

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

FORM S-8
REGISTRATION STATEMENT
Under
The Securities Act of 1933

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 Number)

**8669 Research Drive, Irvine, CA 92618
(949) 528-3100**

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

ToughBuilt Industries, Inc. 2022 Equity Incentive Plan
(Full Title of the Plans)

**Mr. Michael Panosian
Chief Executive Officer
8669 Research Drive
Irvine, CA 92618**

Telephone: (949) 528-3100

(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:

**Ross D. Carmel, Esq.
Philip Magri, Esq.
Carmel, Milazzo & Feil LLP
55 W 39th Street, 18th Floor
New York, NY 10018
Tel: 212-658-0458
Fax: 646-838-1314**

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
Non-accelerated filer

☐
☒

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 7(a)(2)(B) of the Securities Act. ☐

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in “Item 1. Plan Information” and “Item 2. Registrant Information and Employee Plan Annual Information” of Form S-8 will be sent or given to participants of the Registrant’s 2022 Equity Incentive Plan, as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the “Securities Act”). Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the “Commission”) either as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The Commission allows us to “incorporate by reference” the information we file with it, which means that we can disclose important information to you by referring you to those documents instead of having to repeat the information in this prospectus. The information incorporated by reference is considered to be part of this prospectus, and later information that we file with the Commission will automatically update and supersede this information. The documents listed below are incorporated by reference into this prospectus:

- the Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2021 filed with the SEC on April 18, 2022;
- the Registrant’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed with the SEC on May 23, 2022;
- the Registrant’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2022 filed with the Commission on August 19, 2022;
- the Registrant’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2022 with the Commission on November 14, 2022;
- the Registrant’s Current Reports on Form 8-K filed with the Commission on February 15, 2022, February 17, 2022, February 23, 2022, April 4, 2022, April 18, 2022, April 25, 2022, April 27, 2022, May 9, 2022, May 24, 2022, June 9, 2022, June 23, 2022, July 13, 2022, July 27, 2022, August 19, 2022, September 23, 2022, October 7, 2022, October 11, 2022, November 14, 2022, and November 18, 2022; and
- the description of the Registrant’s common stock contained in the Registrant’s Form 8-A (File No: 001-38739) filed with the Commission on October 8, 2018.

All documents filed and to be filed by the Registrant with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the effectiveness of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the respective date of filing of such documents. Unless expressly incorporated into this Registration Statement, a report (or portion thereof) furnished under Item 7.01 of Form 8-K prior or subsequent to the date hereof shall not be incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 78.7502 of the Nevada Revised Statutes (“NRS”) permits a Nevada corporation to 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 (i.e., a “non-derivative proceeding”), by reason of the fact that he or she 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 or her in connection with the action, suit or proceeding if he or she:

- is not liable under NRS 78.138 for breach of his or her fiduciary duties to the corporation; or
- acted in good faith and in a manner which he or she 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 or her conduct was unlawful.

In addition, NRS 78.7502 permits Nevada corporation to indemnify any person 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 (i.e., a “derivative proceeding”), by reason of the fact that he or she 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 amounts paid in settlement and attorneys’ fees actually and reasonably incurred by him or her in connection with the defense or settlement of the action or suit if he or she:

- is not liable under NRS 78.138 for breach of his or her fiduciary duties to the corporation; or
- acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation.

Under NRS 78.502, indemnification may not be made for any claim, issue, or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any non-derivative proceeding or any derivative proceeding, or in defense of any claim, issue or matter therein, the corporation is obligated to indemnify him or her against expenses, including attorneys’ fees, actually and reasonably incurred in connection with the defense.

NRS 78.752 permits a Nevada corporation to purchase and maintain insurance or to make other financial arrangements on behalf of any person who 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 for any liability asserted against him or her and liability and expenses incurred by him or her in his or her capacity as a director, officer, employee or agent, or arising out of his or her status as such, whether or not the corporation has the authority to indemnify him or her against such liability and expenses.

Under the Registrant's bylaws, the directors shall cause the Registrant to indemnify a director or former director of the Registrant, and the directors may cause the Registrant to indemnify a director or former director of a corporation of which the Registrant is or was a shareholder and the heirs and personal representatives of any such person against all costs, charges, and expenses, including any amount paid to settle an action or satisfy a judgment, actually and reasonably incurred by him, her or them including an amount paid to settle an action or satisfy a judgment in a criminal or administrative action or proceeding to which he or she is, or they are made a party by reason of his or her being or having been a director of the Registrant or a director of such corporation, including an action brought by the Registrant. Each director of the Registrant on being elected or appointed is deemed to have contracted with the Registrant on the terms of the foregoing indemnity.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

Exhibit No.:	Description of Exhibit:
4.1	ToughBuilt Industries, Inc. 2022 Equity Incentive Plan
5.1	Opinion of Carmel, Milazzo & Feil LLP
23.1	Consent of Marcum LLP
23.2	Consent of Carmel, Milazzo & Feil LLP (included in Exhibit 5.1).
24.1	Power of Attorney (Included on Signature Page)
107	Filing Fee Table

Item 9. Undertakings

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information in the Registration Statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply to the Registration Statement on Form S-8 if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in City of Irvine, State of California, on December 20, 2022.

TOUGHBUILT INDUSTRIES, INC.

/s/ Michael Panosian

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

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned constitutes and appoints Michael Panosian, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or his or her substitutes or substitute may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Michael Panosian</u> Michael Panosian	Chair and Chief Executive Officer (Principal Executive Officer)	December 20, 2022
<u>/s/ Martin Galstyan</u> Martin Galstyan	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	December 20, 2022
<u>/s/ Robert Faught</u> Robert Faught	Director	December 20, 2022
<u>/s/ Linda Moossaian</u> Linda Moossaian	Director	December 20, 2022
<u>/s/ William Placke</u> William Placke	Director	December 20, 2022
<u>/s/ Joshua Keeler</u> Joshua Keeler	Director	December 20, 2022

TOUGHBUILT INDUSTRIES, INC.

2022 EQUITY INCENTIVE PLAN

1. PURPOSE**1.1 Purpose**

The purpose of the Plan is to secure for the Company and its stockholders the benefits inherent in share ownership by the employees, Consultants, and directors of the Company and its 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: (a) 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 (b) promote a greater alignment of interests between such persons and stockholders of the Company.

