

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): May 1, 2023

**ImmunoGen, Inc.**

(Exact name of registrant as specified in its charter)

Massachusetts  
(State or other jurisdiction of  
incorporation)

0-17999  
(Commission File Number)

04-2726691  
(I.R.S. Employer  
Identification No.)

830 Winter Street, Waltham, MA 02451  
(Address of principal executive offices, including zip code)

(Registrant's telephone number, including area code: (781) 895-0600)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$.01 par value per share	IMGN	Nasdaq Global Select Market

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

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 1.01. Entry into a Material Definitive Agreement.**

On May 1, 2023, ImmunoGen, Inc. (the “Company”) entered into an exchange agreement (the “Exchange Agreement”) with RA Capital Healthcare Fund, L.P. (the “Shareholder”) pursuant to which the Shareholder agreed to exchange 21,853,000 shares of the Company’s Common Stock, par value \$.01 per share (the “Common Stock”), for 21,853 shares of newly designated Series A Convertible Preferred Stock, par value \$.01 per share (the “Preferred Stock”) (the “Exchange”). The preferences, rights, and limitations of the Preferred Stock are set forth in a Certificate of Designation (the “Certificate of Designation”) attached to the Exchange Agreement. In connection with the Exchange, on May 2, 2023, the Company filed Articles of Amendment to the Company’s Articles of Organization, as amended, which included the Certificate of Designation, with the Secretary of the Commonwealth of Massachusetts.

Each share of the Preferred Stock is convertible into 1,000 shares of Common Stock at the option of the holder at any time until the tenth anniversary of the issuance of the Preferred Stock, at which time the Preferred Stock will automatically convert to Common Stock. In addition, the Company has the right to request the conversion of the Preferred Stock into Common Stock in certain circumstances. The conversion of the Preferred Stock into Common Stock is subject to certain limitations, including that the holder will be prohibited from converting the Preferred Stock into Common Stock if, as a result of such conversion, the holder (together with its affiliates and any other persons whose beneficial ownership of Common Stock would be aggregated with the holder for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended) would beneficially own a number of shares of Common Stock above a conversion blocker (the “Conversion Blocker”), which is initially set at 9.99% of the total Common Stock then issued and outstanding immediately following the conversion of such shares of Preferred Stock. Holders of the Preferred Stock are permitted to increase or decrease the Conversion Blocker to an amount not to exceed 19.99% upon 61 days’ prior notice from the holder to the Company.

Shares of the Preferred Stock will have no voting rights, except as required by law and except that the affirmative vote of the holders of the then outstanding Preferred Stock will be required to amend the terms of the Preferred Stock, increase the number of authorized shares of Preferred Stock or enter into an agreement with respect to any of the foregoing. The holders of the Preferred Stock are entitled to receive a nominal preference of \$.001 per share of Preferred Stock upon the liquidation, dissolution, or winding up of the Company (the “Liquidation Preference”) before any payments are made or any assets are distributed to holders of the Common Stock. However, if the amount payable to holders of the Common Stock upon the Company’s liquidation, dissolution, or winding up is greater than the Liquidation Preference on a per share basis, then the holders of the Preferred Stock will instead receive, on a per-share and as-converted basis, the same assets that are distributed to holders of the Common Stock. In the event of certain fundamental transactions, including a merger, holders of the Preferred Stock will automatically receive, as consideration for the Preferred Stock, the same kind and amount of securities, cash, or property as the holders of the Preferred Stock would have been entitled to receive had the holders of the Preferred Stock instead held Common Stock immediately prior to the occurrence of the fundamental transaction, subject to certain exceptions.

The Exchange is expected to close on or around May 3, 2023. The Preferred Stock will be issued without registration under the Securities Act of 1933, as amended (the “Securities Act”), in reliance on the exemption from registration contained in Section 3(a)(9) of the Securities Act.

The foregoing description of the Preferred Stock and the Exchange Agreement is not complete and is qualified in its entirety by reference to the full text of the Articles of Amendment, which includes the Certificate of Designation, and the Exchange Agreement, which are filed as Exhibits 3.1 and 10.1 to this Current Report on Form 8-K and are incorporated by reference herein.

**Item 3.02. Unregistered Sale of Equity Securities.**

The information contained above in Item 1.01 of this Report regarding the Exchange Agreement and Preferred Stock is incorporated by reference into this Item 3.02.

**Item 3.03. Material Modifications of Rights of Security Holders.**

The information contained above in Item 1.01 of this Report regarding the Articles of Amendment and Preferred Stock is incorporated by reference into this Item 3.03.

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

The information contained above in Item 1.01 of this Report regarding the Articles of Amendment and Preferred Stock is incorporated by reference into this Item 5.03.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

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<b>Exhibit No.</b>	<b>Description</b>
<a href="#">3.1</a>	<a href="#">Articles of Amendment.</a>
<a href="#">10.1</a>	<a href="#">Exchange Agreement, dated May 1, 2023, by and among ImmunoGen, Inc. and RA Capital Healthcare Fund, L.P.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL (eXtensible Business Reporting Language) document).

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**SIGNATURE**

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.

**ImmunoGen, Inc.**

Dated: May 2, 2023

By: /s/ Daniel S. Char

Daniel S. Char

Senior Vice President, Chief Legal Officer, and Secretary

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The Commonwealth of Massachusetts  
**William Francis Galvin**  
Secretary of the Commonwealth  
One Ashburton Place, Boston, Massachusetts 02108-1512

**Articles of Amendment**  
**(General Laws Chapter 156D, Section 10.06; 950 CMR 113.34)**

- (1) Exact name of corporation: ImmunoGen, Inc.
- (2) Registered office address: Corporation Service Company, 84 State Street, Boston, MA 02109  
(number, street, city or town, state, zip code)
- (3) These articles of amendment affect article(s): Article III and IV  
(specify the number(s) of article(s) being amended (I-VI))
- (4) Date adopted: May 2, 2023  
(month, day, year)
- (5) Approved by:  
(check appropriate box)
- the incorporators.
- the board of directors without shareholder approval and shareholder approval was not required.
- the board of directors and the shareholders in the manner required by law and the articles of organization.
- (6) State the article number and the text of the amendment. Unless contained in the text of the amendment, state the provisions for implementing the exchange, reclassification or cancellation of issued shares.

Article III is being amended to indicate that 21,853 shares of Preferred Stock have been designated as Series A Convertible Preferred Stock, as set forth in Article IV.

Article IV, Exhibit B, Section 2 is being amended to include the attached Certificate of Designation of Series A Convertible Preferred Stock.

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To change the number of shares and par value, \* if any, of any type, or to designate a class or series, of stock, or change a designation of class or series of stock, which the corporation is authorized to issue, complete the following:

Total authorized prior to amendment:

WITHOUT PAR VALUE		WITH PAR VALUE		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
		Common	600,000,000	.01
		Preferred	5,000,000	.01

Total authorized after amendment:

WITHOUT PAR VALUE		WITH PAR VALUE		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
		Common	600,000,000	.01
		Preferred	4,978,147	.01
		Series A Convertible Preferred	21,853	.01

(7) The amendment shall be effective at the time and on the date approved by the Division, unless a later effective date not more than 90 days from the date and time of filing is specified: \_\_\_\_\_

*\*G.L. Chapter 156D eliminates the concept of par value, however a corporation may specify par value in Article III. See G.L. Chapter 156D, Section 6.21, and the comments relative thereto.*

**CERTIFICATE OF DESIGNATION OF  
SERIES A CONVERTIBLE PREFERRED STOCK  
OF  
IMMUNOGEN, INC.**

(PURSUANT TO SECTION 6.02 OF  
THE MASSACHUSETTS BUSINESS CORPORATION ACT,  
CHAPTER 156D  
OF THE MASSACHUSETTS GENERAL LAWS)

ImmunoGen, Inc., a Massachusetts corporation (the “**Corporation**”), in accordance with Section 6.02 of the Massachusetts Business Corporation Act (the “**MBCA**”), does hereby certify that, pursuant to the authority conferred upon the board of directors of the Corporation (the “**Board of Directors**”) by the Corporation’s Restated Articles of Organization, as heretofore amended to date (the “**Articles of Organization**”), the Board of Directors has, by a resolution duly adopted pursuant thereto, established a series of the Corporation’s Preferred Stock consisting of 21,853 shares of the Corporation’s preferred stock, par value \$.01 per share, designated as “Series A Convertible Preferred Stock” and having the voting powers, designations, preferences, privileges, limitations, restrictions, and relative rights set forth as follows, in addition to any provisions of the Articles of Organization applicable to all classes and series of Preferred Stock (all capitalized terms used but not defined herein shall have the meanings set forth in the Articles of Organization):

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“**Affiliate**” means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Holder, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

“**Alternate Consideration**” has the meaning set forth in Section 7(b).

“**Applicable Settlement Time**” has the meaning set forth in Section 6(d)(i).

“**Articles of Organization**” has the meaning set forth in the introductory paragraph.

“**Automatic Conversion Date**” has the meaning set forth in Section 6(a)(ii).

“**Beneficial Ownership Limitation**” has the meaning set forth in Section 6(c).

“**Board of Directors**” has the meaning set forth in the introductory paragraph.

“**Business Day**” means any day except Saturday, Sunday, any federal legal holiday in the United States, or any day on which banking institutions in the State of New York are closed.

“**Buy-In**” has the meaning set forth in Section 6(d)(iii).

“**Buy-In Date**” has the meaning set forth in Section 6(d)(iii).

“**Closing Sale Price**” means, for any security as of any date, the last closing trade price for such security prior to 4:00 p.m., New York City time, on the principal securities exchange or trading market where such security is listed or traded, as reported by Bloomberg, L.P. (or an equivalent, reliable reporting service mutually acceptable to and hereafter designated by Holders of a majority of the then-outstanding Series A Preferred Stock and the Corporation), or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, L.P., or, if no last trade price is reported for such security by Bloomberg, L.P., the average of the bid prices of any market makers for such security as reported on the Pink Open Market by OTC Markets Group, Inc. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as determined in good faith by the Board of Directors.

