Capital Markets Inc., Ladenburg Thalmann & Co. Inc., and Truist Securities, Inc. (each an “Agent” and collectively, the “Agents”), to issue and sell to [•] [____] shares of the Company’s 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock (the “Purchased Shares”) [, and, solely for the purpose of covering over-allotments, to grant to [•] the option to purchase an additional [____] shares of such preferred stock (the “Additional Shares”)]. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

[•] shall have the right to purchase from the Company all or a portion of the Additional Shares as may be necessary to cover over-allotments made in connection with the offering of the Purchased Shares at the same purchase price per share to be paid by [•] to the Company for the Purchased Shares. This option may be exercised by [•] at any time (but not more than once) on or before the thirtieth day following the date of this Terms Agreement, by written notice to the Company. Such notice shall set forth the aggregate number of Additional Shares as to which the option is being exercised, and the date and time when the Additional Shares are to be delivered (such date, the “Option Settlement Date”); *provided, however*, that the Option Settlement Date shall not be earlier than the Settlement Date (as set forth in the Schedule hereto) nor earlier than the second business day after the date on which the option shall have been exercised nor later than the fifth business day after the date on which the option shall have been exercised. Payment of the purchase price for the Additional Shares shall be made at the Option Settlement Date in the same manner and at the same office as the payment for the Purchased Shares.]

Each of the provisions of the Equity Distribution Agreement not specifically related to the solicitation by [•], as agent of the Company, of offers to purchase Shares in Agency Transactions is incorporated herein by reference in its entirety, and shall be deemed to be part of this Terms Agreement to the same extent as if such provisions had been set forth in full herein.

An amendment to the Registration Statement, or a supplement to the Prospectus, as the case may be, relating to the Purchased Shares [and the Additional Shares], in the form heretofore delivered to [•] is now proposed to be filed with the Securities and Exchange Commission.

Subject to the terms and conditions set forth herein and in the Schedule hereto and subject the terms and conditions of the Equity Distribution Agreement incorporated herein as provided in the second immediately preceding paragraph, the Company agrees to issue and sell to [•], and [•] agrees to purchase from the Company, the Purchased Shares at the time and place and at the purchase price set forth in the Schedule hereto.

[Remainder of Page Intentionally Blank]

If the foregoing is in accordance with your understanding, please sign and return to us a counterpart hereof, whereupon this Terms Agreement, including those provisions of the Equity Distribution Agreement incorporated herein by reference, shall constitute a binding agreement between [•] and the Company.

AMERICAN FINANCE TRUST, INC.

By: _____
Name:
Title:

AMERICAN FINANCE OPERATING PARTNERSHIP, L.P.

By: _____
Name:
Title:

Accepted and agreed as of
the date first above written:

[•]

By: _____
Name:
Title:

Schedule to Terms Agreement

[Price to Public:
USD[__. __] per share]

Purchase Price by [•]:
USD[__. __] per share

Method of and Specified Funds for Payment of Purchase Price:
[By wire transfer to a bank account specified by the Company in same day funds.]

Method of Delivery:
[To [•]'s account, or the account of [•]'s designee, at The Depository Trust Company via DWAC in return for payment of the purchase price.]

Settlement Date:
[____], 20[__]

Closing Location:
[_____]

Documents to be Delivered:

The following documents referred to in the Equity Distribution Agreement shall be delivered as a condition to the closing (which documents shall be dated on or as of the date of the Terms Agreement to which this Scheduled is annexed):

- the officer's certificate referred to in Section 4(c);
- the legal opinions referred to in Section 4(d) and (e);
- the "comfort letters" referred to in Section 4(f); and
- such other documents as [•] shall reasonably request.

[Indemnity:
[_____]]

[Lockup:
In addition to, and without limiting the generality of, the covenant set forth in Section 3(q) of the Equity Distribution Agreement, [_____].]

AMERICAN FINANCE TRUST, INC.