1.2 Available Awards

Awards that may be granted under this Plan include:

- (a) Options; and
- (b) Restricted Stock Units.

2. INTERPRETATION**2.1 Definitions**

- (a) “**Affiliate**” means any corporation in a chain or corporations or other entities in which each corporation or other entity has a “controlling interest” (as defined in U.S. Treasury Regulation § 1.409A-1(b)(5)(iii)(E)(1)) in another corporation or other entity in the chain, ending with the Company.
 - (b) “**Award**” means any right granted under this Plan, including Options and Restricted Stock Units.
 - (c) [INTENTIONALLY OMITTED].
 - (c) “**Blackout Period**” means an interval of time during which the Company has determined, pursuant to the Company’s internal trading policies, that one or more Participants may not trade any securities of the Company because they may be in possession of undisclosed material information pertaining to the Company, or otherwise prohibited by law from trading any securities of the Company.
 - (d) “**Board**” means the board of directors of the Company.
 - (e) “**Cashless Exercise Right**” has the meaning set forth in Section 3.5 of this Plan.
 - (f) “**Change of Control**” means, in respect of the Company:
 - (i) if, as a result of or in connection with the election of directors, the people who were directors (or who were entitled under a contractual arrangement to be directors) of the Company before the election cease to constitute a majority of the Board, unless the directors have been nominated by management, corporate investors, or approved of by a majority of the previously serving directors;
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- (ii) any transaction at any time and by whatever means pursuant to which any Person or any group of two or more Persons acting jointly or in concert as a single control group or any Affiliate (other than a wholly-owned Subsidiary of the Company or in connection with a reorganization of the Company) or any one or more directors thereof hereafter “beneficially owns” (as defined in Section 13d of the Exchange Act) directly or indirectly, or acquires the right to exercise control or direction over, voting securities of the Company representing 50% or more of the then issued and outstanding voting securities of the Company, as the case may be, in any manner whatsoever;
- (iii) the sale, assignment, lease, or other transfer or disposition of more than 50% of the assets of the Company to a Person or any group of two or more Persons acting jointly or in concert (other than a wholly-owned Subsidiary of the Company or in connection with a reorganization of the Company);
- (iv) the occurrence of a transaction requiring approval of the Company’s stockholders whereby the Company is acquired through consolidation, merger, exchange of securities involving all of the Company’s voting securities, purchase of assets, amalgamation, statutory arrangement or otherwise by any Person or any group of two or more Persons acting jointly or in concert (other than a short-form amalgamation of the Company or an exchange of securities with a wholly-owned Subsidiary of the Company or a reorganization of the Company); or
- (v) any sale, lease, exchange, or other disposition of all or substantially all of the assets of the Company other than in the ordinary course of business.

For the purposes of the foregoing, “**voting securities**” means Shares and any other shares entitled to vote for the election of directors and shall include any securities, whether or not issued by the Company, which are not shares entitled to vote for the election of directors but are convertible into or exchangeable for shares which are entitled to vote for the election of directors, including any options or rights to purchase such shares or securities. Notwithstanding the foregoing, as to any Award under the Plan that consists of deferred compensation subject to Section 409A of the Code, the definition of “Change in Control” shall be deemed modified to the extent necessary to comply with Section 409A of the Code.