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“**Commission**” means the Securities and Exchange Commission.

“**Common Stock**” means the Corporation’s common stock, par value \$.01 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Conversion Date**” has the meaning set forth in Section 6(b).

“**Conversion Ratio**” means 1,000 shares of Common Stock issuable upon conversion of every one share of Series A Preferred Stock, as such 1,000:1 ratio may be adjusted from time to time in accordance with Section 7.

“**Conversion Shares**” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock in accordance with the terms hereof.

“**Corporation**” has the meaning set forth in the introductory paragraph.

“**DTC**” has the meaning set forth in Section 6(b).

“**DWAC Delivery**” has the meaning set forth in Section 6(b).

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Fundamental Transaction**” has the meaning set forth in Section 7(b).

“**Fundamental Transaction Exception**” has the meaning set forth in Section 7(b).

“**Holder**” means any holder of Series A Preferred Stock.

“**Issuance Date**” means May 3, 2023.

“**Liquidation Preference**” has the meaning set forth in Section 5(b).

“**Mandatory Conversion Date**” has the meaning set forth in Section 6(a)(i).

“**Mandatory Conversion Notice**” has the meaning set forth in Section 6(a)(i).

“**MBCA**” has the meaning set forth in the introductory paragraph.

“**Notice of Conversion**” has the meaning set forth in Section 6(b).

“**Person**” means any individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof), or other entity of any kind.

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“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Series A Preferred Stock**” has the meaning set forth in Section 2(a).

“**Series A Preferred Stock Register**” has the meaning set forth in Section 2(b).

“**Share Delivery Date**” has the meaning set forth in Section 6(d)(i).

“**Trading Day**” means a day on which the Common Stock is traded for any period on the principal securities exchange or if the Common Stock is not traded on a principal securities exchange, on a day that the Common Stock is traded on another securities market on which the Common Stock is then being traded.

“**Voluntary Conversion Date**” has the meaning set forth in Section 6(b).

Section 2. Designation, Amount and Par Value; Assignment.

a. The series of preferred stock designated by this Certificate of Designation shall be designated as the Corporation’s Series A Convertible Preferred Stock (the “**Series A Preferred Stock**”) and the number of shares so designated shall be 21,853 (which shall not be subject to increase except pursuant to an amendment to this Certificate of Designation duly adopted in accordance with the applicable law and the written consent of the Holders of a majority of the issued and outstanding Series A Preferred Stock). The Series A Preferred Stock shall be designated from the 5,000,000 shares of Preferred Stock authorized to be issued under the Articles of Organization. Each share of Series A Preferred Stock shall have a par value of \$.01 per share.

b. The Corporation shall register shares of the Series A Preferred Stock in the name of the Holders thereof from time to time upon records to be maintained by the Corporation for that purpose (the “**Series A Preferred Stock Register**”). The Series A Preferred Stock shall be issued in book entry only, *provided* that the Corporation shall issue one or more certificates representing shares of Series A Preferred Stock, to the extent such issuance is requested by a given Holder. References herein to “certificates” representing the Series A Preferred Stock shall apply only if such shares have been issued in certificated form. The Corporation may deem and treat the registered Holder of shares of Series A Preferred Stock as the absolute owner thereof for the purpose of any conversion thereof and for all other purposes. The Corporation shall register the transfer of any shares of Series A Preferred Stock in the Series A Preferred Stock Register, upon surrender of any certificates evidencing such shares to be transferred, duly endorsed by the Holder thereof, to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series A Preferred Stock so transferred shall be issued to the transferee (if requested) and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring Holder (if requested), in each case, within five Business Days. The provisions of this Certificate of Designation are intended to be for the benefit of all Holders from time to time and shall be enforceable by any such Holder.

Section 3. Dividends. Holders shall be entitled to receive when, as and if dividends are declared and paid on the Common Stock, an equivalent dividend (with the same dividend declaration date and payment date), calculated on an as-converted basis. Other than the foregoing, the Holders of Series A Preferred Stock shall not be entitled to receive any dividends in respect of the Series A Preferred Stock, unless and until specifically declared by the Board of Directors to be payable to the Holders of the Series A Preferred Stock.

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Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by the MBCA, the Series A Preferred Stock shall have no voting rights. However, as long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Series A Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Series A Preferred Stock or alter or amend this Certificate of Designation, (b) increase the number of authorized shares of Series A Preferred Stock, or (c) enter into any agreement with respect to any of the foregoing.

Section 5. Rank; Liquidation.

a. The Series A Preferred Stock shall rank senior to the Common Stock with respect to distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntarily or involuntarily, to the extent set forth in Section 5(b).

b. Upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, each Holder shall be entitled to receive, out of the assets of the Corporation legally available for distribution to shareholders, in preference to any distributions of any of the assets or surplus funds of the Corporation to the holders of the Common Stock, an amount equal to \$0.001 per share of Series A Preferred Stock, plus an additional amount equal to any dividends declared but unpaid on such shares (the "**Liquidation Preference**"), before any payments shall be made or any assets distributed to holders of any class of Common Stock, *provided, however*, that if the amount payable on a per-share basis to the holders of Common Stock on any such liquidation, dissolution or winding up of the Corporation shall be greater than the Liquidation Preference that is payable to the holders of the Series A Preferred Stock, then the holders of Series A Preferred Stock shall instead receive, on an per-share and as-converted basis, the same assets or surplus funds that is to be distributed to the holders of Common Stock. If, upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be insufficient to pay the holders of shares of the Series A Preferred Stock the amount required under the preceding sentence, then all remaining assets of the Corporation shall be distributed ratably to holders of the shares of the Series A Preferred Stock, subject to the rights of the holders of any shares of capital stock of the Corporation other than the Common Stock.

Section 6. Conversion.

a. Mandatory Conversion; Automatic Conversion.

(i) Mandatory Conversion. (A) Upon request by the Corporation delivered no earlier than five (5) Business Days prior to a determination date with respect to the Corporation's status as a "well-known seasoned issuer" (as defined in Rule 405 under the Securities Act), if the Corporation has made a bona fide determination that the conversion of all or a portion of the outstanding shares of Series A Preferred Stock would, if converted, cause the Corporation to qualify as a "well-known seasoned issuer" (and the Corporation would otherwise not qualify as a "well-known seasoned issuer" absent the conversion of such shares of Series A Preferred Stock), then the number of shares of Series A Preferred Stock that would be required, if converted, to qualify the Corporation as a "well-known seasoned issuer" shall be converted, ratably, into a number of shares of Common Stock equal to the Conversion Ratio, as adjusted from time to time pursuant to Section 7, or (B) upon request by the Corporation delivered no earlier than five (5) Business Days prior to a record date for a shareholder meeting of the Corporation, but subject to the prior written consent of each Holder, not to be unreasonably withheld, a reasonably requested number of Series A Preferred Stock shall be converted, ratably, into the number of shares of Common Stock equal to the Conversion Ratio, as adjusted from time to time pursuant to Section 7 ((A) and (B) together, the "**Mandatory Conversion Request**"), *provided* that in no event shall shares of Series A Preferred Stock be converted pursuant to this Section 6(a)(i) if the conversion of such shares of Series A Preferred Stock would cause a Holder to exceed the Beneficial Ownership Limitation (as defined below). The date of conversion of outstanding shares of Series A Preferred Stock pursuant to this Section 6(a)(i) is referred to herein as the "**Mandatory Conversion Date**."

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(ii) **Automatic Conversion.** On the first (1st) Trading Day following the tenth (10th) anniversary of the Issuance Date (the “**Automatic Conversion Date**”), each outstanding share of Series A Preferred Stock shall automatically convert into the number of shares of Common Stock equal to the Conversion Ratio, as adjusted from time to time pursuant to **Section 7**.

(iii) **Procedural Requirements.** Holders of Series A Preferred Stock shall, at least three (3) Business Days prior to a Mandatory Conversion Date, be sent written notice of a Mandatory Conversion Request, which notice shall set forth the Mandatory Conversion Date and the amount of Series A Preferred Stock designated for conversion pursuant to **Section 6(a)(i)**. On the Mandatory Conversion Date or Automatic Conversion Date, as applicable, each Holder of shares of Series A Preferred Stock in certificated form shall surrender its certificate or certificates for all such shares (or, if such Holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so requested by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered Holder or by its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date or Automatic Conversion Date, as applicable, and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock, the Corporation shall (a) either (x) issue and deliver to such Holder a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof or (y) in the case of a DWAC Delivery (as defined below), electronically transfer such Conversion Shares by crediting the account of the Holder’s prime broker with DTC through its DWAC system, and (b) pay cash as provided in **Section 6(d)(v)** in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion.

b. **Conversions at Option of Holder.** Subject to **Section 6(c)**, each whole share of Series A Preferred Stock shall be convertible, at any time and from time to time from and after the Issuance Date, at the option of the Holder thereof, into a number of shares of Common Stock equal to the Conversion Ratio, as adjusted from time to time pursuant to **Section 7**. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as **Annex A** (a “**Notice of Conversion**”), duly completed and executed. The Notice of Conversion must specify at least a number of shares of Series A Preferred Stock to be converted equal to the lesser of (x) 100 shares (such number subject to appropriate adjustment following the occurrence of an event specified in Section 7(a) hereof) and (y) the number of shares of Series A Preferred Stock then held by the Holder. Provided the Corporation’s transfer agent is participating in the Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer program, the Notice of Conversion may specify, at the Holder’s election, whether the applicable Conversion Shares shall be credited to the account of the Holder’s prime broker with DTC through its Deposit Withdrawal Agent Commission system (a “**DWAC Delivery**”). The conversion pursuant to this **Section 6(b)** shall be deemed effective on the Trading Day that the Notice of Conversion, completed and executed, is sent by email to, and received during regular business hours by, the Corporation (“**Voluntary Conversion Date**”); *provided* that if such shares of Series A Preferred Stock were issued in certificated form, then the original certificate(s) representing such shares of Series A Preferred Stock being converted, duly endorsed, and the accompanying Notice of Conversion, are received by the Corporation within two Trading Days thereafter. In all other cases, the Voluntary Conversion Date shall be defined as the Trading Day on which the original certificates (if any) representing the shares of Series A Preferred Stock being converted, duly endorsed, and the accompanying Notice of Conversion, are received by the Corporation. The Mandatory Conversion Date, the Automatic Conversion Date and the Voluntary Conversion Date collectively are referred to herein as the “**Conversion Date**.”

