

# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM S-1

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)*

**3420**

*(Primary Standard Industrial  
Classification Code Number)*

**46-0820877**

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

**655 N. Central Ave., Suite 1700**

**Glendale, CA 91203**

**Telephone: (800) 288-4695**

*(Address, including zip code, and telephone number,  
including area code, of principal executive offices)*

**Mr. Michael Panosian**

**Chief Executive Officer**

**ToughBuilt Industries, Inc.**

**655 N. Central Ave., Suite 1700**

**Glendale, CA 91203**

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Approximate date of proposed sale to public: As soon as practicable on or after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐

Non-accelerated filer ☐

(Do not check if a smaller reporting company)

Accelerated filer ☐

Smaller reporting company ☒



## CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered	Proposed Maximum Offering Price (1)	Amount of Registration Fee
Shares of common stock, par value \$0.0001 per share (2)(3)	\$ 15,000,000	\$ 1,510.50
Representative's common stock purchase warrants (4)	—	—
Common stock underlying representative's common stock purchase warrants (2)(5)	\$ 937,500	\$ 94.41
<b>Total</b>	<b>\$ 15,937,500</b>	<b>\$ 1,604.91</b>

- (1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.
- (2) Pursuant to Rule 416, there are also being registered such indeterminable additional securities as may be issued to prevent dilution as a result of stock splits, stock dividends or similar transactions.
- (3) Includes shares the underwriters have the option to purchase to cover over-allotments, if any.
- (4) In accordance with Rule 457(g) under the Securities Act, no separate registration fee is required with respect to the warrants registered hereby.
- (5) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(g) under the Securities Act. The warrants are exercisable at a per share exercise price equal to 125% of the public offering price. As estimated solely for the purpose of recalculating the registration fee pursuant to Rule 457(g) under the Securities Act, the proposed maximum aggregate offering price of the representative's warrants is equal to 125% of \$750,000 (5% of \$15,000,000).

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this Registration Statement shall become effective on such date as the Commission acting pursuant to said Section 8(a) may determine.**

The information in this prospectus is not complete and may be changed. We may not sell these securities until the Securities and Exchange Commission declares our registration statement effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS

SUBJECT TO COMPLETION

DATED January 11, 2017

## Shares of Common Stock



## ToughBuilt Industries, Inc.

This is a firm commitment initial public offering of [ ] shares of our common stock, par value \$0.0001 per share. Prior to this offering, there has been no public market for our common stock. We expect the initial public offering price will be between \$[ ] and \$[ ] per share.

We intend to apply to have our common stock listed on The NASDAQ Capital Market under the symbol "[ ]." No assurance can be given that our application will be approved.

Investing in our securities involves a high degree of risk. See "Risk Factors" beginning on page [ ] of this prospectus for a discussion of information that should be considered in connection with an investment in our securities.

We are an "emerging growth company" under the federal securities laws and may elect to comply with certain reduced public company reporting requirements for future filings.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	<i>Per Share</i>	<i>Total</i>
<i>Initial public offering price</i>	\$	\$
<i>Underwriting discounts and commissions<sup>(1)</sup></i>	\$	\$
<i>Proceeds to us, before expenses</i>	\$	\$

(1) Does not include a non-accountable expense allowance equal to 1% of the gross proceeds of this offering payable to Joseph Gunnar & Co., LLC, the representative of the underwriters. See "Underwriting" for a description of compensation payable to the Underwriters.

We have granted the representative of the underwriters a 45-day option, exercisable in full or in part, to purchase up to an additional [ ] shares of common stock from us at the initial offering price, less the underwriting discount, solely to cover over-allotments, if any.

The underwriters expect to deliver our shares of common stock against payment on or about [ ], 2017.

## Joseph Gunnar & Co.

The date of this prospectus is , 2017.

**TOUGHBUILT®**  
INDUSTRIES INC.

## OUR NAME SAYS IT ALL

We create innovative products that help you build faster, build stronger, and work smarter. How do we do it? We listen, we research how professionals work, then create tools that help them save time, save hassle, and save money.



## WE DON'T MAKE ORDINARY PRODUCTS



Our sales to date have been from products in the tools and hardware category, primarily Soft Goods, Sawhorses and Work Products as well as Kneepads. We intend to use a portion of the proceeds from this offering for the commercialization of our mobile device and apparel products which are still in the development stage.

## TABLE OF CONTENTS

	<b>Page</b>
<a href="#">Prospectus Summary</a>	1
<a href="#">Risk Factors</a>	7
<a href="#">Cautionary Note Regarding Forward-Looking Statements</a>	23
<a href="#">Use of Proceeds</a>	24
<a href="#">Dividend Policy</a>	25
<a href="#">Capitalization</a>	26
<a href="#">Dilution</a>	27
<a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	28
<a href="#">Business</a>	37
<a href="#">Management</a>	45
<a href="#">Security Ownership of Certain Beneficial Owners and Management</a>	54
<a href="#">Certain Relationships and Related Party Transactions</a>	55
<a href="#">Description of Our Securities</a>	56
<a href="#">Shares Eligible for Future Sale</a>	59
<a href="#">Underwriting</a>	60
<a href="#">Legal Matters</a>	67
<a href="#">Experts</a>	67
<a href="#">Where You Can Find Additional Information</a>	68
<a href="#">Index to Financial Statements (September)</a>	F-1
<a href="#">Index to Financial Statements (December)</a>	F-20

**You should rely only on information contained in this prospectus or in any free writing prospectus we may authorize to be delivered or made available to you. Neither the delivery of this prospectus nor the sale of our securities means that the information contained in this prospectus or any free writing prospectus is correct after the date of this prospectus or such free writing prospectus. This prospectus is not an offer to sell or the solicitation of an offer to buy our securities in any circumstances under which the offer or solicitation is unlawful or in any state or other jurisdiction where the offer is not permitted. The information contained in this prospectus is accurate only as of its date regardless of the time of delivery of this prospectus or of any sale of common stock.**

**No person is authorized in connection with this prospectus to give any information or to make any representations about us, the securities offered hereby or any matter discussed in this prospectus, other than the information and representations contained in this prospectus. If any other information or representation is given or made, such information or representation may not be relied upon as having been authorized by us.**

**For investors outside the United States:** Neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus.

Unless otherwise indicated, information contained in this prospectus concerning our industry and the markets in which we operate, including our general expectations and market position, market opportunity and market share, is based on information from our own management estimates and research, as well as from industry and general publications and research, surveys and studies conducted by third parties. Management estimates are derived from publicly available information, our knowledge of our industry and assumptions based on such information and knowledge, which we believe to be reasonable. Our management's estimates have not been verified by any independent source, and we have not independently verified any third-party information. In addition, assumptions and estimates of our and our industry's future performance are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors." These and other factors could cause our future performance to differ materially from our assumptions and estimates. See "Cautionary Note Regarding Forward-Looking Statements."

## PROSPECTUS SUMMARY

*This summary highlights selected information contained in other parts of this prospectus. Because it is a summary, it does not contain all of the information that you should consider in making your investment decision. Before investing in our securities, you should read the entire prospectus carefully, including our condensed financial statements and the related notes included in this prospectus and the information set forth under the headings “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” When used herein, unless the context requires otherwise, references to “ToughBuilt,” the “Company,” “we,” “our” and “us” refer to ToughBuilt Industries, Inc., a Nevada corporation.*

*Unless otherwise expressly provided herein, all share and per share numbers set forth herein relating to our common stock (i) assume no exercise of (a) any warrants and/or options, (b) the representative’s common stock purchase warrants and/or (c) the representative’s over-allotment option, and (ii) reflect a 1 for 6 reverse stock split of our common stock, which became effective on October 5, 2016.*

### Our Company

We market and distribute various home improvement and construction product lines for both the do-it-yourself (DIY) and professional markets under TOUGHBUILT® brand name, within the global multi-billion dollar per year tool market industry. All of our products are designed by our in house design team.

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

Since August 2013, pursuant to a Service Agreement with Belegal Industrial Co., Ltd. (“Belegal”), we have been collaborating with Belegal, whose team of experts has provided Toughbuilt additional engineering and sourcing services and quality control support for our operations in China. Belegal assists us with supply-chain issues for our operations in China by, among other things, facilitating the transmission of our purchase orders to our suppliers in China, conducting “in-process” quality checking and inspection, and shipping end-products manufactured in China to their final destinations.

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

Our current product line includes three major categories related to this field, with several additional categories in the works, consisting of Soft Goods, Sawhorses & Work Products and Kneepads, each of which is described below.

The mission of our company includes, but is not limited to, providing products to the building and home improvement communities that are innovative, of superior quality derived in part from enlightened creativity for our end users while enhancing performance, improving well-being and building high brand loyalty.

### Risks and Challenges That We Face

An investment in our securities involves a high degree of risk. You should carefully consider the risks summarized below and the other risks that are discussed more fully in the “Risk Factors” section of this prospectus immediately following this prospectus summary. These risks include, but are not limited to, the following:

- Demand and market acceptance of our product offerings may be considerably less than what we currently anticipate.
- We may be unable to increase revenues in the manner in which we anticipate and generate profitability.
- We may be unable to expand operations and manage growth.



· We may be unable to retain key members of our management and development teams and to recruit additional qualified personnel.

· We face competition from companies that have greater resources than we do and we may not be able to effectively compete against these companies.

### **Implications of being an Emerging Growth Company**

We are an “emerging growth company,” as defined in Section 2(a) of the Securities Act of 1933, or the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. As such, we are eligible to take advantage of certain exemptions from various reporting requirements applicable to other public companies that are not “emerging growth companies” including, but not limited to:

· being permitted to present only two years of audited financial statements and only two years of related disclosure in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in this prospectus;

· not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002 and reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements; and

· exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We intend to take advantage of these and other exemptions available to “emerging growth companies.” We could remain an “emerging growth company” for up to five years following the closing of this offering, or until the earliest of (a) the last day of the first fiscal year in which our annual gross revenue exceeds \$1 billion, (b) the last day of the fiscal year in which we are deemed to be a “large accelerated filer” as defined in Rule 12b-2 under the Securities Exchange Act of 1934, or Exchange Act, which would occur if the market value of our equity securities that is held by non-affiliates exceeds \$700 million as of the last business day of our most recently completed second fiscal quarter, or (c) the date on which we have issued more than \$1 billion in nonconvertible debt during the preceding three-year period.

The JOBS Act permits an “emerging growth company” like us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. This means that an “emerging growth company” can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to delay such adoption of new or revised accounting standards.

### **Corporate Information**

Our company was incorporated on April 9, 2012 as Phalanx, Inc., under the laws of the State of Nevada and changed its name to ToughBuilt Industries, Inc. on December 29, 2015. The address of our principal office is 655 N. Central Ave., Suite 1700, Glendale, CA 91203 and our telephone number is (800) 288-4695. Our corporate website is [www.toughbuilt.com](http://www.toughbuilt.com). Our website and the information contained in, or accessible through, our website will not be deemed to be incorporated by reference into this prospectus and do not constitute part of this prospectus.

## The Offering

**Securities Offered by us:** \_\_\_\_\_ shares of our common stock.

**Common Stock outstanding before this Offering:** 7,359,000 shares

**Common Stock to be Outstanding after this Offering:** \_\_\_\_\_ shares

**Over-allotment Option:** We have granted the underwriters a 45 day option to purchase up to \_\_\_\_\_ additional shares of our common stock at the public offering price less the underwriting discount, solely to cover over-allotments, if any.

**Use of Proceeds:** We intend to use the net proceeds received from this offering for sales and marketing efforts, developing new products, increasing our production capacity, funding our working capital and for general corporate purposes.

**Proposed Listings on NASDAQ:** We intend to apply to list our common stock on The NASDAQ Capital Market under the symbol “\_\_\_\_\_.” No assurance can be given that our application will be approved.

**Lock-up** We, our directors, officers and all of our existing shareholders have agreed with the underwriters not to offer for sale, issue, sell, contract to sell, pledge or otherwise dispose of any of our common stock or securities convertible into common stock for a period of 180 days after the date of this prospectus. See “Underwriting” section on page [ ].

**Risk Factors:** Investing in our securities is highly speculative and involves a significant degree of risk. See “Risk Factors” and other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in our securities.

The number of shares of common stock that will be outstanding after this offering set forth above is based on 7,359,000 shares of common stock outstanding as of January \_\_, 2017, and excludes the following:

- \_\_\_\_\_ shares of common stock issuable upon the conversion of an outstanding convertible debt instrument at an assumed conversion price of \$\_\_\_\_ per share;
- 412,617 shares of common stock issuable upon the exercise of outstanding warrants at an exercise price of \$6.00 per share;
- \_\_\_\_\_ shares of common stock issuable upon the exercise of stock options at a weighted average exercise price of \$\_\_\_\_ per shares, all of which were issued under the 2016 Stock Option Plan.
- 2,000,000 shares of common stock reserved for issuance under our 2016 Stock Option Plan;
- [ ] shares of common stock issuable upon exercise of the underwriters' option to purchase additional shares of our common stock and/or warrants to purchase common stock to cover over-allotments; and
- [ ] shares of common stock issuable upon exercise of a warrant to be issued to the representative in connection with this offering, at an exercise price per share equal to 125% of the per share public offering price.

Unless specifically stated otherwise, all information in this prospectus assumes:

- no exercise of the outstanding options or warrants described above;
- no exercise by the underwriters of their option to purchase additional shares of our common stock and/or warrants to purchase common stock to cover over-allotments, if any; and
- no exercise of the representative's warrant.

## SUMMARY CONDENSED FINANCIAL DATA

The following table summarizes our financial data. We derived the summary condensed financial statement data for the years ended December 31, 2015 and 2014 set forth below from our audited financial statements and related notes contained in this prospectus. We derived the summary condensed financial data as of September 30, 2016 and for the nine months ended September 30, 2016 and 2015, from our unaudited condensed financial information contained in this prospectus. Our historical results are not necessarily indicative of the results that may be expected in the future. The unaudited condensed financial data as of September 30, 2016 and for the nine months ended September 30, 2016 and 2015, in the opinion of management, contain all adjustments (consisting of only normal recurring adjustments) necessary to present fairly our financial position and results of operations for the period. Further, our results for interim periods are not necessarily indicative of the results that may be expected for the entire year. You should read the information presented below together with “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” our condensed financial statements, the notes to those statements and the other financial information contained in this prospectus.

### Condensed Statements of Operations in U.S. dollars in thousands (except share and per share data)

	Years ended December 31,		Nine months ended September 30,	
	2015	2014	2016	2015
			(Unaudited)	(Unaudited)
<b>Sales</b>	\$ 8,930	\$ 5,264	\$ 6,360	\$ 6,130
<b>Cost of goods sold</b>	6,565	3,824	5,019	4,438
<b>Gross profit</b>	2,365	1,440	1,341	1,692
<b>Expenses</b>				
Salaries and wages	735	603	1,183	493
Professional fees	21	24	275	17
Corporate and general	1,348	995	1,555	899
Share based payments	-	-	552	-
Marketing	108	87	193	47
Interest expense	105	76	56	79
Depreciation and amortization	14	14	11	11
<b>Income (Loss) from operations</b>	32	(359)	(2,484)	146
<b>Net income (loss) for the year/period</b>	32	(359)	(2,484)	146
<b>Weighted average number of shares - basic and diluted</b>	5,376,667	5,376,667	6,930,405	5,376,667
<b>Income (Loss) per common stock - basic and diluted</b>	0.01	(0.07)	(0.36)	0.03

**Condensed Unaudited Balance Sheets in U.S. dollars in thousands**

	As of September 30, 2016	
	Actual	As Adjusted
	\$	\$
Cash	3	
Total current assets	747	
Total non-current liabilities	-	
Accumulated deficit	(2,927)	
Total shareholders' equity (deficiency)	(1,438)	

The unaudited as adjusted column in the balance sheet data above gives effect to the sale of [ ] shares of common in this offering at the assumed public offering price of \$[ ] per share, and \$[ ] per warrant, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, as if the sale had occurred on September 30, 2016.

Each \$1.00 increase (decrease) in the assumed public offering price of \$[ ] per share, would increase (decrease) our shareholder's equity, as adjusted, after this offering by approximately \$[ ] million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remain the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. An increase of \_\_\_\_\_ shares in the number of shares offered by us would increase our shareholder's equity, as adjusted, after this offering by approximately \$[ ] million, assuming that the assumed public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, a decrease of \_\_\_\_\_ shares in the number of shares offered by us would decrease our shareholder's equity after this offering by approximately \$[ ] million, assuming that the assumed public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. The information discussed above is illustrative only and will adjust based on the actual public offering price and other terms of this offering determined at pricing.

## RISK FACTORS

*An investment in our common stock involves a high degree of risk. You should carefully consider the risks described below, together with all of the other information included in this prospectus, before making an investment decision. If any of the following risks actually occurs, our business, financial condition or results of operations could suffer. In that case, the trading price of our shares of common stock could decline and you may lose all or part of your investment. See “Cautionary Note Regarding Forward-Looking Statements” below for a discussion of forward-looking statements and the significance of such statements in the context of this prospectus.*

### **Risks Related to Our Company**

#### **We have a limited operating history on which to judge our business prospects and management.**

Our company was incorporated and commenced operations in April 2012. Accordingly, we have only a limited operating history upon which to base an evaluation of our business and prospects. Operating results for future periods are subject to numerous uncertainties and we cannot assure you that we will achieve or sustain profitability. Our prospects must be considered in light of the risks encountered by companies in the early stage of development, particularly companies in new and rapidly evolving markets. Future operating results will depend upon many factors, including increasing the number of affiliates, our success in attracting and retaining motivated and qualified personnel, our ability to establish short term credit lines, our ability to develop and market new products, control costs, and general economic conditions. We cannot assure you that we will successfully address any of these risks.

#### **We are significantly influenced by our officers, directors and entities affiliated with them.**

In the aggregate, ownership of our shares of common stock by management and affiliated parties, represents approximately 76% of the issued and outstanding shares of our common stock. These shareholders, if acting together, will be able to significantly influence all matters requiring approval by shareholders. For example, this concentration of ownership could discourage or prevent a potential takeover of our Company that might otherwise result in an investor receiving a premium over the market price for his shares. A substantial portion of our outstanding shares of common stock is beneficially owned and controlled by a group of insiders, including our officers and directors. Accordingly, our principal stockholders together with our directors, Chief Executive Officer, and insider shareholders have the power to control the election of our directors and the approval of actions for which the approval of our stockholders is required. If you acquire shares of our common stock, you may have no effective voice in the management of our company. Such concentrated control of our company may adversely affect the price of our common stock. Our principal stockholders may be able to control matters requiring approval by our stockholders, including the election of directors, mergers or other business combinations. Such concentrated control may also make it difficult for our stockholders to receive a premium for their shares of our common stock in the event we merge with a third party or enter into different transactions that require stockholder approval. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock.

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

Provisions of our articles of incorporation adopted by our Board of Directors, such as our ability to designate and issue a class of preferred stock, may delay or frustrate the removal of incumbent directors and may prevent or delay a merger, tender offer or proxy contest involving our company that is not approved by our Board of Directors, even if those events may be perceived to be in the best interests of our shareholders. For example, one or more of our affiliates could theoretically be issued a newly authorized and designated class of shares of our preferred stock. Such shares could have significant voting power, among other terms. Consequently, anyone to whom these shares were issued could have sufficient voting power to significantly influence if not control the outcome of all corporate matters submitted to the vote of our common shareholders. Those matters could include the election of directors, changes in the size and composition of the Board of Directors, and mergers and other business combinations involving our company. In addition, through any such person's control of the Board of Directors and voting power, the affiliate may be able to control certain decisions, including decisions regarding the qualification and appointment of officers, dividend policy, access to capital (including borrowing from third-party lenders and the issuance of additional equity securities), and the acquisition or disposition of assets by our company. In addition, the concentration of voting power in the hands of an affiliate could have the effect of delaying or preventing a change in control of our company, even if the change in control would benefit our shareholders, and may adversely affect the future market price of our common stock should a trading market therefor develop.

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

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

**We have recorded a small net income in 2015 and a net loss in 2014 and our financial situation creates doubt whether we will be able to generate any profit in the foreseeable future.**

During the twelve months ended December 31, 2015, we realized net income of \$32,313 compared to a net loss of \$359,025 for the year ended December 31, 2014. During the nine months ended September 30, 2016, we incurred a net loss of \$2,484,393 and as of September 30, 2016, we had a working capital deficit of \$1,614,521 and an accumulated deficit of \$2,927,360. Although we reported a small income for the fiscal year ended December 31, 2015, we have incurred substantial losses in the nine months ended September 30, 2016, and there is no assurance that the profits will be realized in fiscal 2016 or thereafter. There can be no assurance that we will be able to achieve a level of revenues adequate to generate sufficient cash flow from operations or obtain additional financing through private placements, public offerings and/or bank financing necessary to support our working capital requirements. To the extent that funds generated from any private placements, public offerings and/or bank financing are insufficient, we will have to raise additional working capital. No assurance can be given that additional financing will be available on acceptable terms, if at all. If adequate working capital is not available we may be forced to discontinue operations, which would cause investors to lose their entire investment.

**Technology changes rapidly in our business, and if we fail to anticipate new technologies, the quality, timeliness and competitiveness of our products will suffer.**

Rapid technology changes in our industry require us to anticipate, sometimes years in advance, which technologies our products must take advantage of in order to make them competitive in the market at the time they are released. Therefore, we usually start our product development with a range of technical development goals that we hope to be able to achieve. We may not be able to achieve these goals, or our competition may be able to achieve them more quickly than we can. In either case, our products may be technologically inferior to competitive products, or less appealing to consumers, or both. If we cannot achieve our technology goals within the original development schedule of our products, then we may delay products until these technology goals can be achieved, which may delay or reduce revenue and increase our development expenses. Alternatively, we may increase the resources employed in research and development in an attempt to accelerate our development of new technologies, either to preserve our product launch schedule or to keep up with our competition, which would increase our development expenses and adversely affect our operations and financial condition.

