

**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) **April 29, 2022**

Impac Mortgage Holdings, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Maryland

(State or Other Jurisdiction of Incorporation)

1-14100

(Commission File Number)

33-0675505

(IRS Employer Identification No.)

19500 Jamboree Road, Irvine, California

(Address of Principal Executive Offices)

92612

(Zip Code)

(949) 475-3600

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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.

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

Title of each class	Trading Symbols	Name of each exchange on which registered
Common Stock, \$0.01 par value	IMH	NYSE American
Preferred Stock Purchase Rights	IMH	NYSE American

Item 1.01 Entry into a Material Definitive Agreement

Impac Mortgage Holdings, Inc. (the “Company”) has entered into voting agreements, dated as of April 29, 2022 (the “Voting Agreements”), with holders of 59.3% of the outstanding shares of its 9.375% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share (“Series B Preferred Stock”), 53.2% of the outstanding shares of its 9.125% Series C Cumulative Redeemable Preferred Stock, par value \$0.01 per share (the “Series C Preferred Stock”), and 40.2% of the outstanding shares of its common stock, par value \$0.01 per share (the “Common Stock”), to vote in favor of proposed amendments by consent solicitation to the provisions of the Company’s charter setting forth the terms of the Series B Preferred Stock and Series C Preferred Stock (the “Proposed Amendments”) to (1) permit closing of a proposed exchange offer, described below (the “Exchange Offer”), without payment of any accrued or accumulated dividends on any outstanding shares of Series B Preferred Stock or Series C Preferred Stock, and (2) provide that, following the effectiveness of the Proposed Amendments and the Exchange Offer, the remaining outstanding shares of Series B Preferred Stock and Series C Preferred Stock would be subject to redemption at the election of the Company or the holders of any outstanding shares of Series B Preferred Stock or Series C Preferred Stock, as the case may be, for the following redemption consideration: (i) for each outstanding share of Series B Preferred Stock, subject to potential escrow or reduction to reflect the payment of any attorneys’ fees or costs that are the subject of any petition therefor filed by any attorneys representing holders of Series B Preferred Stock or any order entered by a court in respect of any such petition, (a) cash in the amount of \$5.00 and (b) twenty (20) shares of Common Stock and (ii) for each outstanding share of Series C Preferred Stock, (a) cash in the amount of \$0.10; (b) 1.25 shares of Common Stock and (c) a warrant to purchase 1.5 shares of Common Stock at a purchase price of \$5.00 per share of Common Stock.

In the proposed Exchange Offer, the Company currently intends to offer to repurchase each outstanding share of Series B Preferred Stock and each outstanding share of Series C Preferred Stock in exchange for the corresponding redemption consideration described above, and, with request to the Series B Preferred Stock after giving effect to any attorneys’ fees or costs ordered to be paid from such consideration. Closing of the Exchange Offer, if effected by the Company, is expected to be contingent upon the approval of the Proposed Amendments by the stockholders of the Company, which will require the affirmative vote of holders of at least each of 66 2/3% of the outstanding shares of Series B Preferred Stock, 66 2/3% of the outstanding shares of Series C Preferred Stock and a majority of the outstanding shares of Common Stock, and acceptance for record of the Proposed Amendments by the State Department of Assessments and Taxation of Maryland. The Voting Agreements also limit transferability of the shares of Series B Preferred Stock, Series C Preferred Stock and Common Stock during the term and certain holders of Series B Preferred Stock and Series C Preferred Stock have also agreed, as part of the Voting Agreements, to trading limitations in connection with any Common Stock they receive in the Exchange Offer or as part of the redemption including refraining from any sales of Common Stock for a period of six (6) months after consummation of the Exchange Offer. The foregoing description is qualified in its entirety by the terms of the Voting Agreement, the form of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

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

The Company cannot provide any assurance that the Proposed Amendments will be approved by the stockholders of the Company or that the Exchange Offer will be successfully completed on the terms set forth herein. The information set forth in Item 2.03 is incorporated herein by reference.

In connection with the exchange offer and consent solicitation, a registration statement on Form S-4, a tender offer statement on Schedule TO, and related documents and amendments thereto relating to the exchange offer and consent solicitation will be filed by the Company with the Securities and Exchange Commission. The Series B Preferred Stock and Series C Preferred Stock may not be exchanged or sold nor may offers to exchange or buy be accepted prior to the time the registration statement becomes effective. This Form 8-K shall not constitute an offer to exchange or sell, or the solicitation of an offer to exchange or buy, nor shall there be any exchange or sale of such securities in any state in which such offer, exchange, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state. Holders of the Series B Preferred Stock and Series C Preferred Stock are strongly advised to read the registration statement, tender offer statement and other related documents and amendments thereto when available because these documents will contain important information. Such holders will be able to obtain copies of the exchange offer materials from the Company or at the SEC’s website, www.sec.gov. The Company is not making any recommendation to holders of outstanding Series B Preferred Stock and Series C Preferred Stock as to whether they should tender their shares pursuant to the exchange offer and consent solicitation.

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

On April 29, 2022, the Company entered into an agreement to repay \$5 million of its outstanding convertible promissory notes (the “Notes”) on May 9, 2022, the date of maturity of such Notes, and amend and restate the remaining principal amount of \$15 million of the Notes to extend the maturity date of such notes (the “Amended Notes”) until May 9, 2025 (with three principal payments of \$5 million due on each of May 9, 2023, May 9, 2024 and May 9, 2025), provided the Company completes a contemplated Exchange Offer and provides notice of redemption of its remaining outstanding Series B Preferred Stock and Series C Preferred Stock by October 31, 2022, as described in Item 1.01 above. If the Company does not satisfy such exchange and redemption conditions, the Amended Notes will be due on November 9, 2022.

Interest on the Amended Notes remains at 7.0% per annum payable quarterly and computed on the basis of a 360 day year of twelve (12) months each comprised of thirty (30) days. The Amended Notes contain customary affirmative and negative covenants of the Company, including covenants not to incur certain indebtedness that is not subordinated and not to make optional payments on its indebtedness (other than on the Amended Notes) or amend material indebtedness in a manner that is adverse in any material manner to the Noteholders.

Noteholders may convert at any time all or a portion of the outstanding principal amount of the Notes into shares of the Company’s Common Stock (“Conversion Shares”) at a rate of \$21.50 per share (up to 697,674 shares in the aggregate), subject to adjustment for stock splits and dividends (the “Conversion Price”). The Company has the right to convert the entire outstanding principal of the Notes into Conversion Shares at the Conversion Price if the market price per share of the Common Stock, as measured by the average volume-weighted closing stock price per share of the Common Stock on the NYSE MKT (or any other U.S. national securities exchange then serving as the principal such exchange on which the shares of Common Stock are listed) for any twenty (20) trading days in any period of thirty (30) consecutive trading days, reaches the level of \$30.10. Upon conversion of the Amended Notes by the Company, the entire amount of accrued and unpaid interest (and all other amounts owing) under the Amended Notes are immediately due and payable.

Upon a change of control of the Company, the holders of a majority of the outstanding principal balance of the Amended Notes have the right to either (a) cause all unpaid principal and accrued but unpaid interest and other amounts owing to become immediately due and payable in full, (b) cause the entire unpaid principal balance of the Amended Notes to be converted into shares of the Common Stock at the Conversion Price then in effect, with the entire amount of accrued but unpaid interest and other amounts owing under the Notes to be immediately due and payable in cash, or (c) cause the Amended Notes to continue in full force and effect.

The Amended Notes include customary events of default including: failure to pay principal on any Amended Notes when due; failure to pay interest on the Amended Notes for two business days after it becomes due; failure in the performance of any other covenant contained in the terms of the Amended Notes for a period of thirty (30) days after written notice from any Noteholder; acceleration of other debt agreements representing in excess of \$3 million of indebtedness at any one time; the entry of judgments in excess of \$3 million against the Company and certain bankruptcy events. Upon an event of default, holders of 66 2/3% of the aggregate unpaid principal balance of all outstanding Notes may declare the Notes immediately due and payable.

The description above is qualified in its entirety by reference to the form of Amended Note and related Note Purchase Agreement, dated as of May 8, 2015, attached hereto as Exhibits 10.2 and 10.3, respectively, and incorporated herein by reference.

Forward-Looking Statements

This report contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements, some of which are based on various assumptions and events that are beyond our control, may be identified by reference to a future period or periods or by the use of forward looking terminology, such as “may,” “capable,” “will,” “intends,” “believe,” “expect,” “likely,” “potentially” “appear,” “should,” “could,” “seem to,” “anticipate,” “expectations,” “plan,” “ensure,” “desire,” or similar terms or variations on those terms or the negative of those terms. The forward-looking statements are based on current management expectations. Actual results may differ materially as a result of several factors, including, but not limited to the following: ability to complete the Exchange Offer and the consent solicitation in the manner and within the timeframe currently contemplated by the Company; impact on the U.S. economy and financial markets due to the outbreak and continued effect of the COVID-19 pandemic, and any adverse impact or disruption to the Company’s operations; successful development, marketing, sale and financing of new and existing financial products, including NonQM products; ability to successfully re-engage in lending activities, recruit and hire talent to rebuild our TPO NonQM origination team, and increase NonQM originations; ability to successfully sell loans to third-party investors; volatility in the mortgage industry; unexpected interest rate fluctuations and margin compression; performance of third-party sub-servicers; our ability to manage personnel expenses in relation to mortgage production levels; our ability to successfully use warehousing capacity and satisfy financial covenants; increased competition in the mortgage lending industry by larger or more efficient companies; issues and system risks related to our technology; ability to successfully create cost and product efficiencies through new technology including cyber risk and data security risk; more than expected increases in default rates or loss severities and mortgage related losses; ability to obtain additional financing through lending and repurchase facilities, debt or equity funding, strategic relationships or otherwise; the terms of any financing, whether debt or equity, that we do obtain and our expected use of proceeds from any financing; increase in loan repurchase requests and ability to adequately settle repurchase obligations; failure to create brand awareness; the outcome of any claims we are subject to, including any settlements of litigation or regulatory actions pending against us or other legal contingencies; our compliance with applicable local, state and federal laws and regulations; the effects of any acquisitions or dispositions of assets we may make; and other general market and economic conditions.