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c. **Beneficial Ownership Limitation.** Notwithstanding anything in this Certificate of Designation to the contrary, the Corporation shall not effect any conversion of the Series A Preferred Stock, and a Holder shall not have the right to convert any portion of the Series A Preferred Stock, to the extent that, after giving effect to an attempted conversion set forth on an applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission, including any "group" of which the Holder is a member) would beneficially own a number of shares of Common Stock in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock subject to the Notice of Conversion with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (A) conversion of the remaining, unconverted Series A Preferred Stock beneficially owned by such Holder or any of its Affiliates, and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation (including any warrants) beneficially owned by such Holder or any of its Affiliates that are subject to a limitation on conversion or exercise similar to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this Section 6(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission. In addition, for purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and the applicable regulations of the Commission. For purposes of this Section 6(c), it is understood that the number of shares of Common Stock beneficially owned by each Holder shall be aggregated with each other Holder for purposes of Section 13(d) of the Exchange Act. For purposes of this Section 6(c), in determining the number of outstanding shares of Common Stock, absent actual knowledge of such Holder to the contrary, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (A) the Corporation's most recent periodic or annual filing with the Commission, as the case may be, (B) a more recent public announcement by the Corporation that is filed with the Commission, or (C) a more recent notice by the Corporation or the Corporation's transfer agent to the Holder setting forth the number of shares of Common Stock then outstanding. Upon the written request of a Holder (which may be by email), the Corporation shall, within three Trading Days thereof, confirm in writing to such Holder (which may be via email) the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to any actual conversion or exercise of securities of the Corporation, including shares of Series A Preferred Stock, by such Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was last publicly reported or confirmed to the Holder. The initial "**Beneficial Ownership Limitation**" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock pursuant to such Notice of Conversion (to the extent permitted pursuant to this Section 6(c)). By written notice to the Corporation, which will not be effective until the 61st day after such notice is delivered to the Corporation, a Holder may increase or decrease the Beneficial Ownership Limitation applicable solely to such Holder to such other percentage limit as may be determined by the Holder, not to exceed 19.99%, *provided*, that any increase in the Beneficial Ownership Limitation shall not be effective until the 61st day after such notice is delivered to the Corporation. The Corporation shall be entitled to rely on representations made to it by the Holder in any Notice of Conversion regarding its Beneficial Ownership Limitation. For the avoidance of doubt, this Section 6(c) shall not restrict the number of shares of Common Stock that a Holder may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Transaction.

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d. Mechanics of Conversion.

i. Delivery of Certificate or Electronic Issuance Upon Conversion. Not later than two (2) Trading Days or, following the implementation of the Commission's rules to shorten the standard settlement cycle, one (1) Trading Day (such standard settlement cycle as in effect, the "**Applicable Settlement Time**"), after the applicable Voluntary Conversion Date, or if the Holder requests the issuance of physical certificate(s), the Applicable Settlement Time following receipt by the Corporation of the original certificate(s) representing such shares of Series A Preferred Stock being converted, duly endorsed, and the accompanying Notice of Conversion (the "**Share Delivery Date**"), the Corporation shall (a) deliver, or cause to be delivered, to the converting Holder a physical certificate or certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Series A Preferred Stock or (b) in the case of a DWAC Delivery, electronically transfer such Conversion Shares by crediting the account of the Holder's prime broker with DTC through its DWAC system. If in the case of any Notice of Conversion such certificate or certificates are not delivered to or as directed by or, in the case of a DWAC Delivery, such shares are not electronically delivered to or as directed by, the applicable Holder by the Share Delivery Date, the applicable Holder shall be entitled to elect to rescind such Conversion Notice by written notice to the Corporation at any time on or before its receipt of such certificate or certificates for Conversion Shares or electronic receipt of such shares, as applicable, in which event the Corporation shall promptly return to such Holder any original Series A Preferred Stock certificate delivered to the Corporation and such Holder shall promptly return to the Corporation any Common Stock certificates or otherwise direct the return of any shares of Common Stock delivered to the Holder through the DWAC system, representing the shares of Series A Preferred Stock unsuccessfully tendered for conversion to the Corporation.

ii. Obligation Absolute. Subject to Section 6(c) hereof and subject to Holder's right to rescind a Conversion Notice pursuant to Section 6(d)(i) above, the Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Series A Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares. Subject to Section 6(c) hereof and subject to Holder's right to rescind a Conversion Notice pursuant to Section 6(d)(i) above, in the event a Holder shall elect to convert any or all of its Series A Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to such Holder, restraining and/or enjoining conversion of all or part of the Series A Preferred Stock of such Holder shall have been sought and obtained by the Corporation, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the value of the Conversion Shares into which would be converted the Series A Preferred Stock which is subject to such injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall, subject to Section 6(c) hereof and subject to Holder's right to rescind a Conversion Notice pursuant to Section 6(d)(i) above, issue Conversion Shares upon a properly noticed conversion. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief; *provided* that the Holder shall not receive duplicate damages for the Corporation's failure to deliver Conversion Shares within the period specified herein. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

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iii. Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. If the Corporation fails to deliver to a Holder the applicable certificate or certificates or to effect a DWAC Delivery, as applicable, within five (5) Trading Days following the applicable Voluntary Conversion Date (the "**Buy-In Date**") pursuant to Section 6(d)(i) (other than a failure caused by incorrect or incomplete information provided by Holder to the Corporation), and if after such Buy-In Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Buy-In Date (a "**Buy-In**"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount by which (x) such Holder's total purchase price (including any commercially reasonable brokerage commissions) for the shares of Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price per share at which the sell order giving rise to such purchase obligation was executed (including any commercially reasonable brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Series A Preferred Stock equal to the number of shares of Series A Preferred Stock submitted for conversion or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under this Section 6. For the avoidance of doubt, this Section 6(d)(ii) shall not apply if the Corporation does not effect a conversion pursuant to the limitations of Section 6(c). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series A Preferred Stock with respect to which the actual sale price (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice, within two (2) Trading Days after the occurrence of a Buy-In, indicating the amounts payable to such Holder in respect of such Buy-In together with applicable confirmations and other evidence reasonably requested by the Corporation. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Common Stock upon conversion of the shares of Series A Preferred Stock as required pursuant to the terms hereof; *provided, however*, that no Holder shall be entitled to both (i) require the reissuance of the shares of Series A Preferred Stock submitted for conversion for which such conversion was not timely honored and (ii) receive the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under this Section 6.

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iv. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series A Preferred Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series A Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments of Section 7) upon the conversion of all outstanding shares of Series A Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid, and nonassessable.

v. Fractional Shares. No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon the conversion of the Series A Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to receive upon such conversion, the Corporation shall pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the fair value of the fraction of the Common Stock (determined with reference to the Closing Sale Price of the Common Stock).

vi. Transfer Taxes. The Corporation shall not be required to pay any tax that may be payable in respect of the issuance of the Conversion Shares or any transfer of shares of Series A Preferred Stock, and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of any such tax or shall have established to the satisfaction of the Corporation that any such tax has been paid.

e. Status as Shareholder. Upon each Conversion Date, (i) the shares of Series A Preferred Stock being converted shall be deemed converted into shares of Common Stock and (ii) the Holder's rights as a holder of such converted shares of Series A Preferred Stock shall cease and terminate, excepting only the right to receive certificates for or electronic receipt of such shares of Common Stock, as applicable, and to any remedies provided herein or otherwise available at law or in equity to such Holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation. In all cases, the Holder shall retain all of its rights and remedies for the Corporation's failure to convert Series A Preferred Stock.

#### Section 7. Certain Adjustments.

a. Stock Dividends and Stock Splits. If the Corporation, at any time while any Series A Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of any Series A Preferred Stock) with respect to the then outstanding shares of Common Stock; (ii) subdivides outstanding shares of Common Stock into a larger number of shares; or (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, then the Conversion Ratio shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately after such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately before such event (excluding any treasury shares of the Corporation). Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision or combination.

