

Section 1: 8-K (8-K)

**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):
13, 2019 (December 9, 2019)**



Western Asset Mortgage Capital Corporation

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE
(STATE OF INCORPORATION)

001-35543
(COMMISSION FILE NUMBER)

27-0298092
(IRS EMPLOYER ID. NUMBER)

385 East Colorado Boulevard
Pasadena, California
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

91101
(ZIP CODE)

(626) 844-9400
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, \$0.01 par value	WMC	New York Stock Exchange

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

On December 12, 2019, Western Asset Mortgage Capital Corporation, a Delaware corporation (the “Company”), completed the issuance and sale of \$50.0 million aggregate principal amount of its 6.75% Convertible Senior Notes due 2022 (the “Reopened Notes”) at a price to the public of 101.25% of the principal amount of the Reopened Notes plus accrued and unpaid interest. The Reopened Notes were offered pursuant to an underwriting agreement, dated December 9, 2019 (the “Underwriting Agreement”), by and among the Company, Western Asset Management Company, LLC, a California limited liability company and the manager of the Company, and JMP Securities LLC, as underwriter (the “Underwriter”), whereby the Company agreed to sell to the Underwriter and the Underwriter agreed to purchase from the Company, subject to and upon the terms and conditions set forth in the Underwriting Agreement, the Additional Notes.

The Reopened Notes will be a further issuance of, be fully fungible with, and rank equally in right of payment with and form a single series with the \$115.0 million principal amount of 6.75% Convertible Senior Notes due 2022 issued by the Company in October 2017 (the “Original Notes”) and the \$40.0 million principal amount of 6.75% Convertible Senior Notes due 2022 issued by the Company in August 2019 (the “First Reopened Notes” and, together with the Original Notes, the “Existing Notes”). References to “Notes” herein collectively refer to the Reopened Notes and the Existing Notes. The Reopened Notes have substantially identical terms as the Existing Notes and have the same CUSIP number as the Existing Notes. As a result of the Reopened Notes issuance, the aggregate principal amount outstanding of the 6.75% Senior Notes due 2022 is approximately \$205.0 million.

The Notes are senior unsecured obligations of the Company, bear interest at a rate equal to 6.75% per year, payable semiannually in arrears on April 1 and October 1 of each year, and will mature on October 1, 2022 (the “Maturity Date”), unless earlier converted, redeemed or repurchased. The Company may not redeem the Notes prior to July 1, 2022 and no sinking fund is provided for the Notes. On or after July 1, 2022, the Company may redeem the Notes for cash, in whole or from time to time in part, at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest thereon to, but excluding, the redemption date. The Notes are convertible prior to July 1, 2022 upon the satisfaction of certain conditions and at any time on or after July 1, 2022 until the business day preceding the Maturity Date. The Company may settle conversions in cash, shares of the Company’s common stock or a combination thereof, at the Company’s election.

The conversion rate currently equals 83.1947 shares of common stock per \$1,000 principal amount of Notes, which is equivalent to a conversion price of approximately \$12.02 per share of common stock, representing an approximate 15% premium based on the closing price of the Company’s common stock of \$10.48 per share on December 9, 2019. The conversion rate is subject to adjustment upon the occurrence of certain specified events. In addition, following certain corporate events that occur prior to the Maturity Date, the Company will increase the conversion rate for a holder who elects to convert its Notes in connection with such a corporate event in certain circumstances.

If the Company undergoes a fundamental change (as defined in the Supplemental Indenture), holders may require the Company to repurchase for cash all or any portion of their Notes at a fundamental change repurchase price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

The net proceeds to the Company from the sale of the Additional Notes, after deducting the underwriter’s discount and commission and estimated offering expenses, are expected to be approximately \$49.9 million. The Company intends to use the net proceeds of the offering of the Additional Notes primarily for general corporate purposes, including to opportunistically invest in credit sensitive investments consisting of Residential Whole Loans, Commercial Loans and Non-Agency CMBS . The exact investment of the proceeds will depend on prevailing market and investment conditions at the time our Manager invests the net proceeds

The Additional Notes were issued under the base indenture (the “Base Indenture”), dated as of October 2, 2017, between the Company and Wells Fargo Bank, National Association, as trustee (the “Trustee”), as supplemented by a first supplemental indenture (the “Supplemental Indenture”), dated as of October 2, 2017, between the Company and the Trustee with respect to the Notes.

The offer and sale of the Additional Notes were registered with the Securities and Exchange Commission (the “Commission”) pursuant to a registration statement on Form S-3 (File No. 333-216496) under the Securities Act of 1933, as amended (the “Securities Act”). The material terms of the Additional Notes are described in a prospectus supplement filed by the Company with the Commission on December 10, 2019 pursuant to Rule 424(b)(5) under the Securities Act.

Copies of the Underwriting Agreement, the Base Indenture, the Supplemental Indenture and the form of the Additional Notes are attached hereto as Exhibit 1.1, Exhibit 4.1, Exhibit 4.2 and Exhibit 4.3, respectively, and are incorporated herein by reference. The foregoing summaries do not purport to be complete and are qualified in their entirety by reference to the Underwriting Agreement, the Base Indenture, the Supplemental Indenture and the form of the Additional Notes. The legal opinion of Skadden, Arps, Slate, Meagher & Flom LLP relating to the legality of the Additional Notes is attached as Exhibit 5.1 to this Current Report on Form 8-K.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 is incorporated herein by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits

(d) *Exhibits*

Exhibit No.	Description
1.1*	<u>Underwriting Agreement, dated December 9, 2019, by and among Western Asset Mortgage Capital Corporation, Western Asset Management Company, LLC and JMP Securities LLC.</u>
4.1	<u>Indenture, dated as of October 2, 2017, between Western Asset Mortgage Capital Corporation and Wells Fargo Bank, National Association.</u>
4.2	<u>First Supplemental Indenture, dated as of October 2, 2017, between Western Asset Mortgage Capital Corporation and Wells Fargo Bank, National Association.</u>
4.3	<u>Form of 6.75% Convertible Senior Notes due 2022 included as part of Exhibit 4.2 hereto).</u>
5.1*	<u>Opinion of Skadden, Arps, Slate, Meagher & Flom LLP with respect to the legality of the Additional Notes.</u>
8.1*	<u>Opinion of Skadden, Arps, Slate, Meagher & Flom LLP with respect to certain tax matters.</u>
23.1*	<u>Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included as part of Exhibit 5.1 hereto).</u>

* Filed herewith.

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 hereto duly authorized.

Date: December 13, 2019

By: /s/ Lisa Meyer

Name: Lisa Meyer

Title: Chief Financial Officer & Treasurer

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Section 2: EX-1.1 (EXHIBIT 1.1)

Exhibit 1.1

Execution Version

Western Asset Mortgage Capital Corporation

6.75% Convertible Senior Notes due 2022

Underwriting Agreement

December 9, 2019

JMP Securities LLC
Montgomery Street, Suite 1100
San Francisco, California 94111
Ladies and Gentlemen:

Western Asset Mortgage Capital Corporation, a Delaware corporation (the “Company”), proposes to issue and sell to you (the “Underwriter”) \$50,000,000 principal amount of its 6.75% Convertible Senior Notes due 2022 (the “Securities”). The Securities will be convertible into cash, shares (the “Underlying Securities”) of common stock of the Company, par value \$0.01 per share (the “Common Stock”), or a combination thereof, at the Company’s election. The Securities will be issued pursuant to an Indenture, dated as of October 2, 2017 (the “Base Indenture”), between the Company and Wells Fargo Bank, National Association, as trustee (the “Trustee”), as supplemented by a supplemental indenture (the “First Supplemental Indenture” and, together with the Base Indenture, the “Indenture”), dated as of October 2, 2017, between the Company and the Trustee.

In addition to the Company, Western Asset Management Company, LLC, a California limited liability company (the “Manager”), also confirms as follows its respective representations, warranties, covenants and agreements with the Underwriter.

The Company hereby confirms its agreement with the Underwriter concerning the purchase and sale of the Securities, as follows:

1. Registration Statement. The Company has prepared and filed with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the “Securities Act”), a registration statement on Form S-3 (File No. 333-216496) including a base prospectus (the “Base Prospectus”), relating to the Securities. Such registration statement, as amended at the time it became effective, including the information, if any, deemed pursuant to Rule 430A, 430B or 430C under the Securities Act to be part of the registration statement at the time of its effectiveness (“Rule 430 Information”), is referred to herein as the “Registration Statement”; and as used herein, the term “Preliminary Prospectus” means each prospectus included in such registration statement (and any amendments thereto) before effectiveness, any prospectus filed with the Commission pursuant to Rule 424(a) under the Securities Act and the prospectus included in the Registration Statement at the time of its effectiveness that omits Rule 430 Information, and the term “Prospectus” means the Base Prospectus, as supplemented by the prospectus supplement, dated

December 9, 2019, relating to the Securities in the form first used (or made available upon request of purchasers pursuant to Rule 173 under the Securities Act) in connection with confirmation of sales of the Securities. If the Company has filed an abbreviated registration statement pursuant to Rule 462(b) under the Securities Act (the “**Rule 462 Registration Statement**”), then any reference herein to the term “Registration Statement” shall be deemed to include such Rule 462 Registration Statement. Any reference in this underwriting agreement (this “**Agreement**”) to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, as of the effective date of the Registration Statement or the date of such Preliminary Prospectus or the Prospectus, as the case may be and any reference to “amend”, “amendment” or “supplement” with respect to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any documents filed after such date under the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (collectively, the “**Exchange Act**”), that are deemed to be incorporated by reference therein. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Registration Statement and the Prospectus.

At or prior to 5:45 p.m. (Eastern Time) December 9, 2019 (the “Time of Sale”), the Company had prepared the following information (collectively, the “Time of Sale Information”): a Preliminary Prospectus, dated December 9, 2019, and each “free-writing prospectus” (as defined pursuant to Rule 405 under the Securities Act) listed on Annex A hereto.

2. Purchase of the Securities.

(a) The Company agrees to issue and sell the Securities to the Underwriter as provided in this Agreement, and the Underwriter, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees to purchase from the Company the principal amount of Securities set forth opposite the Underwriter’s name in Schedule 1 hereto at a price equal to 98.75% of the principal amount thereof (the “**Purchase Price**”) plus accrued interest, if any, from October 1, 2019 to the Closing Date (as defined below).