**We must effectively manage the growth of our operations, or our company will suffer.**

Our significant increase in the scope and the scale of our mobile product launch, including the hiring of additional personnel, has resulted in significantly higher operating expenses. As a result, we anticipate that our operating expenses will continue to increase. Expansion of our operations may also cause a significant demand on our management, finances and other resources. Our ability to manage the anticipated future growth, should it occur, will depend upon a significant expansion of our accounting and other internal management systems and the implementation and subsequent improvement of a variety of systems, procedures and controls. There can be no assurance that significant problems in these areas will not occur. Any failure to expand these areas and implement and improve such systems, procedures and controls in an efficient manner at a pace consistent with our business could have a material adverse effect on our business, financial condition and results of operations. There can be no assurance that our attempts to expand our marketing, sales, manufacturing and customer support efforts will be successful or will result in additional sales or profitability in any future period. As a result of the expansion of our operations and the anticipated increase in our operating expenses, as well as the difficulty in forecasting revenue levels, we expect to continue to experience significant fluctuations in our results of operations.

**Because we have transactions with companies in China, we may have limited legal recourse under Chinese law if disputes arise with third parties.**

The Chinese government has enacted some laws and regulations dealing with matters such as corporate organization and governance, foreign investment, mergers and acquisitions, intellectual property, commerce, taxation and trade. However, the PRC's experience in implementing, interpreting and enforcing these laws and regulations is limited, and our ability to enforce commercial claims or to resolve commercial disputes is unpredictable. If any new business ventures in which we may become involved are unsuccessful, or other adverse circumstances arise from these transactions, we face the risk that the parties to these ventures may seek ways to terminate the transactions, or, may hinder or prevent us from accessing important information regarding the financial and business operations of any acquired companies. The resolution of these matters may be subject to the exercise of considerable discretion by agencies and other instrumentalities of the Chinese government or those acting on its behalf, and forces unrelated to the legal merits of a particular matter or dispute may influence their determination. Any rights we may have to specific performance, or to seek an injunction under Chinese law, in either of these cases, are severely limited, and without a means of recourse by virtue of the Chinese legal system, we may be unable to prevent these situations from occurring. The occurrence of any such events could have a material adverse effect on our business, financial condition and results of operations.

**Reliance on foreign suppliers could adversely affect our business.**

We source our products from suppliers located in Asia and the United States. Our Asian vendors are located primarily in China, which subjects us to various risks within the region including regulatory, political, economic and foreign currency changes. Our ability to select and retain reliable vendors and suppliers who provide timely deliveries of quality products efficiently will impact our success in meeting customer demand for timely delivery of quality products. Our sourcing operations and our vendors are impacted by labor costs in China. Labor historically has been readily available at low cost relative to labor costs in North America. However, as China is experiencing rapid social, political and economic changes, labor costs have risen in some regions and there can be no assurance that labor will continue to be available to us in China at costs consistent with historical levels or that changes in labor or other laws will not be enacted which would have a material adverse effect on our ability to source our products from China. Interruption of supplies from any of our vendors, or the loss of one or more key vendors, could have a negative effect on our business and operating results.

Changes in currency exchange rates might negatively affect the profitability and business prospects of our company and our overseas vendors. In particular, although the Chinese Renminbi has recently depreciated against the U.S. Dollar, if the Chinese Renminbi appreciates with respect to the U.S. Dollar in the future, we may experience cost increases on such purchases, and this can adversely impact profitability. Future interventions by China may result in further currency appreciation and increase our product costs over time. We may not be successful at implementing customer pricing or other actions in an effort to mitigate the related effects of the product cost increases.

Additional factors that could adversely affect our business include increases in transportation costs, new or increased import duties, transportation delays, work stoppages, capacity constraints and poor quality.

**Contract drafting, interpretation and enforcement in China involve significant uncertainty.**

We have entered into numerous contracts governed by PRC law, many of which are material to our business. As compared with contracts in the United States, contracts governed by PRC law tend to contain less detail and to not be as comprehensive in defining contracting parties' rights and obligations. As a result, contracts in China are more vulnerable to disputes and legal challenges. In addition, contract interpretation and enforcement in China is not as developed as in the United States, and the result of any contract dispute is subject to significant uncertainties. Therefore, we cannot assure you that we will not be subject to disputes under our material contracts, and if such disputes arise, we cannot assure you that we will prevail.

**We may be unable to successfully expand our production capacity, which could result in material delays, quality issues, increased costs and loss of business opportunities, which may negatively impact our product margins and profitability.**

Part of our future growth strategy is to increase our production capacity to meet increasing demand for our existing goods. Assuming we obtain sufficient funding to increase our production capacity, any projects that we undertake to increase such capacity may not be constructed on the anticipated timetable or within budget. We may also experience quality control issues as we implement these production upgrades. Any material delay in completing these projects, or any substantial increase in costs or quality issues in connection with these projects, could materially delay our ability to bring our products to market and adversely affect our business, reduce our revenue, income and available cash, all of which could result in harming our financial condition.

**We rely on highly skilled personnel and the continuing efforts of our executive officers and, if we are unable to retain, motivate or hire qualified personnel, our business may be severely disrupted.**

Our performance largely depends on the talents, knowledge, skills and know-how and efforts of highly skilled individuals and in particular, the expertise held by our chief executive officer, Michael Panosian. His absence, were it to occur, could materially and adversely impact the development and implementation of the projects and businesses. Our future success depends on our continuing ability to identify, hire, develop, motivate and retain highly skilled personnel for all areas of our organization. Our continued ability to compete effectively depends on our ability to attract new technology developers and to retain and motivate our existing contractors. If one or more of our executive officers are unable or unwilling to continue in their present positions, we may not be able to replace them readily, if at all. Therefore, our business may be severely disrupted, and we may incur additional expenses to recruit and retain new officers. In addition, if any of our executives joins a competitor or forms a competing company, we may lose some of our customers.



## **Risks Related to Our Business**

### **We have no manufacturing capabilities and we are dependent upon third parties to manufacture our product.**

We are dependent upon our relationships with independent manufacturers to fulfill our product needs. While we have several manufacturing facilities available to us, we currently are using only one manufacturer for each of our products. Accordingly, we are dependent on the uninterrupted and efficient operation of these manufacturers' facilities. Our ability to market and sell our products requires that our product be manufactured in commercial quantities, without significant delay and in compliance with applicable federal and state regulatory requirements. In addition, we must be able to have our products manufactured at a cost that permits us to charge a price acceptable to the customer while also accommodating any distribution costs or third-party sales compensation. If our current manufacturers are unable for any reason to fulfill our requirements, or seek to impose unfavorable terms, we will have to seek out other contract manufacturers, which could disrupt our operations and have a material adverse effect on our results of operation and financial condition. Competitors who perform their own manufacturing may have an advantage over us with respect to pricing, availability of products, and in other areas through their control of the manufacturing process.

### **We face significant competition and continuous technological change, and developments by competitors may render our licensed technologies obsolete or non-competitive. If we cannot successfully compete with new or existing products, our marketing and sales will suffer and we may not ever be profitable.**

If we are able to fund and implement our business plan we will likely compete against fully integrated technology companies and smaller companies that are collaborating with larger technology companies. In addition, many of these prospective competitors, either alone or together with their collaborative partners, operate larger research and development programs than we do, and have substantially greater financial resources than we do.

If our prospective competitors develop and commercialize technologies faster than we do, or develop and commercialize technologies that are superior to our technology candidates, our commercial opportunities will be reduced or eliminated. The extent to which any of our technology candidates achieve market acceptance will depend on competitive factors, many of which are beyond our control. Competition in the technology industry is intense and has been accentuated by the rapid pace of development. Almost all of these entities have substantially greater research and development capabilities and financial, scientific, manufacturing, marketing and sales resources than we do. These organizations also compete with us to:

- attract parties for acquisitions, joint ventures or other collaborations;
- license proprietary technology that is competitive with the technology we are developing;
- attract funding; and
- attract and hire talented and other qualified personnel.

Our competitors may succeed in developing and commercializing products earlier than we do. Our competitors may also develop products or technologies that are superior to those we are developing, and render our technology candidates or technologies obsolete or non-competitive. If we cannot successfully compete with new or existing products and technologies, our marketing and sales will suffer and we may not ever be profitable.

### **Our development of innovative features for current products is critical to sustaining and growing our sales.**

Historically, our ability to provide value-added custom engineered products that address requirements of technology and space utilization has been a key element of our success. We spend a significant amount of time and effort to refine, improve and adapt our existing products for new customers and applications. The introduction of new product features requires the coordination of the design, manufacturing and marketing of the new product features with current and potential customers. The ability to coordinate these activities with current and potential customers may be affected by factors beyond our control. While we will continue to emphasize the introduction of innovative new product features that target customer-specific opportunities, we do not know if any new product features we introduce will achieve the same degree of success that we have achieved with our existing products. Introduction of new product features typically requires us to increase production volume on a timely basis while maintaining product quality. Manufacturers often encounter difficulties in increasing production volumes, including delays, quality control problems and shortages of qualified personnel or raw materials. As we attempt to introduce new product features in the future, we do not know if we will be able to increase production volume without encountering these or other problems, which might negatively impact our financial condition or results of operations.

### **Our products may never achieve market acceptance by customers in markets necessary for commercial success and the market opportunity may be smaller than we estimate.**

There can be no assurance that the market will continue the acceptance of our products we introduced in recent years or will accept new products, such as our mobile device products and our proposed clothing line for the construction industry scheduled for introduction in early 2017. There can also be no assurance that the level of sales generated from these new products (including the introduction of products into new geographic markets) relative to our expectations will materialize. Market acceptance of any product candidate for which we receive approval depends on a number of factors including, but not limited to:

- Vendor production delays;
- Difficulties encountered in shipping from overseas;
- Reliance upon third-party carriers for our product shipments from our distribution centers to customers;
- Product improvements and new product introductions require significant financial and other resources, including significant planning, design, development, and testing at the technological, product and manufacturing process levels;
- Our competitors' new products may beat our products to market, be more effective with more features, be less expensive than our products, and/or render our products obsolete;
- Any new products that we develop may not receive market acceptance or otherwise generate any meaningful net sales or profits for us relative to our expectations based on, among other things, existing and anticipated investments in manufacturing capacity and commitments to fund advertising, marketing, promotional programs and research and development;
- Changes in customs regulations in each of the markets around the world that might entail significant change in duty rate or other importation restrictions;
- Materials shortages and/or significant cost increases that might impact overall cost of the products; and
- Trade embargos or trade barriers between nations.

Any failure by any of our product candidates to achieve market approval or commercial success would adversely affect our business prospects.

**We have not yet commercialized our new mobile device products or our proposed clothing line for the construction industry.**

We do not know when or if we will complete any of these product development efforts or successfully commercialize any of these new product lines. Even if we are successful in developing these new products that reach commercialization, we will not be successful unless these products gain market acceptance. The degree of market acceptance of these products will depend on a number of factors, including:

- the competitive environment;
- our ability to enter into strategic agreements with manufacturers; and
- the adequacy and success of distribution, sales and marketing efforts.

Even if we successfully develop one or more of these products, we may not become profitable.

**Raw material and energy price fluctuations and shortages (including steel and various fuel sources) could adversely affect our ability to obtain needed manufacturing materials and could adversely affect our results of operations.**

The principal raw material used in the manufacture of our products is steel, which we purchase in competitive, price-sensitive markets. To meet our high quality standards, our steel needs range from specialized alloys, which are available only from a limited group of approved suppliers, to commodity types of alloys. These raw materials have historically exhibited price and demand cyclicity. Some of these materials have been, and in the future may be, in short supply, particularly in the event of mill shutdowns or production cut backs. As some steel alloys require specialized manufacturing procedures, we could experience inventory shortages if we were required to use an alternative manufacturer on short notice. Additionally, unexpected price increases for raw materials could result in higher prices to our customers or an erosion of the margins on our products.

**Risks associated with the disruption of manufacturing operations could adversely affect profitability or competitive position.**

We manufacture a limited portion of the products we sell. Any prolonged disruption in the operations of our or our manufacturers' existing manufacturing facilities, whether due to technical or labor difficulties, facility consolidation or closure actions, lack of raw material or component availability, destruction of or damage to any facility (as a result of natural disasters, use and storage of hazardous materials or other events), or other reasons, could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**The inability to continue to introduce new products that respond to customer needs and achieve market acceptance could result in lower revenues and reduced profitability.**

Sales from new products represent a significant portion of our net sales and are expected to continue to represent a significant component of our future net sales. We may not be able to compete effectively unless we continue to enhance existing products or introduce new products to the marketplace in a timely manner. Product improvements and new product introductions require significant financial and other resources, including significant planning, design, development, and testing at the technological, product and manufacturing process levels. Our competitors' new products may beat our products to market, be more effective with more features, be less expensive than our products, and/or render our products obsolete. Any new products that we develop may not receive market acceptance or otherwise generate any meaningful net sales or profits for us relative to our expectations based on, among other things, existing and anticipated investments in manufacturing capacity and commitments to fund advertising, marketing, promotional programs and research and development.

**The global tool, equipment, and diagnostics and repair information industries are competitive.**

We face strong competition in all of our market segments. Price competition in our various industries is intense and pricing pressures from competitors and customers are increasing. In general, as a manufacturer and marketer of premium products and services, the expectations of our customers are high and continue to increase. Any inability to maintain customer satisfaction could diminish our premium image and reputation and could result in a lessening of our ability to command premium pricing. We expect that the level of competition will remain high in the future, which could limit our ability to maintain or increase market share or profitability.

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

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

In addition, we may from time to time become subject to other kinds of litigation. For example, on August 16, 2016, Edwin Minassian filed a complaint against us and Michael Panosian, our CEO, in the Superior Court of California, County of Los Angeles. The complaint alleges breach of oral contracts to pay Mr. Minassian for consulting and finder's fees, and to hire him as an employee. The complaint further alleges, among other things, fraud and misrepresentation relating to the alleged tender of \$20,000 to us in exchange for "a 2% stake in ToughBuilt" which was never delivered. The complaint seeks unspecified monetary damages, declaratory relief concerning the plaintiff's contention that he has an unresolved 9% ownership stake in ToughBuilt and other relief according to proof. While both we and Mr. Panosian believe the claims to be unfounded and plan to vigorously defend against the claims and have filed a counterclaim against the plaintiff for various actions including interference in our business and unfair business practices, there can be no assurance that we would prevail in any litigation that may ensue. If significant monetary damages are awarded to Mr. Minassian, then our financial position could be materially and adversely affected.

**Our products could be recalled.**

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

**We plan to expand our international operations, which will subject us to risks inherent with operations outside of the United States.**

Although we do not have significant foreign operations at this time other than selling our products through retailers, we intend to seek and expand upon opportunities in foreign markets that we anticipate will constitute significant operations. However, even with the cooperation of a commercialization partner, conducting drug development in foreign countries involves inherent risks, including, but not limited to difficulties in staffing, funding and managing foreign operations; unexpected changes in regulatory requirements; export restrictions; tariffs and other trade barriers; difficulties in protecting, acquiring, enforcing and litigating intellectual property rights; fluctuations in currency exchange rates; and potentially adverse tax consequences.

If we were to experience any of the difficulties listed above, or any other difficulties, any international development activities and our overall financial condition may suffer and cause us to reduce or discontinue our international development efforts.

**Our management team has limited experience managing a public company, and regulatory compliance may divert our attention from the day-to-day management of our business.**

Our management team has limited experience managing a publicly-traded company and limited experience complying with the increasingly complex laws pertaining to public companies. These obligations typically require substantial attention from our senior management and could divert our attention away from the day-to-day management of our business.

**Our internal control over financial reporting does not currently meet the standards required by Section 404 of the Sarbanes-Oxley Act of 2002, and failure to achieve and maintain effective internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our business and stock price.**

We have not maintained internal control over financial reporting in a manner that meets the standards of publicly traded companies required by Section 404 of the Sarbanes-Oxley Act of 2002. The rules governing the standards that must be met for our management to assess our internal control over financial reporting are complex and require significant documentation, testing and possible remediation. We expect to begin the process of reviewing, documenting and testing our internal control over financial reporting after completion of this initial public offering. We might encounter problems or delays in completing the implementation of any changes necessary to make a favorable assessment of our internal control over financial reporting. If we cannot favorably assess the effectiveness of our internal control over financial reporting, investors could lose confidence in our financial information and the price of our common stock could decline.

**We have a material weakness in our internal control over financial reporting, which if left unremediated could materially and adversely affect the market price of our common stock.**

As of December 31, 2015, we did not maintain effective controls over the control environment, including our internal control over financial reporting. Because we are a small start-up company with only one full time employee at the time, we lacked the ability to have adequate segregation of duties and adequate oversight of the financial statement preparation process. Further, our Board of Directors does not currently have any independent members and no director qualifies as an audit committee financial expert as defined in Item 407(d)(5)(ii) of Regulation S-K. Since these entity level controls have a pervasive effect across the organization, management has determined that these circumstances constitute a material weakness.

However, we believe that we have since the date that we were made aware of our material weakness improved our internal control over financial reporting by taking certain corrective steps that we believe minimize the likelihood of a recurrence of such an error. We have designed a disclosure controls and procedures regime pursuant to which our management has, among other things:

- (a) identified the definition, objectives, application and scope of our internal control over financial reporting;
- (b) delineated the duties of each member of the group responsible for maintaining the adequacy of our internal control over financial reporting. This group consists of:
  - (i) Our Chief Executive Officer; and
  - (ii) An external consultant was engaged to prepare and assure compliance with both our internal control over financial reporting as well as our disclosure controls and procedures, and review our disclosure controls and procedures on a regular basis, subject to our management's supervision.

During the second quarter of 2016, we hired the consultant to be our new Chief Financial Officer. The new CFO will assist us in the identification of required key controls, the necessary steps required for procedures to ensure the appropriate communication and review of inputs necessary for the financial statement closing process, as well as for the appropriate presentation of disclosures within the financial statements. With material, complex and non-routine transactions, management has, and will continue to, seek guidance from third-party experts and/or consultants to gain a thorough understanding of these transactions. The remediation steps taken are subject to ongoing senior management review and Board of Directors oversight. Management believes there have been improvements during the year ending December 31, 2016, but sufficient time has not lapsed to ensure the remediation and controls set in place are effective as of December 31, 2016. Management anticipates that the continuing efforts will effectively remediate the material weakness which existed as of December 31, 2015. Our management has been actively engaged in planning for, designing and implementing the corrective steps described above to enhance the effectiveness of our disclosure controls and procedures as well as our internal control over financial reporting. Our management, together with our board of directors, is committed to achieving and maintaining a strong control environment, high ethical standards, and financial reporting integrity.

Although we believe that these corrective steps will enable management to conclude that our internal control over financial reporting is free of material weaknesses, we cannot assure you that they will be sufficient. If we should in the future conclude that our internal control over financial reporting suffers from a material weakness, we will be required to expend additional resources to improve it. Any additional instances of material weaknesses could require a restatement of our financial statements. If such restatements are required, there could be a material adverse effect on our investors' confidence that our financial statements fairly present our financial condition and results of operations, which in turn could materially and adversely affect the market price of our common stock."

**We may need to increase the size of our organization and we may experience difficulties in managing growth.**

We intend to rapidly expand operations to implement our business strategy. We also may acquire other companies or technologies. Any expansion or acquisitions are expected to place a significant strain on our managerial, operational, and financial resources. To manage the expected growth of operations, we may need to develop and maintain operational and financial systems and procedures and controls, which may cause us to incur significant expenses. As we may incur many of these expenses before receiving any significant revenues from our efforts, it may be more difficult to achieve or maintain profitability.

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

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

**Risks Related to Our Intellectual Property**

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

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

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

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

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

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

- adversely affect relationships with future clients;
- cause delays or stoppages in providing products;
- divert management's attention and resources;
- require technology changes to our platform that would cause our company to incur substantial cost
- subject us to significant liabilities; and
- require us to cease some or all of its activities.

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

**We have limited foreign intellectual property rights and may not be able to protect our intellectual property rights throughout the world.**

We have limited intellectual property rights outside the United States. Filing, prosecuting and defending patents on devices in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. In addition, the laws of some foreign countries do not protect intellectual property to the same extent as laws in the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States, or from selling or importing products made using our inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patents to develop their own products and further, may export otherwise infringing products to territories where we have patents, but enforcement is not as strong as that in the United States.

Many companies have encountered significant problems in protecting and defending intellectual property in foreign jurisdictions. The legal systems of certain countries, particularly China and certain other developing countries, do not favor the enforcement of patents, trade secrets and other intellectual property, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. To date, we have not sought to enforce any issued patents in these foreign jurisdictions. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. The requirements for patentability may differ in certain countries, particularly developing countries. Certain countries in Europe and developing countries, including China and India, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In those countries, we and our licensors may have limited remedies if patents are infringed or if we or our licensors are compelled to grant a license to a third party, which could materially diminish the value of those patents. This could limit our potential revenue opportunities. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

**Our patent position is highly uncertain and involves complex legal and factual questions.**

Accordingly, we cannot predict the breadth of claims that may be allowed or enforced under our patents or in third-party patents. For example, we might not have been the first to make the inventions covered by each of our pending patent applications and issued patents; we might not have been the first to file patent applications for these inventions; others may independently develop similar or alternative technologies or duplicate any of our technologies; it is possible that none of our pending patent applications will result in issued patents; our issued patents may not provide a basis for commercially viable technologies, or may not provide us with any competitive advantages, or may be challenged and invalidated by third parties; and, we may not develop additional proprietary technologies that are patentable.

As a result, our owned and licensed patents may not be valid and we may not be able to obtain and enforce patents and to maintain trade secret protection for the full commercial extent of our technology. The extent to which we are unable to do so could materially harm our business.

We have applied for and will continue to apply for patents for certain products. Such applications may not result in the issuance of any patents, and any patents now held or that may be issued may not provide us with adequate protection from competition. Furthermore, it is possible that patents issued or licensed to us may be challenged successfully. In that event, if we have a preferred competitive position because of such patents, such preferred position would be lost. If we are unable to secure or to continue to maintain a preferred position, we could become subject to competition from the sale of generic products. Failure to receive, inability to protect, or expiration of our patents would adversely affect our business and operations.