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b. **Fundamental Transaction.** If, at any time while any Series A Preferred Stock is outstanding, (i) the Corporation effects any merger, consolidation, or other business combination of the Corporation with or into another Person (other than a transaction in which the Corporation is the surviving or continuing entity and its Common Stock is not exchanged for or converted into other securities, cash or property), (ii) the Corporation effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, (iii) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which all of the Common Stock is exchanged for or converted into other securities, cash or property, or (iv) the Corporation effects any reclassification of the Common Stock or any compulsory share exchange pursuant (other than as a result of a dividend, subdivision or combination covered by [Section 7\(a\)](#) above) to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a “**Fundamental Transaction**”), then, upon the consummation of such Fundamental Transaction, each Holder shall automatically receive, as consideration for its shares of Series A Preferred Stock, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the Conversion Shares (the “**Alternate Consideration**”), *provided* that a Holder shall not, unless such Holder directs otherwise in writing, receive the Alternate Consideration to the extent that it would cause such Holder to beneficially own in excess of 9.99% of a class of securities registered under the Securities Exchange Act of 1934, as amended (the “**Fundamental Transaction Exception**”). In the event of a Fundamental Transaction, the determination of the Conversion Ratio shall be appropriately adjusted to apply to the Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall adjust the Conversion Ratio in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration. To the extent the Fundamental Transaction Exception applies, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock evidencing the Holders’ right to convert such preferred stock into the Alternate Consideration. The terms of any agreement to which the Corporation is a party and pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this [Section 7\(b\)](#) and ensuring that the Series A Preferred Stock (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

c. **Calculations.** All calculations under this [Section 7](#) shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this [Section 7](#), the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

d. **Notice to the Holders.**

i. **Adjustment to Conversion Ratio.** Whenever the Conversion Ratio is adjusted pursuant to any provision of this [Section 7](#), the Corporation shall promptly deliver to each Holder a notice setting forth the Conversion Ratio after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. **Other Notices.** If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any shareholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation, or merger, or other business combination to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation, or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at least 10 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights, or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, other business combination, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, other business combination, sale, transfer or share exchange, *provided* that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice.

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Section 8. Miscellaneous.

a. Redemption. The Series A Preferred Stock is not redeemable.

b. Transferability. Notwithstanding Section 2(b) hereof, no Holder may transfer shares of Series A Preferred Stock without the prior written consent of the Corporation, such consent not to be unreasonably withheld, conditioned, or delayed in the case of transfers made to an Affiliate of a Holder. For the avoidance of doubt, any transfer or attempted transfer in breach of this Certificate of Designation shall be void ad initio and of no effect.

c. Confidentiality. Each Holder covenants and agrees that it shall keep confidential any nonpublic information of the Corporation contained in any request issued by the Corporation pursuant to this Certificate of Designation; *provided* that such Holder may disclose such nonpublic information (A) if it reasonably determines that it must disclose such nonpublic information (x) based on the advice of counsel, to comply with applicable law or regulations promulgated by securities exchanges or (y) to comply with a valid order, demand, or request of a court of competent jurisdiction or other governmental entity and (B) to its directors, managers, trustees, officers, employees, contractors, consultants, and advisors, to the extent that any such recipient has a need to know such information and is bound by written or ethical obligations of confidentiality with respect to such nonpublic information; *provided, however*, that such Holder may only disclose that portion of the nonpublic information that, based on the written advice of counsel, such Holder is required to disclose under applicable law, regulation, order, demand, or request. In the event of such a disclosure, such Holder will, to the extent permitted by applicable law, rule, or regulation, provide the Corporation with prompt written notice of such request or requirement so that the Corporation may seek a prior protective order or other appropriate remedy, and such Holder will, to the extent permitted, cooperate with the Corporation's efforts to obtain the same

c. Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, via email, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at 830 Winter Street, Waltham, MA 02451, email Daniel.Char@immunogen.com, or such other number or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by email, or sent by a nationally recognized overnight courier service addressed to each Holder at the email or address of such Holder appearing on the books of the Corporation, or if no such email or address appears on the books of the Corporation, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the date immediately following the date of transmission, if such notice or communication is delivered via email at the email address, specified in this Section between 5:30 p.m. and 11:59 p.m. (New York City time) on any date, (iii) the second Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

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d. Lost or Mutilated Series A Preferred Stock Certificate. If a Holder's Series A Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series A Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft, or destruction of such certificate, and of the ownership thereof, reasonably satisfactory to the Corporation and, in each case, customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Corporation may prescribe.

e. Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver by the Corporation or a Holder must be in writing. Notwithstanding any provision in this Certificate of Designation to the contrary, any provision contained herein and any right of the Holders of Series A Preferred Stock granted hereunder may be waived as to all shares of Series A Preferred Stock (and the Holders thereof) upon the written consent of the Holders of not less than a majority of the shares of Series A Preferred Stock then outstanding, unless a higher percentage is required by the MBCA, in which case the written consent of the Holders of not less than such higher percentage shall be required.

f. Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances.

g. Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h. Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i. Status of Converted Series A Preferred Stock. If any shares of Series A Preferred Stock shall be converted or reacquired by the Corporation, such shares shall, without need for any action by the Board of Directors or otherwise, resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A Preferred Stock.

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ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES  
OF SERIES A PREFERRED STOCK)

The undersigned Holder hereby irrevocably elects to convert the number of shares of Series A Convertible Preferred Stock indicated below, [represented by stock certificate No(s)].[represented in book-entry form], into shares of common stock, par value \$.01 per share (the “**Common Stock**”), of ImmunoGen, Inc., a Massachusetts corporation (the “**Corporation**”), as of the date written below. Capitalized terms utilized but not defined herein shall have the meaning ascribed to such terms in that certain Certificate of Designation of Series A Convertible Preferred Stock (the “**Certificate of Designation**”) filed by the Corporation with the Secretary of the Commonwealth of Massachusetts on April \_\_, 2023.

As of the date hereof, the number of shares of Common Stock beneficially owned by the undersigned Holder (together with such Holder’s Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with the Holder’s for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission, including any “group” of which the Holder is a member), including the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock subject to this Notice of Conversion, but excluding the number of shares of Common Stock which are issuable upon (A) conversion of the remaining, unconverted Series A Preferred Stock beneficially owned by such Holder or any of its Affiliates, and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation (including any warrants) beneficially owned by such Holder or any of its Affiliates that are subject to a limitation on conversion or exercise similar to the limitation contained in Section 6(c) of the Certificate of Designation, is \_\_\_\_\_. For purposes hereof, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission. In addition, for purposes hereof, “**group**” has the meaning set forth in Section 13(d) of the Exchange Act and the applicable regulations of the Commission.

Conversion calculations:

Date to Effect Conversion:

Number of shares of Series A Preferred Stock owned prior to Conversion:

Number of shares of Series A Preferred Stock to be Converted:

Number of shares of Common Stock to be Issued:

Address for delivery of physical certificates:

or

for DWAC Delivery:

DWAC Instructions:

Broker no:

Account no:

[HOLDER]

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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

[HOLDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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Signed by: \_\_\_\_\_ /s/ Daniel S. Char \_\_\_\_\_,  
(signature of authorized individual)

- Chairman of the board of directors,
- President,
- Other officer,
- Court-appointed fiduciary,

on this \_\_\_\_\_ 2<sup>nd</sup> \_\_\_\_\_ day of \_\_\_\_\_ May \_\_\_\_\_, \_\_\_\_\_ 2023 \_\_\_\_\_.

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COMMONWEALTH OF MASSACHUSETTS

**William Francis Galvin**  
Secretary of the Commonwealth  
One Ashburton Place, Boston, Massachusetts 02108-1512

**Articles of Amendment**  
**(General Laws Chapter 156D, Section 10.06; 950 CMR 113.34)**

I hereby certify that upon examination of these articles of amendment, it appears that the provisions of the General Laws relative thereto have been complied with, and the filing fee in the amount of \$\_\_\_\_\_ having been paid, said articles are deemed to have been filed with me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_ a.m./p.m.

Effective date:

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*(must be within 90 days of date submitted)*

WILLIAM FRANCIS GALVIN  
*Secretary of the Commonwealth*

Filing fee: Minimum filing fee \$100 per article amended, stock increases \$100 per 100,000 shares, plus \$100 for each additional 100,000 shares or any fraction thereof.

Examiner

Name approval

C

M

TO BE FILLED IN BY CORPORATION  
Corporation Service Company

84 State Street

Boston, MA 02109 USA

Telephone: (617) 227-9590

Email:

Upon filing, A copy of this filing will be available at [www.sec.state.ma.us/cor](http://www.sec.state.ma.us/cor). If the document is rejected, a copy of the rejection sheet and rejected document will be available in the rejected queue.

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May 1, 2023

ImmunoGen, Inc.  
830 Winter Street  
Waltham, MA 02451  
Attn: Mark J. Enyedy, Chief Executive Officer

Re: 3(a)(9) Exchange Agreement

Ladies and Gentlemen:

This letter agreement (the “**Agreement**”) confirms the agreement of ImmunoGen, Inc. (the “**Company**”) and the holder of the Common Stock, par value \$.01 per share, of the Company (the “**Common Stock**”) listed on Schedule I attached hereto (the “**Shareholder**”), pursuant to which the Shareholder has agreed to exchange an aggregate of 21,853,000 shares (the “**Shares**”) of Common Stock beneficially owned by the Shareholder in consideration for a total of 21,853 shares of Series A Convertible Preferred Stock of the Company (the “**Preferred Shares**”), which shall have the rights, preferences and privileges set forth in the Certificate of Designation set forth on Exhibit A attached hereto (the “**COD**”). The Preferred Shares will be convertible into a total of 21,853,000 shares of Common Stock (subject to adjustment as provided in the COD), subject to beneficial ownership conversion limitations set forth in the COD.

In consideration of the foregoing, the Company and the Shareholder agree as follows:

(1) No later than the close of business on the second business day after the date hereof (the “**Closing Date**”) and subject to the satisfaction or waiver of the conditions set forth herein, the Shareholder shall exchange the Shares for the Preferred Shares (the “**Exchange**”) in the respective amount listed on Schedule I. The Exchange shall be consummated pursuant to Section 3(a)(9) of the Securities Act of 1933, as amended (the “**Securities Act**”). On the Closing Date: (a) the Shareholder shall electronically transfer the Shares to Broadridge Corporate Issuer Solutions, Inc. (the “**Transfer Agent**”) through the Shareholder’s prime broker participating in the Depository Trust Company’s Deposit Withdrawal Agent Commission System; (b) upon the Transfer Agent’s receipt of the Shares, the Company and the Shareholder shall jointly and irrevocably instruct the Transfer Agent to cancel the direct registration book-entry statements from the Transfer Agent evidencing the Shares; and (c) the Company shall issue and deliver to the Shareholder the Preferred Shares in book-entry form, in the amount and in the names set forth on Schedule I.