(b) The Company understands that the Underwriter intends to make a public offering of the Securities as soon after the effectiveness of this Agreement as in the judgment of the Underwriter is advisable, and initially to offer the Securities on the terms set forth in the Prospectus. The Company acknowledges and agrees that the Underwriter may offer and sell Securities to or through any affiliate of the Underwriter and that any such affiliate may offer and sell Securities purchased by it to or through the Underwriter.

(c) Payment for the Securities shall be made by wire transfer in immediately available funds to the account specified by the Company to the Underwriter at the offices of Cozen O’Connor, 33 South 6th Street, Suite 3800, Minneapolis, Minnesota 55402 at 10:00 A.M. New York City time on December 12, 2019, or at such other time or place on the same or such other date, not later than the fifth business day thereafter, as the Underwriter and the Company may agree upon in writing. The time and date of such payment for the Securities is referred to herein as the “**Closing Date**”.

Payment for the Securities to be purchased on the Closing Date shall be made against delivery to the nominee of The Depository Trust Company (“**DTC**”), for the account of the Underwriter of the Securities to be purchased on such date of one or more global notes representing the Securities (collectively, the “**Global Note**”), with any transfer taxes payable in connection with the sale of such Securities duly paid by the Company. The Global Note will be made available for inspection by the Underwriter at the office of JMP Securities LLC set forth above not later than 1:00 P.M., New York City time, on the business day prior to the Closing Date.

(d) The Company acknowledges and agrees that the Underwriter is acting solely in the capacity of an arm’s length contractual counterparty to the Company with respect to the offering of Securities 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 Underwriter is not advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriter shall have no responsibility or liability to the Company with respect thereto. Any review by the Underwriter of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriter and shall not be on behalf of the Company.

3. Representations and Warranties of the Company and the Manager.

(a) The Company represents and warrants to the Underwriter that:

(i) Compliance with Registration Requirements. The Company meets the requirements for use of Form S-3 under the Securities Act. Each of the Registration Statement and any Rule 462(b) Registration Statement and any post-effective amendment thereto has become effective under the Securities Act. No stop order suspending the effectiveness of the Registration Statement, any Rule 462(b) Registration Statement or any post-effective amendment thereto has been issued under the Securities Act, no order preventing or suspending the use of any Preliminary Prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission, and any request on the part of the Commission for additional information has been complied with.

At the respective times each of the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendments thereto became or becomes effective, the Registration Statement, the Rule 462(b) Registration Statement and any amendments and supplements thereto complied and will comply in all material respects with the requirements of the Securities Act and the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission promulgated thereunder (collectively, the “**Trust Indenture Act**”) 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, and the Prospectus, any Preliminary Prospectus and any supplement thereto or prospectus wrapper prepared in connection therewith, at their respective times of issuance complied and will comply in all material respects with the requirements of the Securities

Act. Neither the Prospectus nor any amendments or supplements thereto (including any prospectus wrapper), at the time the Prospectus or any such amendment or supplement was or will be issued, included or will include an untrue statement of a material fact or omitted or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The documents incorporated or deemed to be incorporated by reference in the Registration Statement, any Preliminary Prospectus and the Prospectus, when they became effective or at the time they were, or hereafter are, filed with the Commission, complied and will comply in all material respects with the requirements of the Exchange Act. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, any Preliminary Prospectus and the Prospectus, at the time the Registration Statement became effective or when the documents incorporated by reference were filed with the Commission, as the case may be, when read together with the other information in the Registration Statement, any Preliminary Prospectus and the Prospectus, as the case may be, did not and will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

As of the Time of Sale, neither (x) the Issuer General Use Free Writing Prospectus(es) (as defined below) issued at or prior to the Time of Sale and the Statutory Prospectus (as defined below), including the documents incorporated therein by reference, as of the Time of Sale all considered together (collectively, the “**Time of Sale Information**”), nor (y) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the Time of Sale Information, included any untrue statement of a material fact or omitted 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.

As used in this subsection and elsewhere in this Agreement:

“**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus,” as defined in Rule 433 under the Securities Act (“**Rule 433**”), relating to the Securities that (i) is required to be filed with the Commission by the Company, (ii) is a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i) whether or not required to be filed with the Commission or (iii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed in the form required to be retained in the Company’s records pursuant to Rule 433(g).

“**Issuer General Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors (other than a Bona Fide Electronic Road Show (as defined below)), as evidenced by its being specified in Annex A hereto.

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

“**Statutory Prospectus**” as of any time means the prospectus relating to the Securities that is included in the Registration Statement immediately prior to that time.

Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the Company notified or notifies the Underwriter as described in Section 4(a)(iii), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified.

The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement, any Preliminary Prospectus or any amendments or supplements thereto, the Prospectus or any Issuer Free Writing Prospectus made in reliance upon and in conformity with written information furnished to the Company by the Underwriter expressly for use therein (that information being limited to that described in the last sentence of Section 7(b) hereof).

Each Preliminary Prospectus delivered to the Underwriter for use in connection with the sale of the Securities complied when so filed in all material respects with the Securities Act and each Preliminary Prospectus and the Prospectus delivered to the Underwriter for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

At the time of filing the Registration Statement, any 462(b) Registration Statement and any post-effective amendments thereto and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405 of the Securities Act.

(ii) Independent Accountants. The accountants who certified the financial statements and supporting schedules included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus are independent public accountants as required by the Securities Act, the Public Accounting Oversight Board and the Exchange Act.

(iii) Financial Statements of the Company. The financial statements of the Company included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus, together with the related schedules and notes, present fairly the financial position of the Company and its consolidated subsidiaries at the dates indicated; said financial statements have been prepared in conformity with generally accepted accounting principles (“GAAP”) applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information of the Company included in the Registration Statement, the Time of Sale Information and the Prospectus, or incorporated by reference therein, present fairly the information shown therein and have been compiled on a basis consistent with that of the

audited financial statements included or incorporated by reference in the Registration Statement. No other financial statements are required to be set forth in the Registration Statement, the Time of Sale Information or the Prospectus under the Securities Act and the Exchange Act. All disclosures contained in the Registration Statement, the Time of Sale Information or the Prospectus, or incorporated by reference therein, 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 of the Securities Act, to the extent applicable. The interactive data in Extensible Business Reporting Language incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission’s rules and guidelines applicable thereto.

(iv) Information of the Manager. The information of the Manager incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus presents fairly the information shown thereby.

(v) No Material Adverse Change in Business. Since the respective dates as of which information is given in the Registration Statement, the Time of Sale Information or the Prospectus, except as otherwise stated in the Registration Statement, the Time of Sale Information or the Prospectus, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs, properties, assets or business prospects of the Company and its Subsidiaries (defined below) considered as one enterprise, whether or not arising in the ordinary course of business (a “**Material Adverse Effect**”), (B) there have been no transactions entered into by the Company or any of its Subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its Subsidiaries considered as one enterprise, and (C) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(vi) Good Standing of the Company. The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Time of Sale Information and the Prospectus and to enter into and perform its obligations under this Agreement and to perform its obligations under the Management Agreement, dated May 9, 2012, between the Company and the Manager, as amended by the Amendment to the Management Agreement dated August 3, 2016, between the Company and the Manager (as amended, the “**Management Agreement**” and, together with this Agreement, the “**Transaction Agreements**”); and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

(vii) Good Standing of Subsidiaries. Each “subsidiary” of the Company (as such term is defined in Rule 1-02 of Regulation S-X) (each, a “**Subsidiary**” and, collectively, the “**Subsidiaries**”) has been duly organized and is validly existing in good standing under the laws of the jurisdiction of its incorporation or organization, has corporate or similar power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Time of Sale Information and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not result in a Material Adverse Effect. Except as otherwise disclosed in the Registration Statement, the Time of Sale Information and the Prospectus, all of the issued and outstanding capital stock of each Subsidiary has been duly authorized and validly issued, is fully paid and non assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. None of the outstanding shares of capital stock of any Subsidiary was issued in violation of the preemptive or similar rights of any securityholder of such Subsidiary.

(viii) Capitalization. The authorized, issued and outstanding capital stock of the Company is as set forth in the Registration Statement, the Time of Sale Information and the Prospectus in the column entitled “Actual” under the caption “Capitalization” (except for subsequent issuances, if any, pursuant to this Agreement, or pursuant to separate offerings, reservations, agreements or employee benefit plans referred to in the Registration Statement, the Time of Sale Information and the Prospectus). The shares of issued and outstanding capital stock of the Company and the issued and outstanding warrants of the Company (the “**Warrants**”) have been duly authorized and validly issued and are fully paid and non-assessable; none of the outstanding shares of capital stock of the Company was issued in violation of the preemptive or other similar rights of any securityholder of the Company.

(ix) Authorization of Agreement. This Agreement and the Indenture Agreement have been duly authorized, and this Agreement has been duly executed and delivered by the Company.

(x) Authorization and Enforceability of the Management Agreement. The Management Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization or other laws affecting enforcement of creditors’ rights or by general equitable principles.

(xi) Authorization of the Indenture. The Indenture has been duly authorized and executed by the Company and constitutes the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors’ rights generally and except as enforcement thereof is subject to

general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(xii) Authorization of the Securities. The Company has all requisite corporate power and authority to execute, issue, sell and perform its obligations under the Securities. The Securities have been duly authorized and, at the Closing Date, will have been duly executed by the Company and, when authenticated, issued and delivered in the manner provided for in the Indenture and delivered against payment of the Purchase Price therefor as provided in this Agreement, will constitute valid and binding obligations of the Company entitled to the benefits of the Indenture, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and will be in the form contemplated by, and entitled to the benefits of, the Indenture.

(xiii) Authorization of the Underlying Securities. Upon issuance and delivery of the Securities in accordance with this Agreement and the Indenture, the Securities will be convertible at the option of the holder thereof into, at the Company's election, cash, shares of the Underlying Securities or a combination thereof, in accordance the terms of the Securities and the Indenture; the Underlying Securities (assuming physical settlement and the maximum conversion rate under any "make-whole" adjustment applies) reserved for issuance upon conversion of the Securities have been duly authorized and reserved and, when issued upon conversion of the Securities in accordance with the terms of the Securities and the Indenture, will be validly issued, fully paid and non assessable, and the issuance of the Underlying Securities will not be subject to any preemptive or similar rights.

(xiv) Description of Securities. The Securities and Indenture conform in all material respects to the description thereof contained in the sections of the Registration Statement, the Time of Sale Information, and the Prospectus entitled "Description of Debt Securities" and "Description of notes."