AMENDMENT NO. 3 TO EQUITY DISTRIBUTION AGREEMENT

January 13, 2021

BMO Capital Markets Corp.
3 Times Square
New York, New York 10036

BBVA Securities Inc.
1345 Avenue of the Americas, 44th Floor
New York, New York 10105

B. Riley Securities, Inc.
299 Park Avenue, 21st Floor
New York, New York 10171

Citizens Capital Markets, Inc.
600 Washington Blvd., 11th Floor
Stamford, Connecticut 06901

KeyBanc Capital Markets Inc.
127 Public Square, 11th Floor
Cleveland, Ohio 44114

Ladenburg Thalmann & Co. Inc.
277 Park Avenue, 26th Floor
New York, New York 10172

Truist Securities, Inc.
3333 Peachtree Road NE, 11th Floor
Atlanta, Georgia 30326

D.A. Davidson & Co.
8 Third Street North
Great Falls, MT 59401

Ladies and Gentlemen:

Reference is made to the Equity Distribution Agreement, dated as of May 8, 2019, as amended by Amendment No. 1 to Equity Distribution Agreement, effective as of June 25, 2019, and by Amendment No. 2 to Equity Distribution Agreement, effective as of October 4, 2019 (the "*Agreement*"), by and among American Finance Trust, Inc., a Maryland corporation (the "*Company*"), and American Finance Operating Partnership, L.P., a Delaware limited partnership (the "*Operating Partnership*"), on the one hand, and BMO Capital Markets Corp., BBVA Securities Inc., B. Riley Securities, Inc. (f/k/a B. Riley FBR, Inc.), Citizens Capital Markets, Inc., KeyBanc Capital Markets Inc., Ladenburg Thalmann & Co. Inc., Truist Securities, Inc. (f/k/a SunTrust Robinson Humphrey, Inc.) and D.A. Davidson & Co. (together with the Company and the Operating Partnership, the "*Parties*") regarding the issuance and sale of the Company's 7.50% Series A Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, pursuant to the terms thereof. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

In connection with the foregoing, the Parties wish to amend the Agreement through this Amendment No. 3 to the Equity Distribution Agreement (this “Amendment”) to modify the definition of certain defined terms set forth in the Agreement with effect on and after the date hereof (the “Effective Date”).

SECTION 1. Amendment to the Agreement. The Parties hereby agree, from and after the Effective Date, that:

- a. The definition of the term “Maximum Amount” is hereby amended to read as follows: “an aggregate offering price of up to \$200,000,000 (the “Maximum Amount”).”
- b. The second sentence of Section 3(q) is hereby amended such that (a) the word “or” that precedes clause (v) is deleted and replaced with a comma, and (b) the following new clause (vi) is inserted at the end thereof: “or (vi) offer, issue and sell shares of 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, \$0.01 par value per share (the “Series C Preferred Stock”), to the public, through sales agents, pursuant to the Company’s “at the market” equity offering program for Series C Preferred Stock.”

SECTION 2. No Other Amendments; References to Agreements. Except as set forth in this Amendment, all other terms and provisions of the Agreement shall continue in full force and effect. All references to the Agreement in the Agreement or in any other document executed or delivered in connection therewith shall, from the date hereof, be deemed a reference to the Agreement as amended by this Amendment.

SECTION 3. Governing Law. THIS AMENDMENT, AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING UNDER OR RELATED TO THIS AMENDMENT, 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 Amendment 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.

SECTION 4. Counterparts. This Amendment may be signed in two or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 5. Survival of Provisions Upon Invalidity of Any Single Provision. In case any provision in this Amendment 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.

SECTION 6. Waiver of Jury Trial. Each of the Company, the Operating Partnership and the Agents hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this Amendment or the transactions contemplated hereby or thereby.

SECTION 7. Titles and Subtitles. The titles of the sections and subsections of this Amendment are for convenience and reference only and are not to be considered in construing this Amendment.