For a discussion of these and other risks and uncertainties that could cause actual results to differ from those contained in the forward-looking statements, see our latest Annual Report on Form 10-K and Quarterly Reports on Form 10-Q we file with the Securities and Exchange Commission and in particular the discussion of “Risk Factors” therein. This document speaks only as of its date and we do not undertake, and expressly disclaim any obligation, to release publicly the results of any revisions that may be made to any forward-looking statements to reflect the occurrence of anticipated or unanticipated events or circumstances after the date of such statements except as required by law.

Item 9.01 Exhibits

Exhibit Number

[10.1 Form of Voting Agreement, dated April 29, 2022.](#)

[10.2](#) [Form of Amended and Restated Convertible Promissory Note, dated May 9, 2022.](#)

[10.3](#) [Note Purchase Agreement, dated as of May 8, 2015, by and among Impac Mortgage Holdings, Inc. and the purchasers identified therein \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on August 12, 2015\).](#)

104 Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

IMPAC MORTGAGE HOLDINGS, INC.

Date: April 29, 2022

By: /s/ Joe Joffrion

Name: Joe Joffrion

Title: Senior Vice President and General Counsel

VOTING AGREEMENT

This Voting Agreement (this “**Agreement**”) is made and entered into as of April 29, 2022 (the “**Agreement Date**”), by and between Impact Mortgage Holdings, Inc., a Maryland corporation (the “**Company**”), and _____ (the “**Stockholder**”).

RECITALS

A. On or after the date of this Agreement, the Company proposes to (collectively, the “**Transaction**”) (a) launch an exchange offer (the “**Exchange Offer**”) for all of the outstanding shares of the Company’s 9.375% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share (the “**Series B Preferred Stock**”), and the Company’s 9.125% Series C Cumulative Redeemable Preferred Stock, par value \$0.01 per share (the “**Series C Preferred Stock**”), (b) approve certain amendments to the charter of the Company (the “**Charter**”), in substantially the form attached hereto in Exhibit A-1 and Exhibit A-2 (the “**Form of Amendments**”), by (i) soliciting a written consent from the holders of Series B Preferred Stock and Series C Preferred Stock, and (ii) calling a special meeting of the holders of the Company’s common stock, par value \$0.01 per share (the “**Common Stock**”), (c) amend the Charter as set forth in the Amendments and (d) redeem all outstanding shares of Series B Preferred Stock and Series C Preferred Stock that remain outstanding after completion of the Exchange Offer.

B. As of the Agreement Date, Stockholder is the record owner of, is the “beneficial owner” (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended, or the “**Exchange Act**”) of, or has discretionary voting authority over, the number of shares of Series B Preferred Stock, Series C Preferred Stock and/or Common Stock, as applicable, as set forth on Exhibit B hereto, being all of the shares of such stock owned of record or beneficially by Stockholder or with respect of which Stockholder has discretionary voting authority, as of the Agreement Date (the “**Owned Shares**” and, together with any additional shares of stock Stockholder may acquire record and/or beneficial ownership of, or obtain discretionary voting authority over, after the Agreement Date (including pursuant to a stock split, reverse stock split, stock dividend or distribution, or any redemption of (including as contemplated by the Form of Amendments) or change in Series B Preferred Stock, Series C Preferred Stock or Common Stock by reason of any recapitalization, reorganization, combination, reclassification, exchange of shares or similar transaction), Stockholder’s “**Covered Shares**”).

C. In connection with the Transaction, Stockholder has agreed to enter into this Agreement with respect to the Covered Shares.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. Definitions. When used in this Agreement, the following terms shall have the meanings assigned to them in this Section 1.

1.1. **“Amendments”** means amendments to the provisions of the Charter setting forth the terms of the Series B Preferred Stock and the Series C Preferred Stock in substantially the form of the Form of Amendments and, with respect to the Amendment relating to the terms of the Series B Preferred Stock, including such further changes to the form thereof and the amount of the “Special Redemption Price” set forth therein as the Company may determine to be reasonably necessary to (a) effect the payment, whether by the Company or the holders of Series B Preferred Stock, of any award with respect to the fees or costs of any attorney or attorneys representing one or more holders of Series B Preferred Stock, whether individually or as a class, in the matter *Curtis J. Timm, et al v Impac Mortgage Holdings, Inc., et al.*, as may be ordered by a court to be paid from or with respect to the Special Redemption Price, the consideration per share of Series B Preferred Stock to be paid in connection with the Exchange Offer or Judgment Order Number 5 (as defined in the Form of Amendment relating to the terms of the Series B Preferred Stock), (b) provide for a portion of such Special Redemption Price to be held in escrow pending resolution of any petition filed by any such attorney or attorneys seeking any such fees or costs or (c) cause the consideration per share of Series B Preferred Stock paid in connection with the Exchange Offer and the Special Redemption Price paid to each holder of Series B Preferred Stock to be the same, after payment of any such fees and costs as may be actually awarded by a court.

1.2. **“Closing Time”** shall mean the first time at which both (a) the Amendments have been accepted for record by the State Department of Assessments and Taxation of Maryland; and (b) the Exchange Offer has closed.

1.3. **“Expiration Time”** shall mean the earlier to occur of (a) the Closing Time and (b) such date and time before the occurrence of the Closing Time as this Voting Agreement shall be validly terminated pursuant to the terms hereof.

1.4. **“Transfer”** shall mean (a) any direct or indirect offer, sale, assignment, encumbrance, pledge, hypothecation, disposition, or other transfer (by operation of Law or otherwise), either voluntary or involuntary, or entry into any option or other Contract, arrangement or understanding with respect to any offer, sale, assignment, encumbrance, pledge, hypothecation, disposition or other transfer (by operation of Law or otherwise), of any Covered Shares or any interest in any Covered Shares (in each case other than this Agreement); (b) the deposit of such Covered Shares into a voting trust, the entry into a voting agreement or arrangement (other than this Agreement) with respect to such Covered Shares or the grant of any proxy or power of attorney (other than as contemplated by or pursuant to this Agreement) with respect to such Covered Shares; or (c) any contract or commitment (whether or not in writing) to take any of the actions referred to in the foregoing clauses (a), or (b) above.

2. Transfer Restrictions on Covered Shares

[2.1 Restrictions on Transfer of Covered Shares.

a. No Transfer of Covered Shares prior to Expiration Time. Until the Expiration Time, Stockholder agrees not to Transfer or cause or permit the Transfer of any of the Covered Shares, other than with the prior written consent of the Company.

b. Restrictions on Transfer of Covered Shares after the Closing Time. Unless this Agreement is validly terminated before the Closing Time pursuant to the terms hereof, and until the date that is the third annual anniversary of the first date on which the Closing Time occurs, Stockholder agrees not to Transfer or cause or permit the Transfer of the Covered Shares (which stockholder acknowledges includes any shares of Common Stock received in exchange for, or upon redemption of, shares of Series B Preferred Stock or Series C Preferred Stock that constituted Covered Shares immediately before the Closing Time), other than:

(i) with the prior written consent of the Company; or

(ii) beginning on the date that is 6 months after the date on which the Closing Time occurs and ending on the date that is the third annual anniversary of the first date on which the Closing Time occurs (the “**Restricted Period**”), Stockholder may, on any day during an ADTV Period (as defined below), Transfer a number of Covered Shares that does not exceed the greater of (A) 50,000 Covered Shares and (B) ten percent (10%) of the most recently-determined ADTV (as defined below); provided, however, that the maximum number of Covered Shares that may be Transferred by Stockholder during any particular ADTV Period pursuant to this clause (ii) may not exceed, in the aggregate, the product of (X) ten percent (10%) of the most recently-determined ADTV and (Y) the number of actual trading days during such ADTV Period (such product, the “**Maximum Transferable Share Amount**”). ADTV shall be calculated as of the first day of the Restricted Period and the first day of each calendar quarter thereafter, and the Company shall provide notice to Stockholder in accordance with Section 7.7 hereof of each ADTV within five (5) business days after each date on which it is calculated.

For purposes of this Section 2.1(b), “**ADTV**” means, as of any date, the average daily trading volume of the Common Stock on the principal U.S. securities exchange upon which the Common Stock is then listed or admitted for trading during the 3-month period ending on the trading date immediately preceding the date on which ADTV is calculated.

For purposes of this Section 2.1(b), “**ADTV Period**” means the period beginning on the most recent date on which ADTV has been calculated and ending on the day before the next date on which ADTV will be calculated or, in the case of the last ADTV Period, ending on the last day of the Restricted Period.

For example, if the first ADTV Period consists of 45 trading days and, on the first day of the Restricted Period, the average daily trading volume of the Common Stock on the principal U.S. securities exchange upon which the Common Stock is then listed or admitted for trading for the 3-month period prior to the first day of the Restricted Period is 30,000 shares of Common Stock, then, during the initial ADTV Period, which will begin on the first day of the Restricted Period and end on the day before the first day of the next calendar quarter (when the ADTV will be re-calculated), the Maximum Transferable Share Amount shall be 135,000 (being $10\% * 30,000 * 45$) and, during the initial ADTV Period, Stockholder may Transfer a number of Covered Shares on a daily basis that does not exceed 50,000 Covered Shares per day until the Maximum Transferable Share Amount of 135,000 Covered Shares have been Transferred by Stockholder during that initial ADTV Period.