(xv) Absence of Defaults and Conflicts. The Company is not (A) in violation of its certificate of incorporation or by-laws (or its equivalent), (B) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any Subsidiary is subject (collectively, "**Agreements and Instruments**"), except for such defaults that would not result in a Material Adverse Effect, or (C) in violation of any law, statute, rule, regulation, judgment, order or decree, except for such violations that would not result in a Material Adverse Effect; and the execution, delivery and performance of the Transaction Agreements and the consummation of the transactions contemplated therein (including the issuance and sale of the Securities by the Company and the use of the proceeds from the sale of the Securities as described in the Registration Statement, the Time of Sale Information and the

Prospectus under the caption “**Use of Proceeds**”) and compliance by the Company with its obligations under the Transaction Agreements has been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the certificate of incorporation or by-laws (or its equivalent) of the Company or any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Company or any Subsidiary or any of their assets, properties or operations. As used herein, a “**Repayment Event**” means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company.

(xvi) Absence of Labor Dispute. No labor dispute exists between any officers of the Company or any officers or key persons of the Manager, including the Manager’s structured products team (each, a “**Company-Focused Professional**”), on the one hand, and the employer of each such individual on the other hand nor, to the knowledge of the Company, is such a labor dispute imminent that could have a Material Adverse Effect.

(xvii) Employment; Noncompetition; Nondisclosure. Neither the Company nor, to the best of the Company’s knowledge, any employer of any Company-Focused Professional has been notified that any such Company-Focused Professional plans to terminate his or her employment with his or her employer. Neither the Company nor, to the best of the Company’s knowledge, any Company-Focused Professional is subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar agreement that would be violated by the present or proposed business activities of the Company as described in the Registration Statement, the Time of Sale Information and the Prospectus.

(xviii) Absence of Proceedings. There is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company, threatened, against or affecting the Company, which is required to be disclosed in the Registration Statement (other than as disclosed therein), or which could reasonably be expected to result in a Material Adverse Effect, or which might materially and adversely affect the properties or assets thereof or the consummation of the transactions contemplated in the Transaction Agreements, or the performance by the Company of its obligations thereunder; the aggregate of all pending legal or governmental proceedings to which the Company is a party or of which any of their respective property or assets is the subject which are not described in the Registration Statement, including ordinary routine litigation incidental to the business, could not reasonably be expected to result in a Material Adverse Effect.

(xix) Accurate Disclosure. The descriptions in the Registration Statement, the Time of Sale Information and the Prospectus, if any, of affiliate transactions, contracts required to be described therein and other legal documents are true and correct in all material respects, and there are no legal or governmental proceedings, affiliate transactions, contracts, leases, or other documents of a character required to be described in the Registration Statement, the Time of Sale Information or the Prospectus or to be filed as exhibits to the Registration Statement which are not described or filed as required. All agreements between the Company and any other party expressly referenced in the Registration Statement, the Time of Sale Information and the Prospectus are legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization or other laws affecting enforcement of creditors' rights or by general equitable principles.

(xx) No Finder's Fee. Except for the Underwriter's discounts and commissions payable by the Company in connection with the offering of the Securities contemplated herein or as otherwise disclosed in the Registration Statement, the Time of Sale Information and the Prospectus, the Company has not incurred any liability for any brokerage commissions, finder's fees or similar payments in connection with the offering of the Securities contemplated hereby.

(xxi) 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 or other equity interests, 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.

(xxii) Possession of Intellectual Property. The Company owns or possesses, or can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names or other intellectual property (collectively, "**Intellectual Property**") necessary to carry on the business now operated by them, and the Company has not received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances that would render any Intellectual Property invalid or inadequate to protect the interest of the Company therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would result in a Material Adverse Effect.

(xxiii) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the performance by the Company of its obligations under this Agreement, the Indenture, in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated

by this Agreement, except such as have been already obtained or as may be required under the Securities Act or state securities laws or the rules of FINRA (as defined below) or any applicable legacy rules of the National Association of Securities Dealers, Inc.

(xxiv) Absence of Manipulation. Neither the Company nor any affiliate of the Company has taken, nor will the Company or any affiliate of the Company take, directly or indirectly, any action which is designed to or which has constituted or which would be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities or to result in a violation of Regulation M under the Exchange Act.

(xxv) Possession of Licenses and Permits. The Company possesses such permits, licenses, approvals, consents and other authorizations (collectively, "**Governmental Licenses**") issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the business now operated by them, except where the failure so to possess would not, singly or in the aggregate, result in a Material Adverse Effect; the Company is in compliance with the terms and conditions of all such Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, result in a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, result in a Material Adverse Effect; and neither the Company nor any of its Subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(xxvi) Title to Property. The Company has good and marketable title to all real property owned by the Company and its Subsidiaries and good title to all other properties owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (a) are described in the Registration Statement, the Time of Sale Information and the Prospectus or (b) do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its Subsidiaries; and all of the leases and subleases to which the Company or any of its Subsidiaries is a party and that are material to the business of the Company and its Subsidiaries, considered as one enterprise, or under which the Company or any of its Subsidiaries holds properties described in the Registration Statement, the Time of Sale Information and the Prospectus, are in full force and effect, and neither the Company nor any Subsidiary has any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or any Subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such Subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease.

(xxvii) Investment Company Act. The Company is not required, and upon the issuance and sale of the Securities, as herein contemplated and the application of the net

proceeds therefrom as described in the Registration Statement, the Time of Sale Information and the Prospectus will not be required, to register as an “investment company” under the Investment Company Act of 1940, as amended (the “**1940 Act**”).

(xxviii) Environmental Laws. Except as described in the Registration Statement, and except as would not, singly or in the aggregate, result in a Material Adverse Effect, (A) the Company is not in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, “**Hazardous Materials**”) or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, “**Environmental Laws**”), (B) the Company has all permits, authorizations and approvals required under any applicable Environmental Laws and is each in compliance with their requirements, (C) there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company and (D) there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company relating to Hazardous Materials or any Environmental Laws.

(xxix) Registration Rights. There are no persons with registration rights or other similar rights to have any securities registered pursuant to the Registration Statement or otherwise registered by the Company under the Securities Act, other than as described in the Registration Statement, the Time of Sale Information and the Prospectus.

(xxx) Accounting Controls and Disclosure Controls. The Company maintains effective “internal control over financial reporting” (as defined under Rules 13a-15 and 15d-15 under the Exchange Act) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management’s general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) receipts and expenditures are being made only in accordance with management’s general or specific authorization; (D) access to assets is permitted only in accordance with management’s general or specific authorization; (E) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (F) the interactive data in extensible Business Reporting Language incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission’s rules and guidelines applicable thereto. Except as described in the Registration Statement, the

Time of Sale Information and the Prospectus, since the date of the Company's incorporation, there has been (1) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company and its Subsidiaries maintain an effective system of "disclosure controls and procedures" (as defined in Rules 13a-15 and 15d-15 under the Exchange Act) that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time period specified in the Commission's rules and forms, and is accumulated and communicated to the Company's management, including its principal executive officer or officers and principal financial officer or officers, as appropriate, to allow timely decisions regarding disclosure.

(xxx1) Compliance with the Sarbanes-Oxley Act. The Company has been and is in compliance in all material respects with all effective applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "**Sarbanes-Oxley Act**"), including Section 402 related to loans and Section 302 and Section 906 related to certifications.

(xxxii) Payment of Taxes. All United States federal income tax returns of the Company required by law to be filed have been timely and properly filed and all United States federal income taxes shown by such returns or otherwise due and payable have been paid, including any assessments, fines and penalties, except amounts against which appeals have been or will be timely taken and as to which adequate reserves have been provided. The Company has timely and properly filed all other tax returns that are required to have been filed by it pursuant to applicable foreign, state, local or other law except insofar as the failure to file such returns would not result in a Material Adverse Effect, and has paid all material taxes shown by such returns as due, including any assessments, fines and penalties, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided.

(xxxiii) Insurance. The Company carries or is entitled to the benefits of insurance, with financially sound and reputable insurers, in such amounts and covering such risks as is generally maintained by companies of established repute engaged in the same or similar business, and all such insurance is in full force and effect. The Company has no reason to believe that it will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect.

(xxxiv) Statistical and Market-Related Data. Any statistical and market-related data included in the Registration Statement, the Time of Sale Information and the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate.

(xxxv) Rated Debt. The Company has no debt securities or preferred stock that is rated by any “nationally recognized statistical rating agency” (as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act).

(xxxvi) Foreign Corrupt Practices Act. Neither the Company nor, to the knowledge of the Company, any director, officer or employee of the Company, or any officer, employee or other person of the Manager or its affiliates acting on behalf of the Company, is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”), the Bribery Act 2010 of the United Kingdom (the “**Bribery Act**”) or any other applicable anti-corruption or anti-bribery laws (the “**Other Payment Laws**”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company intends to conduct its businesses in compliance with the FCPA, the Bribery Act and the Other Payment Laws and has instituted and maintains policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxvii) Money Laundering Laws. The operations of the Company are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental 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 with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xxxviii) OFAC. Neither the Company nor, to the knowledge of the Company, any director, officer or employee of the Company, or any officer, employee or other person of the Manager or its affiliates acting on behalf of the Company, 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**”), the United Nations Security Council (“**UNSC**”), the European Union, Her Majesty’s Treasury (“**HMT**”), or other relevant sanctions authority (collectively, “**Sanctions**”), nor is the Company located, organized or resident in a country or territory that is the subject of Sanctions; and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiaries, joint venture partner or other person or entity, to fund any activities of or business with any person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions.

(xxxix) No Integration. The Company has not sold or issued any securities that would be integrated with the offering of the Securities contemplated by this Agreement pursuant to the Securities Act or the interpretations thereof by the Commission.

(xl) Prior Sales of Capital Stock. Except as disclosed in the Registration Statement, the Time of Sale Information and the Prospectus, the Company has not sold, issued or distributed any shares of its capital stock.

(xli) Real Estate Investment Trust. The Company has timely and properly elected to be subject to tax as a real estate investment trust (“**REIT**”) pursuant to Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the “**Code**”) commencing with its taxable year ended December 31, 2012. Commencing with its taxable year ended December 31, 2012, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and the Company’s actual and proposed method of operation as set forth in the Registration Statement, the Time of Sale Information and the Prospectus will enable it to continue to meet the requirements for qualification and taxation as a REIT under the Code. All statements regarding the Company’s qualification and taxation as a REIT and descriptions of the Company’s organization and actual and proposed method of operation set forth in the Registration Statement, the Time of Sale Information and the Prospectus are true, complete and correct in all material respects.