SECTION 8. Successors and Assigns. This Amendment shall be binding upon each Agent and the Company and the Operating Partnership and their successors and assigns and any successor or assign of any substantial portion of the Company’s and the Operating Partnership’s and each Agent’s respective business or assets.

[Signature Page Follows]

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, Treasurer and Secretary

[Signature Page to Amendment No. 3 to Equity Distribution 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

BBVA SECURITIES INC.

By: /s/ Ryan Donovan

Name: Ryan Donovan

Title: Managing Director

B. RILEY SECURITIES, INC.

By: /s/ Patrice McNicoll

Name: Patrice McNicoll

Title: SMD & Co-Head of Investment Banking

CITIZENS CAPITAL MARKETS, INC.

By: /s/ Mark Sanko

Name: Mark Sanko

Title: Managing Director

D.A. DAVIDSON & CO.

By: /s/ Marge A. Sitzmann

Name: Marge A. Sitzmann

Title: Managing Director

KEYBANC CAPITAL MARKETS INC.

By: /s/ Paul Hodermarsky

Name: Paul Hodermarsky

Title: Managing Director, Equity Capital Markets

LADENBURG THALMANN & CO., INC.

By: /s/ Steve Kaplan

Name: Steve Kaplan

Title: Head of Capital Markets

TRUIST SECURITIES, INC.

By: /s/ Keith Carpenter

Name: Keith Carpenter

Title: Director

[Signature Page to Amendment No. 3 to Equity Distribution Agreement]

AMERICAN FINANCE TRUST, INC.**ARTICLES SUPPLEMENTARY**

American Finance Trust, Inc., a Maryland corporation (the "Company"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: Under a power contained in Article V of the charter of the Company (the "Charter"), the Board of Directors of the Company (the "Board"), by duly adopted resolutions, reclassified 26,264,698.1465 authorized but unissued shares of Class B-1 Common Stock, \$0.01 par value per share, of the Company and 26,264,698.1465 authorized but unissued shares of Class B-2 Common Stock, \$0.01 par value per share, of the Company as additional shares (the "Additional Class A Common Shares") of Class A Common Stock, \$0.01 par value per share, of the Company (the "Class A Common Stock"), having the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption set forth in the Charter.

SECOND: The Additional Class A Common Shares have been classified and designated by the Board under the authority contained in the Charter. After giving effect to the classification of the Additional Class A Common Shares set forth herein, the total number of shares of Class A Common Stock that the Company has authority to issue is 300,000,000.

THIRD: Under a power contained in Article V of the Charter, the Board, by duly adopted resolutions classified 4,000,000 authorized but unissued shares of preferred stock, \$0.01 par value per share, of the Company (the "Preferred Stock") as additional shares (the "Additional Series A Preferred Shares") of 7.50% Series A Cumulative Redeemable Preferred Perpetual Stock, \$0.01 par value per share, of the Company (the "Series A Preferred Stock"), having the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption set forth in the Charter.

FOURTH: The Additional Series A Preferred Shares have been classified and designated by the Board under the authority contained in the Charter. After giving effect to the classification of the Additional Series A Preferred Shares set forth herein, the total number of shares of Series A Preferred Stock that the Company has authority to issue is 12,796,000.

FIFTH: Under a power contained in Article V of the Charter, the Board, by duly adopted resolutions classified 7,856,000 authorized but unissued shares of Preferred Stock as additional shares (the "Additional Series C Preferred Shares") of 7.375% Series C Cumulative Redeemable Preferred Perpetual Stock, \$0.01 par value per share, of the Company (the "Series C Preferred Stock"), having the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption set forth in the Charter.

SIXTH: The Additional Series C Preferred Shares have been classified and designated by the Board under the authority contained in the Charter. After giving effect to the classification of the Additional Series C Preferred Shares set forth herein, the total number of shares of Series C Preferred Stock that the Company has authority to issue is 11,536,000.

SEVENTH: These Articles Supplementary have been approved by the Board in the manner and by the vote required by law.