- (g) “**Code**” means the United States *Internal Revenue Code of 1986*, as amended, and any applicable United States Treasury Regulations and other binding guidance thereunder. Any reference to a section of the Code herein will be a reference to any successor or amended section of the Code.
 - (h) “**Committee**” has the meaning set forth in Section 7.1(a).
 - (i) “**Company**” means ToughBuilt Industries, Inc.
 - (j) “**Consultant**” means Persons who provide bona fide services to the Company, including an advisor, and such services are not in connection with the offer or sale of securities in capital-raising transactions, and do not directly or indirectly promote or maintain a market for the Company’s securities.
 - (k) “**Deferred Payment Date**” for a Participant means the date after the Restricted Period in respect of Restricted Stock Units which is the earlier of (i) the date which the Participant has elected to defer receipt of the underlying Shares in accordance with Section 4.5 of this Plan; and (ii) the Participant’s Separation Date.
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- (l) “**Designated Affiliate**” means direct and indirect Subsidiaries of the Company and any Person that is an Affiliate of the Company, in each case designated by the Committee from time to time as a Designated Affiliate for purposes of this Plan.
 - (m) “**Determination Date**” means the latest possible date that will not jeopardize the qualification of an Award granted under the Plan as “performance-based compensation” under Section 162(m) of the Code.
 - (n) “**Director Retirement**” in respect of a Participant, means the Participant ceasing to hold any directorships with the Company, any Designated Affiliate and any entity related to the Company for after attaining a stipulated age in accordance with the Company’s normal retirement policy, or earlier with the Company’s consent.
 - (o) “**Director Termination**” means the removal of, resignation of, or failure to re-elect an Eligible Director (excluding a Director Retirement) as a director of the Company.
 - (p) “**Disability**” means permanent and total disability as defined in Section 22(e)(3) of the Code, provided that in the case of Awards other than Incentive Stock Options, the Committee in its discretion may determine whether a permanent and total disability exists in accordance with uniform and non-discriminatory standards adopted by the Committee from time to time.
 - (q) “**Effective Date**” has the meaning set forth in Section 6.7.
 - (r) “**Eligible Consultant**” means Consultants who are entitled to receive equity incentives as determined by the Committee.
 - (s) “**Eligible Director**” means a director of the Company or any Designated Affiliate who are, as such, eligible for participation in this Plan.
 - (t) “**Eligible Employee**” means an employee (including an officer) of the Company or any Designated Affiliate, whether or not they have a written employment contract with Company or the Designated Affiliate, determined by the Committee.
 - (u) “**Eligible Person**” means an Eligible Employee, Eligible Consultant, or Eligible Director.
 - (v) “**Exchange**” means The Nasdaq Stock Market LLC, or any successor principal stock exchange upon which the Shares may become listed.
 - (w) “**Fair Market Value**” means, as of any date, the value of the Shares determined as follows:
 - (i) if the Shares are listed on any established stock exchange or a national market system, including without limitation the Nasdaq Global Select Market, the Nasdaq Global Market, or the Nasdaq Capital Market of The Nasdaq Stock Market, its Fair Market Value will be the closing sales price for such Shares (or if no closing sales price was reported on that date, as applicable, on the last trading date such closing sales price was reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Committee deems reliable;
 - (ii) if the Shares is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share will be the mean between the high bid and low asked prices for the Shares on the day of determination (or, if no bids and asks were reported on that date, as applicable, on the last trading date such bids and asks were reported), as reported in *The Wall Street Journal* or such other source as the Committee deems reliable; or
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- (iii) in the absence of an established market for the Shares, or if such Shares is not regularly quoted or does not have sufficient trades or bid prices which would accurately reflect the actual Fair Market Value of the Shares, the Fair Market Value will be determined in good faith by the Committee upon the advice of a qualified valuation expert.
 - (x) **"Incentive Stock Option"** means an Option granted under the Plan that by its terms qualifies and is otherwise intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.
 - (y) **"Insider"** means a director, officer, or holder of 5% or more of the Shares at any date as determined by the Committee.
 - (z) **"Market Price"** such calculation of market price as may be determined by the Board.
 - (aa) **"Non-qualified Stock Option"** means an Option granted under the Plan that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.
 - (bb) **"Option"** means an option granted under the terms of this Plan, including Incentive Stock Options and Non-qualified Stock Options.
 - (cc) **"Option Period"** means the period during which an Option is outstanding.
 - (dd) **"Option Shares"** has the meaning set forth in Section 3.5 of this Plan.
 - (ee) **"Optionee"** means an Eligible Person to whom an Option has been granted under the terms of this Plan.
 - (ff) [INTENTIONALLY LEFT BLANK].
 - (gg) **"Participant"** means an Eligible Person who participates in this Plan.
 - (hh) **"Performance Goals"** means the attainment of performance goals relating to one or more business criteria within the meaning of Code Section 162(m) and may provide for a targeted level or levels of achievement including (i) earnings per Share, (ii) operating cash flow, (iii) operating income, (iv) profit after-tax, (v) profit before-tax, (vi) return on assets, (vii) return on equity, (viii) return on sales, (ix) revenue, and (x) total stockholder return.
 - (ii) **"Person"** includes any individual and any corporation, company, partnership, governmental authority, joint venture, association, trust, or other entity.
 - (jj) **"Plan"** means this Equity Incentive Plan, as it may be amended and restated from time to time.
 - (kk) **"Redemption Notice"** means a written notice by a Participant, or the administrator or liquidator of the estate of a Participant, to the Company stating a Participant's request to redeem his or her Restricted Stock Units.
 - (ll) **"Restricted Period"** means any period of time that a Restricted Stock Unit is not vested and the Participant holding such Restricted Stock Unit remains ineligible to receive the relevant Shares or cash in lieu thereof, determined by the Board in its absolute discretion, and with respect to U.S. Taxpayers, the Restricted Stock Units remain subject to a substantial risk of forfeiture within the meaning of Section 409A of the Code, however, such period of time and, with respect to U.S. Taxpayers the substantial risk of forfeiture, may be reduced or eliminated from time to time and at any time and for any reason as determined by the Board, including, but not limited to, circumstances involving death or Disability of a Participant.
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- (mm) **“Restricted Stock Unit”** means a bookkeeping entry representing an amount equal to the Fair Market Value of one Share, granted pursuant to Section 4.1 of this Plan. Each Restricted Stock Unit represents an unfunded and unsecured obligation of the Company.
- (nn) **“Restricted Stock Unit Grant Letter”** has the meaning set forth in Section 4.3 of this Plan.
- (oo) **“Retirement”** in respect of an Eligible Employee, means the Eligible Employee ceasing to hold any employment with the Company or any Designated Affiliate after attaining a stipulated age in accordance with the Company’s normal retirement policy, or earlier with the Company’s consent.
- (pp) **“Separation Date”** means the date that a Participant ceases to be an Eligible Person.
- (qq) **“Stockholder Approval”** means a majority of the votes attached to Shares held by stockholders of the Company.
- (rr) **“Shares”** means the common stock, par value of the Company.
- (ss) **“Subsidiary”** means a “subsidiary corporation,” whether now or hereafter existing, as defined in Section 424(f) of the Code.
- (tt) **“Tax Obligations”** means the amount of all withholding required under any governing tax law with respect to the payment of any amount with respect to the redemption of a Restricted Stock Unit, including amounts funded by the Company on behalf of previous withholding tax payments and owed by the Participant to the Company or with respect to the exercise of an Option, as applicable.
- (uu) **“Termination”** means the termination of the employment or engagement of an Eligible Employee or Eligible Consultant with or without cause by the Company or a Designated Affiliate or the cessation of employment or engagement of the Eligible Employee or Eligible Consultant with the Company or a Designated Affiliate as a result of resignation or otherwise, other than the Retirement of the Eligible Employee.
- (vv) **“U.S. Securities Act”** means the United States *Securities Act of 1933*, as amended.
- (ww) **“U.S. Taxpayer”** means a Participant who is a U.S. citizen, U.S. permanent resident or other person who is subject to taxation on their income under the Code.

2.2 Interpretation

- (a) This Plan is created under and is to be governed, construed and administered in accordance with the laws of the State of Nevada applicable therein.
 - (b) Whenever the Board or Committee is to exercise discretion in the administration of the terms and conditions of this Plan, the term “discretion” means the sole and absolute discretion of the Board or Committee.
 - (c) As used herein, the terms “Part” or “Section” mean and refer to the specified Part or Section of this Plan, respectively.
 - (d) Where the word “including” or “includes” is used in this Plan, it means “including (or includes) without limitation.”
 - (e) Words importing the singular include the plural and vice versa and words importing any gender include any other gender.
 - (f) Unless otherwise specified, all references to money amounts are to Canadian dollars.
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- (g) Any Performance Goals may be used to measure the performance of the Company as a whole or a business unit of the Company and may be measured relative to a peer group or index. The Performance Goals may differ from Participant to Participant and from Award to Award. Prior to the Determination Date, the Committee will determine whether any significant element(s) will be included in or excluded from the calculation of any Performance Goal with respect to any Participant. The Committee may in its discretion grant Awards that are not intended to qualify as “performance-based compensation” under Section 162(m) of the Code to such Participants that are based on Performance Goals or other specific criteria or goals but that do not satisfy the definition of Performance Goals. Notwithstanding any other provision of the Plan, any Award which is granted to a Participant and is intended to constitute qualified performance based compensation under Code Section 162(m) will be subject to any additional limitations set forth in the Code (including any amendment to Section 162(m)) or any regulations and ruling issued thereunder that are requirements for qualification as qualified performance-based compensation as described in Section 162(m) of the Code, and the Plan will be deemed amended to the extent necessary to conform to such requirements.