(xlii) Independent Directors. Each of the independent directors named in the Registration Statement, the Time of Sale Information and the Prospectus satisfies the independence standards established by the Commission and the New York Stock Exchange (the “**NYSE**”).

(xliii) FINRA Matters. Neither the Company nor any of its affiliates is required to register as a “broker” or “dealer” in accordance with the provisions of the Exchange Act and, to the Company’s knowledge, there are no affiliations or associations between any member of the Financial Industry Regulatory Authority, Inc. (“**FINRA**”) and the Company or any of the Company’s officers, directors or 5% or greater securityholders or any beneficial owner of the Company’s unregistered equity securities that were acquired at any time on or after the 180th day preceding the date the Registration Statement was initially filed with the Commission, except as disclosed in the Registration Statement, the Time of Sale Information and the Prospectus.

(xliv) Certain Relationships. No relationship, direct or indirect, exists between the Company, on the one hand, and the directors, officers, employees or stockholders of the Company, on the other hand, which is required by the rules of the FINRA to be described in the Registration Statement, the Time of Sale Information or the Prospectus, which is not so described.

(xlv) Lending Relationship. Except as disclosed in the Registration Statement, the Time of Sale Information and the Prospectus, the Company (i) does not have any material lending or other relationship with any bank or lending affiliate of the Underwriter and (ii)

does not intend to use any of the proceeds from the sale of the Securities to repay any outstanding debt owed to any affiliate of the Underwriter.

(xlvi) Testing-the-Waters. The Company (a) has not engaged in any Testing-the-Waters Communication and (b) has not authorized anyone to engage in Testing-the-Waters Communications. The Company has not distributed any Written Testing-the-Waters Communications. “Testing-the-Waters Communication” means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act. “**Written Testing-the-Waters Communications**” means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

(xlvii) Underlying Securities. The Company will reserve and keep available at all times, free of pre-emptive rights, shares of Common Stock for the purpose of enabling the Company to satisfy all obligations to issue the Underlying Securities upon conversion of the Securities (assuming physical settlement and the maximum conversion rate under any “make-whole” adjustment applies). The Company will use its best efforts to cause the Underlying Securities to be listed on NYSE.

(b) Representations and Warranties by the Manager. The Manager represents and warrants to the Underwriter that:

(i) Certain Information. As of the date of this Agreement, the Manager has no plan or intention to materially alter its investment policy or investment allocation policy with respect to the Company as described in the Registration Statement, the Time of Sale Information or the Prospectus.

(ii) No Material Adverse Change in Business. Since the respective dates as of which information is given in the Registration Statement, the Time of Sale Information or the Prospectus, except as otherwise stated in the Registration Statement, the Time of Sale Information or the Prospectus, there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs, properties, assets or business prospects of the Manager and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, that is material and adverse to the Manager or that would otherwise prevent the Manager from carrying out its obligations under this Agreement or the Management Agreement (a “**Manager Material Adverse Effect**”).

(iii) Good Standing of the Manager. The Manager has been duly organized and is validly existing as a limited liability company in good standing under the laws of the State of California and has limited liability company power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Time of Sale Information and the Prospectus and to enter into and perform its obligations under this Agreement; and the Manager is duly qualified as a foreign limited liability company to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Manager Material Adverse Effect.

(iv) Absence of Defaults and Conflicts. The Manager is not in violation of its certificate of formation or limited liability company agreement (or its equivalent) or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Manager is a party or by which it may be bound, or to which any of the property or assets of the Manager is subject (collectively, “**Manager’s Agreements and Instruments**”), except for such defaults that would not result in a Manager Material Adverse Effect; or in violation of any law, statute, rule, regulation, judgment, order or decree, except for such violations that would not result in a Manager Material Adverse Effect; and the execution, delivery and performance of this Agreement and the Management Agreement by the Manager and the consummation of the transactions in this Agreement and the Management Agreement and the compliance by the Manager with its obligations hereunder and the Management Agreement have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Manager pursuant to, the Manager’s Agreements and Instruments (except for such conflicts, breaches, defaults or liens, charges or encumbrances that would not result in a Manager Material Adverse Effect), nor will such action result in any violation of the provisions of the certificate of formation or limited liability company agreement (or its equivalent) of the Manager or any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Manager or any of its assets, properties or operations.

(v) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Manager.

(vi) Authorization and Enforceability of Management Agreement. The Management Agreement has been duly authorized, executed and delivered by the Manager and constitutes a valid and binding agreement of the Manager, enforceable against the Manager in accordance with its terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization or other laws affecting enforcement of creditors’ rights or by general equitable principles.

(vii) Absence of Further Requirements. (A) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency, domestic or foreign, (B) no authorization, approval, vote or other consent of any stockholder or creditor of the Manager, (C) no waiver or consent under any Manager’s Agreements and Instruments and (D) no authorization, approval, vote or other consent of any other person or entity is necessary or required for the performance by the Manager of its obligations under this Agreement or the Management Agreement, except such as have been already obtained or as may be required under the Securities Act or state securities laws or as are described in the Registration Statement, the Time of Sale Information and the Prospectus.

(viii) Possession of Licenses and Permits. The Manager possesses such Governmental Licenses issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary for the Manager to perform its duties set forth in the Management Agreement, except where the failure so to possess would not, singly or in the aggregate, result in a Material Adverse Effect or a Manager Material Adverse Effect; the Manager is in compliance with the terms and conditions of all such Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, result in a Material Adverse Effect or a Manager Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, result in a Material Adverse Effect or a Manager Material Adverse Effect; and the Manager has not received any notice of proceedings relating to the revocation or modification of any such Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect or a Manager Material Adverse Effect.

(ix) Employment; Noncompetition; Nondisclosure. The Manager has not been notified that any of its Company-Focused Professionals plans to terminate his or her employment with the Manager or any of its affiliates. Neither the Manager nor, to the knowledge of the Manager, any of its Company-Focused Professionals is subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar agreement that would be violated by the present or proposed business activities of the Company or the Manager as described in the Management Agreement, the Registration Statement, the Time of Sale Information and the Prospectus.

(x) Absence of Manipulation. Neither the Manager nor any affiliate of the Manager has taken, nor will the Manager or any affiliate of the Manager take, directly or indirectly, any action which is designed to or which has constituted or which would be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities or to result in a violation of Regulation M under the Exchange Act.

(xi) Absence of Proceedings. There are no pending actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) against or affecting the Manager or any of its subsidiaries or any of their respective properties that, if determined adversely to the Manager or any of its subsidiaries, would, individually or in the aggregate, have a Manager Material Adverse Effect and, to the Manager's knowledge, no such actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are threatened or contemplated.

(xii) Investment Adviser Status. The Manager is duly registered and in good standing with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"), and is not prohibited by the Advisers Act, or the rules and regulations thereunder, from performing its obligations under the Management

Agreement as described in the Management Agreement, the Registration Statement, Time of Sale Information and the Prospectus.

(xiii) Internal Controls. The Manager maintains a system of internal accounting controls sufficient to provide reasonable assurance that (A) the transactions that may be effectuated by it on behalf of the Company pursuant to its duties set forth in the Management Agreement will be executed in accordance with management's general or specific authorization and (B) access to the Company's assets is permitted only in accordance with its management's general or specific authorization.

(xiv) Compliance. The Manager is in compliance with all applicable federal, state, local and foreign laws, rules, regulations, orders, decrees and judgments, including those relating to transactions with affiliates, except where the failure to so comply would not have a Manager Material Adverse Effect.

4. Further Agreements of the Company and the Manager.

(a) The Company covenants and agrees with the Underwriter that:

(i) *Required Filings*. The Company will file the final Prospectus with the Commission within the time periods specified by Rule 424(b) and Rule 430A, 430B or 430C under the Securities Act, will file any Issuer Free Writing Prospectus (including the term sheet substantially in the form of Annex B hereto) to the extent required by Rule 433 under the Securities Act; and will file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Securities; and the Company will furnish copies of the Prospectus and each Issuer Free Writing Prospectus (to the extent not previously delivered) to the Underwriter in New York City prior to 10:00 A.M., New York City time, on the business day next succeeding the date of this Agreement in such quantities as the Underwriter may reasonably request.

(ii) *Delivery of Copies*. The Company will deliver, without charge, (i) to the Underwriter, three signed copies of the Registration Statement as originally filed and each amendment thereto, in each case including all exhibits and consents filed therewith and documents incorporated by reference therein; and (ii) (A) a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) and (B) during the Prospectus Delivery Period (as defined below), as many copies of the Prospectus (including all amendments and supplements thereto and documents incorporated by reference therein), in the case of (i) and (ii)(A), only to the extent such documents are not publicly available on EDGAR, and each Issuer Free Writing Prospectus as the Underwriter may reasonably request. As used herein, the term "**Prospectus Delivery Period**" means such period of time after the first date of the public offering of the Securities as in the opinion of counsel for the Underwriters a prospectus relating to the Securities is required by law to be delivered (or required to be delivered but for Rule 172 under the Securities Act) in connection with sales of the Securities by the Underwriter or any dealer.

(iii) *Amendments or Supplements, Issuer Free Writing Prospectuses.* Before making, preparing, using, authorizing, approving, referring to or filing any Issuer Free Writing Prospectus, and before filing any amendment or supplement to the Registration Statement or the Prospectus, whether before or after the time that the Registration Statement becomes effective, the Company will furnish to the Underwriter and its counsel a copy of the proposed Issuer Free Writing Prospectus, amendment or supplement for review and will not make, prepare, use, authorize, approve, refer to or file any such Issuer Free Writing Prospectus or file any such proposed amendment or supplement to which the Underwriter reasonably objects.

(iv) *Notice to the Underwriter.* Prior to the later of (x) the Closing Date or (y) the expiration of the Prospectus Delivery Period, the Company will advise the Underwriter promptly, and confirm such advice in writing, (i) when any amendment to the Registration Statement has been filed or becomes effective; (ii) when any supplement to the Prospectus or any Issuer Free Writing Prospectus or any amendment to the Prospectus has been filed; (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or the receipt of any comments from the Commission relating to the Registration Statement or any other request by the Commission for any additional information; (iv) of the issuance by the Commission or any other governmental or regulatory authority of any order suspending the effectiveness of the Registration Statement or preventing or suspending the use of any Preliminary Prospectus, any of the Time of Sale Information or the Prospectus or the initiation or threatening of any proceeding for that purpose or pursuant to Section 8A of the Securities Act; (v) of the occurrence of any event or development within the Prospectus Delivery Period as a result of which the Prospectus, the Time of Sale Information or any Issuer Free Writing Prospectus as then amended or supplemented would include 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 existing when the Prospectus, the Time of Sale Information or any such Issuer Free Writing Prospectus is delivered to a purchaser, not misleading; and (vi) of the receipt by the Company of any notice with respect to any suspension of the qualification of the Securities for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use its reasonable best efforts to prevent the issuance of any such order suspending the effectiveness of the Registration Statement, preventing or suspending the use of any Preliminary Prospectus, any of the Time of Sale Information or the Prospectus or suspending any such qualification of the Securities and, if any such order is issued, will obtain as soon as possible the withdrawal thereof.

