

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-K

ANNUAL REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 2022

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ until _____

Commission File Number: 001-38739

TOUGHBUILT INDUSTRIES, INC.

(Exact name of Registrant as specified in its charter)

Nevada

(State or other jurisdiction of
incorporation or organization)

46-0820877

(I.R.S. Employer
Identification No.)

8669 Research Drive

Irvine, CA

(Address of principal executive offices)

92618

(Zip Code)

Registrant's telephone number, including area code (949) 528-3100

Securities registered under Section 12(b) of the Act:

| <u>Title of each class:</u> | <u>Trading Symbol(s)</u> | <u>Name of each exchange on which registered:</u> |
|-----------------------------|--------------------------|---|
| Common Stock | TBLT | The Nasdaq Stock Market LLC |
| Series A Warrants | TBLTW | The Nasdaq Stock Market LLC |

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the past 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the Registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit post such files).

Yes No

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

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.

Indicate by check mark whether the Registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

The aggregate market value of the Registrant's common stock, held by non-affiliates of the Registrant as of June 30, 2022 (which is the last business day of Registrant's most recently completed second fiscal quarter) based upon the reported closing price of \$2.23 on The Nasdaq Capital Market on that date, was approximately \$31,387,992.59.

As of March 31, 2023, the Registrant had 14,946,442 shares of common stock, par value \$0.0001 per share, issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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In this Annual Report on Form 10-K, unless otherwise stated or as the context otherwise requires, references to "ToughBuilt Industries, Inc.," "ToughBuilt Industries," "ToughBuilt," the "Company," "we," "us," "our" and similar references refer to ToughBuilt Industries, Inc., a Nevada corporation formerly known as Phalanx, Inc. Our logo and other trademarks or service marks of the Company appearing in this Annual Report on Form 10-K are the property of ToughBuilt Industries, Inc. This Annual Report on Form 10-K also contains registered marks, trademarks, and trade names of other companies. All other trademarks, registered marks, and trade names appearing in this Annual Report on Form 10-K are the property of their respective holders.

Cautionary Note Regarding Forward-Looking Statements and Industry Data

This Annual Report on Form 10-K, in particular, Part II Item 7 "*Management's Discussion and Analysis of Financial Condition and Results of Operations*," contains certain "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements represent our expectations, beliefs, intentions, or strategies concerning future events, including, but not limited to, any statements regarding our assumptions about financial performance; the continuation of historical trends; the sufficiency of our cash balances for future liquidity and capital resource needs; the expected impact of changes in accounting policies on our results of operations, financial condition or cash flows; anticipated problems and our plans for future operations; and the economy in general or the future of the industry in which we operate, all of which were subject to various risks and uncertainties.

When used in this Annual Report on Form 10-K and other reports, statements, and information we have filed with the Securities and Exchange Commission ("SEC"), in our press releases, presentations to securities analysts or investors, in oral statements made by or with the approval of an executive officer, the words or phrases "believes," "may," "will," "expects," "should," "continue," "anticipates," "intends," "will likely result," "estimates," "projects" or similar expressions and variations thereof are intended to identify such forward-looking statements. However, any statements contained in this Annual Report on Form 10-K that are not statements of historical fact may be deemed to be forward-looking statements. These statements are only predictions. All forward-looking statements included in this Annual Report on Form 10-K are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements. Any or all of our forward-looking statements in this document may turn out to be wrong. Actual events or results may differ materially. Our forward-looking statements can be affected by inaccurate assumptions we might make or by known or unknown risks, uncertainties, and other factors.

This Annual Report on Form 10-K also contains estimates, projections, and other information concerning our industry, our business, and particular markets, including data regarding the estimated size of those markets. Information that is based on estimates, forecasts, projections, market research, or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances reflected in this information. Unless otherwise expressly stated, we obtained this industry, business, market, and other data from reports, research surveys, studies, and similar data prepared by market research firms and other third parties, industry, general publications, government data, and similar sources.

PART I

Item 1. Description of Business.

Overview

We were formed to design, manufacture, and distribute innovative tools and accessories to the building industry. We market and distribute various home improvement and construction product lines for both Do-It-Yourself and professional markets under the TOUGHBUILT® brand name, within the global multibillion-dollar per year tool market. All of our products are designed by our in-house design team. Since our initial launch of product sales nine years ago, we have experienced annual sales growth from approximately \$1,000,000 in 2013 to approximately \$95,000,000 in 2022.

Our business is currently based on development of innovative and state-of-the-art products, primarily in tools and hardware category, with particular focus on building and construction industry with the ultimate goal of making life easier and more productive for contractors and workers alike. Our three major categories contain a total of 19 product lines, consisting of (i) Soft Goods, which includes kneepads, tool bags, pouches and tool belts, (ii) Metal Goods, which consists of sawhorses, tool stands and workbench and (iii) Utility Products, which includes utility knives, aviation snips, shears, lasers and levels, tape measures and chalk reels, striking tools, garden and landscaping tools and pliers and clamps. We also have several additional categories and product lines in various stages of development.

We design and manage our product life cycles through a controlled and structured process. We involve customers and industry experts from our target markets in the definition and refinement of our product development. Product development emphasis is placed on meeting and exceeding industry standards and product specifications, ease of integration, ease of use, cost reduction, design-for manufacturability, quality, and reliability.

Our mission consists, of providing products to the building and home improvement communities that are innovative, of superior quality derived in part from enlightened creativity for our end users while enhancing performance, improving well-being, and building high brand loyalty.

We operate through the following subsidiaries: (i) ToughBuilt Industries UK Limited; (ii) ToughBuilt Mexico; (iii) ToughBuilt Armenia, LLC; and (iv) ToughBuilt Brazil

Corporate History

We were incorporated in the State of Nevada on April 9, 2012, as Phalanx, Inc. We changed our name to ToughBuilt Industries, Inc. on December 29, 2015. On September 18, 2018, we effected a 1-for-2 reverse stock split of our common stock. We consummated our initial public offering pursuant to a registration statement on Form S-1 (File No: 333-226104) declared effective by the SEC on November 8, 2018, and became an SEC Exchange Act reporting company pursuant to a Form 8-A (File No. 001-38739) on November 8, 2018. On April 25, 2022, we effected a 1-for-150 reverse stock split of our common stock. All share amounts and dollar amounts have been adjusted for the reverse stock splits.

Business Developments

The following highlights recent material developments in our business:

- In first quarter of 2022, we announced that our online sales through Amazon increased by 41% to approximately \$3.4 million for the quarter ended March 31, 2022, compared to approximately \$2.4 million for the first quarter of 2021.
- In second quarter of 2022, we announced that our online sales through Amazon.com were \$3.6 million. This represents a 17% increase from the same quarter in 2021. Sales for the first half of 2022 increased by 28% to approximately \$7.0 million compared to \$5.5 million for the first half of 2021.
- In July 2022, we announced that we entered into an agreement with Ace Hardware USA and International to sell 35 ToughBuilt products.
- In August 2022, we announced that we started to sell 93 ToughBuilt products on Amazon.It (Italy) and Amazon.de (Germany).
- In August 2022, we announced our entry into a supply agreement with Elecktro3 S.C.C.L (“Elecktro3”) and NCC Hardware Purchasing and Services Centers, SL (“NCC”), increasing our presence in Spain’s hardware marketplace.
- In August 2022, we announced the launch of our all-new Reload Utility Knife, a groundbreaking new cutting tool made available for purchase through a leading US home improvement retailer and across their global strategic network of ToughBuilt’s partners and buying groups, servicing over 15,500 storefronts around the world.
- In September 2022, we announced our entry into the global measuring and marking market segment category with a feature-rich family of tape measures and chalk reels.
- In September 2022, we announced that we entered into an agreement with two major wholesale tool distributors in Switzerland, marking an expansion of European distribution that includes more than 250 retailers, nationwide.
- In September 2022, we announced our launch of 21 new SKUs into the global handsaws segment, beginning with a line of seven cutting tools featuring ToughBuilt’s QuickSet™ Double-Edge Pull Saw, the first ever safe-folding pull saw. The new line will be available Q4 2022 and beyond for purchase through a leading US home improvement retailer and across global strategic network of partners and buying groups, servicing over 15,500 storefronts around the world.

- In September 2022, we announced major expansions to its network of storefronts in Great Britain, confirming broad new and expanding agreements with Huws Gray, Selco Builders Warehouse, MKM, City Electrical Factors, and Carpet & Flooring.
- In October 2022, we announced the launch of an all-new line of striking tools, including an innovative series of ShockStop™ hammers, marking their entry into the global tool-hammer market.
- In October 2022, we announced that we entered into four major retailers in Germany, which accounted for a 35% share of the global hand tools market in 2019.
- In October 2022, we announced that our online sales for Q3 2022 through Amazon.com were \$3.9 million. This represents a 38% rise from the same quarter in 2021. Sales for the 9-month period ending on September 30, 2022, increased by 32% to approximately \$10.9 million, compared to \$8.3 million for the same period in 2021.

- In October 2022, we announced the launch of our all-new 500 ft. Rotary Laser Level Kit. The level comes with an intuitive, first-of-its-kind, 3-piece stacking guide rod that allows for a rolling laser receiver to provide bracket-free attachment and a one-handed interface for fast operation. It emits a laser that displays a consistent, accurate signature that is detectable up to 500-feet of distance from its projection point. The kit also includes an innovative tripod with a rapid-use bullseye level and telescoping legs to promote accurate placement on uneven terrain.
- In October 2022, we announced that we reached a comprehensive distribution agreement with Sodimac, the largest home improvement and construction supplier in South America; beginning with Peru and Colombia with 15 ToughBuilt SKUs.
- In October 2022, we announced that we expanded our distribution of 84 ToughBuilt branded products to be sold in all Sears' Mexico locations, totaling 96 storefronts nationwide. Sears continues to be a leading supplier to its core consumers in the hardware and home improvement trades in Latin America, and its comprehensive store count and geographical presence across Mexico offer ToughBuilt an opportunity to offer a wide product range to professional end users in the country.
- In November 2022, we announced that we entered into a distribution agreement with Lamed LLP ("Lamed") – one of the largest suppliers of equipment, tools and building materials in Kazakhstan. Lamed begins this agreement with 76 ToughBuilt SKUs and will stock the entire ToughBuilt product range.
- In December 2022, we announced that we are strengthening our relationship with European and UK retailers Wickes, Toolstation UK & Toolstation France. After a successful launch of ToughBuilt products, Wickes, which has 230 locations across the United Kingdom, will be increasing the number of ToughBuilt SKUs available to its customer base, from 15 to 48 SKUs beginning January 2023. Additionally, Toolstation UK, with over 550 stores nationwide, following consistent and impressive sales, Toolstation UK has increased its ToughBuilt SKUs to 35 total SKUs and has committed to several national promotions, contributing to a significant uplift in sales conversions. Toolstation France has also more than doubled its original offering of the ToughBuilt range to from 25 to 65 SKUs in total.
- In December 2022, we announced the launch of our new line of Long Handle Garden and Landscaping Tools. Beginning with 11 out of about 150 SKUs, the new line includes many innovative improvements.
- In January 2023, our global Amazon sales for 2022 through Amazon.com were approximately \$15.9 million. This represents an approximate 34% increase from \$11.9 million in Amazon sales in 2021.
- In January 2023, we launched more than 40 new SKUs into the Handheld Screwdrivers segment, including ratcheting bit drivers, insulated screwdrivers, precision, slotted, Phillips, Torx, and cabinet screwdrivers and demolition drivers.
- In January 2023, we expanded our distribution agreement with Sodimac, the largest home improvement and construction supplier in South America. In this extended agreement, stores in Chile, Peru, Argentina, Colombia, Brazil, and Uruguay will initially begin with 15 SKUs in-store and brings 23 SKUs to Sodimac's online marketplace.
- In January 2023, we launched more than 20 new SKUs into the Handheld Wrenches segment, including adjustable wrenches, construction wrenches and pipe wrenches.
- In February 2023, we launched our new line of pliers and clamps. The new line, comprised of more than 40 SKUs, will be made available for purchase through leading US home improvement retailers and across ToughBuilt's growing strategic networks of North American and global trade partners and buying groups, servicing over 18,900 storefronts and online portals worldwide.

Our Products

We create innovative products that help our customers build faster, build stronger, and work smarter. We accomplish this by listening to what our customers want and need and researching how professionals work, then we create tools that help them save time, hassle and money.

TOUGHBUILT® manufactures and distributes an array of high-quality and rugged tool belts, tool bags, and other personal tool organizer products. We also manufacture and distribute a complete line of knee pads for various construction applications, a variety of metal goods, including utility knives, aviation snips and shears and digital measures such as lasers and levels. Our line of job site tools and material support products consists of a full line of miter saw and table saw stands, saw horses/job site tables, roller stands and workbench. All of our products are designed and engineered in the United States and manufactured in China, India and the Philippines under our quality control supervision. We do not need government approval for any of our products.

Our soft-sided tool storage line is designed for a wide range of Do-It-Yourself and professional needs. This line of pouches and tool and accessories bags is designed to organize our customers' tools faster and easier. Interchangeable pouches clip on and off any belt, bag ladder wall, or vehicle. Our products let our customers carry what they want so they have it when they want it. ToughBuilt's wide mouth tool carry-all bags come in sizes from 12 inches to 30 inches. They all have steel-reinforced handles and

padded shoulder straps which allow for massive loads to be carried with ease. Rigid plastic hard-body lining protects everything inside. Double mesh pockets included inside provide complete visibility for stored items. They include a lockable zipper for added security and safety and secondary side handles for when it takes more than one to carry the load.

All of these products have innovative designs with unique features that provide extra functionality and enhanced user experience. Patented features such as our exclusive “Cliptech” mechanism incorporated in some of the products in this line are unique in these products for the industry and have distinguished the line from other similarly situated products thus we believe, increasing appeal among the other products of this category in the professional community and among the enthusiasts.

Soft Goods

The flagship of the product line is the soft goods line that consists of over 100 variations of tool pouches, tool rigs, tool belts and accessories, tool bags, totes, variety of storage solutions, and office organizers/bags for laptop/tablet/cellphones, etc. Management believes that the breadth of the line is one of the deepest in the industry and has specialized designs to suit professionals from all sectors of the industry including plumbers, electricians, framers, builders, and more.

We have a selection of over 10 models of kneepads, some with revolutionary and patented design features that allow the users to interchange components to suit particular conditions of use. Management believes that these kneepads are among the best performing kneepads in the industry. Our “all terrain” knee pad protection with snapshell technology is part of our interchangeable kneepad system which helps to customize the jobsite needs. They are made with superior quality using multilevel layered construction, heavy-duty webbing, and abrasion-resistant PVC rubber.

Metal Goods

Sawhorses and Work Support Products

The second major category consists of Sawhorses and Work Support products with unique designs and robust construction targeted for the most discerning users in the industry. The innovative designs and construction of the more than 18 products in this category have led to the sawhorses becoming among the best sellers of category everywhere they are sold. The newest additions in this category include several stands and work support products that are quickly gaining recognition in the industry and are expected to position themselves in the top tier products in a short time. Our sawhorse line, miter saw, table saw & roller stands and workbench are built to very high standards. Our sawhorse/jobsite table is fast to set up, holds 2,400 pounds, has adjustable heights, is made of all-metal construction, and has a compact design. We believe that these lines of products are slowly becoming the standard in the construction industry.

All of our products are designed in house to achieve features and benefits for not only the professional construction worker but also for the Do-It-Yourself person.

Electronic Goods

Digital measures and levels

TOUGHBUILT’s third major product line is the digital measure and levels. These digital measures are targeted towards the PROs for accurate job site measuring, to make sure the job is done right and in time. These digital measures help calculated what amount of construction product is needed to finish the job. Such as measure for floors, tile, and paint.

Below is just a sample of our offered products:



Tool Belt Sets



Contractor Pouches



Padded Belts



Laptop Bags



Bags & Totes



Rolling Bags



Saw Horses



Knee Pads



Utility Knives and Other Tools



Levels and Measuring Tools

Our Business Strategy

Our product strategy is to develop product lines in a number of categories rather than focus on a single line of goods. We believe that this approach allows for rapid growth, wider brand recognition, and may ultimately result in increased sales and profits within an accelerated time period. We believe that building brand awareness of our current ToughBuilt lines of products will expand our share of the pertinent markets. Our business strategy includes the following key elements:

- A commitment to technological innovation achieved through consumer insight, creativity, and speed to market;
- A broad selection of products in both brand and private labels;
- Prompt response;
- Superior customer service; and
- Value pricing.

We will continue to consider other market opportunities while focusing on our customers' specific requirements to increase sales.

Market

In addition to the construction market, our products are marketed to the "Do-It-Yourself" and home improvement market place. The home improvement industry has fared much better in the aftermath of the Great Recession than the housing market. The U.S. housing stock of more than 130 million homes requires regular investment merely to offset normal depreciation. And many households that might have traded up to more desirable homes during the downturn decided instead to make improvements to their current homes. Meanwhile, federal and state stimulus programs encouraged homeowners and rental property owners to invest in energy-efficient upgrades that they might otherwise have deferred. Finally, many rental property owners, responding to a surge in demand from households either facing foreclosure or nervous about buying amid the housing market uncertainty, reinvested in their units.

TOUGHBUILT® products are available worldwide in many major retailers ranging from home improvement and construction products and services stores to major online outlets. Currently, we have placement in Lowes, Home Depot, Menards, Bunnings (Australia), Princess Auto (Canada), Dong Shin Tool PIA (S. Korea) and others, as well as seeking to grow our sales in global markets such as Western and Central Europe, Russia and Eastern Europe, South America and the Middle East.

Retailers by region include:

- United States: Lowe's, Home Depot, Menards, Harbor Freight, ACE Hardware, Acme, TSC;
- Canada: Princess Auto;
- United Kingdom: Wickes, TOOL STATION, Huws Gray, Selco Builders Warehouse, MKM, City Electrical Factors, and Carpet & Flooring;
- Europe: Elektro3 and NCC Hardware;
- South America: Sodimac;
- Mexico: Sears;
- Middle East: Lamed;
- Australia: Kincome, and Bunnings;

- New Zealand: Kincrome, and Bunnings;
- Russia: VSEInstrumenti.ru; and
- South Korea: Dong Shin Tool PIA Co., Ltd.

We are actively expanding into other markets including South Africa.

We are currently in product line reviews and discussions with Home Depot Canada, Do It Best, True Value, and other major retailers both domestically and internationally. A product line review requires the supplier to submit a comprehensive proposal which includes product offerings, prices, competitive market studies, and relevant industry trends, and other information. Management anticipates, within the near term, adding to its customer base up to three major retailers, along with several distributors and private retailers within six sectors and among fifty-six targeted countries.

Innovation and Brand Strength

Management believes that the robust capabilities at ToughBuilt eclipse those of many competitors as not every distributor or factory has the ability to quickly identify industry and end-user opportunities and execute quickly to deliver winning product lines consistently. Also, in our view, most distributors and factories do not have a recognizable and reputable brand or the proven ability to reach major retailers globally to position their products and brands. We believe that we are able to take a design from concept to market within a very short period of time.

Product and Services Diversification

TOUGHBUILT® is a singular brand with a driven team that is poised to scale into a highly recognized global entity. We aim to grow ToughBuilt with several significant subsidiaries in the next few years to become the hub/platform for professionals, Do-It-Yourselfers, and passionate builders everywhere. Management anticipates that future subsidiaries will focus on licensing, gear, mobile, equipment rentals, and maintenance services.

New Products

Tools

In 2022, we launched the following product lines:

- Tape Measures and Chalk Reels
- Striking Tools
- Long Handle Garden and Landscaping Tools
- Pliers and Clamps

In 2022, we launched the following tools:

- Reload Utility Knife
- 21 new SKUs into the global handsaws segment
- 500 ft. Rotary Laser Level Kit
- 40+ new SKUs into the Handheld Screwdrivers segment
- 20 new SKUs into the Handheld Wrenches segment

Mobile Device Products

Since 2013, we have been planning, designing, engineering, and sourcing the development of a new line of ToughBuilt mobile devices and accessories to be used in the construction industry and by building enthusiasts. However, due to microchip shortages, we have suspended this segment and will continue development in the near future.

Sales Strategy

The devices, accessories, and bolt-on digital tools will be sold through relevant home improvement big box stores, direct marketing to construction companies, direct marketing of trade/wholesale outlets and to professional outlets.

Suppliers

We use several suppliers in producing our products. We believe that we would be able to retain other suppliers in the event of a slow-down or loss of one or more of its current suppliers without a material adverse effect on our business operations, timeliness of delivery or quality of products.

Intellectual Property

We hold several patents and trademarks of various durations and believe that we hold, have applied for or license all of the patent, trademark, and other intellectual property rights necessary to conduct our business. We utilize trademarks (licensed and owned) on nearly all of our products and believe having distinctive marks that are readily identifiable is an important factor in creating a market for our goods, in identifying our brands and our Company, and in distinguishing our goods from the goods of others.

We consider our ToughBuilt®, Cliptech®, and Fearless® trademarks to be among our most valuable intangible assets. Trademarks registered both in and outside the U.S. are generally valid for 10 years, depending on the jurisdiction, and are generally subject to an indefinite number of renewals for a like period on appropriate application.

In 2019, the United States Patent and Trademark Office (USPTO) granted two new design patents (U.S. D840,961 S and US D841,635 S) that cover ToughBuilt's ruggedized mobile devices, which are valid for a period of 15 years. We also have several patents pending with the USPTO and anticipate three or four of them to be granted in the near future.

We also rely on trade secret protection for our confidential and proprietary information relating to our design and processes for our products. Copyright protection is also utilized when appropriate.

Domain names are a valuable corporate asset for companies around the world, including ToughBuilt. Domain names often contain a trademark or service mark or even a corporate name and are often considered intellectual property. The recognition and value of the ToughBuilt name, trademark, and domain name are our core strengths.

We have entered into and will continue to enter into confidentiality, non-competition, and proprietary rights assignment agreements with our employees and independent contractors. We have entered into and will continue to enter into confidentiality agreements with our suppliers to protect our intellectual property.

We have not entered into any royalty agreements with respect to our intellectual property.

Competition

The tool equipment and accessories industry is highly competitive on a worldwide basis. We compete with a significant number of other tool equipment and accessories manufacturers and suppliers to the construction, home improvement, and Do-It-Yourself industry, many of which have the following:

- Significantly greater financial resources than we have;
- More comprehensive product lines;
- Longer-standing relationships with suppliers, manufacturers, and retailers;
- Broader distribution capabilities;
- Stronger brand recognition and loyalty; and
- The ability to invest substantially more in product advertising and sales.

Our competitors' greater capabilities in the above areas enable them to better differentiate their products from ours, gain stronger brand loyalty, withstand periodic downturns in the construction and home improvement equipment and product industries, compete effectively on the basis of price and production, and more quickly develop new products. Our financial condition and operating results can be adversely affected by these and other industry-wide downward pressures on gross margins. Principal competitive factors important to us include price, product features, relative price/performance, product quality and reliability, design innovation, marketing and distribution capability, service and support, and corporate reputation.

Seasonality

Our company's revenues are not seasonal. However, we usually experience a spike in sales when we introduce new products.

Human Capital Resources

As of December 31, 2023, we had a total of 259 employees, including our four executive officers, and a total of eight independent contractors and consultants. We engage consultants on an as-needed basis to supplement existing staff. All of our employees, consultants, and contractors that are involved with sensitive and/or proprietary information have signed non-disclosure agreements. Since the onset of the COVID-19 pandemic, we have taken an integrated approach to helping our employees manage their work and personal responsibilities, with a strong focus on employee well-being, health, and safety.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. The principal purposes of our equity and cash incentive plans are to attract, retain and reward personnel through the granting of stock-based and cash-based compensation awards, in order to increase stockholder value and the success of our Company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

Available Information

Our website address is www.toughbuilt.com. Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, any amendments to those reports, proxy and registration statements filed or furnished with the SEC, are available free of charge through our website. We make these materials available through our website as soon as reasonably practicable after we electronically file such materials with, or furnish such materials to, the SEC. The reports filed with the SEC by our executive officers and directors pursuant to Section 16 under the Exchange Act are also made available, free of charge on our website, as soon as reasonably practicable after copies of those filings are provided to us by those persons. These materials can be accessed through the "Investor Relations" section of our website. The information contained in, or that can be accessed through, our website is not part of this Annual Report on Form 10-K.

Item 1A. Risk Factors.

Our business is subject to many risks and uncertainties, which may affect our future financial performance. If any of the events or circumstances described below occur, our business and financial performance could be adversely affected, our actual results could differ materially from our expectations, and the price of our stock could decline. The risks and uncertainties discussed below are not the only ones we face. There may be additional risks and uncertainties not currently known to us or that we currently do not believe are material that may adversely affect our business and financial performance. You should carefully consider the risks described below, together with all other information included in this report including our financial statements and related notes, before making an investment decision. The statements contained in this report that are not historic facts are forward-looking statements that are subject to risks and uncertainties that could cause actual results to differ materially from those set forth in or implied by forward-looking statements. If any of the following risks actually occurs, our business, financial condition or results of operations could be harmed. In that case, the trading price of our common stock could decline, and investors in our securities may lose all or part of their investment.

Risks Related to Our Company

Going Concern

We have incurred substantial operating losses since our inception. As reflected in the consolidated financial statements, we had an accumulated deficit of approximately \$145 million at December 31, 2022 a net loss of approximately \$39.3 million, and approximately \$37.3 million of net cash used in operating activities for the year ended December 31, 2022. The accompanying consolidated financial statements in this Annual Report on Form 10-K have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. We anticipate incurring additional losses until such time, if ever, that we can obtain marketing approval to sell, and then generate significant sales, of our technology that is currently in development. As such we believe that additional financing will be needed by us to fund our operations and to develop and commercialize our technology. Also, we will seek to obtain additional capital through the sale of debt or equity financings or other arrangements to fund operations; however, there can be no assurance that we will be able to raise needed capital under acceptable terms, if at all. The sale of additional equity may dilute existing stockholders and newly issued shares may contain senior rights and preferences compared to currently outstanding shares of common stock. Issued debt securities may contain covenants and limit our ability to pay dividends or make other distributions to stockholders. If we are unable to obtain such additional financing, future operations would need to be scaled back or discontinued. Due to these factors, management believes that there is substantial doubt in our ability to continue as a going concern for twelve months from the issuance of these consolidated financial statements.

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We will require additional capital in order to achieve commercial success and if necessary, to finance future losses from operations as we endeavor to build revenue but we do not have any commitments to obtain such capital and we cannot assure you that we will be able to obtain adequate capital as and when required.

We may not be able to generate any profit in the foreseeable future. For the year ended December 31, 2022, we have a net loss of \$39.3 million, compared to a net loss of \$37.5 million for the year ended December 31, 2021. Accordingly, there is no assurance that we will realize profits in fiscal 2023 or thereafter. If we fail to generate profits from our operations, we will not be able to sustain our business. We may never report profitable operations or generate sufficient revenue to maintain our Company as a going concern. We continue to control our cash expenses as a percentage of expected revenue on an annual basis and thus may use our cash balances in the short term to invest in revenue growth; however, we cannot give assurance that we can increase our cash balances or limit our cash consumption and thus maintain sufficient cash balances for our planned operations. Future business demands may lead to cash utilization at levels greater than recently experienced. We may need to raise additional capital in the future. However, we cannot assure that we will be able to raise additional capital on acceptable terms, or at all. Our inability to generate profits could have an adverse effect on our financial condition, results of operations, and cash flows. See “*Management’s Discussion and Analysis of Financial Condition and Results of Operations; Liquidity and Capital Resources.*”

We have limited management and staff and will be dependent upon partnering arrangements

As of March 31, 2023, we have a total eight independent contractors and consultants. Our dependence on third-party consultants and service providers creates a number of risks, including but not limited to, the possibility that such third parties may not be available to us as and when needed, and that we may not be able to properly control the timing and quality of work conducted with respect to our projects. If we experience significant delays in obtaining the services of such third parties or poor performance by such parties, our results of operations and stock price will be materially adversely affected.

The loss of any of our executive officers could adversely affect us

We currently only have four executive officers. We are dependent on the extensive experience of our executive officers to implement our acquisition and growth strategy, specifically, Michael Panosian, our President and Chief Executive Officer, and Joshua Keeler, our Vice President of Research and Development. The loss of the services of any of our executive officers could have a negative impact on our operations and our ability to implement our strategy. Although we maintain a “key man” life insurance policy only for Michael Panosian, we do not carry any key man life insurance for any of our other employees and our key man insurance policy for Mr. Panosian is for \$1 million and will be insufficient to recover any losses resulting from Mr. Panosian’s death or disability while serving as our President and Chief Executive Officer.

We may be unable to attract the necessary employees or be able to prevent our current employees from leaving us

To induce valuable employees to remain with us, in addition to salary and cash incentives, we have provided restricted stock and stock options that vest over time. The value to employees of stock options that vest over time may be significantly affected by movements in our stock price that are beyond our control and may at any time be insufficient to counteract more lucrative offers from other companies. Despite our efforts to retain valuable employees, members of our management may terminate their employment with us. Our success also depends on our ability to continue to attract, retain and motivate employees.

If the hosts of third-party marketplaces limit our access to such marketplaces our operations and financial results may be adversely affected

Third-party marketplaces account for a portion of our revenues. Our sales through online third-party marketplaces represented a combined 16% of total sales for the fourth quarter ended December 31, 2022. We anticipate that sales of our products on third-party marketplaces will continue to account for a portion of our revenues. In the future, the loss of access to these third-party marketplaces, or any significant cost increases from operating on the marketplaces, could significantly reduce our revenues, and the success of our business depends partly on continued access to these third-party marketplaces. Our relationships with our third-party marketplace providers could deteriorate as a result of a variety of factors, such as if they become concerned about our ability to deliver quality products on a timely basis or to protect a third-party’s intellectual property. In addition, third-party marketplace providers could prohibit our access to these marketplaces if we are not able to meet the applicable required terms of use. Loss of access to a marketplace channel could result in lower sales, and as a result, our business and financial results may suffer.

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We are highly dependent upon manufacturers in China, India and the Philippines and an interruption in such relationships or our ability to obtain products from them

could adversely affect our business and results of operations.

Our products are manufactured by factories located in China, India, and the Philippines. Our ability to acquire products from our suppliers in amounts and on terms acceptable to us is dependent on a number of factors which are unforeseeable and may be beyond our control. For example, financial or operational difficulties that some of our manufacturers may face could result in an increase in the cost of the products we purchase from them. If we do not maintain our relationships with our existing manufacturers or fail to find replacement or additional manufacturers in a timely manner and on acceptable commercial terms, we may not be able to continue to offer our products at competitive prices and any failure to deliver those products to our customers in a timely and accurate manner may damage our reputation and brand and could cause us to lose customers and our sales could decline.

Disruptions in our supply chain and other factors affecting the distribution of our merchandise could adversely impact our business

A disruption within our logistics or supply chain network could adversely affect our ability to deliver inventory in a timely manner, which could impair our ability to meet customer demand for products and result in lost sales, increased supply chain costs or damage to our reputation. Such disruptions may result from damage or destruction to our distribution centers, weather-related events, natural disasters, international trade disputes or trade policy changes or restrictions, tariffs or import-related taxes, third-party strikes, lock-outs, work stoppages or slowdowns, shortages of supply chain labor, shipping capacity, third-party contract disputes, supply or shipping interruptions or costs, military conflicts, acts of terrorism, public health issues, including pandemics or quarantines (such as the COVID-19 pandemic) and related shut-downs, re-openings or other actions by the government, civil unrest or other factors beyond our control. In recent years, U.S. ports, particularly those located on the West coast, have been impacted by capacity constraints, port congestion and delays, periodic labor disputes, security issues, weather-related events and natural disasters, which have been further exacerbated by the pandemic. Disruptions to our supply chain due to any of the factors listed above could negatively impact our financial performance or financial condition.

In addition, a significant percentage of the production, downstream processing and sales of our products occurs outside the United States or with vendors, suppliers or customers located outside the United States. If tariffs or other restrictions are placed by the United States on foreign imports from China, India or the Philippines or other countries, or any related counter-measures are taken, our business, financial condition, results of operations and growth prospects may be harmed. Tariffs may increase our cost of goods, which could result in lower gross margin on certain of our products. If we raise prices to account for any such increase in costs of goods, the competitiveness of the affected products could potentially be reduced. In either case, increased tariffs on imports from China, India or the Philippines or other countries could materially and adversely affect our business, financial condition and results of operations. Trade restrictions and sanctions implemented by the United States or other countries, including sanctions imposed on Russia by the United States and other countries due to Russia's recent invasion of Ukraine, could materially and adversely affect our business, financial condition and results of operations.

We are highly dependent upon manufacturers in China, India and the Philippines, which exposes us to complex regulatory regimes and logistical challenges

We acquire a majority of our products from manufacturers and distributors located in China, India and the Philippines. We do not have any long-term contracts or exclusive agreements with our foreign suppliers that would ensure our ability to acquire the types and quantities of products we desire at acceptable prices and in a timely manner or that would allow us to rely on customary indemnification protection with respect to any third-party claims similar to some of our U.S. suppliers. In addition, because many of our suppliers are outside of the United States, additional factors could interrupt our relationships or affect our ability to acquire the necessary products on acceptable terms, including:

- political, social, and economic instability and the risk of war or other international incidents in Asia, India or the Philippines;
- fluctuations in foreign currency exchange rates that may increase our cost of products;

- the imposition of duties, taxes, tariffs, or other charges on imports;
- difficulties in complying with import and export laws, regulatory requirements, and restrictions;
- natural disasters and public health emergencies, such as the recent outbreak of a novel strain of coronavirus identified first in Wuhan, Hubei Province, China and having turned into a global pandemic that has impacted a number of countries from which we purchase product;
- import shipping delays resulting from foreign or domestic labor shortages, slow-downs, or stoppage;
- the failure of local laws to provide a sufficient degree of protection against infringement of our intellectual property;
- imposition of new legislation relating to import quotas or other restrictions that may limit the quantity of our product that may be imported into the U.S. from countries or regions where we do business;
- financial or political instability in any of the countries in which our product is manufactured;
- potential recalls or cancellations of orders for any product that does not meet our quality standards;
- disruption of imports by labor disputes or strikes and local business practices;
- political or military conflict involving the U.S. or any country in which our suppliers are located, which could cause a delay in the transportation of our products, an increase in transportation costs and additional risk to product being damaged and delivered on time;
- heightened terrorism security concerns, which could subject imported goods to additional, more frequent or more thorough inspections, leading to delays in deliveries or impoundment of goods for extended periods;
- inability of our non-U.S. suppliers to obtain adequate credit or access liquidity to finance their operations; and
- our ability to enforce any agreements with our foreign suppliers.

If we were unable to import products from China, India and the Philippines or were unable to import products from such countries in a cost-effective manner, we could suffer irreparable harm to our business and be required to significantly curtail our operations, file for bankruptcy or cease operations.

From time to time, we may also have to resort to administrative and court proceedings to enforce our legal rights with foreign suppliers. However, it may be more difficult to evaluate the level of legal protection we enjoy in China, India and the Philippines and the corresponding outcome of any administrative or court proceedings than in comparison to our suppliers in the United States.

Our financial condition and results of operations for fiscal year 2023 may be adversely affected by the coronavirus outbreak

A significant outbreak, epidemic or pandemic of contagious diseases in any geographic area in which we operate or plan to operate could result in a health crisis adversely affecting the economies, financial markets and overall demand for our services in such areas. In addition, any preventative or protective actions that governments implement or that we take in response to a health crisis, such as travel restrictions, quarantines, or site closures, may interfere with the ability of our employees, suppliers and customers to perform their responsibilities. Such results could have a material adverse effect on our business.

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The continued global COVID-19 pandemic has created significant volatility, uncertainty and economic disruption. To date, this pandemic has affected nearly all regions around the world. In the United States, businesses as well as federal, state and local governments implemented significant actions to mitigate this public health crisis. While we cannot predict the duration or scope of the COVID-19 pandemic, it may negatively impact our business and such impact could be material to our financial results, condition and outlook related to:

- reduction or volatility in demand for our products, which may be caused by, among other things: reduced online traffic and changes in consumer spending behaviors (e.g., consumer confidence in general macroeconomic conditions and a decrease in consumer spending);
- disruption to our operations or the operations of our suppliers, through the effects of business and facilities closures, worker sickness and COVID-19 related inability to work, social, economic, political or labor instability in affected areas, transportation delays, travel restrictions and changes in operating procedures, including for additional cleaning and safety protocols;
- impacts to our third-party marketplaces' ability to operate or manage increases in their operating costs and other supply chain effects that may have an adverse effect on our ability to meet consumer demand and achieve cost targets;
- increased volatility or significant disruption of global financial markets due in part to the COVID-19 pandemic, which could have a negative impact on our ability to access capital markets and other funding sources, on acceptable terms or at all and impede our ability to comply with debt covenants; and
- The further spread of COVID-19, and the requirements to take action to mitigate the spread of the pandemic (e.g., vaccination requirements that have been and continue to be taken in response to the pandemic and enhanced health and hygiene requirements or social distancing or other measures), will impact our ability to carry out our business as usual and may materially adversely impact global economic conditions, our business, results of operations, cash flows and financial condition.

To the extent the COVID-19 pandemic or a similar public health threat has an impact on our business, it is likely to also have the effect of heightening many of the other risks described in this "Risk Factors" section.

The increase of commodity prices such as fuel, plastic and metal could negatively impact our profit margins.

Prices of certain commodity products, including raw materials, are historically volatile and are subject to fluctuations arising from changes in domestic and international supply and demand, labor costs, competition, market speculation, government regulations, trade restrictions and tariffs. Increasing prices in the component materials for the parts of our goods may impact the availability, the quality and the price of our products, as suppliers search for alternatives to existing materials and increase the prices they charge. We cannot ensure that we can recover all the increased costs through price increases, and our suppliers may not continue to provide the consistent quality of product as they may substitute lower cost materials to maintain pricing levels, all of which may have a negative impact on our business and results of operations. Our cost base also reflects significant elements for freight, including fuel. Rapid and significant changes in commodity prices such as fuel, plastic and metal may negatively affect our profit margins.

Our results of operations could be negatively impacted by inflationary or deflationary economic conditions which could affect the ability to obtain goods from our suppliers in a timely and cost-effective manner.

