

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **March 26, 2021**

TOUGHBUILT INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

<u>Nevada</u> (State or other jurisdiction of incorporation)	<u>001-38739</u> (Commission File Number)	<u>46-0820877</u> (IRS Employer Identification No.)
<u>25371 Commercentre Drive, Suite 200</u> <u>Lake Forest, CA</u> (Address of principal executive offices)		<u>92630</u> (Zip code)

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

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

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

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

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

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

Emerging growth company ☒ [X]

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

Item 3.02 Unregistered Sales of Equity Securities.

As ToughBuilt Industries, Inc., a Nevada corporation (the “**Company**”), previously disclosed in its Current Report on Form 8-K filed with the Securities and Exchange Commission on November 23, 2020, the Company entered into an exchange agreement, dated November 20, 2020 (the “**Exchange Agreement**”), with an institutional investor (the “**Investor**”) pursuant to which the Company agreed to issue to the Investor an aggregate of nine (9) shares of Series E Non-Convertible Preferred Stock (the “**Series E Preferred Stock**”) of the Company.

On March 26, 2021, the Company filed with the Nevada Secretary of State a certificate of designation (the “**Series E Certificate of Designation**”) therein establishing the Series E Preferred Stock and issued nine shares of such preferred stock to the Investor per the Exchange Agreement.

Pursuant to the Series E Certificate of Designation, the designated class of Series E Preferred Stock consists of fifteen (15) shares and the holders of Series E Preferred Stock are entitled to vote on all matters subject to a vote or written consent of the holders of the Company's common stock and all capital stock of the Company having voting rights, a number of votes of each one share equal to 1% of the total number of votes that the issued and outstanding shares of common stock and all other voting securities of the Company as of any such date of determination, voting together as a single class, on a fully diluted basis, subject to applicable law and a certain blocker clause contained in the Series E Certificate of Designation, as discussed below.

Pursuant to the blocker clause in the Series E Certificate of Designation, the voting power of every holder of the Series E Preferred Stock together with such holder's affiliates and Attribution Parties, together with any and all securities of the Company owned by such parties, is limited to 4.99% of the voting power of the Company's outstanding capital stock. The term “Attribution Parties” is defined in the Series E Certificate of Designation to consist of the following persons and entities: (i) any investment vehicle, including, any funds, feeder funds, or managed accounts, currently, or from time to time after the date the shares of Series E Preferred Stock are issued to the holder, directly or indirectly managed or advised by the holder's investment manager or any of its affiliates or principals, (ii) any direct or indirect affiliates of the holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a group together with the holder or any of the foregoing; and (iv) any other persons whose beneficial

ownership of the Corporation's voting securities would or could be aggregated with the holder's and the other Attribution Parties for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended.

The Company issued the foregoing Series E Preferred Stock pursuant to the exemption from the registration requirement of the Securities Act of 1933 in reliance upon Section 3(a)(9) promulgated thereunder.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in Item 3.02 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

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

The information set forth in Item 3.02 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03. The information set forth above is qualified in its entirety by reference to the actual terms of Series E Certificate of Designation, which is filed as Exhibit 3.1 to this Form 8-K and is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No:	Description:
3.1	<u>Certificate of Designation of Series E Non-Convertible Preferred Stock</u>

SIGNATURE

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

TOUGHBUILT INDUSTRIES, INC.

Date: March 31, 2021

By: /s/ Martin Galstyan

Name: Martin Galstyan

Title: Chief Financial Officer



BARBARA K. CEGAVSKE
 Secretary of State
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 Carson City, Nevada 89701-4201
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Filed in the Office of <i>Barbara K. Cegavske</i>	Business Number E0199732012-3
Secretary of State State Of Nevada	Filing Number 20211335591
	Filed On 03/26/2021 11:18:09 AM
	Number of Pages 8

Certificate, Amendment or Withdrawal of Designation

NRS 78.1955, 78.1955(6)

- ☒ Certificate of Designation
- ☐ Certificate of Amendment to Designation - Before Issuance of Class or Series
- ☐ Certificate of Amendment to Designation - After Issuance of Class or Series
- ☐ Certificate of Withdrawal of Certificate of Designation