(v) *Ongoing Compliance.* (1) If during the Prospectus Delivery Period (i) any event or development shall occur or condition shall exist as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Prospectus to comply with law, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph 4(a)(iii) above, file with the Commission and furnish to the Underwriter and to such dealers as the Underwriter may designate, such amendments or supplements to the Prospectus (or any document to be filed with the Commission and incorporated by reference therein) as may be necessary so that the statements in the Prospectus as so amended or supplemented (or any document to be filed with the Commission and incorporated by reference therein) will not, in the light of the circumstances existing when the

Prospectus is delivered to a purchaser, be misleading or so that the Prospectus will comply with law and (2) if at any time prior to the Closing Date (i) any event or development shall occur or condition shall exist as a result of which the Time of Sale Information as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Time of Sale Information is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Time of Sale Information to comply with law, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph 4(a)(iii) above, file with the Commission (to the extent required) and furnish to the Underwriters and to such dealers as the Underwriter may designate, such amendments or supplements to the Time of Sale Information (or any document to be filed with the Commission and incorporated by reference therein) as may be necessary so that the statements in the Time of Sale Information as so amended or supplemented will not, in the light of the circumstances, be misleading or so that the Time of Sale Information will comply with law.

(vi) *Applicable Blue Sky Compliance.* The Company will use commercially reasonable efforts, in cooperation with the Underwriter to qualify the Securities for offer and sale or to obtain an exemption for the Securities to be offered and sold under the securities or Blue Sky laws of such jurisdictions as the Underwriter shall reasonably request and will continue such qualifications and exemptions in effect so long as reasonably required for distribution of the Securities; provided that the Company shall not be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(vii) *Earning Statement.* The Company will make generally available to its security holders and the Underwriter as soon as practicable an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 of the Commission promulgated thereunder covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the “effective date” (as defined in Rule 158) of the Registration Statement.

(viii) *Clear Market.* For a period of 60 days after the date of the offering of the Securities, the Company will not (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, or file with the Commission a registration statement under the Securities Act relating to, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing, or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or any such other securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, without the prior written consent of the Underwriter, other than the Securities to be sold hereunder and any shares of Common Stock issued upon the exercise of options granted under existing employee stock option plans; provided, however, that the Company may issue and sell Common Stock pursuant to the Equity Distribution Agreement, dated as of March 6, 2017, among

the Company, the Manager and the Underwriter in connection with an “at the market offering.”

(ix) *Use of Proceeds.* The Company will apply the net proceeds from the sale of the Securities as described in each of the Registration Statement, the Time of Sale Information and the Prospectus under the heading “Use of Proceeds.”

(x) *No Stabilization.* The Company will not take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities and will not take any action prohibited by Regulation M under the Exchange Act in connection with the distribution of the Securities contemplated hereby; provided, however, that the Company may bid for and purchase its Common Stock in accordance with Rule 10b-18 under the Exchange Act.

(xi) *Underlying Securities.* The Company will reserve and keep available at all times, free of preemptive rights, shares of Common Stock for the purpose of enabling the Company to satisfy all obligations to issue the Underlying Securities upon conversion of the Securities (assuming physical settlement and the maximum conversion rate under any “make-whole” adjustment applies). The Company will use its best efforts to cause the Underlying Securities to be listed on NYSE.

(xii) *Qualification and Taxation as a REIT.* The Company will use its best efforts to continue to meet the requirements for qualification and taxation as a REIT under the Code for its taxable year ending December 31, 2019 and for its subsequent taxable years unless, in each case, the Company’s Board of Directors determines that it is no longer in the best interest of the Company and its stockholders to be so qualified.

(xiii) *Investment Company.* The Company will use commercially reasonable efforts to conduct its affairs in such a manner so as to reasonably ensure that neither it nor its subsidiaries will be or become, at any time prior to the termination of this Agreement, an “investment company,” as such term is defined in the Investment Company Act, assuming no change in the Commission’s current interpretation as to entities that are not considered an investment company.

(xiv) *DTC.* The Company will assist the Underwriter in arranging for the Securities to be eligible for clearance and settlement through DTC.

(b) The Manager covenants and agrees with the Underwriter that it will not take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

5. Certain Agreements of the Underwriter. The Underwriter hereby represents and agrees that:

(a) It has not and will not use, authorize use of, refer to, or participate in the planning for use of, any “free writing prospectus”, as defined in Rule 405 under the Securities Act (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by

the Company) other than (i) a free writing prospectus that contains no “issuer information” (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the Base Prospectus or a previously filed Issuer Free Writing Prospectus, (ii) any Issuer Free Writing Prospectus listed on Annex A or prepared pursuant to Section 4(a)(iii) above (including any electronic road show), or (iii) any free writing prospectus prepared by the Underwriter and approved by the Company in advance in writing.

(b) It has not and will not, without the prior written consent of the Company, use any free writing prospectus that contains the final terms of the Securities unless such terms have previously been included in a free writing prospectus filed with the Commission.

(c) It is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering (and will promptly notify the Company if any such proceeding against it is initiated during the Prospectus Delivery Period).

6. Conditions of Underwriter’s Obligations. The obligation of the Underwriter to purchase the Securities on the Closing Date as provided herein is subject to the performance by the Company and the Manager of their respective covenants and other obligations hereunder and to the following additional conditions:

(a) *Registration Compliance; No Stop Order.* No order suspending the effectiveness of the Registration Statement shall be in effect and no proceeding for such purpose pursuant to Section 8A under the Securities Act shall be pending before or, to the knowledge of the Company, threatened by the Commission; the Prospectus and each Issuer Free Writing Prospectus shall have been timely filed with the Commission under the Securities Act (in the case of an Issuer Free Writing Prospectus, to the extent required by Rule 433 under the Securities Act) and in accordance with Section 4(a)(i) hereof; and all requests by the Commission for additional information shall have been complied with to the reasonable satisfaction of the Underwriter.

(b) *Representations and Warranties.* The representations and warranties of the Company and the Manager contained herein shall be true and correct on the date hereof and on and as of the Closing Date; and the statements of the Company and its officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date.

(c) *No Downgrade.* Subsequent to the earlier of (A) the Time of Sale and (B) the execution and delivery of this Agreement, (i) no downgrading shall have occurred in the rating accorded any securities or preferred stock issued or guaranteed by the Company or any of its subsidiaries by any “nationally recognized statistical rating organization”, as such term is defined under Section 3(a)(62) under the Exchange Act and (ii) no such organization shall have publicly announced that it has under surveillance or review, or has changed its outlook with respect to, its rating of any such securities or preferred stock issued or guaranteed by the Company or any of its subsidiaries (other than an announcement with positive implications of a possible upgrading).

(d) *No Material Adverse Change.* No event or condition of a type described in Section 3(a)(v) hereof shall have occurred or shall exist, which event or condition is not described in the Time of Sale Information (excluding any amendment or supplement thereto) and the Prospectus (excluding any amendment or supplement thereto) and the effect of which in the judgment

of the Underwriter makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the Closing Date on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Prospectus.

(e) *Officer's Certificate.* The Underwriter shall have received on and as of the Closing Date a certificate of the chief financial officer or chief accounting officer of the Company and an officer of the Manager (i) confirming that such officers have carefully reviewed the Registration Statement, the Time of Sale Information and the Prospectus and, to the knowledge of such officers, the representations set forth in Section 3(a)(i) hereof are true and correct, (ii) confirming that the other representations and warranties of the Company and the Manager in this Agreement are true and correct and that the Company and the Manager have complied with all agreements and satisfied all conditions on their part to be performed or satisfied hereunder at or prior to such Closing Date and (iii) to the effect set forth in paragraphs 6(a), 6(c) and 6(d) above.

(f) *Comfort Letters.* On the date of this Agreement and on the Closing Date, PricewaterhouseCoopers LLP shall have furnished to the Underwriter, at the request of the Company, a letter, dated the respective dates of delivery thereof and addressed to the Underwriter, in form and substance reasonably satisfactory to the Underwriter, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in each of the Registration Statement, the Time of Sale Information and the Prospectus.

(g) *Legal Opinions and 10b-5 Statement.* On the Closing Date, Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Company and the Manager, at the request of the Company, shall have furnished to the Underwriter, in form and substance reasonably satisfactory to the Underwriter and its counsel, (i) a written corporate opinion dated the date that the opinion is required to be delivered, (ii) a negative assurance letter dated the date the letter is required to be delivered and (iii) a written opinion with respect to federal income tax matters, dated the date that the opinion is required to be delivered.

(h) *No Legal Impediment to Issuance.* No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date, prevent the issuance or sale of the Securities; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date, prevent the issuance or sale of the Securities.

(i) *Good Standing.* The Underwriter shall have received, on and as of the Closing Date, satisfactory evidence of the good standing of the Company and its subsidiaries in their respective jurisdictions of organization and their good standing in such other jurisdictions as the Underwriter may reasonably request, in each case in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(j) *Exchange Listing.* An application for the listing of the Underlying Securities shall have been submitted to NYSE.

(k) *Lock-up Agreements.* The "lock-up" agreements, each substantially in the form of Annex C hereto, between the Underwriter and the officers and directors of the Company

set forth on Schedule 2 hereto relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to the Underwriter on or before the date hereof, shall be full force and effect on the Closing Date.

(l) *DTC*. The Securities shall be eligible for clearance and settlement through DTC.

(m) *Additional Documents*. On or prior to the Closing Date, the Company and the Manager shall have furnished to the Underwriter such further certificates and documents as the Underwriter may reasonably request.

All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriter.

7. Indemnification and Contribution.

(a) *Indemnification of the Underwriter*. The Company agrees to indemnify and hold harmless the Underwriter, its affiliates, directors and officers and each person, if any, who controls the Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, not misleading, or (ii) any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus, any "issuer information" filed or required to be filed pursuant to Rule 433(d), any "road show" as defined in Rule 433(h) under the Securities Act (a "**road show**") or any Time of Sale Information (including any Time of Sale Information that has subsequently been amended), or caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to the Underwriter furnished to the Company in writing by the Underwriter expressly for use therein, it being understood and agreed that the only such information furnished by the Underwriter consists of the information described as such in subsection 7(b) below.