Our profitability may be negatively impacted if we are unable to mitigate any inflationary increases through various customer pricing actions and cost reduction initiatives. Conversely, in the event there is deflation, we may experience pressure from our customers to reduce prices, and there can be no assurance that we would be able to reduce our cost base (through negotiations with suppliers or other measures) to offset any such price concessions which could adversely impact results of operations and cash flows.

We currently, and may in the future, have assets held at financial institutions that may exceed the insurance coverage offered by the Federal Deposit Insurance Corporation ("FDIC"), the loss of such assets would have a severe negative affect on our operations and liquidity.

We may maintain our cash assets at certain financial institutions in the U.S. in amounts that may be in excess of the Federal Deposit Insurance Corporation ("FDIC") insurance limit of \$250,000. In the event of a failure of any financial institutions where we maintain our deposits or other assets, we may incur a loss to the extent such loss exceeds the FDIC insurance limitation, which could have a material adverse effect upon our liquidity, financial condition and our results of operations.

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If we are unable to manage the challenges associated with our international operations the growth of our business could be limited and our business could suffer.

We maintain international business operations throughout Europe with a majority being in the United Kingdom. Our international operations include sales and back office support services for our European market. We are subject to a number of risks and challenges that specifically relate to our international operations. Our international operations may not be successful if we are unable to meet and overcome these challenges, which could limit the growth of our business and may have an adverse effect on our business and operating results. These risks and challenges include:

- difficulties and costs of staffing and managing foreign operations, including any impairment to our relationship with employees caused by a reduction in force;

- restrictions imposed by local labor practices and laws on our business and operations;
- exposure to different business practices and legal standards;
- unexpected changes in regulatory requirements;
- the imposition of government controls and restrictions;
- political, social and economic instability and the risk of war, terrorist activities or other international incidents;
- the failure of telecommunications and connectivity infrastructure;
- natural disasters and public health emergencies;
- potentially adverse tax consequences; and
- fluctuations in foreign currency exchange rates and relative weakness in the U.S. dollar.

If we fail to offer a broad selection of products at competitive prices or fail to maintain sufficient inventory to meet customer demands our revenue could decline.

In order to expand our business, we must successfully offer, on a continuous basis, a broad selection of products that meets the needs of our customers, including by being the first to market with new SKUs. Our products are used by consumers for a variety of purposes, including repair, performance, aesthetics and functionality. In addition, to be successful, our product offerings must be broad and deep in scope, competitively priced, well-made, innovative and attractive to a wide range of consumers. We cannot predict with certainty that we will be successful in offering products that meet all of these requirements. If our product offerings fail to satisfy our customers' requirements or respond to changes in customer preferences or we otherwise fail to maintain sufficient in-stock inventory, our revenue could decline.

As a result of our international operations, we have foreign exchange risk

Our purchases of products from our China, India and Philippines suppliers are denominated in U.S. dollars; however, a change in the foreign currency exchange rates could impact our product costs over time. Our financial reporting currency is the U.S. dollar and changes in exchange rates significantly affect our reported results and consolidated trends. For example, if the U.S. dollar weakens year-over-year relative to currencies in our international locations, our consolidated gross profit and operating expenses would be higher than if currencies had remained constant.

Our products could be recalled.

The Consumer Product Safety Commission or other applicable regulatory bodies may require the recall, repair or replacement of our products if those products are found not to be in compliance with applicable standards or regulations. A recall could increase costs and adversely impact our reputation, and thereby negatively impact our financial condition, results of operations and cash flows.

Regulatory and Litigation Risks

Product liability claims and other kinds of litigation could affect our business reputation, financial condition, results of operations and cash flows.

The products that we design and/or have manufactured can lead to product liability claims or other legal claims being filed against us. We have in the past, and may in the future, be subject to legal proceedings other than those relating to product liability claims. To the extent that plaintiffs are successful in showing that a defect in a product's design, manufacture or warnings led to personal injury or property damage, or that our provision of services resulted in similar injury or damage, we may be subject to claims for damages. Although we are insured for damages above a certain amount, we bear the costs and expenses associated with defending claims, including frivolous lawsuits, and are responsible for damages below the insurance retention amount. In addition to claims concerning individual products, as a manufacturer, we can be subject to costs, potential negative publicity and lawsuits related to product recalls, which could adversely impact our results and damage our reputation.

Even defending against unsuccessful claims could cause us to incur significant expenses and result in a diversion of management's attention. In addition, even if the money damages themselves did not cause substantial harm to our business, the damage to our reputation and the brands offered on our websites could adversely affect our future reputation and our brand, and could result in a decline in our net sales and profitability.

Failure to comply with privacy laws and regulations and failure to adequately protect customer data could harm our business damage our reputation and result in a loss of customers.

Federal and state regulations may govern the collection, use, sharing and security of data that we receive from our customers. Any failure, or perceived failure, by us to comply with our posted privacy policies or with any data-related consent orders, U.S. Federal Trade Commission requirements or other federal, state or international privacy-related laws and regulations could result in proceedings or actions against us by governmental entities or others, which could potentially harm our business. Further, failure or perceived failure to comply with our policies or applicable requirements related to the collection, use or security of personal information or other privacy-related matters could damage our reputation and result in a loss of customers.

The regulatory framework for data privacy is constantly evolving, and privacy concerns could adversely affect our operating results

The regulatory framework for privacy issues is currently evolving and is likely to remain uncertain for the foreseeable future. The occurrence of unanticipated events often rapidly drives the adoption of legislation or regulation affecting the use of data and the way we conduct our business; in fact, there are active discussions among U.S. legislators around adoption of a new U.S. federal privacy law. Restrictions could be placed upon the collection, management, aggregation and use of information, which could result in a material increase in the cost of collecting and maintaining certain kinds of data. In June 2018, California enacted the California Consumer Privacy Act, which took effect on January 1, 2020, and in November 2020, California voters approved Proposition 24 which amended the California Consumer Privacy Act and added new additional privacy protections that began on January 1, 2023 (the "C.C.P.A."). The C.C.P.A. gives consumers the right to request disclosure of information collected about them, and whether that information has been sold or shared with others, the right to request deletion of personal information (subject to certain exceptions), the right to opt out of the sale

of the consumer's personal information, the right not to be discriminated against for exercising these rights, the right to correct inaccurate personal information that a business has about them and the right to limit the use and disclosure of sensitive personal information collected about them. We are required to comply with the C.C.P.A. The C.C.P.A. provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. The C.C.P.A. may increase our compliance costs and potential liability. Some observers have noted that the C.C.P.A. could mark the beginning of a trend toward more stringent privacy legislation in the U.S., which could increase our potential liability and adversely affect our business.

If we are unable to protect our intellectual property rights our reputation and brand could be impaired and we could lose customers

We regard our trademarks, trade secrets and similar intellectual property rights important to our success. We rely on trademark and copyright law, and trade secret protection, and confidentiality and/or license agreements with employees, customers, partners and others to protect our proprietary rights. We cannot be certain that we have taken adequate steps to protect our proprietary rights, especially in countries where the laws may not protect our rights as fully as in the United States. In addition, our proprietary rights may be infringed or misappropriated, and we could be required to incur significant expenses to preserve them. The outcome of such litigation can be uncertain, and the cost of prosecuting such litigation may have an adverse impact on our earnings. We have common law trademarks, as well as pending federal trademark registrations for several marks and several registered marks. However, any registrations may not adequately cover our intellectual property or protect us against infringement by others. Effective trademark, service mark, copyright, patent and trade secret protection may not be available in every country in which our products and services may be made available online. We also currently own or control a number of Internet domain names, including *www.toughbuilt.com*, and have invested time and money in the purchase of domain names and other intellectual property, which may be impaired if we cannot protect such intellectual property. We may be unable to protect these domain names or acquire or maintain relevant domain names in the United States and in other countries. If we are not able to protect our trademarks, domain names or other intellectual property, we may experience difficulties in achieving and maintaining brand recognition and customer loyalty.

If we are unable to protect our intellectual property, our business may be adversely affected

We must protect the proprietary nature of the intellectual property used in our business. There can be no assurance that trade secrets and other intellectual property will not be challenged, invalidated, misappropriated or circumvented by third parties. Currently, our intellectual property includes issued patents, patent applications, trademarks, trademark applications and know-how related to business, product and technology development. We plan on taking the necessary steps, including but not limited to the filing of additional patents as appropriate. There is no assurance any additional patents will issue or that when they do issue they will include all of the claims currently included in the applications. Even if they do issue, those new patents and our existing patents must be protected against possible infringement. Nonetheless, we currently rely on contractual obligations of our employees and contractors to maintain the confidentiality of our products. To compete effectively, we need to develop and continue to maintain a proprietary position with respect to our technologies, and business. The risks and uncertainties that we face with respect to intellectual property rights principally include the following:

- patent applications that we file may not result in issued patents or may take longer than expected to result in issued patents;
- we may be subject to interference proceedings;
- other companies may claim that patents applied for by, assigned, or licensed to, us infringe upon their own intellectual property rights;
- we may be subject to opposition proceedings in the U.S. and in foreign countries;
- any patents that are issued to us may not provide meaningful protection;
- we may not be able to develop additional proprietary technologies that are patentable;
- other companies may challenge patents licensed or issued to us;
- other companies may independently develop similar or alternative technologies, or duplicate our technologies;
- other companies may design around technologies that we have licensed or developed;
- any patents issued to us may expire and competitors may utilize the technology found in such patents to commercialize their own products; and
- enforcement of patents is complex, uncertain, and expensive.

It is also possible that others may obtain issued patents that could prevent us from commercializing certain aspects of our products or require us to obtain licenses requiring the payment of significant fees or royalties in order to enable us to conduct our business. If we license patents, our rights will depend on maintaining its obligations to the licensor under the applicable license agreement, and we may be unable to do so. Furthermore, there can be no assurance that the work-for-hire, intellectual property assignment and confidentiality agreements entered into by our employees and consultants, advisors and collaborators will provide meaningful protection for our trade secrets, know-how or other proprietary information in the event of any unauthorized use or disclosure of such trade secrets, know-how or other proprietary information. As all of our products are manufactured in China, India and the Philippines, and we may not have the same strength of intellectual property protection and enforcement in such countries as in North America or Europe. The scope and enforceability of patent claims are not systematically predictable with absolute accuracy. The strength of our own patent rights depends, in part, upon the breadth and scope of protection provided by the patent and the validity of our patents, if any.

We may not be able to enforce our intellectual property rights throughout the world

The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States. Many companies have encountered significant problems in protecting and defending intellectual property rights in certain foreign jurisdictions. The legal systems of some countries, particularly developing countries, do not favor the enforcement of patents and other intellectual property protection. This could make it difficult for us to stop the infringement of our patents or the

misappropriation of our other intellectual property rights.

Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate. In addition, changes in the law and legal decisions by courts in the United States and foreign countries may affect our ability to obtain adequate protection for our technology and the enforcement of intellectual property. If we are unable to adequately enforce our intellectual property rights throughout the world, our business, financial condition, and results of operations could be adversely impacted.

Because we are involved in litigation from time to time and are subject to numerous laws and governmental regulations we could incur substantial judgments, fines, legal fees and other costs as well as reputational harm.

We are sometimes the subject of complaints or litigation from customers, employees or other third parties for various reasons. The damages sought against us in some of these litigation proceedings could be substantial. Although we maintain liability insurance for some litigation claims, if one or more of the claims were to greatly exceed our insurance coverage limits or if our insurance policies do not cover a claim, this could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Changes in tax laws or regulations that are applied adversely to us or our customers may have a material adverse effect on our business cash flow, financial condition or results of operations.

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could adversely affect our business operations and financial performance. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. For example, legislation enacted in 2017, informally titled the Tax Cuts and Jobs Act (the "Tax Act") enacted many significant changes to the U.S. tax laws. Future guidance from the Internal Revenue Service and other tax authorities with respect to the Tax Act may affect us, and certain aspects of the Tax Act could be repealed or modified in future legislation. In addition, it is uncertain if and to what extent various states will conform to the Tax Act or any newly enacted federal tax legislation. Changes in corporate tax rates, the realization of net deferred tax assets relating to our operations, the taxation of foreign earnings, and the deductibility of expenses under the Tax Act or future reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges, and could increase our future U.S. tax expense.

Existing or future government regulation could expose us to liabilities and costly changes in our business operations and could reduce customer demand for our products and services.

We are subject to federal and state consumer protection laws and regulations, including laws protecting the privacy of customer non-public information and regulations prohibiting unfair and deceptive trade practices, as well as laws and regulations governing businesses in general and the Internet and ecommerce and certain environmental laws. Additional laws and regulations may be adopted with respect to the Internet, the effect of which on ecommerce is uncertain. These laws may cover issues such as user privacy, spyware and the tracking of consumer activities, marketing emails and communications, other advertising and promotional practices, money transfers, pricing, content and quality of products and services, taxation, electronic contracts and other communications, intellectual property rights, and information security. Furthermore, it is not clear how existing laws such as those governing issues such as property ownership, sales and other taxes, trespass, data mining and collection, and personal privacy apply to the Internet and ecommerce. To the extent we expand into international markets, we will be faced with complying with local laws and regulations, some of which may be materially different than U.S. laws and regulations. Any such foreign law or regulation, any new U.S. law or regulation, or the interpretation or application of existing laws and regulations to the Internet or other online services or our business in general, may have a material adverse effect on our business, prospects, financial condition and results of operations by, among other things, impeding the growth of the Internet, subjecting us to fines, penalties, damages or other liabilities, requiring costly changes in our business operations and practices, and reducing customer demand for our products and services. We may not maintain sufficient, or any, insurance coverage to cover the types of claims or liabilities that could arise as a result of such regulation.

Possible new tariffs that might be imposed by the United States government could have a material adverse effect on our results of operations

Changes in U.S. and foreign governments' trade policies have resulted in, and may continue to result in, tariffs on imports into and exports from the U.S., among other restrictions. Throughout 2018 and 2019, the U.S. imposed tariffs on imports from several countries, including China. If further tariffs are imposed on imports of our products, or retaliatory trade measures are taken by China or other countries in response to existing or future tariffs, we could be forced to raise prices on all of our imported products or make changes to our operations, any of which could materially harm our revenue or operating results. Any additional future tariffs or quotas imposed on our products or related materials may impact our sales, gross margin and profitability if we are unable to pass increased prices onto our customers.

We operate in an industry with the risk of intellectual property litigation. Claims of infringement against us may hurt our business

Our success depends, in part, upon non-infringement of intellectual property rights owned by others and being able to resolve claims of intellectual property infringement without major financial expenditures or adverse consequences. Participants that own, or claim to own, intellectual property may aggressively assert their rights. From time to time, we may be subject to legal proceedings and claims relating to the intellectual property rights of others. Future litigation may be necessary to defend us or our clients by determining the scope, enforceability, and validity of third-party proprietary rights or to establish its proprietary rights. Some competitors have substantially greater resources and are able to sustain the costs of complex intellectual property litigation to a greater degree and for longer periods of time. In addition, patent holding companies that focus solely on extracting royalties and settlements by enforcing patent rights may target us. Regardless of whether claims that we are infringing patents or other intellectual property rights have any merit, these claims are time consuming and costly to evaluate and defend and could:

- adversely affect relationships with future clients;
- cause delays or stoppages in providing products;
- divert management's attention and resources;
- subject us to significant liabilities; and
- require us to cease some or all of its activities.

In addition to liability for monetary damages, which may be tripled and may include attorneys' fees, or, in some circumstances, damages against clients, we may be prohibited from developing, commercializing, or continuing to provide some or all of our products unless we obtain licenses from, and pay royalties to, the holders of the patents or other intellectual property rights, which may not be available on commercially favorable terms, or at all.

Geopolitical conditions, including trade disputes and direct or indirect acts of war or terrorism, could have an adverse effect on our operations and financial results.

Since we operate on a global basis, our operations could be disrupted by geopolitical conditions, trade disputes, international boycotts and sanctions, political and social instability, acts of war, terrorist activity or other similar events. From time to time, we could have a large investment in a particular asset type, a large revenue stream associated with a particular customer or industry, or a large number of customers located in a particular geographic region. Decreased demand from a discrete event impacting a specific asset type, customer, industry, or region in which we have a concentrated exposure could negatively impact our results of operations.

In February 2022, Russia initiated significant military action against Ukraine. In response, the U.S. and certain other countries imposed significant sanctions and export controls against Russia, Belarus and certain individuals and entities connected to Russian or Belarusian political, business, and financial organizations, and the U.S. and certain other countries could impose further sanctions, trade restrictions, and other retaliatory actions should the conflict continue or worsen. It is not possible to predict the broader consequences of the conflict, including related geopolitical tensions, and the measures and retaliatory actions taken by the U.S. and other countries in respect thereof as well as any counter measures or retaliatory actions by Russia or Belarus in response, including, for example, potential cyberattacks or the disruption of energy exports, is likely to cause regional instability, geopolitical shifts, and could materially adversely affect global trade, currency exchange rates, regional economies and the global economy. The situation remains uncertain, and while it is difficult to predict the impact of any of the foregoing, the conflict and actions taken in response to the conflict could increase our costs, disrupt our supply chain, reduce our sales and earnings, impair our ability to raise additional capital when needed on acceptable terms, if at all, or otherwise adversely affect our business, financial condition, and results of operations.

General Risk Factors

An investment in our securities is speculative and there can be no assurance of any return on any such investment

An investment in our securities is speculative and there can be no assurance that investors will obtain any return on their investment. Investors may be subject to substantial risks involved in an investment us, including the risk of losing their entire investment.

Certain provisions of our Articles of Incorporation could allow concentration of voting power in one individual which may, among other things, delay or frustrate the removal of incumbent directors or a takeover attempt, even if such events may be beneficial to our stockholders

Provisions of our Articles of Incorporation, such as our ability to designate and issue a class of preferred stock without stockholder approval, may delay or frustrate the removal of incumbent directors and may prevent or delay a merger, tender offer, or proxy contest involving our Company that is not approved by our Board of Directors (“Board”), even if those events may be perceived to be in the best interests of our stockholders. For example, one or more of our affiliates could theoretically be issued a newly authorized and designated class of shares of our preferred stock. Such shares could have significant voting power which may dilute the voting power of our common stock, among other terms. Consequently, anyone to whom these shares of preferred stock were issued could have sufficient voting power to significantly influence if not control the outcome of all corporate matters submitted to the vote of our common stockholders, subject to the rules promulgated by Nasdaq. Those matters could include the election of directors, changes in the size and composition of the Board, and mergers and other business combinations involving our Company. In addition, through any such person’s control of the Board and voting power, the affiliate may be able to control certain decisions, including decisions regarding the qualification and appointment of officers, dividend policy, access to capital (including borrowing from third-party lenders and the issuance of additional equity securities), and the acquisition or disposition of assets by our Company. In addition, the concentration of voting power in the hands of an affiliate could have the effect of delaying or preventing a change in control of our Company, even if the change in control would benefit our stockholders and may adversely affect the future market price of our common stock should a trading market therefor develop.

If you purchase shares of our common stock you may experience immediate and substantial dilution in the net tangible book value of your shares. In addition, we may issue shares of common stock pursuant to our equity incentive plans and additional equity or convertible debt securities in the future, which may result in additional dilution to investors.

We are currently authorized to issue up to 200,000,000 shares of common stock. We may, in the future, issue previously authorized and unissued shares of common stock, which would result in the dilution of current stockholders’ ownership interests. Additional shares are subject to issuance through various equity compensation plans or through the exercise of currently outstanding equity awards. The potential issuance of additional shares of common stock may create downward pressure on the trading price of our common stock. We also may in the future issue additional shares of common stock or other securities that are convertible into or exercisable for common stock in order to raise capital or effectuate other business purposes. Purchasers of the shares we sell, as well as our existing stockholders, will experience significant dilution if we sell shares at prices significantly below the price at which they invested. In addition, to the extent we need to raise additional capital in the future and we issue additional shares of common stock or securities convertible or exchangeable for our common stock, our then existing stockholders may experience dilution and the new securities may have rights senior to those of our common stock offered in this offering. Any of the above events could significantly harm our business, prospects, financial condition and results of operations and cause the price of our common stock to decline.

Our stock price has been, and may continue to be, volatile.

The market price of our common stock has been, and may continue to be, subject to material volatility. Such fluctuations could be in response to, among other things, the factors described in this “Risk Factors” section, or other factors, some of which are beyond our control, such as:

- the ongoing impacts of the COVID-19 pandemic and resulting impact on stock market performance;
- fluctuations in our financial results or outlook, or those of companies perceived to be similar to us;
- changes in the prices of commodities associated with our business;
- changes in our capital structure, such as future issuances of securities or the incurrence of debt;
- announcements by us or our competitors of significant contracts, acquisitions or strategic partnerships;
- regulatory developments;
- litigation involving us or our general industry;

- additions or departures of key personnel; and
- changes in general economic, industry and market conditions.

Furthermore, stock markets have experienced price and volume fluctuations that have affected, and continue to affect, the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market fluctuations, as well as general economic, political and market conditions, such as recessions, interest rate changes and international currency fluctuations, may negatively affect the market price of our common stock.

Additionally, the global economy and financial markets may be adversely affected by geopolitical events, including the current or anticipated impact of military conflict and related sanctions imposed on Russia by the United States and other countries due to Russia's recent invasion of Ukraine.

In the past, many companies that have experienced volatility and sustained declines in the market price of their stock have become subject to securities class action and derivative action litigation. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could materially harm our business. Any insurance we maintain may not provide adequate coverage against potential losses from such securities litigation, and if claims or losses exceed our liability insurance coverage, our business would be adversely impacted. In addition, insurance coverage may become more expensive, which would harm our financial condition and results of operations.

We may need, but be unable, to obtain additional funding on satisfactory terms, which could dilute our stockholders or impose burdensome financial restrictions on our business.

We have relied upon cash from financing activities and in the future, we hope to rely on revenues generated from operations to fund the cash requirements of our activities. However, there can be no assurance that we will be able to generate any significant cash from our operating activities in the future. Future financing may not be available on a timely basis, in sufficient amounts or on terms acceptable to us, if at all. Any debt financing or other financing of securities senior to the common stock will likely include financial and other covenants that will restrict our flexibility. Any failure to comply with these covenants would have a material adverse effect on our business, prospects, financial condition, and results of operations because we could lose our existing sources of funding and impair our ability to secure new sources of funding.

Being a public company is expensive and administratively burdensome.

As a public reporting company, we are subject to the information and reporting requirements of the Securities Act, the Exchange Act and other federal securities laws, rules and regulations related thereto, including compliance with the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"). Complying with these laws and regulations requires the time and attention of our Board and management and increases our expenses. Among other things, we are required to:

- maintain and evaluate a system of internal controls over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act and the related rules and regulations of the SEC and the Public Company Accounting Oversight Board;
- maintain policies relating to disclosure controls and procedures;
- prepare and distribute periodic reports in compliance with our obligations under federal securities laws;
- institute a more comprehensive compliance function, including with respect to corporate governance; and
- involve, to a greater degree, our outside legal counsel and accountants in the above activities.

The costs of preparing and filing annual and quarterly reports, proxy statements, when required, and other information with the SEC and furnishing audited reports to stockholders is expensive and much greater than that of a privately-held company, and compliance with these rules and regulations may require us to hire additional financial reporting, internal controls and other finance personnel, and involve a material increase in regulatory, legal and accounting expenses and the attention of management. There can be no assurance that we will be able to comply with the applicable regulations in a timely manner, if at all. In addition, being a public company makes it more expensive for us to obtain director and officer liability insurance. In the future, we may be required to accept reduced coverage or incur substantially higher costs to obtain this coverage.

Additionally, the expenses incurred by public companies generally for reporting and corporate governance purposes have been increasing. These increased costs will require us to divert a significant amount of monies that we could otherwise use to develop our business. If we are unable to satisfy our obligations as a public company, we could be subject to delisting of our common stock, fines, sanctions, and other regulatory action, and potentially civil litigation.

We have identified material weaknesses in our internal control over financial reporting. These material weaknesses could continue to adversely affect our ability to report our results of operations and financial condition accurately and in a timely manner.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Our management is likewise required, on a quarterly basis, to evaluate the effectiveness of our internal controls and to disclose any changes and material weaknesses identified through such evaluation in those internal controls. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

As described elsewhere in this Annual Report on Form 10-K, we identified several material weaknesses in our internal control over financial reporting. As a result of these material weaknesses, our management concluded that our internal control over financial reporting was not effective as of December 31, 2022.

Any failure to maintain such internal control could adversely impact our ability to report our financial position and results from operations on a timely and accurate basis, which could result in a material adverse effect on our business. If our financial statements are not accurate, investors may not have a complete understanding of our operations. Likewise, if our financial statements are not filed on a timely basis, we could be subject to sanctions or investigations by Nasdaq, the SEC or other regulatory

authorities. In addition, we would likely incur additional accounting, legal and other costs in connection with any remediation steps. Ineffective internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our stock.

To respond to these material weaknesses, we have devoted, and plan to continue to devote, effort and resources to the remediation and improvement of our internal control over financial reporting. While we have processes to identify and appropriately apply applicable accounting requirements, we plan to enhance these processes to better evaluate our research and understanding of the nuances of the complex accounting standards that apply to our financial statements. Our plans at this time include investing in information technology (“IT”) systems to enhance our operational and financial reporting and internal controls, enhancing our organizational structure to support financial reporting processes and internal controls, further developing and documenting detailed policies and procedures regarding business processes for significant accounts, critical accounting policies and critical accounting estimates, establishing effective general controls over IT systems to ensure that information produced can be relied upon by process level controls is relevant and reliable, providing guidance, education and training to employees relating to our accounting policies and procedures. Additionally, we have hired, and plan to continue to hire, as resources permit, qualified accounting personnel to better manage our functional controls and segregate responsibilities. The elements of our remediation plan can only be accomplished over time, and we can offer no assurance that these initiatives will ultimately have the intended effects.

We can give no assurance that the measures we have taken and plan to take in the future will remediate the material weakness identified or that any additional material weaknesses or restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal control over financial reporting or circumvention of these controls. In addition, even if we are successful in strengthening our controls and procedures, in the future those controls and procedures may not be adequate to prevent or identify irregularities or errors or to facilitate the fair presentation of our financial statements.

New laws, regulations, and standards relating to corporate governance and public disclosure may create uncertainty for public companies increasing legal and financial compliance costs and making some activities more time consuming.

These laws, regulations, and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, may evolve over time as new guidance is provided by the courts and other bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. If our efforts to comply with new laws, regulations, and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected.

As a public company subject to these rules and regulations, we may find it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult in the future for us to attract and retain qualified members of our Board, particularly to serve on its Audit Committee and Compensation Committee, and qualified executive officers.

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As an “emerging growth company” under applicable law, we are subject to lessened disclosure requirements, which could leave our stockholders without information or rights available to stockholders of more mature companies.

For as long as we remain an “emerging growth company” as defined in the Jobs Act, we have elected to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies” including, but not limited to:

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements disclosure;
- taking advantage of an extension of time to comply with new or revised financial accounting standards;
- reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We expect to take advantage of these reporting exemptions until we are no longer an “emerging growth company.” Because of these lessened regulatory requirements, our stockholders are not provided information or rights available to stockholders of more mature companies. We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We are also a “smaller reporting company” as defined in Rule 12b-2 of the Exchange Act and have elected to follow certain scaled disclosure requirements available to smaller reporting companies.

If research analysts do not publish research about our business or if they issue unfavorable commentary or downgrade our common stock our stock price and trading volume could decline.

The trading market for our securities may depend in part on the research and reports that research analysts publish about us and our business. If we do not maintain adequate research coverage, or if any of the analysts who cover us downgrade our stock or publish inaccurate or unfavorable research about our business, the price of our common stock and warrants could decline. If one or more of our research analysts ceases to cover our business or fails to publish reports on us regularly, demand for our securities could decrease, which could cause the price of our common stock and warrants or trading volume to decline.

We do not currently intend to pay dividends on our common stock in the foreseeable future and consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

We have never declared or paid cash dividends on our common stock and do not anticipate paying any cash dividends to holders of our common stock in the foreseeable future. Consequently, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

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Anti-takeover provisions in our charter documents and Nevada law could discourage delay or prevent a change of control of our Company and may affect the trading price of our common stock.

We are a Nevada corporation and the anti-takeover provisions of the Nevada Control Shares Acquisition Act may discourage, delay or prevent a change of control by limiting the voting rights of control shares acquired in a control share acquisition. In addition, our Articles of Incorporation and the A&R Bylaws may discourage, delay or prevent a change in our management or control over us that stockholders may consider favorable. Among other things, our Articles of Incorporation and A&R Bylaws:

- authorize the issuance of “blank check” preferred stock that could be issued by our Board in response to a takeover attempt;
- provide that vacancies on our Board, including newly created directorships, may be filled only by a majority vote of directors then in office, except a vacancy occurring by reason of the removal of a director without cause shall be filled by vote of the stockholders; and
- limit who may call special meetings of stockholders.

These provisions could have the effect of delaying or preventing a change of control, whether or not it is desired by, or beneficial to, our stockholders.

The security of our information technology systems may be compromised in the event of system failures, unauthorized access, cyberattacks or a deficiency in our cybersecurity, and confidential information, including non-public personal information that we maintain, could be improperly disclosed.

We rely extensively on information technology and systems including internet sites, data hosting, physical security, and software applications and platforms. Despite our security measures, our information technology systems, some of which are managed by third parties, may be susceptible to damage, disruptions or shutdowns due to computer viruses, attacks by computer hackers, failures during the process of upgrading or replacing software, power outages, user errors or catastrophic events. A significant breakdown, invasion, corruption, destruction or interruption of critical information technology systems, by our employees, others with authorized access to our systems or unauthorized persons could negatively impact or interrupt operations. The use of technology, including cloud-based computing, creates opportunities for the unintentional dissemination or intentional destruction of confidential information stored in our systems or our third-party systems. We could also experience a business interruption, theft of confidential information or reputational damage from malware or other cyberattacks, which may compromise our systems or lead to data leakage, either internally or at our third-party providers.

As part of our business, we maintain large amounts of confidential information, including non-public personal information on customers and our employees. Breaches in security, either internally or at our third-party providers, could result in the loss or misuse of this information, which could, in turn, result in potential regulatory actions or litigation, including material claims for damages, interruption to our operations, damage to our reputation or otherwise have a material adverse effect on our business, financial condition and operating results. Although we maintain information security policies and systems designed to prevent unauthorized use or disclosure of confidential information, including non-public personal information, there can be no assurance that such use or disclosure will not occur.

Any such business interruption, theft of confidential information or reputational damage from malware or other cyberattacks, or violation of personal information laws, could have a material adverse effect on our business, financial condition, and results of operations.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

We currently lease approximately 15,500 square feet of office space at 8669 Research Drive, Irvine, CA 92618 as our principal executive offices. This lease commenced on December 1, 2019, with no rent due from December 1, 2019 to April 1, 2020. From April 1, 2020, through March 31, 2025, base rent will be due on the first of each month in the amount of \$25,200. We paid an initial amount of \$68,128 comprising the rent for April 2020, a security deposit, and the amount due for property taxes, insurance, and association fees. The base rent shall be adjusted on the following dates as follows:

| | |
|----------------------|-----------|
| 12/1/2022-11/30/2023 | \$ 27,256 |
| 12/1/2023-11/30/2024 | \$ 28,347 |
| 12/1/2024-11/30/2025 | \$ 29,480 |

The lease otherwise contains commercially market terms as to events of default and termination and the like.

In addition, the Company entered into two leases for additional space, in Irvine, CA. The leases commenced March 1, 2022 and June 1, 2022. Base rent is initially \$16,250 and \$48,379 with escalations contained in the lease through February 28, 2027 and May 31, 2027.

In addition, we intend to seek additional leased space, which will include some warehouse facilities, as our business efforts increase.

Item 3. Legal Proceedings.

From time to time, we are involved in lawsuits, claims, investigations, and proceedings, including pending opposition proceedings involving patents that arise in the ordinary course of business. There are no matters pending that we expect to have a material adverse impact on our business, results of operations, financial condition, or cash flows, except as set forth below.

The occurrence of an unfavorable outcome in any specific period could have a material adverse effect on our results of operations for that period or future periods. Other than as described below, we are not presently a party to any material pending or threatened legal proceedings.

Edwin Minassian v. Michael Panosian and ToughBuilt Industries, Inc., Los Angeles Superior Court Case No. EC065533

On August 16, 2016, Plaintiff Edwin Minassian filed a complaint against the Company and Michael Panosian in the Superior Court of California, County of Los Angeles, Case No. EC065533. The complaint alleges breach of oral contracts to pay Plaintiff for consulting and finder’s fees, and to hire him as an employee. The complaint further alleged claims of fraud and misrepresentation relating to an alleged payment in exchange for stock in the Company. The complaint seeks unspecified monetary damages, declaratory relief, stock in the Company, and other relief according to proof.

On April 12, 2018, the Court entered judgments of default against the Company and Mr. Panosian in the amounts of \$7,080 and \$235,542, plus awarding Mr. Minassian a 7% ownership interest in the Company (the “Judgments”). Mr. Minassian served notice of entry of the judgments on April 17, 2018, and the Company and Mr. Panosian received notice of the entry of the default judgments on April 19, 2018.

The Company and Mr. Panosian satisfied the Judgments on September 14, 2018, by payment of \$252,949 to Plaintiff Minassian and by issuing Plaintiff Minassian 376,367 shares of common stock of the Company. On October 18, 2018, the Company and Mr. Panosian filed a Notice of Appeal from the Order denying their motion for relief from the above-referenced default judgment.

On October 1, 2019, the Second Appellate District of the California Court of Appeal issued its opinion reversing the trial court’s order denying ToughBuilt’s motion for relief from the default judgment and directing the trial court to grant ToughBuilt’s motion for relief, including allowing ToughBuilt to file an Answer and contest Plaintiff Minassian’s claims.

The plaintiff was seeking damages and stock based on a breach of an alleged oral agreement. This case concluded in April 2022. The plaintiff was awarded \$160,000 which was offset by a prior judgment against the plaintiff.

Nevada Court Case No. A-22-859580-B

On October 7, 2022, one of our stockholders (the “2022 Plaintiff”), filed a shareholder derivative action against us, Michael Panosian, Joshua Keeler, Zareh Khachatoorian, Martin Galstyan, et. al. (collectively, the “2022 Defendants”) in the Eighth Judicial District Court of Nevada, Case No. A-22-859580-B. In the complaint, the 2022 Plaintiff alleged a breach of the applicable 2022 Defendants’ fiduciary duties of loyalty, good faith, and due care owed to us and our shareholders, by negligently, willfully, recklessly and/or intentionally failing to perform their fiduciary duties primarily in connection with our registered direct offering of 2,500 shares of Series F preferred stock and 2,500 shares of Series G preferred stock in February 2022 and subsequent 1-for-150 reverse stock split effected in April 2022. The 2022 Plaintiff claimed that the 2022 Plaintiff has suffered (i) monetary damages in excess of \$10,000, and (ii) attorney fees and costs, and is entitled to reimbursement. The 2022 Plaintiff asked for the following relief (i) issuance of a preliminary injunction enjoining us and the Board from continued of their fiduciary duties; (ii) damages incurred by the plaintiff; (iii) for an accounting of our books and records; (iv) equity relief; and (v) reimbursements of attorney and courts fees and other related costs. We believe that the claims put forth by the 2022 Plaintiff are without merit and we intend to vigorously defend ourself and the officers named in the complaint.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

Our common stock is currently listed on The Nasdaq Capital Market under the symbol “TBLT,” and warrants under the symbol “TBLTW.” Trading in our common stock has historically lacked consistent volume, and the market price has been volatile.

On March 30, 2023, the closing price for our common stock and warrants as reported on The Nasdaq Capital Market was \$120 per share and \$0.073, respectively.

Holders of Common Stock

On March 31, 2023, there were 157 holders of record of our common stock.

Dividend Policy

We have never paid any cash dividends on our common stock. We anticipate that we will retain funds and future earnings to support operations and to finance the growth and development of our business. Therefore, we do not expect to pay cash dividends in the foreseeable future following this offering. Any future determination to pay dividends will be at the discretion of our Board and will depend on our financial condition, results of operations, capital requirements, and other factors that our Board deems relevant. In addition, the terms of any future debt or credit financings may preclude us from paying dividends.

Unregistered Sales of Equity Securities

Issuance of Warrants

In connection with a registered direct offering of an aggregate of \$5,000,000 of Preferred Stock as previously reported on a Current Report on Form 8-K filed with the SEC on February 17, 2022, we also issued in a concurrent private placement unregistered warrants to the same investors in the registered direct offering to purchase up to an aggregate of 125,000 shares of our common stock, at an exercise price of \$37.65 per share.

The February Warrants will be exercisable on the date that is the later of (a) the consummation of either a stockholder vote on the proposal to authorize the Board to effect a reverse stock split or increase the authorized shares of our common stock; and (b) six months after the date of issuance, and will have a term of 5 years from the initial exercise date. The offering closed on February 15, 2022.

As compensation to Wainwright, as the exclusive placement agent in connection with the offering, we paid Wainwright a cash fee of 7% of the aggregate gross proceeds raised in the February Direct Offering, plus a management fee equal to 0.5% of the gross proceeds raised in the offering and reimbursement of certain expenses and legal fees. We also issued to designees of Wainwright warrants to purchase up to 10,000 shares of our common stock. The Wainwright February Warrants are exercisable for \$37.50 per share and become exercisable on the date that is the later of (a) the consummation of either a stockholder vote on the proposal to authorize our Board to effect a reverse stock split or increase the authorized shares of our common stock; and (b) six months after the date of issuance, and will expire on February 15, 2027.

We received net proceeds of approximately \$4,205,000 from the offering, after deducting the estimated offering expenses payable by us, including the fees payable to Wainwright.

We issued the February Warrants and the Wainwright February Warrants pursuant to the exemption from the registration requirements of the Securities Act, available under Section 4(a)(2) and/or Rule 506(b) of Regulation D promulgated thereunder due to the fact the issuance did not involve a public offering of securities.