3. STOCK OPTIONS

3.1 Participation

The Company may from time to time grant Options to Participants pursuant to this Plan.

3.2 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, the Company 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 the Company 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 Incentive Stock Option granted to an Eligible Employee who, at the time the Incentive Stock Option is granted, owns shares representing more than 10% of the voting power of all classes of shares of the Company 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 of this Section 3.2, 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.

3.3 Grant of Options

Each Option will be designated in the Award agreement as either an Incentive Stock Option or a Non-qualified Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds \$100,000 (U.S.), such Options will be treated as Non-qualified Stock Options. For purposes of this Section 3.3, Incentive Stock Options 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.

The Board, on the recommendation of the Committee, may at any time authorize the granting of Options to such Participants as it may select for the number of Shares that it shall designate, subject to the provisions of this Plan. The date of grant of an Option shall, unless otherwise determined by the Board, be (i) the date such grant was approved by the Committee for recommendation to the Board, provided the Board approves such grant; or (ii) for a grant of an Option not approved by the Committee for recommendation to the Board, the date such grant was approved by the Board.

Each Option granted to a Participant shall be evidenced by a stock option agreement with terms and conditions consistent with this Plan and as approved by the Board on the recommendation of the Committee (which terms and conditions need not be the same in each case and may be changed from time to time, subject to Section 6.8 of this Plan, and the approval of any material changes by the Exchange).

In respect of Options granted to Participants pursuant to this Plan, the Company is representing herein and in the applicable stock option agreement that the Participant is a bona fide Eligible Person of the Company or a Designated Affiliate.

3.4 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 Committee, may determine at the date of grant, and may thereafter be reduced with respect to any such Option as provided in Section 3.6 hereof covering termination of employment or engagement of the Optionee or death or Disability of the Optionee; provided, however, that at any time the expiry date of the Option Period in respect of any outstanding Option under this Plan should be determined to occur either during a Blackout Period imposed by the Company or within two business days following the expiry of the Blackout Period, the expiry date of such Option Period shall be deemed to be the date that is the tenth business day following the expiry of the Blackout Period. Moreover, in the case of an Incentive Stock Option granted to a Participant who, at the time the Incentive Stock Option is granted, owns Shares representing more than 10% of the total combined voting power of all classes of shares of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option will be five years from the date of grant or such shorter term as may be provided in the Award agreement.

Unless otherwise determined from time to time by the Board, on the recommendation of the Committee, Options shall vest and may be exercised (in each case to the nearest full Share) during the Option Period annually over a two-year period, with one-eighth of the Options vesting on the date of grant, and an additional one-eighth of the Options vesting on the date which is each three months thereafter.

Except as set forth in Section 3.6, no Option may be exercised unless the Optionee is at the time of such exercise:

- (a) in the case of an Eligible Employee, in the employ of the Company or a Designated Affiliate and shall have been continuously so employed or retained since the grant of the Option;
- (b) in the case of an Eligible Consultant, a Consultant of the Company or a Designated Affiliate and shall have been such a Consultant continuously since the grant of the Option; or
- (c) in the case of an Eligible Director, a director of the Company or a Designated Affiliate and shall have been such a director continuously since the grant of the Option.

The exercise of any Option will be contingent upon the Optionee having entered into a stock option agreement with the Company on such terms and conditions as have been approved by the Board, on the recommendation of the Committee, and which incorporates by reference the terms of this Plan. The exercise of any Option will, subject to Section 3.5, also be contingent upon receipt by the Company of cash payment of the full purchase price of the Shares being purchased.

Shares issuable upon exercise of the Options may be subject to a hold period or trading restrictions. In addition, no Optionee who is resident in the U.S. may exercise Options unless the Shares to be issued upon exercise of the Options are registered under the U.S. Securities Act or are issued in compliance with an available exemption from the registration requirements of the U.S. Securities Act.

To the extent that the Committee determines it to be desirable to qualify Awards granted hereunder as “performance-based compensation” within the meaning of Section 162(m) of the Code, the Plan will be administered by a Committee of two (2) or more “outside directors” within the meaning of Section 162(m) of the Code.

To the extent desirable to qualify transactions hereunder as exempt under Rule 16b-3, the transactions contemplated hereunder will be structured to satisfy the requirements for exemption under Rule 16b-3.

3.5 Cashless Exercise Right

Unless prohibited by the Exchange, and except with respect to Incentive Stock Options 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 obtained by:

- (a) subtracting the applicable Option exercise price per Share from the Market Price per Share on the business day immediately prior to the exercise of the Cashless Exercise Right and multiplying the remainder by the number of Option Shares;
- (b) subtracting from the amount obtained under subsection 3.5(a) that amount of Tax Obligations applicable to the Option Shares; and
- (c) dividing the net amount obtained under subsection 3.5(b) by the Market Price per Share on the business day immediately prior to the exercise of the Cashless Exercise Right.

If a Participant exercises a Cashless Exercise Right in connection with an Option, it is exercisable only to the extent and on the same conditions that the related Option is exercisable under this Plan.

3.6 Effect of Termination of Employment or Death or Disability

If an Optionee:

- (a) 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 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;
- (b) 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 Committee, be exercisable following the date on which such Optionee ceases to be so employed or engaged; and
- (c) 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 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.

3.7 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 the Exchange) shall be obtained for any reduction in the exercise price of any Option granted under this Plan if the holder thereof is an Insider of the Company at the time of the proposed amendment.

3.8 Change of Control

In the event of a Change of Control, 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 Committee.