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information:	Name of entity: TOUGHBUILT INDUSTRIES, INC.	
	Entity or Nevada Business Identification Number (NVID): NV20121228846	
2. Effective date and time:	For Certificate of Designation or Amendment to Designation Only (Optional):	Date: _____ Time: _____ (must not be later than 90 days after the certificate is filed)
3. Class or series of stock: (Certificate of Designation only)	The class or series of stock being designated within this filing: Series E Non-Convertible Preferred Stock	
4. Information for amendment of class or series of stock:	The original class or series of stock being amended within this filing: _____	
5. Amendment of class or series of stock:	☐ Certificate of Amendment to Designation- Before Issuance of Class or Series As of the date of this certificate no shares of the class or series of stock have been issued.	
	☐ Certificate of Amendment to Designation- After Issuance of Class or Series The amendment has been approved by the vote of stockholders holding shares in the corporation entitling them to exercise a majority of the voting power, or such greater proportion of the voting power as may be required by the articles of incorporation or the certificate of designation.	
6. Resolution: (Certificate of Designation and Amendment to Designation only)	By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes OR amends the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.* _____	
7. Withdrawal:	Designation being _____ Date of Withdrawn: _____ Designation: _____ No shares of the class or series of stock being withdrawn are outstanding. The resolution of the board of directors authorizing the withdrawal of the certificate of designation establishing the class or series of stock: * _____	
8. Signature: (Required)	☒ Michael Panosian _____ Date: 03/26/2021 Signature of Officer	

This form must be accompanied by appropriate fees.

Filed in the Office of <i>Richard K. Givens</i>	Business Number E0199732012-3
Secretary of State State Of Nevada	Filing Number 20211336591
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CERTIFICATE OF DESIGNATION
SERIES E NON-CONVERTIBLE PREFERRED STOCK OF
TOUGHBUILT INDUSTRIES, INC.

Pursuant to Sections 78.315 and 78.1955 of the Nevada Revised Statutes, ToughBuilt Industries, Inc., a corporation organized and existing under the laws of the State of Nevada (the “Corporation”), does hereby submit the following:

WHEREAS, the articles of incorporation, as amended, of the Corporation (the “**Articles of Incorporation**”) authorizes the issuance of up to 5,000,000 shares of preferred stock, par value \$0.0001 per share, of the Corporation (“**Preferred Stock**”) in one or more series, and expressly authorizes the board of directors of the Corporation (the “**Board**”), subject to limitations prescribed by law, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designation, rights, preferences, powers, restrictions, and limitations of the shares of such series; and

WHEREAS, it is the desire of the Board to establish and fix the number of shares to be included in a new series of Preferred Stock and the designation, rights, preferences, and limitations of the shares of such new series.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby provide for the issue of a series of Preferred Stock and does hereby in this certificate of designation (the “**Certificate of Designation**”) establish and fix and herein state and express the designation, rights, preferences, powers, restrictions, and limitations of such series of Preferred Stock as follows:

1. Designation. There shall be a series of Preferred Stock that shall be designated as “Series E Non-Convertible Preferred Stock” (the “**Series E Preferred Stock**”) and the number of shares constituting such series shall be 15. The rights, preferences, powers, restrictions, and limitations of the Series E Preferred Stock shall be as set forth herein.

2. Defined Terms. For purposes hereof, the following terms shall have the following meanings:

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that “control” of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“**Attribution Parties**” means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the date the Shares are issued to the holder, directly or indirectly managed or advised by the holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the holder or any of the foregoing; and (iv) any other

Persons whose beneficial ownership of the Corporation's voting securities would or could be aggregated with the holder's and the other Attribution Parties for purposes of Section 13(d) of the Securities Exchange Act of 1934. For clarity, the purpose of the foregoing is to subject collectively the holder and all other Attribution Parties to the Maximum Percentage.

"Board" has the meaning set forth in the Recitals.

"Certificate of Designation" has the meaning set forth in the Recitals.

"Articles of Incorporation" has the meaning set forth in the Recitals.

"Change of Control" means (a) any sale, lease, or transfer or series of sales, leases or transfers of all or substantially all of the consolidated assets of the Corporation and its Subsidiaries; (b) any sale, transfer, or issuance (or series of sales, transfers, or issuances) of capital stock by the Corporation or the holders of Common Stock (and other voting stock of the Corporation) that results in the inability of the holders of Common Stock and the Series E Preferred Stock (or other voting stock of the Corporation) immediately prior to such sale, transfer, or issuance to designate or elect a majority of the board of directors (or its equivalent) of the Corporation; or (c) any merger, consolidation, recapitalization, or reorganization of the Corporation with or into another Person (whether or not the Corporation is the surviving corporation) that results in the inability of the holders of Common Stock and Series E Preferred Stock (and other voting stock of the Corporation) immediately prior to such merger, consolidation, recapitalization, or reorganization to designate or elect a majority of the board of directors (or its equivalent) of the resulting entity or its parent company.