(c) Attempted or Violative Transfer of Covered Shares. Any Transfer or attempted Transfer of any Covered Shares in violation of this Section 2.1 shall be null and void and of no effect whatsoever. If any involuntary Transfer of any of the Covered Shares shall occur (including, but not limited to, a sale by Stockholder's trustee in any bankruptcy, or a sale to a purchaser at any creditor's or court sale) in violation of this Section 2.1, the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall, subject to applicable law, take and hold such Covered Shares subject to all of the restrictions, obligations, liabilities and rights under this Agreement, which shall continue in full force and effect until the Expiration Time and until the expiration of the Restricted Period, if applicable.¹

[2.1. No Transfer of Covered Shares prior to Expiration Time. Until the Expiration Time, Stockholder agrees not to Transfer or cause or permit the Transfer of any of the Covered Shares, other than with the prior written consent of the Company. Any Transfer or attempted Transfer of any Covered Shares in violation of this Section 2.1 shall be null and void and of no effect whatsoever. If any involuntary Transfer of any of the Covered Shares shall occur (including, but not limited to, a sale by Stockholder's trustee in any bankruptcy, or a sale to a purchaser at any creditor's or court sale), the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall, subject to applicable Law, take and hold such Covered Shares subject to all of the restrictions, obligations, liabilities and rights under this Agreement, which shall continue in full force and effect until the Expiration Time.]²

2.2. No Inconsistent Arrangements. Stockholder hereby agrees that, from and after the date hereof and until the Expiration Time, Stockholder shall not, directly or indirectly, take any action that would have the effect of preventing, materially delaying or materially impairing Stockholder from performing any of its obligations under this Agreement or that would, or would reasonably be expected to, have the effect of preventing, materially delaying or materially impairing, the consummation of the Transaction or the other transactions contemplated by the Information Statement.

2.3. Permitted Transfers. Section 2.1 above shall not prohibit or otherwise restrict a Transfer of Covered Shares by Stockholder: (a) to any member of Stockholder's immediate family, or to a trust for the benefit of Stockholder or any member of Stockholder's immediate family, or otherwise for estate planning purposes, (b) after the Closing Time, to any investor or member of Stockholder, or to any investor or member of Stockholder's affiliates or related entities; (c) by will or under the laws of intestacy upon the death of Stockholder, (d) pursuant to a qualified domestic order; (e) in order to participate in the Exchange Offer; provided, however, that a Transfer referred to in clauses (a) through (d) of this sentence shall be permitted only if (i) all of the representations and warranties in Section 5 of this Agreement with respect to Stockholder would be true and correct in all material respects upon such Transfer, subject to necessary adjustment as a result of such Transfer, (ii) the transferee agrees in a written document, reasonably satisfactory in form and substance to the Company, to be bound by all of the terms of this Agreement, and (iii) other than with respect to a Transfer referred to in clause (c) of this Section, such Transfer does not occur during the period beginning three (3) business days prior to the Closing Time and ending at the Closing Time.

¹ NTD: To be included in voting agreements with Camac Fund LP, Camac Partners LLC, Sara-Bay Financial Inc., Joseph Waske and Dennis Hesse.

² NTD: This Section 2.1 to be included in form agreement for all other stockholders.

3. Agreement to Vote the Covered Shares.

3.1. Voting Agreement. Until the Expiration Time, at any applicable meeting of the Company's stockholders at which the Amendments are to be considered or voted on (and at every adjournment or postponement thereof), and on any action or approval of the Company's stockholders by written or electronic transmission consent with respect to any of the Amendments, Stockholder shall vote (including via proxy) all of the Covered Shares (or cause the holder of record on any applicable record date to vote (including via proxy) all of the Covered Shares) in favor of such proposals, or shall execute or deliver such applicable written or electronic transmission consent approving such proposals. Additionally, Stockholder agrees to (a) vote (or consent) as recommended by the Company's Board of Directors (the "**Board**") on any other matters brought to vote at a meeting of the stockholders of the Company relating to the Transaction (or approved by written consent) and (b) against any action or agreement that would reasonably be expected impede, interfere with or materially and adversely affect the consummation of the Transaction (collectively, the "**Covered Proposals**").

3.2. Quorum. Until the Expiration Time, at every applicable meeting of the Company's stockholders (and at every adjournment or postponement thereof), Stockholder shall be represented in person or by proxy at such meeting (or cause the holders of record on any applicable record date to be represented in person or by proxy at such meeting) in order for the Covered Shares to be counted as present for purposes of establishing a quorum.

3.3. Return of Proxy or Consent. Stockholder shall execute and deliver (or cause the holders of record to execute and deliver), within five Business Days of receipt, any proxy card, voting instructions or request for consent it receives from the Company that is sent to stockholders of the Company soliciting proxies or consents with respect to any matter described in Section 3.1, which shall be voted in the manner described in Section 3.1 (with the Company to be promptly notified (and provided reasonable evidence) of such execution and delivery of such proxy card, voting instructions or consent).

4. Waiver of Certain Actions. Stockholder hereby agrees not to, as a stockholder of the Company, commence or participate in, and to take all actions necessary to opt out of any class in any class action with respect to, any claim, derivative or otherwise, against the Company any of its affiliates or successors or any of their respective directors, managers or officers (a) challenging the validity of, or seeking to enjoin or delay the operation of, any provision of this Agreement, (b) seeking to enjoin or delay the Transaction or (c) alleging a breach of any duty of the directors of the Company in connection with the Transaction, this Agreement or the transactions contemplated thereby or hereby.

5. Representations and Warranties of Stockholder. Stockholder hereby represents and warrants to the Company that:

5.1. Due Authority. Stockholder has the full power and capacity to make, enter into and carry out the terms of this Agreement. This Agreement has been duly and validly executed and delivered by Stockholder and constitutes a valid and binding obligation of Stockholder, enforceable against Stockholder in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws relating to or affecting the enforcement of creditors' rights and (ii) general equitable principles, whether applied in law or in equity.

5.2. Ownership of the Covered Shares. Except as disclosed on Exhibit B hereto: (a) Stockholder is, as of the Agreement Date, the beneficial and record owner of the Covered Shares, free and clear of any and all liens, claims, proxies, voting trusts or agreements, options, rights, understandings or arrangements or any other encumbrances or restrictions whatsoever on title, transfer, voting or exercise of any rights of a stockholder in respect of such Covered Shares other than (i) those created by this Agreement, or (ii) those arising under applicable securities laws, and (b) Stockholder has sole voting power over all of the Covered Shares (and to the extent Stockholder does not have sole voting power on any of the Covered Shares, Stockholder shall vote or cause the person with whom Stockholder shares voting power to vote as set forth in Section 3.1). As of the Agreement Date, there does not exist any agreement made by Stockholder to Transfer any Covered Shares. As of the Agreement Date, Stockholder does not own, beneficially or of record, any capital stock of the Company (including any securities convertible, exercisable or exchangeable for, or rights to purchase or acquire, any capital stock of the Company) other than the Owned Shares.

5.3. No Conflict; Consents.

a. The execution and delivery of this Agreement by Stockholder does not, and the performance by Stockholder of his, her or its obligations under this Agreement and the compliance by Stockholder with any provisions hereof does not and will not: (a) conflict with or violate any laws applicable to Stockholder, or (b) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a lien on any of the Covered Shares beneficially owned by Stockholder pursuant to any contract or obligation to which Stockholder is a party or to which Stockholder is subject.

b. No consent, approval, order or authorization of, or registration, declaration or, except as required by the rules and regulations promulgated under the Exchange Act, filing with, any governmental entity or any other person, is required by or with respect to Stockholder in connection with the execution and delivery of this Agreement or the consummation by Stockholder of the transactions contemplated hereby.

5.4. Absence of Litigation. As of the Agreement Date, there is no legal action pending against, or, to the knowledge of Stockholder, threatened against or affecting Stockholder that would reasonably be expected to materially impair the ability of Stockholder to perform his obligations hereunder or to consummate the transactions contemplated hereby on a timely basis.

5.5. No Brokers. No broker, finder, financial advisor, investment banker or other person is entitled to any brokerage, finder's, financial advisor's or other similar fee or commission from the Company in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Stockholder.

5.6 Accredited Investor. Stockholder is an “accredited investor” as that term is defined in Rule 501(a) of the Securities Act of 1933, as amended.

6. Representations and Warranties of the Company. The Company hereby represents and warrants to Stockholder that:

6.1. Due Authority. The Company has the full power and capacity to make, enter into and carry out the terms of this Agreement. The Company is duly organized, validly existing and in good standing in accordance with the laws of its jurisdiction of incorporation. The execution and delivery of this Agreement, the performance of the Company’s obligations hereunder, and the consummation of the transactions contemplated hereby have been validly authorized, and no other consents or authorizations are required to give effect to this Agreement or the transactions contemplated by this Agreement. This Agreement has been duly and validly executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable against it in accordance with its terms, subject to subject to (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws relating to or affecting the enforcement of creditors’ rights and (ii) general equitable principles, whether applied in law or in equity.

6.2. No Conflict; Consents.

a. The execution and delivery of this Agreement by the Company does not, and the performance by the Company of its obligations under this Agreement and the compliance by the Company with the provisions hereof do not and will not: (i) conflict with or violate any laws applicable to the Company or (ii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a material default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, pursuant to any contract or obligation to which the Company is a party or by which the Company is subject.

b. No consent, approval, order or authorization of, or registration, declaration or, except as required by the rules and regulations promulgated under the Exchange Act, filing with, any governmental entity or any other person, is required by or with respect to the Company in connection with the execution and delivery of this Agreement or the consummation by the Company of the transactions contemplated hereby.