Patents issued or licensed to us may be infringed by the products or processes of others. The cost of enforcing our patent rights against infringers, if such enforcement is required, could be significant, and we do not currently have the financial resources to fund such litigation. Further, such litigation can go on for years and the time demands could interfere with our normal operations. We may become a party to patent litigation and other proceedings. The cost to us of any patent litigation, even if resolved in our favor, could be substantial. Many of our competitors may be able to sustain the costs of such litigation more effectively than we can because of their substantially greater financial resources. Litigation may also absorb significant management time.

Unpatented trade secrets, improvements, confidential know-how and continuing technological innovation are important to our scientific and commercial success. Although we attempt to and will continue to attempt to protect our proprietary information through reliance on trade secret laws and the use of confidentiality agreements with our partners, collaborators, employees and consultants, as well as through other appropriate means, these measures may not effectively prevent disclosure of our proprietary information, and, in any event, others may develop independently, or obtain access to, the same or similar information.

**International intellectual property protection is particularly uncertain, and if we are involved in opposition proceedings in foreign countries, we may have to expend substantial sums and management resources.**

Patent and other intellectual property law outside the United States is more uncertain and is continually undergoing review and revisions in many countries. Further, the laws of some foreign countries may not protect intellectual property rights to the same extent as the laws of the United States. For example, certain countries do not grant patent claims that are directed to business methods and processes. In addition, we may have to participate in opposition proceedings to determine the validity of its foreign patents or its competitors' foreign patents, which could result in substantial costs and diversion of its efforts and loss of credibility with customers.

**If we are found to be infringing on patents or trade secrets owned by others, we may be forced to cease or alter our product development efforts, obtain a license to continue the development or sale of our products, and/or pay damages.**

Our manufacturing processes and potential products may violate proprietary rights of patents that have been or may be granted to competitors, universities or others, or the trade secrets of those persons and entities. As our industry expands and more patents are issued, the risk increases that our processes and potential products may give rise to claims that they infringe the patents or trade secrets of others. These other persons could bring legal actions against us claiming damages and seeking to enjoin manufacturing and marketing of the affected product or process. If any of these actions are successful, in addition to any potential liability for damages, we could be required to obtain a license in order to continue to manufacture or market the affected product or use the affected process. Required licenses may not be available on acceptable terms, if at all, and the results of litigation are uncertain. If we become involved in litigation or other proceedings, it could consume a substantial portion of our financial resources and the efforts of our personnel.

**We rely on confidentiality agreements to protect our trade secrets. If these agreements are breached by our employees or other parties, our trade secrets may become known to our competitors.**

We rely on trade secrets that we seek to protect through confidentiality agreements with our employees and other parties. If these agreements are breached, our competitors may obtain and use our trade secrets to gain a competitive advantage over us. We may not have any remedies against our competitors and any remedies that may be available to us may not be adequate to protect our business or compensate us for the damaging disclosure. In addition, we may have to expend resources to protect our interests from possible infringement by others.

#### **Risks Related to this Offering and the Ownership of Our Common Stock**

**Our officers, directors and founding shareholders may exert significant influence over our affairs, including the outcome of matters requiring shareholder approval.**

As of the date of this prospectus, our officers, directors and affiliated shareholders collectively have an approximately 76% beneficial ownership of our company. As a result, such individuals will have the ability, acting together, to control the election of our directors and the outcome of corporate actions requiring shareholder approval, such as: (i) a merger or a sale of our company, (ii) a sale of all or substantially all of our assets, and (iii) amendments to our articles of incorporation and bylaws. This concentration of voting power and control could have a significant effect in delaying, deferring or preventing an action that might otherwise be beneficial to our other shareholders and be disadvantageous to our shareholders with interests different from those individuals. Certain of these individuals also have significant control over our business, policies and affairs as officers or directors of our company. Therefore, you should not invest in reliance on your ability to have any control over our company.

**We have broad discretion in the use of the net proceeds from this offering and may use the net proceeds in ways with which you disagree.**

Our management will have broad discretion in the application of the net proceeds from this offering and could spend the proceeds in ways that do not improve our results of operations or enhance the value of our securities. You will be relying on the judgment of our management with regard to the use of these net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the net proceeds are being used appropriately. The failure by our management to apply these funds effectively could result in financial losses that could have a material adverse effect on our business, cause the price of our securities to decline and delay the development of our product candidates. Pending the application of these funds, we may invest the net proceeds from this offering in a manner that does not produce income or that loses value.

**Investors in this offering will experience immediate and substantial dilution in net tangible book value.**

You will incur immediate and substantial dilution as a result of this offering. After giving effect to the sale by us of up to [ ] shares of common stock at an assumed public offering price of \$[ ] per share, and after deducting the underwriters' discounts and commissions and estimated offering expenses payable by us, investors in this offering can expect an immediate dilution of \$[ ] per share.

We have also issued options in the past to acquire common stock at prices significantly below the initial offering price. As of \_\_\_\_\_, 2017, there were [•] shares of common stock subject to outstanding options with a weighted-average exercise price of \$[•] per share. To the extent that these outstanding options are ultimately exercised, you will incur further dilution, and our stock price may decline. To the extent that additional or outstanding options or warrants are granted and/or exercised you will experience further dilution. See "Dilution" for a more complete description of how the value of your investment in our common stock will be diluted upon the completion of this offering.

**A sustained, active trading market for our common stock or warrants may not develop or be maintained.**

As we are in our early stage of development, an investment in our company will likely require a long-term commitment, with no certainty of return. There is currently no trading market for our common stock and we cannot predict whether an active market for our common stock will ever develop or be sustained in the future. In the absence of an active trading market:

- investors may have difficulty buying and selling or obtaining market quotations;
- market visibility for shares of our common stock may be limited; and
- a lack of visibility for shares of our common stock may have a depressive effect on the market price for shares of our common stock.



The lack of an active market impairs your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the fair market value of your shares. An inactive market may also impair our ability to raise capital to continue to fund operations by selling securities and may impair our ability to acquire additional assets by using our securities as consideration.

**There is no established trading market for our shares; further, our shares will be subject to potential delisting if we do not maintain the listing requirements of the NASDAQ Capital Market.**

This offering constitutes our initial public offering of our shares. No public market for these shares currently exists. We intend to apply to list the shares of our common stock on the NASDAQ Capital Market, or NASDAQ. An approval of our listing application by NASDAQ will be subject to, among other things, our fulfilling all of the listing requirements of NASDAQ. Even if these shares are listed on NASDAQ, there can be no assurance that an active trading market for these securities will develop or be sustained after this offering is completed. The initial offering price has been determined by negotiations among the lead underwriter and us. Among the factors considered in determining the initial offering price were our future prospects and the prospects of our industry in general, our revenue, net income and certain other financial and operating information in recent periods, and the financial ratios, market prices of securities and certain financial and operating information of companies engaged in activities similar to ours. However, there can be no assurance that following this offering our shares of common stock will trade at a price equal to or greater than the offering price.

In addition, NASDAQ has rules for continued listing, including, without limitation, minimum market capitalization and other requirements. Failure to maintain our listing, or de-listing from NASDAQ, would make it more difficult for shareholders to dispose of our common stock and more difficult to obtain accurate price quotations on our common stock. This could have an adverse effect on the price of our common stock. Our ability to issue additional securities for financing or other purposes, or otherwise to arrange for any financing we may need in the future, may also be materially and adversely affected if our common stock is not traded on a national securities exchange.

**Our ability to have our common stock traded on the NASDAQ is subject to us meeting applicable listing criteria.**

We intend to apply for our common stock to be listed on NASDAQ, a national securities exchange. The NASDAQ requires companies desiring to list their common stock to meet certain listing criteria including total number of shareholders: minimum stock price, total value of public float, and in some cases total shareholders' equity and market capitalization. Our failure to meet such applicable listing criteria could prevent us from listing our common stock on NASDAQ. In the event we are unable to have our shares traded on NASDAQ, our common stock will likely trade on the OTCQX or the OTCQB, each of which is generally considered less liquid and more volatile than the NASDAQ. Our failure to have our shares traded on NASDAQ could make it more difficult for you to trade our shares, could prevent our common stock trading on a frequent and liquid basis and could result in the value of our common stock being less than it would be if we were able to list our shares on NASDAQ.

**The requirements of being a public company may strain our resources, divert management's attention and affect our results of operations.**

As a public company in the United States, we will face increased legal, accounting, administrative and other costs and expenses. After the consummation of this offering, we will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act. The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and financial condition. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. For example, Section 404 of the Sarbanes-Oxley Act requires that our management report on the effectiveness of our internal controls structure and procedures for financial reporting. Section 404 compliance may divert internal resources and will take a significant amount of time and effort to complete. If we fail to maintain compliance under Section 404, or if in the future management determines that our internal control over financial reporting are not effective as defined under Section 404, we could be subject to sanctions or investigations by NASDAQ should we in the future be listed on this market, the SEC, or other regulatory authorities. Furthermore, investor perceptions of our company may suffer, and this could cause a decline in the market price of our common stock. Any failure of our internal control over financial reporting could have a material adverse effect on our stated results of operations and harm our reputation. If we are unable to implement these changes effectively or efficiently, it could harm our operations, financial reporting or financial results and could result in an adverse opinion on internal controls from our independent auditors. We may need to hire a number of additional employees with public accounting and disclosure experience in order to meet our ongoing obligations as a public company, particularly if we become fully subject to Section 404 and its auditor attestation requirements, which will increase costs. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly, although we are currently unable to estimate these costs with any degree of certainty. A number of those requirements will require us to carry out activities we have not done previously. Our management team and other personnel will need to devote a substantial amount of time to new compliance initiatives and to meeting the obligations that are associated with being a public company, which may divert attention from other business concerns, which could have a material adverse effect on our business, financial condition and results of operations.

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

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

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

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

**The market price of our common stock may be volatile, and you may not be able to resell your shares at or above the initial public offering price.**

The market price for our common stock may be volatile and subject to wide fluctuations in response to factors including the following:

- actual or anticipated fluctuations in our quarterly or annual operating results;
- changes in financial or operational estimates or projections;
- conditions in markets generally;
- changes in the economic performance or market valuations of companies similar to ours;
- general economic or political conditions in the United States or elsewhere;
- any delay in development of our products or services;
- our failure to comply with regulatory requirements;
- our inability to commercially launch products and services and market and generate sales of our products and services,
- developments or disputes concerning our intellectual property rights;
- our or our competitors' technological innovations;
- general and industry-specific economic conditions that may affect our expenditures;
- changes in market valuations of similar companies;
- announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, joint ventures, capital commitments, new technologies, or patents;
- future sales of our common stock or other securities, including shares issuable upon the exercise of outstanding warrants or convertible securities or otherwise issued pursuant to certain contractual rights;
- period-to-period fluctuations in our financial results; and

low or high trading volume of our common stock due to many factors, including the terms of our financing arrangements.

In addition, if we fail to reach an important research, development or commercialization milestone or result by a publicly expected deadline, even if by only a small margin, there could be significant impact on the market price of our common stock. Additionally, as we approach the announcement of anticipated significant information and as we announce such information, we expect the price of our common stock to be particularly volatile and negative results would have a substantial negative impact on the price of our common stock.

In addition, in recent years, the stock market in general has experienced extreme price and volume fluctuations. This volatility has had a significant effect on the market price of securities issued by many companies, including for reasons unrelated to their operating performance. These broad market fluctuations may adversely affect our stock price, notwithstanding our operating results. The market price of our common stock will fluctuate and there can be no assurances about the levels of the market prices for our common stock.

In some cases, following periods of volatility in the market price of a company's securities, shareholders have often instituted class action securities litigation against those companies. Such litigation, if instituted, could result in substantial costs and diversion of management attention and resources, which could significantly harm our business operations and reputation.

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

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

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

We expect to take advantage of these reporting exemptions until we are no longer an “emerging growth company.” Because of these lessened regulatory requirements, our shareholders would be left without information or rights available to shareholders of more mature companies. We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

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

**Because we have elected to use the extended transition period for complying with new or revised accounting standards for an “emerging growth company” our financial statements may not be comparable to companies that comply with public company effective dates.**

We have elected to use the extended transition period for complying with new or revised accounting standards under Section 102(b)(1) of the JOBS Act. This election allows us to delay the adoption of new or revised accounting standards that have different effective dates for public and private companies until those standards apply to private companies. While we are not currently delaying the implementation of any relevant accounting standards, in the future we may avail ourselves of this right, and as a result of this election, our financial statements may not be comparable to companies that comply with public company effective dates. Because our financial statements may not be comparable to companies that comply with public company effective dates, investors may have difficulty evaluating or comparing our business, performance or prospects in comparison to other public companies, which may have a negative impact on the value and liquidity of our common stock.

**FINRA sales practice requirements may also limit your ability to buy and sell our common stock, which could depress the price of our shares.**

Financial Industry Regulatory Authority, Inc. (FINRA) rules require broker-dealers to have reasonable grounds for believing that an investment is suitable for a customer before recommending that investment to the customer. Prior to recommending speculative low-priced securities to their non-institutional customers, broker-dealers must make reasonable efforts to obtain information about the customer's financial status, tax status and investment objectives, among other things. Under interpretations of these rules, FINRA believes that there is a high probability such speculative low-priced securities will not be suitable for at least some customers. Thus, FINRA requirements make it more difficult for broker-dealers to recommend that their customers buy our common stock, which may limit your ability to buy and sell our shares, have an adverse effect on the market for our shares, and thereby depress our share price.

**Our compliance with complicated U.S. regulations concerning corporate governance and public disclosure is expensive. Moreover, our ability to comply with all applicable laws, rules and regulations is uncertain given our management's relative inexperience with operating U.S. public companies.**

As a publicly reporting company, we are faced with expensive and complicated and evolving disclosure, governance and compliance laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act and the Dodd-Frank Act, and, following this offering, the rules of the NASDAQ Stock Market. New or changing laws, regulations and standards are subject to varying interpretations in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies, which could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. As a result, our efforts to comply with evolving laws, regulations and standards of a U.S. public company are likely to continue to result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities.

Moreover, our executive officers have little experience in operating a U.S. public company, which makes our ability to comply with applicable laws, rules and regulations uncertain. Our failure to comply with all laws, rules and regulations applicable to U.S. public companies could subject us or our management to regulatory scrutiny or sanction, which could harm our reputation and stock price.

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

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

**We may issue additional equity securities, or engage in other transactions that could dilute our book value or affect the priority of our common stock, which may adversely affect the market price of our common stock**

Our Board of Directors may determine from time to time that it needs to raise additional capital by issuing additional shares of our common stock or other securities. Except as otherwise described in this prospectus, we will not be restricted from issuing additional shares of common stock, including securities that are convertible into or exchangeable for, or that represent the right to receive, shares of our common stock. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing, or nature of any future offerings, or the prices at which such offerings may be affected. Additional equity offerings may dilute the holdings of existing shareholders or reduce the market price of our common shares, or both. Holders of our securities are not entitled to pre-emptive rights or other protections against dilution. New investors also may have rights, preferences and privileges that are senior to, and that adversely affect, then-current holders of our securities. Additionally, if we raise additional capital by making offerings of debt or preference shares, upon our liquidation, holders of our debt securities and preference shares, and lenders with respect to other borrowings, may receive distributions of its available assets before the holders of our common stock.

We have recently issued a convertible debenture and convertible preferred stock in financings consummated in October of 2016. If the shares of our common stock underlying these equity-linked securities were to be issued upon conversion of such securities, the holdings of existing shareholders would be diluted and the market price of our shares of common stock would likely decrease. Please see "*Management's Discussion and Analysis of Financial Condition – Liquidity and Capital Resources – Recent Financings*" for more information about these securities.

**Unless our shares of common stock are approved for listing on NASDAQ, our common stock will be subject to the “penny stock” rules of the SEC and the trading market in our securities is limited, which makes transactions in our stock cumbersome and may reduce the value of an investment in our stock.**

The SEC has adopted Rule 15c-9 which establishes the definition of a “penny stock,” for the purposes relevant to us, as any equity security that has a market price of less than \$5.00 per share or with an exercise price of less than \$5.00 per share, subject to certain exceptions. For any transaction involving a penny stock, unless exempt, the rules require:

- that a broker or dealer approve a person’s account for transactions in penny stocks; and
- the broker or dealer receive from the investor a written agreement to the transaction, setting forth the identity and quantity of the penny stock to be purchased.

In order to approve a person’s account for transactions in penny stocks, the broker or dealer must:

- obtain financial information and investment experience objectives of the person; and
- make a reasonable determination that the transactions in penny stocks are suitable for that person and the person has sufficient knowledge and experience in financial matters to be capable of evaluating the risks of transactions in penny stocks.

The broker or dealer must also deliver, prior to any transaction in a penny stock, a disclosure schedule prescribed by the SEC relating to the penny stock market, which:

- sets forth the basis on which the broker or dealer made the suitability determination; and
- affirms that the broker or dealer received a signed, written agreement from the investor prior to the transaction.

Generally, brokers may be less willing to execute transactions in securities subject to the “penny stock” rules. This may make it more difficult for investors to dispose of our common stock and cause a decline in the market value of our stock.

Disclosure also has to be made about the risks of investing in penny stocks in both public offerings and in secondary trading and about the commissions payable to both the broker-dealer and the registered representative, current quotations for the securities and the rights and remedies available to an investor in cases of fraud in penny stock transactions. Finally, monthly statements have to be sent disclosing recent price information for the penny stock held in the account and information on the limited market in penny stocks.

Shareholders should be aware that, according to SEC Release No. 34-29093, the market for “penny stocks” has suffered in recent years from patterns of fraud and abuse. Such patterns include (1) control of the market for the security by one or a few broker-dealers that are often related to the promoter or issuer; (2) manipulation of prices through prearranged matching of purchases and sales and false and misleading press releases; (3) boiler room practices involving high-pressure sales tactics and unrealistic price projections by inexperienced sales persons; (4) excessive and undisclosed bid-ask differential and markups by selling broker-dealers; and (5) the wholesale dumping of the same securities by promoters and broker-dealers after prices have been manipulated to a desired level, along with the resulting inevitable collapse of those prices and with consequent investor losses. Our management is aware of the abuses that have occurred historically in the penny stock market. Although we do not expect to be in a position to dictate the behavior of the market or of broker-dealers who participate in the market, management will strive within the confines of practical limitations to prevent the described patterns from being established with respect to our securities. Unless our shares of common stock are approved for listing on NASDAQ, the occurrence of these patterns or practices could increase the future volatility of our share price.

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

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

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains “forward-looking statements,” which include information relating to future events, future financial performance, financial projections, strategies, expectations, competitive environment and regulation. Words such as “may”, “should”, “could”, “would”, “predicts”, “potential”, “continue”, “expects”, “anticipates”, “future”, “intends”, “plans”, “believes”, “estimates”, and similar expressions, as well as statements in future tense, identify forward-looking statements. Forward-looking statements should not be read as a guarantee of future performance or results and may not be accurate indications of when such performance or results will be achieved. Forward-looking statements are based on information we have when those statements are made or management’s good faith belief as of that time with respect to future events, and are subject to significant risks and uncertainties that could cause actual performance or results to differ materially from those expressed in or suggested by the forward-looking statements. Important factors that could cause such differences include, but are not limited to:

- Our severely limited operating history;
- our ability to manufacture, market and sell our products;
- our ability to maintain or protect the validity of our U.S. and other patents and other intellectual property;
- our ability to launch and penetrate markets;
- our ability to retain key executive members;
- our ability to internally develop new inventions and intellectual property;
- interpretations of current laws and the passages of future laws; and
- acceptance of our business model by investors.

The foregoing does not represent an exhaustive list of matters that may be covered by the forward-looking statements contained herein or risk factors that we are faced with that may cause our actual results to differ from those anticipate in our forward-looking statements. Please see “*Risk Factors*” for additional risks which could adversely impact our business and financial performance.

Moreover, new risks regularly emerge and it is not possible for our management to predict or articulate all risks we face, nor can we assess the impact of all risks on our business or the extent to which any risk, or combination of risks, may cause actual results to differ from those contained in any forward-looking statements. All forward-looking statements included in this prospectus are based on information available to us on the date of this prospectus. Except to the extent required by applicable laws or rules, we undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise. All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained above and throughout this prospectus.

## USE OF PROCEEDS

We estimate that the net proceeds from the sale of the [ ] shares of our common stock will be approximately \$[ ] million, or approximately \$[ ] million if the underwriters exercise in full their option to purchase additional shares, based on an assumed public offering price of \$[ ] per share, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Each \$1.00 increase (decrease) in the assumed public offering price of \$[ ] per share would increase (decrease) the net proceeds to us from this offering by approximately \$[ ] million, or approximately \$ [ ] million if the underwriters exercise their over-allotment option in full, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remain the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The expected use of net proceeds of this offering represents our current intentions based upon our present plan and business conditions. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds to be received upon the completion of this offering. The amounts and timing of our actual use of net proceeds will vary depending on numerous factors. As a result, management will have broad discretion in the application of the net proceeds, and investors will be relying on our judgment regarding the application of the net proceeds of this offering.

We currently estimate that we will use the net proceeds from this offering as follows: (i) \$2,000,000 to the production of new tools, (ii) \$1,000,000 to produce apparel and accessories, (iii) \$3,000,000 to the development of technology and design, including intelligence sensors, accessories and other technologies, (iv) \$3,000,000 to sales and marketing, (v) \$2,500,000 to repayment of debt and (vi) \$2,000,000 to working capital. We have presumed that we will receive aggregate gross proceeds of \$15,000,000 and deducted \$1,500,000 payable in commissions and fees.