3.9 Incentive Stock Options

- (a) Maximum Number of Shares for Incentive Stock Options. Notwithstanding any other provision of this Plan to the contrary, the aggregate number of Shares available for Incentive Stock Options shall not exceed 10% of the number of Shares issued at such time, subject to adjustment pursuant to Section 6.3 of this Plan and subject to the provisions of Sections 422 and 424 of the Code.
 - (b) 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 Incentive Stock Option or a Non-qualified Stock Option. 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 Non-qualified Stock Option.
 - (c) Special Requirements for Incentive Stock Options. In addition to the other terms and conditions of this Plan (and notwithstanding any other term or condition of this Plan to the contrary), the following limitations and requirements will apply to an Incentive Stock Option:
 - (i) An Incentive Stock Option may be granted only to an employee of the Company, or an employee of a Subsidiary of the Company within the meaning of Section 424(f) of the Code.
 - (ii) The aggregate Fair Market Value of the Shares (determined as of the applicable grant date) with respect to which Incentive Stock Options are exercisable for the first time by any U.S. Taxpayer during any calendar year (pursuant to this Plan and all other plans of the Company and of any Parent or Subsidiary, as defined in Sections 424(e) and (f) respectively of the Code) will not exceed US\$100,000 or any other limitation subsequently set forth in Section 422(d) of the Code. To the extent that an Option that is designated as an Incentive Stock Option becomes exercisable for the first time during any calendar year for Shares having a Fair Market Value greater than US\$100,000, the portion that exceeds such amount will be treated as a Non-qualified Stock Option.
 - (iii) The exercise price per Share payable upon exercise of an Incentive Stock Option will be not less than 100% of the Fair Market Value of a Share on the applicable grant date; provided, however, that the exercise price per Share payable upon exercise of an Incentive Stock Option granted to a U.S. Taxpayer who is a 10% Stockholder (within the meaning of Sections 422 and 424 of the Code) on the applicable grant date will be not less than 110% of the Fair Market Value of a Share on the applicable grant date.
 - (iv) No Incentive Stock Option may be granted more than 10 years after the earlier of (A) the date on which this Plan, or an amendment and restatement of the Plan, as applicable, is adopted by the Board; or (B) the date on which this Plan, or an amendment and restatement of this Plan, as applicable, is approved by the stockholders of the Company.
 - (v) An Incentive Stock Option will terminate and no longer be exercisable no later than 10 years after the applicable date of grant; provided, however, that an Incentive Stock Option granted to a U.S. Taxpayer who is a 10% Stockholder (within the meaning of Sections 422 and 424 of the Code) on the applicable grant date will terminate and no longer be exercisable no later than 5 years after the applicable grant date.
 - (vi) An Incentive Stock Options shall be exercisable in accordance with its terms under the Plan and the applicable stock option agreement and related exhibits and appendices thereto. However, in order to retain its treatment as an Incentive Stock Option for U.S. federal income tax purposes, the Incentive Stock Option must be exercised within the time periods set forth below. The limitations below are not intended to, and will not, extend the time during which an Option may be exercised pursuant to the terms of such Option.
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- (A) For Incentive Stock Option treatment, if a U.S. Taxpayer who has been granted an Incentive Stock Option ceases to be an employee due to the Disability of such U.S. Taxpayer (within the meaning of Section 22(e) of the Code), such Incentive Stock Option must be exercised (to the extent such Incentive Stock Option is exercisable pursuant to its terms) by the date that is one year following the date of such Disability (but in no event beyond the term of such Incentive Stock Option).
 - (B) For Incentive Stock Option treatment, if a U.S. Taxpayer who has been granted an Incentive Stock Option ceases to be an employee for any reason other than the death or Disability of such U.S. Taxpayer, such Incentive Stock Option must be exercised (to the extent such Incentive Stock Option otherwise is exercisable pursuant to its terms) by such U.S. Taxpayer within three months following the date of termination (but in no event beyond the term of such Incentive Stock Option).
 - (C) For purposes of this Section 3.9(c)(vi), the employment of a U.S. Taxpayer who has been granted an Incentive Stock Option will not be considered interrupted or terminated upon (a) sick leave, military leave or any other leave of absence approved by the Company that does not exceed three months; provided, however, that if reemployment upon the expiration of any such leave is guaranteed by contract or applicable law, such three month limitation will not apply, or (b) a transfer from one office of the Company (or of any Designated Affiliate) to another office of the Company (or of any Designated Affiliate) or a transfer between the Company and any Designated Affiliate.
- (vii) An Incentive Stock Option granted to a U.S. Taxpayer may be exercised during such U.S. Taxpayer's lifetime only by such U.S. Taxpayer.
 - (viii) An Incentive Stock Option granted to a U.S. Taxpayer may not be transferred, assigned, pledged, hypothecated, or otherwise disposed of by such U.S. Taxpayer, except by will or by the laws of descent and distribution.
 - (ix) In the event the Plan is not approved by the stockholders of the Company in accordance with the requirements of Section 422 of the Code within 12 months of the date of adoption of the Plan, Options otherwise designated as Incentive Stock Options will be Non-qualified Stock Options.
 - (x) The Company shall have no liability to a U.S. Taxpayer or any other party if any Option (or any part thereof) intended to be an Incentive Stock Option is not an Incentive Stock Option.

4. RESTRICTED STOCK UNITS

4.1 Participants

The Board, on the recommendation of the Committee, may grant, in its sole and absolute discretion, to any Participant, rights to receive any number of Restricted Stock Units as a discretionary payment in consideration of past services to the Company or as an incentive for future services, subject to this Plan and with such additional provisions and restrictions as the Board may determine.

4.2 Maximum Number of Shares

The aggregate maximum number of Shares available for issuance from treasury underlying Restricted Shares Units under this Plan, subject to adjustment pursuant to Section 6.3, shall not exceed the maximum number of Shares issuable under this Plan at the applicable time. Any Shares subject to a Restricted Stock Unit which has been granted under the Plan and which has been cancelled or terminated in accordance with the terms of the Plan without the applicable Restricted Period having expired will again be available under the Plan.

Such aggregate maximum number of Shares subject to Restricted Stock Units which have been granted under this Plan shall be subject to, applicable, any stock exchange or regulatory authority having jurisdiction over the securities of the Company.

4.3 Restricted Stock Unit Grant Letter

Each grant of a Restricted Stock Unit under this Plan shall be evidenced by a grant letter (a “**Restricted Stock Unit Grant Letter**”) issued to the Participant by the Company. Such Restricted Stock Unit Grant Letter shall be subject to all applicable terms and conditions of this Plan and may be subject to any other terms and conditions (including without limitation any recoupment, reimbursement or clawback compensation policy as may be adopted by the Board from time to time) which are not inconsistent with this Plan and which the Board, on the recommendation of the Committee, deems appropriate for inclusion in a Restricted Stock Unit Grant Letter. The provisions of the various Restricted Stock Unit Grant Letters issued under this Plan need not be identical.