7. Miscellaneous.

7.1. Other Agreements. Stockholder further agrees that, from and after the date hereof until the Expiration Time, Stockholder will not, and will not permit any entity under Stockholder’s control to, (A) solicit proxies or become a “participant” in a “solicitation” (as such terms are defined in Rule 14A under the Exchange Act) in opposition to any Covered Proposal or (B) become a member of a “group” (as such term is used in Section 13(d) of the Exchange Act) with respect to the Transaction.

7.2. No Ownership Interest. Nothing contained in this Agreement shall be deemed to vest the Company any direct or indirect ownership or incidence of ownership of or with respect to the Covered Shares. All rights, ownership and economic benefits of and relating to the Covered Shares shall remain vested in and belong to the Stockholder, and the Company shall have no authority to direct Stockholder in the voting or disposition of any of the Covered Shares, except as otherwise provided herein.

7.3. Certain Adjustments. In the event of a stock split, stock dividend or distribution, or any change in the Common Stock, Series B Preferred Stock or Series C Preferred Stock by reason of any split-up, reverse stock split, recapitalization, combination, reclassification, exchange of shares or the like, the terms “Covered Shares” and “Owned Shares” shall be deemed to refer to and include such shares as well as all such stock dividends and distributions and any securities into which or for which any or all of such shares may be changed or exchanged or which are received in such transaction.

7.4. Survival. None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants, and agreements, shall survive the Expiration Time or the termination of this Agreement, except for those covenants and agreements contained herein that by their terms apply or are to be performed in whole or in part after the Expiration Time or the termination of this Agreement.

7.5. Amendments; Waivers. Subject to the provisions of applicable laws, this Agreement may be amended, modified or waived if, and only if, such amendment, modification or waiver is in writing and signed, in the case of an amendment or modification, by the parties hereto, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

7.6. Expenses. All costs and expenses incurred by any party in connection with this Agreement shall be paid by the party incurring such cost or expense.

7.7. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally (notice deemed given upon receipt), transmitted by facsimile (notice deemed given upon confirmation of receipt), sent by electronic mail (notice deemed given upon confirmation of receipt) or sent by a nationally recognized overnight courier service, such as Federal Express (notice deemed given upon receipt of proof of delivery), to the Parties at the following addresses (or at such other address for a party as shall be specified by like notice):

- a. if to Stockholder, to the address for notice set forth on the signature page hereto.
- b. if to the Company, to:

1950 Jamboree Rd
Irvine, CA 92612
Att'n: Joe Joffrion
Email: joe.joffrion@impacmail.com

With a copy to:

Venable LLP
750 E. Pratt Street, Suite 900
Baltimore, MD 21202
Att'n: Carmen Fonda
Email: cmfonda@venable.com

7.8. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to each other party (including by means of electronic delivery), it being understood that the parties need not sign the same counterpart. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

7.9. Entire Agreement; No Third-Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof, and is not intended to confer upon any person other than the parties any rights or remedies hereunder.

7.10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to any applicable conflicts of law principles.

7.11. Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability and, unless the effect of such invalidity or unenforceability would prevent the parties from realizing the major portion of the economic benefits of the Transaction that they currently anticipate obtaining therefrom, shall not render invalid or unenforceable the remaining terms and provisions of this Agreement or affect the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

7.12. Assignment. Neither this Agreement nor any of the rights, interests or obligations of the parties hereunder shall be assigned by any of the parties (whether by operation of law or otherwise) without the prior written consent of the other parties, and any attempt to make any such assignment without such consent shall be null and void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns.

7.13. Submission to Jurisdiction. With respect to any claim arising under or relating to this Agreement or the transactions contemplated by this Agreement, each of the parties agrees that it shall exclusively bring any action or proceeding in the Circuit Court for Baltimore City (Maryland), or, if that court does not have subject matter jurisdiction over a particular matter, the United States District Court for the District of Maryland, Northern Division) (the “Chosen Courts”) and, solely in connection with such claims, (a) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (b) waives any objection to the laying of venue in any such action or proceeding in the Chosen Courts, (c) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party and (d) agrees that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 7.7 or in such other manner as may be permitted by law shall be valid and sufficient service thereof. If any action or proceeding is filed in the Circuit Court for Baltimore City (Maryland), the Parties agree to request assignment of the action or proceeding to the Business and Technology Case Management Program of that court. The consent to jurisdiction set forth in this Section 7.13 shall not constitute a general consent to service of process in the State of Maryland and shall have no effect for any purpose except as provided in this Section 7.13. The parties agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

7.14. Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms on a timely basis or were otherwise breached. It is accordingly agreed that, prior to the valid termination of this Agreement, the parties shall be entitled to an injunction or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court identified in the Section above, this being in addition to any other remedy to which they are entitled at law or in equity. Each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that any other party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. The parties further agree that no party to this Agreement shall be required to obtain, secure, furnish or post any bond, security or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 7.14 and each party waives any objection to the imposition of such relief or any right it may have to require the obtaining, securing, furnishing or posting of any such bond, security or similar instrument.

7.15. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

7.16. Documentation and Information. Stockholder consents to and authorizes the publication and disclosure by the Company of Stockholder's identity and holding of the Covered Shares, and the terms of this Agreement (including, for the avoidance of doubt, the disclosure of this Agreement), in any press release, the Form S-4, Schedule TO, Joint Proxy Statement/Prospectus and any other disclosure document required in connection with the Transaction, and Stockholder acknowledges that the Company may, in its sole discretion, file this Agreement or a form hereof with the SEC or any other governmental entity or securities exchange. Stockholder agrees to promptly give the Company any information it may reasonably require for the preparation of any such disclosure documents, and Stockholder agrees to promptly notify the Company of any required corrections with respect to any information supplied by Stockholder specifically for use in any such disclosure document, if and to the extent that any such information shall have become false or misleading in any material respect.

7.17. Further Assurances. Subject to the terms of this Agreement, Stockholder agrees, from time to time, at the reasonable request of the Company and without further consideration, to execute and deliver such additional documents and take all such further action as may be reasonably required to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement.

7.18. Stop Transfer Instructions. At all times commencing with the execution and delivery of this Agreement and continuing until the expiration of all restrictions on the Transfer of Covered Shares pursuant to Section 2.1, in furtherance of this Agreement, Stockholder hereby authorizes the Company or its counsel to notify the Company's transfer agent that there is a stop transfer order with respect to any or all of the Covered Shares (and that this Agreement places limits on the voting and transfer of Covered Shares), subject to the provisions hereof and provided that any such stop transfer order and notice will immediately be withdrawn and terminated by Company following the expiration of all restrictions on the Transfer of Covered Shares pursuant to Section 2.1.

7.19. Interpretation. When a reference is made in this Agreement to Sections, Exhibits or Schedules, such reference shall be to a Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "herein," "hereof," "hereunder" and words of similar import shall be deemed to refer to this Agreement as a whole, including the Exhibits and Schedules hereto, and not to any particular provision of this Agreement. Any pronoun shall include the corresponding masculine, feminine and neuter forms. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. The word "extent" and the phrase "to the extent" when used in this Agreement shall mean the degree to which a subject or other thing extends, and such word or phrase shall not merely mean "if."

7.20. Termination. This Agreement shall automatically terminate without further action by any of the parties hereto and shall have no further force or effect as of the earliest to occur of:

- a. 5:00 p.m., eastern time, on October 31, 2022, if, as of such time, the Closing Time has not occurred;
- b. The time specified by written agreement of the parties; or
- c. The expiration of all restrictions on Transfer of any Covered Shares pursuant to Section 2.1 hereof;

provided that the provisions of this Section 7 (other than Sections 7.1, 7.17 and 7.18) shall survive any such termination. Notwithstanding the foregoing, termination of this Agreement shall not prevent any party from seeking any remedies (at law or in equity) against any other party for that party's breach of any of the terms of this Agreement prior to the date of termination.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered on the date and year first above written.

COMPANY:

IMPAC MORTGAGE HOLDINGS, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered on the date and year first above written.

STOCKHOLDER:

Name of Stockholder (please print)

By: _____

Name:

Title:

Address:

Email: _____

EXHIBIT A - 1

AMENDMENT TO SERIES B PREFERRED STOCK

(see attached)

IMPAC MORTGAGE HOLDINGS, INC.

ARTICLES OF AMENDMENT¹

Impac Mortgage Holdings, Inc., a Maryland corporation (the “Corporation”), hereby certifies to the State Department of Assessments and Taxation of Maryland (the “SDAT”) that:

FIRST: Articles Supplementary (the “Articles Supplementary”) of the Corporation establishing the Corporation’s 9.375% Series B Cumulative Redeemable Preferred Stock (the “Series B Preferred Stock”) were filed with and accepted for record by the SDAT on May 26, 2004 and formed a part of the charter of the Corporation (the “Charter”). The Articles Supplementary are hereby amended to add the following new Section 8, Section 9 and Section 10 to follow Section 7:

(8) **DEFINED TERMS.** As used in this Section 8 and in Section 9 and Section 10, the following terms shall have the following meanings:

(a) “Amendment Effective Date” means the date the Articles of Amendment setting forth this Section 8 and Section 9 and Section 10 are accepted for record by the State Department of Assessments and Taxation of Maryland (the “SDAT”).

(b) “Exchange Offer” means the Exchange Offer as defined in the Exchange Offer Registration Statement.

(c) “Exchange Offer Registration Statement” means the Registration Statement on Form S-4, Commission File No. 333-_____, filed by the Company with the United States Securities and Exchange Commission under the Securities Act of 1933, as amended, and all amendments thereto, and the related form of prospectus included therein.