The use of the proceeds represents management's estimates based upon current business and economic conditions. We reserve the right to use of the net proceeds we receive in the offering in any manner we consider to be appropriate. Although our company does not contemplate changes in the proposed use of proceeds, to the extent we find that adjustment is required for other uses by reason of existing business conditions, the use of proceeds may be adjusted. The actual use of the proceeds of this offering could differ materially from those outlined above as a result of several factors including those set forth under "Risk Factors" and elsewhere in this prospectus.

Pending the use of the net proceeds of this offering, we intend to invest the net proceeds in short-term investment-grade, interest-bearing securities.

## **MARKET FOR OUR COMMON STOCK AND RELATED STOCKHOLDER MATTERS**

Our common stock is not quoted on any market, and never has been.

As of January \_\_, 2017, we had approximately \_\_\_\_ shareholders of record of our common stock.

We intend to apply for the listing of our common stock on NASDAQ under the symbol "TBII." No assurance can be given that such application will be approved or that a trading market will develop.

## **DIVIDEND POLICY**

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



## CAPITALIZATION

The following table sets forth our capitalization as of September 30, 2016:

- on an actual basis; and
- on a pro forma as adjusted basis to reflect the sale by us of [ ] shares of our common stock at an assumed initial public offering price of \$[ ] per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering costs payable by us.

The pro forma as adjusted information below is illustrative only and our capitalization following the completion of this offering will be adjusted based on the actual public offering price and other terms of this offering determined at pricing. You should read this table together with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our audited and unaudited condensed financial statements and the related notes appearing elsewhere in this prospectus.

You should read this table together with the section in this prospectus entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements and related notes included elsewhere in this prospectus.

	As of September 30, 2016	
	Actual	As Adjusted
	(Unaudited)	(Unaudited) <sup>(1)</sup>
Common stock, par value \$0.0001 per share, 100,000,000 shares authorized, 7,359,000 shares issued and outstanding	\$ 736	\$
Additional paid-in capital	1,488,649	
Accumulated other comprehensive income	-	
Cash	3,235	
Notes payable	380,389	
Retained earnings (accumulated deficit)	(2,927,360)	
Total shareholders’ equity (deficiency)	(1,437,975)	\$
Total capitalization		

The number of shares of our common stock to be outstanding after this offering is based on \_\_\_\_\_ shares of our common stock outstanding as of January \_\_, 2017, and excludes the following:

- 412,617 shares of common stock issuable upon the exercise of outstanding warrants at an exercise price of \$6.00 per share;
- 61,450 shares of our common stock issuable upon exercise of outstanding warrants as of January \_\_, 2017 at a weighted average exercise price of \$6.00 per share;
- \_\_\_\_\_ shares of our common stock underlying warrants to be issued to the underwriters in connection with this offering; and
- \_\_\_\_\_ shares of our common stock issuable upon the exercise of the underwriters’ over-allotment option.

(1) A \$1.00 increase or decrease in the assumed public offering price per share would increase or decrease our pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders’ equity and total capitalization by approximately \$ \_\_\_\_\_ assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discount and estimated offering expenses payable by us.

## DILUTION

If you invest in our common stock in this offering, your ownership interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock in this offering and the as adjusted net tangible book value per share immediately after this offering. We calculate net tangible book value per share by dividing our net tangible book value, which is tangible assets less total liabilities less debt discounts, by the number of outstanding shares of our common stock as of September 30, 2016. Our historical net tangible book value as of September 30, 2016, was approximately \$\_\_\_\_\_ or \$\_\_\_\_\_ per share of our common stock.

After giving effect to the sale of [ ] shares of our common stock at an assumed initial public offering price of \$ [ ] per share of common stock, after deducting the underwriting discounts and commissions and estimated offering costs payable by us, our as adjusted net tangible book value as of September 30, 2016, would have been approximately \$[ ] million, or \$[ ] per share of common stock. This represents an immediate increase in as adjusted net tangible book value of \$[ ] per share to existing shareholders and an immediate dilution of \$[ ] per share to investors purchasing shares of common stock in this offering at the assumed public offering price.

The following table illustrates the per share dilution (unaudited):

Assumed initial public offering price per share	\$ [ ]
Historical net tangible book value per share as of September 30, 2016	\$ (0.20)
Increase per share attributable to new investors	\$ [ ]
Pro forma as adjusted net tangible book value per share after this offering	[ ]
Dilution in net tangible book value per share to new investors	\$ [ ]

Each \$1.00 increase (decrease) in the assumed public offering price would increase (decrease) our as adjusted net tangible book value after this offering by approximately \$[ ] million, or approximately \$[ ] per share, and the dilution per share to new investors by approximately \$[ ] per share, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remain the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. An increase of \_\_\_\_\_ shares in the number of shares offered by us would increase our as adjusted net tangible book value after this offering by approximately \$[ ] million, or \$[ ] per share, and decrease the dilution per share to new investors by \$[ ] per share, assuming that the assumed initial public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, a decrease of \_\_\_\_\_ shares in the number of shares offered by us would decrease our as adjusted net tangible book value after this offering by approximately \$[ ] million, or \$[ ] per share, and increase the dilution per share to new investors by \$[ ] per share, assuming that the assumed initial public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. The information discussed above is illustrative only and will adjust based on the actual initial public offering price and other terms of this offering determined at pricing.

If the underwriters exercise in full their option to purchase up to [ ] additional shares of common stock at the assumed initial public offering price of \$[ ] per share, the as adjusted net tangible book value after this offering would be \$[ ] per share, representing an increase in net tangible book value of \$[ ] per share to existing shareholders and immediate dilution in net tangible book value of \$[ ] per share to investors purchasing our common stock in this offering at the assumed public offering price.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*Prospective investors should read the following discussion and analysis of our financial condition and results of operations together with our condensed financial statements and the related notes and other financial information included elsewhere in this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. See "Cautionary Note Regarding Forward-Looking Statements." You should review the "Risk Factors" section of this prospectus for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.*

### **Company History**

Our company was formed on April 9, 2012 as Phalanx, Inc., under the laws of the State of Nevada and changed its name to ToughBuilt Industries, Inc. on December 29, 2015.

### **Business Overview**

Our company was formed to design, manufacture and distribute innovative tools and accessories to the building industry. The global tool market industry is a multibillion dollar business.

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

ToughBuilt's current product line includes three major categories related to this field, with several additional categories in the works, consisting of Soft Goods, Sawhorses & Work Products and Kneepads, each of which is described below.

### **JOBS Act**

On April 5, 2012, the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, was enacted. Section 107 of the JOBS Act provides that an "emerging growth company" can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, as amended, or the Securities Act, for complying with new or revised accounting standards. In other words, an "emerging growth company" can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

We are in the process of evaluating the benefits of relying on other exemptions and reduced reporting requirements provided by the JOBS Act. Subject to certain conditions set forth in the JOBS Act, as an "emerging growth company," we intend to rely on certain of these exemptions from, without limitation, (i) providing an auditor's attestation report on our system of internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act and (ii) complying with any requirement that may be adopted by the Public Company Accounting Oversight Board (PCAOB) regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements, known as the auditor discussion and analysis. We will remain an "emerging growth company" until the earliest of (a) the last day of the fiscal year in which we have total annual gross revenues of \$1 billion or more, (b) the last day of our fiscal year following the fifth anniversary of the date of the completion of this offering, (c) the date on which we have issued more than \$1 billion in nonconvertible debt during the previous three years or (d) the date on which we are deemed to be a large accelerated filer under the rules of the Securities and Exchange Commission (the "Commission").

### **Results of Operations**

The following discussion should be read in conjunction with the financial statements for the interim periods ended September 30, 2016 and 2015, and for the years ended December 31, 2015 and 2014, respectively, included in this report.

**For the nine months ended September 30, 2016 compared to the nine months ended September 30, 2015 (unaudited)**

**Revenues**

Revenues for the nine months ended September 30, 2016 and 2015 were \$6,360,139 and \$6,130,471, respectively. Revenues increased slightly during the nine months in 2016 over 2015 by \$229,668 or 4% primarily due to the recurring sales orders from our existing customers and introduction of our new products to our customers.

**Cost of Goods Sold**

Cost of goods sold for the nine months ended September 30, 2016 and 2015 was \$5,019,367 and \$4,438,005, respectively. Cost of goods sold increased in 2016 over 2015 by \$581,362 or 13% primarily due to introduction of new products in tools and metal industry, where the costs incurred to manufacture were higher than our other recurring products. Cost of goods sold as a percentage of revenues in 2016 was 79% as compared to cost of goods sold as a percentage of revenues in 2015 of 72%. We expect to reduce our cost of goods sold as a percentage of revenue as we achieve operational efficiencies in production and work with automated state of the art factories to manufacture our product lines.

**Selling, General and Administrative Expenses**

Selling, general and administrative expenses (the "SG&A Expenses") for the nine months ended September 30, 2016 and 2015 were \$3,751,214 and \$1,431,796, respectively. SG&A Expenses increased in 2016 over 2015 by \$2,319,418 or 162% primarily due to recording stock compensation paid to employees and consultants, marketing and international trade shows expense, hiring additional independent contractors and professional consultants to keep up with the increase in Company's growth and capital raise. SG&A expense in 2016 as a percentage of revenues was 59% as compared to SG&A expense in 2015 as a percentage of revenues was 23%. We expect our SG&A expense will increase as the Company plans to bring professional management team and staff on board, expend cash to raise capital for new products development, and move into a new office/warehouse/storage facility to expand its operations and keep inventory on hand.

**Other Expense**

Other expense consisted of interest expense for the nine months ended September 30, 2016 and 2015 of \$56,116 and \$78,750, respectively. We entered into a financing arrangement and received a loan from a third party of \$250,000 in May 2016 and recorded an original issuance of debt discount of \$80,000. We recorded the amortization of debt discount of \$44,675 as interest expense in 2016. In addition, we recorded interest expense of \$11,441 for the short term loans obtained in 2016. We obtained a loan of \$500,000 in April 2014 from a third party at the annual interest rate of 21% and recorded interest expense of \$78,750 in 2015. We expect the interest expense in 2016 to decrease as we converted the loan of \$500,000 in exchange of issuance of 166,667 shares of our common stock on February 25, 2016. The conversion of the loan into shares of Common Stock occurred pursuant to a Mutual Rescission Agreement and General Release entered into on December 29, 2015.

**Net Income/Loss**

As a result of the above explanations, we recorded a net loss of \$2,484,393 for the nine months ended September 30, 2016 compared to a net income of \$145,752 for the comparable period in 2015.

**For the year ended December 31, 2015 compared to the year ended December 31, 2014**

**Revenues**

Revenues for the years ended December 31, 2015 and 2014 were \$8,930,178 and \$5,264,224, respectively. Revenues increased in 2015 over 2014 by \$3,665,954 or 70% primarily due to wide acceptance of our products in the tools industry and receipt of recurring sales orders from our existing customers and new customers, and introduction and sale of new products to our customers.

**Cost of Goods Sold**

Cost of goods sold for the years ended December 31, 2015 and 2014 was \$6,565,088 and \$3,824,548, respectively. Cost of goods sold increased in 2015 over 2014 by \$2,740,540 or 72% primarily due to introduction of new products in tools and metal industry, where the costs incurred to manufacture were higher than our other recurring products. Cost of goods sold as a percentage of revenues in 2015 was 74% as compared to cost of goods sold as a percentage of revenues in 2014 of 73%. We expect to reduce our cost of goods sold as a percentage of revenue as we achieve operational efficiencies in production and work with automated state of the art factories to manufacture our product lines.

**Selling, General and Administrative Expenses**

Selling, general and administrative expenses (the "SG&A Expenses") for the years ended December 31, 2015 and 2014 were \$2,178,454 and \$1,703,673, respectively. SG&A Expenses increased in 2015 over 2014 by \$474,781 or 28% primarily due to hiring additional independent contractors and consultants to keep up with the increase in growth of the Company. SG&A expense in 2015 as a percentage of revenues was 24% as compared to SG&A expense in 2014 as a percentage of revenues was 32%. We expect our SG&A expense will increase as the Company plans to bring professional management team and staff on board, expend cash to raise capital for new products development, and move into a new office/warehouse/storage facility to expand its operations and keep inventory on hand.

#### Other Expense

Other expense consisted of interest expense for the years ended December 31, 2015 and 2014 of \$105,000 and \$76,000, respectively. We obtained a loan of \$500,000 in April 2014 from a third party at the annual interest rate of 21%. We expect the interest expense in 2016 to decrease as we converted the loan of \$500,000 in exchange of issuance of 166,667 shares of our common stock on February 25, 2016. The conversion of the loan into shares of Common Stock occurred pursuant to a Mutual Rescission Agreement and General Release entered into on December 29, 2015.

#### Net Income/Loss

As a result of the above explanations, we recorded a net income of \$32,313 for the year ended December 31, 2015, compared to a net loss of \$359,025 for the comparable period in 2014.

#### **Liquidity and Capital Resources**

We have faced significant liquidity shortages as shown in the accompanying financial statements. As of September 30, 2016, our total liabilities exceeded its total assets by \$1,437,975. We have recorded a net loss of \$2,484,393 for the nine months ended September 30, 2016 and an accumulated deficit of \$2,927,360 as of September 30, 2016. Net cash used in operating activities for the nine months ended September 30, 2016 was \$151,856. Although we have had difficulty in obtaining working lines of credit from financial institutions and trade credit from vendors, management has been able to raise capital from private placements and further expand our operations geographically to continue our revenue growth. In January 2016, we initiated a Private Placement of our securities, in which we sold 122,167 units at \$3.00 per unit, with each unit consisting of one share of common stock and one redeemable Class A Warrant, to certain accredited investors. We received \$366,500 in cash proceeds from the sale of 122,167 units. On February 25, 2016, management negotiated to convert a promissory note payable of \$500,000, in exchange for issuance of 166,667 shares of its common stock to the note holder. On October 17, 2016, we completed a private placement of 229,000 Units and received \$1,145,000 in cash proceeds, with each Unit consisting of (i) one share of our newly designated Class B Convertible Preferred Stock, par value \$0.0001 per share, and (ii) a warrant to purchase one share of our common stock, par value \$0.0001 per share, at an exercise price of \$6.00 per share, subject to adjustment, exercisable over a period of five years from the date of issuance. In addition, we sold a senior secured convertible debenture for \$5,700,000 at 8% annual rate of interest with original issuance debt discount of \$700,000, principal amounts of \$1,425,000 payable on March 1, 2018 and June 1, 2018, and remaining balance of \$2,850,000 payable on September 1, 2018.

Although our sales remained relatively unchanged during the nine months ended September 30, 2016 compared to the same period in 2015, we are continuing to focus our efforts on increased marketing campaigns, and distribution programs to strengthen the demand for its products. Management anticipates that our capital resources will improve if our products gain wider market recognition and acceptance resulting in increased product sales. If we are not successful with our marketing efforts to increase sales and weak demand continues, we will experience a shortfall in cash and it will be necessary to further reduce our operating expenses in a manner or obtain funds through equity or debt financing in sufficient amounts to avoid the need to curtail our operations subsequent to September 30, 2016. Given the liquidity and credit constraints in the markets, the business may suffer, should the credit markets not improve in the near future. The direct impact of these conditions is not fully known. However, there can be no assurance that we will be able to secure additional funds if needed and that if such funds were available on commercially reasonable terms or in the necessary amounts, and whether the terms or conditions would be acceptable to us. In such case, the reduction in operating expenses might need to be substantial in order for us to generate positive cash flow to sustain our operations.

We had \$3,235 in cash at September 30, 2016 as compared to \$0 at December 31, 2015.

Net cash flows used in operating activities for the nine months ended September 30, 2016 was \$151,856, attributable to net loss of \$2,484,393, depreciation expense of \$10,714, original issuance of debt discount of \$44,675, stock compensation expense of \$599,499, decrease in accounts receivable of \$107,346, decrease in factor receivable of \$570,459, decrease in inventory of \$17,879, increase in security deposits of \$500, increase in accounts payable of \$801,895, increase in accrued payroll taxes of \$33,880, decrease in accrued liabilities of \$134,561, increase in customer deposits of \$86,331 and increase in related parties payable of \$194,920. Net cash flows provided by operating activities for the year ended December 31, 2015 was \$302,237, which was attributable to net income of \$32,313, depreciation expense of \$14,286, increase in accounts receivable of \$83,933, decrease in factors receivable of \$16,661, decrease in inventory of \$144,406, increase in security deposits of \$12,832, increase in accounts payable of \$154,813, increase in accrued payroll taxes of \$18,432 and increase in accrued liabilities of \$18,091.

Net cash used by investing activities for the nine months ended September 30, 2016 and for the year ended December 31, 2015 was \$0.

Net cash provided by financing activities for the nine months ended September 30, 2016 was \$155,091, primarily due to cash received from sale of common stock and contributed capital of \$379,886, cash received from notes payable from related parties of \$270,000, cash received from note payable of \$250,000, cash payments on note payable of \$184,286, cash payments for deferred issuance cost of \$102,500, bank overdraft of \$4,319, cash payment of advance from officer of \$12,500, cash proceeds from short term advances of \$75,000, cash payment on short term advances of \$210,409, and cash payments made for loans payable of \$305,781. Net cash used in financing activities for the year ended December 31, 2015 was \$302,711 due to the bank overdraft of \$4,319, cash received from short term advances of \$200,000, payments on short term advances of \$161,255 and cash payments for loans payable of \$345,775.

As a result of the activities described above, we recorded a net increase of \$3,235 in cash for the nine months ended September 30, 2016 and net decrease of \$474 of cash for the year ended December 31, 2015.

## **Recent Financings**

### January 2016 Financing

In January 2016, we conducted a private placement of our securities in which we sold units, with each such unit consisting of one share of common stock and one redeemable Class A Warrant (the "Class A Warrant") to purchase one share of our common stock for an exercise price of \$6.00 per share (the "January Units") to certain accredited investors who were personally known to management of the Company. We received \$366,500 in gross proceeds from the issuance of 122,167 shares of our common stock forming part of the January Units. Please see the section entitled "*Description of Our Securities*" for information on the Class A Warrants.

### October 2016 Financings

#### *Sale of Debenture*

We recently consummated a debt financing whereby the investor purchased \$5,000,000 in a senior secured convertible debenture from us. We issued the debenture in the aggregate principal face amount of \$5,700,000. The maturity date of the debenture is September 1, 2018. In addition to the original issue discount, the debenture carries an annual interest rate of 8%, payable quarterly in arrears. Under the terms of the debenture, we also issued 168,750 shares of Class B Convertible Preferred Stock to the investor. The debenture is secured by all of our assets.

The debenture is convertible into the number of shares of our common stock (the "Conversion Shares") equal to (i) at the investor's option, the quotient obtained by dividing \$5,700,000, and any accrued interest thereon, by \$5.00 (the "Standard Conversion Price") or (ii) upon the listing of our common stock on a national securities exchange through an initial public offering (a "Public Offering"), 120% of the price at which our shares of common stock are offered in this prospectus (the "IPO Conversion Price" and, together with the Standard Conversion Price, the "Conversion Price"). During any such time as the debenture is outstanding, if we issue or grant any rights to our common stock or any type of security convertible into or exercisable or exchangeable for, our common stock, including any re-pricing of any such shares, at a price below the then-applicable Conversion Price (the "Dilutive Offering"), subject to certain exceptions, the Conversion Price under the debenture will be adjusted downward such that it will equal the sale price or conversion price, as applicable, under the Dilutive Offering. Such price shall not be less than \$1.00 per share. The shares of our common stock issuable upon any conversion of the debenture (other than any such shares issued by us to the purchaser of the debenture in connection with amortization payments) will be subject to a lock-up arrangement until 180 days following the date of the final prospectus relating to this offering.

#### *Class B Convertible Preferred Stock*

In October 2016, we conducted a private placement of our securities in which we sold units, with each such unit consisting of one share of Class B Convertible Preferred Stock and one warrant to purchase one share of our common stock for an exercise price of \$6.00 per share (the "October Units") to certain accredited investors. We received approximately \$1,145,000 in gross proceeds from the issuance of 229,000 October Units. Please see the section entitled "*Description of Our Securities*" for information on the securities comprising the October Units.

## **Off Balance Sheet Arrangements**

None.

## Seasonality

Our business is a seasonal business. For the first calendar quarter, our business is fairly slow because we are not able to ship our products from China due to the Chinese New Year holidays when the Chinese factories are closed for production. We make up the lost sales from the first calendar quarter in the subsequent quarters.

## Significant Accounting Policies

### Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company regularly evaluates estimates and assumptions related to the valuation of accounts and factored receivables, valuation of long-lived assets, stock based compensation, fair value of equity related instruments, accrued liabilities, note payable and deferred income tax asset valuation allowances. The Company bases its estimates and assumptions on current facts, historical experience and various other factors that it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities and the accrual of costs and expenses that are not readily apparent from other sources. The actual results experienced by the Company may differ materially and adversely from the Company's estimates. To the extent there are material differences between the estimates and the actual results, future results of operations will be affected.

### Accounts Receivable

Accounts receivable represent income earned from sale of tools and accessories for which our company has not yet received payment. Accounts receivable are recorded at the invoiced amount and stated at the amount management expects to collect from balances outstanding at period-end. We estimate the allowance for doubtful accounts based on an analysis of specific accounts and an assessment of the customer's ability to pay.

We account for the transfer of our accounts receivable to a third party under a factoring type arrangement in accordance with ASC 860 "*Transfers and Servicing*". ASC 860 requires that several conditions be met in order to present the transfer of accounts receivable as a sale. Even though we have isolated the transferred (sold) assets and we have the legal right to transfer our assets (accounts receivable), we do not meet the third test of effective control since our accounts receivable sales agreement with the third party factor requires us to be liable in the event of default by one of our customers. Because we do not meet all three conditions, we do not qualify for sale treatment and our debt incurred with respect to the sale of our accounts receivable is presented as a secured loan liability "Loan payable - third party" on our balance sheet.

### Inventory

Inventory consists of finished goods, is valued at the lower of (i) the actual cost of its purchase or (ii) its current market value. Inventory cost is determined on the first-in, first-out method ("FIFO"). The Company regularly reviews its inventory quantities on hand, and when appropriate, records a provision for excess and slow-moving inventory.