For purposes of qualifying grants of Restricted Stock Units as “performance-based compensation” under Section 162(m) of the Code, the Committee, in its discretion, may set restrictions based upon the achievement of Performance Goals. The Performance Goals will be set by the Committee on or before the Determination Date. In granting Restricted Stock Units that are intended to qualify under Section 162(m) of the Code, the Committee will follow any procedures determined by it from time to time to be necessary or appropriate to ensure the qualification of the Award under Section 162(m) of the Code (e.g., in determining the Performance Goals).

4.4 Restricted Period

Concurrent with the determination to grant Restricted Stock Units to a Participant, the Board, on the recommendation of the Committee, shall determine the Restricted Period applicable to such Restricted Stock Units. In addition, at the sole discretion of the Board, at the time of grant, the Restricted Stock Units may be subject to performance conditions to be achieved by the Company 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 or cash in lieu thereof.

4.5 Deferred Payment Date

Any Participant who is not a U.S. Taxpayer may elect to defer to receive all or any part of the Shares, or cash in lieu thereof, underlying Restricted Stock Units until one or more Deferred Payment Dates. Any other Participants may not elect a Deferred Payment Date.

4.6 Prior Notice of Deferred Payment Date

Participants who elect to set a Deferred Payment Date must give the Company written notice of the Deferred Payment Date(s) not later than 30 days prior to the expiration of the Restricted Period. For certainty, Participants shall not be permitted to give any such notice after the day which is 30 days prior to the expiration of the Restricted Period and a notice once given may not be changed or revoked.

4.7 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 the Company during the Restricted Period, any Restricted Stock Units 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 Restricted Stock Units to provide that the Restricted Period shall terminate immediately prior to the date of such occurrence.

4.8 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 the Company 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 the Company shall issue forthwith, Shares or cash in lieu thereof in satisfaction of the Restricted Stock Units then held by the Participant. The provisions of this Section 4.8 shall not apply to Participants who are Israeli taxpayers.

4.9 Death or Disability of Participant

In the event of the death or Disability of a Participant, any Shares or cash in lieu thereof represented by Restricted Stock Units held by the Participant shall be immediately issued or paid by the Company to the Participant or legal representative of the Participant.

4.10 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 the Company on the Shares, a Participant may be credited with additional Restricted Stock Units. The number of such additional Restricted Stock Units, if any, will be calculated by dividing (a) the total amount of the dividends that would have been paid to the Participant if the Restricted Stock Units (including Restricted Stock Units in which the Restricted Period has expired but the Shares have not been issued due to a Deferred Payment Date) in the Participant's account on the dividend record date had been outstanding Shares (and the Participant held no other Shares) by (b) the Market Price of the Shares on the date on which such dividends were paid. Additional Restricted Stock Units awarded pursuant to this Section 4.10 shall be subject to the same terms and conditions as the underlying Restricted Stock Units to which they relate.

4.11 Change of Control

In the event of a Change of Control, all Restricted Stock Units outstanding shall vest immediately and be settled by the issuance of Shares or cash, or a combination of both Shares and cash, in each case in the discretion of the Committee, notwithstanding the Restricted Period and any Deferred Payment Date.

4.12 Redemption of Restricted Stock Units

Except to the extent prohibited by the Exchange, upon expiry of the applicable Restricted Period (or on the Deferred Payment Date, as applicable), the Company shall redeem Restricted Stock Units in accordance with the election made in a Redemption Notice given by the Participant to the Company by:

- (a) issuing to the Participant one Share for each Restricted Stock Unit 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 Restricted Stock Units;
 - (b) issuing to the Participant one Share for each Restricted Stock Unit redeemed and either (i) selling, or arranging to be sold, on behalf of the Participant, such number of Shares 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 an amount equal to the applicable Tax Obligation;
 - (c) subject to the discretion of the Company, paying in cash to, or for the benefit of, the Participant, the value of any Restricted Stock Units being redeemed, less any applicable Tax Obligation; or
 - (d) a combination of any of the Shares or cash in Section 4.12(a), Section 4.12(b), or Section 4.12(c) above.
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The Shares shall be issued and the cash, if any, shall be paid as a lump sum by the Company within ten business days of the date the Restricted Stock Units are redeemed pursuant to this Part 4. Restricted Stock Units of U.S. Taxpayers will be redeemed as soon as possible following the end of the Restricted Period (as set forth in the Restricted Stock Unit Grant Letter or such earlier date on which the Restricted Period is terminated pursuant to this Part 4), 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 Restricted Stock Unit which has been redeemed in accordance with this Plan.

No Participant who is resident in the U.S. may receive Shares for redeemed Restricted Stock Units unless the Shares to be issued upon redemption of the Restricted Stock Units are registered under the U.S. Securities Act or are issued in compliance with an available exemption from the registration requirements of the U.S. Securities Act.

4.13 Rights as a Stockholder

A Participant receiving Restricted Stock Units shall have the rights of a stockholder only as to Shares, 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 Plan and the applicable Award agreement, and not with respect to Shares to which such Award relates but which are not actually issued to such Participant.

5. WITHHOLDING TAXES

5.1 Withholding Taxes

The Company or any Designated Affiliate may take such steps as are considered necessary or appropriate for the withholding of any taxes or other amounts which the Company or any Designated Affiliate is required by any law or regulation of any governmental authority whatsoever to withhold in connection with any Award including, without limiting the generality of the foregoing, the withholding of all or any portion of any payment or the withholding of the issue of any Shares to be issued under this Plan, until such time as the Participant has paid the Company or any Designated Affiliate for any amount which the Company or Designated Affiliate is required to withhold by law with respect to such taxes or other amounts. Without limitation to the foregoing, the Board may adopt administrative rules under this Plan, which provide for the automatic sale of Shares (or a portion thereof) in the market upon the issuance of such Shares under this Plan on behalf of the Participant to satisfy withholding obligations under an Award.