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

IN WITNESS WHEREOF, the Company has caused these Articles Supplementary to be executed under seal in its name and on its behalf by its Chief Executive Officer and President and attested to by its Chief Financial Officer, Secretary and Treasurer on this on this 13th day of January, 2021.

ATTEST:

AMERICAN FINANCE TRUST, INC.

By: /s/ Katie P. Kurtz

Name: Katie P. Kurtz

Title: Chief Financial Officer, Secretary and Treasurer

By: /s/ Edward M. Weil, Jr.

Name: Edward M. Weil, Jr.

Title: Chief Executive Officer and President

January 13, 2021

American Finance Trust, Inc.
405 Park Avenue
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 \$200,000,000 aggregate offering price of shares (the "Shares") of 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, \$0.01 par value per share (the "Series C Preferred Stock"), of the Company, 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"). The Shares are to be issued pursuant to the Prospectus Supplement and the Distribution Agreement (each as defined below) in one or more transactions deemed to be "at the market" offerings (each, an "Offering" and, collectively, the "Offerings") under Rule 415 of 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 (hereinafter collectively referred to as the "Documents"):

1. The Registration Statement;
 2. The Prospectus, dated July 20, 2018, as supplemented by a Prospectus Supplement, dated January 13, 2021 (collectively, the "Prospectus Supplement"), filed with the Commission pursuant to Rule 424(b) of the General Rules and Regulations promulgated under the 1933 Act;
 3. The charter of the Company (the "Charter"), certified by the State Department of Assessments and Taxation of Maryland (the "SDAT");
 4. The Amended and Restated Bylaws of the Company, certified as of the date hereof by an officer of the Company;
 5. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;
-

American Finance Trust, Inc.

January 13, 2021

Page 2

6. Resolutions adopted by the Board of Directors of the Company (the "Board") relating to, among other matters, (a) the authorization of the sale, issuance and registration of the Shares and the execution and delivery of the Distribution Agreement and (b) the delegation to a Trading Authorization Committee (the "Committee") of the power to determine, subject to certain parameters, the number of Shares and the offering price of each Share to be sold in each Offering (the "Resolutions"), certified as of the date hereof by an officer of the Company;

7. The Equity Distribution Agreement, dated as of the date hereof (the "Distribution Agreement"), by and among the Company, American Finance Operating Partnership, L.P., a Delaware limited partnership, and BMO Capital Markets Corp., BBVA Securities Inc., B. Riley Securities, Inc., Citizens Capital Markets, Inc., D.A. Davidson & Co., KeyBanc Capital Markets Inc., Ladenburg Thalmann & Co. Inc. and Truist Securities, Inc., as agents;

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

9. 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 any other 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 in violation of any restriction or limitation contained in Section 5.7 of Article V of the Charter.

6. Upon the issuance of any of the Shares, the total number of shares of Series C Preferred Stock issued and outstanding will not exceed the total number of shares of Series C Preferred Stock that the Company is then authorized to issue under the Charter.

7. The number of Shares, and the offering price of each Share, to be issued by the Company from time to time pursuant to the Distribution Agreement will be authorized and approved by the Board or the Committee in accordance with the Maryland General Corporation Law, the Charter, the Bylaws and the Resolutions (with such approvals referred to hereinafter as the "Corporate Proceedings") prior to the issuance thereof.

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 by the Company and, when issued and delivered against payment therefor in accordance with the Distribution Agreement, the Resolutions and the Corporate Proceedings, the Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the 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.