Private Placement

On July 27, 2022, we consummated a private placement pursuant to the terms and conditions of the Securities Purchase Agreement, dated July 25, 2022, by and among us and certain purchasers named on the signature pages thereto. At the closing of the Private Placement, we issued (i) 700,000 shares of common stock, (ii) pre-funded warrants to purchase an aggregate of 3,300,000 shares of common stock, (iii) Series A Preferred Investment Options to purchase an aggregate of 4,000,000 shares of common stock and (iv) Series B Preferred Investment Options to purchase an aggregate of 4,000,000 shares of common stock. The purchase price of each Share and associated Series A Preferred Investment Option and Series B Preferred Investment Option was \$5.00 and the purchase price of each Pre-Funded Warrant and associated and associated Series A Preferred Investment Option and Series B Preferred Investment Option was \$4.9999. The aggregate gross proceeds to us from the Private Placement were approximately \$20 million, before deducting placement agent fees and other offering expenses. Wainwright acted as the exclusive placement agent for the Private Placement.

The Pre-Funded Warrants have an exercise price of \$0.0001 per share of common stock, are exercisable on or after July 27, 2022, and are exercisable until the Pre-Funded Warrants are exercised in full. The Series A Preferred Investment Options are exercisable at any time on or after July 27, 2022 at an exercise price of \$5.00 per share of common stock, subject to certain adjustments, including with respect to stock dividends, splits, subsequent rights offerings, pro rata distributions and a Fundamental Transaction (as defined in the Series A Preferred Investment Options), and terminate on the third anniversary of such date. If, at any time at the time of exercise of the Series A Preferred Investment Options, there is no effective registration statement registering, or the prospectus contained therein is not available for the resale of the shares issuable pursuant to the exercise of Series A Preferred Investment Options, the Series A Preferred Investment Options may be exercised, in whole or in part, by means of a cashless exercise, in which the holder is entitled to receive a number of shares of common stock to be determined by a formula contained in the Preferred Investment Options. No fractional shares or scrip representing fractional shares may be issued upon the exercise of the Preferred Investment Options.

The Series B Preferred Investment Options are exercisable at any time on or after July 27, 2022 at an exercise price of \$5.00 per share of common stock (the "Series B Preferred Investment Option Shares" and together with the Prefunded Warrant Shares and the Series A Preferred Option Shares, the "Warrant Shares"), subject to certain adjustments, including with respect to stock dividends, splits, subsequent rights offerings, pro rata distributions and a Fundamental Transaction (as defined in the Series B Preferred Investment Options), and terminate on the second anniversary of such date. Other than the exercise period, the terms of the Series B Preferred Investment Options are identical to the terms of the Series A Preferred Investment Options.

In connection with the Private Placement, we entered into a Registration Rights Agreement with the Purchasers, dated July 25, 2022 (the "Registration Rights Agreement"). The Registration Rights Agreement provides that we shall file a registration statement covering the resale of all of the Registrable Securities (as defined in the Registration Rights Agreement) with the SEC no later than the 10th calendar day following the date of the Registration Rights Agreement, or August 4, 2022, and have the registration statement declared effective by the SEC as promptly as possible after the filing thereof, but in any event no later than the 45th calendar day following the date of the Registration Rights Agreement, or in the event of a "full review" by the SEC, the 75th day following the date of the Registration Rights Agreement.

Upon the occurrence of any Event (as defined in the Registration Rights Agreement), which, among others, prohibits the Purchasers from reselling the Securities for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days during any 12-month period, we are obligated to pay to each Purchaser, on each monthly anniversary of each such Event, an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of 2.0% multiplied by the aggregate subscription amount paid by such Purchaser pursuant to the Purchase Agreement.

Subject to certain exceptions, neither we nor any of our security holders (other than the Purchasers in such capacity pursuant thereto) may include our securities in any registration statement other than the Shares and the Warrant Shares. We may not file any other registration statements until all Shares and Warrant Shares are registered pursuant to a registration statement that is declared effective by the SEC, provided that we may file amendments to registration statements filed prior to the date of the Registration Rights Agreement so long as no new securities are registered on any such existing registration statements.

Wainwright served as the exclusive placement agent for the issuance and sale of the securities pursuant to the Purchase Agreement and is entitled to preferred investment options to purchase up to 240,000 shares of common stock. The Placement Agent Preferred Investment Options are in substantially the same form as the Series A Preferred Investment Options, except that the exercise price is \$6.25 per share.

We issued the foregoing securities pursuant to the exemption from the registration requirements of the Securities Act, available under Section 4(a)(2) and/or Rule 506(b) of Regulation D promulgated thereunder due to the fact the issuance did not involve a public offering of securities.

November 2022 Private Placement

On November 17, 2022, we consummated a private placement pursuant to the terms and conditions of the Securities Purchase Agreement, dated November 15, 2022, by and among us and certain purchasers named on the signature pages thereto. At the closing of the November 2022 Private Placement, we issued (i) 982,466 shares of common stock, (ii) pre-funded warrants to purchase an aggregate of 1,637,445 shares of common stock and (iii) Series C Preferred Investment Options to purchase 10,619,911 shares of common stock.

The purchase price of each November 2022 Share and associated Series C Preferred Investment was \$2.862692 and the purchase price of each Pre-Funded Warrant and associated Series C Preferred Investment Option was \$2.862592. The aggregate gross proceeds to us from the November 2022 Private Placement were approximately \$7,500,000, before deducting placement agent fees and other offering expenses. In connection with the offering, the investors in the private placement agreed to cancel preferred investment options to purchase up to an aggregate of 8,000,000 shares of our common stock which were previously issued to the investors in July 2022.

The November 2022 Pre-Funded Warrants have an exercise price of \$0.0001 per share of common stock, and are exercisable on or after the date of issuance until all of the November 2022 Pre-Funded Warrants are exercised in full. The Series C Preferred Investment Options are exercisable at any time on or after November 17, 2022 at an exercise price of \$2.356 per share of common stock, subject to certain adjustments, including with respect to stock dividends, splits, subsequent rights offerings, pro rata distributions and a Fundamental Transaction (as defined in the Series C Preferred Investment Options), and terminate on the third anniversary of such date. If, at any time at the time of exercise of the Series C Preferred Investment Options, there is no effective registration statement registering, or the prospectus contained therein is not available for the resale of the shares issuable pursuant to the exercise of Series C Preferred Investment Options, the Series C Preferred Investment Options may be exercised, in whole or in part, by means of a cashless exercise, in which the holder is entitled to receive a number of shares of common stock to be determined by a formula contained in the Preferred Investment Options. No fractional shares or scrip representing fractional shares may be issued upon the exercise of the Preferred Investment Options.

In connection with the Private Placement, we entered into a Registration Rights Agreement with the Purchasers, dated November 15, 2022 (the “November 2022 Registration Rights Agreement”). The November 2022 Registration Rights Agreement provides that we shall file a registration statement covering the resale of all of the Registrable Securities (as defined in the November 2022 Registration Rights Agreement) with the SEC no later than the 10th calendar day following the date of the November 2022 Registration Rights Agreement, or November 25, 2022, and have the registration statement declared effective by the SEC as promptly as possible after the filing thereof, but in any event no later than the 45th calendar day following the date of the November 2022 Registration Rights Agreement, or in the event of a “full review” by the SEC, the 75th day following the date of the November 2022 Registration Rights Agreement.

Upon the occurrence of any Event (as defined in the November 2022 Registration Rights Agreement), which, among others, prohibits the November 2022 Purchasers from reselling the securities for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days during any 12-month period, we are obligated to pay to each Purchaser, on each monthly anniversary of each such Event, an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of 2.0% multiplied by the aggregate subscription amount paid by such November 2022 Purchaser pursuant to the November 2022 Purchase Agreement.

Subject to certain exceptions, neither we nor any of our security holders (other than the November 2022 Purchasers in such capacity pursuant thereto) may include our securities in any registration statement other than the November 2022 Shares and the November 2022 Warrant Shares. We may not file any other registration statements until all November 2022 Shares and November 2022 Warrant Shares are registered pursuant to a registration statement that is declared effective by the SEC, provided that we may file amendments to registration statements filed prior to the date of the Registration Rights Agreement so long as no new securities are registered on any such existing registration statements.

Wainwright served as the exclusive placement agent for the issuance and sale of the securities pursuant to the November 2022 Purchase Agreement and is entitled to preferred investment options to purchase up to 157,195 shares of common stock. The November 2022 Placement Agent Preferred Investment Options are in substantially the same form as the Series C Preferred Investment Options, except that the exercise price is approximately \$3.578365 per share.

In addition, upon any exercise for cash of any preferred investment options issued to investors in the offering, we shall pay Wainwright, within five (5) business days of our receipt of the exercise price, a cash fee of seven (7.0%) percent of the aggregate gross exercise price paid in cash with respect thereto and a management fee of 0.5% of the aggregate gross exercise price paid in cash with respect thereto.

We issued the foregoing securities pursuant to the exemption from the registration requirements of the Securities Act, available under Section 4(a)(2) and/or Rule 506(b) of Regulation D promulgated thereunder due to the fact the issuance did not involve a public offering of securities.

Equity Plan Information

EQUITY PLAN INFORMATION

| <u>Plan Category:</u> | <u>Number of securities to be issued upon exercise of outstanding options, warrants and rights:</u> | <u>Weighted average exercise price of outstanding options, warrants and rights:</u> | <u>Number of securities remaining available for future issuance:</u> |
|--|---|---|--|
| <u>2016 Equity Incentive Plan:</u> | | | |
| Equity compensation plans approved by security holders | 0 | \$ 0 | 100,000 |
| Equity compensation plans not approved by security holders | 0 | 0 | 0 |
| Total | 0 | \$ 0 | 100,000 |
| <u>2018 Equity Incentive Plan:</u> | | | |
| Equity compensation plans approved by security holders | 1,271 | \$ 6,084 | 22,667 |
| Equity compensation plans not approved by security holders | 0 | 0 | 0 |
| Total | 1,271 | 6,084 | 22,667 |
| <u>2022 Equity Incentive Plan: (1)</u> | | | |
| Equity compensation plans approved by security holders | 1,350,000 | \$ 1.79 | 0 |
| Equity compensation plans not approved by security holders | 0 | 0 | 0 |
| Total | 1,350,000 | \$ 1.79 | 0 |
| Total | 1,351,271 | \$ 5.39 | 122,667 |

- (1) The 2022 Plan contains an “evergreen formula” pursuant to which the number of shares of common stock available for issuance under the 2022 Plan will automatically increase on January 1 of each calendar year during the term of the 2022 Plan, beginning with the calendar year 2023, by an amount of shares of common stock so that the total amount of common stock available under the 2022 Plan is equal to 15% of the total number of shares of common stock outstanding on December 31st of the prior calendar year.

Item 6. [Reserved]

Not applicable.

Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations

Prospective investors should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and the related notes and other financial information included elsewhere in this annual report. Some of the information contained in this discussion and analysis or set forth elsewhere in this annual report, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and

uncertainties. See “Cautionary Note Regarding Forward-Looking Statements.” This discussion should be read in conjunction with our audited consolidated financial statements and the notes thereto included elsewhere in this report. In this discussion, we may use certain non-generally accepted accounting principles (GAAP) financial measures. An explanation of these non-GAAP financial measures and a reconciliation to the most directly comparable GAAP financial measures are included in this “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” Investors should not consider non-GAAP financial measures in isolation or as substitutes for financial information presented in compliance with GAAP.

Business Overview

We were formed to design, manufacture, and distribute innovative tools and accessories to the building industry. The global tool market industry is a multibillion-dollar business.

Our business is based on development of innovative and state-of-the-art products, primarily in tools and hardware category, with particular focus on building and construction industry with the ultimate goal of making life easier and more productive for the contractors and workers alike.

Our three major categories contain a total of 19 product lines, consisting of (i) Soft Goods, which includes kneepads, tool bags, pouches and tool belts, (ii) Metal Goods, which consists of sawhorses, tool stands and (iii) Utility Products, which includes utility knives, aviation snips, shears, lasers and levels, tape measures and chalk reels, striking tools, garden and landscaping tools and pliers and clamps. We also have several additional categories and product lines in various stages of development.

We are continuing to focus our efforts on increased marketing campaigns, and distribution programs to strengthen the demand for our products globally. Management anticipates that our capital resources will improve and our products gain wider market recognition and acceptance resulting in increased product sales.

As discussed below, while we have faced the impacts of COVID-19 and inflation, we have been able to obtain significant revenue growth between fiscal 2021 and 2022 of 35.6%. Notwithstanding, we have incurred substantial operating losses since our inception and anticipate incurring additional losses for the foreseeable future until such time, if ever, that we can commercialize our technology currently in development. In their audit report included in this Annual Report on Form 10-K, our auditors have expressed that there is substantial doubt as to our ability to continue as a going concern. To fund our operations and grow our business, we will require to fund our capital requirements through the sale of debt or equity securities or other arrangements to fund operations. There can be no assurances that we will be able to obtain additional financing on acceptable terms, if at all. If we are unable to obtain such additional financing, future operations would need to be scaled back or discontinued. See “Liquidity and Capital Resources; Going Concern” below and Part I Item 1A. Risk Factors “Going Concern” and “We will require additional capital in order to achieve commercial success and, if necessary, to finance future losses from operations as we endeavor to build revenue, but we do not have any commitments to obtain such capital and we cannot assure you that we will be able to obtain adequate capital as and when required.”

Business Developments

The following highlights recent material developments in our business:

- In first quarter of 2022, we announced that our online sales through Amazon increased by 41% to approximately \$3.4 million for the quarter ended March 31, 2022, compared to approximately \$2.4 million for the first quarter of 2021.
- In second quarter of 2022, we announced that our online sales through Amazon.com were \$3.6 million. This represents a 17% increase from the same quarter in 2021. Sales for the first half of 2022 increased by 28% to approximately \$7 million compared to \$5.4 million for the first half of 2021.
- In July 2022, we announced that we entered into an agreement with Ace Hardware USA and International to sell 35 ToughBuilt products.
- In August 2022, we announced that we started to sell 93 ToughBuilt products on Amazon.It (Italy) and Amazon.de (Germany).

- In August 2022, we announced our entry into a supply agreement with Elektro3 S.C.C.L and NCC Hardware Purchasing and Services Centers, SL, increasing our presence in Spain’s hardware marketplace.
- In August 2022, we announced the launch of our all-new Reload Utility Knife, a groundbreaking new cutting tool made available for purchase through a leading US home improvement retailer and across their global strategic network of ToughBuilt’s partners and buying groups, servicing over 15,500 storefronts around the world.
- In September 2022, we announced our entry into the global measuring and marking market segment category with a feature-rich family of tape measures and chalk reels.
- In September 2022, we announced that we entered into an agreement with two major wholesale tool distributors in Switzerland, marking an expansion of European distribution that includes more than 250 retailers, nationwide.
- In September 2022, we announced our launch of 21 new SKUs into the global handsaws segment, beginning with a line of seven cutting tools featuring ToughBuilt’s QuickSet™ Double-Edge Pull Saw, the first ever safe-folding pull saw. The new line will be available Q4 2022 and beyond for purchase through a leading US home improvement retailer and across global strategic network of partners and buying groups, servicing over 15,500 storefronts around the world.
- In September 2022, we announced major expansions to its network of storefronts in Great Britain, confirming broad new and expanding agreements with Huws Gray, Selco Builders Warehouse, MKM, City Electrical Factors, and Carpet & Flooring.
- In October 2022, we announced the launch of an all-new line of striking tools, including an innovative series of ShockStop™ hammers, marking their entry into the global tool-hammer market.
- In October 2022, we announced that we entered into four major retailers in Germany, which accounted for a 35% share of the global hand tools market in 2019.

- In October 2022, we announced that our online sales for Q3 2022 through Amazon.com were \$3.9 million. This represents a 38% rise from the same quarter in 2021. Sales for the 9-month period ending on September 30, 2022, increased by 32% to approximately \$10.9 million, compared to \$8.3 million for the same period in 2021.
- In October 2022, we announced the launch of our all-new 500 ft. Rotary Laser Level Kit. The level comes with an intuitive, first-of-its-kind, 3-piece stacking guide rod that allows for a rolling laser receiver to provide bracket-free attachment and a one-handed interface for fast operation. It emits a laser that displays a consistent, accurate signature that is detectable up to 500-feet of distance from its projection point. The kit also includes an innovative tripod with a rapid-use bullseye level and telescoping legs to promote accurate placement on uneven terrain.
- In October 2022, we announced that we reached a comprehensive distribution agreement with Sodimac, the largest home improvement and construction supplier in South America; beginning with Peru and Colombia with 15 ToughBuilt SKUs.
- In October 2022, we announced that we expanded our distribution of 84 ToughBuilt branded products to be sold in all Sears' Mexico locations, totaling 96 storefronts nationwide. Sears continues to be a leading supplier to its core consumers in the hardware and home improvement trades in Latin America, and its comprehensive store count and geographical presence across Mexico offer ToughBuilt an opportunity to offer a wide product range to professional end users in the country.

- In November 2022, we announced that we entered into a distribution agreement with Lamed LLP – one of the largest suppliers of equipment, tools and building materials in Kazakhstan. Lamed begins this agreement with 76 ToughBuilt SKUs and will stock the entire ToughBuilt product range.
- In December 2022, we announced that we are strengthening our relationship with European and UK retailers Wickes, Toolstation UK & Toolstation France. After a successful launch of ToughBuilt products, Wickes, which has 230 locations across the United Kingdom, will be increasing the number of ToughBuilt SKUs available to its customer base, from 15 to 48 SKUs beginning January 2023. Additionally, Toolstation UK, with over 550 stores nationwide, following consistent and impressive sales, Toolstation UK has increased its ToughBuilt SKUs to 35 total SKUs and has committed to several national promotions, contributing to a significant uplift in sales conversions. Toolstation France has also more than doubled its original offering of the ToughBuilt range to from 25 to 65 SKUs in total.
- In December 2022, we announced the launch of our new line of Long Handle Garden and Landscaping Tools. Beginning with 11 out of about 150 SKUs, the new line includes many innovative improvements.
- In January 2023, our global Amazon sales for 2022 through Amazon.com were approximately \$15.9 million. This represents an approximate 34% increase from \$11.9 million in Amazon sales in 2021.
- In January 2023, we launched more than 40 new SKUs into the Handheld Screwdrivers segment, including ratcheting bit drivers, insulated screwdrivers, precision, slotted, Phillips, Torx, and cabinet screwdrivers and demolition drivers.
- In January 2023, we expanded our distribution agreement with Sodimac, the largest home improvement and construction supplier in South America. In this extended agreement, stores in Chile, Peru, Argentina, Colombia, Brazil, and Uruguay will initially begin with 15 SKUs in-store and brings 23 SKUs to Sodimac's online marketplace.
- In January 2023, we launched more than 20 new SKUs into the Handheld Wrenches segment, including adjustable wrenches, construction wrenches and pipe wrenches.
- In February 2023, we launched our new line of pliers and clamps. The new line, comprised of more than 40 SKUs, will be made available for purchase through leading US home improvement retailers and across ToughBuilt's growing strategic networks of North American and global trade partners and buying groups, servicing over 18,900 storefronts and online portals worldwide.

Key Factors Affecting our Performance

As a result of a number of factors, our historical results of operations may not be comparable to our results of operations in future periods, and our results of operations may not be directly comparable from period to period. Set forth below is a brief discussion of the key factors impacting our results of operations.

Seasonality

Our company's revenues are not seasonal. However, we usually experience a spike in sales when we introduce new products.

COVID-19

In March 2020, the World Health Organization declared the outbreak of a novel coronavirus (COVID-19) as a pandemic which continues to spread throughout the United States and the world. We are currently monitoring the outbreak of COVID-19 and the related business and travel restrictions and changes to behavior intended to reduce its spread. All of our Chinese facilities were temporarily closed for a period of time but have been reopened. Depending on the progression of the outbreak, including new variants and subvariants of the coronavirus, our ability to obtain necessary supplies and ship finished products to customers may be partly or completely disrupted globally. Also, our ability to maintain appropriate labor levels could be disrupted. If the coronavirus, including variants and subvariants thereof, continues to progress, it could have a material negative impact on our results of operations and cash flow, in addition to the impact on its employees.

The ultimate extent of the impact of any epidemic, pandemic, outbreak, or other public health crisis on our business, financial condition and results of operations will depend on future developments, which are highly uncertain and cannot be predicted, including:

- new information which may emerge concerning the severity of the disease;
- the duration and spread of the outbreak;

- effectiveness of vaccination and booster vaccination campaigns;
- the severity of travel restrictions imposed by geographic areas in which we operate, mandatory or voluntary business closures;
- regulatory actions taken in response to the pandemic;
- other business disruptions that affect our workforce;
- the impact on capital and financial markets; and
- actions taken throughout the world, including in markets in which we operate, to contain the COVID-19 outbreak or treat its impact.

In addition, the current outbreak of COVID-19 has resulted in a widespread global health crisis and adversely affected global economies and financial markets, and similar public health threats could do so in the future.

Accordingly, we cannot predict the extent to which our business, financial condition and results of operations will be affected. To the extent the COVID-19 pandemic or a similar public health threat has an impact on our business, it is likely to also have the effect of heightening many of the other risks described in the “*Risk Factors*” section of Part I Item 1A.

Inflation

Prices of certain commodity products, including raw materials, are historically volatile and are subject to fluctuations arising from changes in domestic and international supply and demand, labor costs, competition, market speculation, government regulations, trade restrictions and tariffs. Increasing prices in the component materials for the parts of our goods may impact the availability, the quality and the price of our products, as suppliers search for alternatives to existing materials and increase the prices they charge. Our suppliers may also fail to provide consistent quality of product as they may substitute lower cost materials to maintain pricing levels. Rapid and significant changes in commodity prices may negatively affect our profit margins we are unable to mitigate any inflationary increases through various customer pricing actions and cost reduction initiatives. To offset increased prices charged by our manufacturers and increased shipping rates, we increased the prices of our products in 2022.

Supply Chain

We acquire a majority of our products from manufacturers and distributors located in China, India and the Philippines. We do not have any long-term contracts or exclusive agreements with our foreign suppliers that would ensure our ability to acquire the types and quantities of products we desire at acceptable prices and in a timely manner. We utilize a number of techniques to address potential disruption in and other risks relating to our supply chain, including in certain cases the use of other qualified suppliers. We increased our inventory from \$38,432,012 at December 31, 2021 to \$40,365,286 at December 31, 2022. Due to our inventory levels in 2022, the supply chain disruptions in 2022 have not had a material adverse effect on our operations and we do not currently anticipate that any continue supply chain disruptions will have a material adverse effect on our operations for fiscal year 2023. See Part I Item 1A. Risk Factors “*Disruptions in our supply chain and other factors affecting the distribution of our merchandise could adversely impact our business.*”

Results of Operations

The Fiscal Year Ended December 31, 2022 compared to the Fiscal Year Ended December 31, 2021

Revenues

Revenues, net of allowances, for the years ended December 31, 2022 and 2021 were \$95,253,767 and \$70,026,324, respectively, consisted of metal goods, soft goods and electronic goods sold to customers. Revenues increased in 2022 over 2021 by \$25,227,443, or 36%, primarily due to wide acceptance of our products in the tools industry and receipt of recurring sales orders for metal goods and soft goods from our existing customers and new customers, and introduction and sale of new soft goods products and electronic goods to our customers. Amazon was a major factor of the increase.

Cost of Goods Sold

Cost of goods sold for the years ended December 31, 2022 and 2021 was \$70,042,504 and \$50,912,513, respectively. Cost of goods sold increased in 2022 over 2021 by \$19,129,991, or 37.6% primarily due to the increase in the cost of steel and plastics polyester needed to manufacture metal goods and soft goods, an increase in labor cost in China, high inflation rates, as well as increased prices in tariffs and shipping rates. Cost of goods sold as a percentage of revenues in 2022 was 73.5%, as compared to cost of goods sold as a percentage of revenues in 2021 of 72.7%

Operating Expenses

Operating expenses consist of selling, general and administrative expenses, litigation expense, and research and development costs. Selling, general and administrative expenses (the “SG&A Expenses”) for the years ended December 31, 2022 and 2021 were \$66,189,907 and \$51,434,180, respectively. SG&A Expenses increased in 2022 over 2021 by \$14,755,727, or 28.7%, primarily due to hiring additional employees and engaging additional independent contractors and consultants (e.g., industrial designers, sales, operations and accounting staff, and a human resource team) to grow the Company, of which increased the total number of employees, independent contractors and consultants to 259 as of December 31, 2022. SG&A Expenses in 2022 as a percentage of revenues was 69.5%, as compared 73.4% in 2021. We expect our SG&A Expenses will continue to increase as we plan to bring professional management team and staff on board, expend cash to raise capital for new products development, and acquire a new warehouse/storage facility to expand its operations and maintain finished products inventory on hand.

Research and Development

Research and development costs (the “R&D”) for the years ended December 31, 2022 and 2021 were \$11,296,948 and \$6,980,453, respectively. R&D costs increased in 2022 over 2021 by \$4,316,495 or 61.8% primarily due to the costs incurred in developing new tools, a ruggedized mobile device, software applications to run on the mobile device related to construction industry, and stock-based compensation expense and bonuses to the R&D management team. Since we suspended our ruggedized mobile device segment, we expect R&D costs in relation to that segment to decrease until we decide to continue the development of our ruggedized mobile device segment. We expect other R&D costs, however, to continue to increase as we embark on developing new tools for the construction industry.

Other income (expense)

Other expense for the year ended December 31, 2022 consisted of warrant and preferred investment option issuance costs in the amount of \$1,868,766, interest expense of \$1,914,120 and change in fair value of warrant and preferred investment option liabilities in the amount of \$16,763,205. Other expense for the year ended December 31, 2021 consisted of warrant issuance costs in the amount of \$588,221, interest expense of \$297,931 and change in fair value of warrant and preferred investment option liabilities in the amount of \$2,661,076.

Net loss

Due to factors set forth above, we recognized a net loss of \$39,295,273 and \$37,525,898 for the years ended December 31, 2022 and 2021, respectively. The large net loss is mainly attributable to building our team to meet the demand for current product lines and new product lines in design, as well as a high increase in cost of goods sold prices, as noted above.

Liquidity and Capital Resources; Going Concern

At December 31, 2022, we had \$2,564,237 cash on hand and \$16,810,659 in accounts receivable, net and \$32,682,186 in accounts payable and accrued expenses. Although our sales increased by 36% during the year ended December 31, 2022, compared to the same period in 2021, we are continuing to focus our efforts on increased marketing campaigns, and distribution programs to strengthen the demand for our products globally. Management anticipates that our capital resources will improve and our products gain wider market recognition and acceptance resulting in increased product sales.

We have incurred substantial operating losses since our inception. As reflected in the consolidated financial statements included in this Annual Report on Form 10-K, we had an accumulated deficit of approximately \$145 million at December 31, 2022, a net loss of approximately \$39.3 million, and approximately \$37.5 million of net cash used in operating activities for the year ended December 31, 2022. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of this uncertainty. We anticipate incurring additional losses until such time, if ever, that it will be able to effectively market its products and technology currently in development. As such it is likely that additional financing will be needed by us to fund our operations and to develop and commercialize our technology. These factors raise substantial doubt about our ability to continue as a going concern. We do not currently have sufficient capital to fund our operations for the next 12 months. For the 12 months from issuance of this Annual Report on Form 10-K and the subsequent 12 months, we intend to fund our capital requirements through the sale of debt or equity securities or other arrangements to fund operations. However, there can be no assurance that we will be able to raise needed capital under acceptable terms, if at all. The sale of additional equity may dilute existing stockholders and newly issued shares may contain senior rights and preferences compared to currently outstanding shares of common stock. Issued debt securities may contain covenants and limit our ability to pay dividends or make other distributions to stockholders. If we are unable to obtain such additional financing, future operations would need to be scaled back or discontinued. Due to the uncertainty in our ability to raise capital, management believes that there is substantial doubt in our ability to continue as a going concern for twelve months from the issuance of these consolidated financial statements.

We have conducted the following public and private offerings since the beginning of the 2022 fiscal year. The net proceeds of each offering were for working capital purposes:

Registered Direct Offering on Form S-3 (February 2022)

On February 15, 2022, we entered into a Securities Purchase Agreement dated as of February 15, 2022, as amended by the Letter Agreement dated as of February 18, 2022, with institutional investors named therein, pursuant to which we issued, in a registered direct offering through a prospectus supplement to the registration statement on Form S-3 (File No. 333-252630), which was initially filed on February 2, 2021 and declared effective by the SEC on February 8, 2021, an aggregate of \$5,000,000 of preferred stock (split evenly among the Series F Convertible Preferred Stock, par value \$0.0001 per share, and Series G Convertible Preferred Stock, par value \$0.0001 per share). The shares of Preferred Stock have a stated value of \$1,000 per share and are convertible, following the date of the issuance thereof, into an aggregate of 12,500,000 shares of our common stock upon the conversion of Series F and into an aggregate of 12,500,000 shares of our common stock upon the conversion of Series G, at a conversion price of \$0.20 per share each. The Preferred Stock and the underlying shares of common stock were offered pursuant to the Form S-3. In a concurrent private placement, we also issued to such investors unregistered warrants to purchase up to an aggregate of 18,750,000 shares of our common stock, at an exercise price of \$0.251 per share. The February Warrants will be exercisable on the date that is the later of (i) the consummation of either a stockholder vote on the proposal to authorize the Board to effect the reverse stock split or increase the authorized shares of our common stock; and (ii) six months after the date of issuance, and will have a term of 5 years from the initial exercise date.

The February Purchase Agreement contained customary representations and warranties and agreements of the Company and the institutional investors named therein and customary indemnification rights and obligations of the parties. The offering closed on February 15, 2022.

As compensation to Wainwright, as the exclusive placement agent in connection with the offering, we paid Wainwright a cash fee of 7% of the aggregate gross proceeds raised in the February Direct Offering, plus a management fee equal to 0.5% of the gross proceeds raised in the offering and reimbursement of certain expenses and legal fees. We also issued to designees of Wainwright warrants to purchase up to 1,500,000 shares of common stock. The warrants are exercisable for \$0.25 per share and become exercisable on the date that is the later of (i) the consummation of either a stockholder vote on the proposal to authorize the Board to effect a reverse stock split or increase the authorized shares of our common stock; and (ii) six months after the date of issuance, and will expire on February 15, 2027.

We received net proceeds of approximately \$4,205,000 from the offering, after deducting the estimated offering expenses payable by us, including the fees payable to Wainwright. We intend to use has used and will continue to use the net proceeds from the February Direct Offering for working capital purposes.

We issued the February Warrants and warrants to Wainwright pursuant to the exemption from the registration requirements of the Securities Act, available under Section 4(a)(2) and/or Rule 506(b) of Regulation D promulgated thereunder.

Public Offering

On June 22, 2022, we completed a public offering of (i) 772,157 units, each Unit consisting of one share of our common stock, par value \$0.0001 per share and one warrant to purchase one share of our common stock at a price of \$1.90 per Unit; and (ii) 2,385,738 prefunded units, each Prefunded Unit consisting of one prefunded warrant to purchase one share of our common stock and one warrant, at a price of \$1.8999 per Prefunded Unit. Subject to certain ownership limitations described in the Warrants, the

Warrants have an exercise price of \$1.90 per share of our common stock, are exercisable upon issuance and will expire five years from the date of issuance. The exercise price of the Warrants is subject to adjustment for stock splits, reverse splits, and similar capital transactions as described in the Warrants. In connection with the Offering, we issued Warrants to purchase an aggregate of 3,157,895 shares of Common Stock.

Subject to certain ownership limitations described in the Prefunded Warrants, the Prefunded Warrants are immediately exercisable and may be exercised at a nominal consideration of \$0.0001 per share of our common stock any time until all of the Prefunded Warrants are exercised in full.

As compensation to Wainwright, as the exclusive placement agent in connection with the Offering, we paid Wainwright a cash fee of 7% of the aggregate gross proceeds raised in the Offering, plus a management fee equal to 0.5% of the gross proceeds raised in the Offering and reimbursement of certain expenses and legal fees. We also issued to designees of Wainwright warrants to purchase up to 189,474 shares of our common stock. The Placement Agent Warrants have substantially the same terms as the Warrants, except that the Placement Agent Warrants have an exercise price equal to \$2.375 per share, and expire on the fifth anniversary from the date of the commencement of sales in the Offering.

In connection with the Offering, we entered into a Securities Purchase Agreement with certain institutional investors on June 17, 2022.

The shares of our common stock and Warrants underlying the Units, the Warrants and Prefunded Warrants underlying the Prefunded Units and the Placement Agent Warrants described above and the underlying shares of our common stock were offered pursuant to the Registration Statement on Form S-1 (File No. 333-264930), as amended, which was declared effective by the SEC on June 17, 2022.

We received net proceeds of approximately \$5.1 million from the Offering, after deducting the estimated Offering expenses payable by us, including the Placement Agent fees. We intend to use the net proceeds from the Offering for general corporate purposes, including working capital, and the repurchase of certain existing warrants.

Private Placement

On July 27, 2022, we consummated a private placement pursuant to the terms and conditions of the Securities Purchase Agreement, dated July 25, 2022, by and among us and certain purchasers named on the signature pages thereto. At the closing of the Private Placement, we issued (i) 700,000 shares of common stock, (ii) pre-funded warrants to purchase an aggregate of 3,300,000 shares of common stock, (iii) Series A Preferred Investment Options to purchase an aggregate of 4,000,000 shares of common stock and (iv) Series B Preferred Investment Options to purchase an aggregate of 4,000,000 shares of common stock. The purchase price of each Share and associated Series A Preferred Investment Option and Series B Preferred Investment Option was \$5.00 and the purchase price of each Pre-Funded Warrant and associated and associated Series A Preferred Investment Option and Series B Preferred Investment Option was \$4.9999. The aggregate gross proceeds to us from the Private Placement were approximately \$20 million, before deducting placement agent fees and other offering expenses. Wainwright acted as the exclusive placement agent for the Private Placement.

The Pre-Funded Warrants have an exercise price of \$0.0001 per share of common stock, are exercisable on or after July 27, 2022, and are exercisable until the Pre-Funded Warrants are exercised in full. The Series A Preferred Investment Options are exercisable at any time on or after July 27, 2022 at an exercise price of \$5.00 per share of common stock, subject to certain adjustments, including with respect to stock dividends, splits, subsequent rights offerings, pro rata distributions and a Fundamental Transaction (as defined in the Series A Preferred Investment Options), and terminate on the third anniversary of such date. If, at any time at the time of exercise of the Series A Preferred Investment Options, there is no effective registration statement registering, or the prospectus contained therein is not available for the resale of the shares issuable pursuant to the exercise of Series A Preferred Investment Options, the Series A Preferred Investment Options may be exercised, in whole or in part, by means of a cashless exercise, in which the holder is entitled to receive a number of shares of common stock to be determined by a formula contained in the Preferred Investment Options. No fractional shares or scrip representing fractional shares may be issued upon the exercise of the Preferred Investment Options.

The Series B Preferred Investment Options are exercisable at any time on or after July 27, 2022 at an exercise price of \$5.00 per share of common stock (the "Series B Preferred Investment Option Shares" and together with the Prefunded Warrant Shares and the Series A Preferred Option Shares, the "Warrant Shares"), subject to certain adjustments, including with respect to stock dividends, splits, subsequent rights offerings, pro rata distributions and a Fundamental Transaction (as defined in the Series B Preferred Investment Options), and terminate on the second anniversary of such date. Other than the exercise period, the terms of the Series B Preferred Investment Options are identical to the terms of the Series A Preferred Investment Options.

In connection with the Private Placement, we entered into a Registration Rights Agreement with the Purchasers, dated July 25, 2022 (the "Registration Rights Agreement"). The Registration Rights Agreement provides that we shall file a registration statement covering the resale of all of the Registrable Securities (as defined in the Registration Rights Agreement) with the SEC no later than the 10th calendar day following the date of the Registration Rights Agreement, or August 4, 2022, and have the registration statement declared effective by the SEC as promptly as possible after the filing thereof, but in any event no later than the 45th calendar day following the date of the Registration Rights Agreement, or in the event of a "full review" by the SEC, the 75th day following the date of the Registration Rights Agreement.

Upon the occurrence of any Event (as defined in the Registration Rights Agreement), which, among others, prohibits the Purchasers from reselling the Securities for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days during any 12-month period, we are obligated to pay to each Purchaser, on each monthly anniversary of each such Event, an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of 2.0% multiplied by the aggregate subscription amount paid by such Purchaser pursuant to the Purchase Agreement.

Subject to certain exceptions, neither we nor any of its security holders (other than the Purchasers in such capacity pursuant thereto) may include our securities in any registration statement other than the Shares and the Warrant Shares. We may not file any other registration statements until all Shares and Warrant Shares are registered pursuant to a registration statement that is declared effective by the SEC, provided that we may file amendments to registration statements filed prior to the date of the Registration Rights Agreement so long as no new securities are registered on any such existing registration statements.

Wainwright served as the exclusive placement agent for the issuance and sale of the securities pursuant to the Purchase Agreement and is entitled to preferred investment options to purchase up to 240,000 shares of common stock. The Placement Agent Preferred Investment Options are in substantially the same form as the Series A Preferred Investment Options, except that the exercise price is \$6.25 per share.

November 2022 Private Placement

On November 17, 2022, we consummated a private placement pursuant to the terms and conditions of the Securities Purchase Agreement, dated November 15, 2022, by and among us and certain purchasers named on the signature pages thereto. At the closing of the November 2022 Private Placement, we issued (i) 982,466 shares of common

stock, (ii) pre-funded warrants to purchase an aggregate of 1,637,445 shares of common stock and (iii) Series C Preferred Investment Options to purchase 10,619,911 shares of common stock.

The purchase price of each November 2022 Share and associated Series C Preferred Investment was \$2.862692 and the purchase price of each Pre-Funded Warrant and associated Series C Preferred Investment Option was \$2.862592. The aggregate gross proceeds to us from the November 2022 Private Placement were approximately \$7,500,000, before deducting placement agent fees and other offering expenses. In connection with the offering, the investors in the private placement agreed to cancel preferred investment options to purchase up to an aggregate of 8,000,000 shares of our common stock which were previously issued to the investors in July 2022.