(d) “Series C Special Redemption” means the Corporation’s right and obligation to redeem outstanding shares of the Corporation’s 9.125% Series C Cumulative Redeemable Preferred Stock (the “Series C Preferred Stock”) pursuant to the “Series C Special Redemption” set forth in Articles of Amendment filed with, and accepted for record by, the SDAT on or about the Amendment Effective Date and described in the Exchange Offer Registration Statement.

(9) **EXCHANGE OFFER REDEMPTIONS.** Subject to the terms and conditions of the Exchange Offer as described in the Exchange Offer Registration Statement, the Corporation shall have the right and obligation to redeem outstanding shares of Series B Preferred Stock, and the right and obligation to redeem outstanding shares of Series C Preferred Stock pursuant to the Exchange Offer (the “Exchange Offer Redemptions”). The Corporation’s power to effect the Exchange Offer Redemptions shall be without regard to or compliance with any other provision set forth in the Articles Supplementary classifying the Series B Preferred Stock, including, without limitation, Section 3 [Dividends] and Section 5 [Redemption] thereof. In furtherance of, and without limitation to, the foregoing sentence, in connection with the Exchange Offer Redemptions, the Corporation shall have no obligation to pay or make allowance for, and will make no payment or allowance for, accrued and unpaid dividends on any share of Series B Preferred Stock outstanding (whether or not any such dividends have accumulated and whether or not such dividends accrued before or after the Amendment Effective Date). The redemption of shares of Series B Preferred Stock pursuant to the Exchange Offer Redemptions shall not prejudice any person’s rights to receive the amount contemplated by Order Number 5 in the Judgment Order by the Circuit Court for Baltimore City, dated July 16, 2018, as modified in the Judgement Order by the Circuit Court for Baltimore City, dated July 24, 2018, in the matter Curtis J. Timm, et al v Impac Mortgage Holdings, Inc., et al. (the “Judgment Order Number 5”).

¹ Note to Draft: These Articles of Amendment to be filed with the SDAT before the closing of the Exchange Offer.

(10) SERIES B SPECIAL REDEMPTION.

(a) *Right and Obligation of Series B Special Redemption.* The Corporation shall have the right and obligation to redeem all outstanding shares of Series B Preferred Stock pursuant to the special redemption set forth in this Section 10 (the “Series B Special Redemption”) and the power to effect the Series C Special Redemption. The Corporation’s right and obligation to effect the Series B Special Redemption and the Corporation’s power to effect the Series C Special Redemption shall be without regard to or compliance with any other provision set forth in the Articles Supplementary classifying the Series B Preferred Stock, including, without limitation, Section 3 [Dividends] and Section 5 [Redemption] thereof. In furtherance of, and without limitation to, the foregoing sentence, in connection with the Series B Special Redemption and the Series C Special Redemption, the Corporation shall have no obligation to pay or make allowance for, and will make no payment or allowance for, accrued and unpaid dividends on any share of Series B Preferred Stock outstanding (whether or not any such dividends have accumulated and whether or not such dividends accrued before or after the Amendment Effective Date).

(b) *Special Redemption Price.* The Corporation shall have the right to redeem the outstanding shares of Series B Preferred Stock, in whole but not in part, on such date as may be fixed by the Corporation on or prior to the date that is two years from the Amendment Effective Date for the following per share redemption price (the “Special Redemption Price”): (i) \$5.00 and (ii) 20 shares of the Corporation’s Common Stock, \$0.01 par value per share.² If the Corporation has not provided written notice of its election to effect the Series B Special Redemption by the date that is 65 days from the Amendment Effective Date, then, upon the written request of the holder of any outstanding share of Series B Preferred Stock on or prior to the date that is two years from the Amendment Effective Date (the “Stockholder Put Notice”), the Corporation shall effect the Series B Special Redemption for all, but not less than all, of the outstanding shares of Series B Preferred Stock at the Special Redemption Price on such date as may be fixed by the Corporation within 90 days of receipt by the Corporation of the Stockholder Put Notice (the “Put Closing Date”) in accordance with this Section 10; provided, however, that the Corporation may delay the Put Closing Date if the Corporation would be prohibited from paying the Special Redemption Price under Section 2-311 of the Maryland General Corporation Law, or any successor statute, until such time that the Corporation would be permitted to pay the Special Redemption Price.

² The “Special Redemption Price” may be modified or reduced as described in Section 1.1 of the Voting Agreement.

(c) *No Dividends Paid with Respect to Series B Special Redemption.* Except as expressly provided for in the last sentence of this Section 10(c), in connection with the Series B Special Redemption, the Corporation shall only be obligated to pay with respect to each share of Series B Preferred Stock the Special Redemption Price and the Corporation shall have no obligation to pay or make allowance for, and will make no payment or allowance for, accrued and unpaid dividends on any share of Series B Preferred Stock outstanding (whether or not any such dividends have accumulated and whether or not such dividends accrued before or after the Amendment Effective Date). The redemption of shares of Series B Preferred Stock shall not prejudice any person's rights to receive the amount contemplated by the Judgment Order Number 5.

(d) *Effect on Series B Preferred Stock.* If notice of the Series B Special Redemption has been given as contemplated below and if the funds and other Special Redemption Price consideration necessary for the Series B Special Redemption have been set aside by the Corporation for the benefit of the holders of shares of Series B Preferred Stock, then, from and after the date of the Series B Special Redemption, the shares of Series B Preferred Stock shall no longer be deemed outstanding, dividends will cease to accrue on shares of Series B Preferred Stock, and all rights of the holders of such shares will terminate, except the right to receive for each share of Series B Preferred Stock the Special Redemption Price. Holders of Series B Preferred Stock shall surrender such shares of Series B Preferred Stock at the place and in accordance with the procedures specified in such notice and, upon such surrender, each such share of Series B Preferred Stock shall be redeemed by the Corporation at the Special Redemption Price.

(e) *Procedures for Series B Special Redemption.*

(i) If the Corporation elects to effect the Series B Special Redemption or is required to effect the Series B Special Redemption pursuant to this Section 10, the Corporation shall send notice of the Series B Special Redemption substantially in accordance with the applicable procedures of The Depository Trust Company, including notice periods or required information as shall be determined by the Corporation in accordance with the applicable procedures of The Depository Trust Company. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the Series B Special Redemption except as to the holder to whom notice was defective or not given and is not later corrected or given.

(ii) If the Corporation elects to effect the Series B Special Redemption or is required to effect the Series B Special Redemption pursuant to this Section 10, the Corporation shall deposit the required funds and any other Special Redemption Price consideration with a bank or trust company for the purpose of redeeming Series B Preferred Stock, which deposit shall be irrevocable except that:

(A) the Corporation shall be entitled to receive from such bank or trust company the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and

(B) any balance of funds and any other Special Redemption Price consideration so deposited by the Corporation and unclaimed by the holders of the Series B Preferred Stock entitled thereto at the expiration of two years from the applicable redemption date shall be repaid, together with any interest or other earnings thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds and any other Special Redemption Price consideration so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

SECOND: The amendment to the Charter as set forth above has been advised by the Board of Directors of the Corporation and approved by the stockholders of the Corporation entitled to vote thereon as required by law.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be signed in its name and on its behalf by its _____ and attested to by its ____ on this _____ day of _____, 2022.

ATTEST:

IMPAC MORTGAGE HOLDINGS, INC.

Name:
Title:

By: _____
Name:
Title:

EXHIBIT A - 2

AMENDMENT TO SERIES C PREFERRED STOCK

(see attached)

IMPAC MORTGAGE HOLDINGS, INC.

ARTICLES OF AMENDMENT¹

Impac Mortgage Holdings, Inc., a Maryland corporation (the "Corporation"), hereby certifies to the State Department of Assessments and Taxation of Maryland (the "SDAT") that:

FIRST: Articles Supplementary (the "Articles Supplementary") of the Corporation establishing the Corporation's 9.125% Series C Cumulative Redeemable Preferred Stock (the "Series C Preferred Stock") were filed with and accepted for record by the SDAT on November 18, 2004 and formed a part of the charter of the Corporation (the "Charter"). Articles of Amendment were filed with and accepted for record by the SDAT on June 29, 2009 which amended and restated the Articles Supplementary (the "Amendment"). The Amendment is hereby amended to add the following new Section 8, Section 9 and Section 10 to follow Section 7:

(8) **DEFINED TERMS.** As used in this Section 8 and in Section 9 and Section 10, the following terms shall have the following meanings:

(a) "Amendment Effective Date" means the date the Articles of Amendment setting forth this Section 8 and Section 9 and Section 10 are accepted for record by the State Department of Assessments and Taxation of Maryland (the "SDAT").

(b) "Exchange Offer" means the Exchange Offer as defined in the Exchange Offer Registration Statement.

(c) "Exchange Offer Registration Statement" means the Registration Statement on Form S-4, Commission File No. 333-_____, filed by the Company with the United States Securities and Exchange Commission under the Securities Act of 1933, as amended, and all amendments thereto, and the related form of prospectus included therein.

(d) "Series B Special Redemption" means the Corporation's right and obligation to redeem outstanding shares of the Corporation's 9.375% Series B Cumulative Redeemable Preferred Stock (the "Series B Preferred Stock") pursuant to the "Series B Special Redemption" set forth in Articles of Amendment filed with, and accepted for record by, the SDAT on or about the Amendment Effective Date and described in the Exchange Offer Registration Statement.

(e) "Series C Articles" means the Articles Supplementary classifying the Series C Preferred Stock, filed with and accepted for record by the SDAT on November 18, 2004, as amended by the Articles of Amendment to such Articles Supplementary, filed with and accepted for record by the SDAT on June 29, 2009.