### Fair value of Financial Instruments and Fair Value Measurements

ASC 820, "*Fair Value Measurements and Disclosures*", requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. ASC 820 establishes a fair value hierarchy based on the level of independent, objective evidence surrounding the inputs used to measure fair value. A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. ASC 820 prioritizes the inputs into three levels that may be used to measure fair value:

#### *Level 1*

Level 1 applies to assets or liabilities for which there are quoted prices in active markets for identical assets or liabilities.

## *Level 2*

Level 2 applies to assets or liabilities for which there are inputs other than quoted prices that are observable for the asset or liability such as quoted prices for similar assets or liabilities in active markets; quoted prices for identical assets or liabilities in markets with insufficient volume or infrequent transactions (less active markets); or model-derived valuations in which significant inputs are observable or can be derived principally from, or corroborated by, observable market data. If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

## *Level 3*

Level 3 applies to assets or liabilities for which there are unobservable inputs to the valuation methodology that are significant to the measurement of the fair value of the assets or liabilities.

The Company's financial instruments consist principally of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, customer deposits, loans payable, note payable and amounts due to related parties. Pursuant to ASC 820, "*Fair Value Measurements and Disclosures*" and ASC 825, "*Financial Instruments*", the fair value of our cash equivalents is determined based on "Level 1" inputs, which consist of quoted prices in active markets for identical assets. The Company believes that the recorded values of all of the other financial instruments approximate their current fair values because of their nature and respective maturity dates or durations.

## Revenue Recognition

The Company recognizes revenues when the product is delivered to the customer and the ownership is transferred. The Company's revenue recognition policy is based on the revenue recognition criteria established under the SEC's Staff Accounting Bulletin No. 104. The criteria and how the Company satisfies each element is as follows: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred per the terms of the signed contract; (3) the price is fixed and determinable; and (4) collectability is reasonably assured.

## Income Taxes

The Company accounts for income taxes using the asset and liability method in accordance with ASC 740, "*Income Taxes*". The asset and liability method provides that deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax basis of assets and liabilities, and for operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using the currently enacted tax rates and laws. The Company records a valuation allowance to reduce deferred tax assets to the amount that is believed more likely than not to be realized.

The Company follows the provisions of ASC 740, "*Income Taxes*". When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. In accordance with the guidance of ASC 740, the benefit of a tax position is recognized in the financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above should be reflected as a liability for unrecognized tax benefits in the accompanying balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination. Management makes estimates and judgments about our future taxable income that are based on assumptions that are consistent with our plans and estimates. Should the actual amounts differ from our estimates, the amount of our valuation allowance could be materially impacted. Any adjustment to the deferred tax asset valuation allowance would be recorded in the income statement for the periods in which the adjustment is determined to be required. The Company does not believe that it has taken any positions that would require the recording of any additional tax liability nor does it believe that there are any unrealized tax benefits that would either increase or decrease within the next year.

## Earnings (Loss) Per Share

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



**Recent accounting pronouncements**

In August 2016, the FASB issued ASU 2016-15, “*Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*” (“ASU 2016-15”). ASU 2016-15 will make eight targeted changes to how cash receipts and cash payments are presented and classified in the statement of cash flows. ASU 2016-15 is effective for fiscal years beginning after December 15, 2017. The new standard will require adoption on a retrospective basis unless it is impracticable to apply, in which case it would be required to apply the amendments prospectively as of the earliest date practicable. The Company is currently in the process of evaluating the impact of ASU 2016-15 on its condensed financial statements.

In November 2016, the FASB issued Accounting Standards Update No. 2016-18, “*Statement of Cash Flows (Topic 230): Restricted Cash*” (“ASU 2016-18”). The new guidance is intended to reduce diversity in practice by adding or clarifying guidance on classification and presentation of changes in restricted cash on the statement of cash flows. ASU 2016-18 is effective for annual and interim periods beginning after December 15, 2017. Early adoption is permitted. The amendments in this update should be applied retrospectively to all periods presented. The Company is currently evaluating the impact of adopting ASU 2016-18 noting it will only impact the Company to the extent it has restricted cash in the future.

In June 2016, the FASB issued Accounting Standards Update (“ASU”) 2016-13, “*Financial Instruments - Credit Losses (Topic 326)*.” The new standard amends guidance on reporting credit losses for assets held at amortized cost basis and available-for-sale debt securities. This ASU is effective for financial statements issued for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The Company is currently evaluating this guidance to determine the impact it may have on its financial statements.

In March 2016, the FASB issued ASU 2016-09, “*Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*.” The objective of this update is to simplify several aspects of the accounting for employee share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. This ASU is effective for fiscal years beginning after December 15, 2016, including interim periods within those fiscal years. Early adoption is permitted. If an entity adopts the amendments in an interim period, any adjustments should be reflected as of the beginning of the fiscal year that includes that interim period. An entity that elects early adoption must adopt all of the amendments in the same period. The Company is currently evaluating the timing of adopting the new guidance as well as the impact it may have on its financial statements.

In February 2016, the FASB issued ASU 2016-02, “*Leases (Topic 842)*.” The objective of this update is to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. This ASU is effective for fiscal years beginning after December 15, 2018, including interim periods within those annual periods and is to be applied utilizing a modified retrospective approach. The Company is currently evaluating this guidance to determine the impact it may have on its financial statements.

In January 2016, the FASB issued ASU 2016-01, “*Financial Instruments - Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities*.” The main objective of this update is to enhance the reporting model for financial instruments to provide users of financial statements with more decision-useful information. The new guidance addresses certain aspects of recognition, measurement, presentation, and disclosure of financial instruments. This ASU is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. The Company is currently evaluating this guidance to determine the impact it may have on its financial statements.

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers: Topic 606* and issued subsequent amendments to the initial guidance in August 2015, March 2016, April 2016 and May 2016 within ASU 2015-14, ASU 2016-08, ASU 2016-10 and ASU 2016-12, respectively (ASU 2014-09, ASU 2015-14, ASU 2016-08, ASU 2016-10 and ASU 2016-12 collectively, Topic 606). Topic 606 supersedes nearly all existing revenue recognition guidance under GAAP. The core principle of Topic 606 is to recognize revenues when promised goods or services are transferred to customers in an amount that reflects the consideration that is expected to be received for those goods or services. Topic 606 defines a five-step process to achieve this core principle and, in doing so, it is possible more judgment and estimates may be required within the revenue recognition process than are required under existing GAAP, including identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation, among others. Topic 606 also provides guidance on the recognition of costs related to obtaining customer contracts. The revenue recognition standard affects all entities—public, private, and not-for-profit—that have contracts with customers with certain exceptions. The new revenue recognition standard eliminates the transaction- and industry-specific revenue recognition guidance under current GAAP and replaces it with a principle-based approach for determining revenue recognition. The guidance was originally effective for annual reporting periods of public entities beginning on or after December 15, 2016, including interim periods within that reporting period. For all other entities, the amendments in the new guidance were originally effective for annual reporting periods beginning after December 15, 2017, and interim periods within annual periods beginning after December 15, 2018. To allow entities additional time to implement systems, gather data and resolve implementation questions, the FASB issued ASU No. 2015-14, *Revenue From Contracts with Customers – Deferral of the Effective Date*, in August 2015, to defer the effective date of ASU No. 2014-09 for one year. Public business entities, certain not-for-profit entities, and certain employee benefit plans will apply the guidance in FASB ASU No. 2014-09 to annual reporting periods beginning after December 15, 2017, including interim reporting periods within that reporting period. Earlier application will be permitted only as of annual reporting periods beginning after December 15, 2016, including interim reporting periods within that reporting period. All other entities will apply the guidance in FASB ASU No. 2014-09 to annual reporting periods beginning after December 15, 2018, and interim reporting periods within annual reporting periods beginning after December 15, 2019. Application will be permitted earlier only as of an annual reporting period beginning after December 15, 2016, including interim reporting periods within that reporting period, or an annual reporting period beginning after December 15, 2016, and interim reporting periods within annual reporting periods beginning one year after the annual reporting period in which an entity first applies the guidance in ASU No. 2014-09. We are continuing to evaluate the impact to our revenues related to our pending adoption of Topic 606 and our preliminary assessments are subject to change. We are also continuing to evaluate the impact adoption of Topic 606 will have on our recognition of costs related to obtaining customer contracts.

In 2015, the FASB issued ASU No. 2015-17, “*Income Taxes*” (Topic 740): *Balance Sheet Classification of Deferred Taxes*, which requires all deferred tax assets and liabilities to be classified as noncurrent in a classified balance sheet. Current US GAAP requires an entity to separate deferred tax assets and liabilities into current and noncurrent amounts in a classified balance sheet. For public entities, ASU 2015-17 is effective for financial statements issued for annual periods beginning after December 15, 2016, and interim periods within those annual periods. For all other entities, ASU 2015-17 is effective for annual reporting periods beginning after December 15, 2017, and interim periods within annual periods beginning after December 15, 2018, and may be applied either prospectively or retrospectively, with early application permitted for financial statements that have not been previously issued. The Company has not yet determined the effect of the adoption of this standard on the Company’s financial position and results of operations.

In August 2014, the FASB issued ASU No. 2014-15, “*Presentation of Financial Statements—Going Concern* (Subtopic 205-40): *Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern*”. This standard is intended to define management’s responsibility to evaluate whether there is substantial doubt about an organization’s ability to continue as a going concern and to provide related footnote disclosures. Under U.S. GAAP, financial statements are prepared under the presumption that the reporting organization will continue to operate as a going concern, except in limited circumstances. Financial reporting under this presumption is commonly referred to as the going concern basis of accounting. The going concern basis of accounting is critical to financial reporting because it establishes the fundamental basis for measuring and classifying assets and liabilities. Currently, U.S. GAAP lacks guidance about management’s responsibility to evaluate whether there is substantial doubt about the organization’s ability to continue as a going concern or to provide related footnote disclosures. This ASU provides guidance to an organization’s management, with principles and definitions that are intended to reduce diversity in the timing and content of disclosures that are commonly provided by organizations today in the financial statement footnotes. The amendments are effective for annual periods ending after December 15, 2016, and interim periods within annual periods beginning after December 15, 2016. Early application is permitted for annual or interim reporting periods for which the financial statements have not previously been issued. We are currently evaluating the impact of this accounting standard.

**Revenue Recognition**

We recognize revenues when persuasive evidence of an arrangement exists; delivery has occurred; price is fixed or determinable; and collectability of the related receivable is reasonably assured.

**Related Party Transactions**

Michael Panosian, our chief executive officer, made cash advances of \$12,500 to us for our working capital requirements during 2014. Advances made by Mr. Panosian amounted to \$12,500 at December 31, 2015 and 2014, respectively. Amounts due to Mr. Panosian are unsecured, non-interest bearing and due on demand without specific repayment terms. The advance of \$12,500 due to Mr. Panosian was paid as of March 8, 2016.

On April 26, 2016, September 1, 2016 and October 5, 2016, Mr. Ohri loaned us an aggregate of \$130,000. The terms of the loan required that it must be repaid on or before December 31, 2016, with interest at 10% per annum payable monthly. The loan including the accrued interest was paid in full on October 18, 2016.

On May 10, 2016, Mr. Khachatourian loaned us an aggregate of \$170,000. The terms of the loan required that it must be repaid on or before December 31, 2016, with interest at 10% per annum payable monthly. The loan including accrued interest was paid in full on October 18, 2016.

**Financial Instruments***Fair Value*

Our financial instruments consist of cash, accounts receivable, bank overdraft accounts payable and accrued liabilities, and notes payable. There are no significant differences between the carrying amounts of the items reported on the statements of financial position and their estimated fair values. Our risk exposures and their impact on our financial instruments are summarized below.

*Credit Risk*

We are exposed to credit risk on the accounts receivable from customers. In order to reduce our credit risk, we have adopted credit policies which include the regular review of outstanding accounts receivable. We do not have significant exposure to any individual clients or counterparty. At December 31, 2015, management considered our credit risk in relation to such financial assets to be low and accordingly no allowance for loss has been recorded. Generally, the carrying amount on the condensed statements of financial position of our financial assets exposed to credit risk, net of any applicable provisions for losses, represents the maximum amount exposed to credit risk.

*Liquidity Risk*

We are exposed to liquidity risk. Liquidity risk is the exposure of our company to the risk of not being able to meet our financial obligations as they fall due. Our approach to managing liquidity risk is to ensure that we will have sufficient liquidity to meet liabilities when due. Our future liquidity is dependent on factors such as the ability to generate cash from operations and to raise money through debt or equity financing.

*Foreign Currency Risk*

Foreign exchange risk arises from the changes in foreign exchange rates that may affect the fair value or future cash flows of our financial assets or liabilities.

## **BUSINESS**

### **Overview**

We were formed to design, manufacture and distribute innovative tools and accessories to the building industry. We market and distribute various home improvement and construction product lines for both DIY and professional markets under TOUGHBUILT® brand name, within the global multibillion dollar per year tool market industry. All of our products are designed by our in house design team.

Since August 2013, pursuant to a Service Agreement, we have been collaborating with Belegal, whose team of experts has provided ToughBuilt additional engineering and sourcing services and quality control support for our operations in China. Belegal assists us with supply-chain issues for our operations in China by, among other things, facilitating the transmission of our purchase orders to our suppliers in China, conducting “in-process” quality checking and inspection, and shipping end-products manufactured in China to their final destinations. Either party, upon notice may terminate the Service Agreement. In accordance with the agreement, we pay all of the monthly costs for payroll, overhead and other operation expenses associated with the Chinese company’s activities on behalf of ToughBuilt. Our business is based on development of innovative and state of the art products, primarily in tools and hardware category, with particular focus on building and construction industry with the ultimate goal of making life easier and more productive for the contractors and workers alike.

Our current product line includes three major categories related to this field, with several additional categories in the works, consisting of Soft Goods, Sawhorses & Work Products and Kneepads, each of which is described below.

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

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

### **Products**

We create innovative products that help you build faster, build stronger and work smarter. How do we do it? We listen, we research how professionals work, then create tools that help them save time, save hassle and save money.

TOUGHBUILT® manufactures and distributes an array of high quality and rugged tool belts, tool bags and other personal tool organizer products. We also manufacture and distribute a complete line of knee pads for various construction applications. Our line of job-site tools and material support products consist of a full line of miter-saw and table saw stands and saw horses/job site tables and roller stands. All of our products are designed and engineered in the United States and manufactured in China under our quality control supervision.

Our soft sided tool storage line is designed for wide range of do-it-yourself and professional needs. This line of pouches and tool and accessories bags are designed to organize your tools faster and easier. Interchangeable pouches clip on and off any belt, bag ladder wall or vehicle. Our products let you carry what you want when you want it.

ToughBuilt’s wide mouth tool carry-all bags come in sizes from 12” to 30”. They all have steel reinforced handles and padded shoulder straps which allow for massive loads to be carried with ease. Rigid plastic hard-body lining protects everything inside. Double mesh pockets included inside provide complete visibility for stored items. They include a lockable zipper for added security and safety and secondary side handles for when it takes more than one to carry the load.

All of these products have innovative designs with unique features that provide extra functionality and enhanced user experience. Patented features such as our exclusive “Cliptech” mechanism incorporated in some of the products in this line have revolutionized the industry and have positioned the line amongst the highest rated products of this category in the professional community and among the enthusiasts.

### Soft Goods

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



### Sawhorses & Work Products

The second major category consists of Sawhorses and Work Support products with their unique designs and robust construction targeted for the most discerning users in the industry. The innovative designs and construction of the more than 15 products in this category have led to the sawhorses becoming the best sellers of category everywhere they are sold. The newest additions in this category include several stands and work support products that are quickly gaining recognition in the industry and are expected to position themselves in the top tier products in a short time. Our sawhorse line, miter saw, table saw & roller stands are built to very high standards. Our sawhorse/jobsite table is fast to set up, holds 2,400 pounds, has adjustable heights, is made of all metal construction and has a compact design. These lines of products are slowly becoming the standard in the construction industry.



### Kneepads

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



All of our products are designed in house with unending innovation and the highest standards to achieve features and benefits for not only the professional construction worker but for the do-it-yourself person.

Research and development expenses for the years ended December 31, 2015 and 2014 were \$35,000 and \$4,700, respectively. The research and development expense for the nine months ended September 30, 2016 and 2015 were \$7,100 and \$25,454, respectively.

**Business Strategy**

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

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

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

**Market**

According to "Statista & Statistic Brain" the annual revenue in the construction industry is \$1.731 Trillion. The heavy and civil engineering industry is over \$260 Billion with tools and hardware alone totaling over \$60 Billion. There are approximately 729,345 construction companies in the United States employing more than 7,316, 240 employees. In addition to the construction market, our products are marketed to the "do it yourself" and home improvement market place. The home improvement industry has fared much better in the aftermath of the Great Recession than the housing market. The U.S. housing stock of more than 130 million homes requires regular investment merely to offset normal depreciation. And many households that might have traded up to more desirable homes during the downturn decided instead to make improvements to their current homes. Meanwhile, federal and state stimulus programs encouraged homeowners and rental property owners to invest in energy-efficient upgrades that they might otherwise have deferred. Finally, many rental property owners, responding to a surge in demand from households either facing foreclosure or nervous about buying amid the housing market uncertainty, reinvested in their units.

As a result, improvement and repair spending held up well compared to residential construction spending. And while homebuilding is several years away from full recovery, the home improvement industry we believe could post record-level spending in 2016. ToughBuilt's products are designed to be suited for both the construction and home improvement markets.

TOUGHBUILT® products are available worldwide in many major retailers ranging from home improvement and construction products and services stores to major online outlets. Currently, we have strong placement in Home Depot, Menards, OSH, B&Q (UK), Bunning's (Australia), Princess Auto (Canada), as well as growing sales in global markets such as Western and Central Europe, Russia & Eastern Europe, Africa and the Middle East.

Retailers by region include:

United States: Home Depot, Menards, Orchard Supply Hardware, GM products, Fire Safety, Hartville Hardware, ORR, Pooley, YOW, Wesco, Buzzi, and Western Pacific Building Materials.

Canada: Princess Auto

United Kingdom: Bryan Hyde Ltd. (selling throughout England, B&Q and online selling for Europe).

France: Birk

Australia: Bunnings, Sydney tools

New Zealand: Miter 10

Russia: LIT Trading

South Korea: Dong Shin Toolpia Co., Ltd.

Japan: Knicks

We are also seeking to expand into markets in Mexico, the UAE, South Africa and some parts of the Middle East.

We are currently in line reviews and discussions with Lowe's, Home Depot Canada, Do It Best, True Value, and other major retailers around the world. A line review requires the supplier to submit a comprehensive proposal which includes product offerings, prices, competitive market studies and relevant industry trends and other information. Management anticipates, within the near term, adding to its customer base up to three major retailers, along with several distributors and private retailers within six sectors and among 56 targeted countries.

#### **Innovation and Brand Strength**

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

#### **Product & Services Diversification**

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

## **New Products:**

### **Work Clothing Line**

In addition to our new line of mobile devices described immediately below, we are currently designing a complete line of work gear clothing that incorporates technology features. This line will include work pants, work shirts, outerwear and rugged gloves, boots and shoes for the construction industry, which we presently expect will be available in the summer of 2017 for the home improvement and construction markets. The ToughBuilt clothing line currently being designed will provide maximum durability and comfort while at the same time allowing for the required mobility necessary on the job. We intend to deliver only superior craftsmanship and quality in our clothing line to our entire current global customer base. All apparel and accessories will be designed and engineered in the USA with our robust standards.

### **Mobile Device Products**

Since 2013, we have been planning, designing, engineering and sourcing the development of an exciting new line of ToughBuilt mobile devices and accessories to be used in the construction industry and by building enthusiasts. We are planning to have our mobile device products ready to market by Q4 of 2017, at which time we intend to commence marketing and selling our mobile device products to our current global customer base. We believe that the increasing numbers of companies in the construction industry are requiring their employees to utilize mobile devices not just to communicate with others but to utilize the special apps that will allow the construction worker to do their job better and more efficiently. All of our mobile devices are designed and built in accordance with IP-68 and Military Standards level of durability and with the cooperation of Foxconn Manufacturing.

Our ruggedized Mobile line of products was created to place customized technology and inelegant data in the palm of the building professionals and enthusiasts such as contractors, subcontractors, foreman, general laborers etc. The devices, accessories and custom apps allow the users to plan with confidence, organize faster, find labor and products faster, estimate accurately, purchase wisely, protect themselves, workers and their business, create and track invoicing faster and easier.

### Agreement with Foxconn

On October 18, 2016, we entered into a Project Statement of Work Agreement (“SOW”) with Hon Hai Precision Ind. Co., Ltd., a corporation organized under the law of Taiwan (referred to as “Foxconn”) to design, manufacture and supply to us a certain rugged mobile telephone (the “Product”). The Company will pay to Foxconn all fees and costs required to develop the Product. The Product will be developed by Foxconn to our specifications. We will submit to Foxconn written specifications, features and concepts required to be included in the Product. The specifications are subject to review and update by the parties and upon written approval by the parties such new or revised specifications will become part of the SOW. The SOW also provides dates for completion of deliverables, such as prototypes, “Beta” testing of the Product, sample assembly of the prototype and commencement of mass production of the Product. We may terminate the SOW at any time, in which case we must pay the costs for those portions of the development work completed by Foxconn up to the date of termination. The SOW is governed, construed and enforced in accordance with the laws of the State of California. The SOW is attached hereto as Exhibit 10.6 and is incorporated by reference herein. We have sought confidential treatment for certain terms and conditions of the SOW.

### Mobile Device Market

Based upon an annual white paper published by the Mobile and Wireless Practice of Venture Development Corporation, we believe that an increasing number of companies are requiring their employees to transact business in the field and/or other non-traditional office environments. Because of this and other factors, the construction industry is accelerating its acceptance of wireless technology. We further believe that the construction industry, like other industries, will be leveraging mobile and wireless solutions to address the need for greater collaboration among a highly mobile and distributed workforce.