(b) *Indemnification of the Company*. The Underwriter agrees to indemnify and hold harmless the Company, its directors, its officers who signed the Registration Statement, the Manager and each person, if any, who controls the Company and the Manager within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph 7(a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to

the Underwriter furnished to the Company in writing by the Underwriter expressly for use in the Registration Statement, the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus, any road show or any Time of Sale Information (including any Time of Sale Information that has subsequently been amended), it being understood and agreed upon that the only such information furnished by the Underwriter consists of the following information in the Prospectus furnished on behalf of the Underwriter: the information contained in the seventh paragraph of text under the caption "Underwriting," the first two sentences of the second paragraph under the caption "Underwriting - New Issue of Notes," and the first sentence of the first paragraph under the caption "Underwriting - Price Stabilization and Short Positions; Repurchase of Common Stock."

(c) *Notice and Procedures.* If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnification may be sought pursuant to either paragraph 7(a) or 7(b) above, such person (the "**Indemnified Person**") shall promptly notify the person against whom such indemnification may be sought (the "**Indemnifying Person**") in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under paragraph 7(a) or 7(b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided, further, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under paragraph 7(a) or 7(b) above. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be paid or reimbursed as they are incurred. Any such separate firm for the Underwriter, its affiliates, directors and officers and any control persons of the Underwriter shall be designated in writing by the Underwriter and any such separate firm for the Company, its directors, its officers who signed the Registration Statement, the Manager, and any control persons of the Company shall be designated in writing by the Company. The Indemnifying Person shall not be

liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by the Indemnifying Person of such request and (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (x) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) *Contribution.* If the indemnification provided for in paragraphs 7(a) and 7(b) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriter, on the other, from the offering of the Securities or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company, on the one hand, and the Underwriter, on the other, in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriter, on the other, shall be deemed to be in the same respective proportions as the net proceeds (before deducting expenses) received by the Company from the sale of the Securities and the total underwriting discounts and commissions received by the Underwriter in connection therewith, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate offering price of the Securities. The relative fault of the Company, on the one hand, and the Underwriter, on the other, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriter and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) *Limitation on Liability.* The Company and the Underwriter agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph 7(d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph 7(d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses

incurred by such Indemnified Person in connection with any such action or claim. Notwithstanding the provisions of this Section 7, in no event shall the Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by the Underwriter with respect to the offering of the Securities exceeds the amount of any damages that the Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(f) *Non-Exclusive Remedies.* The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity.

8. Effectiveness of Agreement. This Agreement shall become effective as of the date first written above.

9. Termination. This Agreement may be terminated in the absolute discretion of the Underwriter, by notice to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on or by any of NYSE or The NASDAQ Stock Market; (ii) trading of any securities issued or guaranteed by the Company shall have been suspended on any exchange or in any over-the-counter market; (iii) a general moratorium on commercial banking activities shall have been declared by federal or New York State authorities; or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis, either within or outside the United States, that, in the judgment of the Underwriter, is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the Closing Date on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Prospectus.

10. Payment of Expenses.

(a) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company will pay or cause to be paid all costs and expenses incident to the performance of its obligations hereunder, including without limitation, (i) the costs incident to the authorization, issuance, sale, preparation and delivery of the Securities and any taxes payable in that connection; (ii) the costs incident to the preparation, printing and filing under the Securities Act of the Registration Statement, any Issuer Free Writing Prospectus, any Time of Sale Information and the Prospectus (including all exhibits, amendments and supplements thereto) and the distribution thereof; (iii) the costs of reproducing and distributing each of the Agreement, Indenture and Securities; (iv) the fees and expenses of the Company's counsel and independent accountants; (v) the fees and expenses incurred in connection with the registration or qualification and determination of eligibility for investment of the Securities under the laws of such jurisdictions as the Underwriter may designate and the preparation, printing and distribution of a Blue Sky Memorandum (including the related fees and expenses of counsel for the Underwriter); (vi) the fees and expenses of the Trustee and any paying agent (including related fees and expenses of any counsel to such parties); (vii) all expenses and application fees incurred in connection with the approval of the Securities for book-entry transfer by DTC; (viii) all expenses incurred by the

Company in connection with any “road show” presentation to potential investors; and (ix) all expenses and application fees related to the listing of the Underlying Securities on NYSE.

(b) If (i) this Agreement is terminated pursuant to Section 9, (ii) the Company for any reason fails to tender the Securities for delivery to the Underwriter or (iii) the Underwriter declines to purchase the Securities due to the Company’s failure to comply with Section 6 herein, the Company agrees to reimburse the Underwriter for all out-of-pocket costs and expenses (including the fees and expenses of their counsel) reasonably incurred by the Underwriter in connection with this Agreement and the offering contemplated hereby.

11. Persons Entitled to Benefit of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and any controlling persons referred to herein, and the affiliates of the Underwriter referred to in Section 7 hereof. Nothing in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. No purchaser of Securities from the Underwriter shall be deemed to be a successor merely by reason of such purchase.

12. Survival. The respective indemnities, rights of contribution, representations, warranties and agreements of the Company, the Manager and the Underwriter contained in this Agreement or made by or on behalf of the Company, the Manager or the Underwriter pursuant to this Agreement or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Securities and shall remain in full force and effect, regardless of any termination of this Agreement or any investigation made by or on behalf of the Company, the Manager or the Underwriter.

13. Certain Defined Terms. For purposes of this Agreement, (a) except where otherwise expressly provided, the term “**affiliate**” has the meaning set forth in Rule 405 under the Securities Act; (b) the term “**business day**” means any day other than a day on which banks are permitted or required to be closed in New York City; (c) the term “**subsidiary**” has the meaning set forth in Rule 405 under the Securities Act; and (d) the term “**significant subsidiary**” has the meaning set forth in Rule 1-02 of Regulation S-X under the Exchange Act.

14. Compliance with USA Patriot Act. In accordance with the requirements of the USA Patriot Act, the Underwriter is required to obtain, verify and record information that identifies its clients, including the Company, which information may include the name and address of its clients, as well as other information that will allow the Underwriter to properly identify its clients.

15. Miscellaneous.

(a) Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication. Notices to the Underwriter shall be given to JMP Securities LLC, 600 Montgomery Street, Suite 1100, San Francisco, California 94111, Facsimile: (415) 835-8920, Attention: Equity Securities, with a copy (which shall not constitute notice) to Cozen O’Connor, 33 South 6th Street, Suite 3800, Minneapolis, Minnesota 55402, Attention Christopher J. Bellini. Notices to the Company and the Manager shall be given to it at 385 East Colorado Blvd., Pasadena,

California 91101, Facsimile (626) 844-9451, Attention of General Counsel, with a copy (which shall not constitute notice) to Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, Attention: David J. Goldschmidt.

(b) *Governing Law.* This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(c) *Waiver of Jury Trial.* Each of the parties hereto hereby waives any right to trial by jury in any suit or proceeding arising out of or relating to this Agreement.

(d) *Counterparts.* This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

(e) *Amendments or Waivers.* No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

(f) *Headings.* The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

[Signature page follows]

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

**WESTERN ASSET MORTGAGE CAPITAL
CORPORATION**

By: /s/ Jennifer W. Murphy
Jennifer W. Murphy
Chief Executive Officer

WESTERN ASSET MANAGEMENT COMPANY, LLC

By: /s/ Charles A. Ruys de Perez
Charles A. Ruys de Perez
Secretary

Accepted: As of the date first written above:

JMP SECURITIES LLC

By: /s/ Forrest Koenig
Forrest Koenig
Managing Director

[Signature Page to Underwriting Agreement]

Schedule 1

Underwriter	Principal Amount
JMP Securities LLC	\$ 50,000,000
Total:	\$ 50,000,000

Schedule 2

List of Persons and Entities Executing Lock-Up Agreements

Edward D. Fox
James W. Hirschmann III
Sean Johnson
Ranjit M. Kripalani
M. Christian Mitchell
Richard W. Roll
Lisa Meyer
Elliott Neumayer
Harris Trifon
Jennifer W. Murphy
Western Asset Management Company, LLC

Annex A

Time of Sale Information

Issuer Free Writing Prospectus dated December 9, 2019, substantially in the form of Annex B.

[Signature Page to Lock-Up Agreement]

Annex B

Pricing Term Sheet

Western Asset Mortgage Capital Corporation

\$50,000,000 aggregate principal amount of

6.75% Convertible Senior Notes due 2022 (the “notes”)

The information in this pricing term sheet relates only to Western Asset Mortgage Capital Corporation’s offering (the “offering”) of its 6.75% Convertible Senior Notes due 2022 and should be read together with the preliminary prospectus supplement dated December 9, 2019 relating to the offering (the “Preliminary Prospectus Supplement”) and the related base prospectus dated March 7, 2017, filed pursuant to Rule 424 (b) under the Securities Act of 1933, as amended, including the documents incorporated by reference therein.

The information in this pricing term sheet updates and, to the extent inconsistent, supersedes the information in the Preliminary Prospectus Supplement and the accompanying prospectus. You should read the entire Preliminary Prospectus Supplement, accompanying prospectus and documents incorporated by reference therein carefully, especially the “Risk Factors” sections and the consolidated financial statements and related schedules and notes, before deciding to invest in our securities. Terms used but not defined herein have the meanings given in the Preliminary Prospectus Supplement.