The November 2022 Pre-Funded Warrants have an exercise price of \$0.0001 per share of common stock, and are exercisable on or after the date of issuance until all of the November 2022 Pre-Funded Warrants are exercised in full. The Series C Preferred Investment Options are exercisable at any time on or after November 17, 2022 at an exercise price of \$2.356 per share of common stock, subject to certain adjustments, including with respect to stock dividends, splits, subsequent rights offerings, pro rata distributions and a Fundamental Transaction (as defined in the Series C Preferred Investment Options), and terminate on the third anniversary of such date. If, at any time at the time of exercise of the Series C Preferred Investment Options, there is no effective registration statement registering, or the prospectus contained therein is not available for the resale of the shares issuable pursuant to the exercise of Series C Preferred Investment Options, the Series C Preferred Investment Options may be exercised, in whole or in part, by means of a cashless exercise, in which the holder is entitled to receive a number of shares of common stock to be determined by a formula contained in the Preferred Investment Options. No fractional shares or scrip representing fractional shares may be issued upon the exercise of the Preferred Investment Options.

In connection with the Private Placement, we entered into a Registration Rights Agreement with the Purchasers, dated November 15, 2022 (the "November 2022 Registration Rights Agreement"). The November 2022 Registration Rights Agreement provides that we shall file a registration statement covering the resale of all of the Registrable Securities (as defined in the November 2022 Registration Rights Agreement) with the SEC no later than the 10th calendar day following the date of the November 2022 Registration Rights Agreement, or November 25, 2022, and have the registration statement declared effective by the SEC as promptly as possible after the filing thereof, but in any event no later than the 45th calendar day following the date of the November 2022 Registration Rights Agreement, or in the event of a "full review" by the SEC, the 75th day following the date of the November 2022 Registration Rights Agreement.

Upon the occurrence of any Event (as defined in the November 2022 Registration Rights Agreement), which, among others, prohibits the November 2022 Purchasers from reselling the securities for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days during any 12-month period, we are obligated to pay to each Purchaser, on each monthly anniversary of each such Event, an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of 2.0% multiplied by the aggregate subscription amount paid by such November 2022 Purchaser pursuant to the November 2022 Purchase Agreement.

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Subject to certain exceptions, neither us nor any of our security holders (other than the November 2022 Purchasers in such capacity pursuant thereto) may include our securities in any registration statement other than the November 2022 Shares and the November 2022 Warrant Shares. We may not file any other registration statements until all November 2022 Shares and November 2022 Warrant Shares are registered pursuant to a registration statement that is declared effective by the SEC, provided that we may file amendments to registration statements filed prior to the date of the Registration Rights Agreement so long as no new securities are registered on any such existing registration statements.

Wainwright served as the exclusive placement agent for the issuance and sale of the securities pursuant to the November 2022 Purchase Agreement and is entitled to preferred investment options to purchase up to 157,195 shares of common stock. The November 2022 Placement Agent Preferred Investment Options are in substantially the same form as the Series C Preferred Investment Options, except that the exercise price is approximately \$3.578365 per share.

In addition, upon any exercise for cash of any preferred investment options issued to investors in the offering, we shall pay Wainwright, within five (5) business days of our receipt of the exercise price, a cash fee of seven (7.0%) percent of the aggregate gross exercise price paid in cash with respect thereto and a management fee of 0.5% of the aggregate gross exercise price paid in cash with respect thereto.

Cash Flows

Net cash flows used in operating activities for the year ended December 31, 2022 was \$37,291,817, attributable to a net loss of \$39,295,273, offset by depreciation expense of \$4,162,153, bad debt expense of \$2,918,869, change in fair value of warrant liabilities of \$16,763,205, \$1,868,766 of warrant issuance costs, stock-based compensation expense of \$758,152, net increase in operating assets of \$4,214,714 and a net increase in liabilities of \$12,543,670. Net cash flows used in operating activities for the year ended December 31, 2021 was \$66,184,477, attributable to a net loss of \$37,525,898, offset by depreciation expense of \$1,839,069, stock-based compensation expense of \$245,548, amortization of capitalized contract costs of \$640,059, change in fair value of warrant liabilities of \$2,661,076 common stock issued for services of \$189,000 and net increase in operating assets of \$37,888,850, and net decrease in liabilities of \$7,889,450. We offered cash discounts to its customers and factors to accelerate payments of accounts receivable. In addition, we negotiated extended payment terms with its suppliers, vendors and related parties to conserve its cash.

Net cash used by investing activities for the year ended December 31, 2022 was \$5,049,768 for the purchase of property and equipment and the proceeds from the sale of property and equipment. There was net cash used by investing activities for the year ended December 31, 2021 of \$11,300,828, attributable to cash paid for purchase of property and equipment.

Net cash provided by financing activities for the year ended December 31, 2022 was \$37,433,598, primarily attributable to the net cash proceeds of \$32,981,948 and \$5,978,067 from the sales of common stock and warrants, and the exercise of warrants, respectively. Net cash provided by financing activities for the year ended December 31, 2021 was \$82,762,679 primarily attributable to net cash proceeds from the sales of common stock and warrants, offset by repayments of the factor loan payable

We recorded a net decrease in cash of \$4,907,987 for the year ended December 31, 2022.

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Material Cash Requirements from Known Contractual and Other Obligations

The following table summarizes our contractual obligations as of December 31, 2022 and as for the 12 months thereafter:

| | As of December 31, 2022 | For the fiscal year ended December 31, 2023 |
|--------------------------------|----------------------------|---|
| Contractual Obligations | | |
| Operating lease obligations | \$ 4,437,010 | \$ 959,630 |

| | | |
|--------------------------------------|---------------------|-------------------|
| Total Contractual Obligations | <u>\$ 4,437,010</u> | <u>\$ 959,630</u> |
|--------------------------------------|---------------------|-------------------|

We intend to fund our contractual obligations with working capital.

Significant Accounting Policies

See the footnotes to our audited financial statements for the year ended December 31, 2022, included with this annual report.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

We qualify as a smaller reporting company, as defined by SEC Rule 229.10(f)(1) and are not required to provide the information required by this Item.

Item 8. Financial Statements and Supplementary Data.

**TOUGHBUILT INDUSTRIES, INC.
CONSOLIDATED FINANCIAL STATEMENTS
FOR THE YEARS ENDED
DECEMBER 31, 2022 AND 2021
INDEX TO AUDITED CONSOLIDATED FINANCIAL STATEMENTS**

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Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of
ToughBuilt Industries, Inc.

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of ToughBuilt Industries, Inc. (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations, shareholders' equity, and cash flows for each of the two years in the period ended December 31, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

Explanatory Paragraph – Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As more fully described in Note 1, the Company has incurred significant losses and needs to raise additional funds to meet its obligations and sustain its operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Explanatory Paragraph – Change in Accounting Principle

As discussed in Note 2 to the consolidated financial statements, the Company changed its method of accounting for leases due the adoption of Financial Accounting Standards Board Accounting Standards ASC 2016-02, *Leases (Topic 842)*, effective January 1, 2022, using the modified retrospective approach.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2016.

Costa Mesa, California
March 31, 2023

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TOUGHBUILT INDUSTRIES, INC.

Consolidated Balance Sheets

| | <u>December 31, 2022</u> | <u>December 31, 2021</u> |
|--|--------------------------|--------------------------|
| Assets | | |
| Current Assets | | |
| Cash | \$ 2,564,237 | \$ 7,472,224 |
| Accounts receivable, net | 16,810,659 | 18,179,933 |
| Inventory | 40,365,286 | 38,432,012 |
| Prepaid and other current assets | 369,792 | 786,036 |
| Total Current Assets | 60,109,974 | 64,870,205 |
| Other Assets | | |
| Property and equipment, net | 17,500,383 | 13,341,629 |
| Right of use asset | 4,415,859 | - |
| Other assets | 1,890,780 | 742,691 |
| Total Assets | \$ 83,916,996 | \$ 78,954,525 |
| Liabilities and Shareholders' Equity | | |
| Current Liabilities | | |
| Accounts payable | \$ 29,671,272 | \$ 14,440,506 |
| Accrued expenses | 3,010,914 | 1,815,567 |
| Short term lease liability | 959,630 | - |
| Short term loan payable | 973,583 | - |
| Warrant and preferred investment option liabilities | 16,116,273 | 4,801,929 |
| Total Current Liabilities | 50,731,672 | 21,058,002 |
| Long term lease liability | 3,477,380 | - |
| Total Liabilities | 54,209,052 | 21,058,002 |
| Shareholders' Equity | | |
| Series C Preferred Stock, \$0.0001 par value, 4,268 authorized, 0 issued and outstanding at December 31, 2022 and December 31, 2021 | - | - |
| Series D Preferred Stock, \$1,000 par value, 5,775 shares authorized, issued, and outstanding at December 31, 2022 and December 31, 2021 | - | - |
| Series E Preferred Stock, \$0.0001 par value, 15 authorized, 9 and 0 issued and outstanding at December 31, 2022 and December 31, 2021, respectively | - | - |
| Series F Preferred Stock, \$0.0001 par value, 2,500 authorized, issued and outstanding at December 31, 2022, 0 authorized, issued and outstanding at December 31, 2021 | - | - |
| Series G Preferred Stock, \$0.0001 par value, 2,500 authorized, issued and outstanding at December 31, 2022, 0 authorized, issued and outstanding at December 31, 2021 | - | - |
| Common stock, \$0.0001 par value, 200,000,000 shares authorized, 14,078,997 and 861,997 shares issued and outstanding at December 31, 2022 and December 31, 2021, respectively | 1,408 | 86 |
| Additional paid-in capital | 174,659,589 | 156,184,327 |
| Accumulated deficit | (144,953,053) | (98,287,890) |
| Total Shareholders' Equity | 29,707,944 | 57,896,523 |
| Total Liabilities and Shareholders' Equity | \$ 83,916,996 | \$ 78,954,525 |

The accompanying notes are an integral part of these consolidated financial statements.

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TOUGHBUILT INDUSTRIES, INC.

Consolidated Statements of Operations

| | <u>For The Years Ended December 31,</u> | |
|-----------------------------|---|---------------|
| | <u>2022</u> | <u>2021</u> |
| Revenues, net of allowances | | |
| Metal goods | \$ 51,160,571 | \$ 26,835,410 |

| | | |
|--|------------------------|------------------------|
| Soft goods | 38,301,113 | 40,030,219 |
| Electronic goods | 5,792,083 | 3,160,695 |
| Total revenues, net of allowances | <u>95,253,767</u> | <u>70,026,324</u> |
| Cost of Goods Sold | | |
| Metal goods | 40,434,106 | 22,606,173 |
| Soft goods | 24,413,884 | 27,302,847 |
| Electronic goods | 5,194,514 | 1,003,493 |
| Total cost of goods sold | <u>70,042,504</u> | <u>50,912,513</u> |
| Gross profit | <u>25,211,263</u> | <u>19,113,811</u> |
| Operating expenses: | | |
| Selling, general and administrative expenses | 66,189,907 | 51,434,180 |
| Research and development | 11,296,948 | 6,980,453 |
| Total operating expenses | <u>77,486,855</u> | <u>58,414,633</u> |
| Loss from operations | <u>(52,275,592)</u> | <u>(39,300,822)</u> |
| Other income (expense) | | |
| Interest expense | (1,914,120) | (297,931) |
| Change in fair value of warrant liabilities | 16,763,205 | 2,661,076 |
| Warrant issuance cost | (1,868,766) | (588,221) |
| Total other income (expense) | <u>12,980,319</u> | <u>1,774,924</u> |
| Net loss | <u>\$ (39,295,273)</u> | <u>\$ (37,525,898)</u> |
| Common stock deemed dividend | (7,467,200) | - |
| Net loss attributable to common stockholders | <u>\$ (46,762,473)</u> | <u>\$ (37,525,898)</u> |
| Basic and diluted net loss per share attributed to common stockholders | <u>\$ (7.09)</u> | <u>\$ (56.08)</u> |
| Weighted Average Number of Shares Outstanding - Basic and Diluted | <u>6,591,356</u> | <u>669,125</u> |

The accompanying notes are an integral part of these consolidated financial statements.

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TOUGHBUILT INDUSTRIES, INC.

Consolidated Statements of Shareholders' Equity

| | Series C Preferred Stock | | Series D Preferred Stock | | Series E Preferred Stock | | Series F Preferred Stock | | Series G Preferred Stock | | Common Stock | | Additional Paid-in Capital | Accumulated Deficit | Total Stockholders' Equity |
|--|-----------------------------|--------|-----------------------------|--------|-----------------------------|--------|-----------------------------|--------|-----------------------------|--------|--------------|--------|-------------------------------|------------------------|----------------------------------|
| | Shares | Amount | Shares | Amount | | | |
| Balance - January 1, 2021 | - | \$ - | - | \$ - | - | - | - | - | - | - | 292,792 | \$ 29 | \$ 80,108,016 | \$ (60,761,992) | \$ 19,346,053 |
| Issuance of common stock upon conversion of warrants | - | - | - | - | - | - | - | - | - | - | 36,084 | 4 | 5,412,536 | - | 5,412,540 |
| Issuance of common stock for services | - | - | - | - | - | - | - | - | - | - | 1,000 | - | 189,000 | - | 189,000 |
| Issuance of common stock and warrants, net of issuance costs | - | - | - | - | - | - | - | - | - | - | 532,121 | 53 | 70,229,227 | - | 70,229,280 |
| Issuance of Series E Preferred Stock in connection with Exchange transaction | - | - | - | - | 9 | - | - | - | - | - | - | - | - | - | - |
| Stock based compensation expense | - | - | - | - | - | - | - | - | - | - | - | - | 245,548 | - | 245,548 |
| Net loss | - | - | - | - | - | - | - | - | - | - | - | - | - | (37,525,898) | (37,525,898) |
| Balance - December 31, 2021 | - | \$ - | - | \$ - | 9 | - | - | - | - | - | 861,997 | 86 | 156,184,327 | (98,287,890) | 57,896,523 |
| Issuance of common stock and warrants, net of issuance costs | - | - | - | - | - | - | - | - | - | - | 10,459,572 | 1,046 | 9,153,376 | - | 9,154,422 |
| Issuance of preferred stock | - | - | - | - | - | - | 2,500 | - | 2,500 | - | - | - | 1,833,995 | - | 1,833,995 |
| Issuance of common stock upon exercise of warrants | - | - | - | - | - | - | - | - | - | - | 1,603,684 | 160 | 9,229,854 | - | 9,230,014 |

| | | | | | | | | | | | | | | | |
|-------------------------------------|---|---|---|---|---|---|-------|---|-------|-----------|------------|-------------|--------------|---------------|------------|
| Cashless warrants exercised | - | - | - | - | - | - | - | - | - | 1,153,744 | 115 | (115) | - | - | |
| Repurchase of common stock warrants | - | - | - | - | - | - | - | - | - | - | - | (2,500,000) | - | (2,500,000) | |
| Adoption of lease guidance | - | - | - | - | - | - | - | - | - | - | - | - | 97,310 | 97,310 | |
| Stock based compensation expense | - | - | - | - | - | - | - | - | - | - | - | 758,152 | - | 758,152 | |
| Net loss | - | - | - | - | - | - | - | - | - | - | - | - | (46,762,473) | (46,762,473) | |
| Balance - December 31, 2022 | - | - | - | - | 9 | - | 2,500 | - | 2,500 | - | 14,078,997 | 1,408 | 174,659,589 | (144,953,053) | 29,707,944 |

The accompanying notes are an integral part of these consolidated financial statements.

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TOUGHBUILT INDUSTRIES, INC.

Consolidated Statements of Cash Flows

| | For The Year Ended December 31, | |
|---|--|---------------------|
| | 2022 | 2021 |
| Cash flows from operating activities: | | |
| Net loss | \$ (39,295,273) | \$ (37,525,898) |
| Adjustments to reconcile from net loss to net cash used in operating activities: | | |
| Depreciation | 4,162,153 | 1,839,069 |
| Provision for doubtful accounts | 2,918,869 | - |
| Stock-based compensation expense | 758,152 | 245,548 |
| Loss on sale of property and equipment | 15,806 | - |
| Amortization of capitalized contract costs | - | 640,059 |
| Amortization or right of use | 713,958 | - |
| Common stock issued for services | - | 189,000 |
| Change in fair value of warrant derivative | (16,763,205) | (2,661,076) |
| Loss on exchange transaction | - | - |
| Warrant issuance costs | 1,868,766 | 588,221 |
| Changes in operating assets and liabilities | | |
| Accounts receivable, net | (1,549,595) | (7,642,538) |
| Factor receivables, net | - | 807,648 |
| Inventory | (1,933,274) | (29,516,668) |
| Prepaid assets | 416,244 | (422,323) |
| Other assets | (1,148,089) | (614,969) |
| Accounts payable | 11,943,821 | 6,672,358 |
| Accrued expenses | 1,302,897 | 1,217,092 |
| Lease liability | (703,047) | - |
| Net cash used in operating activities | (37,291,817) | (66,184,477) |
| Cash flows from investing activities: | | |
| Proceeds from sale of equipment | 50,000 | - |
| Purchases of property and equipment | (5,099,768) | (11,300,828) |
| Net cash provided by (used in) investing activities | (5,049,768) | (11,300,828) |
| Cash flows from financing activities: | | |
| Proceeds from exercise of warrants | 5,978,067 | 5,412,540 |
| Proceeds from issuance of stock, net of costs | 32,981,948 | 77,941,089 |
| Repurchase of common stock warrants | (2,500,000) | - |
| Proceeds from loan payable | 1,669,000 | - |
| Repayments of loan payable | (695,417) | - |
| Repayments of factor loan payable | - | (590,950) |
| Repayments of Series D Preferred Stock | - | - |
| Net cash provided by financing activities | 37,433,598 | 82,762,679 |
| Net (decrease) increase in cash | (4,907,987) | 5,277,374 |
| Cash, beginning of period | 7,472,224 | 2,194,850 |
| Cash, end of period | <u>\$ 2,564,237</u> | <u>\$ 7,472,224</u> |
| Supplemental disclosure of cash flow information: | | |
| Cash paid during the period for: | | |
| Interest | \$ - | \$ - |
| Income taxes | \$ - | \$ - |
| Supplemental disclosure of non-cash investing and financing activities: | | |
| Purchase of property and equipment included in accounts payable | \$ 3,424,416 | \$ 812,949 |
| Initial value of lease liability | \$ 5,140,057 | \$ - |
| Initial fair value of warrants | \$ 37,687,895 | \$ 7,463,005 |

The accompanying notes are an integral part of these consolidated financial statements.

TOUGHBUILT INDUSTRIES, INC.
Notes to Consolidated Financial Statements
December 31, 2022 and 2021

NOTE 1: NATURE OF OPERATIONS

Nature of Operations

In these notes, the terms “us”, “we”, “it”, “its”, “ToughBuilt”, the “Company” or “our” refer to ToughBuilt Industries, Inc. ToughBuilt was incorporated under the laws of the State of Nevada on April 9, 2012 under the name Phalanx, Inc., and on December 29, 2015, Phalanx, Inc. changed its name to ToughBuilt Industries, Inc.

The Company designs and distributes innovative and superior quality tools and accessories to the home improvement community and the building industry. The Company aspires to augment brand loyalty in part from the enlightened creativity of its end users throughout the global tool market industry. The Company holds exclusive licenses to develop, manufacture, market, and distribute various home improvement and construction product lines for both Do-it-Yourself and professional trade markets under the TOUGHBUILT® brand name.

TOUGHBUILT® distributes products in the following categories, all designed and engineered in the United States and manufactured by third party vendors in China:

- tool belts, tool bags and other personal tool organizer products;
- complete line of knee pads for various construction applications; and
- jobsite tools and material support products consisting of a full line of miter-saws and table saw stands, saw horses/job site tables and roller stands.

On April 15, 2020, the Company effected a 1-for-10 reverse stock split (the “Reverse Split”) of its issued and outstanding common stock. As a result of the Reverse Split, each ten shares of issued and outstanding prior to the Reverse Split were converted into one share of common stock, with fractional shares resulting from the Reverse Split rounded up to the nearest whole number.

On April 25, 2022, the Company effected a 1-for-150 reverse stock split (the “2022 Reverse Split”) of its issued and outstanding common stock. As a result of the 2022 Reverse Split, each one hundred fifty shares of issued and outstanding prior to the 2022 Reverse Split were converted into one share of common stock. All share and per share numbers in the unaudited condensed consolidated financial statements and notes below have been revised retroactively to reflect the Reverse Split and the 2022 Reverse Split.

Risk and Uncertainty Concerning COVID-19

In March 2020, the World Health Organization declared the outbreak of a novel coronavirus (COVID-19) as a pandemic which continues to spread throughout the United States and the world. We are currently monitoring the outbreak of COVID-19 and the related business and travel restrictions and changes to behavior intended to reduce its spread. All our Chinese facilities were temporarily closed for a period. Most of these facilities have been reopened. Depending on the progression of the outbreak, our ability to obtain necessary supplies and ship finished products to customers may be partly or completely disrupted globally. Also, our ability to maintain appropriate labor levels could be disrupted. If the coronavirus continues to progress, it could have a material negative impact on our results of operations and cash flow, in addition to the impact on its employees. Toughbuilt Industries, Inc., needs to develop new strategies, new practices, different methods and tools to succeed in this process. In order to get out of this process with damages, the Company needs to create a roadmap and act in line with its own strategy. At the end of this process, it is expected that digital business models and automation will no longer be among the targets of industrial organizations, but among their obligations. We have concluded that while it is reasonably possible that the virus could have a negative impact on the results of operations, the specific impact is not readily determinable as of the date of these consolidated financial statements. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Going Concern

The Company has incurred substantial operating losses since its inception. As reflected in the consolidated financial statements, the Company had an accumulated deficit of approximately \$145 million at December 31, 2022, a net loss of approximately \$9.3 million, and approximately \$37.3 million of net cash used in operating activities for the year ended December 31, 2022. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of this uncertainty. The Company anticipates incurring additional losses until such time, if ever, that it can obtain marketing approval to sell, and then generate significant sales, of its technology that is currently in development. As such it is likely that additional financing will be needed by the Company to fund its operations and to develop and commercialize its technology. These factors raise substantial doubt about the Company’s ability to continue as a going concern for the next twelve months from issuance of this Annual Report on Form 10-K. The Company will seek to obtain additional capital through the sale of debt or equity financings or other arrangements to fund operations; however, there can be no assurance that the Company will be able to raise needed capital under acceptable terms, if at all. The sale of additional equity may dilute existing stockholders and newly issued shares may contain senior rights and preferences compared to currently outstanding shares of common stock. Issued debt securities may contain covenants and limit the Company’s ability to pay dividends or make other distributions to stockholders. If the Company is unable to obtain such additional financing, future operations would need to be scaled back or discontinued.

Basis of Presentation and Preparation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) and applicable rules and regulations of the United States Securities and Exchange Commission (“SEC”). The consolidated financial statements and accompanying notes are the representations of the Company’s management, who is responsible for their integrity and objectivity. In the opinion of the Company’s management, the consolidated financial statements reflect all adjustments, which are normal and recurring in nature, necessary for fair financial statement presentation.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiary, Toughbuilt Industries UK Limited. All intercompany balances and transactions are eliminated. Any foreign currency translation and transactions are de minimis to the consolidated financial statements.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. The Company regularly evaluates estimates and assumptions related recognition of revenue, valuation of accounts receivable, valuation of long-lived assets, going concern assumptions, warrant valuation, inventory reserve, and deferred income tax asset valuation allowances. The Company bases its estimates and assumptions on current facts, historical experience and various other factors that it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities and the accrual of costs and expenses that are not readily apparent from other sources. The actual results experienced by the Company may differ materially and adversely from the Company's estimates. To the extent there are material differences between the estimates and the actual results, future results of operations will be affected.

Cash and Cash Equivalents

The Company considers all highly liquid instruments with maturity of three months or less at the time of issuance to be cash equivalents. The Company did not have any cash equivalents at December 31, 2022 and 2021.

Accounts Receivable

Accounts receivable represent income earned from the sale of tools and accessories for which the Company has not yet received payment. Accounts receivable are recorded at the invoiced amount and adjusted for amounts management expects to collect from balances outstanding at period-end. The Company estimates the allowance for doubtful accounts based on an analysis of specific accounts and an assessment of the customer's ability to pay, among other factors. At December 31, 2022, an allowance for doubtful accounts of \$2,918,869 was recorded. As of December 31, 2021, no allowance for doubtful accounts was recorded.

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The Company also has an agreement with a third party to be able to receive advance payments for certain accounts receivables, for a specified fee. Under this agreement, the respective customer will repay the third party within a predetermined term. Receivables transferred under this agreement generally meet the requirements to be accounted for as sales in accordance with Accounting Standards Codification ("ASC") 860, "*Transfers and Servicing*." ASC 860 requires that several conditions be met in order to present the transfer of accounts receivable as a sale. The Company has isolated the transferred (sold) assets and has the legal right to transfer its assets (accounts receivable). In addition, control has effectively been transferred.

Inventory

Inventory is valued at the lower of cost or net realizable value using the first-in, first-out method. The reported net value of inventory includes finished salable products that will be sold or used in future periods. The Company reserves for obsolete and slow-moving inventory. At December 31, 2022 and 2021, there were no reserves for obsolete and slow-moving inventory.

Property and Equipment

Property and equipment are recorded at cost, less accumulated depreciation. The Company provides for depreciation on a straight-line basis over the estimated useful lives of the assets which are as follows: furniture 5 years, computers 3 years, production equipment 5 years, auto 5 years, tooling and molds 3 years, application development 3 years and website design in progress 4 years. Leasehold improvements are amortized over the shorter of the lease term or the estimated useful life of the related assets when they are placed into service. The Company evaluates property and equipment for impairment periodically to determine if changes in circumstances or the occurrence of events suggest the carrying value of the asset or asset group may not be recoverable. Maintenance and repairs are charged to operations as incurred. Expenditures which substantially increase the useful lives of the related assets are capitalized.

Long-lived Assets

In accordance with ASC 360, "*Property, Plant, and Equipment*", the Company tests long-lived assets or asset groups for recoverability when events or changes in circumstances indicate that their carrying amount may not be recoverable. Circumstances which could trigger a review include, but are not limited to: significant decreases in the market price of the asset; significant adverse changes in the business climate or legal factors; accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of the asset; current period cash flow or operating losses combined with a history of losses or a forecast of continuing losses associated with the use of the asset; and current expectation that the asset will more likely than not be sold or disposed of significantly before the end of its estimated useful life. Recoverability is assessed based on the carrying amount of the asset compared to the estimated future undiscounted cash flows expected to result from the use and the eventual disposal of the asset, as well as specific appraisal in certain instances. An impairment loss equal to the excess of the carrying value over the assets fair market value is recognized when the carrying amount exceeds the undiscounted cash flows. The impairment loss is recorded as an expense and a direct write-down of the asset. No impairment loss was recorded during the years ended December 31, 2022 and 2021.

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Common stock purchase warrants

The Company accounts for the common stock purchase warrants in accordance with the guidance contained in ASC 815-40, under which the Warrants do not meet the criteria for equity treatment and must be recorded as liabilities. Accordingly, the Company classifies the Warrants as liabilities at their fair value and adjusts the Warrants to fair value in respect of each reporting period. This liability is subject to re-measurement at each balance sheet date until the Warrants are exercised, and any change in fair value is recognized in the statements of operations.

Fair Value of Financial Instruments and Fair Value Measurements

The Company adheres to ASC 820 "*Fair Value Measurement*", which defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. ASC 820 applies to reported balances that are required or permitted to be measured at fair value under existing accounting pronouncements; accordingly, the standard does not require any new fair value measurements of reported balances.

ASC 820 emphasizes that fair value is a market-based measurement, not an entity-specific measurement. Therefore, a fair value measurement should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, ASC 820 establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

- Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access.
- Level 2 inputs are inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs may include quoted prices for similar assets and liabilities in active markets, as well as inputs that are observable for the asset or liability (other than quoted prices), such as interest rates, foreign exchange rates, and yield curves that are observable at commonly quoted intervals.
- Level 3 inputs are unobservable inputs for the asset or liability, which is typically based on an entity's own assumptions, as there is little, if any, related market activity.

In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on the lowest level input that is significant to the fair value measurement in its entirety. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

There were no transfers in our out of Level 3 financial instruments during the years ending December 31, 2022 or 2021.

The fair value of the Company's warrant liability recorded in the Company's consolidated financial statements was determined using a Black-Scholes valuation methodology and the quoted price of the Company's common stock in an active market, a Level 3 measurement. Volatility was based on the actual market activity of the Company for the period in which the Company was public and its peer group for the remaining period. The expected life was based on the remaining contractual term of the warrants, and the risk-free interest rate was based on the implied yield available on U.S. Treasury Securities with a maturity equivalent to the warrants' expected life.

The Company calculated the estimated fair value of warrants on the date of issuance and at each subsequent reporting date using the following assumptions:

| | For the Year Ended December 31, 2022 | For the Year Ended December 31, 2021 |
|-------------------------|---|---|
| Risk-free interest rate | 4.06% - 4.32% | 0.80% - 1.19% |
| Contractual term | 1.75 - 4.75 years | 4.54 - 5 years |
| Dividend yield | 0% | 0% |
| Expected volatility | 88%-99.5% | 56.27%- 88.3% |

Warrant and preferred investment option liability

From time to time, the Company sells common stock warrants that are derivative instruments. The Company does not enter into speculative derivative agreements and does not enter into derivative agreements for the purpose of hedging risks.

The fair value of the warrant liability includes the estimated volatility and risk-free rate. The higher/lower the estimated volatility, the higher/lower the value of the debt conversion feature liability. The higher/lower the risk-free interest rate, the higher/lower the value of the debt conversion feature liability.

The table below provides a reconciliation of the beginning and ending balances for the warrant and preferred investment option liability which is measured at fair value using significant unobservable inputs (Level 3):

| | |
|---|----------------------|
| Balance, January 1, 2021 | \$ - |
| Fair value of warrant liability at issuance | 7,463,005 |
| Change in the fair value of warrant liability | (2,661,076) |
| Balance, December 31, 2021 | <u>\$ 4,801,929</u> |
| Balance, January 1, 2022 | \$ 4,801,929 |
| Fair value of warrant and preferred investment option liability at issuance | 37,687,895 |
| Fair value of warrant and preferred investment option liability upon exercise | (9,610,346) |
| Change in the fair value of warrant and preferred investment option liability | (16,763,205) |
| Balance, December 31, 2022 | <u>\$ 16,116,273</u> |

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Revenue Recognition

The Company recognizes revenues when product is delivered to the customer, and the ownership is transferred. The Company's revenue recognition policy is based on the revenue recognition criteria established under the Financial Accounting Standards Board ("FASB") – Accounting Standards Codification 606 "Revenue From Contracts With Customers" which has established a five-step process to govern contract revenue and satisfy each element is as follows: (1) identify the contract(s) with a customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations in the contract; and (5) recognize revenue when or as you satisfy a performance obligation. The Company records the revenue once all the above steps are completed. See Note 10 for further information on revenue recognition.

Advertising

Advertising costs are expensed as incurred. Advertising expense totaled \$4,680,366 and \$9,626,374 for the years ending December 31, 2022 and 2021, respectively.

Patents

Legal fees and similar costs incurred relating to patents are capitalized and are amortized over their estimated useful life once determined. Such costs amounted to \$1,459,232 and \$615,439 as of December 31, 2022 and 2021, respectively, and are included in other assets on the accompanying consolidated balance sheet. Amortization is expected to commence during 2023.

Research and development

Expenditures for research activities relating to patents and product development are charged to expense as incurred. Such expenditures amounted to \$1,296,948 and \$6,980,453 for the years ending December 31, 2022 and 2021, respectively.

Income Taxes

The Company accounts for income taxes following the asset and liability method in accordance with ASC 740 “Income Taxes.” Under such method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the consolidated financial statement carrying amounts of existing assets and liabilities and their respective tax bases. The Company applies the accounting guidance issued to address the accounting for uncertain tax positions. This guidance clarifies the accounting for income taxes, by prescribing a minimum recognition threshold a tax position is required to meet before being recognized in the consolidated financial statements as well as provides guidance on derecognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure and transition. The Company classifies interest and penalty expense related to uncertain tax positions as a component of income tax expense. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years that the asset is expected to be recovered or the liability settled. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized. The ultimate realization of deferred tax assets depends on the generation of future taxable income during the period in which related temporary differences become deductible. The Company considers the scheduled reversal of deferred tax liabilities, projected future taxable income and tax planning strategies in its assessment of a valuation allowance.

During 2020, the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) was passed, which temporarily removed 80% limitations on net operating loss carryforwards for the years 2019 and 2020.

The Company adopted FASB ASU 2019-12, “Income Taxes (Topic 740): Simplifying the Accounting of Income Taxes,” as of January 1, 2021. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. The adoption of this guidance did not have a material impact on its consolidated financial statements.

Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with ASC 718-10, “Share-Based Payment,” which requires the measurement and recognition of compensation expense for all share-based payment awards made to employees and directors including employee stock options, restricted stock units, and employee stock purchases based on estimated fair values. In addition, as of January 1, 2020, the Company adopted Accounting Standards Update (“ASU”) 2018-07, *Compensation – Stock Compensation (Topic 718), Improvements to Non-employee Share-Based Payment Accounting*. This ASU simplified aspects of share-based compensation issued to non-employees by making the guidance consistent with accounting for employee share-based compensation. The adoption of this guidance did not have a material impact on the consolidated financial statements.

The Company estimates the fair value of stock options granted using the Black-Scholes option-pricing formula. This fair value is then amortized on a straight-line basis over the requisite service periods of the awards, which is generally the vesting period. The Company’s determination of fair value using an option-pricing model is affected by the stock price as well as assumptions regarding the number of highly subjective variables.

The Company estimates volatility based upon the historical stock price of the comparable companies and estimates the expected term for employee stock options using the simplified method for employees and directors and the contractual term. The risk-free rate is determined based upon the prevailing rate of United States Treasury securities with similar maturities.

The Company recognizes forfeitures as they occur rather than applying a prospective forfeiture rate in advance.

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Loss Per Share

The Company computes net loss per share in accordance with ASC 260, “Earnings per Share”. ASC 260 requires presentation of both basic and diluted net earnings per share (“EPS”) on the face of the statement of operations. Basic EPS is computed by dividing loss available to common shareholders (numerator) by the weighted average number of shares outstanding (denominator) during the period. Diluted EPS gives effect to all dilutive potential common shares outstanding during the period using the treasury stock method and convertible preferred stock using the if-converted method. In computing diluted EPS, the average stock price for the period is used in determining the number of shares assumed to be purchased from the exercise of warrants, options, and restricted stock units. Diluted EPS excludes all dilutive potential shares if their effect is anti-dilutive.

Potentially dilutive securities that are not included in the calculation of diluted net loss per share because their effect is anti-dilutive are as follows (in common equivalent shares):

| | Year Ended | |
|---|-------------------|-------------------|
| | December 31, 2022 | December 31, 2021 |
| Warrants and preferred investment options | 11,624,579 | 281,832 |
| Options and restricted stock units | 1,351,271 | 1,354 |
| Total anti-dilutive weighted average shares | 12,975,850 | 283,186 |

Segment Reporting

The Company operates one reportable segment referred to as the tools segment. A single management team that reports to the Chief Executive Officer comprehensively manages the business. Accordingly, the Company does not have separately reportable segments.

Recent Accounting Pronouncements

As an emerging growth company, the Company has elected to use the extended transition period for complying with any new or revised financial accounting standards pursuant to Section 13(a) of the Securities Exchange Act of 1934, as amended.

In February 2016, the FASB issued ASU 2016-02, “Leases (Topic 842).” The objective of this update is to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. This ASU is effective for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022, and is to be applied utilizing a modified retrospective approach. The Company adopted this guidance as of January 1, 2022, and it did not have a material impact on the Company’s stockholders’ equity balance as of January 1, 2022. Due to this adoption of this guidance, the Company now recorded a right-of-use asset and lease liability on its consolidated balance sheet. As a result of the adoption of the new lease accounting guidance, the Company recognized on January 1, 2022 (a) a lease liability of \$1,044,828, which represents the present value of the remaining lease payments of existing leases, discounted using the Company’s incremental borrowing rate of 4%, and (b) a right-of-use asset of \$1,034,588, which represents the initial lease liability.

In August 2020, the FASB issued “ASU 2020-06, Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40)” (“ASU 2020-06”) which simplifies the accounting for convertible instruments. The guidance removes certain accounting models which separate the embedded conversion features from the host contract for convertible instruments. Either a modified retrospective method of transition or a fully retrospective method of

transition was permissible for the adoption of this standard. Update No. 2020-06 is effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. The Company has adopted ASU 2020-06 as of January 1, 2022, and as a result no longer is required to analyze embedded conversion features for separation from its host contract in convertible instruments.

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NOTE 3: FACTOR RECEIVABLES, LETTERS OF CREDIT PAYABLE AND LOAN PAYABLE

In April 2013, the Company entered into a financing arrangement with a third-party purchase order financing company (the "Factor"), whereby the Company assigned to the Factor selected sales orders from its customers in exchange for opening a letter of credit ("LC") with its vendors to manufacture its products. The Company paid an initial fixed fee of 5% of the cost of products it purchased from the vendor upon opening the LC, and 1% each 30 days thereafter, after the LC is funded by the Factor until such time as the Factor receives the payment from the Company's customers. The factoring agreement provides for full recourse against the Company for factored accounts receivable that are not collected by the Factor for any reason, and the collection of such accounts receivable is fully secured by substantially all of the receivables of the Company. As of March 2021, the Company no longer factors its receivables.

NOTE 4: INVENTORY

Inventory consists of the following:

| Description | December 31, 2022 | December 31, 2021 |
|----------------|-------------------|-------------------|
| Finished goods | \$ 40,365,286 | \$ 38,432,012 |

NOTE 5: PROPERTY AND EQUIPMENT, NET

Property and equipment consist of the following:

| | December 31, 2022 | December 31, 2021 |
|--------------------------------|----------------------|----------------------|
| Furniture | \$ 2,252,686 | \$ 1,066,219 |
| Computers | 1,384,542 | 1,038,154 |
| Production equipment | 245,713 | 245,713 |
| Tooling and molds | 8,737,114 | 6,390,962 |
| Auto | 412,509 | 635,542 |
| Application development | 4,258,916 | 2,398,919 |
| Website design | 1,399,029 | 814,733 |
| Steelbox | 882,000 | 882,000 |
| Leasehold Improvements | 5,058,790 | 2,862,079 |
| Less: accumulated depreciation | (7,130,916) | (2,992,692) |
| Property and Equipment, net | <u>\$ 17,500,383</u> | <u>\$ 13,341,629</u> |

Depreciation expense for the years ended December 31, 2022 and 2021, was \$1,162,153 and \$1,839,069, respectively.