"Commission" means the U.S. Securities and Exchange Commission.

"Common Stock" means the common stock, par value \$0.0001 per share, of the Corporation.

"Corporation" has the meaning set forth in the Preamble.

"Date of Issuance" means, for any Share, the date on which the Corporation initially issues such Share (without regard to any subsequent transfer of such Share or reissuance of the certificate(s) representing such Share).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, promulgated by the Commission.

"Group" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

"Junior Securities" means, collectively, the Common Stock and any other class of securities that is specifically designated as junior to the Series E Preferred Stock.

"Liquidation" has the meaning set forth in Section 5.

"Liquidation Value" means \$1.00 per Share.

“**Maximum Percentage**” has the meaning set forth in Section 6.3.

“**NRS**” means the Nevada Revised Statutes.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“**Preferred Stock**” has the meaning set forth in the Recitals.

“**Series E Preferred Stock**” has the meaning set forth in Section 1.

“**Series E Redemption**” has the meaning set forth in Section 7.1.

“**Series E Redemption Date**” has the meaning set forth in Section 7.1(b).

“**Series E Redemption Notice**” has the meaning set forth in Section 7.1.

“**Series E Redemption Price**” has the meaning set forth in Section 7.1.

“**Share**” means a share of Series E Preferred Stock.

“**Subsidiary**” means, with respect to any Person, any other Person of which a majority of the outstanding shares or other equity interests having the power to vote for directors or comparable managers are owned, directly or indirectly, by the first Person.

3. Rank. With respect to payment of dividends and distribution of assets upon liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, all Shares of the Series E Preferred Stock shall rank senior to all Junior Securities.

4. Dividends. The Series E Preferred Stock shall not be entitled to receive dividends.

5. Liquidation. In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Corporation (collectively with a Deemed Liquidation, a “**Liquidation**”), the holders of Shares then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, before any payment shall be made to the holders of Junior Securities by reason of their ownership thereof, an amount in cash equal to the aggregate Liquidation Value of all Shares held by such holder, plus all unpaid accrued and accumulated dividends on all such Shares (whether or not declared).

6. Voting.

6.1 Voting Generally. Each holder of outstanding Shares will have the voting rights as described in this Section 6, subject to the restrictions provided in this Certificate of Designation. At all times, the holders of the Shares shall be entitled to notice of any stockholders’ meeting and to vote together with the class of stockholders of Common Stock, as a single class, upon any matter submitted to the stockholders of Common Stock for a vote as of a record date established by the Board of Directors of the Corporation (the “**Record Date**”), except as provided

by law, or by written consent in lieu thereof (“**Written Consent**”). For so long as any Shares remain issued and outstanding, the holders of each Share shall have the right to vote, in an amount equal to one percent (1%) of the total voting power of then-outstanding shares of Common Stock of the Corporation entitled to vote in such class, calculated as provided herein.

The voting power of the entirety of issued and outstanding Shares shall be calculated in accordance with the following formula, provided that there shall be no fractional votes and the resulting votes shall be rounded up to the nearest whole number:

$$VSA=(C+X)/(1-0.01*n)*0.01*n$$

where:

- VSA** is the voting power of the entirety of the Shares on the date of the vote;
- C** is the total voting power of all shares of Common Stock of the Corporation entitled to vote on the matter(s) submitted to the holders of the outstanding voting capital stock of the Corporation as of a certain Record Date or date of a Written Consent, as the case may be;
- X** is the total voting power of all outstanding shares of all series of Preferred Stock of the Corporation, other than Series E Preferred Stock, as of the Record Date or date of Written Consent, as the case may be; and
- n** is the number of issued and outstanding Shares as of the Record Date or date of Written Consent, as the case may be.

For example, if there are 5,000,000 shares of the Corporation’s Common Stock issued and outstanding as of the Record Date or the date of Written Consent, as the case may be, and no shares of Preferred Stock are issued and outstanding, the holders of the voting stock, voting separately as a class, will have the right to vote an aggregate of 5,000,000 votes. In such an event, the holders of 15 issued and, subject to Section 6.2 below, the outstanding Shares will have the right to vote an aggregate of 882,353 votes (and each Share will be entitled to 58,824 votes) in the class of holders of Common Stock and Shares, which classes will, collectively, have an aggregate voting power equal to 5,882,353 votes.