(f) "Series C Warrants" means the Company's Warrants contemplated by the [Warrant Agreement, dated as of [date]] and described in the Exchange Offer Registration Statement

¹ Note to Draft: These Articles of Amendment to be filed with the SDAT before the closing of the Exchange Offer.

(9) EXCHANGE OFFER REDEMPTIONS. Subject to the terms and conditions of the Exchange Offer as described in the Exchange Offer Registration Statement, the Corporation shall have the right and obligation to redeem outstanding shares of Series C Preferred Stock, and the right and obligation to redeem outstanding shares of Series B Preferred Stock pursuant to the Exchange Offer (the “Exchange Offer Redemptions”). The Corporation’s power to effect the Exchange Offer Redemptions shall be without regard to or compliance with any other provision set forth in the Series C Articles, including, without limitation, Section 3 [Dividends] and Section 5 [Redemption] thereof. In furtherance of, and without limitation to, the foregoing sentence, in connection with the Exchange Offer Redemptions, the Corporation shall have no obligation to pay or make allowance for, and will make no payment or allowance for, accrued and unpaid dividends on any share of Series C Preferred Stock outstanding (whether or not any such dividends have accumulated and whether or not such dividends accrued before or after the Amendment Effective Date).

(10) SERIES C SPECIAL REDEMPTION.

(a) *Right and Obligation of Series C Special Redemption.* The Corporation shall have the right and obligation to redeem all outstanding shares of Series C Preferred Stock pursuant to the special redemption set forth in this Section 10 (the “Series C Special Redemption”) and the power to effect the Series B Special Redemption. The Corporation’s right and obligation to effect the Series C Special Redemption and the Corporation’s power to effect the Series B Special Redemption shall be without regard to or compliance with any other provision set forth in the Series C Articles, including, without limitation, Section 3 [Dividends] and Section 5 [Redemption] thereof. In furtherance of, and without limitation to, the foregoing sentence, in connection with the Series C Special Redemption and the Series B Special Redemption, the Corporation shall have no obligation to pay or make allowance for, and will make no payment or allowance for, accrued and unpaid dividends on any share of Series C Preferred Stock outstanding (whether or not any such dividends have accumulated and whether or not such dividends accrued before or after the Amendment Effective Date).

(b) *Special Redemption Price.* The Corporation shall have the right to redeem the outstanding shares of Series C Preferred Stock, in whole but not in part, on such date as may be fixed by the Corporation on or prior to the date that is two years from the Amendment Effective Date for the following per share redemption price (the “Special Redemption Price”): (i) \$0.10; (ii) 1.25 shares of the Corporation’s Common Stock, \$0.01 par value per share (“Common Stock”); and (iii) 1.5 Series C Warrants; provided, however, (1) no fractional shares of Common Stock will be issued pursuant to subsection (ii) of this sentence, and each holder of Series C Preferred Stock otherwise entitled to receive a fractional share of Common Stock shall be entitled to receive one share of Common Stock in lieu of the fraction of a share of Common Stock and (2) no fractional Series C Warrants will be issued pursuant to subsection (iii) of this sentence and the Company shall round down to the nearest whole number the number of Series C Warrants to be issued to each holder of Series C Preferred Stock otherwise entitled to receive a fractional Series C Warrant. If the Corporation has not provided written notice of its election to effect the Series C Special Redemption by the date that is 65 days from the Amendment Effective Date, then, upon the written request of the holder of any outstanding share of Series C Preferred Stock on or prior to the date that is two years from the Amendment Effective Date (the “Stockholder Put Notice”), the Corporation shall effect the Series C Special Redemption for all, but not less than all, of the outstanding shares of Series C Preferred Stock at the Special Redemption Price on such date as may be fixed by the Corporation within 90 days of receipt by the Corporation of the Stockholder Put Notice (the “Put Closing Date”) in accordance with this Section 10; provided, however, that the Corporation may delay the Put Closing Date if the Corporation would be prohibited from paying the Special Redemption Price under Section 2-311 of the Maryland General Corporation Law, or any successor statute, until such time that the Corporation would be permitted to pay the Special Redemption Price.

(c) *No Dividends Paid with Respect to Series C Special Redemption.* In connection with the Series C Special Redemption, the Corporation shall only be obligated to pay with respect to each share of Series C Preferred Stock the Special Redemption Price and the Corporation shall have no obligation to pay or make allowance for, and will make no payment or allowance for, accrued and unpaid dividends on any share of Series C Preferred Stock outstanding (whether or not any such dividends have accumulated and whether or not such dividends accrued before or after the Amendment Effective Date).

(d) *Effect on Series C Preferred Stock.* If notice of the Series C Special Redemption has been given as contemplated below and if the funds and other Special Redemption Price consideration necessary for the Series C Special Redemption have been set aside by the Corporation for the benefit of the holders of shares of Series C Preferred Stock, then, from and after the date of the Series C Special Redemption, the shares of Series C Preferred Stock shall no longer be deemed outstanding, dividends will cease to accrue on shares of Series C Preferred Stock, and all rights of the holders of such shares will terminate, except the right to receive for each share of Series C Preferred Stock the Special Redemption Price. Holders of Series C Preferred Stock shall surrender such shares of Series C Preferred Stock at the place and in accordance with the procedures specified in such notice and, upon such surrender, each such share of Series C Preferred Stock shall be redeemed by the Corporation at the Special Redemption Price.

(e) *Procedures for Series C Special Redemption.*

(i) If the Corporation elects to effect the Series C Special Redemption or is required to effect the Series C Special Redemption pursuant to this Section 10, the Corporation shall send notice of the Series C Special Redemption substantially in accordance with the applicable procedures of The Depository Trust Company, including notice periods or required information as shall be determined by the Corporation in accordance with the applicable procedures of The Depository Trust Company. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the Series C Special Redemption except as to the holder to whom notice was defective or not given and is not later corrected or given.

(ii) If the Corporation elects to effect the Series C Special Redemption or is required to effect the Series C Special Redemption pursuant to this Section 10, the Corporation shall deposit the required funds and any other Special Redemption Price consideration with a bank or trust company for the purpose of redeeming Series C Preferred Stock, which deposit shall be irrevocable except that:

(A) the Corporation shall be entitled to receive from such bank or trust company the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and

(B) any balance of funds and any other Special Redemption Price consideration so deposited by the Corporation and unclaimed by the holders of the Series C Preferred Stock entitled thereto at the expiration of two years from the applicable redemption date shall be repaid, together with any interest or other earnings thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds and any other Special Redemption Price consideration so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

SECOND: The amendment to the Charter as set forth above has been advised by the Board of Directors of the Corporation and approved by the stockholders of the Corporation entitled to vote thereon as required by law.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be signed in its name and on its behalf by its _____ and attested to by its ____ on this _____ day of _____, 2022.

ATTEST:

IMPAC MORTGAGE HOLDINGS, INC.

Name:
Title:

By: _____
Name:
Title:

EXHIBIT B
OWNED SHARES

Class of Stock	Number of Shares	Record Holder, Beneficial Holder or Discretionary Voting Authority
Common Stock		
Series B Preferred Stock		
Series C Preferred Stock		

Exceptions from Voting Power (please describe):

THIRD AMENDED AND RESTATED CONVERTIBLE PROMISSORY NOTE

THE SECURITY REPRESENTED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR QUALIFIED UNDER ANY STATE SECURITIES LAWS AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT IS IN EFFECT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. THE HOLDER OF THIS SECURITY IS SUBJECT TO THE TERMS OF THE NOTE PURCHASE AGREEMENT, DATED AS OF MAY 8, 2015 (THE "PURCHASE AGREEMENT"), AMONG IMPAC MORTGAGE HOLDINGS, INC., A MARYLAND CORPORATION (THE "COMPANY"), AND THE PURCHASERS NAMED THEREIN. A COPY OF SUCH PURCHASE AGREEMENT IS AVAILABLE AT THE OFFICES OF THE COMPANY.

THIRD AMENDED AND RESTATED CONVERTIBLE PROMISSORY NOTE DUE 2025

No. _____ \$ _____

Impac Mortgage Holdings, Inc., a corporation duly organized and existing under the laws of Maryland (herein called the "Company," which term includes any successor person under the Purchase Agreement), for value received, hereby promises to pay to _____, or registered assigns, the principal sum of _____ (\$ _____) on or before May 9, 2025 (the "Stated Maturity Date") in accordance with the terms of this Note. This Note amends and restates in its entirety the Second Amended and Restated Convertible Promissory Note Due 2020 dated November 9, 2020 (the "Second Amended Note"), which was issued to the holder of this Note pursuant to the Purchase Agreement. Nothing in this Note shall be deemed to waive or otherwise impair any rights or remedies inuring to the benefit of Noteholders pursuant to any of the Financing Documents prior to the date of this Note. As inducement and partial consideration for the holder to enter into this Note, the Company will concurrently pay a portion of the Second Amended Note in an amount equal to \$ _____ (the "Note Payment") and the remaining balance following such Note Payment is as reflected in this Note. The issuance of this Note shall take place simultaneously with, and be conditioned on, the Company's delivery of the Note Payment to the holder.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: May 9, 2022

IMPAC MORTGAGE HOLDINGS, INC.

By: _____
Name: _____
Title: _____

Attest:

By: _____
Title: _____

1. **General.** This Note is one of a duly authorized issue of Notes of the Company designated as its Third Amended and Restated Convertible Promissory Notes Due 2025 (the “**Notes**”), limited in aggregate principal amount to \$15,000,000 as of the date hereof, in each case, issued pursuant to the Note Purchase Agreement, dated as of May 8, 2015 (the “**Purchase Agreement**”), among the Company and the Purchasers named therein, to which Purchase Agreement and all amendments thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company and the Noteholders (including both the Purchasers and subsequent holders of the Notes) and of the terms upon which the Notes are, and are to be, issued and delivered.