NOTE 6 – COMMITMENTS AND CONTINGENCIES

Leases

On January 3, 2017, the Company executed a non-cancellable operating lease for its principal office with the lease commencing February 1, 2017 for a five(5) year term. The Company paid a security deposit of \$29,297. The lease required the Company to pay its proportionate share of direct costs estimated to be 22.54% of the total property, a fixed monthly direct cost of \$6,201 for each month during the term of the lease, and monthly rental pursuant to the lease terms. This lease expired during February 2022.

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The Company entered a lease for office space at 8669 Research Drive, in Irvine, CA, which is to replace the current corporate headquarters. The lease commenced on December 1, 2019 with no rent due until April 1, 2020. From April 1, 2020 through March 31, 2025, base rent will be due on the first of each month in the amount of \$25,200 escalating annually on December 1 of each year to \$29,480 beginning December 1, 2023. The Company paid an initial amount of \$68,128 comprising the rent for April 2020, a security deposit and the amount due for property taxes, insurance and association fees.

In addition, the Company entered into two leases for additional space, in Irvine, CA. The leases commenced March 1, 2022 and June 1, 2022. Base rent is initially \$16,250 and \$48,379 with escalations contained in the lease through February 28, 2027 and May 31, 2027.

Supplemental balance sheet information related to leases is as follows as of December 31, 2022:

| | |
|--|---------------------|
| Operating leases | |
| Right-of-use assets, net | \$ 4,415,859 |
| Current liabilities | 959,630 |
| Non-current liabilities | 3,477,380 |
| Total operating lease liabilities | <u>\$ 4,437,010</u> |
| Weighted Average Remaining Lease Term | 4.01 years |
| Weighted Average Discount Rate | 4% |

As the leases do not provide an implicit rate, the Company used an incremental borrowing rate based on the information available at the lease commencement date in determining the present value of the lease payments, which is reflective of the specific term of the leases and economic environment of each geographic region.

Anticipated future lease costs are as follows:

| For the years ending December 31, | Building leases |
|--------------------------------------|---------------------|
| 2023 | \$ 959,630 |
| 2024 | 1,271,436 |
| 2025 | 1,077,415 |
| 2026 | 1,013,237 |
| 2027 | 370,172 |
| Total lease payments | 4,691,890 |
| Less: imputed interest | (254,880) |
| Present value of lease liabilities | <u>\$ 4,437,010</u> |

The Company recorded rent expense of \$1,120,081 and \$650,605 for the year ended December 31, 2022 and 2021, respectively.

Employment Agreements with Officers

Michael Panosian Employment Agreement

We entered into the Employment Agreement dated as of December 29, 2022 with Michael Panosian (the “Panosian Employment Agreement”). The Panosian Employment Agreement provides that Mr. Panosian will serve as our Chief Executive Officer, President, and Chair of the Board for a term beginning on December 29, 2022 and ending on December 29, 2025 (the “Initial Term”), with automatic one (1) year extensions unless notice not to renew is given by either party at least 90 days prior to the relevant end date.

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Pursuant to the Panosian Employment Agreement, Mr. Panosian will be entitled to: (i) an annual base salary of \$650,000, which may be increased annually at the sole discretion of the Board; (ii) a potential annual target bonus of up to \$350,000 payable in cash, which may be granted in the discretion of, and in an amount determined by the Compensation Committee and approved by the Board; (iii) a grant of 540,000 incentive stock options, pursuant to the 2022 Plan and also be eligible to receive annual long-term incentive awards from time to time under the 2022 Plan; (iv) participate in the Company’s health insurance plan offered to its employees; (v) participate in the Company’s 401(k) Plan; and (vi) reimbursement for all reasonable business expenses, including a \$1,000 monthly automobile allowance. Any incentive-based compensation or award that Mr. Panosian receives will be subject to clawback by the Company as may be required by applicable law or, if applicable, any stock exchange listing requirement and on such basis as we determine.

In the event we terminate Mr. Panosian without “Cause” (as defined below) at any time with 90 days prior written notice, or Mr. Panosian resigns for “Good Reason” (as defined below), Mr. Panosian will be entitled to the following, provided that he executes a general waiver and release of claims: (i) an amount equal to 1.5 times the average of his base salary if terminated during the Initial Term, or an amount equal to 1 times the average of his then base salary; (ii) monthly payments for up to 12 months (and 18 months, if terminated during the Initial Term) of COBRA premiums for continued group health, dental and vision coverage; and (iii) the immediate vesting of all long-term incentive awards, that utilize time-based vesting.

In the event of Mr. Panosian’s termination by us with Cause or Mr. Panosian’s resignation without “Good Reason, Mr. Panosian will be only be entitled to accrued and unpaid compensation and wages accrued prior to such date.

If, within one year following a Change of Control of the Company, Mr. Panosian’s employment is terminated involuntarily by us other than for Cause, death, or disability or by Mr. Panosian pursuant to a voluntary termination for Good Reason, and Mr. Panosian executes and does not revoke a general release of claims against us and our affiliates in a form acceptable to us, then we shall, in addition to any other earned but unpaid base salary and vacation pay due through the date of such termination, provide Mr. Panosian (i) an amount equal to two times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 18 months of COBRA premiums for continued group health, dental and vision coverage.

The Panosian Employment Agreement contains restrictive covenants prohibiting Mr. Panosian from disclosing our confidential information at any time, and has executed a Proprietary Information, Inventions Assignment and Non-Disclosure Agreement.

Martin Galstyan Employment Agreement

We entered into the Employment Agreement dated as of December 29, 2022 with Martin Galstyan (the “Galstyan Employment Agreement”). The Galstyan Employment Agreement provides that Mr. Galstyan will serve as our Chief Financial Officer for a term beginning on December 29, 2022 and ending on December 29, 2025, with automatic one (1) year extensions unless notice not to renew is given by either party at least 90 days prior to the relevant end date.

Pursuant to the Galstyan Employment Agreement, Mr. Galstyan will be entitled to: (i) an annual base salary of \$300,000, which may be increased annually at the sole discretion of the Board; (ii) a potential annual target bonus of up to \$150,000 payable in cash, which may be granted in the discretion of, and in an amount determined by the Compensation Committee and approved by the Board; (iii) a grant of 112,500 incentive stock options, pursuant to the 2022 Plan, and also be eligible to receive annual long-term incentive awards from time to time under the 2022 Plan; (iv) participate in the Company’s health insurance plan offered to its employees; (v) participate in the Company’s 401(k) Plan; and (vi) reimbursement for all reasonable business expenses, including a \$500 monthly automobile allowance. Any incentive-based compensation or award that Mr. Galstyan receives will be subject to clawback by the Company as may be required by applicable law or, if applicable, any stock exchange listing requirement and on such basis as we determine.

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In the event we terminate Mr. Galstyan without “Cause” (as defined below), or Mr. Galstyan resigns for “Good Reason” (as defined below), Mr. Galstyan will be entitled to the following, provided that he executes a general waiver and release of claim and does not revoke the release: (i) an amount equal to 6 months of his then base salary; (ii) monthly payments for up to 6 months of COBRA premiums for continued group health, dental and vision coverage, unless Mr. Galstyan starts receiving coverage under his subsequent employment; and (iii) continuation of his vesting schedule per the 2022 Plan, with three months for exercise of any vested option(s). If Mr. Galstyan’s employment is terminated by us following a Change of Control of the Company, Mr. Galstyan will be entitled to: (i) an amount equal to 1 times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 12 months of COBRA premiums for continued group health, dental and vision coverage.

In the event of Mr. Galstyan’s termination with Cause or Mr. Galstyan’s resignation without Good Reason, Mr. Galstyan shall be only be entitled to accrued and unpaid compensation and wages accrued prior to such date.

If, within one year following a Change of Control of the Company, Mr. Galstyan's employment is terminated involuntarily by us other than for Cause, death, or disability or by Mr. Galstyan pursuant to a voluntary termination for Good Reason, and Mr. Galstyan executes and does not revoke a general release of claims against us and our affiliates in a form acceptable to us, then we shall, in addition to any other earned but unpaid base salary and vacation pay due through the date of such termination, provide Mr. Galstyan (i) an amount equal to two times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 12 months of COBRA premiums for continued group health, dental and vision coverage.

The Galstyan Employment Agreement contains restrictive covenants prohibiting Mr. Galstyan from disclosing our confidential information at any time, and has executed a Proprietary Information, Inventions Assignment and Non-Disclosure Agreement.

Joshua Keeler Employment Agreement

We entered into the Employment Agreement dated as of December 29, 2022 with Joshua Keeler (the "Keeler Employment Agreement"). The Keeler Employment Agreement provides that Mr. Keeler will serve as our Chief Design Officer for a term beginning on December 29, 2022 and ending on December 29, 2025, with automatic one (1) year extensions unless notice not to renew is given by either party at least 90 days prior to the relevant end date.

Pursuant to the Keeler Employment Agreement, Mr. Keeler will be entitled to: (i) an annual base salary of \$475,000, which may be increased annually at the sole discretion of the Board; (ii) a potential annual target bonus of up to \$150,000 payable in cash, which may be granted in the discretion of, and in an amount determined by the Compensation Committee and approved by the Board; (iii) a grant of 360,000 incentive stock options, pursuant to the 2022 Plan, and also be eligible to receive annual long-term incentive awards from time to time under the 2022 Plan; (iv) participate in the Company's health insurance plan offered to its employees; (v) participate in the Company's 401(k) Plan; and (vi) reimbursement for all reasonable business expenses, including a \$750 monthly automobile allowance. Any incentive-based compensation or award that Mr. Keeler receives will be subject to clawback by the Company as may be required by applicable law or, if applicable, any stock exchange listing requirement and on such basis as we determine.

In the event we terminate Mr. Keeler without "Cause" (as defined below) with 90 days prior written notice, or Mr. Keeler resigns for "Good Reason" (as defined below), Mr. Keeler will be entitled to the following, provided that he executes a general waiver and release of claims: (i) an amount equal to 1.5 times the average of his base salary if terminated during the Initial Term, or an amount equal to 1 times the average of his then base salary; (ii) monthly payments for up to 12 months (and 18 months, if terminated during the Initial Term) of COBRA premiums for continued group health, dental and vision coverage; and (iii) the immediate vesting of all incentive awards, that utilize time-based vesting. If Mr. Keeler's employment is terminated by us following a Change of Control of the Company, Mr. Keeler will be entitled to: (i) an amount equal to 2 times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 18 months of COBRA premiums for continued group health, dental and vision coverage.

In the event of Mr. Keeler's termination by us with Cause or Mr. Keeler's resignation without Good Reason, Mr. Keeler shall be only be entitled to accrued and unpaid compensation and wages accrued prior to such date.

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If, within one year following a Change of Control, Mr. Keeler's employment is terminated involuntarily by us other than for Cause, death, or disability or by Mr. Keeler pursuant to a voluntary termination for Good Reason, and Mr. Keeler executes and does not revoke a general release of claims against us and our affiliates in a form acceptable to us, then we shall, in addition to any other earned but unpaid base salary and vacation pay due through the date of such termination, provide Mr. Keeler (i) an amount equal to two times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 18 months of COBRA premiums for continued group health, dental and vision coverage.

The Keeler Employment Agreement contains restrictive covenants prohibiting Mr. Keeler from disclosing our confidential information at any time, and has executed a Proprietary Information, Inventions Assignment and Non-Disclosure Agreement.

Zareh Khachatoorian Employment Agreement

We entered into the Employment Agreement dated as of December 29, 2022 with Zareh Khachatoorian (the "Khachatoorian Employment Agreement" and, together with the Panosian Employment Agreement, the Galstyan Employment Agreement and the Khachatoorian Employment Agreement, the "Employment Agreements"). The Khachatoorian Employment Agreement provides that Mr. Khachatoorian will serve as our Chief Operating Officer and Secretary for a term beginning on December 29, 2022 and ending on December 29, 2025, with automatic one (1) year extensions unless notice not to renew is given by either party at least 90 days prior to the relevant end date.

Pursuant to the Khachatoorian Employment Agreement, Mr. Khachatoorian will be entitled to: (i) an annual base salary of \$300,000, which may be increased annually at the sole discretion of the Board; (ii) a potential annual target bonus of up to \$150,000 payable in cash, which may be granted in the discretion of, and in an amount determined by the Compensation Committee and approved by the Board; (iii) a grant of 112,500 incentive stock options, pursuant to the 2022 Plan, and also be eligible to receive annual long-term incentive awards from time to time under the 2022 Plan; (iv) participate in the Company's health insurance plan offered to its employees; (v) participate in the Company's 401(k) Plan; and (vi) reimbursement for all reasonable business expenses, including a \$500 monthly automobile allowance. Any incentive-based compensation or award that Mr. Khachatoorian receives will be subject to clawback by the Company as may be required by applicable law or, if applicable, any stock exchange listing requirement and on such basis as we determine.

In the event we terminate Mr. Khachatoorian without Cause, or Mr. Khachatoorian resigns for Good Reason (each as defined in the Khachatoorian Employment Agreement), Mr. Khachatoorian will be entitled to the following, provided that he executes a general waiver and release of claim and does not revoke the release: (i) an amount equal to 6 months of his then base salary; (ii) monthly payments for up to 6 months of COBRA premiums for continued group health, dental and vision coverage, unless Mr. Khachatoorian starts receiving coverage under his subsequent employment; and (iii) continuation of his vesting schedule per the 2022 Plan, with three months for exercise of any vested option(s). If Mr. Khachatoorian's employment is terminated by us following a Change of Control of the Company, Mr. Khachatoorian will be entitled to: (i) an amount equal to 1 times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 12 months of COBRA premiums for continued group health, dental and vision coverage.

In the event of Mr. Khachatoorian's termination with Cause or Mr. Khachatoorian's resignation without Good Cause, Mr. Khachatoorian shall be only be entitled to accrued and unpaid compensation and wages accrued prior to such date.

If, within one year following a Change of Control of the Company, Mr. Khachatoorian's employment is terminated involuntarily by us other than for Cause, death, or disability or by Mr. Khachatoorian pursuant to a voluntary termination for Good Reason, and Mr. Khachatoorian executes and does not revoke a general release of claims against us and our affiliates in a form acceptable to us, then we shall, in addition to any other earned but unpaid base salary and vacation pay due through the date of such termination, provide the Mr. Khachatoorian (i) an amount equal to two times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 12 months of COBRA premiums for continued group health, dental and vision coverage.

The Khachatoorian Employment Agreement contains restrictive covenants prohibiting Mr. Khachatoorian from disclosing our confidential information at any time, and has

Litigation Costs and Contingencies

From time to time, the Company may become involved in various lawsuits and legal proceedings, which arise in the ordinary course of business. Litigation is subject to inherent uncertainties, and an adverse result in these or other matters may arise from time to time that may harm our business. Other than as set forth below, management is currently not aware of any such legal proceedings or claims that could have, individually or in the aggregate, a material adverse effect on our business, financial condition, or operating results.

In the normal course of business, the Company incurs costs to hire and retain external legal counsel to advise it on regulatory, litigation and other matters. The Company expenses these costs as the related services are received. If a loss is considered and the amount can be reasonably estimated, the Company recognizes an expense for the estimated loss.

On August 16, 2016, a plaintiff filed a complaint against Defendants ToughBuilt Industries, Inc. (the “Company”) and Michael Panosian in the Superior Court of California, County of Los Angeles, Case No. EC065533. The complaint alleges breach of oral contracts to pay the plaintiff for consulting and finder’s fees and to hire him as an employee. The complaint further alleged claims of fraud and misrepresentation relating to an alleged payment in exchange for stock in the Company. The complaint seeks unspecified monetary damages, declaratory relief, stock in the Company, and other relief according to proof.

On April 12, 2018, the Court entered judgments of default against the Company and Mr. Panosian in the amounts of \$7,080 and \$235,542, plus awarding the plaintiff a 7% ownership interest in the Company (the “Judgments”). The plaintiff served notice of entry of the judgments on April 17, 2018 and the Company and Mr. Panosian received notice of the entry of the default judgments on April 19, 2018.

The Company and Panosian satisfied the judgments on September 14, 2018 by payment of \$252,949 to the plaintiff and by issuing the plaintiff 2,509 shares of common stock of the Company. On October 18, 2018, the Company and Panosian filed a Notice of Appeal from the Order denying their motion for relief from the above-referenced default judgment.

On October 1, 2019, the Second Appellate District of the California Court of Appeal issued its opinion reversing the trial court’s order denying ToughBuilt’s motion for relief from the default judgment and directing the trial court to grant ToughBuilt’s motion for relief, including allowing Toughbuilt to file an Answer and contest the plaintiff’s claims.

The plaintiff was seeking damages and stock based on a breach of an alleged oral agreement. This case concluded in April 2022. The plaintiff was awarded \$160,000 which was offset by a prior judgment against the plaintiff.

On October 7, 2022, one of our stockholders (the “2022 Plaintiff”), filed a shareholder derivative action against us, Michael Panosian, Joshua Keeler, Zareh Khachatoorian, Martin Galstyan, et. al. (collectively, the “2022 Defendants”) in the Eighth Judicial District Court of Nevada, Case No. A-22-859580-B. In the complaint, the 2022 Plaintiff alleged a breach of the applicable 2022 Defendants’ fiduciary duties of loyalty, good faith, and due care owed to us and our shareholders, by negligently, willfully, recklessly and/or intentionally failing to perform their fiduciary duties primarily in connection with our registered direct offering of 2,500 shares of Series F preferred stock and 2,500 shares of Series G preferred stock in February 2022 and subsequent 1-for-150 reverse stock split effected in April 2022. The 2022 Plaintiff claimed that the 2022 Plaintiff has suffered (i) monetary damages in excess of \$10,000, and (ii) attorney fees and costs, and is entitled to reimbursement. The 2022 Plaintiff asked for the following relief (i) issuance of a preliminary injunction enjoining us and the Board from continued of their fiduciary duties; (ii) damages incurred by the plaintiff; (iii) for an accounting of our books and records; (iv) equity relief; and (v) reimbursements of attorney and courts fees and other related costs. We believe that the claims put forth by the 2022 Plaintiff are without merit and we intend to vigorously defend ourself and the officers named in the complaint.

NOTE 7: SHORT-TERM LOAN PAYABLE

In July 2022, the Company entered into a short-term loan in the amount of \$1,669,000. The loan matures July 2023 and bears interest at 7.99%, with monthly payments of both interest and principal.

NOTE 8: STOCKHOLDERS’ EQUITY

At December 31, 2022 and December 31, 2021, the Company had 200,000,000 shares of common stock, and 4,268 shares of Series C preferred stock authorized, both with a par value of \$0.0001 per share. In addition, as of December 30, 2022 and December 31, 2021, the Company had 5,775 shares of Series D preferred stock, and as of December 31, 2022 the Company had 15 Series E Non-Convertible preferred stock authorized, with a par value of \$1,000 and \$0.0001 per share. In addition, as of December 31, 2022, the Company had 2,500 shares of Series F preferred stock and 2,500 shares of Series G preferred stock authorized, both with a par value of \$0.0001 per share.

Common Stock and Preferred Stock

At the Market (“ATM”) S-3 Offering

On January 19, 2021, the Company filed a prospectus supplement dated January 15, 2021 (the “ATM Prospectus Supplement”) to the shelf registration statement Form S-3 (File No. 333-251185) declared effective by the SEC on December 15, 2020 (the “First Form S-3”) for the offer and sale shares of common stock having an aggregate value of \$8,721,746 from time to time through H.C. Wainwright & Co., LLC, as sales agent (“Wainwright”), pursuant to the At The Market Offering Agreement, dated December 7, 2020 (the “ATM Agreement”), between the Company and Wainwright. In January 2021, the Company raised approximately \$ 16,200,000 through the sale of 99,748 shares of the Company’s common stock.

Second ATM S-3 Offering

On February 2, 2021, the Company filed a second registration statement on Form S-3 (File No. 333-252630) containing a base prospectus covering the offering, issuance and sale by us of up to \$100,000,000 of the Company’s common stock, preferred stock, warrants and units; and a sales agreement prospectus covering the offering, issuance and sale by us of up to a maximum aggregate offering price of \$100,000,000 (which amount was included in the aggregate offering price set forth in the base prospectus) of the Company’s common stock that may be issued and sold under a second At The Market Offering Agreement, dated February 1, 2021, we entered into with Wainwright, as sales agent. The Second Form S-3 was declared effective by the SEC on February 8, 2021.

From February 2021 to July 2021, the Company sold an aggregate of 125,508 shares of common stock through Wainwright under the Second S-3 with net proceeds of \$24,602,110, after deducting underwriting discounts and expense.

Series E Preferred Stock

On March 26, 2021, the Company filed with the Nevada Secretary of State a certificate of designation therein establishing the Series E Preferred Stock consisting of fifteen (15) shares, and the Company issued nine (9) shares of such preferred stock to an institutional investor pursuant to an exchange agreement, dated November 20, 2020, between the Company and the investor.

The Series E Preferred Stock have the following rights:

- Not entitled to dividends;
- Voting rights, as outlined in the Certificate of Designation;
- In the event of a voluntary or involuntary liquidation, dissolution, or winding up of the Company (collectively with a Deemed Liquidation, a “Liquidation”), the holders of Series E Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, before any payment shall be made to the holders of Junior Securities (as described in the Certification of Designation) by reason of their ownership thereof, an amount in cash equal to the aggregate Liquidation Value of all Series E Preferred Stock held by such holder, plus all unpaid accrued and accumulated dividends on all such Series E Preferred Stock (whether or not declared).

Registered Direct S-3 Offering

On July 11, 2021, the Company entered into a Securities Purchase Agreement, dated July 11, 2021, with several institutional and accredited investors pursuant to which the Company agreed to issue and sell in a registered direct offering an aggregate of 306,866 shares of common stock and warrants to purchase up to an aggregate of 53,433 shares of common stock at a combined offering price of \$130.35 per share and accompanying warrant, for gross proceeds of approximately \$40 million. The warrants have an exercise price equal to \$121.50 per share and are immediately exercisable until the fifth anniversary of the date of issuance. The net proceeds to the Company from the offering were \$36,259,050, after deducting placement agent fees and expenses payable by the Company. The offering closed on July 14, 2021.

Pursuant to an engagement letter, dated July 10, 2021 (the “Engagement Letter”), with Wainwright, as the placement agent, the Company agreed to pay the placement agent a cash fee equal to 7.0% of the gross proceeds received in the offering and a management fee equal to 0.5% of the gross proceeds received in the offering. The Company also agreed to pay the placement agent \$25,000 for non-accountable expenses, up to \$50,000 for fees and expenses of legal counsel and other reasonable and customary out-of-pocket expenses, and \$15,950 for clearing fees. Also pursuant to the Engagement Letter, the Company, in connection with the offering, issued to the placement agent or its designees warrants to purchase an aggregate of 18,412 shares of its common stock (which represents 6.0% of the shares sold to investors in the offering) at an exercise price equal to 125% of the offering price in the offering, or \$162.94 (the “Placement Agent Warrants”). The Placement Agent Warrants are immediately exercisable until the fifth anniversary of the commencement of sales of the offering.

The shares sold under the Securities Purchase Agreement, the issuance of the warrants and the Placement Agent Warrants, and the shares issuable pursuant to the Warrants and the Placement Agent Warrants were offered and sold by through a prospectus supplement included in the Company’s Second Form S-3 (as defined above).

Series F Preferred Stock and Series G Preferred Stock S-3 Offering

On February 15, 2022, the Company entered into a Securities Purchase Agreement with certain institutional investors named therein pursuant to which the Company issued, in a registered direct offering an aggregate of \$5,000,000 of Preferred Stock, split evenly among the 2,500 shares of Series F Convertible Preferred Stock, par value \$0.0001 per share (“Series F Preferred Stock”), and 2,500 shares of Series G Convertible Preferred Stock, par value \$0.0001 per share (“Series G Preferred Stock”). The Series F Preferred Stock and Series G Preferred Stock have a stated value of \$1,000 per share and are convertible into common stock at any time after the date of issuance. The conversion rate, subject to adjustment as set forth in the Certificate of Designation, is determined by dividing the \$1,000 stated value of the Series F Preferred Stock and Series G Preferred Stock by \$30 (the “Conversion Price”). The Conversion Price can be adjusted as set forth in the Certificate of Designation for stock dividends and stock splits or the occurrence of a fundamental transaction. The 2,500 shares of Series F Preferred Stock and 2,500 shares of Series G Preferred Stock are each convertible into 83,334 shares of common stock. The Series F Preferred Stock and Series G Preferred Stock and the underlying shares of common stock were offered pursuant to the Second Form S-3 (as defined above).

In a concurrent private placement, the Company also issued to such investors unregistered warrants to purchase up to an aggregate of 125,000 shares of the Company’s common stock, at an exercise price of \$37.65 per share. The warrants are exercisable from April 15, 2022 until the fifth anniversary of the initial exercise date.

As compensation to Wainwright in consideration for serving as the placement agent of the offering, the Company paid Wainwright a cash fee of 7% of the aggregate gross proceeds raised in the offering, plus a management fee equal to 0.5% of the gross proceeds raised in the offering and reimbursement of certain expenses and legal fees. The Company also issued to designees of Wainwright agent warrants to purchase up to 10,000 shares of common stock for \$7.50 per share from April 15, 2022 until February 15, 2027.

The Series F Preferred Stock and Series G Preferred Stock have the following rights:

- Entitled to dividends, on an as-if converted basis, equal to and in the same form as dividends actually paid on shares of common stock, when and if actually paid;
- No voting rights, except for rights outlined in the Certificate of Designation;
- Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary (a “Liquidation), the then holders of the Series F Preferred Stock and Series G Preferred Stock shall be entitled to receive out of the assets, whether capital or surplus, of the Company the same amount that a holder of common stock would receive if the Series F Preferred Stock and Series G Preferred Stock were fully converted (disregarding for such purposes any conversion limitations hereunder) to common stock which amounts shall be paid pari passu with all holders of common stock;
- The Series F Preferred Stock and Series G Preferred Stock is convertible into common stock at any time after the date of issuance. The conversion rate, subject to adjustment as set forth in the Certificate of Designation, is determined by dividing the stated value of the Series F Preferred Stock and Series G Preferred Stock by \$30 (the “Conversion Price”). The Conversion Price can be adjusted as set forth in the Certificate of Designation for stock dividends and stock splits or the occurrence of a fundamental transaction; and

The Series F Preferred Stock and Series G Preferred Stock can be converted at the option of the holder at any time and from time to time after the date of issuance.

The Company received net proceeds of approximately \$4,205,000 from the offering, after deducting the estimated offering expenses payable by the Company, including the placement agent fees. The total issuance costs amounted to \$795,000 and the Company also recognized an initial fair value of warrants in the amount of \$2,646,135. \$275,130 of such issuance costs have been determined to be in connection with the warrants and have been expensed during the nine months ended September 30, 2022. As of September 30, 2022, there were 2,500 shares of Series F Preferred Stock and 2,500 shares of Series G Preferred Stock issued and outstanding.

Unit and Prefunded Unit Registered S-1 Offering

On June 22, 2022, the Company completed a public offering (the “June 2022 Offering”) of (i) 772,157 units (“Units”), each Unit consisting of one share of common stock, par value \$0.0001 per share (“Common Stock”), and one warrant to purchase one share of Common Stock (each, a “June 2022 Warrant”) at a price of \$1.90 per Unit; and (ii) 2,385,738 prefunded units (“Prefunded Units”), each Prefunded Unit consisting of one prefunded warrant (a “Prefunded Warrant”) to purchase one share of Common Stock and one June 2022 Warrant, at a price of \$1.8999 per Prefunded Unit.

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Subject to certain ownership limitations described in the June 2022 Warrants, the June 2022 Warrants have an exercise price of \$1.90 per share of Common Stock, are exercisable upon issuance and will expire five years from the date of issuance. The exercise price of the Warrants is subject to adjustment for stock splits, reverse splits, and similar capital transactions as described in the June 2022 Warrants. In connection with the Offering, the Company issued June 2022 Warrants to purchase an aggregate of 3,157,895 shares of Common Stock.

Subject to certain ownership limitations described in the Prefunded Warrants, the Prefunded Warrants are immediately exercisable and may be exercised at a nominal consideration of \$0.0001 per share of Common Stock any time until all of the Prefunded Warrants are exercised in full.

A holder will not have the right to exercise any portion of the June 2022 Warrants or the Prefunded Warrants if the holder (together with its affiliates) would beneficially own in excess of 4.99% (or, at the election of the holder, 9.99%) of the number of shares of Common Stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the June 2022 Warrants or the Prefunded Warrants, respectively. However, upon notice from the holder to the Company, the holder may increase the beneficial ownership limitation, which may not exceed 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the June 2022 Warrants or the Prefunded Warrants, respectively, provided that any increase in the beneficial ownership limitation will not take effect until 61 days following notice to the Company.

As compensation to Wainwright, as the exclusive placement agent in connection with the Offering, the Company paid Wainwright a cash fee of 7% of the aggregate gross proceeds raised in the June 2022 Offering, plus a management fee equal to 0.5% of the gross proceeds raised in the Offering and reimbursement of certain expenses and legal fees. The Company also issued to designees of the Wainwright warrants to purchase up to 189,474 shares of Common Stock (the “Placement Agent Warrants”). The Placement Agent Warrants have substantially the same terms as the June 2022 Warrants, except that the Placement Agent Warrants have an exercise price equal to \$ 2.375 per share and expire on the fifth anniversary from the date of the commencement of sales in the June 2022 Offering.

In connection with the June 2022 Offering, the Company entered into a Securities Purchase Agreement (the “Purchase Agreement”) with certain institutional investors on June 17, 2022. The Purchase Agreement contained customary representations and warranties and agreements of the Company and the Purchasers and customary indemnification rights and obligations of the parties.

The shares of Common Stock and June 2022 Warrants underlying the Units, the June 2022 Warrants and Prefunded Warrants underlying the Prefunded Units and the Placement Agent Warrants described above and the underlying shares of Common Stock were offered pursuant to the Registration Statement on Form S-1 (File No. 333-264930), as amended, which was declared effective by the Securities and Exchange Commission on June 17, 2022.

The Company received net proceeds of approximately \$5,100,000 from the June 2022 Offering, after deducting the estimated June 2022 Offering expenses payable by the Company, including the Placement Agent fees, as well as including immediate exercises of June 2022 Warrants. The total issuance costs amounted to approximately \$881,000 and the Company also recognized an initial fair value of warrants in the amount of \$2,800,588. \$170,308 of such issuance costs have been determined to be in connection with the June 2022 and have been expensed during the nine months ended September 30, 2022. In addition, the Company incurred \$454,867 of equity related costs which have been netted with the net proceeds from the June 2022 Offering.

On July 27, 2022, the Company consummated the closing of a private placement (the “July 2022 Private Placement”), pursuant to the terms and conditions of the Securities Purchase Agreement, dated July 25, 2022 (the “July 2022 Purchase Agreement”), by and among the Company and certain purchasers named on the signature pages thereto (the “Purchasers”). At the closing of the July 2022 Private Placement, the Company issued (i) 700,000 shares of common stock (the “Shares”); (ii) pre-funded warrants (the “July 2022 Pre-Funded Warrants”) to purchase an aggregate of 3,300,000 shares of common stock, (iii) Series A Preferred Investment Options to purchase an aggregate of 4,000,000 shares of common stock (the “Series A Preferred Investment Options”); and (iv) Series B Preferred Investment Options to purchase an aggregate of 4,000,000 shares of common stock (the “Series B Preferred Investment Options”, and, collectively with the Shares, the Pre-Funded Warrants, and the Series A Preferred Investment Options, the “Securities”). The purchase price of each Share and associated Series A Preferred Investment Option and Series B Preferred Investment Option was \$5.00 and the purchase price of each Pre-Funded Warrant and associated Series A Preferred Investment Option and Series B Preferred Investment Option was \$4.9999.

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As compensation to Wainwright, as the exclusive placement agent in connection with the July 2022 Offering, the Company also issued to designees of the Wainwright preferred investment options to purchase up to 240,000 shares of common stock (“July 2022 Placement Options”). The July 2022 Placement Options have substantially the same terms as the Series A Preferred Investment Options, except that the July 2022 Placement Options have an exercise price equal to \$ 6.25 per share and expire on the third anniversary from the date of the commencement of sales in the July 2022 Offering.

The Company received net proceeds of approximately \$18,200,000 from the July 2022 Offering, after deducting the estimated July 2022 Offering expenses payable by the Company. The total issuance costs amounted to approximately \$1,800,150 and the Company also recognized an initial fair value of the Series A and B Preferred Investment Options in the amount of \$27,466,800. \$969,791 of such issuance costs have been determined to be in connection with the Series A and Series B Preferred Investment Options and have been expensed during the year ended December 31, 2022. The Company recognized common stock deemed dividends in the amount of \$7,467,200 which resulted from the excess initial fair value of the Series A and B Preferred Investment Options issued. In addition, the Company incurred \$454,867 of equity related costs which have been netted with the net proceeds from the July 2022 Offering.

On November 17, 2022, the Company consummated the closing of a private placement (the “November 2022 Private Placement”), pursuant to the terms and conditions of the Securities Purchase Agreement, dated November 15, 2022 (the “November 2022 Purchase Agreement”), by and among the Company and certain purchasers named on the signature pages thereto (the “Purchasers”). At the closing of the November 2022 Private Placement, the Company issued (i) 982,466 shares of common stock (the “Shares”);

(ii) pre-funded warrants (the “November 2022 Pre-Funded Warrants”) to purchase an aggregate of 1,637,445 shares of common stock, (iii) Series C Preferred Investment Options to purchase an aggregate of 10,619,911 shares of common stock (the “Series C Preferred Investment Options”) collectively with the Shares, the Pre-Funded Warrants, and the Series C Preferred Investment Options, the “Securities”). The purchase price of each Share and associated Series C Preferred Investment Option was \$2.862592 and the purchase price of each Pre-Funded Warrant and associated Series C Preferred Investment Option was \$2.862592.

In connection with the offering, the investors in the private placement agreed to cancel preferred investment options to purchase up to an aggregate of 8,000,000 shares of common stock of the Company which were previously issued to the investors in July 2022.

As compensation to Wainwright, as the exclusive placement agent in connection with the November 2022 Offering, the Company also issued to designees of the Wainwright preferred investment options to purchase up to 157,915 shares of common stock (“November 2022 Placement Options”). The November 2022 Placement Options have substantially the same terms as the Series C Preferred Investment Options, except that the November 2022 Placement Options have an exercise price equal to \$3.578365 per share and expire on the third anniversary from the date of the commencement of sales in the November 2022 Offering.

The Company received net proceeds of approximately \$6,400,000 from the November 2022 Offering, after deducting the estimated November 2022 Offering expenses payable by the Company. The total issuance costs amounted to approximately \$1,124,149 and the Company also recognized an initial fair value of the Series C Preferred Investment Options in the amount of \$4,589,108. \$453,537 of such issuance costs have been determined to be in connection with the Series C Preferred Investment Options and have been expensed during the year ended December 31, 2022.

Warrants

Placement Agent Warrants

The Company issued an aggregate of 165 warrants to the placement agents to purchase one share of its common stock per warrant at an exercise price of \$8,000 per share for 32 warrants and \$1,500 for 133 warrants. The warrants issued in its October 2016 Private Placement expired on October 17, 2021, and the warrants issued in its March 2018 Private Placement, May 2018 Private Placement and August 2018 Financing expire on September 4, 2023. The exercise price and number of shares of common stock or other securities issuable on exercise of such warrants are subject to customary adjustment in certain circumstances, including in the event of a stock dividend, recapitalization, reorganization, merger or consolidation of the Company.

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As of December 31, 2022 and 2021, 133 warrants issued to the placement agents at an exercise price of \$1,500 and 9 at an exercise price of \$18,000 are outstanding and are currently exercisable.

Class B Warrants

The holders of the Class B Warrants did not exercise any of their warrants during the year ended December 31, 2022. Class B Warrants have an exercise price of \$18,000 per share and shall expire between October 17, 2021 and May 15, 2023.

As of December 31, 2022 and 2021, the Company had 100 Class B Warrants issued and outstanding.

Series A Warrants and Series B Warrants

On January 24, 2019, the Company entered into an exchange agreement with two institutional investors pursuant to which these investors exercised Series A Warrants to purchase 283 shares of the Company’s common stock for total cash proceeds of \$2,172,680 to the Company, net of costs of \$159,958. The two investors also exchanged Series A Warrants to purchase 339 shares of its common stock into 339 shares of its common stock and received new warrants to purchase an aggregate of 6,220 shares of its common stock. These new warrants have terms substantially like the terms of the Company’s Series A Warrants, except that the per share exercise price of the new warrants is \$5,505, and the warrants are not exercisable until July 24, 2019, the six-month anniversary of the date of issuance. Each warrant expires on the fifth anniversary of the original issuance date.

As of December 31, 2022 and 2021, the Company had 3,460 Series A Warrants issued and outstanding.

2020 Offering Warrants

In the January 28, 2020 public offering, the Company sold 329,667 warrants (each exercisable into 1/20th of a share of common stock for a total of 16,483 shares of common stock). In the June 2, 2020 public offering, the Company sold 138,000 warrants (each exercisable into 1 share of common stock for a total of 138,000 shares of common stock). Each warrant expires on the fifth anniversary of the original issuance date. During the three months ended September 30, 2022, 0 warrants were converted to common stock.

As of December 31, 2022 and 2021, the Company had 102,450 2020 Offering Warrants issued and outstanding.

2021 Offering Warrants

In the July 11, 2021 offering, the Company sold 153,433 warrants (each exercisable into 1 share of common stock) at an exercise price equal to \$21.50 per share, and are immediately exercisable until the fifth anniversary of the date of issuance. In connection with the offering the Company issued to the Placement Agent or its designees warrants to purchase an aggregate of 18,412 shares of its common stock at an exercise price equal to 125% of the offering price in the offering, or \$162.94 (the “2021 Placement Agent Warrants”). The 2021 Placement Agent Warrants are immediately exercisable until the fifth anniversary of the commencement of sales of the offering.