Mobility is one of the top technology trends that construction companies are focusing on in 2016 and beyond. Three key factors are driving the demand for mobile technology in the workplace: executive demand, an increasingly mobile workforce, and the growing need for real-time information, as found in a study by IDG Research Services.

While the construction industry has widely adopted solutions such as push to talk (PTT) telephony applications, the use of mobile and wireless data applications has been limited. IT solutions in general and mobile and wireless solutions specifically have been adopted at varying degrees within organizations and to support the various phases of construction projects. Currently the business planning, engineering and procurement operations have more effectively deployed IT solutions while actual construction operations have fallen behind in IT infrastructure and field automation solutions. The construction and engineering workforce is inherently mobile. However, construction sites have never effectively leveraged (wireless) communications networks to connect these distributed and often remote workers and their assets. Nevertheless construction project managers require real time access to a variety of information, including real time tool inventory management, raw materials deliveries, job costing, time stamping and general project management information. The challenge, however, is the lack of network access on construction sites resulting in an information bottleneck on the job site. Buoyed by advances in wireless technologies – including coverage, performance, security and cost of ownership – we believe this is becoming an issue of the past for construction operations.

#### Mobile Apps

We intend to include apps on our mobile devices and are developing, with a third party applications developer, apps which will include, among other things, building codes, permitting, estimating and job listings. The purposes of the apps that are being developed include:

- *To reduce construction delays.* Gathering real-time information at the job site about issues such as trades and contractors present at the site, construction progress, or incidents, can reduce overall project delays. This critical information helps to bring issues to light that might put projects on hold, and keep construction on schedule.
- *To improve communication with owners and project stakeholders.* Completing daily reports at the job site on mobile devices and sending automated emails can tighten the communication loop with project stakeholders. When all parties involved in the project have access to the same information at the same time, errors are reduced and issues requiring attention can be addressed faster.
- *To increase back-office efficiency.* By eliminating the use of paper and spreadsheets, construction companies can save hundreds of hours spent on data entry, collating information for reporting, or looking for paperwork that has been lost or filed away. Increasing back-office efficiency allows projects to be run leaner and to be completed on time and on budget.
- *To improve accountability of field staff.* Staff travel times, GPS locations and time spent on-site can all be consistently monitored with mobile apps. This improves accountability and reduces labor costs. Costs can be also reduced with mobile timesheets that record clock-in/clock-out time to the minute.
- *To improve accuracy of project documentation.* Using mobile apps to capture information at the job site improves accuracy and reduces issues that arise from illegible handwriting, inconsistent data, and information gaps. Photos, GPS, time stamps and signatures captured on-site provide an accurate and indisputable audit trail for the project, delivering accountability to clients or evidence in legal disputes.
- *To improve equipment management.* Construction companies that use a database-driven mobile solution can maximize the use of equipment through better management and tracking. Real-time information about maintenance schedules, availability, and equipment locations helps to improve inventory planning and use.
- *To utilize real-time mobile access to plans and bylaws.* With apps that provide two-way access to information, construction companies can file electronic versions of drawings, plans or bylaws for quick offline access by teams in the field. This improves productivity and reduces the need for re-work.



### **Sales Strategy**

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

### **Intellectual Property**

We hold several patents and trademarks of various durations, and believe that we hold or license all of the patent, trademark and other intellectual property rights necessary to conduct our business. We utilize trademarks on nearly all of our products and believe having distinctive marks that are readily identifiable is an important factor in creating a market for our goods, in identifying our brands and our company, and in distinguishing our goods from the goods of others. We consider our ToughBuilt<sup>®</sup>, Cliptech<sup>®</sup>, and Fearless<sup>®</sup> trademarks to be among our most valuable intangible assets. Trademarks registered both in and outside the U.S. are generally valid for ten years, depending on the jurisdiction, and are generally subject to an indefinite number of renewals for a like period on appropriate application.

We also rely on trade secret protection for our confidential and proprietary information relating to our design and processes for our products. We have entered into and will continue to enter into confidentiality, non-competition and proprietary rights assignment agreements with our employees and independent contractors. We have entered into and will continue to enter into confidentiality agreements with our suppliers.

### **Competition**

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

- Significantly greater financial resources than us;

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

Our competitors' greater capabilities in the above areas enable them to better differentiate their products from ours, gain stronger brand loyalty, withstand periodic downturns in the construction and home improvement equipment and product industries, compete effectively on the basis of price and production, and more quickly develop new products. These competitors include Dewalt, Caterpillar and Samsung Active.

**Employees**

As of the date of this prospectus, we have three full-time employees and 10 independent contractors. We intend to convert all of these contractors to employee status at the beginning of 2017. We also engage consultants on an as-needed basis to supplement existing staff. All of our employees, consultants and contractors that are involved with sensitive and/or proprietary information have signed non-disclosure agreements.

**Description of Property**

We currently lease office space at 655 N. Central Ave., Suite 1700, Glendale, CA 91203 as our principal offices. We believe these facilities are in good condition and satisfy our operational requirements. We intend to seek additional leased space, which will include some warehouse facilities, as our business efforts increase.

**Legal Proceedings**

On August 16, 2016, Edwin Minassian filed a complaint against us and Michael Panosian, our CEO, in the Superior Court of California, County of Los Angeles. The complaint alleges breach of oral contracts to pay Mr. Minassian for consulting and finder's fees, and to hire him as an employee. The complaint further alleges, among other things, fraud and misrepresentation relating to the alleged tender of \$20,000 to us in exchange for "a 2% stake in Toughbuilt" which was never delivered. The complaint seeks unspecified monetary damages, declaratory relief concerning the plaintiff's contention that he has an unresolved 9% ownership stake in Toughbuilt and other relief according to proof. Both we and Mr. Panosian believe the claims to be unfounded and plan to vigorously defend against the claims and to counterclaim against the plaintiff for various actions including interference in our business and unfair business practices.

## MANAGEMENT

### Directors and Executive Officers

The names, positions and ages of our directors and executive officers as of the date of this prospectus are as follows:

<b>Name</b>	<b>Age</b>	<b>Position</b>
Michael Panosian	53	President, CEO & Director
Joshua Keeler	38	Director of Research & Development
Zareh Khachatoorian	57	COO, Secretary & Director
Manu Ohri	61	Chief Financial Officer & Director

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

#### **Michael Panosian**, Co-Founder, President, CEO and Director

Mr. Panosian co-founded our company in 2012 and has been our CEO, President and director since inception. In 2008, Mr. Panosian co-founded Pandun, Inc., a manufacturer and distributor of tools and tool accessories in Asia, and served as its CEO until 2012. Mr. Panosian has over 16 years of extensive experience in innovation, design direction, product development, brand management, marketing, merchandising, sales, supply chain and commercialization experience in the hardware industry. He has launched several product projects spanning several fields. Mr. Panosian has deep knowledge of doing business in China where he managed a team of over 350 engineers, industrial designers and marketing professionals while stationed in Suzhou with his team for 4 years. Mr. Panosian is a graduate of Northrop University in Aerospace engineering with numerous specializations; he holds numerous patents and trademarks that are shared with some of his colleagues at our company and other development teams.

#### **Joshua Keeler**, Co-Founder and Director of Research & Development

As the Director of Research & Development at our company, Mr. Keeler is responsible for all product development. Mr. Keeler co-founded our company in 2012 and works directly with Mr. Panosian in bringing innovative ideas to market. Mr. Keeler is a graduate of Art Center College of Design with a BS in Industrial Design. Mr. Keeler has over 12 years of product development experience, working on projects spanning several fields, including: automotive, personal electronics, sporting goods and a wide expanse of tools. From 1999 to 2000 he was co-owner and vice-president of Oracle Industrial Design, Co., a private company specializing in industrial design and product development. From August 2000 to April 2004, Mr. Keeler worked for Positec Power Tool Co., a private company in Suzhou, China, designing and creating a large innovation library of numerous power tool concepts. From August 2005 to April 2008, Mr. Keeler was the chief designer for Harbinger International, Inc. From August 2008 to April 2012, he was chief designer for Pandun Inc, specializing in innovative tools and supporting products. He has lived in China and has extensive experience working directly with manufacturers to get designs into production.

#### **Zareh Khachatoorian**, Chief Operating Officer, Secretary and Director

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

#### **Manu Ohri**, Chief Financial Officer and Director

Mr. Ohri has over 25 years of hands-on experience in financial management and business leadership, as well as working with boards of directors and financial institutions. Mr. Ohri has assisted several public companies in the areas of compliance with US and international financial accounting standards, investor relations, reverse mergers and acquisitions, strategic planning, team-building and project management. Mr. Ohri is a Certified Public Accountant and Chartered Global Management Accountant with over seven years of experience with Deloitte, LLP and PriceWaterhouseCoopers, LLP. Mr. Ohri earned Master's Degree in Business Administration from the University of Detroit and Bachelor's Degree in Accounting from University of Delhi in India.

## **Corporate Governance**

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

### ***Term of Office***

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

### ***Director Independence***

We use the definition of “independence” of The NASDAQ Stock Market to make this determination. We are not yet listed on NASDAQ, and although we use its definition of “independence,” its rules are inapplicable to us until such time as we become listed on NASDAQ. NASDAQ Listing Rule 5605(a)(2) provides that an “independent director” is a person other than an officer or employee of our company or any other individual having a relationship which, in the opinion of the Board of Directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The NASDAQ rules provide that a director cannot be considered independent if:

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

Under the following three NASDAQ director independence rules a director is not considered independent: (a) NASDAQ Rule 5605(a)(2) (A), a director is not considered to be independent if he or she also is an executive officer or employee of the corporation, (b) NASDAQ Rule 5605(a)(2)(B), a director is not consider independent if he or she accepted any compensation from our company in excess of \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, and (c) NASDAQ Rule 5605(a)(2)(D), a director is not considered to be independent if he or she is a partner in, or a controlling shareholder or an executive officer of, any organization to which our company made, or from which our company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000. Under such definitions, we have no independent directors, though we are in the process of identifying suitable candidates.

### **Family Relationships**

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

### **Board Committees**

Our Board of Directors has no standing committees. In connection with our application to list our common stock on NASDAQ, we intend to identify and appoint the requisite number of independent directors required under the NASDAQ listing rules and to establish an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee, each comprised entirely of independent directors. We do not intend to take advantage of any transition periods permissible under the NASDAQ rules.

#### *Audit Committee*

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

Our Audit Committee will oversee our corporate accounting, financial reporting practices and the audits of financial statements. For this purpose, the Audit Committee will have a charter (which will be reviewed annually) and perform several functions. The Audit Committee will:

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

#### *Compensation Committee*

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

The Compensation Committee will review or recommend the compensation arrangements for our management and employees and also assist our Board of Directors in reviewing and approving matters such as company benefit and insurance plans, including monitoring the performance thereof. The Compensation Committee will have a charter (which will be reviewed annually) and perform several functions.

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

#### *Nominating and Corporate Governance Committee*

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

The Nominating and Corporate Governance Committee will be charged with the responsibility of reviewing our corporate governance policies and with proposing potential director nominees to the Board of Directors for consideration. This committee will also have the authority to oversee the hiring of potential executive positions in our company. The Nominating and Corporate Governance Committee will have a charter (which will be reviewed annually) and perform several functions.

#### **Director Independence**

Our Board of Directors has reviewed the materiality of any relationship that each of our directors has with us, either directly or indirectly. Based on this review, our Board of Directors has determined that \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ are “independent directors” as defined in the NASDAQ Listing Rules and Rule 10A-3 promulgated under the Exchange Act.

#### **Code of Ethics**

We have adopted a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Following the consummation of this offering, we will post a current copy of the code on our website, [www.toughbuilt.com](http://www.toughbuilt.com). In addition, we intend to post on our website all disclosures that are required by law or the listing standards of NASDAQ concerning any amendments to, or waivers from, any provision of the code. The reference to our website address does not constitute incorporation by reference of the information contained at or available through our website, and you should not consider it to be a part of this prospectus.

**Indemnification of Officers and Directors**

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

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

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

**Section 16(a) Beneficial Ownership Reporting Compliance**

Since our common stock is not yet registered under Section 12 of the Exchange Act, our directors and executive officers and persons who beneficially own more than 10% of our common stock are not required to file with the Commission various reports as to their ownership of and activities relating to our common stock.

## EXECUTIVE COMPENSATION

The following table summarizes compensation of our named executive officers, as of December 31, 2015 and 2014.

**Summary Compensation Table**

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards	Option Awards (\$)	Non-equity incentive plan compensation	Non-qualified incentive plan compensation	Change in pension value and nonqualified deferred compensation earnings (\$)	All Other Compensation (\$)	Total (\$)
Michael Panosian	2015	59,100	-	-	-	-	-	-	-	59,100
	2014	30,220	-	-	-	-	-	-	-	30,220
Joshua Keeler	2015	76,000	-	-	-	-	-	-	-	76,000
	2014	83,500	-	-	-	-	-	-	-	83,500
Manu Ohri	2015	-	-	-	-	-	-	-	-	-
	2014	-	-	-	-	-	-	-	-	-

### Employment and Related Agreements

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

#### Agreements with Our Named Executive Officers

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

##### *Employment Agreement with Michael Panosian*

We entered into an employment agreement with Mr. Panosian on January 3, 2017 that governs the terms of his employment with us as President and Chief Executive Officer. Under the terms of this agreement, Mr. Panosian received a “sign-on-bonus” of \$50,000. The term of the agreement is for five years and Mr. Panosian is entitled to an annual base salary of \$350,000 beginning on January 1, 2017 and increasing by 10% each year commencing on January 1, 2018. Mr. Panosian was also granted a stock option to purchase 250,000 shares of the Company’s common stock at an exercise price of \$5.00 per share. The employment agreement also entitles Mr. Panosian to, among other benefits, the following compensation: (i) eligibility to receive an annual cash bonus at the sole discretion of the Board and as determined by the Compensation Committee commensurate with the policies and practices applicable to other senior executive officers of the Company; (ii) an opportunity to participate in any stock option, performance share, performance unit or other equity based long-term incentive compensation plan commensurate with the terms and conditions applicable to other senior executive officers and (iii) participation in welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent available to our other senior executive officers.

##### *Employment Agreement with Josh Keeler*

We entered into an employment agreement with Mr. Keeler on January 3, 2017 that governs the terms of his employment with us as Director of Design and Development. Under the terms of this agreement, Mr. Keeler received a “sign-on-bonus” of \$35,000. The term of the agreement is for five years and Mr. Keeler is entitled to an annual base salary of \$250,000 beginning on January 1, 2017 and increasing by 10% each year commencing on January 1, 2018. The employment Agreement also entitles Mr. Keeler to, among other benefits, the following compensation: (i) eligibility to receive an annual cash bonus at the sole discretion of the Board and as determined by the Compensation Committee commensurate with the policies and practices applicable to other senior executive officers of the Company; (ii) an opportunity to participate in any stock option, performance share, performance unit or other equity based long-term incentive compensation plan commensurate with the terms and conditions applicable to other senior executive officers and (iii) participation in welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent available to our other senior executive officers.



### **Potential Payments to Messrs. Panosian and Keeler upon Termination or Change in Control**

Pursuant to the employment agreements, regardless of the manner in which Messrs. Panosian and Mr. Keeler's service terminates, each executive officer is entitled to receive amounts earned during his term of service, including salary and other benefits. In addition, each of them is eligible to receive certain benefits pursuant to his agreement with us described above.

The Company is permitted to terminate the employment of Mr. Panosian and Mr. Keeler for the following reasons: (1) death or disability, (2) Termination for Cause (as defined below) or (3) for no reason.

Each such officer is permitted Termination for Good Reason (as defined below) of such officer's employment. In addition, each such officer may terminate his or her employment upon written notice to the Company 90 days prior to the effective date of such termination.

In the event of such officer's death during the employment period or a termination due to such officer's disability, such officer or his or her beneficiaries or legal representatives shall be provided the sum of (a) an amount equal to two times the officer's then prevailing base salary and (b) the bonus that would have been payable to such officer subject to any performance conditions and (c) certain other benefits provided for in the employment agreement.

In the event of such officer's Termination for Cause by the Company or the termination of such officer's employment as a result of such officer's resignation other than a Termination for Good Reason, such officer shall be provided certain benefits provided in the employment agreement and payment of all accrued and unpaid compensation and wages, but such officer shall have no right to compensation or benefits for any period subsequent to the effective date of termination.

Under the employment agreements, "Cause" means: such officer willfully engages in an act or omission which is in bad faith and to the detriment of the Company, engages in gross misconduct, gross negligence, or willful malfeasance, in each case that causes material harm to the Company, breaches this Agreement in any material respect, habitually neglects or materially fails to perform his duties (other than any such failure resulting solely from such officer's physical or mental disability or incapacity) after a written demand for substantial performance is delivered to such officer which identifies the manner in which the Company believes that such officer has not performed his duties, commits or is convicted of a felony or any crime involving moral turpitude, uses drugs or alcohol in a way that either interferes with the performance of his duties or compromises the integrity or reputation of the Company, or engages in any act of dishonesty involving the Company, disclosure of Company's confidential information not required by applicable law, commercial bribery, or perpetration of fraud; provided, however, that such officer shall have at least forty-five (45) calendar days to cure, if curable, any of the events which could lead to his termination for Cause.

Under the employment agreements, "Termination for Good Reason" means any of the following that are undertaken without the officer's express written consent: (i) the assignment to such officer of principal duties or responsibilities, or the substantial reduction of such officer's duties and responsibilities, either of which is materially inconsistent with such officer's position as President and Chief Executive Officer of the Company and Director of design and Development, respectively; (ii) a material reduction by the Company in such officer's annual Base Salary, except to the extent the salaries of other executive employees of the Company and any other controlled subsidiary of the Company are similarly reduced; (iii) such officer's principal place of business is, without his consent, relocated by a distance of more than thirty (30) miles from the center of Glendale, California; or (iv) any material breach by the Company of any provision of this Agreement.

Involuntary Termination other than for Cause, Death or Disability or Voluntary Termination for Good Reason Following a Change of Control. If, within twenty-four (24) months following a Change of Control, the officer's employment is terminated involuntarily by the Company other than for Cause, death, or Disability or by such officer pursuant to a Voluntary Termination for Good Reason, and such officer executes and does not revoke a general release of claims against the Company and its affiliates in a form acceptable to the Company, then the Company shall provide such officer with, among other benefits, a lump sum payment in the amount equal to four (4) times such officer's then prevailing base salary in the case of Mr. Panosian and three (3) times such officer's then prevailing base salary in the case of Mr. Keeler, plus the officer's target for the annual short term incentive portion of the corporate bonus program for such year as in effect immediately prior to such termination, in addition to any other earned but unpaid base salary or vacation pay due through the date of such termination, as well as a pro rata portion of the executive's annual short term incentive portion of the corporate bonus program for such year (if any) and a pro rata portion of the executive's long term incentive portion of the corporate bonus program (if any).

### ***Employment Agreement with Zareh Khachatoorian***

We entered into an employment agreement with Mr. Khachatoorian on January 3, 2017 that governs the terms of his employment with us as Chief Operating Officer and Secretary. The term of the agreement is for three years and Mr. Khachatoorian is entitled to an annual base salary of \$180,000 beginning on January 1, 2017 and increasing by 10% each year commencing on January 1, 2018. The employment Agreement also entitles Mr. Khachatoorian to, among other benefits, the following compensation: (i) eligibility to receive an annual cash bonus at the sole discretion of the Board and as determined by the Compensation Committee commensurate with the policies and practices applicable to other senior executive officers of the Company; (ii) an opportunity to participate in any stock option, performance share, performance unit or other equity based long-term incentive compensation plan commensurate with the terms and conditions applicable to other senior executive officers and (iii) participation in welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent available to our other senior executive officers.

The Company is permitted to terminate the employment of Mr. Khachatoorian for the following reasons: (1) death or disability, (2) Termination for Cause (as defined above) or (3) for no reason. In the event of Mr. Khachatoorian's (i) death or disability, or (ii) Termination for Cause by the Company, Mr. Khachatoorian or his beneficiaries or legal representatives shall be entitled to payment for all accrued and unpaid compensation and wages and in addition pay to Mr. Khachatoorian a sum equivalent to one month's salary, but shall have no right to compensation or benefits for any period subsequent to the effective date of his death or disability.

In the event of the termination of Mr. Khachatoorian's employment for Good Reason, he shall be provided certain benefits listed in the employment agreement and payment of all accrued and unpaid compensation and wages, but executive shall have no right to compensation or benefits for any period subsequent to the effective date of termination.

### ***Employment Agreement with Manu Ohri***

We entered into an employment agreement with Mr. Ohri on January 3, 2017 that governs the terms of his employment with us as Chief Financial Officer of the Company. The term of the agreement is for three years and Mr. Ohri is entitled to an annual base salary of \$250,000 beginning on January 1, 2017 and increasing by 10% each year commencing on January 1, 2018. The employment Agreement also entitles Mr. Ohri to, among other benefits, the following compensation: (i) eligibility to receive an annual cash bonus at the sole discretion of the Board and as determined by the Compensation Committee commensurate with the policies and practices applicable to other senior executive officers of the Company; (ii) an opportunity to participate in any stock option, performance share, performance unit or other equity based long-term incentive compensation plan commensurate with the terms and conditions applicable to other senior executive officers and (iii) participation in welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent available to our other senior executive officers.

The Company is permitted to terminate the employment of Mr. Ohri for the following reasons: (1) death or disability, (2) Termination for Cause (as defined above) or (3) for no reason. In the event of Mr. Ohri's (i) death or disability, or (ii) Termination for Cause by the Company, Mr. Ohri or his beneficiaries or legal representatives shall be entitled to payment for all accrued and unpaid compensation and wages and in addition pay to Mr. Ohri a sum equivalent to one month's salary, but shall have no right to compensation or benefits for any period subsequent to the effective date of his death or disability.