Issuer:	Western Asset Mortgage Capital Corporation
Ticker / Exchange for Common Stock:	WMC / New York Stock Exchange (the “NYSE”)
Title of Securities:	6.75% Convertible Senior Notes due 2022
Aggregate Principal Amount Offered:	\$50,000,000 aggregate principal amount of notes
Maturity Date:	October 1, 2022, unless earlier converted, repurchased or redeemed
Price to Public:	101.25% of principal amount plus 71 days of accrued interest equaling \$13.3125 per \$1,000 principal amount of notes
Interest:	6.75% per annum, accruing from October 1, 2019
Interest Payment Dates:	April 1 and October 1, beginning April 1, 2020
Interest Payment Record Dates:	March 15 and September 15 of each year
Last Reported Sale Price:	\$10.48 per share of the Issuer’s common stock on the NYSE on December 9, 2019
Initial Conversion Price:	Approximately \$12.02 per share of the Issuer’s common stock
Initial Conversion Rate:	83.1947 shares of common stock per \$1,000 principal amount of notes
Aggregate Underwriting Discount:	\$1,250,000
Redemption:	The Issuer may not redeem the notes prior to July 1, 2022. On or after July 1, 2022, the Issuer may redeem the notes for cash, in whole or from time to time in part, at the Issuer’s option, at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest thereon to, but excluding, the redemption date.
Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change	If and only to the extent a holder elects to convert its notes in connection with a make-whole fundamental change (as defined under “Description of Notes-Conversion Rights-Increase in Conversion Rate upon Conversion upon a Make-Whole Fundamental Change” in the Preliminary Prospectus Supplement), the Issuer will, under certain circumstances, increase the conversion rate by a number of additional shares of common stock. The following table sets forth the number of additional shares by which the conversion rate will be increased per \$1,000 principal amount of notes for conversions in connection with a make-whole fundamental change for each stock price and effective date set forth below:

Effective Date	Stock Price							
	\$10.93	\$12.02	\$12.25	\$12.50	\$12.75	\$13.00	\$13.50	\$14.00
October 2, 2017	8.2966	3.4002	2.6498	1.9352	1.3176	0.7908	0.0570	0.0000
October 1, 2018	8.2966	3.2854	2.5380	1.8288	1.2188	0.6985	0.0407	0.0000
October 1, 2019	8.2966	3.2854	2.5380	1.8288	1.2188	0.6985	0.0407	0.0000
October 1, 2020	8.2966	3.2138	2.4563	1.7592	1.1859	0.6985	0.0407	0.0000
October 1, 2021	8.2966	2.6539	1.8914	1.2240	0.7129	0.3485	0.0148	0.0000
October 1, 2022	8.2966	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact stock prices and effective dates may not be set forth in the table above, in which case:

- If the stock price is between two stock prices in the table or the effective date is between two effective dates in the table, the number of additional shares by which the conversion rate will be increased will be determined by a straight-line interpolation between the number of additional shares set forth for the

- higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365-day year
- If the stock price is greater than \$14.00 per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate.
 - If the stock price is less than \$10.93 per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate

Notwithstanding the foregoing, in no event will the conversion rate per \$1,000 principal amount of notes exceed 91.4913 shares of common stock, subject to adjustment in the same manner as the conversion rate as set forth under “Description of Notes-Conversion Rights-Conversion Rate Adjustments” in the Preliminary Prospectus Supplement.

Use of Proceeds:

The Issuer estimates that the net proceeds of this offering will be approximately \$49.9 million, after deducting the underwriter’s discount and commission and estimated offering expenses payable by the Issuer.

The Issuer intends to use the net proceeds from this offering primarily for general corporate purposes, including to opportunistically invest in credit sensitive investments consisting of Residential Whole Loans, Commercial Loans and Non-Agency CMBS. The exact investment of the proceeds will depend on prevailing market and investment conditions at the time the Issuer’s Manager invests the net proceeds.

Trade Date:

December 10, 2019

Closing Date:

December 12, 2019

Sole Book-Running Manager:

JMP Securities LLC

CUSIP / ISIN:

95790D AA3 / US95790DAA37

No Listing:

The notes will not be listed on any securities exchange.

The Issuer has filed a registration statement (including a base prospectus and a Preliminary Prospectus Supplement) with the SEC for the offering to which this communication relates. Before you invest, you should read the Preliminary Prospectus Supplement and the accompanying prospectus, and the information incorporated therein by reference, and other documents the Issuer has filed with the SEC for more complete information about the Issuer and this offering. You may obtain these documents for free by visiting EDGAR on the SEC web site at www.sec.gov. Alternatively, the Issuer, the sole book-running manager or any dealer participating in the offering will arrange to send you the Preliminary Prospectus Supplement and the accompanying prospectus if you request them by contacting JMP Securities LLC, 600 Montgomery Street, 10th Floor, San Francisco, CA 94111, Attention: Prospectus Department, or by telephone at (415) 835-8985

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

Annex C

Form of Lock-Up Agreement

December 9, 2019

JMP Securities LLC
Montgomery Street, Suite 1100
San Francisco, California 94111

Re: Western Asset Mortgage Capital Corporation - Public Offering

Ladies and Gentlemen:

The undersigned understands that you propose to enter into an Underwriting Agreement (the "Underwriting Agreement") with Western Asset Mortgage Capital Corporation, a Delaware corporation (the "Company"), and Western Asset Management Company, LLC, a California limited liability company (the "Manager"), providing for the public offering (the "Public Offering") by JMP Securities LLC (the "Underwriter"), of Convertible Senior Notes of the Company (the "Securities") that are convertible into shares of common stock, par value \$0.01 per share, of the Company (the "Common Stock"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Underwriting Agreement.

In consideration of the Underwriters' agreement to purchase and make the Public Offering of the Securities, and for other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby agrees that, without the prior written consent of the Underwriter, the undersigned will not, during the period beginning on the date of this letter agreement (this "Letter Agreement") and ending 30 days after the date of the final prospectus supplement relating to the Public Offering (such period, the "Restricted Period"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (including without limitation, Common Stock or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a stock option or warrant), or publicly disclose the intention to make any offer, sale, pledge or disposition, (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or such other securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise or (3) make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock.

Notwithstanding the restrictions noted above, the undersigned may transfer Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (including without limitation, Common Stock or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a stock option or warrant): (i) as a bona fide gift or gifts, (ii) by will or intestacy, (iii) to any trust,

partnership, limited liability company or other entity for the direct or indirect benefit of the undersigned or the immediate family of the undersigned (for purposes of this Letter Agreement, "immediate family" shall mean any relationship by blood, current or former marriage or adoption, not more remote than first cousin), (iv) to any immediate family member or other dependent, (v) to a nominee or custodian of a person or entity to whom transfers would be permitted under clauses (i) through (iv) above, (vi) pursuant to an order of a court or regulatory agency, (vii) if the undersigned is an executive officer, to the Company upon death, disability, or termination of employment, in each case, of such executive officer, and (viii) to members of stockholders of the undersigned; provided that (a) in the case of any transfer or distribution pursuant to clauses (ii) through (iv) and (v) (solely with respect to transfers pursuant to (ii) through (iv)) above, each donee or distributee shall execute and deliver to the Underwriter a lock-up letter in the form of this Letter Agreement and (b) in the case of any transfer or distribution pursuant to clauses (i) through (v) above, such transfer or distribution shall not be for value; and provided, further, that in the case of any transfer or distribution pursuant to clauses (i), (iii) and (v) (solely with respect to transfers pursuant to (i) and (iii)), during the Restricted Period no public reports or filings (including filings under Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) reporting a reduction in beneficial ownership of Common Stock shall be required or voluntarily made; and provided further, that in the case of any transfer or distribution pursuant to clauses (ii), (iv), (vi) and (vii) above, during the Restricted Period, no public reports or filings (including filings under Section 16(a) of the Exchange Act) reporting a reduction in beneficial ownership of Common Stock shall be voluntarily made, and any such reports or filings required under Section 16(a) of the Exchange Act shall indicate in the notes thereto or otherwise that the filing relates to the circumstances described in clauses (ii), (iv), (vi) or (vii), as applicable.

In furtherance of the foregoing, the Company, and any duly appointed transfer agent for the registration or transfer of the securities described herein, are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Letter Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Letter Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that, if the Underwriting Agreement does not become effective by December 31, 2019, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Stock to be sold thereunder, the undersigned shall be released from all obligations under this Letter Agreement. The undersigned understands that the Underwriters are entering into the Underwriting Agreement and proceeding with the Public Offering in reliance upon this Letter Agreement.

This Letter Agreement and any claim, controversy or dispute arising under or related to this Letter Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Signature Page Follows]

Very truly yours,

Name of Securityholder (*Print exact name*)

By: Signature

Name of Authorized Signatory (*Print*)

Title of Authorized Signatory (*Print*)

(indicate capacity of person signing if signing as custodian, trustee, or on behalf of an entity)

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Section 3: EX-5.1 (EXHIBIT 5.1)

Exhibit 5.1

December 12, 2019

Western Asset Mortgage Capital Corporation
385 East Colorado Boulevard
Pasadena, CA 91101

Re: Western Asset Mortgage Capital Corporation
 Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as special United States counsel to Western Asset Mortgage Capital Corporation, a Delaware corporation (the "Company"), in connection with the public offering of \$50,000,000 aggregate principal amount of the Company's 6.75% Convertible Senior Notes due 2022 (the "Securities") to be issued under the Indenture, dated as of October 2, 2017 (the "Base Indenture"), as supplemented by the First Supplemental Indenture, dated as of October 2, 2017 (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), between the Company and Wells Fargo Bank, National Association, as Trustee (the "Trustee").

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933 (the “Securities Act”).

In rendering the opinions stated herein, we have examined and relied upon the following:

(a) the registration statement on Form S-3 (File No. 333-216496) of the Company relating to the Securities and other securities of the Company filed on March 7, 2017 with the Securities and Exchange Commission (the “Commission”) under the Securities Act allowing for delayed offerings pursuant to Rule 415 of the General Rules and Regulations under the Securities Act (the “Rules and Regulations”) and Pre-Effective Amendment No. 1 thereto, including the information deemed to be a part of the registration statement pursuant to Rule 430B of the Rules and Regulations and the Notice of Effectiveness of the Commission posted on its website declaring such registration statement effective on April 26, 2017 (such registration statement, as so amended, being hereinafter referred to as the “Registration Statement”);

(b) the prospectus, dated March 7, 2017 (the “Base Prospectus”), which forms a part of and is included in the Registration Statement;

(c) the preliminary prospectus supplement, dated December 9, 2019 (together with the Base Prospectus, the “Preliminary Prospectus”), relating to the offering of the Securities, in the form filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations;

(d) the prospectus supplement, dated December 9, 2019 (together with the Base Prospectus, the “Prospectus”), relating to the offering of the Securities, in the form filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations;

(e) the pricing term sheet, dated December 9, 2019 (the “Pricing Term Sheet”), relating to the offering of the Securities in the form filed with the Commission pursuant to Rule 433 of the Rules and Regulations;

- (f) an executed copy of the Underwriting Agreement, dated as of December 9, 2019, the “Underwriting Agreement”), among the Company, Western Asset Management Company, LLC, a California limited liability company, and JMP Securities LLC (the “Underwriter”), relating to the sale by the Company to the Underwriter of the Securities;
- (g) an executed copy of the Base Indenture;
- (h) an executed copy of the Supplemental Indenture;
- (i) the global certificate evidencing the Securities (the “Note Certificate”), delivered by the Company to the Trustee for authentication and delivery;
- (j) an executed copy of a certificate of Adam Wright, Assistant Secretary of the Company, dated the date hereof (the “Secretary’s Certificate”);
- (k) a copy of the Company’s Amended and Restated Certificate of Incorporation, certified by the Secretary of State of the State of Delaware as of December 12, 2019, and certified pursuant to the Secretary’s Certificate;
- (l) a copy of the Company’s Amended And Restated Bylaws, as amended and in effect as of the date hereof and certified pursuant to the Secretary’s Certificate;
- (m) a copy of certain resolutions of the Board of Directors of the Company, adopted on December 6, 2019, certified pursuant to the Secretary’s Certificate; and
- (n) a copy of certain resolutions of the Pricing Committee of the Board of Directors of the Company, adopted on December 9, 2019, certified pursuant to the Secretary’s Certificate.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and others, and such other documents as we have deemed necessary or appropriate as a basis for the opinions stated below.