As of December 31, 2022 and December 31, 2021, the Company had 153,433 and 18,412, 2021 Offering Warrants and 2021 Placement Agent Warrants issued and outstanding, respectively. The total fair value of such warrants amounted to \$19,751 and \$4,801,929 as of December 31, 2022 and December 31, 2021, respectively, and is included in warrant and preferred investment option liabilities on the accompanying condensed consolidated balance sheets.

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Exchange

On November 20, 2020, the Company and the investor entered into an exchange agreement and issued a warrant to purchase up to an aggregate of 8,833 shares of the Company’s common stock for \$150 per share which expires on August 20, 2024. As of December 31, 2021, such warrant was outstanding. In accordance with the underlying agreement, in connection with the Company’s offering of Series F Preferred Stock, Series G Preferred Stock and the warrants on February 15, 2022, the warrant was adjusted to purchase an aggregate of 76,667 shares of the Company’s common stock for \$0.05 per share. On June 8, 2022, the Company and the investor entered into a warrant

repurchase agreement to repurchase the warrant for \$2,500,000.

2022 Offering Warrants

On February 15, 2022, in connection with the Company's offer and sale of 2,500 shares of Series F Preferred Stock and 2,500 shares of Series G Preferred Stock, the Company sold 125,000 warrants (each exercisable into one share of common stock) at an exercise price equal to \$7.65 per share. The warrants are exercisable from July 15, 2022 until the fifth anniversary of the initial exercise date. In connection with the offering, the Company issued to the designees of Wainwright, for serving as the placement agent of the offering, warrants to purchase an aggregate of 10,000 shares of its common stock at an exercise price equal to \$7.50 (the "2022 Placement Agent Warrants"). The 2022 Placement Agent Warrants are exercisable from July 15, 2022 until February 15, 2027.

As of December 31, 2022, the Company had 125,000 and 10,000 2022 Offering Warrants and 2022 Placement Agent Warrants issued and outstanding, respectively. The total fair value of such warrants amounted to \$2,646,135 and \$81,775 as of the date of issuance and December 31, 2022, respectively, and is included in warrant and preferred investment option liabilities on the accompanying condensed consolidated balance sheets.

June 2022 Offering Warrants

In the June 2022 Offering, the Company sold 3,157,895 warrants (each exercisable into 1 share of common stock) at an exercise price equal to \$1.90 per share, and are immediately exercisable until the fifth anniversary of the date of issuance. In connection with the offering, the Company issued to the Placement Agent or its designees warrants to purchase an aggregate of 189,474 shares of its common stock at an exercise price equal to \$2.375 (the "June 2022 Placement Agent Warrants"). The June 2022 Placement Agent Warrants are immediately exercisable until the fifth anniversary of the commencement of sales of the offering. Immediately following the June 2022 Offering, 3,152,895 of the June 2022 Warrants were exercised.

As of December 31, 2022, the Company had 5,000 and 189,474, June 2022 Offering Warrants and June 2022 Placement Agent Warrants issued and outstanding, respectively. The total fair value of such warrants amounted to \$2,985,853 and \$333,605 as of the date of issuance and December 31, 2022, respectively, and is included in warrant and preferred investment option liabilities on the accompanying condensed consolidated balance sheets.

July 2022 Preferred Investment Options

In the July 2022 Offering, the Company sold Series A Preferred Investment Options to purchase an aggregate of 4,000,000 shares of common stock (the "Series A Preferred Investment Options"); and Series B Preferred Investment Options to purchase an aggregate of 4,000,000 shares of common stock (the "Series B Preferred Investment Options"). The Series A and B Preferred Investment Options have an exercise price equal to \$5, and immediately exercisable until the third and second anniversary, respectively, of the commencement of sales of the offering. In connection with the July 2022 Offering, the Company also issued to designees of the Wainwright preferred investment options to purchase up to 240,000 shares of common stock ("July 2022 Placement Options"). The July 2022 Placement Options have substantially the same terms as the Series A Preferred Investment Options, except that the July 2022 Placement Options have an exercise price equal to \$6.25 per share and expire on the third anniversary from the date of the commencement of sales in the July 2022 Offering.

In connection with the November 2022 Private Placement, the investors in the private placement agreed to cancel the Series A Preferred Investment Options and Series B Preferred Investment Options to purchase up to an aggregate of 8,000,000 shares of our common stock which were previously issued to the investors in July 2022. As of December 31, 2022, the Company had 240,000 July 2022 Options issued and outstanding, respectively. The total fair value of such securities amounted to \$27,466,800 and \$173,673 as of the date of issuance and December 31, 2022, respectively, and is included in warrant and preferred investment option liabilities on the accompanying condensed consolidated balance sheets.

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November 2022 Preferred Investment Options

In the November 2022 Offering, the Company sold Series C Preferred Investment Options to purchase an aggregate of 10,619,911 shares of common stock (the "Series C Preferred Investment Options"). The 10,619,911 Series C Preferred Investment Options includes the 8,000,000 of cancelled Series A and Series B Preferred Investment Options. The Series C Preferred Investment Options have an exercise price equal to \$2.356, and immediately exercisable until the third anniversary of the commencement of sales of the offering. In connection with the November 2022 Offering, the Company also issued to designees of the Wainwright preferred investment options to purchase up to 157,195 shares of common stock ("November 2022 Placement Options"). The November 2022 Placement Options have substantially the same terms as the Series C Preferred Investment Options, except that the November 2022 Placement Options have an exercise price equal to \$3.578365 per share and expire on the third anniversary from the date of the commencement of sales in the November 2022 Offering.

As of December 31, 2022, the Company had 10,619,911, Series C Preferred Investment Options and July 2022 Options issued and outstanding. The total fair value of such securities amounted to \$4,589,108 and \$15,507,651 as of the date of issuance and December 31, 2022, respectively, and is included in warrant and preferred investment option liabilities on the accompanying condensed consolidated balance sheets. The initial fair value of \$4,589,108 relates to the new 2,619,911 Series C Preferred Investments Options, and does not include the initial fair value of the original 8,000,000 Series A and Series B Preferred Investment Options.

Equity Incentive Plans

The 2016 Equity Incentive Plan

The 2016 Equity Incentive Plan (the "2016 Plan") was adopted by the Board and approved by the stockholders on July 6, 2016. The awards per the 2016 Plan may be granted through July 5, 2026 to the Company's employees, consultants, directors and non-employee directors provided such consultants, directors and non-employee directors render good faith services not in connection with the offer and sale of securities in a capital-raising transaction. As of December 31, 2021, the maximum number of shares of our common stock that may be issued under the 2016 Plan is 200,000 shares, which amount will be (a) reduced by awards granted under the 2016 Plan, and (b) increased to the extent that awards granted under the 2016 Plan are forfeited, expire or are settled for cash (except as otherwise provided in the 2016 Plan). No employee will be eligible to receive more than 12,500 shares of common stock in any calendar year under the 2016 Plan pursuant to the grant of awards.

On January 3, 2017, the Board approved and granted to the President/Chief Executive Officer of the Company, an option to purchase 12,500 shares of the Company's Common Stock ("Option") under the Company's 2016 Plan. The Option will have an exercise price that is no less than \$100.00 per share and will vest over four (4) years, with 25% of the total number of shares subject to the Option vesting on the one (1) year anniversary of the date of grant and, the remainder vesting in equal installments on the last day of each of the thirty-six (36) full calendar months thereafter. Vesting will depend on the Officer's continued service as an employee with the Company and will be subject to the terms and conditions of the 2016 Plan and the written Stock Option Agreement governing the Option. As of December 31, 2018, the Company estimated the fair value of the options using the Black-Scholes option pricing model was \$448,861. The Company recorded compensation expense of \$112,315 for the year ending December 31, 2020. The key valuation assumptions used consist, in part, of the price of the Company's common stock of \$3.060 at the issuance date; a risk-free interest rate of 1.72% and the expected volatility of the Company's common stock of 315.83% (estimated based on the common stock of comparable public entities). As of December 31, 2022, there was no unrecognized compensation expense.

The 2018 Equity Incentive Plan

Effective July 1, 2018, the Board of Directors and the stockholders of the Company approved and adopted the Company's 2018 Equity Incentive Plan (the "2018 Plan"). The 2018 Plan supplements, and does not replace, the existing 2016 Equity Incentive Plan. Awards may be granted under the 2018 Plan through September 30, 2023 to the Company's employees, officers, consultants, and non-employee directors. The maximum number of shares of our common stock that may be issued under the 2018 Plan is 625 shares, which amount will be (a) reduced by awards granted under the 2018 Plan, and (b) increased to the extent that awards granted under the 2018 Plan are forfeited, expire or are settled for cash (except as otherwise provided in the 2018 Plan).

On April 4, 2020, the Company granted 604 restricted stock units to two officers of the Company. These units have the following vesting term: 33% on January 1, 2021, 34% on January 1, 2022 and 33% on January 1, 2023. The fair value of these units as of the grant date was \$144,110 based on the closing price of the Company's stock.

As of December 31, 2022, there was no unrecognized compensation expense.

The 2022 Equity Incentive Plan

Effective September 21, 2022, the Board of Directors and the stockholders of the Company approved and adopted the Company's 2022 Equity Incentive Plan (the "2022 Plan"). The 2022 Plan supplements, and does not replace, the existing 2016 or 2018 Equity Incentive Plan. Awards may be granted under the 2022 Plan through 2032 to the Company's employees, officers, consultants, and non-employee directors. The maximum number of shares of our common stock that may be issued under the 2022 Plan is 1,350,000 shares, which amount will be (a) reduced by awards granted under the 2022 Plan, and (b) increased to the extent that awards granted under the 2022 Plan are forfeited, expire or are settled for cash (except as otherwise provided in the 2022 Plan).

On December 28, 2022, the Company granted 1,350,000 stock options to management and employees of the Company. 900,000 of such stock options have the following vesting term: 50% vest upon the grant date, and the remaining vest in equal installments on the last day of each of the following thirty-six months. The remaining stock options have the following vesting term: in equal installments on the last day of each of the following thirty-six months. The fair value of these units as of the grant date was \$2,003,130 based on the closing price of the Company's stock. As of December 31, 2022, there was \$1,297,382 of unrecognized compensation expense.

The Company recorded compensation expense of \$758,151 and \$245,548, for the years ending December 31, 2022 and 2020, respectively.

NOTE 9: INCOME TAX

Income tax expense for the years ended December 31, 2022 and 2021 is summarized as follows.

| | <u>December 31, 2022</u> | <u>December 31, 2021</u> |
|-------------------------------|--------------------------|--------------------------|
| Deferred: | | |
| Federal | \$ (11,457,628) | \$ (8,581,566) |
| State | (3,810,261) | (2,853,820) |
| Change in valuation allowance | 15,267,889 | 11,435,386 |
| Income tax expense (benefit) | <u>\$ -</u> | <u>\$ -</u> |

The following is a reconciliation of the provision for income taxes at the U.S. federal income tax rate to the income taxes reflected in the Statement of Operations:

| | <u>December 31, 2022</u> | <u>December 31, 2021</u> |
|--|--------------------------|--------------------------|
| Book income (loss) | 21.00% | 21.00% |
| State taxes | 6.98 | 6.98% |
| Change in the fair value of warrant derivative | 11.80% | 2.02% |
| Other permanent items | 2.49% | 1.47% |
| Valuation allowance | (42.2)% | (31.51)% |
| Tax expense at actual rate | <u>-</u> | <u>-</u> |

The tax effects of temporary differences that gave rise to significant portions of deferred tax assets and liabilities at December 31, 2022 and 2021 are as follows:

| | <u>December 31, 2022</u> | <u>December 31, 2021</u> |
|---------------------------------|--------------------------|--------------------------|
| Deferred tax assets: | | |
| Net operating loss carryforward | \$ 37,803,576 | \$ 25,466,331 |
| Depreciation | (961,977) | (827,012) |
| Deferred rent | - | (8,267) |
| Research and development | 2,845,164 | - |
| Stock-based compensation | 669,382 | 457,224 |
| Total gross deferred tax assets | <u>40,356,145</u> | <u>25,088,276</u> |
| Less: valuation allowance | (40,356,145) | (25,088,276) |
| Net deferred tax assets | <u>\$ -</u> | <u>\$ -</u> |

Deferred income taxes are provided for the tax effects of transactions reported in the consolidated financial statements and consist of deferred taxes related primarily to differences between the bases of certain assets and liabilities for financial and tax reporting. The deferred taxes represent the future tax return consequences of those differences, which will either be deductible or taxable when the assets and liabilities are recovered or settled.

Section 382 of the Internal Revenue Code ("Section 382"), imposes limitations on a corporation's ability to utilize its Net Operating Losses ("NOLs"), if it experiences an "ownership change." In general terms, an ownership change may result from transactions increasing the ownership percentage of certain stockholders in the stock of the corporation by more than 50% over a three-year period. In the event of an ownership change, utilization of the NOLs would be subject to an annual limitation under Section 382 determined by multiplying the value of the Company's stock at the time of the ownership change by the applicable long-term tax-exempt rate. The Company has not completed a Section 382 study at this time; however, should a study be completed certain NOLs may be subject to such limitations. Any future annual limitation may result in the expiration of NOLs before utilization.

As of December 31, 2022, the Company had approximately \$132,900,000 of federal net operating loss (“NOL”) carryforwards that may be available to offset future taxable income. As of that date, approximately \$10,800,000 of federal net operating losses will expire in various amounts between 2035 and 2037. The remaining federal NOL have no expiration. The Company also had approximately \$132,900,000 of state NOLs that begin to expire in 2035. The Company has recorded a 100% valuation allowance on the deferred tax assets due to the uncertainty of its realization. The net change in the valuation allowance for the years ended December 31, 2022 and 2021 was an increase of \$15,267,889 and \$11,435,386, respectively.

In the ordinary course of business, the Company’s income tax returns are subject to examination by various taxing authorities. Such examinations may result in future tax and interest assessment by these taxing authorities. Accordingly, the Company believes that it is more likely than not that it will realize the benefits of tax positions it has taken in its tax returns or for the amount of any tax benefit that exceeds the cumulative probability threshold in accordance with FASB ASC 740. Differences between the estimated and actual amounts determined upon ultimate resolution, individually or in the aggregate, are not expected to have a material adverse effect on the Company’s financial position. The Company believes its tax positions are all highly certain of being upheld upon examination. As such, the Company has not recorded a liability for unrecognized tax benefits. The Company is no longer subject to the U.S. federal and state income tax examination to the extent the net operating losses are carried forward and impact a year that is open to examination by the authorities. The Company’s income tax returns for the years 2017-2019 are subject to examination.

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NOTE 10: REVENUE RECOGNITION AND RESERVE FOR SALES RETURNS AND ALLOWANCES

The Company’s contracts with customers only include one performance obligation (i.e., sale of the Company’s products). Revenue is recognized in the gross amount at a point in time when delivery is completed and control of the promised goods is transferred to the customers. Revenue is measured as the amount of consideration the Company expects to be entitled to in exchange for those goods. The Company’s contracts do not involve financing elements as payment terms with customers are less than one year. Further, because revenue is recognized at the point in time goods are sold to customers, there are no contract asset or contract liability balances. The Company does not disclose remaining performance obligations related to contracts with durations of one year or less as allowed by the practical expedient applicable to such contracts.

The Company disaggregates its revenues by major geographic region. See Note 11, Concentrations, Geographic Data, and Sales by Major Customers, for further information.

The Company accounts for fees paid to Amazon for products sold through its Amazon Stores as operating expense.

The Company offers various discounts, pricing concessions, and other allowances to customers, all of which are considered in determining the transaction price. Certain discounts and allowances are fixed and determinable at the time of sale and are recorded at the time of sale as a reduction to revenue. Other discounts and allowances can vary and are determined at management’s discretion (variable consideration). Specifically, the Company occasionally grants discretionary credits to facilitate markdowns and sales of slow-moving merchandise, and consequently accrues an allowance based on historic credits and management estimates. Further, the Company allows sales returns, consequently records a sales return allowance based upon historic return amounts and management estimates. These allowances (variable consideration) are estimated using the expected value method and are recorded at the time of sale as a reduction to revenue. The Company adjusts its estimate of variable consideration at least quarterly or when facts and circumstances used in the estimation process may change. The variable consideration is not constrained as the Company has sufficient history on the related estimates and does not believe there is a risk of significant revenue reversal.

The Company also participates in cooperative advertising arrangements with some customers, whereby it allows a discount from invoiced product amounts in exchange for customer purchased advertising that features the Company’s products. Generally, these allowances range from 2% to 5% of gross sales and are generally based upon product purchases or specific advertising campaigns. Such allowances are accrued when the related revenue is recognized. These cooperative advertising arrangements provide a distinct benefit and fair value, and are accounted for as direct selling expenses.

Sales commissions are expensed when incurred as the related revenue is recognized at a point in time and therefore, the amortization period is less than one year. As a result, these costs are recorded as direct selling expenses, as incurred.

The Company has also elected to adopt the practical expedient related to shipping and handling fees which allows the Company to account for shipping and handling activities that occur after control of the related good transfers as fulfillment activities instead of assessing such activities as performance obligations. Therefore, shipping and handling activities are considered part of the Company’s obligation to transfer the products and therefore are recorded as direct selling expenses, as incurred.

During the year ended December 31, 2020, the Company incurred costs to obtain a contract. Such costs amounted to \$53,412. The Company expected to recover those costs through future revenue during the period of the contract. The Company was amortizing these costs over one year which was the stated term of the contract. The total amount was amortized as of December 31, 2021.

The Company’s reserve for sales returns and allowances amounted to \$13,000 as of December 31, 2022 and December 31, 2021.

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NOTE 11: CONCENTRATIONS, GEOGRAPHIC DATA, AND SALES BY MAJOR CUSTOMERS

Concentration of Customers

The Company sold its products to two customers that account for approximately 67% (53% and 14%) of the total revenues for the year ended December 31, 2022. The Company sold its products to two customers that accounted for approximately 53% (15% and 38%) of the total revenues for the years ended December 31, 2021. Two customers accounted for 56% and 45% of the total accounts receivable balance due to the Company at December 31, 2022 and 2021, respectively.

Concentration of Suppliers

The Company purchased products from three vendors for the year ended December 31, 2022 that accounted for approximately 35% (13%, 12% and 11%) of its total cost of goods sold.

The Company purchased products from two vendors for the year ended December 31, 2021 that accounted for approximately 51% (32% and 19%) of its total cost of goods sold.

Concentration of Credit Risk

The Company maintains its cash in bank and financial institution deposits that at times may exceed federally insured limits. The Company has not experienced any losses in such accounts through December 31, 2022. The Company’s bank balances exceeded FDIC insured amounts at times during the years ended December 31, 2022 and 2021, respectively. At December 31, 2022 and 2021, the Company’s bank balance exceeded the FDIC insured amounts by \$2,314,237 and \$7,222,224 respectively.

Geographic Concentration

Geographical distribution of net revenue consisted of the following for the years ended December 31, 2022 and 2021, respectively, as follows:

| | For the Year Ended | |
|--------|--------------------|------|
| | December 31, | |
| | 2022 | 2021 |
| Canada | 3% | 4% |
| Europe | 9% | 11% |
| USA | 87% | 82% |
| Other | 1% | 3% |

NOTE 12: SUBSEQUENT EVENTS

The Company evaluated subsequent events through the date of the filing of this Annual Report on Form 10-K with the SEC, to ensure that this filing includes appropriate disclosures of events both recognized in the consolidated financial statements as of December 31, 2022, and events which occurred subsequent to December 31, 2022 but were not recognized in the consolidated financial statements. The Company has determined that there were no subsequent events which required recognition, adjustment to or disclosure in the consolidated financial statements.

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Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures.

We maintain disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Disclosure controls and procedures are controls and other procedures designed to ensure that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and our principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable and not absolute assurance of achieving the desired control objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on our management's evaluation (with the participation of the individuals serving as our principal executive officer and principal financial officer) of our disclosure controls and procedures as required by Rules 13a-15 and 15d-15 under the Exchange Act, each of the individuals serving as our principal executive officer and principal financial officer has concluded that our disclosure controls and procedures were not effective at the reasonable assurance level as of December 31, 2022, the end of the period covered by this report.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act). Internal control over financial reporting is a process designed under the supervision and with the participation of our management, including the individuals serving as our principal executive officer and principal financial officer, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.

Management conducted an assessment of the effectiveness of our internal control over financial reporting based on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control-Integrated Framework (2013 Framework). Based on this assessment, our management concluded that, as of December 31, 2022, our internal control over financial reporting was not effective based on those criteria due to material weaknesses in our internal control over financial reporting described below.

Material Weakness in Internal Control over Financial Reporting

We did not design policies and procedures at a sufficient level of precision to support the operating effectiveness of the controls to prevent and detect potential errors. We did not maintain adequate documentation to evidence the operating effectiveness of certain control activities, and did not maintain proper levels of supervision and review of complex accounting matters. We did not perform an initial assessment regarding classification of common stock purchase warrants. We did not maintain appropriate access to certain systems and did not maintain appropriate segregation of duties related to processes associated within those systems. We did not maintain adequate controls over inventory valuation. We did not assess our allowance for doubtful accounts.

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These control deficiencies resulted in several misstatements to the preliminary financial statements that were corrected and/or deemed immaterial in the aggregate prior to issuance of the financial statements. These control deficiencies create a reasonable possibility that a material misstatement to the financial statements will not be prevented or detected on a timely basis, and there we concluded that the deficiencies represent material weaknesses in our internal control over financial reporting and our internal control over financial reporting was not effective as of December 31, 2022.

Remediation Plan

During the year ended December 31, 2022, we continued to enhance our internal control over financial reporting in an effort to remediate the material weaknesses described

above. For example, in the fourth quarter of 2022, we hired four new account team members and set up controls and closing procedures. We are committed to ensuring that our internal control over financial reporting is designed and operating effectively.

Our remediation process includes, but not limited to:

- Investing in IT systems to enhance our operational and financial reporting and internal controls.
- Enhancing the organizational structure to support financial reporting processes and internal controls.
- Providing guidance, education and training to employees relating to our accounting policies and procedures.
- Further developing and documenting detailed policies and procedures regarding business processes for significant accounts, critical accounting policies and critical accounting estimates.
- Establishing effective general controls over IT systems to ensure that information produced can be relied upon by process level controls is relevant and reliable.

We expect to remediate these material weaknesses in the first half of 2023. However, we may discover additional material weaknesses that may require additional time and resources to remediate.

Attestation Report on Internal Control over Financial Reporting

This Annual Report on Form 10-K does not include an attestation report of our independent registered public accounting firm due to the deferral allowed under the Jobs Act for emerging growth companies.

Changes in Internal Control over Financial Reporting

Other than with respect to the remediation efforts discussed above, there was no change in our internal control over financial reporting that occurred during the fourth quarter of 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. Although we have altered some work routines due to the COVID-19 pandemic, the changes in our work environment, including remote work arrangements, have not materially impacted our internal controls over financial reporting and have not adversely affected our ability to maintain operations.

Item 9B. Other Information.

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers, and Corporate Governance.

Directors and Executive Officers

The names, positions and ages of our non-independent directors and executive officers as of March 31, 2023 are as follows:

| Name | Age | Position | Director Since |
|---------------------|------------|---|-----------------------|
| Michael Panosian | 60 | President, Chief Executive Officer, and Chairman of the Board of Directors (Principal Executive Officer) | January 1, 2012 |
| Martin Galstyan | 37 | Chief Financial Officer (Principal Financial and Accounting Officer) | — |
| Joshua Keeler | 47 | Chief Design Officer and Director | June 7, 2019 |
| Zareh Khachatoorian | 63 | Chief Operating Officer and Secretary | — |

Directors serve until the next annual meeting and until their successors are elected and qualified. Officers are appointed to serve for one year until the meeting of the Board following the annual meeting of stockholders and until their successors have been elected and qualified.

Michael Panosian, Co-founder, President, CEO and Chairman of the Board

Mr. Panosian co-founded our Company in 2012 and has been CEO, President, and Chairman of the Board since inception. Mr. Panosian has over 25 years of experience in the commercialization process including innovation, design direction, product development, brand management, marketing, merchandising, sales, supply chain and finance. Mr. Panosian has deep knowledge of doing business in China where he managed large sourcing and manufacturing teams. Mr. Panosian education background is in technical aerospace engineering and is a graduate of Northrop University with specializations in helicopters and jet engines. He has been a visionary and an inventor throughout his career and is holder of numerous patents and trademarks. Mr. Panosian business background also includes construction and real-estate development and product design and innovation consultancy. We believe Mr. Panosian is qualified to serve on our Board of Directors due to his business and leadership experience.

Martin Galstyan, Chief Financial Officer

Mr. Galstyan has been serving as the Chief Financial Officer of the Company since July 2, 2020. Mr. Galstyan joined the Company in 2012 as account manager and became controller of the Company in 2014. Mr. Galstyan set up the Enterprise Resource Planning system for the Company and EDI (Electronic Data Interchange) for the Company's big box retailers. Mr. Galstyan has a Bachelor's in Accounting from Woodbury University in California.

Joshua Keeler, Co-founder, Chief Design Officer and Director

As the Chief Design Officer at our Company, Mr. Keeler is responsible for all product development since the inception of the Company. Mr. Keeler is also a member of the Board. He co-founded our Company in 2012 and works directly with Mr. Panosian in bringing innovative ideas to market. Mr. Keeler is a graduate of Art Center College of Design with a Bachelor of Science (BS) in Industrial Design. Mr. Keeler has over 12 years of product development experience, working on projects spanning several fields, including: automotive, personal electronics, sporting goods and a wide expanse of tools. From 1999 to 2000 he was co-owner and Vice President of Oracle Industrial Design, Co., a private company specializing in industrial design and product development. From August 2000 to April 2004, Mr. Keeler worked for Positec Power Tool Co., a private company in Suzhou, China, designing and creating a large innovation library of numerous power tool concepts. From August 2005 to April 2008, Mr. Keeler was the chief designer for Harbinger International, Inc. From August 2008 to April 2012, he was chief designer for Pandun Inc, specializing in innovative tools and supporting products. He has lived in China and has extensive experience working directly with manufacturers to get designs into production. Mr. Keeler became a Director at our 2019 Annual Meeting, and is deemed suitable as a director by our Board due to his depth of knowledge in the industry.

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Zareh Khachatoorian, Chief Operating Officer and Secretary

Mr. Khachatoorian has over 30 years of experience in the realms of corporate purchasing, product development, merchandising and operations. Prior to joining ToughBuilt in January 2016, Mr. Khachatoorian was the President of Mount Holyoke Inc. in Northridge, California, starting in May 2014. Mr. Khachatoorian led Mount Holyoke Inc. in the servicing of its entire import and distribution operations. From August 2008 to April 2014, Mr. Khachatoorian served as the Vice President of Operations at Allied International in Sylmar, California. At Allied, Mr. Khachatoorian was responsible for the management of overseas and domestic office employees and departments involved in the areas of procurement and purchasing, inventory management, product development, engineering, control and quality assurance, and other related areas. Mr. Khachatoorian holds a BS degree in Industrial Systems Engineering from the University of Southern California. Additionally, Mr. Khachatoorian has been credited as the inventor or co-inventor of more than twenty issued patents, as well as several pending patents with the USPTO. Mr. Khachatoorian is fluent in Armenian and Farsi.

Independent Directors

The names, positions and ages of our independent directors are as follows:

| Name | Age | Audit Committee | Compensation Committee | Nominating and Corporate Governance Committee | Director Since |
|-----------------|------------|------------------------------|-------------------------------|--|-----------------------|
| Robert Faught | 72 | Member | Member | Chairperson | November 14, 2018 |
| Linda Moossaian | 56 | Chairperson | Member | Member | December 12, 2019 |
| William Placke | 55 | (Financial Expert) Member | Chairperson | Member | June 11, 2021 |

Robert Faught, Director

Mr. Faught is President of RKF International a corporate distribution and advisory company. He currently sits on the board of Kansas City based SmartHome Ventures, a private equity backed company that he founded that has developed a worldwide platform for IoT (Internet of things) products. He is also a Board Advisor for TROC, a Miami based company focused on the sales, marketing and merchandising of consumer products within the retail environment for cable, broadband, wireless and home security products. Mr. Faught was previously a board member of Stratus Silver Lining, Inc a private equity backed company that sold to Erickson in July of 2020. From 2003-2013, Mr. Faught was the Senior Vice President of Consumer Channels for Philadelphia based Comcast. He created an industry-leading organization of retail, digital marketing and retail "store within a store's" through a series of acquisitions and innovative solutions selling and marketing cable, broadband, telephone, wireless and home security, which resulted in a \$4.5BB division. He negotiated the industry's first extensive retail contracts, generating distribution in over 10,000 retail stores nationwide. He represented the cable industry as the Chairman of the Consumer/Retail Committee for CTAM from 2004 to 2013, the cable industries Washington DC based public interest firm. From 2001-2003, Mr. Faught was the President and CEO of Atlanta based Enrev Power Solutions. He was recruited by the Board to grow revenues and position the firm for a favorable IPO. He built, trained and led a high- performance cross-functional management team of Sales, Marketing, Finance and R&D and IT personnel. In 1998, Mr. Faught was recruited by the Chairman of Philips Electronics to be the President of the Americas Region. He was brought in to lead a turnaround and assume accountability for North and South America. He increased distribution and sales of several lines of consumer electronic products, which lead to a \$3.0BB joint venture with Lucent Technologies. In addition, Mr. Faught directed a team of 25 Senior Managers and 12,000 employees, oversaw manufacturing of product in Guadalajara, Mexico and traveled extensively to Paris to source European goods and expand the product portfolio. He also sat on Tom Wheeler's (FCC Chairman) CTIA board in Washington from 1998 to 2003. Prior to 1998, Mr. Faught worked in Los Angeles for L.A. Cellular and in Atlanta for Bell South Cellular, where he managed Consumer sales and marketing. Prior experiences also include leading Atari and Activision in senior Sales and Marketing roles. Mr. Faught has a BA degree in Communication from John Carroll University, Cleveland, Ohio. We believe Mr. Faught is qualified to serve on our Board given his leadership and business experience.

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Linda Moossaian, Director

Linda Moossaian is an achievement-oriented financial strategist with an exceptional record of successful initiatives in financial planning, profit optimization, joint venture accounting, and treasury management. She has a strong history of forging strategic partnerships with senior management, including CEOs and CFOs as well as key stakeholders to drive financial objectives, make strategic decisions, and analyze value-added analytics. Ms. Moossaian has a sophisticated understanding of long-range budget preparation, GAAP accounting, M&A, planning models, financial forecasting & analysis, decision support, accounting procedures, and continuous process improvement. Her advanced critical thinking, analytical, qualitative, and quantitative analysis skills have been developed through positions in corporate and public accounting and consulting. She currently is the Executive Director, Theatrical Production Finance for WarnerMedia in Burbank, CA, a position she has held since August 2021. Ms. Moossaian has previously acted as Director, Audit & Controls-WBTV Financial Administration, Director, Theatrical Production Finance and Director, Financial Planning & Analysis for Warner Bros from 2009 to the present. We believe that Ms. Moossaian is qualified to serve on our Board given her expertise in finance and business.

William Placke, Director

William "Bill" Placke is the EVP of Corporate Development and Operations at TruU, Inc., a global cybersecurity company. Prior to TruU, Bill was the Head of Strategic Partnerships and Business Development for Ericsson Wireless Office, a publicly listed, global company with more than 100,000 employees operating in over 120 countries from August 2020 until August 2021. Before being acquired by Ericsson in August 2020, Bill served as the Executive Vice President of Corporate Development and Strategic

Alliances for StratusWorX, a Silicon Valley technology company, from June 2016. From June 2016 to June 2017, Bill served as Executive Vice President of Corporate Development at Console Connect, a SaaS and network company in Silicon Valley acquired by PCCW in August 2017. Prior to this, he was the Executive Vice President, General Counsel, and Company Secretary of Digital Globe Services, a London Stock Exchange-listed digital media company from January 2010 to July 2016. Bill has served in executive roles at Charter Communications and in board positions, a member of the Investment Committee, and as Sr. Director of Legal Mergers & Acquisitions at United Pan-Europe Communications/Liberty Global.

Bill began his career as a Corporate, M&A (mergers and acquisitions), and IPO (initial public offering) attorney with the law firm of Roberts, Sheridan & Kotel in New York (now Dickstein, Shapiro) and later as a Cross-Border Mergers and Acquisitions attorney at Clifford Chance, LLP, one of the largest law firms in the world. Bill has served on the Board of Directors of companies in the US, Netherlands, UK, Ireland, and France and has published articles and cited in multiple legal reviews and business reviews on various topics from corporate governance to cross-border mergers and acquisitions and securities issues. Bill earned his law degree (J.D.) from St. John's University School of law in May 1994, a Diploma in European Union Law from King's College London in 2000, and his undergraduate degree in Business Administration from the University of Dayton in 1989. He has been licensed to practice law in New York since November 1994 and is a member in good standing with the New York Bar.

We believe Mr. Placke is qualified to serve on our Board due to his legal expertise and extensive international experience in corporate finance, mergers and acquisitions, and securities offerings.

Corporate Governance

The business and affairs of our Company are managed under the direction of the Board.

Term of Office

Directors serve until the next annual meeting of stockholders and their respective successors are elected and qualified, subject to the earlier of their death, resignation or removal. Officers serve at the pleasure of the Board, subject to any contractual arrangements.

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Independence

We use the definition of "independence" of The Nasdaq Stock Market to make this determination. Nasdaq Listing Rule 5605(a)(2) provides that an "independent director" is a person other than an officer or employee of our Company or any other individual having a relationship which, in the opinion of the Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The Nasdaq rules provide that a director cannot be considered independent if:

- the director is, or at any time during the past three years was, an employee of our Company;
- the director or a family member of the director accepted any compensation from our Company in excess of \$120,000 during any period of 12 consecutive months within the three years preceding the independence determination (subject to certain exclusions, including, among other things, compensation for Board or Board committee service);
- a family member of the director is, or at any time during the past three years was, an executive officer of our Company;
- the director or a family member of the director is a partner in, controlling shareholder of, or an executive officer of an entity to which our Company made, or from which our Company received, payments in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenue for that year or \$200,000, whichever is greater (subject to certain exclusions);
- the director or a family member of the director is employed as an executive officer of an entity where, at any time during the past three years, any of the executive officers of our Company served on the Compensation Committee of such other entity; or
- the director or a family member of the director is a current partner of our Company's outside auditor, or at any time during the past three years was a partner or employee of our Company's outside auditor, and who worked on our Company's audit.

Under such definition, Messrs. Faught and Placke and Ms. Moossaian are independent directors.

Family Relationships

There are no family relationships among any of our officers or directors.

Involvement in Certain Legal Proceedings

To the best of our knowledge, none of our directors or executive officers have, during the past ten years, been involved in any legal proceedings described in subparagraph (f) of Item 401 of Regulation S-K.

Code of Ethics

We have adopted a written Code of Business Conduct and Ethics (the "Code") that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. We have posted a current copy of the Code on our website, www.toughbuilt.com. In addition, we will post on our website all disclosures that are required by law or the listing standards of Nasdaq concerning any amendments to, or waivers from, any provision of the Code. The reference to our website address does not constitute incorporation by reference of the information contained at or available through our website, and you should not consider it to be a part of this Annual Report on Form 10-K.

Board Committees

Our Board has an Audit Committee, a Compensation Committee, and a Nominating and Corporate Governance Committee, each comprised entirely of independent directors, of which met a total of sixteen times in 2022. The Audit Committee met a total of six times in 2022.

Audit Committee

Our Audit Committee is comprised of three individuals, each of whom is an independent director and at least one of whom, Ms. Moossaian, is an “audit committee financial expert,” as defined in Item 407(d)(5)(ii) of Regulation S-K.

Our Audit Committee oversees our corporate accounting, financial reporting practices and the audits of financial statements. For this purpose, the Audit Committee does have a charter (which is reviewed annually) and performs several functions. The Audit Committee performs the following:

- evaluates the independence and performance of, and assesses the qualifications of, our independent auditor and engage such independent auditor;
- approves the plan and fees for the annual audit, quarterly reviews, tax and other audit-related services and approves in advance any non-audit service to be provided by our independent auditor;
- monitors the independence of our independent auditor and the rotation of partners of the independent auditor on our engagement team as required by law;
- reviews the financial statements to be included in our future Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q and review with management and our independent auditor the results of the annual audit and reviews of our quarterly financial statements; and
- oversees all aspects our systems of internal accounting control and corporate governance functions on behalf of the Board.

Compensation Committee

Our Compensation Committee is comprised of three individuals, each of whom is an independent director.

The Compensation Committee reviews or recommends the compensation arrangements for our management and employees and also assists our Board in reviewing and approving matters such as Company benefits and insurance plans, including monitoring the performance thereof. The Compensation Committee has a charter (which is reviewed annually) and performs several functions.

The Compensation Committee has the authority to directly engage, at our expense, any compensation consultants or other advisers as it deems necessary to carry out its responsibilities in determining the amount and form of employee, executive and director compensation.

Nominating and Corporate Governance Committee

Our Nominating and Corporate Governance Committee is comprised of three individuals, each of whom is an independent director.

The Nominating and Corporate Governance Committee is charged with the responsibility of reviewing our corporate governance policies and with proposing potential director nominees to the Board for consideration. This committee has the authority to oversee the hiring of potential executive positions in our Company. The Nominating and Corporate Governance Committee has a charter (which is reviewed annually) and performs several functions.

Director Independence

Our Board has reviewed the materiality of any relationship that each of our directors has with us, either directly or indirectly. Based on this review, our Board has determined that William Placke, Linda Moossaian and Robert Faught are “independent directors” as defined in Nasdaq Listing Rules and Rule 10A-3 promulgated under the Exchange Act. As such, all independent directors serve on all three of our standing Board committees, with Linda Moossaian as the Chair of the Audit Committee, William Placke as the Chair of the Compensation Committee and Robert Faught as Chair of the Nominating and Corporate Governance Committee.