Payments of principal and interest on this Note shall be made, in accordance with the Purchase Agreement and subject to applicable laws and regulations, by wire transfer in immediately available funds to such account as any holder hereof shall designate by written instructions received by the Company no less than 5 days prior to any applicable Interest Payment Date (as defined *infra*) or other applicable payment date hereunder, which wire instructions shall continue in effect until such time as the holder otherwise notifies the Company or such holder no longer is the registered owner of this Note.

2. **Payments of Principal and Interest.** The Company promises to pay interest on the outstanding principal amount of this Note from the date of issuance of this Note (or any Predecessor Note), or from the most recent Interest Payment Date to which interest has been paid or duly provided for, quarterly in arrears on March 31, June 30, September 30 and December 31 in each year commencing June 30, 2022 (each, an “**Interest Payment Date**”) and on the Stated Maturity Date, at an interest rate equal to 7.0% per annum on the then outstanding principal amount of the Note until the principal hereof is fully repaid; provided, however, that if any Interest Payment Date falls on a date which is not a Business Day, interest due on such Interest Payment Date shall be paid on the Business Day immediately preceding such Interest Payment Date; provided, further, that such interest payment shall include interest accruing to the calendar day immediately preceding such Interest Payment Date. Principal on this Note shall be due and payable in three equal installments of \$_____ on each of May 9, 2023, May 9, 2024 and the Stated Maturity Date. Notwithstanding the foregoing, if the Company has not received by October 31, 2022 approval of its stockholders for the exchange of its 9.375% Cumulative Redeemable Series B Preferred Stock (“**Series B Preferred Stock**”) and 9.125% Redeemable Series C Preferred Stock (“**Series C Preferred Stock**”) for cash and shares of Company Common Stock and other good and valuable consideration on terms agreed to by the requisite percentage of holders of Series B Preferred Stock and Series C Preferred Stock and provided notice of the subsequent redemption of any remaining outstanding Series B Preferred Stock and its Series C Preferred Stock for Common Stock then the Stated Maturity Date of this Note shall mean November 9, 2022.

To the extent that the payment of such interest shall be legally enforceable, in the event of any Default on this Note, (x) the interest rate borne by this Note shall immediately increase by, and (y) any principal of, or installment of interest on, this Note which is overdue shall bear interest, in each case, at the rate of 2% per annum in excess of the rate of interest then borne by this Note from the date of such Default until cured or waived.

Interest on this Note shall be computed on the basis of a 360 day year of twelve (12) months each comprised of thirty (30) days.

All interest and principal payable on any Interest Payment Date or other applicable payment date hereunder will, as provided in the Purchase Agreement, be paid to the person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on the “**Regular Record Date**”, which shall be the fifteenth calendar day (whether or not a Business Day) immediately preceding such Interest Payment Date or other applicable payment date. Notwithstanding the foregoing, if this Note is issued after a Regular Record Date and prior to the first Interest Payment Date, the record date for the first Interest Payment Date hereunder shall be the original issue date.

3. **Prepayment.** This Note may not be prepaid, in whole or in part, without the prior written consent of the holder of this Note, except as expressly permitted by the terms of this Section 3 or by clause (i) of Section 6 of this Note.

(a) **Prepayment Right.** The Company shall have the right, but not the obligation, to prepay at any time prior to the Stated Maturity Date all, but not less than all, amounts then owing under all of the Notes, subject to the conditions set forth in this Section 3 (the “**Prepayment**”).

(b) **Notice of Prepayment.** The Company may exercise the right provided in Section 3(a) hereof by delivering written notice (the “**Prepayment Notice**”) of its election to make the Prepayment, in accordance with the provisions of Section 11.1 of the Purchase Agreement, to the holder of each Note, not less than thirty (30) calendar days prior to the date (which shall be a Business Day) that the Prepayment is to be made (the “**Prepayment Date**”), and further stating therein:

(i) the Prepayment Date;

(ii) the total amount, including the Prepayment Premium (as defined below), payable to such holder with respect to said Note on the Prepayment Date in connection with the Prepayment (the “**Total Prepayment Amount**”);

(iii) that, on the Prepayment Date, the Total Prepayment Amount will become due and payable in full to such holder, as proportionally reduced in the event that all or a portion of the outstanding principal under said Note is the subject of a Conversion (as defined below) noticed or elected as described in Section 3(e); and

(iv) that said Note is to be surrendered to the Company on the Prepayment Date.

(c) **Prepayment Premium.** The Company shall pay to the holder of each Note a prepayment premium (the “**Prepayment Premium**”) on the Prepayment Date, as follows: in the event that the Prepayment is effected prior to the Stated Maturity Date, then the Company shall pay to such holder on the Prepayment Date a Prepayment Premium in an amount equal to the entire amount of the interest under said Note that is forgone by such holder as a result of the occurrence of the Prepayment (x) for a period of six (6) months, or, if shorter, (y) for the period commencing on the Prepayment Date and ending on the Stated Maturity Date.

(d) **Failure to Effectuate Prepayment.** In the event that the Company fails to comply with any of its obligations under this Section 3 in attempting to effectuate a purported Prepayment, the subject Prepayment Notice shall thereupon be deemed null and void *ab initio* for all purposes hereof, and any sums paid to the holder of this Note in connection with such purported Prepayment shall be promptly returned by such holder to the Company, and, if this Note was surrendered to the Company in connection with such purported Prepayment, the Company shall promptly return this Note to such holder.

(e) **Superseding Conversion Notice or Election.** In the event that, during the period commencing with the delivery of the Prepayment Notice to the holder of this Note and ending on the day preceding the Prepayment Date, the holder of this Note either delivers a Conversion Notice (as defined below) pursuant to the provisions of Section 5(b) hereof or receives delivery of a Company Conversion Notice (as defined below) pursuant to the provisions of Section 5(d) hereof, or the Electing Holders (as defined below) timely make an election under clause (ii) of Section 6 hereof, then the Prepayment shall be immediately and automatically deemed to apply only to that portion, if any, of the outstanding principal of this Note that is not subject to the Conversion so noticed or elected.

4. OMITTED.

5. **Conversion.**

(a) Optional Conversion by Holder. Subject to and in accordance with the provisions of this Section 5, at any time through to and including the Stated Maturity Date, the holder hereof may elect, in its sole discretion, to effect the conversion of all or any portion of the outstanding principal under this Note into shares of the Common Stock (“**Conversion**”). The number of shares of Common Stock into which the outstanding principal under this Note shall be converted pursuant to this Section 5(a) shall be determined by dividing the amount of such principal the holder hereof has elected to convert by \$21.50 (including as adjusted pursuant to the terms of this Section 5, the “**Conversion Price**”). The Conversion Price, and the number and nature of the securities into which this Note is convertible, are subject to adjustment as provided in Section 5(f) hereof. Upon such Conversion, the entire amount of accrued and unpaid interest (and all other amounts owing) under this Note through the effective date of Conversion shall be immediately due and payable in cash to the holder of this Note, and such date shall thereupon be deemed an Interest Payment Date for purposes of Section 2 hereof.

(b) Manner of Effecting Section 5(a) Conversion. If the holder hereof elects to effect a Conversion pursuant to Section 5(a) hereof, the holder hereof shall deliver, in accordance with the provisions of Section 11.1 of the Purchase Agreement, a duly executed written notice to the Company of such election specifying the amount of principal to be converted (the “**Conversion Notice**”), and in such event the Conversion shall be deemed to have been effected at the close of business on the date such Conversion Notice is given. Upon any Conversion of this Note pursuant to Section 5(a) hereof, the rights of the holder hereof with respect to the outstanding principal thereby converted shall cease, and the holder hereof shall thereupon be deemed to have become the holder of record of the shares of Common Stock (or other securities) into which this Note shall have been converted, provided that, if the holder hereof elects to convert only a portion of the outstanding principal pursuant to Section 5(a) hereof, then the Company will promptly deliver a new note to the holder hereof, on the same terms and conditions as this Note, with respect to the portion of the outstanding principal that is not converted (the “**New Note**”). Concurrently with the delivery of a Conversion Notice, the holder hereof shall surrender this Note to the Company. Promptly upon its receipt of a Conversion Notice, the Company shall (i) deliver to or upon the written order of the holder hereof a certificate or certificates for the number of shares of Common Stock (or other securities) issuable upon such Conversion, (ii) make a cash payment to the holder in respect of any fraction of a share as provided in Section 5(e) hereof and in the amount required pursuant to the last sentence of Section 5(a) hereof, and (iii) if applicable, deliver a New Note to the holder hereof as set forth in this Section 5(b).

(c) Optional Conversion by Company. In the event that the market price per share of the Common Stock, as measured by the average volume-weighted closing stock price per share of the Common Stock on the NYSE American (or any other U.S. national securities exchange then serving as the principal such exchange on which the shares of Common Stock are listed) for any twenty (20) trading days in any period of thirty (30) consecutive trading days, reaches the level of \$30.10 (as adjusted, mutatis mutandis, pursuant to the adjustment principles set forth in Section 5(f) infra) (the “**Optional Conversion Threshold**”), then the Company shall have the right, but not the obligation, to effect, without the consent of any holder of a Note, the Conversion of the entire outstanding principal balance of all of the Notes, and no lesser portion thereof, into shares of Common Stock at the Conversion Price as in effect at the effective time of such Conversion (including as adjusted as provided in Section 5(f) hereof). Upon such Conversion, the entire amount of accrued and unpaid interest (and all other amounts owing) under this Note through the effective date of Conversion shall be immediately due and payable in cash to the holder of this Note. In addition, if the Conversion effected pursuant to this Section 5(c) occurs prior to the third anniversary of the Closing Date, the entire amount of the interest under this Note through said third anniversary that is forgone by the holder of this Note as a result of the occurrence of this Conversion shall also be immediately due and payable in cash to said holder.