(2) The Company represents and warrants to the Shareholder as follows:

(a) The Company has not paid or given, or agreed to pay or give, directly or indirectly, any commission or other remuneration (within the meaning of Section 3(a)(9) of the Securities Act and the rules and regulations of the U.S. Securities and Exchange Commission (the “**Commission**”) promulgated thereunder) for soliciting the Exchange. Assuming the representations and warranties of the Shareholder contained herein are true and complete, the Exchange will qualify for the registration exemption contained in Section 3(a)(9) of the Securities Act.

(b) It has the requisite corporate power and authority to enter into this Agreement and to consummate the Exchange and such transactions shall not contravene any contractual, regulatory, statutory, or other obligation or restriction applicable to the Company, except for such contraventions of obligations or restrictions (other than those set forth in the Company’s Restated Articles of Incorporation, as amended or Amended and Restated By-Laws) that would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on the business, management, financial position, or results of operations of the Company and its subsidiaries taken as a whole or on the performance by the Company of its obligations under this Agreement. The Company has taken all necessary action required for the due authorization, execution, delivery, and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby.

(c) It has reserved a sufficient number of shares of Common Stock as may be necessary to fully permit the conversion of the Preferred Shares and the issuance of the Common Stock issuable upon conversion of the Preferred Shares, without regard to any beneficial ownership limits.

(3) The Shareholder represents and warrants to the Company as follows:

(a) It has the requisite power and authority to enter into this Agreement and consummate the Exchange and such transactions shall not contravene any contractual, regulatory, statutory, or other obligation or restriction applicable to the Shareholder. The Shareholder has taken all necessary action required for the due authorization, execution, delivery, and performance by the Shareholder of this Agreement and the consummation of the transactions contemplated hereby.

(b) It is the record and beneficial owner of the aggregate number of shares of Common Stock and pre-funded warrants to purchase shares of Common Stock (the "**Pre-Funded Warrants**") of the Company set forth opposite its name on Schedule I, which shares and Pre-Funded Warrants constitute all of the shares of Common Stock and Pre-Funded Warrants beneficially owned by the Shareholder.

(c) It is the record and beneficial owner of, and has valid and marketable title to, the Shares being exchanged by it pursuant to this Agreement, free and clear of any lien, pledge, restriction, or other encumbrance (other than restrictions arising pursuant to applicable securities laws), and has the absolute and unrestricted right, power and capacity to surrender and exchange the Shares being exchanged by it pursuant to this Agreement, free and clear of any lien, pledge, restriction, or other encumbrance. It is not a party to or bound by, and the Shares being exchanged by it pursuant to this Agreement are not subject to, any agreement, understanding, or other arrangement (i) granting any option, warrant, or right of first refusal with respect to such Shares to any person, (ii) restricting its right to surrender and exchange such Shares as contemplated by this Agreement, or (iii) restricting any other of its rights with respect to such Shares.

(d) Neither it nor any of its affiliates nor any person acting on behalf of or for the benefit of any of the foregoing, has paid or given, or agreed to pay or give, directly or indirectly, any commission or other remuneration (within the meaning of Section 3(a)(9) of the Securities Act and the rules and regulations of the Commission promulgated thereunder) for soliciting the Exchange, and the Shareholder has received no additional consideration for the Shares other than the Preferred Shares.

(e) The Shareholder understands and accepts that the Preferred Shares to be acquired in the Exchange involve risks. The Shareholder acknowledges that no person has been authorized to give any information or to make any representation concerning the Company, the Shares, the Preferred Shares, or the Exchange other than as contained in this Agreement. The Company takes no responsibility for, and provides no assurance as to the reliability of, any other information that others may provide to any Shareholder.



(f) There is no claim, action, suit, assessment, arbitration, or inquiry, or any proceeding or investigation by or before any governmental authority, pending, or to the Shareholder's knowledge, currently threatened, against the Shareholder that challenges the consummation of this Agreement or the transactions contemplated hereby.

(4) The Shareholder covenants and agrees that it shall keep confidential any nonpublic information of the Company contained in any conversion request issued by the Company pursuant to the COD; provided that the Shareholder may disclose such nonpublic information (a) if the Shareholder reasonably determines that it must disclose such nonpublic information (1) based on the advice of counsel, to comply with applicable law or regulations promulgated by securities exchanges or (2) to comply with a valid order, demand, or request of a court of competent jurisdiction or other governmental entity and (b) to its directors, managers, trustees, officers, employees, contractors, consultants, and advisors, to the extent that any such recipient has a need to know such information and is bound by written or ethical obligations of confidentiality with respect to such nonpublic information; provided, however, that the Shareholder may only disclose that portion of the nonpublic information that, based on the written advice of counsel, the Shareholder is required to disclose under applicable law, regulation, order, demand, or request. In the event of such a disclosure, the Shareholder will, to the extent permitted by applicable law, rule, or regulation, provide the Company with prompt written notice of such request or requirement so that the Company may seek a prior protective order or other appropriate remedy, and the Shareholder shall, to the extent permitted, cooperate with the Company's efforts to obtain the same.

(5) The Shareholder shall pay the Company's reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement incurred through the Closing Date, not to exceed twenty-five thousand dollars (\$25,000).

(6) This Agreement, and any action or proceeding arising out of or relating to this Agreement, shall be exclusively governed by the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions thereof.

(7) In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void, or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect. In such an event, the Shareholder and the Company shall endeavor in good faith negotiations to modify this Agreement so as to reflect the original intent of the parties as closely as possible.

(8) No provision of this Agreement may be amended or modified except upon the written consent of the Company and the Shareholder, and no provision hereof may be waived other than by a written instrument signed by the party against whom enforcement of such waiver is sought.

(9) All the covenants and agreements in this Agreement contained by or on behalf of the parties hereto shall bind their successors and assigns, whether so expressed or not. This Agreement is not intended to confer any rights or remedies upon any person other than the parties hereto. The Shareholder may not assign this Agreement or its rights hereunder without the Company's prior written consent.

(10) This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument, and shall become effective when one or more counterparts have been signed by each party hereto and delivered to the other party. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

(11) This Agreement represents the entire agreement and understanding among the parties regarding the terms and conditions of the Exchange and supersedes all prior agreements.

[SIGNATURE PAGE FOLLOWS]

Please sign to acknowledge agreement with the above terms and return to the undersigned.

Common Shareholder:

**RA Capital Healthcare Fund, L.P.**

By: RA Capital Healthcare Fund GP, LLC, its general partner

By: /s/ Rajeev Shah

Name: Rajeev Shah

Title: Manager

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Acknowledged and agreed:

**Immunogen, Inc.**

By: /s/ Mark J. Enyedy

Name: Mark J. Enyedy

Title: President and Chief Executive Officer

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SCHEDULE I

	<b>Shares of Common Stock Held</b>	<b>Shares Underlying Pre-Funded Warrants Held</b>	<b>Shares of Common Stock to be Exchanged</b>	<b>Shares of Series A Preferred Stock to be Received</b>
RA Capital Healthcare Fund, L.P.	<u>21,853,958</u>	<u>21,434,782</u>	<u>21,853,000</u>	<u>21,853</u>

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**Exhibit A**

**CERTIFICATE OF DESIGNATION OF  
SERIES A CONVERTIBLE PREFERRED STOCK**

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The Commonwealth of Massachusetts  
**William Francis Galvin**  
Secretary of the Commonwealth  
One Ashburton Place, Boston, Massachusetts 02108-1512

**Articles of Amendment**  
**(General Laws Chapter 156D, Section 10.06; 950 CMR 113.34)**

- (1) Exact name of corporation: ImmunoGen, Inc.
- (2) Registered office address: Corporation Service Company, 84 State Street, Boston, MA 02109  
(number, street, city or town, state, zip code)
- (3) These articles of amendment affect article(s): Article III and IV  
(specify the number(s) of article(s) being amended (I-VI))
- (4) Date adopted: [●]  
(month, day, year)
- (5) Approved by:  
(check appropriate box)
- the incorporators.
- the board of directors without shareholder approval and shareholder approval was not required.
- the board of directors and the shareholders in the manner required by law and the articles of organization.
- (6) State the article number and the text of the amendment. Unless contained in the text of the amendment, state the provisions for implementing the exchange, reclassification or cancellation of issued shares.

Article III is being amended to indicate that 21,853 shares of Preferred Stock have been designated as Series A Convertible Preferred Stock, as set forth in Article IV.

Article IV, Exhibit B, Section 2 is being amended to include the attached Certificate of Designation of Series A Convertible Preferred Stock.