Indemnification of Officers and Directors

Chapter 78 of the NRS provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he is not liable pursuant to NRS Section 78.138 or acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. NRS Chapter 78 further provides that a corporation similarly may indemnify any such person serving in any such capacity who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit if he is not liable pursuant to NRS Section 78.138 or acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the court or other court of competent jurisdiction in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court or other court of competent jurisdiction shall deem proper.

Our A&R Bylaws provide that we may indemnify our officers, directors, employees, agents and any other persons to the maximum extent permitted by the NRS.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

We maintain a Code of Business Conduct and Ethics that applies to all employees, including our principal executive officer, principal financial officer, principal accounting

officer, controller and persons performing similar functions, and including our independent directors, who are not our employees, with regard to their ToughBuilt-related activities. The Code incorporates guidelines designed to deter wrongdoing and to promote honest and ethical conduct and compliance with applicable laws, rules and regulations. The Code also incorporates our expectations of our employees that enable us to provide accurate and timely disclosure in our filings with the SEC and other public communications. In addition, the Code incorporates guidelines pertaining to topics such as complying with applicable laws, rules, and regulations; insider trading; reporting Code violations; and maintaining accountability for adherence to the Code. The full text of our Code is published on our web site at www.toughbuilt.com and is incorporated by reference herein. We intend to disclose future amendments to certain provisions of our Code, or waivers of such provisions granted to our principal executive officer, principal financial officer, principal accounting officer or controller and persons performing similar functions on our web site. Except as expressly stated herein, the information contained on our website does not constitute a part of this Annual Report on Form 10-K and is not incorporated by reference herein.

Item 11. Executive Compensation.

The following table summarizes compensation for the years ended December 31, 2022 and 2021 for all individuals serving as our principal executive officer or acting in a similar capacity during the last completed fiscal year (“PEO”), regardless of compensation level, two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year; and up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (m)(2)(ii) of Item 402 of Regulation S-K but for the fact that the individual was not serving as an executive officer of the smaller reporting company at the end of the last completed fiscal year (each a “Named Executive Officer”).

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Summary Compensation Table

| Name and Position | Fiscal Year Ended December 31, | Salary (\$) | Stock Awards (\$) | Option Awards (\$) | All Other Compensation (\$)(1) | Total (\$) |
|---|--------------------------------|-------------|-------------------|--------------------|--------------------------------|------------|
| Michael Panosian Chief Executive Officer, President (PEO) | 2022 | 635,000 | - | 813,240(2) | - | 1,448,240 |
| | 2021 | 435,000 | - | - | 29,615 | 464,615 |
| Martin Galstyan Chief Financial Officer | 2022 | 320,000 | - | 165,262(3) | - | 485,262 |
| | 2021 | 230,000 | - | - | - | 230,000 |
| Joshua Keeler Chief Design Officer | 2022 | 620,000 | - | 528,840(4) | - | 1,148,840 |
| | 2021 | 450,000 | - | - | 20,072 | 470,072 |
| Zareh Khachatoorian Chief Operating Officer | 2022 | 320,000 | - | 165,262(5) | - | 485,262 |
| | 2021 | 230,000 | - | - | - | 230,000 |

(1) Vacation pay and other.

(2) On December 28, 2022, we granted Michael Panosian an incentive stock option to purchase 540,000 shares of common stock for \$1.79 per share under the 2022 Plan (the “2022 Panosian Option”). The 2022 Panosian Option vests 50% on the grant date, with the remaining 50% vesting in equal installments on the last day of each of the thirty-six (36) full calendar months thereafter, which may be exercised in lots of a minimum of 200 shares of our common stock. As of December 31, 2022, the 2022 Panosian Option was 50% vested. The expiration date of the 2022 Panosian Option is December 28, 2032. The fair value of the option awards issued on the grant date was \$813,240.

(3) On December 28, 2022, we granted Martin Galstyan an incentive stock option to purchase 112,500 shares of common stock for \$1.79 per share under the 2022 Plan (the “2022 Galstyan Option”). The 2022 Galstyan Option vests in equal installments on the last day of each of the thirty-six (36) calendar months following the date of grant, which may be exercised in lots of a minimum of 200 shares of our common stock. As of December 31, 2022, the 2022 Galstyan Option has not vested. The expiration date of the 2022 Galstyan Option is December 28, 2032. The fair value of the option awards issued on the grant date was \$165,262.

(4) On December 28, 2022, we granted Joshua Keeler an incentive stock option to purchase 360,000 shares of common stock for \$1.79 per share under the 2022 Plan (the “2022 Keeler Option”). The 2022 Keeler Option vests 50% on the grant date, with the remaining 50% vesting in equal installments on the last day of each of the thirty-six (36) full calendar months thereafter, which may be exercised in lots of a minimum of 200 shares of our common stock. As of December 31, 2022, the 2022 Keeler Option was 50% vested. The expiration date of the 2022 Keeler Option is December 28, 2032. The fair value of the option awards issued on the grant date was \$528,840.

(5) On December 28, 2022, we granted Zareh Khachatoorian an incentive stock option to purchase 112,500 shares of common stock for \$1.79 per share under the 2022 Plan (the “2022 Khachatoorian Option”). The 2022 Khachatoorian Option vests in equal installments on the last day of each of the thirty-six (36) calendar months following the date of grant, which may be exercised in lots of a minimum of 200 shares of our common stock. As of December 31, 2022, the 2022 Khachatoorian Option has not vested. The expiration date of the 2022 Khachatoorian Option is December 28, 2032. The fair value of the option awards issued on the grant date was \$165,262.

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Employment and Related Agreements

Except as set forth below, we currently have no other written employment agreements with any of our officers and directors. The following is a description of our current executive employment agreements:

Agreements with Our Named Executive Officers

We have entered into written employment agreements with each of our Named Executive Officers, as described below. Each of our Named Executive Officers has also executed our standard form of confidential information and invention assignment agreement.

Michael Panosian Employment Agreement

We entered into the Employment Agreement dated as of December 29, 2022 with Michael Panosian (the “Panosian Employment Agreement”). The Panosian Employment Agreement provides that Mr. Panosian will serve as our Chief Executive Officer, President, and Chair of the Board for a term beginning on December 29, 2022 and ending on December 29, 2025 (the “Initial Term”), with automatic one (1) year extensions unless notice not to renew is given by either party at least 90 days prior to the relevant end date.

Pursuant to the Panosian Employment Agreement, Mr. Panosian will be entitled to: (i) an annual base salary of \$650,000, which may be increased annually at the sole discretion of the Board; (ii) a potential annual target bonus of up to \$350,000 payable in cash, which may be granted in the discretion of, and in an amount determined by the Compensation Committee and approved by the Board; (iii) a grant of 540,000 incentive stock options, pursuant to the 2022 Plan and also be eligible to receive annual long-term incentive awards from time to time under the 2022 Plan; (iv) participate in the Company’s health insurance plan offered to its employees; (v) participate in the Company’s 401(k) Plan; and (vi) reimbursement for all reasonable business expenses, including a \$1,000 monthly automobile allowance. Any incentive-based compensation or award that Mr. Panosian receives will be subject to clawback by the Company as may be required by applicable law or, if applicable, any stock exchange listing requirement and on such basis as we determine.

In the event we terminate Mr. Panosian without “Cause” (as defined below) at any time with 90 days prior written notice, or Mr. Panosian resigns for “Good Reason” (as defined below), Mr. Panosian will be entitled to the following, provided that he executes a general waiver and release of claims: (i) an amount equal to 1.5 times the average of his base salary if terminated during the Initial Term, or an amount equal to 1 times the average of his then base salary; (ii) monthly payments for up to 12 months (and 18 months, if terminated during the Initial Term) of COBRA premiums for continued group health, dental and vision coverage; and (iii) the immediate vesting of all long-term incentive awards, that utilize time-based vesting.

In the event of Mr. Panosian’s termination by us with Cause or Mr. Panosian’s resignation without “Good Reason, Mr. Panosian will be only be entitled to accrued and unpaid compensation and wages accrued prior to such date.

If, within one year following a Change of Control of the Company, Mr. Panosian’s employment is terminated involuntarily by us other than for Cause, death, or disability or by Mr. Panosian pursuant to a voluntary termination for Good Reason, and Mr. Panosian executes and does not revoke a general release of claims against us and our affiliates in a form acceptable to us, then we shall, in addition to any other earned but unpaid base salary and vacation pay due through the date of such termination, provide Mr. Panosian (i) an amount equal to two times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 18 months of COBRA premiums for continued group health, dental and vision coverage.

The Panosian Employment Agreement contains restrictive covenants prohibiting Mr. Panosian from disclosing our confidential information at any time, and has executed a Proprietary Information, Inventions Assignment and Non-Disclosure Agreement.

Martin Galstyan Employment Agreement

We entered into the Employment Agreement dated as of December 29, 2022 with Martin Galstyan (the “Galstyan Employment Agreement”). The Galstyan Employment Agreement provides that Mr. Galstyan will serve as our Chief Financial Officer for a term beginning on December 29, 2022 and ending on December 29, 2025, with automatic one (1) year extensions unless notice not to renew is given by either party at least 90 days prior to the relevant end date.

Pursuant to the Galstyan Employment Agreement, Mr. Galstyan will be entitled to: (i) an annual base salary of \$300,000, which may be increased annually at the sole discretion of the Board; (ii) a potential annual target bonus of up to \$150,000 payable in cash, which may be granted in the discretion of, and in an amount determined by the Compensation Committee and approved by the Board; (iii) a grant of 112,500 incentive stock options, pursuant to the 2022 Plan, and also be eligible to receive annual long-term incentive awards from time to time under the 2022 Plan; (iv) participate in the Company’s health insurance plan offered to its employees; (v) participate in the Company’s 401(k) Plan; and (vi) reimbursement for all reasonable business expenses, including a \$500 monthly automobile allowance. Any incentive-based compensation or award that Mr. Galstyan receives will be subject to clawback by the Company as may be required by applicable law or, if applicable, any stock exchange listing requirement and on such basis as we determine.

In the event we terminate Mr. Galstyan without “Cause” (as defined below), or Mr. Galstyan resigns for “Good Reason” (as defined below), Mr. Galstyan will be entitled to the following, provided that he executes a general waiver and release of claim and does not revoke the release: (i) an amount equal to 6 months of his then base salary; (ii) monthly payments for up to 6 months of COBRA premiums for continued group health, dental and vision coverage, unless Mr. Galstyan starts receiving coverage under his subsequent employment; and (iii) continuation of his vesting schedule per the 2022 Plan, with three months for exercise of any vested option(s). If Mr. Galstyan’s employment is terminated by us following a Change of Control of the Company, Mr. Galstyan will be entitled to: (i) an amount equal to 1 times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 12 months of COBRA premiums for continued group health, dental and vision coverage.

In the event of Mr. Galstyan’s termination with Cause or Mr. Galstyan’s resignation without Good Reason, Mr. Galstyan shall be only be entitled to accrued and unpaid compensation and wages accrued prior to such date.

If, within one year following a Change of Control of the Company, Mr. Galstyan’s employment is terminated involuntarily by us other than for Cause, death, or disability or by Mr. Galstyan pursuant to a voluntary termination for Good Reason, and Mr. Galstyan executes and does not revoke a general release of claims against us and our affiliates in a form acceptable to us, then we shall, in addition to any other earned but unpaid base salary and vacation pay due through the date of such termination, provide Mr. Galstyan (i) an amount equal to two times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 12 months of COBRA premiums for continued group health, dental and vision coverage.

The Galstyan Employment Agreement contains restrictive covenants prohibiting Mr. Galstyan from disclosing our confidential information at any time, and has executed a Proprietary Information, Inventions Assignment and Non-Disclosure Agreement.

Joshua Keeler Employment Agreement

We entered into the Employment Agreement dated as of December 29, 2022 with Joshua Keeler (the “Keeler Employment Agreement”). The Keeler Employment Agreement provides that Mr. Keeler will serve as our Chief Design Officer for a term beginning on December 29, 2022 and ending on December 29, 2025, with automatic one (1) year extensions unless notice not to renew is given by either party at least 90 days prior to the relevant end date.

Pursuant to the Keeler Employment Agreement, Mr. Keeler will be entitled to: (i) an annual base salary of \$475,000, which may be increased annually at the sole discretion of the Board; (ii) a potential annual target bonus of up to \$150,000 payable in cash, which may be granted in the discretion of, and in an amount determined by the Compensation Committee and approved by the Board; (iii) a grant of 360,000 incentive stock options, pursuant to the 2022 Plan, and also be eligible to receive annual long-term incentive awards from time to time under the 2022 Plan; (iv) participate in the Company's health insurance plan offered to its employees; (v) participate in the Company's 401(k) Plan; and (vi) reimbursement for all reasonable business expenses, including a \$750 monthly automobile allowance. Any incentive-based compensation or award that Mr. Keeler receives will be subject to clawback by the Company as may be required by applicable law or, if applicable, any stock exchange listing requirement and on such basis as we determine.

In the event we terminate Mr. Keeler without "Cause" (as defined below) with 90 days prior written notice, or Mr. Keeler resigns for "Good Reason" (as defined below), Mr. Keeler will be entitled to the following, provided that he executes a general waiver and release of claims: (i) an amount equal to 1.5 times the average of his base salary if terminated during the Initial Term, or an amount equal to 1 times the average of his then base salary; (ii) monthly payments for up to 12 months (and 18 months, if terminated during the Initial Term) of COBRA premiums for continued group health, dental and vision coverage; and (iii) the immediate vesting of all incentive awards, that utilize time-based vesting. If Mr. Keeler's employment is terminated by us following a Change of Control of the Company, Mr. Keeler will be entitled to: (i) an amount equal to 2 times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 18 months of COBRA premiums for continued group health, dental and vision coverage.

In the event of Mr. Keeler's termination by us with Cause or Mr. Keeler's resignation without Good Reason, Mr. Keeler shall be only be entitled to accrued and unpaid compensation and wages accrued prior to such date.

If, within one year following a Change of Control, Mr. Keeler's employment is terminated involuntarily by us other than for Cause, death, or disability or by Mr. Keeler pursuant to a voluntary termination for Good Reason, and Mr. Keeler executes and does not revoke a general release of claims against us and our affiliates in a form acceptable to us, then we shall, in addition to any other earned but unpaid base salary and vacation pay due through the date of such termination, provide Mr. Keeler (i) an amount equal to two times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 18 months of COBRA premiums for continued group health, dental and vision coverage.

The Keeler Employment Agreement contains restrictive covenants prohibiting Mr. Keeler from disclosing our confidential information at any time, and has executed a Proprietary Information, Inventions Assignment and Non-Disclosure Agreement.

Zareh Khachatoorian Employment Agreement

We entered into the Employment Agreement dated as of December 29, 2022 with Zareh Khachatoorian (the "Khachatoorian Employment Agreement" and, together with the Panosian Employment Agreement, the Galstyan Employment Agreement and the Khachatoorian Employment Agreement, the "Employment Agreements"). The Khachatoorian Employment Agreement provides that Mr. Khachatoorian will serve as our Chief Operating Officer and Secretary for a term beginning on December 29, 2022 and ending on December 29, 2025, with automatic one (1) year extensions unless notice not to renew is given by either party at least 90 days prior to the relevant end date.

Pursuant to the Khachatoorian Employment Agreement, Mr. Khachatoorian will be entitled to: (i) an annual base salary of \$300,000, which may be increased annually at the sole discretion of the Board; (ii) a potential annual target bonus of up to \$150,000 payable in cash, which may be granted in the discretion of, and in an amount determined by the Compensation Committee and approved by the Board; (iii) a grant of 112,500 incentive stock options, pursuant to the 2022 Plan, and also be eligible to receive annual long-term incentive awards from time to time under the 2022 Plan; (iv) participate in the Company's health insurance plan offered to its employees; (v) participate in the Company's 401(k) Plan; and (vi) reimbursement for all reasonable business expenses, including a \$500 monthly automobile allowance. Any incentive-based compensation or award that Mr. Khachatoorian receives will be subject to clawback by the Company as may be required by applicable law or, if applicable, any stock exchange listing requirement and on such basis as we determine.

In the event we terminate Mr. Khachatoorian without Cause, or Mr. Khachatoorian resigns for Good Reason (each as defined in the Khachatoorian Employment Agreement), Mr. Khachatoorian will be entitled to the following, provided that he executes a general waiver and release of claim and does not revoke the release: (i) an amount equal to 6 months of his then base salary; (ii) monthly payments for up to 6 months of COBRA premiums for continued group health, dental and vision coverage, unless Mr. Khachatoorian starts receiving coverage under his subsequent employment; and (iii) continuation of his vesting schedule per the 2022 Plan, with three months for exercise of any vested option(s). If Mr. Khachatoorian's employment is terminated by us following a Change of Control of the Company, Mr. Khachatoorian will be entitled to: (i) an amount equal to 1 times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 12 months of COBRA premiums for continued group health, dental and vision coverage.

In the event of Mr. Khachatoorian's termination with Cause or Mr. Khachatoorian's resignation without Good Cause, Mr. Khachatoorian shall be only be entitled to accrued and unpaid compensation and wages accrued prior to such date.

If, within one year following a Change of Control of the Company, Mr. Khachatoorian's employment is terminated involuntarily by us other than for Cause, death, or disability or by Mr. Khachatoorian pursuant to a voluntary termination for Good Reason, and Mr. Khachatoorian executes and does not revoke a general release of claims against us and our affiliates in a form acceptable to us, then we shall, in addition to any other earned but unpaid base salary and vacation pay due through the date of such termination, provide the Mr. Khachatoorian (i) an amount equal to two times his then prevailing base salary; (ii) immediate vesting of all incentive awards; and (iii) monthly payments for up to 12 months of COBRA premiums for continued group health, dental and vision coverage.

The Khachatoorian Employment Agreement contains restrictive covenants prohibiting Mr. Khachatoorian from disclosing our confidential information at any time, and has executed a Proprietary Information, Inventions Assignment and Non-Disclosure Agreement.

Definitions

The term "Cause" is defined in the Employment Agreements as any of the following: (i) willful engagement in an act or omission which is in bad faith and to the detriment of the Company, (ii) engagement in gross misconduct, gross negligence, or willful malfeasance, in each case causing material harm to the Company, (iii) breach of employment agreement in any material respect, (iv) executive's habitual neglect or material failure to perform their duties (other than any such failure resulting solely from the executive's physical or mental disability or incapacity) after a written demand for substantial performance is delivered to the executive which identifies the manner in which we believe that the executive has not performed their duties, (v) committing, pleading nolo contendere, or conviction for a felony or any crime involving fraud, embezzlement, misappropriation, theft, or moral turpitude, or use of drugs or alcohol in a way that either interferes with the performance of duties or compromise of the integrity or reputation of the Company, (vi) violation of any law relating to our business, or violation of any lawful Company policy, procedure or guideline that results in material harm to the

Company as determined by us, in our reasonable discretion, or (vii) engagement in any act of dishonesty involving us, breach of any agreement with us containing confidentiality obligations, commercial bribery, or perpetration of fraud; provided, however, that the executive shall have at least forty-five (45) calendar days to cure, if curable, any of the events which could lead to their termination for Cause.

The term “Good Reason” is defined in the Employment Agreements as any of the following that are undertaken without the executive’s express written consent: (i) the assignment to the executive of principal duties or responsibilities, or the substantial reduction of the executive’s duties and responsibilities, either of which is materially inconsistent with the executive’s position with us; (ii) a material reduction by us in the executive’s annual base salary (except to the extent the salaries of our other executive employees and any of our other controlled subsidiaries are similarly reduced); (iii) the executive’s principal place of business is, without his consent, relocated by a distance of more than forty (40) miles from the center of Irvine, California; or (iv) any material breach by us of any provision of the executive’s employment agreement.

The term “Change of Control” defined in the Employment Agreements means the occurrence of any of the following events:

(i) A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group (“Person”), acquires ownership of our stock that, together with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of our stock; provided, however, that for purposes of this subsection, the acquisition of additional stock by any one Person, who is considered to own more than fifty percent (50%) of the total voting power of our stock will not be considered a Change of Control; or

(ii) A change in the effective control of the Company which occurs on the date that a majority of members of the board is replaced during any twelve (12) month period by directors whose appointment or election is not endorsed by a majority of the members of the board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change of Control; or

(iii) A change in the ownership of a substantial portion of our assets which occurs on the date that any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from us that have a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of our assets immediately prior to such acquisition or acquisitions; provided, however, that for purposes of this subsection (iii), the following will not constitute a change in the ownership of a substantial portion of our assets: (A) a transfer to an entity that is controlled by our stockholders immediately after the transfer, or (B) a transfer of assets by us to: (1) one of our stockholders (immediately before the asset transfer) in exchange for or with respect to our stock, (2) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by us, (3) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all of our outstanding stock, or (4) an entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person described in this subsection (iii)(B)(3). For purposes of this subsection (iii), gross fair market value means the value of our assets, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For purposes of this definition, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

OUTSTANDING EQUITY AWARDS AT DECEMBER 31, 2022

| Name | Option Awards | | | | |
|-------------------------------------|---|---|--|----------------------------|------------------------|
| | Number of securities underlying unexercised options (#) exercisable | Number of securities underlying unexercised options (#) unexercisable | Equity incentive plan awards: Number of securities underlying unexercised unearned options (#) | Option exercise price (\$) | Option expiration date |
| Michael Panosian, CEO & Pres. (PEO) | 270,133(1)(2) | 270,000(1)(2) | - | \$ (1)(2) | (1)(2) |
| Martin Galstyan, CFO | - | 112,500(3) | - | \$ (3) | (3) |
| Joshua Keeler, CDO | 180,133(4)(5) | 180,000(4)(5) | - | \$ (4)(5) | (4)(5) |
| Zareh Khachatoorian, COO | 83(6)(7) | 112,500(6)(7) | - | \$ (6)(7) | (6)(7) |

- (1) On September 14, 2018, we granted Michael Panosian an incentive stock option to purchase 200,000 shares of common stock for \$4.29 per share (the “2018 Panosian Option”) under the ToughBuilt Industries, Inc. 2018 Equity Incentive Plan (the “2018 Plan”). The 2018 Panosian Option vests in 25% equal increments commencing on the date of grant and each anniversary of the date of grant and expires on the fifth anniversary of the date of grant. Due to the 1-for-10 and 1-for-150 reverse stock splits of our common stock on April 15, 2020 and April 25, 2022, respectively, the amount of shares issuable upon the 2018 Panosian Option was adjusted to 133 and the exercise price was adjusted to \$6,435 per share. As of December 31, 2022, the 2018 Panosian Option was 100% vested. The expiration date of the 2018 Panosian Option is June 30, 2023.
- (2) On December 28, 2022, we granted Michael Panosian an incentive stock option to purchase 540,000 shares of common stock for \$1.79 per share under the 2022 Plan (the “2022 Panosian Option”). The 2022 Panosian Option vests 50% on the grant date, with the remaining 50% vesting in equal installments on the last day of each of the thirty-six (36) full calendar months thereafter, which may be exercised in lots of a minimum of 200 shares of our common stock. As of December 31, 2022, the 2022 Panosian Option was 50% vested. The expiration date of the 2022 Panosian Option is December 28, 2032.
- (3) On December 28, 2022, we granted Martin Galstyan an incentive stock option to purchase 112,500 shares of common stock for \$1.79 per share under the 2022 Plan (the “2022 Galstyan Option”). The 2022 Galstyan Option vests in equal installments on the last day of each of the thirty-six (36) calendar months following the date of grant, which may be exercised in lots of a minimum of 200 shares of our common stock. As of December 31, 2022, the 2022 Galstyan Option has not vested. The expiration date of the 2022 Galstyan Option is December 28, 2032.

- (4) On September 14, 2018, we granted Joshua Keeler an incentive stock option to purchase 200,000 shares of common stock for \$4.29 per share under the 2018 Plan (the “2018 Keeler Option”). The 2018 Keeler Option vests in 25% equal increments commencing on the date of grant and on each anniversary of the date of grant and expires on the fifth anniversary of the date of grant. Due to the 1-for-10 reverse stock split of our common stock on April 15, 2020, the amount of shares issuable upon the 2018 Keeler Option was adjusted to 133 and the exercise price was adjusted to \$6,435 per share. As of December 31, 2022, the 2018 Keeler Option was 100% vested. The expiration date of the 2018 Keeler Option is June 30, 2023.
- (5) On December 28, 2022, we granted Joshua Keeler an incentive stock option to purchase 360,000 shares of common stock for \$1.79 per share under the 2022 Plan (the “2022 Keeler Option”). The 2022 Keeler Option vests 50% on the grant date, with the remaining 50% vesting in equal installments on the last day of each of the thirty-six (36) full calendar months thereafter, which may be exercised in lots of a minimum of 200 shares of our common stock. As of December 31, 2022, the 2022 Keeler Option was 50% vested. The expiration date of the 2022 Keeler Option is December 28, 2032.
- (6) On September 14, 2018, we granted Zareh Khachatoorian an incentive stock option to purchase 110,000 shares of common stock for \$3.90 per share under the 2018 Plan (the “2018 Khachatoorian Option”). The 2018 Khachatoorian Option vests in 25% equal increments commencing on the date of grant and each anniversary of the date of grant and expires on the fifth anniversary of the date of grant. Due to the 1-for-10 and 1-for-150 reverse stock splits of our common stock on April 15, 2020 and April 25, 2022, respectively, the amount of shares issuable upon the 2018 Khachatoorian Option was adjusted to 83 and the exercise price was adjusted to \$5,850 per share. As of December 31, 2022, the 2018 Khachatoorian Option was 100% vested. The expiration date of the 2018 Khachatoorian Option is June 30, 2023.
- (7) On December 28, 2022, we granted Zareh Khachatoorian an incentive stock option to purchase 112,500 shares of common stock for \$1.79 per share under the 2022 Plan (the “2022 Khachatoorian Option”). The 2022 Khachatoorian Option vests in equal installments on the last day of each of the thirty-six (36) calendar months following the date of grant, which may be exercised in lots of a minimum of 200 shares of our common stock. As of December 31, 2022, the 2022 Khachatoorian Option has not vested. The expiration date of the 2022 Khachatoorian Option is December 28, 2032.

The 2016 Equity Incentive Plan

The Toughbuilt Industries, Inc. 2016 Equity Incentive Plan (the “2016 Plan”) was adopted by the Board and approved by the stockholders on July 6, 2016. The awards per the 2016 Plan may be granted through July 5, 2026 to our employees, consultants, directors, and non-employee directors provided such consultants, directors, and non-employee directors render good faith services not in connection with the offer and sale of securities in a capital-raising transaction. The awards issuable under the 2016 Plan consist of options, restricted stock awards, stock bonus awards, stock appreciation rights, restricted stock units (“RSUs”) and performance awards. The 2016 Plan shall be administered by a committee of the Board or the Board.

Incentive stock options (“ISOs”) may be granted only to employees. All other awards may be granted to our employees, consultants, directors and non-employee directors or any of our subsidiaries; provided such consultants, directors and non-employee directors render bona fide services not in connection with the offer and sale of securities in a capital-raising transaction.

Options may be vested and exercisable within the times or upon the conditions as set forth in the award agreement governing such option; provided, however, that no option will be exercisable after the expiration of 10 years from the date the option is granted; and provided further that no ISO granted to a person who, at the time the ISO is granted, directly or by attribution owns more than ten percent (10%) of the total combined voting power of all classes of our stock or any one of our parents or subsidiaries will be exercisable after the expiration of five (5) years from the date the ISO is granted. The committee or Board also may provide for options to become exercisable at one time or from time to time, periodically or otherwise, in such number of shares or percentage of shares as the committee or Board determines.

Pursuant to the 2016 Plan, the exercise price of an option will be determined by the committee or if there is no committee, the Board, when the option granted; provided that: (i) the exercise price of an option will be not less than 100% of the Fair Market Value of the shares on the date of grant and (ii) the exercise price of any ISO granted to a 10% stockholder will not be less than 110% of the Fair Market Value of the shares on the date of grant.

Under the 2016 Plan, the term “Fair Market Value” is defined, as of any date, the value of a share of our common stock determined as follows: (a) if such common stock is publicly traded and is then listed on a national securities exchange, the closing price on the date of determination on the principal national securities exchange on which the common stock is listed or admitted to trading as officially quoted in the composite tape of transactions on such exchange or such other source as the committee deems reliable for the applicable date; (b) if such common stock is publicly traded but is neither listed nor admitted to trading on a national securities exchange, the average of the closing bid and asked prices on the date of determination as reported in The Wall Street Journal or such other source as the committee deems reliable; (c) in the case of an option or stock appreciation right grant made on the effective date, the price per share at which shares of our common stock are initially offered for sale to the public by our underwriters in the initial public offering of our common stock pursuant to a registration statement filed with the SEC under the Securities Act.

If the number of outstanding shares of common stock is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in our capital structure, without consideration, then (a) the number of shares reserved for issuance and future grant under the 2016 Plan, (b) the exercise prices of and number of shares subject to outstanding options and stock appreciation rights, (c) the number of shares subject to other outstanding awards, (d) the maximum number of shares that may be issued as ISOs set forth in the 2016 Plan, (e) the maximum number of shares that may be issued to an individual or to a new employee in any one calendar year set forth in the 2016 Plan and (f) the number of shares that are granted as Awards to non-employee directors, shall be proportionately adjusted, subject to any required action by the Board or our stockholders and in compliance with applicable securities laws; provided that fractions of a share will not be issued.

The initial number of shares of common stock authorized and reserved for issuance under the 2016 Plan was 12 million. The amount was subsequently reduced to 2 million due to our 1-for-6 reverse stock split on October 5, 2016, then to 1 million for our 1-for-2 reverse stock split on September 3, 2018, then to 100,000 shares for our 1-for-10 reverse stock split on April 15, 2020. The amount was reduced to 667 shares for the 1-for-150 reverse stock split on April 25, 2022, which amount will be (a) reduced by awards granted under the 2016 Plan, and (b) increased to the extent that awards granted under the 2016 Plan are forfeited, expire or are settled for cash (except as otherwise provided in the 2016 Plan). No employee will be eligible to receive more than 83 shares of common stock in any calendar year under the 2016 Plan pursuant to the grant of Awards.

In addition, our Board may amend the 2016 Plan at any time. However, without stockholder approval, our 2016 Plan may not be amended in a manner that would:

- increase the number of shares that may be issued under the 2016 Plan;
- materially modify the requirements for eligibility for participation in the 2016 Plan;

- materially increase the benefits to participants provided by the 2016 Plan; or
- otherwise disqualify the 2016 Plan for an exemption under Rule 16b-3 promulgated under the Exchange Act.

Awards previously granted under the 2016 Plan may not be impaired or affected by any amendment of the 2016 Plan, without the consent of the affected grantees.

The 2018 Equity Incentive Plan

On July 1, 2018, the Board and our stockholders approved and adopted the ToughBuilt Industries, Inc. 2018 Equity Incentive Plan. The 2018 Plan supplements, and does not replace, the existing 2016 Equity Incentive Plan. Awards may be granted under the 2018 Plan through June 30, 2023 to our employees, officers, consultants, and non-employee directors.

The awards issuable under the 2018 Plan consist of ISOs and non-qualified stock options (“NQSOs”), restricted stock awards, stock bonus awards, stock appreciation rights, restricted stock and RSUs, performance awards and other share-based awards. The Board may delegate all or a portion of the administration of the 2018 Plan to a committee. The Board shall administer the 2018 Plan unless and until the Board delegates administration of the 2018 Plan to a committee.

The initial number of shares of common stock authorized and reserved for issuance under the 2018 Plan was 2 million. The amount was subsequently reduced to 1 million due to our 1-for-2 reverse stock split on September 3, 2018. On April 12, 2019, the Board and our stockholders approved to increase the number of shares to 20 million and then on February 14, 2020, to 35 million. The amount was later reduced to 3.5 million as a result of our 1-for-10 reverse stock split on April 15, 2020 and then to 23,334 for the 1-for-150 reverse stock split on April 25, 2022.

The number of shares of common stock that may be issued under the 2018 Plan will be (a) reduced by awards granted under the 2018 Plan, and (b) increased to the extent that Awards granted under the 2018 Plan are forfeited, expire or are settled for cash (except as otherwise provided in the 2018 Plan). Currently, no employee will be eligible to receive more than 10% of authorized shares under the 2018 Plan in any calendar year under the 2018 Plan pursuant to the grant of awards.

If any shares of common stock subject to an award are forfeited, an award expires or otherwise terminates without issuance of shares of common stock, or an award is settled for cash (in whole or in part) or otherwise does not result in the issuance of all or a portion of the shares of common stock subject to such award (including payment in shares of common stock on exercise of a stock appreciation right), such shares of common stock shall, to the extent of such forfeiture, expiration, termination, cash settlement or non-issuance, again be available for issuance under the 2018 Plan.

In the event that (i) any option or other award granted is exercised through the tendering of shares of common stock (either actually or by attestation) or by the withholding of shares of our common stock, or (ii) withholding tax liabilities arising from such option or other award are satisfied by the tendering of shares of common stock (either actually or by attestation) or by the withholding of shares of our common stock, then the shares of common stock so tendered or withheld shall be available for issuance under the 2018 Plan.

The following provisions shall apply to awards in the event of a Corporate Transaction unless otherwise provided in a written agreement between us or any affiliate and the holder of the award or unless otherwise expressly provided by the Board at the time of grant of an award:

- In the event of a Corporate Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation’s parent company) may assume or continue any or all awards outstanding under the 2018 Plan or may substitute similar stock awards for awards outstanding under the 2018 Plan (including, but not limited to, awards to acquire the same consideration paid to our stockholders pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by us in respect of common stock issued pursuant to awards may be assigned by us to our successor (or the successor’s parent company, if any), in connection with such Corporate Transaction. A surviving corporation or acquiring corporation may choose to assume or continue only a portion of a stock award or substitute a similar stock award for only a portion of a stock award. The terms of any assumption, continuation or substitution shall be set by the Board in accordance with the provisions of the 2018 Plan.
- In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue any or all outstanding awards or substitute similar stock awards for such outstanding awards, then with respect to awards that have not been assumed, continued or substituted and that are held by participants whose continuous service has not terminated prior to the effective time of the Corporate Transaction (referred to as the “Current Participants”), the vesting of such Awards (and, if applicable, the time at which such stock awards may be exercised) shall (contingent upon the effectiveness of the Corporate Transaction) be accelerated in full to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five days prior to the effective time of the Corporate Transaction), and such Awards shall terminate if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction, and any reacquisition or repurchase rights held by us with respect to such Awards shall lapse (contingent upon the effectiveness of the Corporate Transaction). No vested restricted stock unit award shall terminate without being settled by delivery of shares of common stock, their cash equivalent, any combination thereof, or in any other form of consideration, as determined by the Board, prior to the effective time of the Corporate Transaction.
- In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue any or all outstanding Awards or substitute similar stock awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by persons other than Current Participants, the vesting of such awards (and, if applicable, the time at which such award may be exercised) shall not be accelerated and such awards (other than an award consisting of vested and outstanding shares of common stock not subject to the Company’s right of repurchase) shall terminate if not exercised (if applicable) prior to the effective time of the Corporate Transaction; provided, however, that any reacquisition or repurchase rights held by us with respect to such Awards shall not terminate and may continue to be exercised notwithstanding the Corporate Transaction. No vested restricted stock unit award shall terminate without being settled by delivery of shares of common stock, their cash equivalent, any combination thereof, or in any other form of consideration, as determined by the Board, prior to the effective time of the Corporate Transaction.

Notwithstanding the foregoing, in the event an award will terminate if not exercised prior to the effective time of a Corporate Transaction, the Board may provide, in its sole discretion, that the holder of such award may not exercise such award but will receive a payment, in such form as may be determined by the Board, equal in value to the excess, if any, of (i) the value of the property the holder of the award would have received upon the exercise of the award immediately prior to the effective time of the Corporate Transaction, over (ii) any exercise price payable by such holder in connection with such exercise.

The term “Corporate Transaction” is defined in the 2018 Plan as the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

- a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of our consolidated assets and our subsidiaries;

- a sale or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;
- the consummation of a merger, consolidation or similar transaction following which we are not the surviving corporation; or
- the consummation of a merger, consolidation or similar transaction following which we are the surviving corporation but the shares of common stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

An award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control (as defined in the 2018 Plan) as may be provided in the agreement for such award or as may be provided in any other written agreement between us or any affiliate and the participant. An award may vest as to all or any portion of the shares subject to the award (i) immediately upon the occurrence of a Change in Control, whether or not such award is assumed, continued, or substituted by a surviving or acquiring entity in the Change in Control, or (ii) in the event a participant's Continuous Service is terminated, actually or constructively, within a designated period following the occurrence of a Change in Control. In the absence of such provisions, no such acceleration shall occur.

Our Compensation Committee will: (i) interpret our Plans; and (ii) make all other determinations and take all other action that may be necessary or advisable to implement and administer our Plans. The Plans provide that in the event of a change of control event, the Compensation Committee or our Board shall have the discretion to determine whether and to what extent to accelerate the vesting, exercise or payment of an award.

In addition, our Board may amend our 2018 Plan at any time. However, without stockholder approval, our 2018 Plan may not be amended in a manner that would:

- increase the number of shares that may be issued under the 2018 Plan;
- materially modify the requirements for eligibility for participation in the 2018 Plan;
- materially increase the benefits to participants provided by the 2018 Plan; or
- otherwise disqualify the 2018 Plan for an exemption under Rule 16b-3 promulgated under the Exchange Act.

Awards previously granted under the 2018 Plan may not be impaired or affected by any amendment of the 2018 Plan, without the consent of the affected grantees.

2022 Equity Incentive Plan

Our Board and our shareholders adopted the ToughBuilt Industries, Inc. 2022 Equity Incentive Plan on August 11, 2022 and September 21, 2022, respectively, which provides for the grant of stock options and restricted stock units to our officers, employees, directors, advisors and consultants. A total of 1,350,000 shares of common stock have initially been reserved for the issuance of awards under the 2022 Plan. The 2022 Plan also contains an "evergreen formula" pursuant to which the number of shares of common stock available for issuance under the 2022 Plan will automatically increase on January 1 of each calendar year during the term of the 2022 Plan, beginning with the calendar year 2023, by an amount of shares of common stock so that the total amount of common stock available under the 2022 Plan is equal to 15% of the total number of shares of common stock outstanding on December 31st of the prior calendar year. The 2022 Plan supplements, and does not replace, the existing 2016 Plan and 2018 Plan.