American Finance Trust, Inc.
January 13, 2021
Page 4

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 Offerings (the "Current Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Current Report and the said incorporation by reference 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



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

January 13, 2021

American Finance Trust, Inc.
405 Park Avenue
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 \$100,000,000 additional aggregate offering price of shares (the "Shares") of 7.50% Series A Cumulative Redeemable Perpetual Preferred Stock, \$0.01 par value per share (the "Series A Preferred Stock"), of the Company, 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"). The Shares are to be issued pursuant to the Prospectus Supplement and the Distribution Agreement (each as defined below) in one or more transactions deemed to be "at the market" offerings (each, an "Offering" and, collectively, the "Offerings") under Rule 415 of 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 (hereinafter collectively referred to as the "Documents"):

1. The Registration Statement;
2. The Prospectus, dated July 20, 2018, as supplemented by a Prospectus Supplement, dated May 8, 2019, and as further supplemented by Supplements, dated June 25, 2019, October 4, 2019 and the date hereof (collectively, the "Prospectus Supplement"), filed with the Commission pursuant to Rule 424(b) of the General Rules and Regulations promulgated under the 1933 Act;
3. The charter of the Company (the "Charter"), certified by the State Department of Assessments and Taxation of Maryland (the "SDAT");
4. The Amended and Restated Bylaws of the Company, certified as of the date hereof by an officer of the Company;

American Finance Trust, Inc.

January 13, 2021

Page 2

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

6. Resolutions adopted by the Board of Directors of the Company (the "Board") relating to, among other matters, (a) the authorization of the sale, issuance and registration of the Shares and the execution and delivery of the Distribution Agreement and (b) the delegation to a Trading Authorization Committee (the "Committee") of the power to determine, subject to certain parameters, the number of Shares and the offering price of each Share to be sold in each Offering (the "Resolutions"), certified as of the date hereof by an officer of the Company;

7. The Equity Distribution Agreement, dated as of May 8, 2019, as amended through Amendment No. 3, dated as of the date hereof (as amended, the "Distribution Agreement"), by and among the Company, American Finance Operating Partnership, L.P., a Delaware limited partnership, and BMO Capital Markets Corp., BBVA Securities Inc., B. Riley FBR, Inc., Citizens Capital Markets, Inc., KeyBanc Capital Markets Corp., Ladenburg Thalmann & Co. Inc., SunTrust Robinson Humphrey, Inc. and D.A. Davidson & Co., as agents;

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

9. 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 any other 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.

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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 in violation of any restriction or limitation contained in Section 5.7 of Article V of the Charter.

6. Upon the issuance of any of the Shares, the total number of shares of Series A Preferred Stock issued and outstanding will not exceed the total number of shares of Series A Preferred Stock that the Company is then authorized to issue under the Charter.

7. The number of Shares, and the offering price of each Share, to be issued by the Company from time to time pursuant to the Distribution Agreement will be authorized and approved by the Board or the Committee in accordance with the Maryland General Corporation Law, the Charter, the Bylaws and the Resolutions (with such approvals referred to hereinafter as the "Corporate Proceedings") prior to the issuance thereof.

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 by the Company and, when issued and delivered against payment therefor in accordance with the Distribution Agreement, the Resolutions and the Corporate Proceedings, the Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the 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.

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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 Offerings (the "Current Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Current Report and the said incorporation by reference 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

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

THIS SEVENTH AMENDMENT TO SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF AMERICAN FINANCE OPERATING PARTNERSHIP, L.P. (this "Amendment"), dated as of January 13, 2021, 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, on March 22, 2019, the General Partner, for itself and on behalf of any limited partners of the Partnership, entered into the Second Amendment to the Partnership Agreement (the "Second Amendment") to set forth the designations, allocations, preferences, conversion and other special rights, powers and duties of a new series of Partnership Units of the Partnership designated as the "7.50% Series A Cumulative Redeemable Perpetual Preferred Units" (the "Series A Preferred Units");

WHEREAS, the Series A Preferred Units were created and were initially issued in conjunction with the General Partner's initial issuance and sale of shares of its 7.50% Series A Cumulative Redeemable Perpetual Preferred Stock, \$0.01 par value per share (the "Series A Preferred Stock"), and, as such, the Series A Preferred Units are intended to have designations, preferences and other rights and terms that are substantially the same as those of the Series A Preferred Stock, all such that the economic interests of the Series A Preferred Units and the Series A Preferred Stock are substantially similar;