(d) Manner of Effecting Section 5(c) Conversion. The Company may exercise the right provided in Section 5(c) hereof by delivering a written notice of exercise (which shall include in reasonable detail the Company's bases for concluding that the Optional Conversion Threshold has been attained) (the "**Company Conversion Notice**"), in accordance with the provisions of Section 11.1 of the Purchase Agreement, to the holder of each Note not less than fifteen (15) calendar days prior to the effective date of the subject Conversion, which effective date may not be more than sixty (60) calendar days after the date that the Optional Conversion Threshold was attained, as set forth in the Company Conversion Notice, and in such event the Conversion shall be deemed to have been effected at the close of business on the date such Company Conversion Notice is given. Any failure by the Company, on any individual occasion of attaining the Optional Conversion Threshold, to effect a Conversion pursuant to Sections 5(c) and 5(d) hereof shall in no way affect any future right of the Company to effect such a Conversion on a subsequent date, assuming that all of the conditions to effecting such a Conversion are separately satisfied as of such subsequent date. Upon any Conversion of this Note pursuant to Section 5(c) hereof, the rights of the holder hereof with respect to the outstanding principal thereby converted shall cease, and the holder hereof shall thereupon be deemed to have become the holder of record of the shares of Common Stock (or other securities) into which this Note shall have been converted. Upon receipt of the Company Conversion Notice, the holder hereof shall surrender this Note to the Company, and the Company shall thereupon (i) deliver to or upon the written order of the holder hereof a certificate or certificates for the number of shares of Common Stock (or other securities) issuable upon such Conversion, and (ii) make a cash payment to the holder in respect of any fraction of a share as provided in Section 5(e) hereof and in the amount required pursuant to the last two sentences of Section 5(c) hereof.

(e) Fractional Shares. No fractional shares shall be issued upon any Conversion. Instead of any fractional share which would otherwise be issuable upon a Conversion, the Company shall pay a cash amount to the holder of this Note in respect of such fractional share in an amount based upon (i) the closing price of the Common Stock on the trading day immediately preceding the date of such Conversion on the principal national securities exchange on which the Common Stock is then listed, or (ii) if the Common Stock is not then so listed, the current fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Company.

(f) Adjustments. The Conversion Price and the aggregate number and nature of the securities issuable upon the exercise of this Note (the "**Conversion Rate**") shall be subject to adjustment from time to time upon the occurrence of the events enumerated in this Section 5(f), as follows.

If the Company:

(1) pays a dividend or makes any other distribution on the Common Stock in shares of the Common Stock or other capital stock of the Company; or

(2) subdivides, combines or reclassifies the outstanding shares of Common Stock;

then, in each case, the Conversion Rate and the Conversion Price in effect immediately prior to such action shall be proportionately adjusted so that the holder of this Note may upon payment of the same aggregate Conversion Price payable immediately prior to such action receive the aggregate number and kind of shares of capital stock of the Company which the holder would have owned immediately following such action if this Note had been converted immediately prior to such action.

Any such adjustment shall become effective immediately after the record date of such dividend or distribution or the effective date of such subdivision, combination or reclassification.

If after an adjustment the holder of this Note upon conversion of this Note may receive shares of two or more classes of capital stock of the Company, the Board of Directors of the Company shall determine the allocation of the adjusted Conversion Price between the classes of capital stock. After such allocation, the Conversion Rate and the Conversion Price of each such class of capital stock shall thereafter be subject to adjustment on terms comparable to those applicable to Common Stock in this Section 5(f).

Such adjustment shall be made successively whenever any event listed above shall occur.

In the event of any such adjustment, a Financial Officer of the Company shall, within three (3) Business Days thereof, notify the holder of this Note, in accordance with the provisions of Section 11.1 of the Purchase Agreement, of such adjustment and, in reasonable detail, the method of computing the adjusted Conversion Rate and the adjusted Conversion Price.

(g) **Registration Rights.** Pursuant to Section 11.15 of the Purchase Agreement, all of the shares of Common Stock issuable upon a Conversion pursuant to this Section 5 (as well as upon a Conversion pursuant to Section 6 hereof) shall have the benefit of registration rights on the terms set forth in the Registration Rights Agreement.

(h) **Pre-Conversion Dividends.** Upon the occurrence of any Conversion pursuant to this Section 5 (as well as upon a Conversion pursuant to Section 6 hereof), the Company shall, within three (3) Business Days thereof, pay to the holder of this Note (x) the sum of the applicable per share amounts of *each* cash dividend and other cash distribution paid by the Company with respect to all shares of Common Stock during the period commencing on the Closing Date and ending on the effective date of such Conversion, as if such Conversion had occurred immediately prior to the record date for said dividend or other distribution at the Conversion Price in effect immediately prior to said record date, (y) less the amount of all interest paid by the Company under this Note prior to the date of said dividend or distribution.

6. Change in Control. Notwithstanding any other provision of this Note, upon the occurrence of one or more events constituting a Change in Control, and on each such occasion during the term of this Note, the holders holding a majority of the outstanding principal balance of the Notes (the “**Electing Holders**”) shall have the right, in their sole and absolute discretion, by written election, to either (i) cause each of the outstanding Notes, and all amounts of unpaid principal, accrued but unpaid interest and other amounts owing thereunder, to become immediately due and payable in full simultaneously with such occurrence; (ii) cause the entire unpaid principal balance of each outstanding Note to be converted as of the logical instant immediately prior to such occurrence into shares of the Common Stock at a conversion price per share equal to the Conversion Price as then in effect, with the entire amount of accrued but unpaid interest and other amounts owing under each Note becoming immediately due and payable in cash to the holder of said Note; or (iii) cause the outstanding Notes, and all of the terms and provisions thereof, to continue in full force and effect notwithstanding the occurrence of said Change in Control. The Company shall provide each holder of a Note written notice of any contemplated Change in Control, specifying with reasonable particularity the nature, terms and contemplated timing thereof, not less than fifteen (15) Business Days prior to the scheduled or first anticipated date of the consummation thereof. The holders of the Notes shall have ten (10) Business Days from the date such notice is given to respond to the Company in writing with respect to electing the option set forth in either clause (i), (ii) or (iii) *supra*. In the event that the Electing Holders fail to make timely any such election, they will be deemed to have made the election set forth in clause (iii). In the event that the Electing Holders elect the option set forth in clause (i) or (ii), the Company shall promptly take all necessary and desirable actions to effectuate the full payment, or entire conversion of the aggregate principal balance, as applicable, of all of the Notes.

7. Events of Default. If an Event of Default shall occur and be continuing, the principal of this Note may be declared, or may automatically become, due and payable in the manner and with the effect provided in the Purchase Agreement.

8. Amendments, Modifications and Waivers. The Purchase Agreement permits, with certain exceptions as therein provided, the amendment thereof and of the Notes and the modification of the rights and obligations of the Company and certain rights of the Noteholders under the Purchase Agreement and the Notes at any time by the Company with the consent of the Required Holders. The Purchase Agreement also contains provisions permitting the Required Holders, on behalf of the Noteholders of all the Notes, to waive compliance by the Company with certain provisions of the Purchase Agreement and of the Notes and past defaults under the Purchase Agreement and their consequences. Any such consent or waiver shall be conclusive and binding upon such Noteholder and upon all future Noteholders of any Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

9. Restrictions on Transfer; Registration of Transfer. This Note is subject to restrictions on transfer as set forth in the Purchase Agreement. As provided in the Purchase Agreement and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Security Register, upon surrender of this Note for registration of transfer at the principal offices of the Company, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company duly executed by, the holder hereof or its attorney duly authorized in writing, and thereupon one or more new Notes, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Notes are issuable only in registered form without coupons in denominations authorized under the Purchase Agreement. As provided in the Purchase Agreement and subject to certain limitations therein set forth, Notes are exchangeable for a like aggregate principal amount of Notes of a different authorized denomination, as requested by the Noteholder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange.

Prior to due presentment of this Note for registration of transfer as permitted by the terms of the Purchase Agreement, the Company and any agent of the Company may treat the person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

10. Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon its shares of Common Stock (or other class of its securities into which this Note may be converted), other than a cash dividend or distribution as referenced in Section 5(h) hereof, whether in property, stock or other securities (including, without limitation, stock or other securities of any subsidiary of the Company, whether in connection with a spin-off of such subsidiary, or otherwise); (b) to offer rights for subscription pro rata to the holders of any class securities into which this Note may be converted; (c) to effect any reclassification or recapitalization of any class of securities into which this Note may be converted; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Company shall give the holder of this Note (x) at least fifteen (15) days' prior written notice of the date on which a record will be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of the applicable securities will be entitled thereto) or for determining the rights, if any, of holders of such securities to vote in respect of the matters referred to in (c) and (d) above; and (y) in the case of the matters referred to in (c) and (d) above at least fifteen (15) days' prior written notice of the date when the same will take place (and specifying the date on which the holders of the applicable securities will be entitled to exchange such securities for securities or other property deliverable upon the occurrence of such event).

11. Miscellaneous. All terms used in this Note which are defined in the Purchase Agreement and not otherwise defined in this Note shall have the meanings respectively assigned to them in the Purchase Agreement.

THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

The terms and conditions of this Third Amended and Restated Convertible Promissory Note are acknowledged and agreed to by Holder as of May 9, 2022:

HOLDER

By: _____

Name: _____

Title: _____