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To change the number of shares and par value, \* if any, of any type, or to designate a class or series, of stock, or change a designation of class or series of stock, which the corporation is authorized to issue, complete the following:

Total authorized prior to amendment:

WITHOUT PAR VALUE		WITH PAR VALUE		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
		Common	600,000,000	.01
		Preferred	5,000,000	.01

Total authorized after amendment:

WITHOUT PAR VALUE		WITH PAR VALUE		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
		Common	600,000,000	.01
		Preferred	4,978,147	.01
		Series A Convertible Preferred	21,853	.01

(7) The amendment shall be effective at the time and on the date approved by the Division, unless a later effective date not more than 90 days from the date and time of filing is specified: \_\_\_\_\_

*\*G.L. Chapter 156D eliminates the concept of par value, however a corporation may specify par value in Article III. See G.L. Chapter 156D, Section 6.21, and the comments relative thereto.*



**CERTIFICATE OF DESIGNATION OF  
SERIES A CONVERTIBLE PREFERRED STOCK  
OF  
IMMUNOGEN, INC.**

(PURSUANT TO SECTION 6.02 OF  
THE MASSACHUSETTS BUSINESS CORPORATION ACT,  
CHAPTER 156D  
OF THE MASSACHUSETTS GENERAL LAWS)

ImmunoGen, Inc., a Massachusetts corporation (the “**Corporation**”), in accordance with Section 6.02 of the Massachusetts Business Corporation Act (the “**MBCA**”), does hereby certify that, pursuant to the authority conferred upon the board of directors of the Corporation (the “**Board of Directors**”) by the Corporation’s Restated Articles of Organization, as heretofore amended to date (the “**Articles of Organization**”), the Board of Directors has, by a resolution duly adopted pursuant thereto, established a series of the Corporation’s Preferred Stock consisting of 21,853 shares of the Corporation’s preferred stock, par value \$.01 per share, designated as “Series A Convertible Preferred Stock” and having the voting powers, designations, preferences, privileges, limitations, restrictions, and relative rights set forth as follows, in addition to any provisions of the Articles of Organization applicable to all classes and series of Preferred Stock (all capitalized terms used but not defined herein shall have the meanings set forth in the Articles of Organization):

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“**Affiliate**” means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Holder, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

“**Alternate Consideration**” has the meaning set forth in Section 7(b).

“**Applicable Settlement Time**” has the meaning set forth in Section 6(d)(i).

“**Articles of Organization**” has the meaning set forth in the introductory paragraph.

“**Automatic Conversion Date**” has the meaning set forth in Section 6(a)(ii).

“**Beneficial Ownership Limitation**” has the meaning set forth in Section 6(c).

“**Board of Directors**” has the meaning set forth in the introductory paragraph.

“**Business Day**” means any day except Saturday, Sunday, any federal legal holiday in the United States, or any day on which banking institutions in the State of New York are closed.

“**Buy-In**” has the meaning set forth in Section 6(d)(iii).

“**Buy-In Date**” has the meaning set forth in Section 6(d)(iii).

“**Closing Sale Price**” means, for any security as of any date, the last closing trade price for such security prior to 4:00 p.m., New York City time, on the principal securities exchange or trading market where such security is listed or traded, as reported by Bloomberg, L.P. (or an equivalent, reliable reporting service mutually acceptable to and hereafter designated by Holders of a majority of the then-outstanding Series A Preferred Stock and the Corporation), or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, L.P., or, if no last trade price is reported for such security by Bloomberg, L.P., the average of the bid prices of any market makers for such security as reported on the Pink Open Market by OTC Markets Group, Inc. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as determined in good faith by the Board of Directors.

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“**Commission**” means the Securities and Exchange Commission.

“**Common Stock**” means the Corporation’s common stock, par value \$.01 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Conversion Date**” has the meaning set forth in Section 6(b).

“**Conversion Ratio**” means 1,000 shares of Common Stock issuable upon conversion of every one share of Series A Preferred Stock, as such 1,000:1 ratio may be adjusted from time to time in accordance with Section 7.

“**Conversion Shares**” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock in accordance with the terms hereof.

“**Corporation**” has the meaning set forth in the introductory paragraph.

“**DTC**” has the meaning set forth in Section 6(b).

“**DWAC Delivery**” has the meaning set forth in Section 6(b).

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Fundamental Transaction**” has the meaning set forth in Section 7(b).

“**Fundamental Transaction Exception**” has the meaning set forth in Section 7(b).

“**Holder**” means any holder of Series A Preferred Stock.

“**Issuance Date**” means May 3, 2023.

“**Liquidation Preference**” has the meaning set forth in Section 5(b).

“**Mandatory Conversion Date**” has the meaning set forth in Section 6(a)(i).

“**Mandatory Conversion Notice**” has the meaning set forth in Section 6(a)(i).

“**MBCA**” has the meaning set forth in the introductory paragraph.

“**Notice of Conversion**” has the meaning set forth in Section 6(b).

“**Person**” means any individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof), or other entity of any kind.

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“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Series A Preferred Stock**” has the meaning set forth in Section 2(a).

“**Series A Preferred Stock Register**” has the meaning set forth in Section 2(b).

“**Share Delivery Date**” has the meaning set forth in Section 6(d)(i).

“**Trading Day**” means a day on which the Common Stock is traded for any period on the principal securities exchange or if the Common Stock is not traded on a principal securities exchange, on a day that the Common Stock is traded on another securities market on which the Common Stock is then being traded.

“**Voluntary Conversion Date**” has the meaning set forth in Section 6(b).

Section 2. Designation, Amount and Par Value; Assignment.

a. The series of preferred stock designated by this Certificate of Designation shall be designated as the Corporation’s Series A Convertible Preferred Stock (the “**Series A Preferred Stock**”) and the number of shares so designated shall be 21,853 (which shall not be subject to increase except pursuant to an amendment to this Certificate of Designation duly adopted in accordance with the applicable law and the written consent of the Holders of a majority of the issued and outstanding Series A Preferred Stock). The Series A Preferred Stock shall be designated from the 5,000,000 shares of Preferred Stock authorized to be issued under the Articles of Organization. Each share of Series A Preferred Stock shall have a par value of \$.01 per share.

b. The Corporation shall register shares of the Series A Preferred Stock in the name of the Holders thereof from time to time upon records to be maintained by the Corporation for that purpose (the “**Series A Preferred Stock Register**”). The Series A Preferred Stock shall be issued in book entry only, *provided* that the Corporation shall issue one or more certificates representing shares of Series A Preferred Stock, to the extent such issuance is requested by a given Holder. References herein to “certificates” representing the Series A Preferred Stock shall apply only if such shares have been issued in certificated form. The Corporation may deem and treat the registered Holder of shares of Series A Preferred Stock as the absolute owner thereof for the purpose of any conversion thereof and for all other purposes. The Corporation shall register the transfer of any shares of Series A Preferred Stock in the Series A Preferred Stock Register, upon surrender of any certificates evidencing such shares to be transferred, duly endorsed by the Holder thereof, to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series A Preferred Stock so transferred shall be issued to the transferee (if requested) and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring Holder (if requested), in each case, within five Business Days. The provisions of this Certificate of Designation are intended to be for the benefit of all Holders from time to time and shall be enforceable by any such Holder.

Section 3. Dividends. Holders shall be entitled to receive when, as and if dividends are declared and paid on the Common Stock, an equivalent dividend (with the same dividend declaration date and payment date), calculated on an as-converted basis. Other than the foregoing, the Holders of Series A Preferred Stock shall not be entitled to receive any dividends in respect of the Series A Preferred Stock, unless and until specifically declared by the Board of Directors to be payable to the Holders of the Series A Preferred Stock.

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Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by the MBCA, the Series A Preferred Stock shall have no voting rights. However, as long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Series A Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Series A Preferred Stock or alter or amend this Certificate of Designation, (b) increase the number of authorized shares of Series A Preferred Stock, or (c) enter into any agreement with respect to any of the foregoing.

Section 5. Rank; Liquidation.

a. The Series A Preferred Stock shall rank senior to the Common Stock with respect to distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntarily or involuntarily, to the extent set forth in Section 5(b).

b. Upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, each Holder shall be entitled to receive, out of the assets of the Corporation legally available for distribution to shareholders, in preference to any distributions of any of the assets or surplus funds of the Corporation to the holders of the Common Stock, an amount equal to \$0.001 per share of Series A Preferred Stock, plus an additional amount equal to any dividends declared but unpaid on such shares (the "**Liquidation Preference**"), before any payments shall be made or any assets distributed to holders of any class of Common Stock, *provided, however*, that if the amount payable on a per-share basis to the holders of Common Stock on any such liquidation, dissolution or winding up of the Corporation shall be greater than the Liquidation Preference that is payable to the holders of the Series A Preferred Stock, then the holders of Series A Preferred Stock shall instead receive, on an per-share and as-converted basis, the same assets or surplus funds that is to be distributed to the holders of Common Stock. If, upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be insufficient to pay the holders of shares of the Series A Preferred Stock the amount required under the preceding sentence, then all remaining assets of the Corporation shall be distributed ratably to holders of the shares of the Series A Preferred Stock, subject to the rights of the holders of any shares of capital stock of the Corporation other than the Common Stock.

Section 6. Conversion.

a. Mandatory Conversion; Automatic Conversion.

(i) Mandatory Conversion. (A) Upon request by the Corporation delivered no earlier than five (5) Business Days prior to a determination date with respect to the Corporation's status as a "well-known seasoned issuer" (as defined in Rule 405 under the Securities Act), if the Corporation has made a bona fide determination that the conversion of all or a portion of the outstanding shares of Series A Preferred Stock would, if converted, cause the Corporation to qualify as a "well-known seasoned issuer" (and the Corporation would otherwise not qualify as a "well-known seasoned issuer" absent the conversion of such shares of Series A Preferred Stock), then the number of shares of Series A Preferred Stock that would be required, if converted, to qualify the Corporation as a "well-known seasoned issuer" shall be converted, ratably, into a number of shares of Common Stock equal to the Conversion Ratio, as adjusted from time to time pursuant to Section 7, or (B) upon request by the Corporation delivered no earlier than five (5) Business Days prior to a record date for a shareholder meeting of the Corporation, but subject to the prior written consent of each Holder, not to be unreasonably withheld, a reasonably requested number of Series A Preferred Stock shall be converted, ratably, into the number of shares of Common Stock equal to the Conversion Ratio, as adjusted from time to time pursuant to Section 7 ((A) and (B) together, the "**Mandatory Conversion Request**"), *provided* that in no event shall shares of Series A Preferred Stock be converted pursuant to this Section 6(a)(i) if the conversion of such shares of Series A Preferred Stock would cause a Holder to exceed the Beneficial Ownership Limitation (as defined below). The date of conversion of outstanding shares of Series A Preferred Stock pursuant to this Section 6(a)(i) is referred to herein as the "**Mandatory Conversion Date**."