6. GENERAL

6.1 Number of Shares

The total number of shares of Common Stock reserved and available for issuance under the Plan shall be 1,350,000 shares of Common Stock. Shares of Common Stock under the Plan 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 Plan shall automatically increase on the first trading day of January each calendar year during the term of the Plan, beginning with the calendar year 2023, resulting in the aggregate number of shares of Common Stock available under this 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. 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 Plan.

6.2 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 not issued under such lapsed Awards, subject to any restrictions that may be imposed by the Code.

6.3 Adjustment in Shares Subject to this Plan

If the outstanding Shares shall at any time be changed or exchanged by the declaration of a stock dividend (bonus shares), stock split, combination or exchange of Shares, 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 subject to the 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, 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. Upon the occurrence of any of the foregoing, the class and the aggregate number of Shares issuable pursuant to the Plan (as set forth in Section 5 hereof), in respect of which Options have not yet been exercised, shall be appropriately adjusted. Except as expressly provided herein, no issuance by the Company of Shares of any class, or securities convertible into Shares of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Option.

6.4 Non-Transferability

Any Awards accruing to any Participant in accordance with the terms and conditions of this Plan shall not be transferable or assignable to anyone unless specifically provided herein. 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.

6.5 Employment

Nothing contained in this Plan shall confer upon any Participant any right with respect to employment or continuance of employment with the Company or any Affiliate or interfere in any way with the right of the Company or any Affiliate to terminate the Participant's employment at any time. Participation in this Plan by a Participant is voluntary.

6.6 Record Keeping

The Company shall maintain a register in which shall be recorded:

- (a) the name and address of each Participant;
- (b) the number of Awards granted to each Participant and relevant details regarding such Awards; and
- (c) such other information as the Board may determine.

6.7 Necessary Approvals

The issue of Shares under this Plan is prohibited until the date that the Company obtains approval of this Plan by Stockholder Approval (the **'Effective Date'**). Notwithstanding the foregoing, the Board may issue Awards prior to the Effective Date, with all such Awards subject to the following additional restrictions unless and until the occurrence of the Effective Date: (x) all Awards will be prohibited from being converted or exchanged for Shares; and (y) all Awards will terminate upon a Change of Control or upon either the stockholders of the Company or the Exchange failing to approve this Plan.

6.8 Amendments to Plan

The Board shall have the power to, at any time and from time to time, either prospectively or retrospectively, amend, suspend, or terminate this Plan or any Award granted under this 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 this 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 this Plan, and any other matter relating to this Plan and the Awards that may be granted hereunder, provided however that:

- (a) such amendment, suspension, or termination is in accordance with applicable laws and the rules of the Exchange, and any such amendment has been approved by the Exchange;
- (b) no amendment to this Plan or to an Award granted hereunder will have the effect of impairing, derogating from or otherwise adversely affecting the terms of an Award which is outstanding at the time of such amendment without the written consent of the holder of such Award;
- (c) the expiry date of an Option Period in respect of an Option shall not be more than ten years from the date of grant of an Option except as expressly provided in Section 3.4;
- (d) the Directors shall obtain Stockholder Approval of:
 - (i) any amendment to the number of Shares specified in Section 6.1;
 - (ii) any amendment to the limitations on Shares that may be reserved for issuance, or issued, to Insiders; or
 - (iii) any amendment that would reduce the exercise price of an outstanding Option other than pursuant to Section 6.3;
 - (iv) any amendment that would extend the expiry date of the Option Period in respect of any Option granted under this Plan except as expressly contemplated in Section 3.4; and,
 - (v) to the extent necessary and desirable to comply with applicable law or the rules of the Exchange.

If this Plan is terminated, the provisions of this 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 this Plan, the Board shall remain able to make such amendments to this Plan or the Award as they would have been entitled to make if this Plan were still in effect.

6.9 No Representation or Warranty

The Company makes no representation or warranty as to the future market value of any Shares issued in accordance with the provisions of this Plan.

6.10 Section 409A

It is intended that any payments under the Plan to U.S. Taxpayers shall be exempt from or comply with Section 409A of the Code, and all provisions of the Plan shall be construed and interpreted in a manner consistent with the requirements for avoiding taxes and penalties under Section 409A of the Code. Amendment, substitution, or termination, as permitted under the Plan, of Awards of U.S. Taxpayers will be undertaken in a manner to avoid adverse tax consequences under Section 409A of the Code. Notwithstanding the foregoing, the Company makes no assurance that Awards will satisfy the requirements of Section 409A of the Code. Participants remain solely liable for all taxes, penalties and interest that may arise as a result of the grant, exercise, vesting or settlement of Awards under the Plan.

6.11 Compliance with U.S. Securities Laws

The Board shall not grant any Awards that may be denominated or redeemed in Shares to residents of the U.S. unless such Awards and the Shares issuable upon exercise or redemption thereof are registered under the U.S. Securities Act or are issued in compliance with an available exemption from the registration requirements of the U.S. Securities Act.

6.12 Compliance with Applicable Law, etc.

If any provision of this Plan or any agreement entered into pursuant to this Plan contravenes any legal or regulatory requirements relating to the administration of equity-based awards, including but not limited to any order, policy, by-law, or regulation of any regulatory body, any stock exchange or quotation system on which securities of the Company are listed or quoted, or the applicable laws of any country or jurisdiction where Awards are, or will be, granted under the Plan, then such provision shall be deemed to be amended to the extent required to bring such provision into compliance therewith.

6.13 [INTENTIONALLY OMITTED.]

6.14 Term of the Plan

This Plan shall be in effect upon the adoption by the Board of Directors and remain in effect until the tenth (10th) anniversary of the date the Board approves and adopts this Plan, unless terminated earlier by the Board. This Plan and all Awards issued hereunder 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 the Exchange determines not to approve this Plan.

7. ADMINISTRATION OF THIS PLAN

7.1 Administration by the Committee

- (a) Unless otherwise determined by the Board or set out herein, this Plan shall be administered by the Board's Compensation Committee (the '**Committee**') appointed by the Board and constituted in accordance with such Committee's charter.
- (b) The Committee shall have the power, where consistent with the general purpose and intent of this Plan and subject to the specific provisions of this Plan, to:
 - (i) adopt and amend rules and regulations relating to the administration of this Plan and make all other determinations necessary or desirable for the administration of this Plan. The interpretation and construction of the provisions of this Plan and related agreements by the Committee shall be final and conclusive. The Committee may correct any defect or supply any omission or reconcile any inconsistency in this Plan or in any related agreement in the manner and to the extent it shall deem expedient to carry this Plan into effect and it shall be the sole and final judge of such expediency; and
 - (ii) otherwise exercise the powers delegated to the Committee by the Board and under this Plan as set forth herein.