In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photocopied copies, and the authenticity of the originals of such copies. As to any facts relevant to the opinions stated herein that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company and others and of public officials, including those in the Secretary’s Certificate and the factual representations and warranties contained in the Underwriting Agreement.

We do not express any opinion with respect to the laws of any jurisdiction other than (i) the laws of the State of New York and (ii) the General Corporation Law of the State of Delaware (the “DGCL”) (all of the foregoing being referred to as “Opined-on Law”).

As used herein, “Transaction Documents” means the Underwriting Agreement, the Indenture and the Note Certificate.

Based upon the foregoing and subject to the qualifications and assumptions stated herein, we are of the opinion that the Note Certificate has been duly authorized by all requisite corporate action on the part of the Company and duly executed by the Company under the DGCL, and when duly authenticated by the Trustee and issued and delivered by the Company against payment therefor in accordance with the terms of the Underwriting Agreement and the Indenture, the Note Certificates will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms under the laws of the State of New York.

The opinions stated herein are subject to the following qualifications:

(a) we do not express any opinion with respect to the effect on the opinions stated herein of any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer, preference and other similar laws affecting creditors' rights generally, and the opinion stated herein is limited by such laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law);

(b) except to the extent expressly stated in the opinion contained herein, we do not express any opinion with respect to the effect on the opinions stated herein of (i) the compliance or non-compliance of any party to any of the Transaction Documents with any laws, rules or regulations applicable to such party or (ii) the legal status or legal capacity of any party to any of the Transaction Documents;

(c) we do not express any opinion with respect to any law, rule or regulation that is applicable to any party to any of the Transaction Documents or the transactions contemplated thereby solely because such law, rule or regulation is part of a regulatory regime applicable to any such party or any of its affiliates as a result of the specific assets or business operations of such party or such affiliates;

(d) we do not express any opinion with respect to any securities, antifraud, consumer credit, debt collection, privacy, derivatives or commodities laws, rules or regulations, Regulations T, U or X of the Board of Governors of the Federal Reserve System or laws, rules or regulations relating to national security;

(e) except to the extent expressly stated in the opinion contained herein, we have assumed that each of the Transaction Documents constitutes the valid and binding obligation of each party to such Transaction Document, enforceable against such party in accordance with its terms;

(f) the opinion stated herein is limited to the agreements and documents specifically identified in the opinion contained herein without regard to any agreement or other document referenced in such agreement or document (including agreements or other documents incorporated by reference or attached or annexed thereto);

(g) we do not express any opinion with respect to the enforceability of any provision contained in any Transaction Document relating to any indemnification, contribution, non-reliance, exculpation, release, limitation or exclusion of remedies, waiver or other provisions having similar effect that may be contrary to public policy or violative of federal or state securities laws, rules or regulations, or to the extent any such provision purports to, or has the effect of, waiving or altering any statute of limitations; and

(h) to the extent that any opinion relates to the enforceability of the choice of New York law and choice of New York forum provisions contained in any Transaction Document, the opinions stated

herein are subject to the qualification that such enforceability may be subject to, in each case, (i) the exceptions and limitations in New York General Obligations Law sections 5-1401 and 5-1402 and (ii) principles of comity and constitutionality.

In addition, in rendering the foregoing opinions we have assumed that:

(a) neither the execution and delivery by the Company of the Transaction Documents nor the performance by the Company of its obligations thereunder, including the issuance and sale of the Securities: (i) constituted or will constitute a violation of, or a default under, any lease, indenture, agreement or other instrument to which the Company or its property is subject (except that we do not make the assumption set forth in this clause (i) with respect to those agreements or instruments which are listed in Part II of the Registration Statement or the Company's Annual Report on Form 10-K express to be governed by the laws of the State of New York), (ii) contravened or will contravene any order or decree of any governmental authority to which the Company or its property is subject, or (iii) violated or will violate any law, rule or regulation to which the Company or its property is subject (except that we do not make the assumption set forth in this clause (iii) with respect to the Opined-on Law); and

(b) neither the execution and delivery by the Company of the Transaction Documents, nor the performance by the Company of its obligations thereunder, including the issuance and sale of the Securities, required or will require the consent, approval, licensing or authorization of, or any filing, recording or registration with, any governmental authority under any law, rule or regulation of any jurisdiction.

We hereby consent to the reference to our firm under the heading "Legal Matters" in the Preliminary Prospectus and the Prospectus. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations. We also hereby consent to the filing of this opinion with the Commission as an exhibit to the Company's Current Report on Form 8-K being filed on the date hereof and incorporated by reference into the Registration Statement. This opinion is expressed as of the date hereof unless otherwise expressly stated, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable laws.

Very truly yours,

/s/ Skadden, Arps, Slate, Meagher & Flom LLP

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Section 4: EX-8.1 (EXHIBIT 8.1)

Exhibit 8.1

December 12, 2019

Western Asset Mortgage Capital Corporation
385 East Colorado Boulevard
Pasadena, California 91101

Re: Western Asset Mortgage Capital Corporation - 6.75% Convertible Senior Notes due 2022

Ladies and Gentlemen:

You have requested our opinion concerning certain United States federal income tax considerations in connection with the offering, issuance and sale by the Company to JMP Securities LLC (the "Underwriter"), pursuant to the Underwriting Agreement, dated December 9, 2019 (the "Underwriting Agreement"), between the Underwriter, Western Asset Management Company, a California corporation, and the Company, of \$50,000,000 aggregate principal amount of the Company's 6.75% Convertible Senior Notes due 2022 (the "Notes"), to be issued under the Indenture, dated as of October 2, 2017, between the Company and Wells Fargo Bank, as trustee.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the Underwriting Agreement and such other documentation and information provided to us by you as we have deemed necessary or appropriate as a basis for the opinion set forth herein. In addition, you have provided us with, and we are relying upon, a certificate containing certain factual statements, factual representations and covenants of your officers (the "Officers' Certificate") relating to, among other things, the actual and proposed operations of Western Asset and the entities in which it holds, or has held, a direct or indirect interest (collectively, the "Company"). For purposes of our opinion, we have not independently verified all of the facts, statements, representations and covenants set forth in the Officers' Certificate, the Underwriting Agreement, or in any other document. In particular, we note that the Company may engage in transactions in connection with which we have not provided legal advice, and have not reviewed, and of which we may be unaware. Consequently, we have relied on your representation that the facts, statements, representations, and covenants presented in the Officers' Certificate, the Underwriting Agreement, and other documents, or otherwise furnished to us or the Underwriter, accurately and completely describe all material facts relevant to our opinion. We have assumed that all such facts, statements, representations and covenants are true without regard to any qualification as to knowledge, belief, intent, or materiality. Our opinion is conditioned on the continuing accuracy and completeness of such facts, statements, representations and covenants. Any material change or inaccuracy in the facts, statements, representations, and covenants referred to, set forth, or assumed herein or in the Officers' Certificate may affect our conclusions set forth herein.

In our review of certain documents in connection with our opinion as expressed below, we have assumed the legal capacity of all natural persons, the

genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed, photostatic, or electronic copies, and the authenticity of the originals of such copies. Where documents have been provided to us in draft form, we have assumed that the final executed versions of such documents will not differ materially from such drafts.

Our opinion is also based on the correctness of the following assumptions: (i) Western Asset and each of the entities comprising the Company has been and will continue to be operated in accordance with the laws of the jurisdictions in which it was formed and in the manner described in the relevant organizational documents, (ii) there will be no changes in the applicable laws of the State of Delaware or of any other jurisdiction under the laws of which any of the entities comprising the Company have been formed, and (iii) each of the written agreements to which the Company is a party has been and will be implemented, construed and enforced in accordance with its terms.

In rendering our opinion, we have considered and relied upon the Internal Revenue Code of 1986, as amended (the "Code"), the regulations promulgated thereunder ("Regulations"), administrative rulings and other Treasury interpretations of the Code and the Regulations by the courts and the Internal Revenue Service ("IRS"), all as they exist at the date hereof. It should be noted that the Code, Regulations, judicial decisions, and administrative interpretations are subject to change at any time and, in some circumstances, with retroactive effect. A material change that is made after the date hereof in any of the foregoing bases for our opinion could affect our conclusions set forth herein. There can be no assurance, moreover, that our opinion will be accepted by the IRS or, if challenged, by a court.

Based on and subject to the foregoing, we are of the opinion that, commencing with Western Asset's taxable year ended December 31, 2012, Western Asset has been organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a "REIT") under the Code, and its proposed method of operation will enable it to continue to meet the requirements for qualification and taxation as a REIT. Western Asset's qualification and taxation as a REIT depend upon its ability to meet, through actual operating results, certain requirements relating to the sources of its income, the nature of its assets, its distribution levels and the diversity of its stock ownership, and various other qualification tests imposed under the Code, the results of which are not reviewed by us. Accordingly, no assurance can be given that the actual results of Western Asset's operations for any one taxable year will satisfy the requirements for taxation as a REIT under the Code.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Company's Current Report on Form 8-K, being filed on the date hereof. We also hereby consent to the reference to our firm under the heading "Legal Matters" in the prospectus supplement, dated December 9, 2019, relating to the offering of the Notes (the "Prospectus Supplement"). In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations.

Except as set forth above, we express no other opinion. This opinion is expressed as of the date hereof, and we are under no obligation to supplement or revise our opinion to reflect any legal developments or factual matters arising subsequent to the date hereof, or the impact of any information, document, certificate, record, statement, representation, covenant, or assumption relied upon herein that becomes incorrect or untrue.

Very truly yours,

/s/ Skadden, Arps, Slate, Meagher & Flom LLP

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