6.2 For so long as any Shares remain issued and outstanding, the holders of each Share shall have the right to vote, in an amount equal to one percent (1%) of the total voting power of then-outstanding shares of Common Stock of the Corporation entitled to vote in such class, calculated as provided herein, provided, however, that in no event shall the total voting power exceed 3,602,466 shares (as adjusted for any stock split, stock dividend, recapitalization, or otherwise).

6.3 Maximum Percentage. Notwithstanding anything to the contrary set forth herein, the voting power attributable to any Share hereunder, shall be automatically, reduced, as necessary, such that the aggregate voting power attributable to the Shares of such applicable Holder (and any other securities of the Company then held by such Holder) or any of its Attribution Parties shall not exceed 4.99% of the voting power of the Corporation (the “**Maximum Percentage**”). For

purposes of the foregoing sentence, the aggregate number of voting power of the holder and the other Attribution Parties shall include the number of shares of Common Stock, Shares or other securities of the Company held by the holder and all other Attribution Parties and entitled to vote on such matter pursuant to which this determination is being made. The Corporation shall not give effect to any voting rights of the Shares, and any holder shall not have the right to exercise voting rights with respect to any Shares pursuant hereto, to the extent that giving effect to such voting rights would result in such holder (together with its affiliates) being deemed to be entitled to vote in excess of the Maximum Percentage of the voting power of the Corporation. The provisions of this Section 6.3 shall be construed and implemented in a manner otherwise than in strict conformity to the extent necessary to correct this Section 6.3 or any portion thereof which may be defective or inconsistent with the intended voting limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained herein may not be waived by the Corporation or any holder of Shares.

7. Redemption.

7.1 At any time and from time to time on or after the Date of Issuance, the Corporation shall have the right to redeem, out of funds legally available therefor, all or any portion of the then outstanding Shares (a "**Series E Redemption**") for a price per Share equal to the Liquidation Value for such Share (the "**Series E Redemption Price**"). Any such Series E Redemption shall occur not more than sixty (60) days following the delivery by the Corporation of a written redemption notice (the "**Series E Redemption Notice**") to the holder of record of each Share stating the aggregate number of Shares to be redeemed. Each Series E Redemption Notice shall state:

- (a) the number of Shares held by the holder that the Corporation shall redeem on the Series E Redemption Date specified in the Series E Redemption Notice;
- (b) the date the Series E Preferred Stock shall be redeemed (the "**Series E Redemption Date**"); and
- (c) the manner and place designated for surrender by the holder to the Corporation of his, her, or its certificate or certificates representing the Shares to be redeemed.

7.2 In exchange for the surrender to the Corporation by the respective holders of Shares of their certificate or certificates representing such Shares in accordance with the Series E Redemption Notice, the aggregate Series E Redemption Price for all Shares held by each holder of Shares shall be payable in cash in immediately available funds to the respective holders of the Series E Preferred Stock on the applicable Series E Redemption Date.

7.3 If on the applicable Series E Redemption Date, the Series E Redemption Price is paid (or tendered for payment) for any of the Shares to be redeemed on such Series E Redemption Date, then on such date all rights of the holder in the Shares so redeemed and paid or tendered, including any rights to dividends on such Shares, shall cease, and such Shares shall no longer be deemed issued and outstanding.

8. Conversion; Exchange. The Series E Preferred Stock is not convertible or exchangeable into Common Stock or other securities of the Corporation or Subsidiary.

9. Reissuance of Series E Preferred Stock. Any Shares acquired by the Corporation may be reissued by the Corporation.

10. Notices. Except as otherwise provided herein, all notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent (a) to the Corporation, at its principal executive offices and (b) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (or at such other address for a stockholder as shall be specified in a notice given in accordance with this Section 10).

11. Amendment and Waiver. No provision of this Certificate of Designation may be amended, modified, or waived except by an instrument in writing executed by the Corporation and a Supermajority Interest and any such written amendment, modification, or waiver will be binding upon the Corporation and each holder of Series E Preferred Stock; *provided*, that no such action shall change or waive this Section 11, without the prior written consent of each holder of outstanding Shares; *provided, further*, that no amendment, modification, or waiver of the terms or relative priorities of the Series E Preferred Stock may be accomplished by the merger, consolidation, or other transaction of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders in accordance with this Section 11.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Certificate of Designation is executed on behalf of the Corporation by its President this March 26, 2021.

TOUGHBUILT INDUSTRIES, INC.

By: /s/ Michael Panosian

Name: Michael Panosian

Title: Chief Executive Officer