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(ii) **Automatic Conversion.** On the first (1st) Trading Day following the tenth (10th) anniversary of the Issuance Date (the “**Automatic Conversion Date**”), each outstanding share of Series A Preferred Stock shall automatically convert into the number of shares of Common Stock equal to the Conversion Ratio, as adjusted from time to time pursuant to **Section 7**.

(iii) **Procedural Requirements.** Holders of Series A Preferred Stock shall, at least three (3) Business Days prior to a Mandatory Conversion Date, be sent written notice of a Mandatory Conversion Request, which notice shall set forth the Mandatory Conversion Date and the amount of Series A Preferred Stock designated for conversion pursuant to **Section 6(a)(i)**. On the Mandatory Conversion Date or Automatic Conversion Date, as applicable, each Holder of shares of Series A Preferred Stock in certificated form shall surrender its certificate or certificates for all such shares (or, if such Holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so requested by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered Holder or by its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date or Automatic Conversion Date, as applicable, and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock, the Corporation shall (a) either (x) issue and deliver to such Holder a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof or (y) in the case of a DWAC Delivery (as defined below), electronically transfer such Conversion Shares by crediting the account of the Holder’s prime broker with DTC through its DWAC system, and (b) pay cash as provided in **Section 6(d)(v)** in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion.

b. **Conversions at Option of Holder.** Subject to **Section 6(c)**, each whole share of Series A Preferred Stock shall be convertible, at any time and from time to time from and after the Issuance Date, at the option of the Holder thereof, into a number of shares of Common Stock equal to the Conversion Ratio, as adjusted from time to time pursuant to **Section 7**. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as **Annex A** (a “**Notice of Conversion**”), duly completed and executed. The Notice of Conversion must specify at least a number of shares of Series A Preferred Stock to be converted equal to the lesser of (x) 100 shares (such number subject to appropriate adjustment following the occurrence of an event specified in Section 7(a) hereof) and (y) the number of shares of Series A Preferred Stock then held by the Holder. Provided the Corporation’s transfer agent is participating in the Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer program, the Notice of Conversion may specify, at the Holder’s election, whether the applicable Conversion Shares shall be credited to the account of the Holder’s prime broker with DTC through its Deposit Withdrawal Agent Commission system (a “**DWAC Delivery**”). The conversion pursuant to this **Section 6(b)** shall be deemed effective on the Trading Day that the Notice of Conversion, completed and executed, is sent by email to, and received during regular business hours by, the Corporation (“**Voluntary Conversion Date**”); *provided* that if such shares of Series A Preferred Stock were issued in certificated form, then the original certificate(s) representing such shares of Series A Preferred Stock being converted, duly endorsed, and the accompanying Notice of Conversion, are received by the Corporation within two Trading Days thereafter. In all other cases, the Voluntary Conversion Date shall be defined as the Trading Day on which the original certificates (if any) representing the shares of Series A Preferred Stock being converted, duly endorsed, and the accompanying Notice of Conversion, are received by the Corporation. The Mandatory Conversion Date, the Automatic Conversion Date and the Voluntary Conversion Date collectively are referred to herein as the “**Conversion Date**.”

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c. **Beneficial Ownership Limitation.** Notwithstanding anything in this Certificate of Designation to the contrary, the Corporation shall not effect any conversion of the Series A Preferred Stock, and a Holder shall not have the right to convert any portion of the Series A Preferred Stock, to the extent that, after giving effect to an attempted conversion set forth on an applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission, including any "group" of which the Holder is a member) would beneficially own a number of shares of Common Stock in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock subject to the Notice of Conversion with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (A) conversion of the remaining, unconverted Series A Preferred Stock beneficially owned by such Holder or any of its Affiliates, and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation (including any warrants) beneficially owned by such Holder or any of its Affiliates that are subject to a limitation on conversion or exercise similar to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this Section 6(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission. In addition, for purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and the applicable regulations of the Commission. For purposes of this Section 6(c), it is understood that the number of shares of Common Stock beneficially owned by each Holder shall be aggregated with each other Holder for purposes of Section 13(d) of the Exchange Act. For purposes of this Section 6(c), in determining the number of outstanding shares of Common Stock, absent actual knowledge of such Holder to the contrary, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (A) the Corporation's most recent periodic or annual filing with the Commission, as the case may be, (B) a more recent public announcement by the Corporation that is filed with the Commission, or (C) a more recent notice by the Corporation or the Corporation's transfer agent to the Holder setting forth the number of shares of Common Stock then outstanding. Upon the written request of a Holder (which may be by email), the Corporation shall, within three Trading Days thereof, confirm in writing to such Holder (which may be via email) the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to any actual conversion or exercise of securities of the Corporation, including shares of Series A Preferred Stock, by such Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was last publicly reported or confirmed to the Holder. The initial "**Beneficial Ownership Limitation**" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock pursuant to such Notice of Conversion (to the extent permitted pursuant to this Section 6(c)). By written notice to the Corporation, which will not be effective until the 61st day after such notice is delivered to the Corporation, a Holder may increase or decrease the Beneficial Ownership Limitation applicable solely to such Holder to such other percentage limit as may be determined by the Holder, not to exceed 19.99%, *provided*, that any increase in the Beneficial Ownership Limitation shall not be effective until the 61st day after such notice is delivered to the Corporation. The Corporation shall be entitled to rely on representations made to it by the Holder in any Notice of Conversion regarding its Beneficial Ownership Limitation. For the avoidance of doubt, this Section 6(c) shall not restrict the number of shares of Common Stock that a Holder may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Transaction.

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d. Mechanics of Conversion.

i. Delivery of Certificate or Electronic Issuance Upon Conversion. Not later than two (2) Trading Days or, following the implementation of the Commission's rules to shorten the standard settlement cycle, one (1) Trading Day (such standard settlement cycle as in effect, the "**Applicable Settlement Time**"), after the applicable Voluntary Conversion Date, or if the Holder requests the issuance of physical certificate(s), the Applicable Settlement Time following receipt by the Corporation of the original certificate(s) representing such shares of Series A Preferred Stock being converted, duly endorsed, and the accompanying Notice of Conversion (the "**Share Delivery Date**"), the Corporation shall (a) deliver, or cause to be delivered, to the converting Holder a physical certificate or certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Series A Preferred Stock or (b) in the case of a DWAC Delivery, electronically transfer such Conversion Shares by crediting the account of the Holder's prime broker with DTC through its DWAC system. If in the case of any Notice of Conversion such certificate or certificates are not delivered to or as directed by or, in the case of a DWAC Delivery, such shares are not electronically delivered to or as directed by, the applicable Holder by the Share Delivery Date, the applicable Holder shall be entitled to elect to rescind such Conversion Notice by written notice to the Corporation at any time on or before its receipt of such certificate or certificates for Conversion Shares or electronic receipt of such shares, as applicable, in which event the Corporation shall promptly return to such Holder any original Series A Preferred Stock certificate delivered to the Corporation and such Holder shall promptly return to the Corporation any Common Stock certificates or otherwise direct the return of any shares of Common Stock delivered to the Holder through the DWAC system, representing the shares of Series A Preferred Stock unsuccessfully tendered for conversion to the Corporation.

ii. Obligation Absolute. Subject to Section 6(c) hereof and subject to Holder's right to rescind a Conversion Notice pursuant to Section 6(d)(i) above, the Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Series A Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares. Subject to Section 6(c) hereof and subject to Holder's right to rescind a Conversion Notice pursuant to Section 6(d)(i) above, in the event a Holder shall elect to convert any or all of its Series A Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to such Holder, restraining and/or enjoining conversion of all or part of the Series A Preferred Stock of such Holder shall have been sought and obtained by the Corporation, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the value of the Conversion Shares into which would be converted the Series A Preferred Stock which is subject to such injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall, subject to Section 6(c) hereof and subject to Holder's right to rescind a Conversion Notice pursuant to Section 6(d)(i) above, issue Conversion Shares upon a properly noticed conversion. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief; *provided* that the Holder shall not receive duplicate damages for the Corporation's failure to deliver Conversion Shares within the period specified herein. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

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iii. Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. If the Corporation fails to deliver to a Holder the applicable certificate or certificates or to effect a DWAC Delivery, as applicable, within five (5) Trading Days following the applicable Voluntary Conversion Date (the "**Buy-In Date**") pursuant to Section 6(d)(i) (other than a failure caused by incorrect or incomplete information provided by Holder to the Corporation), and if after such Buy-In Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Buy-In Date (a "**Buy-In**"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount by which (x) such Holder's total purchase price (including any commercially reasonable brokerage commissions) for the shares of Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price per share at which the sell order giving rise to such purchase obligation was executed (including any commercially reasonable brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Series A Preferred Stock equal to the number of shares of Series A Preferred Stock submitted for conversion or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under this Section 6. For the avoidance of doubt, this Section 6(d)(ii) shall not apply if the Corporation does not effect a conversion pursuant to the limitations of Section 6(c). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series A Preferred Stock with respect to which the actual sale price (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice, within two (2) Trading Days after the occurrence of a Buy-In, indicating the amounts payable to such Holder in respect of such Buy-In together with applicable confirmations and other evidence reasonably requested by the Corporation. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Common Stock upon conversion of the shares of Series A Preferred Stock as required pursuant to the terms hereof; *provided, however*, that no Holder shall be entitled to both (i) require the reissuance of the shares of Series A Preferred Stock submitted for conversion for which such conversion was not timely honored and (ii) receive the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under this Section 6.