WHEREAS, through the date hereof, the General Partner has issued and sold 7,873,711 shares of Series A Preferred Stock, and, in connection therewith, the General Partner, pursuant to Section 4.02(b) of the Partnership Agreement, has contributed the net proceeds from the sales to the Partnership in exchange for, and has caused the Partnership to issue to the General Partner, 7,873,711 Series A Preferred Units;

WHEREAS, on December 16, 2020, the General Partner, for itself and on behalf of any limited partners of the Partnership, entered into the Sixth Amendment to the Partnership Agreement (the "Sixth Amendment") to set forth the designations, allocations, preferences, conversion and other special rights, powers and duties of a new series of Partnership Units designated as the "7.375% Series C Cumulative Redeemable Perpetual Preferred Units" (the "Series C Preferred Units");

WHEREAS, the Series C Preferred Units were created and were initially issued in conjunction with the General Partner's initial issuance and sale of shares of its 7.375% Series C Cumulative Redeemable Perpetual Preferred Stock, \$0.01 par value per share (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;

WHEREAS, through the date hereof, the General Partner has issued and sold 3,535,700 shares of Series C Preferred Stock, and, in connection therewith, the General Partner, pursuant to Section 4.02(b) of the Partnership Agreement, has contributed the net proceeds from the sales to the Partnership in exchange for, and has caused the Partnership to issue to the General Partner, 3,535,700 Series C Preferred Units;

WHEREAS, the General Partner has authorized the issuance and sale from time to time of up to \$200,000,000 in aggregate offering price of additional shares of Series A Preferred Stock in an at-the-market offering, and, in connection therewith, the General Partner, pursuant to Section 4.02(b) of the Partnership Agreement, will, upon the issuance and sale of any shares of Series A Preferred Stock in such offering, contribute the net proceeds from the sales to the Partnership in exchange for, and will cause the Partnership to issue to the General Partner, a number of Series A Preferred Units equal to the number of shares of Series A Preferred Stock actually issued in such offering from time to time;

WHEREAS, the General Partner has authorized the issuance and sale from time to time of up to \$200,000,000 in aggregate offering price of additional shares of Series C Preferred Stock in an at-the-market offering, and, in connection therewith, the General Partner, pursuant to Section 4.02(b) of the Partnership Agreement, will, upon the issuance and sale of any shares of Series C Preferred Stock in such offering, contribute the net proceeds from the sales to the Partnership in exchange for, and will cause the Partnership to issue to the General Partner, a number of Series C Preferred Units equal to the number of shares of Series C Preferred Stock actually issued in such offering from time to time;

WHEREAS, in order to conduct these at-the-market offerings, the General Partner has filed Articles Supplementary with the State Department of Assessments and Taxation of Maryland (i) classifying and designating 7,856,000 authorized but unissued shares of preferred stock, \$0.01 par value per share, as additional shares of Series A Preferred Stock, and (ii) classifying and designating 4,000,000 authorized but unissued shares of preferred stock, \$0.01 par value per share, as additional shares of Series C Preferred Stock;

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 resolutions adopted by the Board of Directors of the General Partner on January 8, 2021, the General Partner desires to amend the Partnership Agreement to increase the number of Series A Preferred Units and Series C Preferred Units authorized for issuance and to issue additional Series A Preferred Units and 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:

Annex A to the Partnership Agreement is hereby amended by deleting Section 1 thereof and replacing such Section with the following new Section 1:

“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 “7.50% Series A Cumulative Redeemable Perpetual Preferred Units” (the “Series A Preferred Units”), is hereby established. The number of authorized Series A Preferred Units shall be 12,796,000.”

Annex B to the Partnership Agreement is hereby amended by deleting Section 1 thereof and replacing such Section with the following new Section 1:

“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 11,536,000.”

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.

[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

[Signature Page to Seventh Amendment to Second Amended and Restated Agreement of Limited Partnership]