In the event of the termination of Mr. Ohri's employment for Good Reason, he shall be provided certain benefits listed in the employment agreement and payment of all accrued and unpaid compensation and wages, but executive shall have no right to compensation or benefits for any period subsequent to the effective date of termination.

### **Outstanding Equity Awards at December 31, 2015**

Name	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Equity incentive plan awards:	Option exercise price (\$)	Option expiration date
			Number of securities underlying unexercised unearned options (#)		
Michael Panosian	-	-	-	-	-
Joshua Keeler	-	-	-	-	-
Zareh Khachatoorian	-	-	-	-	-
Manu Ohri	-	-	-	-	-

## Stock Option Plan

On July 16, 2016, our Board of Directors and a majority of the holders of our then outstanding shares of our common stock adopted our 2016 Equity Incentive Plan, which we refer to as the Plan. There are currently 2,000,000 shares of common stock issued or reserved for issuance under the Plan. There are no options or other awards issued which do not fall under the Plan.

The following table provides information with respect to options outstanding under our Plan:

<b>Plan category</b>	<b>Number of securities to be issued upon exercise of outstanding options, warrants and rights</b>	<b>Weighted-average exercise price of outstanding options, warrants and rights</b>	<b>Number of securities remaining available for future issuance</b>
Equity compensation plans approved by security holders	2,000,000	-	2,000,000
Equity compensation plans not approved by security holders			
<b>Total</b>	<b>2,000,000</b>		

The purpose of our Plan is to attract and retain directors, officers, consultants, advisors and employees whose services are considered valuable, to encourage a sense of proprietorship and to stimulate an active interest of such persons in our development and financial achievements. The Plan will be administered by the Compensation Committee of our Board of Directors, once established, or by the full board, which may determine, among other things, the (a) terms and conditions of any option or stock purchase right granted, including the exercise price and the vesting schedule, (b) persons who are eligible to receive options and stock purchase rights and (c) the number of shares to be subject to each option and stock purchase right. The types of equity awards that may be granted under the Plan are: (i) incentive stock options (“ISOs”) and non-incentive stock options (“Non-ISOs”); (ii) share appreciation rights (“SARs”); (iii) restricted shares, restricted share units (which are shares granted after certain vesting conditions are met) and unrestricted shares; (iv) deferred share units; and (v) performance awards

In connection with the administration of our Plan, our Compensation Committee will:

- determine which employees and other persons will be granted awards under our Plan;
- grant the awards to those selected to participate;
- determine the exercise price for options; and
- prescribe any limitations, restrictions and conditions upon any awards, including the vesting conditions of awards.

Our Compensation Committee will: (i) interpret our Plan; and (ii) make all other determinations and take all other action that may be necessary or advisable to implement and administer our Plan.

The Plan provides that in the event of a change of control event, the Compensation Committee or our Board of Directors shall have the discretion to determine whether and to what extent to accelerate the vesting, exercise or payment of an award.

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

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

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

## **Non-Employee Director Remuneration Policy**

Our Board of Directors has adopted the following non-employee director remuneration policy:

### *Stock and Option Awards*

Each of our non-employee directors may receive up to \_\_\_\_\_ options to purchase shares of common stock (which we refer to as the Annual Director Options) for each fiscal year. The Annual Director Options will be confirmed (together with the exercise price for such options) at the first meeting of our Board of Directors for each fiscal year and shall vest quarterly in arrears. Annual Director Options shall have ten year terms and shall be issued under the Plan.

### *Compensation Committee Review*

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

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

### *Participation of Employee Directors; New Directors*

Unless separately and specifically approved by the Compensation Committee in its discretion, no employee director of our company shall be entitled to receive any remuneration for service as a director (other than expense reimbursement as per prevailing policy).

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

## **Director Compensation**

No annual compensation was paid to our non-employee directors for the fiscal year ended December 31, 2015.

## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding the beneficial ownership of our common stock as of January \_\_, 2017, by:

- each person known by us to be the beneficial owner of more than 5% of our outstanding shares of common stock;
- each of our named executive officers and directors; and
- all our executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the securities. Except as otherwise indicated, each person or entity named in the table has sole voting and investment power with respect to all shares of our capital shown as beneficially owned, subject to applicable community property laws. As of the date of this prospectus, there were 7,359,000 shares of our common stock issued and outstanding.

In computing the number and percentage of shares beneficially owned by a person, shares that may be acquired by such person within 60 days of the date of January \_\_, 2017 are counted as outstanding, while these shares are not counted as outstanding for computing the percentage ownership of any other person. Unless otherwise indicated, the principal address of each of the persons below is c/o ToughBuilt Industries, Inc., 655 N. Central Ave., Suite 1700, Glendale, CA 91203.

Name of Beneficial Owner	Shares Beneficially Owned	Percentage Beneficially Owned Prior to the Offering <sup>(1)</sup>	Percentage Beneficially Owned After the Offering <sup>(2)</sup>
<b><i>Officers and Directors</i></b>			
Michael Panosian	3,923,334	53.31%	%
Joshua Keeler	1,208,333	16.42%	%
Zareh Khachatourian	81,667	1.11%	%
Manu Ohri	177,500	2.41%	%
<b>All Executive Officers and Directors as a group (4 persons)</b>	5,390,834	73.25%	%

- (1) Percentage ownership is based on 7,359,000 shares of our common stock outstanding as of January \_\_, 2017 and, for each person or entity listed above, warrants or options to purchase shares of our common stock which are exercisable within 60 days of the date of this prospectus.
- (2) Percentage ownership is based on \_\_\_\_\_ shares of our common stock outstanding assuming completion of the offering in which \_\_\_\_\_ shares of common stock are issued and all the Class B Preferred Stock is converted at \$5.00 per share and, for each person or entity listed above, warrants or options to purchase shares of our common stock which are exercisable within 60 days of the date of this prospectus.

Name of Beneficial Owner	Shares Beneficially Owned	Percentage Beneficially Owned Prior to the Offering <sup>(1)</sup>	Percentage Beneficially Owned After the Offering <sup>(2)</sup>
<b><i>5% or Greater Shareholders</i></b>			
Michael Panosian	3,923,334	53.31%	%
Joshua Keeler	1,208,333	16.42%	%

- (1) Percentage ownership is based on 7,359,000 shares of our common stock outstanding as of January \_\_, 2017 and, for each person or entity listed above, warrants or options to purchase shares of our common stock which are exercisable within 60 days of the date of this prospectus.
- (2) Percentage ownership is based on \_\_\_\_\_ shares of our common stock outstanding assuming completion of the offering in which \_\_\_\_\_ shares of common stock are issued and all the Class B Preferred Stock is converted at \$5.00 per share and, for each person or entity listed above, warrants or options to purchase shares of our common stock which are exercisable within 60 days of the date of this prospectus.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

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

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

At present, while the policy has been established, our board of directors does not yet include any independent members and therefore no one has been appointed to the Nominating and Corporate Governance Committee. As a result, our Chief Compliance Officer, Manu Ohri, must present information regarding a proposed related-party transaction to our board of directors. Under the policy, where a transaction has been identified as a related-party transaction, Mr. Ohri must present information regarding the proposed related-party transaction to our Nominating and Corporate Governance Committee, once the same is established, for review. The presentation must include a description of, among other things, the material facts, the direct and indirect interests of the related parties, the benefits of the transaction to us and whether any alternative transactions are available. To identify related-party transactions in advance, we rely on information supplied by our executive officers, directors and certain significant shareholders. In considering related-party transactions, our Nominating and Corporate Governance Committee will take into account the relevant available facts and circumstances including, but not limited to:

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

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

Other than as disclosed below, during the last two fiscal years, there have been no related party transactions.

On March 4, 2014, Mr. Panosian made cash advances of \$12,500 to the Company for its working capital requirements. Advances made by Mr. Panosian were unsecured, non-interest bearing and due on demand without specific repayment terms. The advances were repaid in full by the Company in multiple payments during the three months ended March 31, 2016.

On April 26, 2016, September 1, 2016 and October 5, 2016, Mr. Ohri loaned our company an aggregate of \$130,000. Pursuant to the terms of the Promissory Note, the loan must be repaid on or before December 31, 2016, with interest at 10% per annum payable monthly. The loans were repaid on October 18, 2016.

On May 10, 2016, Mr. Khachatoorian loaned our company an aggregate of \$170,000. Pursuant to the terms of the Promissory Note, the loan must be repaid on or before December 31, 2016, with interest at 10% per annum payable monthly. The loan was repaid on October 18, 2016.

For the nine months ended September 30, 2016 and 2015, Mr. Ohri, and an independent consultant who is also a shareholder, and our general counsel who is also a shareholder, provided services to the Company amounting to \$194,920 and \$0. Amounts due and payable to the related parties were \$194,920 and \$0 at September 30, 2016 and December 31, 2015, respectively.

## DESCRIPTION OF OUR SECURITIES

### General

We are authorized to issue two classes of stock. The total number of shares of stock that we are authorized to issue is one hundred and five million (105,000,000) shares, consisting of one hundred million (100,000,000) shares of common stock, \$0.0001 par value and five million (5,000,000) shares of preferred stock, \$0.0001 par value.

### Common Stock

As of the date of this prospectus, we had 7,359,000 shares of common stock issued and outstanding.

### Voting

The holders of the common stock are entitled to one vote for each share held at all meetings of shareholders (and written actions in lieu of meeting). There is no cumulative voting. The holders of shares of common stock are entitled to dividends when and as declared by the Board of Directors from funds legally available therefor, and upon liquidation are entitled to share pro rata in any distribution to holders of common stock. There are no preemptive, conversion or redemption privileges, nor sinking fund provisions with respect to the common stock.

### Preferred Stock

Our preferred stock may be issued from time to time in one or more series. The Board of Directors is authorized to fix the number of shares of any series of preferred stock and to determine the designation of any such series. The Board of Directors is also authorized to determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued series of preferred stock and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series.

### Class B Convertible Preferred Stock

We issued shares of Class B Convertible Preferred Stock, which we refer to as the Class B Shares, and Warrants, which we refer to as the Class B Warrants, in a private offering that was consummated in October of 2016, or the October 2016 Private Placement.

#### Mandatory Conversion

The Class B Shares will be automatically converted into that number of shares of common stock determined by dividing their stated value of \$5.00 by the then applicable Conversion Price (each as defined below, as applicable).

“Conversion Price” shall mean a per share price (in each case subject to anti-dilution adjustment as provided below) equal to, in the case of: (i) a Qualified IPO (as defined below), the lesser of (A) \$5.00 per share (as may be adjusted) and (B) seventy percent (70%) of the offering price per share of common stock in such Qualified IPO; (ii) a Non-Qualified IPO (as defined below), fifty percent (50%) of the lesser of (A) \$5.00 per share (as may be adjusted) and (B) the offering price per share of common stock in such Non-Qualified IPO, or (iii) an OTC Listing (as defined below), fifty percent (50%) of \$5.00 per share (as may be adjusted).

“Qualified IPO” shall mean the closing of a firm commitment underwritten public offering of shares of common stock which results in the common stock being traded on a national securities exchange.

“Non-Qualified IPO” shall mean the closing of an initial public offering of shares of common stock that is not a Qualified IPO which results in the common stock being traded on the OTCQX or OTCQB operated by OTC Markets Group, Inc.

“OTC Listing” shall mean the registration by our company of our shares of common stock under Section 12(g) of the Exchange Act, which results in such common stock being traded on the OTCQX or OTCQB operated by the OTC Markets Group, Inc.

#### Optional Conversion

The holders of the Class B Shares have the right to convert such shares at any time into shares of common stock at the then applicable Conversion Price. For purposes of an optional conversion absent an automatic conversion on the terms described above, the conversion price shall be a per share price equal to \$5.00 per share, as may be adjusted.

#### Anti-dilution Provisions

The Conversion Price of the Class B Shares is subject to standard anti-dilution provisions in connection with any stock split, stock dividend, subdivision or similar reclassification of the common stock. The Conversion Price of the Class B Shares is subject to “full-ratchet” anti-dilution if our company consummates (i) an initial public offering of common stock or (ii) a subsequent sale of common stock (or securities exercisable for or convertible into common stock) prior to an initial public offering of common stock, in each case at a purchase price per share of common stock (or, with respect to securities exercisable for or convertible into common stock, having an exercise or conversion price per share of common stock) less than \$5.00 per share.

#### Optional Redemption

The Class B Shares are subject to redemption in cash at the option of the holders thereof at any time after October 17, 2018 in an amount per share equal to 120% of the greater of (a) the stated value and (b) the fair market value of such Class B Shares. Funds available for redemption will be paid prior to any payment to any holder of any other class or series of capital stock.

#### Voting Rights

The Class B Shares will vote together with the common stock and not as a separate class except as specifically provided herein or as otherwise required by law. Each Class B Share shall have a number of votes equal to the number of shares of common stock then issuable upon conversion of such Class B Share.

#### Ranking

The Class B Shares shall, with respect to rights on liquidation, winding up and dissolution, rank (i) senior to (A) all classes of common stock, and (B) any other class or series of our capital stock hereafter created that specifically subordinates such class or series to the Class B Shares and (ii) *pari passu* with any other class or series of our capital stock hereafter created that specifically ranks such shares on parity with the Class B Shares.

#### **Class A Warrants**

We issued Class A Warrants in a private offering that was consummated in January of 2016. Each Class A Warrant entitles the holder thereof to purchase one (1) share of common stock at a price of \$6.00 per share, through and including December 31, 2018.

The Class A Warrants are redeemable by us, upon thirty (30) days’ notice, at a price of \$0.05 per Class A Warrant, provided the average of the closing bid price of the common stock, as reported by NASDAQ or the average of the last sale price if the common stock is then listed on the NASDAQ or another national securities exchange, shall exceed \$12.00 per share (subject to adjustment) for 10 consecutive trading days prior to the third day preceding the date on which we give notice of redemption. The holders of Class A Warrants called for redemption have exercise rights until the close of business on the date fixed for redemption.

The exercise price and number of shares of common stock or other securities issuable on exercise of the Class A Warrants are subject to adjustment in certain circumstances, including in the event of a stock dividend, recapitalization, reorganization, merger or consolidation of our company. However, no Class A Warrant is subject to adjustment for issuances of common stock at a price below the exercise price of that Class A Warrant.

No fractional shares will be issued upon exercise of the Class A Warrants. However, if a Warrant holder exercises all Class A Warrants then owned of record by that holder, we will pay to such Class A Warrant holder, in lieu of the issuance of any fractional share which is otherwise issuable, an amount in cash based on the market value of the common stock on the last trading day prior to the exercise date.

As of the date of this prospectus, 122,167 Class A Warrants are issued and outstanding.

#### **Class B Warrants**

We issued Class B Warrants in connection with the October 2016 Private Placement as described above. Each Class B Warrant entitles the holder thereof to purchase one (1) share of common stock at a price of \$6.00 per share, through and including October 17, 2021.

The exercise price and number of shares of common stock or other securities issuable on exercise of the Warrants are subject to adjustment in certain circumstances, including in the event of a stock dividend, recapitalization, reorganization, merger or consolidation of our company. The Conversion Price of the Warrants is subject to “full-ratchet” anti-dilution if we consummate (i) an initial public offering of common stock or (ii) a subsequent sale of common stock (or securities exercisable for or convertible into common stock) prior to an initial public offering of common stock, in each case at a purchase price per share of common stock (or, with respect to securities exercisable for or convertible into common stock, having an exercise or conversion price per share of common stock) less than \$5.00 per share; provided that such “full-ratchet” anti-dilution protection shall not be effective following the date on which no Class B Shares shall remain outstanding.

No fractional shares of common stock will be issued upon the exercise of the Warrants, but rather the number of shares of common stock to be issued shall be rounded up to the nearest whole number.



As of the date of this prospectus, 229,000 Class B Warrants are issued and outstanding.

#### **Placement Agent Warrants**

We have issued warrants to the placement agent in our October 2016 Private Placement. Each warrant entitled the holder thereof to purchase one (1) share of common stock at a price of \$6.00 per share, through and including October 17, 2021. The exercise price and number of shares of common stock or other securities issuable on exercise of the warrants are subject to customary adjustment in certain circumstances, including in the event of a stock dividend, recapitalization, reorganization, merger or consolidation of our company. As of the date of this prospectus, 61,450 warrants are issued and outstanding.

#### **Underwriters' Warrants**

We have agreed to issue to the underwriter in this offering warrants to purchase up to [●] shares of our common stock, with a per share exercise price equal to 125% of the initial public offering price per share of common stock. In addition, the warrants provide for registration rights upon request, in certain cases. The demand registration right provided will not be greater than five years from the effective date of the offering in compliance with FINRA Rule 5110(f)(2)(G)(iv). The piggyback registration right provided will not be greater than seven years from the effective date of the offering in compliance with FINRA Rule 5110(f)(2)(G)(v). See "Underwriting — Underwriters' Warrants" section of this prospectus for a description of these warrants.

#### **The 2016 Equity Incentive Plan**

The 2016 Equity Incentive Plan (the "2016 Plan") was adopted by the Board of Directors and approved by the shareholders on July 6, 2016. As of the date of this Memorandum, no shares of common stock underlying awards under the Plan have been granted.

*Stock Subject to the 2016 Plan.* The maximum number of shares of our common stock that may be issued under the 2016 Plan is 2,000,000 shares, which amount will be (a) reduced by awards granted under the 2016 Plan, and (b) increased to the extent that awards granted under the 2016 Plan are forfeited, expire or are settled for cash (except as otherwise provided in the 2016 Plan). Substitute awards (awards made or shares issued by our company in assumption of, or in substitution or exchange for, awards previously granted, or the right or obligation to make future awards, in each case by a company acquired by us or any subsidiary of ours or with which we or any subsidiary combines) will not reduce the shares authorized for grant under the 2016 Plan, nor will shares subject to a substitute award be added to the shares available for issuance or transfer under the 2016 Plan.

We and the Representative have agreed that for so long as any Class B Shares remain issued and outstanding, we may issue no more than 750,000 shares of common stock (or awards that are convertible into or exercisable or exchangeable for shares of common stock in such amount) under the 2016 Plan.

*Awards under the Plan.* The 2016 Plan includes a variety of forms of awards, including stock options, stock appreciation rights, restricted stock, restricted stock units and dividend equivalents to allow us to adapt our incentive compensation program to meet our needs in the changing business environment in which we operate.

*Eligibility.* Incentive Stock Options may be granted only to our employees. All other awards may be granted to our employees, consultants, directors and non-employee directors, provided that such consultants, directors and non-employee directors render good faith services not in connection with the offer and sale of securities in a capital-raising transaction. No employee will be eligible to receive more than 250,000 shares of common stock in any calendar year under the 2016 Plan pursuant to the grant of awards.

*Term.* The 2016 Plan is effective July 6, 2016 and awards may be granted through July 5, 2026. No awards may be granted under the 2016 Plan subsequent to that date. The Board may suspend or terminate the 2016 Plan without shareholder approval or ratification at any time or from time to time.

#### **Transfer Agent**

The transfer agent and registrar for our common stock is VStock Transfer, LLC. The transfer agent's address is 18 Lafayette Place, Woodmere, NY 11598, and its telephone number is 855-9VSTOCK.

#### **Listing**

We intend to apply to have our common stock listed on NASDAQ under the symbol "TBII." No assurance can be given that our application will be approved.

## SHARES ELIGIBLE FOR FUTURE SALE

Future sales of substantial amounts of our common stock in the public market, including shares issued upon exercise of outstanding options and warrants, or the anticipation of these sales, could adversely affect prevailing market prices from time to time and could impair our ability to raise equity capital in the future.

Based on the number of shares of common stock outstanding as of January \_\_, 2017, upon the completion of this offering we will have [ ] shares of common stock outstanding, assuming (1) no exercise of the underwriters' option to purchase additional shares of common stock and (2) no exercise of outstanding options or warrants. Of those shares, all of the shares sold in this offering will be freely tradable, except that any shares held by our "affiliates," as that term is defined in Rule 144 under the Securities Act, or Rule 144, may only be sold in compliance with the limitations described below.

**Rule 144** The availability of Rule 144 will vary depending on whether restricted shares are held by an affiliate or a non-affiliate. In general, under Rule 144 as in effect on the date of this prospectus, a person who has beneficially owned restricted shares of common stock for at least six months would be entitled to sell their securities provided that (i) such person is not deemed to have been one of our affiliates at the time of, or at any time during the three months preceding, a sale and (ii) our company is subject to the Exchange Act periodic reporting requirements for at least three months before the sale.

Persons who have beneficially owned restricted shares of common stock for at least six months but who are affiliates of our company at the time of, or at any time during the three months preceding, a sale, would be subject to additional restrictions, by which such persons would be entitled to sell within any three-month period only a number of securities that does not exceed the greater of either of the following:

- 1% of the number of shares of common stock then outstanding; and
- if the shares of common stock are then traded on a national securities exchange, the average weekly trading volume of shares of common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

### Options, Warrants and Convertible Securities

As of January \_\_, 2017, options to purchase a total of \_\_\_\_\_ shares of common stock were outstanding, of which \_\_\_\_\_ were vested. Upon the exercise of outstanding options, \_\_\_\_\_ shares will become eligible for sale subject to Rule 144.

As of January \_\_, 2017, warrants to purchase a total of \_\_\_\_\_ shares of common stock were outstanding. Upon the exercise of outstanding warrants, \_\_\_\_\_ shares will become eligible for sale subject to Rule 144.

As of January \_\_, 2017, there were 1,140,000 shares of common stock issuable upon the conversion of an outstanding convertible debt instrument at an assumed conversion price of \$5.00 per share. The debenture is convertible into the number of shares of our common stock equal to (i) at the investor's option, the quotient obtained by dividing \$5,700,000, and any accrued interest thereon, by \$5.00 or (ii) upon the listing of our common stock on a national securities exchange through an initial public offering, 120% of the price at which our shares of common stock are offered in this prospectus.