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iv. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series A Preferred Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series A Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments of Section 7) upon the conversion of all outstanding shares of Series A Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid, and nonassessable.

v. Fractional Shares. No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon the conversion of the Series A Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to receive upon such conversion, the Corporation shall pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the fair value of the fraction of the Common Stock (determined with reference to the Closing Sale Price of the Common Stock).

vi. Transfer Taxes. The Corporation shall not be required to pay any tax that may be payable in respect of the issuance of the Conversion Shares or any transfer of shares of Series A Preferred Stock, and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of any such tax or shall have established to the satisfaction of the Corporation that any such tax has been paid.

e. Status as Shareholder. Upon each Conversion Date, (i) the shares of Series A Preferred Stock being converted shall be deemed converted into shares of Common Stock and (ii) the Holder's rights as a holder of such converted shares of Series A Preferred Stock shall cease and terminate, excepting only the right to receive certificates for or electronic receipt of such shares of Common Stock, as applicable, and to any remedies provided herein or otherwise available at law or in equity to such Holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation. In all cases, the Holder shall retain all of its rights and remedies for the Corporation's failure to convert Series A Preferred Stock.

#### Section 7. Certain Adjustments.

a. Stock Dividends and Stock Splits. If the Corporation, at any time while any Series A Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of any Series A Preferred Stock) with respect to the then outstanding shares of Common Stock; (ii) subdivides outstanding shares of Common Stock into a larger number of shares; or (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, then the Conversion Ratio shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately after such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately before such event (excluding any treasury shares of the Corporation). Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision or combination.

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b. **Fundamental Transaction.** If, at any time while any Series A Preferred Stock is outstanding, (i) the Corporation effects any merger, consolidation, or other business combination of the Corporation with or into another Person (other than a transaction in which the Corporation is the surviving or continuing entity and its Common Stock is not exchanged for or converted into other securities, cash or property), (ii) the Corporation effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, (iii) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which all of the Common Stock is exchanged for or converted into other securities, cash or property, or (iv) the Corporation effects any reclassification of the Common Stock or any compulsory share exchange pursuant (other than as a result of a dividend, subdivision or combination covered by [Section 7\(a\)](#) above) to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a “**Fundamental Transaction**”), then, upon the consummation of such Fundamental Transaction, each Holder shall automatically receive, as consideration for its shares of Series A Preferred Stock, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the Conversion Shares (the “**Alternate Consideration**”), *provided* that a Holder shall not, unless such Holder directs otherwise in writing, receive the Alternate Consideration to the extent that it would cause such Holder to beneficially own in excess of 9.99% of a class of securities registered under the Securities Exchange Act of 1934, as amended (the “**Fundamental Transaction Exception**”). In the event of a Fundamental Transaction, the determination of the Conversion Ratio shall be appropriately adjusted to apply to the Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall adjust the Conversion Ratio in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration. To the extent the Fundamental Transaction Exception applies, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock evidencing the Holders’ right to convert such preferred stock into the Alternate Consideration. The terms of any agreement to which the Corporation is a party and pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this [Section 7\(b\)](#) and ensuring that the Series A Preferred Stock (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

c. **Calculations.** All calculations under this [Section 7](#) shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this [Section 7](#), the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

d. **Notice to the Holders.**

i. **Adjustment to Conversion Ratio.** Whenever the Conversion Ratio is adjusted pursuant to any provision of this [Section 7](#), the Corporation shall promptly deliver to each Holder a notice setting forth the Conversion Ratio after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

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ii. Other Notices. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any shareholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation, or merger, or other business combination to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation, or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at least 10 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights, or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, other business combination, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, other business combination, sale, transfer or share exchange, *provided* that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice.

#### Section 8. Miscellaneous.

a. Redemption. The Series A Preferred Stock is not redeemable.

b. Transferability. Notwithstanding Section 2(b) hereof, no Holder may transfer shares of Series A Preferred Stock without the prior written consent of the Corporation, such consent not to be unreasonably withheld, conditioned, or delayed in the case of transfers made to an Affiliate of a Holder. For the avoidance of doubt, any transfer or attempted transfer in breach of this Certificate of Designation shall be void *ad initio* and of no effect.

c. Confidentiality. Each Holder covenants and agrees that it shall keep confidential any nonpublic information of the Corporation contained in any request issued by the Corporation pursuant to this Certificate of Designation; *provided* that such Holder may disclose such nonpublic information (A) if it reasonably determines that it must disclose such nonpublic information (x) based on the advice of counsel, to comply with applicable law or regulations promulgated by securities exchanges or (y) to comply with a valid order, demand, or request of a court of competent jurisdiction or other governmental entity and (B) to its directors, managers, trustees, officers, employees, contractors, consultants, and advisors, to the extent that any such recipient has a need to know such information and is bound by written or ethical obligations of confidentiality with respect to such nonpublic information; *provided, however*, that such Holder may only disclose that portion of the nonpublic information that, based on the written advice of counsel, such Holder is required to disclose under applicable law, regulation, order, demand, or request. In the event of such a disclosure, such Holder will, to the extent permitted by applicable law, rule, or regulation, provide the Corporation with prompt written notice of such request or requirement so that the Corporation may seek a prior protective order or other appropriate remedy, and such Holder will, to the extent permitted, cooperate with the Corporation's efforts to obtain the same

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c. Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, via email, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at 830 Winter Street, Waltham, MA 02451, email Daniel.Char@immunogen.com, or such other number or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by email, or sent by a nationally recognized overnight courier service addressed to each Holder at the email or address of such Holder appearing on the books of the Corporation, or if no such email or address appears on the books of the Corporation, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the date immediately following the date of transmission, if such notice or communication is delivered via email at the email address, specified in this Section between 5:30 p.m. and 11:59 p.m. (New York City time) on any date, (iii) the second Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

d. Lost or Mutilated Series A Preferred Stock Certificate. If a Holder's Series A Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series A Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft, or destruction of such certificate, and of the ownership thereof, reasonably satisfactory to the Corporation and, in each case, customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Corporation may prescribe.

e. Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver by the Corporation or a Holder must be in writing. Notwithstanding any provision in this Certificate of Designation to the contrary, any provision contained herein and any right of the Holders of Series A Preferred Stock granted hereunder may be waived as to all shares of Series A Preferred Stock (and the Holders thereof) upon the written consent of the Holders of not less than a majority of the shares of Series A Preferred Stock then outstanding, unless a higher percentage is required by the MBCA, in which case the written consent of the Holders of not less than such higher percentage shall be required.

f. Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances.

g. Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h. Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i. Status of Converted Series A Preferred Stock. If any shares of Series A Preferred Stock shall be converted or reacquired by the Corporation, such shares shall, without need for any action by the Board of Directors or otherwise, resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A Preferred Stock.

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ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES  
OF SERIES A PREFERRED STOCK)

The undersigned Holder hereby irrevocably elects to convert the number of shares of Series A Convertible Preferred Stock indicated below, [represented by stock certificate No(s)].[represented in book-entry form], into shares of common stock, par value \$.01 per share (the “**Common Stock**”), of ImmunoGen, Inc., a Massachusetts corporation (the “**Corporation**”), as of the date written below. Capitalized terms utilized but not defined herein shall have the meaning ascribed to such terms in that certain Certificate of Designation of Series A Convertible Preferred Stock (the “**Certificate of Designation**”) filed by the Corporation with the Secretary of the Commonwealth of Massachusetts on April \_\_, 2023.

As of the date hereof, the number of shares of Common Stock beneficially owned by the undersigned Holder (together with such Holder’s Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with the Holder’s for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission, including any “group” of which the Holder is a member), including the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock subject to this Notice of Conversion, but excluding the number of shares of Common Stock which are issuable upon (A) conversion of the remaining, unconverted Series A Preferred Stock beneficially owned by such Holder or any of its Affiliates, and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation (including any warrants) beneficially owned by such Holder or any of its Affiliates that are subject to a limitation on conversion or exercise similar to the limitation contained in Section 6(c) of the Certificate of Designation, is \_\_\_\_\_. For purposes hereof, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission. In addition, for purposes hereof, “**group**” has the meaning set forth in Section 13(d) of the Exchange Act and the applicable regulations of the Commission.

Conversion calculations:

Date to Effect Conversion:

Number of shares of Series A Preferred Stock owned prior to Conversion:

Number of shares of Series A Preferred Stock to be Converted:

Number of shares of Common Stock to be Issued:

Address for delivery of physical certificates:

or

for DWAC Delivery:

DWAC Instructions:

Broker no:

Account no:

[HOLDER]

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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

[HOLDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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Signed by: \_\_\_\_\_,  
*(signature of authorized individual)*

- Chairman of the board of directors,
- President,
- Other officer,
- Court-appointed fiduciary,

on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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COMMONWEALTH OF MASSACHUSETTS

**William Francis Galvin**  
Secretary of the Commonwealth  
One Ashburton Place, Boston, Massachusetts 02108-1512

**Articles of Amendment**  
**(General Laws Chapter 156D, Section 10.06; 950 CMR 113.34)**

I hereby certify that upon examination of these articles of amendment, it appears that the provisions of the General Laws relative thereto have been complied with, and the filing fee in the amount of \$\_\_\_\_\_ having been paid, said articles are deemed to have been filed with me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_ a.m./p.m.

Effective date:

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*(must be within 90 days of date submitted)*

WILLIAM FRANCIS GALVIN  
*Secretary of the Commonwealth*

Filing fee: Minimum filing fee \$100 per article amended, stock increases \$100 per 100,000 shares, plus \$100 for each additional 100,000 shares or any fraction thereof.

Examiner

Name approval

C

M

TO BE FILLED IN BY CORPORATION  
Corporation Service Company

84 State Street

Boston, MA 02109 USA

Telephone: (617) 227-9590

Email:

Upon filing, A copy of this filing will be available at [www.sec.state.ma.us/cor](http://www.sec.state.ma.us/cor). If the document is rejected, a copy of the rejection sheet and rejected document will be available in the rejected queue.

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