The purpose of the 2022 Plan is to secure for us and our shareholders the benefits inherent in share ownership by our employees, consultants, and directors and our affiliates who, in the judgment of the Board, will be largely responsible for its future growth and success. It is generally recognized that equity incentive plans of the nature provided for herein: (i) aid in retaining and encouraging individuals of exceptional ability because of the opportunity offered to them to acquire a proprietary interest in the Company; and (ii) promote a greater alignment of interests between such persons and shareholders of the Company.

Awards

The 2022 Plan authorizes the grant, from time to time, of (i) options intended to qualify under Section 422(a) of the Code, (ii) options not intended to qualify under Section 422(a) of the Code and (iii) restricted stock units.

Administration of the 2022 Plan

The 2022 Plan provides that it is to be administered by the Board, the Compensation Committee or any other committee appointed by the Board to administer the 2022 Plan. The Board has appointed the Compensation Committee as the administrator of the 2022 Plan until further notice is given. Any such committee shall be comprised of three or more "non-employee directors" as defined in Rule 16b-3 under the Exchange Act and "independent directors" as defined by Nasdaq Rule 5605(a)(2).

Eligibility

The Compensation Committee has sole authority, in its discretion, to determine which officers, employees, consultants, advisors or directors will receive awards, the number of shares of common stock to be subject to each award, and the forfeiture restrictions for each award.

Authorized Number of Shares

The total number of shares of common stock reserved and available for issuance under the 2022 Plan shall initially be 1,350,000 shares of common stock and may consist, in whole or in part, of authorized and unissued shares or treasury shares. The number of shares of common stock available for issuance under the 2022 Plan shall automatically increase on the first trading day of January each calendar year during the term of the 2022 Plan, beginning with calendar year 2023, resulting in the aggregate number of shares of common stock available under the 2022 Plan is equal to fifteen percent (15%) of the total number of shares of common stock outstanding on the last trading day in December of the immediately preceding calendar year. The total number of shares of common stock reserved and available for issuance under the 2022 Plan as of March 31, 2023 is 2,111,849. If any shares of common stock that have been granted pursuant to an award cease to be subject to such award or are forfeited or if any award otherwise terminates without a payment being made to the holder in the form of common stock, such shares shall again be available for distribution in connection with future grants and

awards under the 2022 Plan.

Term of the Plan

This Plan shall be in effect upon the adoption by the Board and remain in effect until the tenth (10th) anniversary of the date the Board approves and adopts the 2022 Plan, unless terminated earlier by the Board. The 2022 Plan and all awards issued thereunder will terminate immediately without any further action if the stockholder resolution required to trigger the effective date is not approved by the stockholders or if Nasdaq determines not to approve the 2022 Plan.

Lapsed Awards

If awards are surrendered, terminated, or expire without being exercised in whole or in part, new awards may be granted covering the shares of common stock not issued under such lapsed awards, subject to any restrictions that may be imposed by the Code.

Adjustment in Shares of Common Stock

If the outstanding shares of common stock shall at any time be changed or exchanged by a declaration of a stock dividend (bonus shares), stock split, combination or exchange of shares of common stock, recapitalization, or any other like event by or of the Company, and as often as the same shall occur, then the number, class, and kind of the shares of common stock subject to the 2022 Plan or subject to any options therefore granted, and the exercise price, shall be appropriately and equitably adjusted so as to maintain the proportionate number of shares of common stock, without changing the aggregate exercise price; provided, however, that no adjustment shall be made by reason of the distribution of subscription rights or a rights offering on outstanding shares of common stock. Upon the occurrence of any of the foregoing, the class and aggregate number of shares of common stock issuable pursuant to the 2022 Plan in respect of which options have not yet been exercised shall be appropriately adjusted.

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Non-Transferability

Any awards accruing to any participant in accordance with the terms and conditions of the 2022 Plan shall not be transferable or assignable to anyone unless specified in the 2022 Plan. During the lifetime of a participant all awards may only be exercised by the participant. Awards are non-transferable and non-assignable except by will or by the laws of descent and distribution.

Nothing contained in the 2022 Plan shall confer upon any participant any right with respect to employment or continuance of employment with us or any affiliate or interfere in any way with our rights or any affiliate to terminate the participant's employment at any time. Participation in the 2022 Plan by a participant is voluntary.

Amendments to the Equity Plan

The Board shall have the power to, at any time and from time to time, either prospectively or retrospectively, amend, suspend, or terminate the 2022 Plan or any award granted under the 2022 Plan without stockholder approval, including, without limiting the generality of the foregoing: changes of a clerical or grammatical nature, changes regarding the persons eligible to participate in the 2022 Plan, changes to the exercise price, vesting, term, and termination provisions of the award, changes to the Cashless Exercise Right provisions, changes to the authority and role of the Board under the 2022 Plan, and any other matter relating to the 2022 Plan and the awards that may be granted hereunder, subject to any required approvals or otherwise.

If the 2022 Plan is terminated, the provisions of the 2022 Plan and any administrative guidelines and other rules and regulations adopted by the Board and in force on the date of termination will continue in effect as long as any award or any rights pursuant thereto remain outstanding and, notwithstanding the termination of the 2022 Plan, the Board shall remain able to make such amendments to the 2022 Plan or the award as they would have been entitled to make if the 2022 Plan were still in effect.

Withholding Taxes

We, including any one of our designated affiliates, may take such steps as are considered necessary or appropriate for the withholding of any taxes or other amounts which we or any designated affiliate is required by any law or regulation of any governmental authority whatsoever to withhold in connection with any award.

Exercise Price

The exercise price per share of any option shall be not less than 100% of the market price on the date of grant, provided that with respect to an option granted to a U.S. taxpayer, the exercise price per share shall not be less than the Fair Market Value on the date of grant of the option. Notwithstanding the foregoing, we may designate and exercise price less than the Fair Market Value on the date of grant if the option: (i) is granted in substitution of a stock option previously granted by an entity acquired that is acquired by or merged with us or an affiliate, or (ii) otherwise is structured to be exempt from, or to comply with, Section 409A of the Code, in the case of options awarded to U.S. taxpayers. In addition, in the case of an ISO granted to an eligible employee who, at the time the ISO is granted, owns shares representing more than 10% of the voting power of all classes of our shares or any parent or subsidiary, the per share exercise price will be no less than 110% of the Fair Market Value per share on the date of grant. Notwithstanding the foregoing provisions, options may be granted with a per share exercise price of less than 100% of the Fair Market Value per share on the date of grant pursuant to a transaction described in, and in a manner consistent with, Section 424(a) of the Code.

Grant of Options

Each option will be designated in the award agreement as either an ISO or a NQSO. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the shares with respect to which ISOs are exercisable for the first time by the participant during any calendar year (under all our plans and any parent or subsidiary) exceeds \$100,000 (U.S.), such options will be treated as NQSOs. ISOs will be taken into account in the order in which they were granted. The Fair Market Value of the shares will be determined as of the time the option with respect to such shares is granted.

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Terms of Options

The option period shall be ten years from the date such option is granted or such greater or lesser duration as the Board, on the recommendation of the Compensation Committee, may determine at the date of grant, and may thereafter be reduced with respect to any such option covering termination of employment or engagement of the optionee or death or disability of the optionee. In the case of an ISO granted to a participant who, at the time the ISO is granted, owns shares representing more than 10% of

the total combined voting power of all classes of our shares or any parent or subsidiary, the term of the ISO will be five years from the date of grant or such shorter term as may be provided in the award agreement.

Cashless Exercise Right

Unless prohibited by Nasdaq, and except with respect to ISOs awarded to U.S. taxpayers, participants have the right (the “Cashless Exercise Right”), in lieu of the right to exercise an option, to terminate such option in whole or in part by notice in writing delivered by the participant to the Company electing to exercise the Cashless Exercise Right and, in lieu of receiving the shares (the “Option Shares”) to which such terminated option relates, to receive the number of shares, disregarding fractions, which is equal to the quotient set forth in the 2022 Plan.

Effect of Termination of Employment or Death or Disability

If an optionee:

- dies or becomes disabled while employed by, a consultant to or while a director of the Company or a designated affiliate, any option that had vested and was held by him or her at the date of death or disability shall become exercisable in whole or in part, but only by the person or persons to whom the optionee’s rights under the option shall pass by the optionee’s will or applicable laws of descent and distribution. Unless otherwise determined by the Board, on the recommendation of the Compensation Committee, all such options shall be exercisable only to the extent that the optionee was entitled to exercise the option at the date of his or her death or disability and only for 12 months after the date of death or disability or prior to the expiration of the option period in respect thereof, whichever is sooner;
- ceases to be employed by, or to act as a director of, or to be engaged as a consultant of, the Company or a designated affiliate for cause, no option held by such optionee will, unless otherwise determined by the Board, on the recommendation of the Compensation Committee, be exercisable following the date on which such optionee ceases to be so employed or engaged; and
- ceases to be employed by, or to or act as a director of, or to be engaged as a consultant of, the Company or a designated affiliate for any reason other than cause then, unless otherwise determined by the Board, on the recommendation of the Compensation Committee, any option that had vested and is held by such optionee at the effective date thereof shall become exercisable for a period of up to 30 days thereafter or prior to the expiration of the option period in respect thereof, whichever is sooner.

Reduction in Exercise Price

Any change to the exercise price of any option shall be subject to the approval of the Board.

Stockholder approval (as required by Nasdaq) shall be obtained for any reduction in the exercise price of any option granted under the 2022 Plan if the holder thereof is an insider of the Company at the time of the proposed amendment.

Change of Control

In the event of a Change of Control (as defined in the 2022 Plan), all options outstanding shall vest immediately and be settled by the issuance of shares or cash, or a combination of both shares and cash, at the discretion of the Compensation Committee.

Incentive Stock Options

- Maximum Number of Shares for Incentive Stock Options. Notwithstanding any other provision of the 2022 Plan to the contrary, the aggregate number of shares available for ISOs shall not exceed 10% of the number of shares issued at such time, subject to adjustment pursuant to the 2022 Plan and subject to the provisions of Sections 422 and 424 of the Code.
- Designation of Options. Each stock option agreement with respect to an option granted to a U.S. taxpayer shall specify whether the related option is an ISO or a NQSO. If no such specification is made in the stock option agreement or in the resolutions authorizing the grant of the option, the related option will be a NQSO.
- Special Requirements for Incentive Stock Options. In addition to the other terms and conditions of the 2022 Plan (and notwithstanding any other term or condition of the 2022 Plan to the contrary), the 2022 Plan sets forth limitations and requirements that will apply to an ISO.

Restricted Stock Units

An RSU is a compensatory award granted by a company to an employee or other individual performing services for the company. An RSU represents a promise by the company to transfer a share of the company’s stock or a cash payment equal to the value of a share of the company’s stock at a specific time in the future.

The holder of an RSU is not the beneficial owner of the shares underlying the RSU award and therefore is not entitled to voting, dividend, or other stockholder rights unless and until shares are delivered in settlement of the award.

Restricted Period

Concurrent with the determination to grant RSUs to a participant, the Board, on the recommendation of the Compensation Committee, shall determine the restricted period applicable to such RSUs. In addition, at the sole discretion of the Board, at the time of grant, the RSUs may be subject to performance conditions to be achieved by us or a class of participants or by a particular participant on an individual basis, within a restricted period, for such restricted stock units to entitle the holder thereof to receive the underlying shares of common stock or cash in lieu thereof.

Retirement or Termination during Restricted Period

In the event and to the extent of the retirement or termination and/or, as applicable, the director retirement or director termination of a participant from all such roles with us during the restricted period, any RSUs held by the participant shall immediately terminate and be of no further force or effect; provided, however, that the Board shall have the absolute discretion to modify the grant of the RSUs to provide that the restricted period shall terminate immediately prior to the date of such occurrence.

Retirement or Termination after Restricted Period

In the event and to the extent of the retirement or termination and/or, as applicable, the director retirement or director termination of the participant from all such roles with us following the restricted period and prior to a deferred payment date (as elected by a participant who is not a U.S. taxpayer), the participant shall be entitled to receive, and we shall issue forthwith, shares of common stock or cash in lieu thereof in satisfaction of the RSUs then held by the participant.

Death or Disability of Participant

In the event of the death or disability of a participant, any shares of common stock or cash in lieu thereof represented by RSUs by the participant shall be immediately issued or paid by us to the participant or legal representative of the participant.

Payment of Dividends

Subject to the absolute discretion of the Board, in the event that a dividend (other than a dividend payable in shares) is declared and paid by us on the shares of common stock, a participant may be credited with additional RSUs. The number of such additional RSUs, if any, will be calculated by dividing (a) the total amount of the dividends that would have been paid to the participant if the RSUs (including RSUs in which the restricted period has expired but the shares of common stock have not been issued due to a deferred payment date) in the participant's account on the dividend record date had been outstanding shares of common stock (and the participant held no other shares of common stock) by (b) the market price of the shares of common stock on the date on which such dividends were paid. Additional RSUs awarded pursuant to Section 4.10 of the 2022 Plan shall be subject to the same terms and conditions as the underlying RSUs to which they relate.

Change of Control

In the event of a Change of Control, all RSUs outstanding shall vest immediately and be settled by the issuance of shares of common stock or cash, or a combination of both shares of common stock and cash, in each case in the discretion of the Compensation Committee, notwithstanding the restricted period and any deferred payment date.

Redemption of Restricted Stock Units

Except to the extent prohibited by Nasdaq, upon expiry of the applicable restricted period (or on the deferred payment date, as applicable), we shall redeem RSUs in accordance with the election made in a redemption notice given by the participant to us by:

- issuing to the participant one share for each RSU redeemed provided the participant makes payment to the Company of an amount equal to the tax obligation required to be remitted by the Company to the taxation authorities as a result of the redemption of the RSUs;
- issuing to the participant one share for each RSU redeemed and either (i) selling, or arranging to be sold, on behalf of the participant, such number of shares of common stock issued to the participant as to produce net proceeds available to the Company equal to the applicable tax obligation so that the Company may remit to the taxation authorities an amount equal to the tax obligation; or (ii) receiving from the participant at the time of issuance of the shares of common stock an amount equal to the applicable tax obligation;
- subject to the discretion of the Company, paying in cash to, or for the benefit of, the participant, the value of any RSUs being redeemed, less any applicable tax obligation; or
- a combination of any of the shares of common stock or cash.

The shares of common stock shall be issued and the cash, if any, shall be paid as a lump sum by us within ten business days of the date the RSUs are redeemed under the 2022 Plan. RSUs of U.S. taxpayers will be redeemed as soon as possible following the end of the restricted period (as set forth in the RSU grant letter or such earlier date on which the restricted period is terminated pursuant to the 2022 Plan), and in all cases by the end of the calendar year in which the restricted period ends, or if later, by the date that is 75 days following the end of the restricted period. A participant shall have no further rights respecting any RSU which has been redeemed in accordance with the 2022 Plan.

No participant who is resident in the U.S. may receive shares of common stock for redeemed RSUs unless the shares of common stock to be issued upon redemption of the RSUs are registered under the Securities Act or are issued in compliance with an available exemption from the registration requirements of the Securities Act.

Right as a Stockholder

A participant receiving RSUs shall have the rights of a stockholder only as to shares of common stock, if any, actually issued to such participant upon expiration of the applicable restricted period and satisfaction or achievement of the terms and conditions of the award, and in accordance with the provisions of the 2022 Plan and the applicable award agreement, and not with respect to shares of common stock to which such award relates but which are not actually issued to such participant.

Non-Employee Director Remuneration Policy

Our Board has not adopted a non-employee director remuneration policy.

Board Compensation

We currently pay each of our non-employee directors \$75,000 per year. Our non-employee directors do not receive any options to purchase shares of common stock in connection with their services as a member of the Board.

Compensation Committee Review

The Compensation Committee shall, if it deems necessary or prudent in its discretion, reevaluate and approve in January of each such year (or in any event prior to the first Board meeting of such fiscal year) the cash and equity awards (amount and manner or method of payment) to be made to non-employee directors for such fiscal year. In making this determination, the Compensation Committee shall utilize such market standard metrics as it deems appropriate, including, without limitation, an analysis of cash

The Compensation Committee shall also have the power and discretion to determine in the future whether non-employee directors should receive annual or other grants of options to purchase shares of common stock or other equity incentive awards in such amounts and pursuant to such policies as the Compensation Committee may determine utilizing such market standard metrics as it deems appropriate, including, without limitation, an analysis of equity awards granted to independent directors of our peer group.

Participation of Employee Directors: New Directors

Unless separately and specifically approved by the Compensation Committee in its discretion, none of our employee directors shall be entitled to receive any remuneration for service as a director (other than expense reimbursement as per prevailing policy).

New directors joining our Board shall be entitled to a prorated portion (based on months to be served in the fiscal year in which they join) of cash and stock options or other equity incentive awards (if applicable) for the applicable fiscal year at the time they join the Board.

**Director Compensation
As of December 31, 2022**

| Name | Fees Earned or Paid in Cash (\$) | Stock Awards (\$) | Option Awards (\$) | Non-Equity Incentive Plan Compensation (\$) | All Other Compensation (\$) | Total (\$) |
|-----------------|---|-------------------------|--------------------------|--|-----------------------------------|---------------|
| Robert Faught | 62,500 | - | - | - | - | 62,500 |
| Linda Moossaian | 62,500 | - | - | - | - | 62,500 |
| William Placke | 62,500 | - | - | - | - | 62,500 |

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The following table presents information regarding beneficial ownership of our equity interests as of March 31, 2023, by:

- each stockholder or group of stockholders known by us to be the beneficial owner of more than 5% of any class of our voting securities;
- our Named Executive Officers;
- each of our directors; and
- all of our executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and, thus, represents voting or investment power with respect to our securities as of March 31, 2023. In computing the number and percentage of shares beneficially owned by a person, shares that may be acquired by such person within 60 days of March 31, 2023 are counted as outstanding, while these shares are not counted as outstanding for computing the percentage ownership of any other person. Unless otherwise indicated, the principal address of each of the persons below is c/o ToughBuilt Industries, Inc., 8669 Research Drive, Irvine, CA 92618. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all equity interests beneficially owned, subject to community property laws where applicable.

| Name and Address | Number of Shares Beneficially Owned | Percentage of Class |
|---|--|------------------------|
| <i>Named Executive Officers and Directors</i> | | |
| Michael Panosian —CEO, President and Chair of the Board | 303,102(2) | * |
| Martin Galstyan —CFO | 12,520(3) | * |
| Joshua Keeler —CDO and Director | 200,698(4) | * |
| Zareh Khachatoorian —COO | 12,693(5) | * |
| Robert Faught —Director | - | - |
| William Placke —Director | - | - |
| Linda Moossaian —Director | - | - |
| All Officers and Directors as a group (7 persons) | 529,013 | * |
| <u>5%+ Stockholders</u> | | |
| None | - | - |

*Less than 1%

- (1) Percentages based on 14,946,442 shares of common stock issued and outstanding as of March 31, 2023 plus shares of common stock the person has the right to acquire within 60 days thereafter.
- (2) Includes (i) 133 shares of common stock issuable upon vested options at a price of \$6,435 per share until September 14, 2028 and (ii) 800,000 shares of common stock issuable upon vested options at a price of \$1.79 per share until December 28, 2032.

- (3) Includes 12,500 shares of common stock issuable upon vested options at a price of \$1.79 per share until December 28, 2032.
- (4) Includes (i) 133 shares of common stock issuable upon vested options at a price of \$6,435 per share until September 14, 2028 and (ii) 200,000 shares of common stock issuable upon vested options at a price of \$1.79 per share until December 28, 2032.
- (5) Includes (i) 83 shares of common stock issuable upon vested options at a price of \$5,850 per share until September 14, 2028 and (ii) 12,500 shares of common stock issuable upon vested options at a price of \$1.79 per share until December 28, 2032.

Equity Plan Information

See Part II, Item 5 “Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities” of this Annual Report on Form 10-K.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

We have adopted a written related-person transactions policy that sets forth our policies and procedures regarding the identification, review, consideration, and oversight of “related-party transactions.” For purposes of our policy only, a “related-party transaction” is a transaction, arrangement, or relationship (or any series of similar transactions, arrangements, or relationships) in which we and any “related party” are participants involving an amount that exceeds \$120,000.

Transactions involving compensation for services provided to us as an employee or director are not considered related-person transactions under this policy. A related party is any executive officer, director or a holder of more than five percent of our common stock, including any of their immediate family members and any entity owned or controlled by such persons.

There have been no related party transactions during the last two fiscal years.

Policy and Procedures

Our Chief Financial Officer, Martin Galstyan, must present information regarding a proposed related-party transaction to our Board. Under the policy, where a transaction has been identified as a related-party transaction, Ms. Kahn must present information regarding the proposed related-party transaction to our Nominating and Corporate Governance Committee, once the same is established, for review. The presentation must include a description of, among other things, the material facts, the direct and indirect interests of the related parties, the benefits of the transaction to us and whether any alternative transactions are available. To identify related-party transactions in advance, we rely on information supplied by our executive officers, directors and certain significant shareholders. In considering related-party transactions, our Nominating and Corporate Governance Committee will take into account the relevant available facts and circumstances including, but not limited to:

- whether the transaction was undertaken in the ordinary course of our business;
- whether the related party transaction was initiated by us or the related party;
- whether the transaction with the related party is proposed to be, or was, entered into on terms no less favorable to us than terms that could have been reached with an unrelated third-party;
- the purpose of, and the potential benefits to us from the related party transaction;
- the approximate dollar value of the amount involved in the related party transaction, particularly as it relates to the related party;
- the related party’s interest in the related party transaction; and
- any other information regarding the related party transaction or the related party that would be material to investors in light of the circumstances of the particular transaction.

The Nominating and Corporate Governance Committee shall then make a recommendation to the Board, which will determine whether or not to approve of the related party transaction, and if so, upon what terms and conditions. In the event a director has an interest in the proposed transaction, the director must recuse himself or herself from the deliberations and approval.

Item 14. Principal Accountant Fees and Services.

During the year ended December 31, 2022 and 2021, we engaged Marcum as our independent registered accounting firm. For the years ended December 31, 2022 and 2021, we incurred fees, as discussed below:

| | Fiscal Year Ended December 31, | |
|------------------------|---------------------------------------|-------------------|
| | 2022 | 2021 |
| Audit Fees | \$ 391,515 | \$ 150,861 |
| Audit-Related Fees (1) | \$ 97,875 | \$ 107,000 |
| Tax Fees | \$ - | \$ - |
| All Other Fees | \$ - | \$ - |
| Total | \$ 489,390 | \$ 257,861 |

- (1) Fees incurred in conjunction with consents for various registration statements filed during years.

Audit fees consist of fees related to professional services rendered in connection with the audit of our annual financial statements. All other fees relate to professional services rendered in connection with the review of the quarterly financial statements.

Our policy is to pre-approve all audit and permissible non-audit services performed by the independent accountants. These services may include audit services, audit-related services, tax services and other services. Under our Audit Committee’s policy, pre-approval is generally provided for particular services or categories of services, including planned services, project-based services and routine consultations. In addition, the Audit Committee may also pre-approve particular services on a case-by-case basis. Our

PART IV

Item 15. Exhibits and Financial Statement Schedules

The following documents are filed as part of this Annual Report on Form 10-K:

1. **Financial Statements:** The following Financial Statements and Supplementary Data of ToughBuilt and the Report of Independent Registered Public Accounting Firm included in Part II, Item 8:
 - Balance Sheets at December 31, 2022 and 2021;
 - Statements of Operations for the years ended December 31, 2022 and 2021;
 - Statements of Changes in Stockholders' Deficit for the years ended December 31, 2022 and 2021;
 - Statements of Cash Flows for the years ended December 31, 2022 and 2021; and
 - Notes to Financial Statements.

2. **Exhibits:**

| Exhibit No : | Description of Exhibit: | Previously Filed and Incorporated by Reference herein: | Date Filed: |
|------------------------|--|---|------------------------------------|
| 1.1 | At The Market Offering Agreement, dated December 7, 2020, between ToughBuilt Industries, Inc. and H.C. Wainwright & Co., LLC. | Exhibit 1.1 to Registration Statement on Form S-3 (File No. 333-251185) | December 7, 2020 |
| 1.2 | At The Market Offering Agreement, dated February 1, 2021, between ToughBuilt Industries, Inc. and H.C. Wainwright & Co., LLC | Exhibit 1.1 to Registration Statement on Form S-3 (File No: 333-252630) | February 2, 2021 |
| 3.1 | Articles of Incorporation, dated April 9, 2012 | Exhibit 3.1 to Registration Statement on Form S-1 | July 9, 2018 |
| 3.1.2 | Certificate of Amendment, dated December 29, 2015 | Exhibit 3.1 to Registration Statement on Form S-1 | July 9, 2018 |
| 3.1.3 | Certificate of Change Pursuant to NRS 78.209, dated October 5, 2016 | Exhibit 3.1 to Registration Statement on Form S-1 | July 9, 2018 |
| 3.1.4 | Certificate of Change Pursuant to NRS 78.209, dated September 13, 2018 | Exhibit 3.4 to Registration Statement on Form S-1/A | September 19, 2018 |
| 3.1.5 | Certificate of Designations of Series B Convertible Preferred Stock, dated October 5, 2016 | Exhibit 3.3 to Registration Statement on Form S-1 | July 9, 2018 |
| 3.1.6 | Certificate of Amendment to the Certificate of Incorporation, dated January 17, 2020 | Exhibit 3.1 to Current Report on Form 8-K | January 17, 2020 |
| 3.1.7 | Certificate of Amendment to the Articles of Incorporation dated as of March 26, 2021 | Exhibit 3.1 to Current Report on Form 8-K | April 1, 2021 |
| 3.1.8 | Certificate of Designations of Series F Convertible Preferred Stock dated as of February 15, 2022 | Exhibit 3.1 to Current Report on Form 8-K | February 17, 2022 |
| 3.1.9 | Certificate of Designations of Series G Convertible Preferred Stock dated as of February 15, 2022 | Exhibit 3.2 to Current Report on Form 8-K | February 17, 2022 |
| 3.1.10 | Amendment to the Articles of Incorporation, as amended, of ToughBuilt Industries, Inc. for 1-for-150 Reverse Stock Split | Exhibit 3.1 to Current Report on Form 8-K | April 25, 2022 |
| 3.2 | Amended and Restated Bylaws | Exhibit 3.2 to Registration Statement on Form S-1 | July 9, 2018 |
| 3.2.2 | Amendment to Amended and Restated Bylaws of ToughBuilt Industries, Inc., effective as of October 6, 2022 | Exhibit 3.1 to Current Report on Form 8-K | October 7, 2022 |
| 4.1 | Description of registrant's securities registered under section 12 of the Securities Exchange Act of 1934, as amended | Exhibit 4.1 to Current Report on Form 10-K | March 26, 2021 |
| 4.2 | Warrant, dated November 20, 2020, issued by ToughBuilt Industries, Inc. to the Investor | Exhibit 4.1 to Current Report on Form 8-K | November 23, 2020 |
| 4.3 | Form of Common Warrant dated as of July 14, 2021, issued by ToughBuilt Industries, Inc. to certain purchasers | Exhibit 4.1 to Current Report on Form 8-K | July 14, 2021 |
| 4.4 | Form of Placement Agent Warrant dated as of July 14, 2021, issued by ToughBuilt Industries, Inc. to H.C. Wainwright & Co., LLC | Exhibit 4.2 to Current Report on Form 8-K | July 14, 2021 |
| 4.5 | Form of Common Warrant dated as of February 15, 2022, issued by ToughBuilt Industries, Inc. to certain purchasers | Exhibit 4.1 to Current Report on Form 8-K | February 17, 2022 |
| 4.6 | Form of Placement Agent Warrant dated as of February 15, 2022, issued by ToughBuilt Industries, Inc. to H.C. Wainwright & Co., LLC | Exhibit 4.2 to Current Report on Form 8-K | February 17, 2022 |
| 4.7 | Form of Warrant | Exhibit 4.1 to Current Report on Form 8-K | June 23, 2022 |
| 4.8 | Form of Prefunded Warrant | Exhibit 4.2 to Current Report on Form 8-K | June 23, 2022 |
| 4.9 | Form of Placement Agent Warrant | Exhibit 4.3 to Current Report on Form 8-K | June 23, 2022 |
| 4.10 | Form of Pre-Funded Common Stock Purchase Warrant | Exhibit 4.1 to Current Report on Form 8-K | July 27, 2022 |
| 4.11 | Form of Series A Preferred Investment Option | Exhibit 4.2 to Current Report on Form 8-K | July 27, 2022 |
| 4.12 | Form of Series B Preferred Investment Option | Exhibit 4.3 to Current Report on Form 8-K | July 27, 2022 |
| 4.13 | Form of Placement Agent Preferred Investment Option | Exhibit 4.4 to Current Report on Form 8-K | July 27, 2022 |

| | | | |
|---------|--|--|-----------------------------------|
| 4.14 | Form of Pre-Funded Common Stock Purchase Warrant | Exhibit 4.1 to Current Report on Form 8-K | November 18, 2022 |
| 4.15 | Form of Series C Preferred Investment Option | Exhibit 4.2 to Current Report on Form 8-K | November 18, 2022 |
| 4.16 | Form of Series C Preferred Investment Option | Exhibit 4.3 to Current Report on Form 8-K | November 18, 2022 |
| 10.1# | Employment Agreement dated as of January 3, 2017 by and between ToughBuilt Industries, Inc. and Michael Panosian | Exhibit 10.3 to Registration Statement on Form S-1 | September 7, 2018 |
| 72 | | | |
| 10.2# | Employment Agreement dated as of January 3, 2017 by and between ToughBuilt Industries, Inc. and Zareh Khachatourian | Exhibit 10.4 to Registration Statement on Form S-1 | September 7, 2018 |
| 10.3# | Employment Agreement dated as of January 3, 2017 by and between ToughBuilt Industries, Inc. and Josh Keeler | Exhibit 10.6 to Registration Statement on Form S-1 | September 7, 2018 |
| 10.4# | Exchange Agreement, dated November 20, 2020, between ToughBuilt Industries, Inc. and the Investor | Exhibit 10.1 to Current Report on Form 8-K | November 23, 2020 |
| 10.5# | Executive Employment Agreement, dated December 29, 2022, between ToughBuilt Industries, Inc., and Michael Panosian | Exhibit 10.1 to Current Report on Form 8-K | January 4, 2023 |
| 10.6# | Executive Employment Agreement, dated December 29, 2022, between ToughBuilt Industries, Inc., and Josh Keeler | Exhibit 10.2 to Current Report on Form 8-K | January 4, 2023 |
| 10.7# | Executive Employment Agreement, dated December 29, 2022, between ToughBuilt Industries, Inc., and Martin Galstyan | Exhibit 10.3 to Current Report on Form 8-K | January 4, 2023 |
| 10.8# | Executive Employment Agreement, dated December 29, 2022, between ToughBuilt Industries, Inc., and Martin Galstyan | Exhibit 10.4 to Current Report on Form 8-K | January 4, 2023 |
| 10.9 | Form of Securities Purchase Agreement dated as of July 11, 2021, by and between ToughBuilt Industries, Inc. and certain purchasers | Exhibit 10.1 to Current Report on Form 8-K | July 14, 2021 |
| 10.10 | Form of Securities Purchase Agreement dated as of February 15, 2022, by and between ToughBuilt Industries, Inc. and certain purchasers | Exhibit 10.1 to Current Report on Form 8-K | February 17, 2022 |
| 10.11 | Form of Letter Agreement dated as of February 18, 2022, between ToughBuilt Industries, Inc. and the purchasers pursuant to the Securities Purchase Agreement dated as of February 15, 2022 | Exhibit 10.1 to Current Report on Form 8-K | February 23, 2022 |
| 10.12 | Warrant Repurchase Agreement, June 8, 2022, between ToughBuilt Industries, Inc. and Alto Opportunity Master Fund, Spc - Segregated Master Portfolio B | Exhibit 10.1 to Current Report on Form 8-K | June 9, 2022 |
| 10.13 | Form of Securities Purchase Agreement | Exhibit 10.1 to Current Report on Form 8-K | June 23, 2023 |
| 10.14 | Form of Securities Purchase Agreement, dated as of July 25, 2022, by and among the Company and the Purchasers. | Exhibit 10.1 to Current Report on Form 8-K | July 27, 2022 |
| 10.15 | Form of Registration Rights Agreement, dated as of July 25, 2022, by and among the Company and the Purchasers. | Exhibit 10.2 to Current Report on Form 8-K | July 27, 2022 |
| 10.16 | Form of Securities Purchase Agreement, dated as of November 15, 2022, by and among the Company and the Purchasers. | Exhibit 10.1 to Current Report on Form 8-K | November 18, 2022 |
| 10.17 | Form of Registration Rights Agreement, dated as of November 15, 2022, by and among the Company and the Purchasers. | Exhibit 10.2 to Current Report on Form 8-K | November 18, 2022 |
| 10.18# | 2016 Equity Incentive Plan | Exhibit 4.7 to Form S-1/A | May 19, 2020 |
| 10.19# | 2018 Equity Incentive Plan | Exhibit 4.11 to Form S-1/A | May 19, 2020 |
| 10.20# | 2022 Equity Incentive Plan | Exhibit 4.1 to Form S-8 | December 20, 2022 |
| 14.1 | Code of Ethics | Exhibit 14.1 to Registration Statement on Form S-1 | September 7, 2018 |
| 21.1 | List of Subsidiaries | Exhibit 21.1 to Annual Report on Form 10-K | April 18, 2022 |
| 23.1 | Consent of Marcum LLP | * | |
| 31.1 | Certification of Principal Executive Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 | * | |
| 31.2 | Certification of Principal Financial Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 | * | |
| 32.1 | Certification of Chief Executive Officer furnished pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 | ** | |
| 32.2 | Certification of Chief Financial Officer furnished pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 | ** | |
| 99.1 | Audit Committee Charter | Exhibit 99.1 to Registration Statement on Form S-1 | September 7, 2018 |
| 99.2 | Compensation Committee Charter | Exhibit 99.2 to Registration Statement on Form S-1 | September 7, 2018 |
| 99.3 | Nominating and Corporate Governance Committee Charter | Exhibit 99.3 to Registration Statement on Form S-1 | September 7, 2018 |
| 99.4 | Whistleblower Policy | Exhibit 99.4 to Registration Statement on Form S-1 | September 7, 2018 |
| 101 | Interactive Data Files | * | |
| 101.INS | XBRL Instance Document | * | |
| 101.SCH | XBRL Schema Document | * | |
| 101.CAL | XBRL Calculation Linkbase Document | * | |
| 101.DEF | XBRL Definition Linkbase Document | * | |
| 101.LAB | XBRL Label Linkbase Document | * | |
| 101.PRE | XBRL Presentation Linkbase Document | * | |
| 104 | Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101). | * | |

Management contract or compensatory plan.

* Filed herewith.

Item 16. Form 10-K Summary.

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

TOUGHBUILT INDUSTRIES, INC.

Dated: March 31, 2023

/s/ Michael Panosian

Michael Panosian

President, Chief Executive Officer and Chairman of the Board of Directors
(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|----------------|
| <u>/s/ Michael Panosian</u> Michael Panosian | President, Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer) | March 31, 2023 |
| <u>/s/ Martin Galstyan</u> Martin Galstyan | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | March 31, 2023 |
| <u>/s/ Joshua Keeler</u> Joshua Keeler | Chief Design Officer and Director | March 31, 2023 |
| <u>/s/ Robert Faught</u> Robert Faught | Director | March 31, 2023 |
| <u>/s/ Linda Moossaian</u> Linda Moossaian | Director | March 31, 2023 |
| <u>/s/ William Placke</u> William Placke | Director | March 31, 2023 |

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the (i) Registration Statement of ToughBuilt Industries, Inc. on Form S-8 (File No. 333-268910), (ii) Registration Statement of ToughBuilt Industries, Inc. on Form S-1 (File No. 333-268537), (iii) Registration Statement of ToughBuilt Industries, Inc. on Form S-1 (File No. 333-266496), (iv) Registration Statement of ToughBuilt Industries, Inc. on Form S-1 (File No. 333-264930), and (v) Registration Statement of ToughBuilt Industries, Inc. on Form S-3 (File No. 333-252630), of our report dated March 31, 2023, which includes an explanatory paragraph as to ToughBuilt Industries, Inc.'s ability to continue as a going concern, with respect to our audits of the consolidated financial statements of ToughBuilt Industries, Inc. as of December 31, 2022 and 2021, and for the years ended December 31, 2022 and 2021, which report is included in this Annual Report on Form 10-K of ToughBuilt Industries, Inc. for the year ended December 31, 2022.

/s/ Marcum llp

Marcum llp
Costa Mesa, California
March 31, 2023

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULES 13a-14(a) AND 15d-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Michael Panosian, President and Chief Executive Officer of ToughBuilt Industries, Inc. (the "Company"), certify that:

- (1) I have reviewed this Annual Report on Form 10-K for the fiscal year ended December 31, 2022;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods represented in this report;
- (4) The Company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
- (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the Company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the Company's internal control over financial reporting that occurred during the Company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting; and
- (5) The Company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company's auditors and to the Audit Committee of the Board of Directors (or persons fulfilling the equivalent function):
- (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

March [], 2023

/s/ Michael Panosian

Michael Panosian
President and Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO RULES 13a-14(a) AND 15d-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Martin Galstyan, Chief Financial Officer of ToughBuilt Industries, Inc. (the "Company"), certify that:

- (1) I have reviewed this Annual Report on Form 10-K for the fiscal year ended December 31, 2022;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods represented in this report;
- (4) The Company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
- (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the Company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the Company's internal control over financial reporting that occurred during the Company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting; and
- (5) The Company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company's auditors and to the Audit Committee of the Board of Directors (or persons fulfilling the equivalent function):
- (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

March [], 2023

/s/ Martin Galstyan

Martin Galstyan
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of ToughBuilt Industries, Inc. (the "Company") for the year ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Michael Panosian, President and Chief Executive Officer of the Company hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March [], 2023

/s/ Michael Panosian

Michael Panosian
President and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of ToughBuilt Industries, Inc. (the "Company") for the year ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Martin Galstyan, Chief Financial Officer of the Company hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March [], 2023

/s/ Martin Galstyan

Martin Galstyan
Chief Financial Officer
(Principal Financial Officer)