7.2 Board Role

- (a) The Board, on the recommendation of the Committee, shall determine and designate from time to time the individuals to whom Awards shall be made, the amounts of the Awards and the other terms and conditions of the Awards.
- (b) The Board may delegate any of its responsibilities or powers under this Plan to the Committee, provided that the grant of all Awards under this Plan shall be subject to the approval of the Board. No Award shall be exercisable in whole or in part unless and until such approval is obtained.
- (c) In the event the Committee is unable or unwilling to act in respect of a matter involving this Plan, the Board shall fulfill the role of the Committee provided for herein.

IN WITNESS WHEREOF, the undersigned authorized officer of ToughBuilt Industries, Inc. hereby certifies as of the date below that this ToughBuilt Industries, Inc. 2022 Equity Incentive Plan was duly adopted by the Company's Board of Directors on August 11, 2022 and the stockholders of the Company on September 21, 2022.

/s/ Michael Panosian

Name: Michael Panosian
Title: Chief Executive Officer
Date: September 21, 2022



December 20, 2022

ToughBuilt Industries, Inc.
8669 Research Drive
Irvine, CA 92618
Attn: Board of Directors

RE: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as special counsel to ToughBuilt Industries, Inc. a Nevada corporation (the “*Company*”), in connection with the proposed issuance by the Company of up to 1,350,000 shares of Common Stock of the Company, \$0.0001 par value per share (the “*Shares*”), issuable under the ToughBuilt Industries, Inc. 2022 Equity Incentive Plan (the “*Plan*”). The Shares are included in a registration statement on Form S-8 under the Securities Act of 1933, as amended (the “*Act*”), filed with the Securities and Exchange Commission (the “*Commission*”) on December 20, 2022 (the “*Registration Statement*”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related prospectus, other than as expressly stated herein with respect to the issue of the Shares.

For purposes of rendering this opinion, we have examined the Plan, the Registration Statement, the Articles of Incorporation and the Bylaws of the Company, as amended or restated, the proceedings and other actions of the Company that provide for the issuance of the Shares, and such other documents and matters as we have deemed necessary for purposes of rendering this opinion. We have assumed the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified or photostatic copies and the authenticity of the originals of all documents submitted to us as copies. We have also assumed the legal capacity of all natural persons who have executed documents examined by us, the genuineness of all signatures on all documents examined by us, the authority of such persons signing on behalf of the parties thereto other than the Company and the due authorization, execution and delivery of all documents by the parties thereto other than the Company. In rendering the opinion set forth below, we have assumed that certificates evidencing the Shares will be signed by the authorized officers of the Company and registered by the transfer agent and registrar and will conform to the specimen certificate for the Common Stock. In addition, we have assumed that the resolutions of the Company’s board of directors or its applicable committee authorizing the Company to issue and deliver the Shares will be in full force and effect at all times at which such Shares are issued and delivered by the Company, and that the Company will take no action inconsistent with such resolutions.

Based upon and subject to the foregoing, it is our opinion that the Shares, when issued, delivered and paid for in accordance with the Plan and in the manner described in the Registration Statement and the related prospectus, will be validly issued, fully paid, and non-assessable.

This opinion is opining upon and is limited to the Nevada Revised Statutes. We express no opinion with respect to the effect or applicability of the laws of any other jurisdiction. We assume no obligation to revise or supplement this opinion letter should the Nevada Revised Statutes be changed after the date hereof by legislative action, judicial decision, or otherwise.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving our consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

This opinion is rendered on, and speaks only as of, the date of this letter first written above and does not address any potential change in facts or law that may occur after the date of this opinion letter. We assume no obligation to advise you of any fact, circumstance, event, or change in the law or the facts that may hereafter be brought to our attention, whether or not such occurrence would affect or modify any of the opinions expressed herein.

Very truly yours,

/s/ Carmel, Milazzo & Feil LLP

CARMEL, MILAZZO & FEIL LLP

Manhattan Office: 55 West 39th Street, 18th Floor, New York, NY 10018
New York City | New Jersey | Long Island | Beverly Hills | Florida
Website: www.cmflp.com

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Toughbuilt Industries, Inc. on Form S-8 of our report dated April 15, 2022, which includes an explanatory paragraph as to the Company'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, 2021 and 2020 and for the years ended December 31, 2021 and 2020, which report appears in the Prospectus, which is part of this Registration Statement.

/s/ Marcum llp

Marcum llp
Costa Mesa, CA
December 20, 2022

Calculation of Filing Fee Tables

Form S-8
(Form Type)

ToughBuilt Industries, Inc.

Table 1: Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Newly Registered Securities								
Fees to be Paid	Equity	Common stock, par value \$0.0001 per share	457(c) and (h)	1,350,000	\$ 2.11 ⁽²⁾	\$ 2,848,500.00	0.0001102	\$ 313.91 ⁽²⁾
Total Offering Amounts								\$ 2,848,500
Total Offset Fees								\$ 0.00
Net Fee Due								\$ 313.91

(1) ToughBuilt Industries, Inc., a Nevada corporation (the “Registrant”), is filing this Registration Statement on Form S-8 to register 1,350,000 shares of its common stock, par value \$0.0001 per share (the “Common Stock”), for issuance under the ToughBuilt Industries, Inc. 2022 Equity Incentive Plan, as amended (the “2022 Equity Plan”). Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover an indeterminate number of additional shares of the Registrant’s Common Stock as may become issuable pursuant to the anti-dilution and other adjustment provisions of the 2022 Equity Plan by reason of any stock split, stock dividend, recapitalization or similar transaction effected without the receipt of consideration that results in a change in the number of outstanding shares of the Registrant’s Common Stock.

(2) Estimated in accordance with Rules 457(c) and (h) of the Securities Act solely for the purpose of calculating the registration fee covering the 1,350,000 shares of Common Stock to be registered pursuant to this Registration Statement on Form S-8, based on the average of the high and low prices of the Registrant’s Common Stock, as reported on the Nasdaq Capital Market on December 16, 2022.