### Lock-Up Agreements

Our directors, executive officers and shareholders have agreed with the underwriters that for a period of 180 days after the date of this prospectus, except with the prior written consent of the representative and subject to specified exceptions, we or they will not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for shares of common stock, or enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock. Following the expiration of the lock-up agreements, shares will become eligible for sale subject to Rule 144.

## UNDERWRITING

Joseph Gunnar & Co., LLC is acting as representative of the underwriters (the “Representative”). We have entered into an underwriting agreement dated \_\_\_\_\_ with the Representative. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to each underwriter named below, and each underwriter named below has severally agreed to purchase, at the public offering price less the underwriting discounts set forth on the cover page of this prospectus, the number of shares of common stock listed next to its name in the following table:

	Number of Shares
Joseph Gunnar & Co., LLC	
Total	

The underwriters are committed to purchase all the shares of common stock offered by us other than those covered by the option to purchase additional shares described below, if they purchase any shares. The obligations of the underwriters may be terminated upon the occurrence of certain events specified in the underwriting agreement. Furthermore, pursuant to the underwriting agreement, the underwriters’ obligations are subject to customary conditions, representations and warranties contained in the underwriting agreement, such as receipt by the underwriters of officers’ certificates and legal opinions.

We have agreed to indemnify the underwriters against specified liabilities, including liabilities under the Securities Act, and to contribute to payments the underwriters may be required to make in respect thereof.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel and other conditions specified in the underwriting agreement. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

We have granted the underwriters an over-allotment option. This option, which is exercisable for up to 45 days after the date of this prospectus, permits the underwriters to purchase a maximum of additional shares (15% of the shares sold in this offering) from us to cover over-allotments, if any. If the underwriters exercise all or part of this option, they will purchase such shares covered by the option at the public offering price that appears on the cover page of this prospectus, less the underwriting discount. If this option is exercised in full, the total price to the public will be \$ and the total net proceeds, before expenses, to us will be \$ .

### Discounts

The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters. Such amounts are shown assuming both no exercise and full exercise of the underwriters’ option to purchase \_\_\_\_\_ additional shares.

	Per Share	Total	
		Without Option	With Option
Public offering price	\$	\$	\$
Underwriting discounts and commissions (7%)	\$	\$	\$
Non-accountable expense allowance (1%) <sup>(1)</sup>	\$	\$	\$
Proceeds, before expenses, to us	\$	\$	\$

(1) The non-accountable expense allowance of 1% is not payable with respect to the shares sold upon exercise of the underwriters’ over-allotment option.

The underwriters propose to offer the shares offered by us to the public at the public offering price set forth on the cover of this prospectus. In addition, the underwriters may offer some of the shares to other securities dealers at such price less a concession of \$ per share. If all of the shares offered by us are not sold at the public offering price, the Representative may change the offering price and other selling terms by means of a supplement to this prospectus.

We have agreed to pay the Representative a non-accountable expense allowance of 1% of the public offering price at the closing, excluding the over-allotment option. We have paid an expense deposit of \$25,000 to the Representative, which will be applied against such non-accountable expense allowance. The advance will be returned to us to the extent not actually incurred in accordance with FINRA Rule 5110(f)(2)(c).

We have also agreed to pay the following expenses of the Representative relating to the offering: (a) all filing fees and communication expenses associated with the review of this offering by FINRA; (b) all fees, expenses and disbursements relating to background checks of our officers and directors in an amount not to exceed \$15,000 in the aggregate; (c) all fees, expenses and disbursements relating to the registration, qualification or exemption of securities offered under the securities laws of foreign jurisdictions designated by the Representative, including the reasonable fees and expenses of the Representative's blue sky counsel; (d) up to \$20,000 of the Representative's actual accountable road show expenses for the offering; and (e) fees for underwriters' counsel, not to exceed \$75,000.

We estimate that the total expenses of the offering payable by us, excluding the total underwriting discount, will be approximately \$\_\_\_\_\_.

#### **Discretionary Accounts**

The underwriters do not intend to confirm sales of the securities offered hereby to any accounts over which they have discretionary authority.

#### **Lock-Up Agreements**

Pursuant to "lock-up" agreements, we, our executive officers and directors, and our shareholders, have agreed, subject to limited exceptions, without the prior written consent of the Representative not to directly or indirectly, offer to sell, sell, pledge or otherwise transfer or dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the transfer or disposition by any person at any time in the future of) any shares of our common stock, enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of our common stock, make any demand for or exercise any right or cause to be filed a registration statement, including any amendments thereto, with respect to the registration of any shares of common stock or securities convertible into or exercisable or exchangeable for common stock or any other securities of our company or publicly disclose the intention to do any of the foregoing, subject to customary exceptions, for a period of 180 days from the date of this prospectus.

#### **Representative's Warrants**

We have agreed to issue to the Representative warrants to purchase up to a total of \_\_\_\_\_ shares of common stock (3% of the shares of common stock sold in this offering, excluding the over-allotment option). The warrants will be exercisable at any time, and from time to time, in whole or in part, during the four-year period commencing one year from the effective date of the offering, which period shall not extend further than five years from the effective date of the offering in compliance with FINRA Rule 5110(f)(2)(G). The warrants are exercisable at a per share price equal to 125% of the public offering price per share in the offering. The warrants have been deemed compensation by FINRA and are therefore subject to a 180-day lock-up pursuant to Rule 5110(g)(1) of FINRA. The underwriters (or permitted assignees under Rule 5110(g)(1)) will not sell, transfer, assign, pledge, or hypothecate these warrants or the securities underlying these warrants, nor will they engage in any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the warrants or the underlying securities for a period of 180 days from the date of this prospectus.

The exercise price and number of shares issuable upon exercise of the warrants may be adjusted in certain circumstances including in the event of a stock dividend, extraordinary cash dividend or recapitalization, reorganization, merger or consolidation.

#### **Right of First Refusal**

Until 9 months after the closing date of the offering, the Representative will have a right of first refusal to act as lead underwriter for any future public or private equity (a "Subject Transaction") offering during such 9-month period.

#### **Electronic Offer, Sale and Distribution of Shares**

A prospectus in electronic format may be made available on the websites maintained by one or more of the underwriters or selling group members. The Representative may agree to allocate a number of shares to underwriters and selling group members for sale to its online brokerage account holders. Internet distributions will be allocated by the underwriters and selling group members that will make internet distributions on the same basis as other allocations. Other than the prospectus in electronic format, the information on these websites is not part of, nor incorporated by reference into, this prospectus or the registration statement of which this prospectus forms a part, has not been approved or endorsed by us, and should not be relied upon by investors.

### **Determination of the Initial Public Offering Price**

Prior to this offering, there has been no public market for our common stock. The initial public offering price was determined through negotiations between us and the Representative. In addition to prevailing market conditions, the factors considered in determining the initial public offering price included the following:

- the information included in this prospectus and otherwise available to the Representative;
- the valuation multiples of publicly traded companies that the Representative believes to be comparable to us;
- our financial information;
- our prospects and the history and the prospects of the industry in which we compete;
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues;
- the present state of our development; and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for our common stock may not develop. It is also possible that, after the offering, the shares will not trade in the public market at or above the initial public offering price.

### **Stabilization**

In connection with this offering, the underwriters may engage in stabilizing transactions, over-allotment transactions, syndicate-covering transactions, penalty bids and purchases to cover positions created by short sales.

- Stabilizing transactions permit bids to purchase shares so long as the stabilizing bids do not exceed a specified maximum, and are engaged in for the purpose of preventing or retarding a decline in the market price of the shares while the offering is in progress.
- Over-allotment transactions involve sales by the underwriters of shares in excess of the number of shares the underwriters are obligated to purchase. This creates a syndicate short position which may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by the underwriters is not greater than the number of shares that they may purchase in the over-allotment option. In a naked short position, the number of shares involved is greater than the number of shares in the over-allotment option. The underwriters may close out any short position by exercising their over-allotment option and/or purchasing shares in the open market.
- Syndicate covering transactions involve purchases of shares in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of the shares to close out the short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared with the price at which they may purchase shares through exercise of the over-allotment option. If the underwriters sell more shares than could be covered by exercise of the over-allotment option and, therefore, have a naked short position, the position can be closed out only by buying shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that after pricing there could be downward pressure on the price of the shares in the open market that could adversely affect investors who purchase in the offering.
- Penalty bids permit the Representative to reclaim a selling concession from a syndicate member when the shares originally sold by that syndicate member are purchased in stabilizing or syndicate covering transactions to cover syndicate short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our shares of common stock or preventing or retarding a decline in the market price of our shares of common stock. As a result, the price of our common stock in the open market may be higher than it would otherwise be in the absence of these transactions. Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described above may have on the price of our common stock. These transactions may be effected on the [NASDAQ Capital Market], in the over-the-counter market or otherwise and, if commenced, may be discontinued at any time.

**Passive Market Making**

In connection with this offering, underwriters and selling group members may engage in passive market making transactions in our common stock on the [NASDAQ Capital Market] in accordance with Rule 103 of Regulation M under the Exchange Act, during a period before the commencement of offers or sales of the shares and extending through the completion of the distribution. A passive market maker must display its bid at a price not in excess of the highest independent bid of that security. However, if all independent bids are lowered below the passive market maker's bid, then that bid must then be lowered when specified purchase limits are exceeded.

**Certain Relationships**

The underwriters and their affiliates have provided, or may in the future provide, various investment banking, commercial banking, financial advisory, brokerage or other services to us and our affiliates for which services they have received, and may in the future receive, customary fees and expense reimbursement.

In October 2016, we entered into a Securities Purchase Agreement with Hillair Capital Investments L.P. ("Hillair"), pursuant to which we issued and sold to Hillair, for an aggregate purchase price of \$5,000,000, (i) an 8% original issue discount senior secured convertible debenture (the "Hillair Debenture"), in an original principal amount of \$5,700,000, convertible into shares of our common stock in accordance with the terms of the Hillair Debenture, and (ii) 168,750 Class B Shares, convertible into shares of our common stock in accordance with the terms of the Class B Preferred Stock Certificate of Designation. Upon the redemption of approximately \$[•] in principal amount plus accrued interest of the Hillair Debenture with the proceeds of this offering, we will have a remaining payoff amount to Hillair equal to \$[•].

The Representative served as the placement agent in connection with this private placement, as well as our October 2016 Private Placement of an aggregate of \$1,145,000 in units of our company to certain accredited investors, with each unit consisting of (i) one Class B Share and (ii) one Class B Warrant (together, the "Private Placements"). In exchange for its services as placement agent for the Private Placements, the Representative earned (x) a placement agent fee of \$491,600 (which is equal to 8% of the \$6,145,000 in gross proceeds from the Private Placements) and (y) warrants to purchase up to 61,450 shares of our common stock at an exercise price of \$6.00 per share (the "Placement Agent Warrants"). We also paid an expense deposit of \$25,000 to the Representative in connection with the Private Placements.

The Placement Agent Warrants are subject to a 180-day lock-up beginning on the effective date of this offering pursuant to FINRA Rule 5110(g)(1). Furthermore, (i) the Placement Agent Warrants are not exercisable or convertible more than five years from the effective date of this offering in compliance with FINRA Rule 5110(f)(2)(G)(i); (ii) in compliance with FINRA Rule 5110(f)(2)(G)(ii), the Placement Agent Warrants are compliant with FINRA Rule 5110(e)(1); (iii) the Placement Agent Warrants do not have more than one demand registration right at our company's expense in compliance with FINRA Rule 5110(f)(2)(G)(iii); (iv) the Placement Agent Warrants do not have a demand registration right with a duration of more than five years from the effective date of this offering in compliance with FINRA Rule 5110(f)(2)(G)(iv); (v) the Placement Agent Warrants do not have piggyback registration rights with a duration of more than seven years from the effective date of this offering in compliance with FINRA Rule 5110(f)(2)(G)(v); (vi) the Placement Agent Warrants do not have anti-dilution terms that allow the holder, the Representative and related persons to receive more shares or to exercise at a lower price than originally agreed at the time of the public offering, when the public shareholders have not been proportionally affected by a stock split, stock dividend, or other similar event in compliance with FINRA Rule 5110(f)(2)(G)(vi); and (vii) the Placement Agent Warrants do not have anti-dilution terms that allow the holder, the Representative and related persons to receive or accrue cash dividends prior to the exercise of the Placement Agent Warrants in compliance with FINRA Rule 5110(f)(2)(G)(vii).

Please see "*Management's Discussion and Analysis of Financial Condition – Liquidity and Capital Resources – Recent Financings*" for additional information concerning the Private Placements and agreements between those parties and us.

The underwriters and their affiliates may, from time to time, engage in transactions with and perform services for us in the ordinary course of their business for which they may receive customary fees and reimbursements of expenses. In the ordinary course of their various business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own accounts and for the accounts of their customers and such investment and securities activities may involve securities and/or instruments of our Company. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

#### **Offer Restrictions Outside the United States**

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

#### **Australia**

This prospectus is not a disclosure document under Chapter 6D of the Australian Corporations Act, has not been lodged with the Australian Securities and Investments Commission and does not purport to include the information required of a disclosure document under Chapter 6D of the Australian Corporations Act. Accordingly, (i) the offer of the securities under this prospectus is only made to persons to whom it is lawful to offer the securities without disclosure under Chapter 6D of the Australian Corporations Act under one or more exemptions set out in section 708 of the Australian Corporations Act, (ii) this prospectus is made available in Australia only to those persons as set forth in clause (i) above, and (iii) the offeree must be sent a notice stating in substance that by accepting this offer, the offeree represents that the offeree is such a person as set forth in clause (i) above, and, unless permitted under the Australian Corporations Act, agrees not to sell or offer for sale within Australia any of the securities sold to the offeree within 12 months after its transfer to the offeree under this prospectus.

#### **Canada**

The securities may be sold in Canada only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the securities must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

#### **China**

The information in this document does not constitute a public offer of the securities, whether by way of sale or subscription, in the People's Republic of China (the "PRC") (excluding, for purposes of this paragraph, Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan). The securities may not be offered or sold directly or indirectly in the PRC to legal or natural persons other than directly to "qualified domestic institutional investors."

#### **European Economic Area — Belgium, Germany, Luxembourg and Netherlands**

The information in this document has been prepared on the basis that all offers of securities will be made pursuant to an exemption under the Directive 2003/71/EC ("Prospectus Directive"), as implemented in Member States of the European Economic Area (each, a "Relevant Member State"), from the requirement to produce a prospectus for offers of securities.

An offer to the public of securities has not been made, and may not be made, in a Relevant Member State except pursuant to one of the following exemptions under the Prospectus Directive as implemented in that Relevant Member State:

- (a) to legal entities that are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- (b) to any legal entity that has two or more of (i) an average of at least 250 employees during its last fiscal year; (ii) a total balance sheet of more than €43,000,000 (as shown on its last annual unconsolidated or consolidated financial statements) and (iii) an annual net turnover of more than €50,000,000 (as shown on its last annual unconsolidated or consolidated financial statements);
- (c) to fewer than 100 natural or legal persons (other than qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive) subject to obtaining the prior consent of our company or any underwriter for any such offer; or
- (d) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of securities shall result in a requirement for the publication by our company of a prospectus pursuant to Article 3 of the Prospectus Directive.

#### **France**

This document is not being distributed in the context of a public offering of financial securities (offre au public de titres financiers) in France within the meaning of Article L.411-1 of the French Monetary and Financial Code (Code monétaire et financier) and Articles 211-1 et seq. of the General Regulation of the French Autorité des marchés financiers (“AMF”). The securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France.

This document and any other offering material relating to the securities have not been, and will not be, submitted to the AMF for approval in France and, accordingly, may not be distributed or caused to be distributed, directly or indirectly, to the public in France.

Such offers, sales and distributions have been and shall only be made in France to (i) qualified investors (investisseurs qualifiés) acting for their own account, as defined in and in accordance with Articles L.411-2-II-2° and D.411-1 to D.411-3, D.744-1, D.754-1 and D.764-1 of the French Monetary and Financial Code and any implementing regulation and/or (ii) a restricted number of non-qualified investors (cercle restreint d’investisseurs non-qualifiés) acting for their own account, as defined in and in accordance with Articles L.411-2-II-2° and D.411-4, D.744-1, D.754-1 and D.764-1 of the French Monetary and Financial Code and any implementing regulation.

Pursuant to Article 211-3 of the General Regulation of the AMF, investors in France are informed that the securities cannot be distributed (directly or indirectly) to the public by the investors otherwise than in accordance with Articles L.411-1, L.411-2, L.412-1 and L.621-8 to L.621-8-3 of the French Monetary and Financial Code.

#### **Ireland**

The information in this document does not constitute a prospectus under any Irish laws or regulations and this document has not been filed with or approved by any Irish regulatory authority as the information has not been prepared in the context of a public offering of securities in Ireland within the meaning of the Irish Prospectus (Directive 2003/71/EC) Regulations 2005 (the “Prospectus Regulations”). The securities have not been offered or sold, and will not be offered, sold or delivered directly or indirectly in Ireland by way of a public offering, except to (i) qualified investors as defined in Regulation 2(1) of the Prospectus Regulations and (ii) fewer than 100 natural or legal persons who are not qualified investors.

#### **Israel**

The securities offered by this prospectus have not been approved or disapproved by the Israeli Securities Authority (the “ISA”), nor have such securities been registered for sale in Israel. The shares may not be offered or sold, directly or indirectly, to the public in Israel, absent the publication of a prospectus. The ISA has not issued permits, approvals or licenses in connection with the offering or publishing the prospectus; nor has it authenticated the details included herein, confirmed their reliability or completeness, or rendered an opinion as to the quality of the securities being offered. Any resale in Israel, directly or indirectly, to the public of the securities offered by this prospectus is subject to restrictions on transferability and must be effected only in compliance with the Israeli securities laws and regulations.



## Italy

The offering of the securities in the Republic of Italy has not been authorized by the Italian Securities and Exchange Commission (Commissione Nazionale per le Società e la Borsa, “CONSOB”) pursuant to the Italian securities legislation and, accordingly, no offering material relating to the securities may be distributed in Italy and such securities may not be offered or sold in Italy in a public offer within the meaning of Article 1.1(t) of Legislative Decree No. 58 of 24 February 1998 (“Decree No. 58”), other than:

- to Italian qualified investors, as defined in Article 100 of Decree No. 58 by reference to Article 34-ter of CONSOB Regulation no. 11971 of 14 May 1999 (“Regulation no. 11971”) as amended (“Qualified Investors”); and
- in other circumstances that are exempt from the rules on public offer pursuant to Article 100 of Decree No. 58 and Article 34-ter of Regulation No. 11971 as amended.

Any offer, sale or delivery of the securities or distribution of any offer document relating to the securities in Italy (excluding placements where a Qualified Investor solicits an offer from the issuer) under the paragraphs above must be:

- made by investment firms, banks or financial intermediaries permitted to conduct such activities in Italy in accordance with Legislative Decree No. 385 of 1 September 1993 (as amended), Decree No. 58, CONSOB Regulation No. 16190 of 29 October 2007 and any other applicable laws; and
- in compliance with all relevant Italian securities, tax and exchange controls and any other applicable laws.

Any subsequent distribution of the securities in Italy must be made in compliance with the public offer and prospectus requirement rules provided under Decree No. 58 and the Regulation No. 11971 as amended, unless an exception from those rules applies. Failure to comply with such rules may result in the sale of such securities being declared null and void and in the liability of the entity transferring the securities for any damages suffered by the investors.

## Japan

The securities have not been and will not be registered under Article 4, paragraph 1 of the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948), as amended (the “FIEL”), pursuant to an exemption from the registration requirements applicable to a private placement of securities to Qualified Institutional Investors (as defined in and in accordance with Article 2, paragraph 3 of the FIEL and the regulations promulgated thereunder). Accordingly, the securities may not be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan other than Qualified Institutional Investors. Any Qualified Institutional Investor who acquires securities may not resell them to any person in Japan that is not a Qualified Institutional Investor, and acquisition by any such person of securities is conditional upon the execution of an agreement to that effect.

## Portugal

This document is not being distributed in the context of a public offer of financial securities (oferta pública de valores mobiliários) in Portugal, within the meaning of Article 109 of the Portuguese Securities Code (Código dos Valores Mobiliários). The securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in Portugal. This document and any other offering material relating to the securities have not been, and will not be, submitted to the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários) for approval in Portugal and, accordingly, may not be distributed or caused to be distributed, directly or indirectly, to the public in Portugal, other than under circumstances that are deemed not to qualify as a public offer under the Portuguese Securities Code. Such offers, sales and distributions of securities in Portugal are limited to persons who are “qualified investors” (as defined in the Portuguese Securities Code). Only such investors may receive this document and they may not distribute it or the information contained in it to any other person.

## Sweden

This document has not been, and will not be, registered with or approved by Finansinspektionen (the Swedish Financial Supervisory Authority). Accordingly, this document may not be made available, nor may the securities be offered for sale in Sweden, other than under circumstances that are deemed not to require a prospectus under the Swedish Financial Instruments Trading Act (1991:980) (Sw. lag (1991:980) om handel med finansiella instrument). Any offering of securities in Sweden is limited to persons who are “qualified investors” (as defined in the Financial Instruments Trading Act). Only such investors may receive this document and they may not distribute it or the information contained in it to any other person.

**Switzerland**

The securities may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange (“SIX”) or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering material relating to the securities may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering material relating to the securities have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of securities will not be supervised by, the Swiss Financial Market Supervisory Authority.

This document is personal to the recipient only and not for general circulation in Switzerland.

**United Arab Emirates**

Neither this document nor the securities have been approved, disapproved or passed on in any way by the Central Bank of the United Arab Emirates or any other governmental authority in the United Arab Emirates, nor have we received authorization or licensing from the Central Bank of the United Arab Emirates or any other governmental authority in the United Arab Emirates to market or sell the securities within the United Arab Emirates. This document does not constitute and may not be used for the purpose of an offer or invitation. No services relating to the securities, including the receipt of applications and/or the allotment or redemption of such shares, may be rendered within the United Arab Emirates by our company.

No offer or invitation to subscribe for securities is valid or permitted in the Dubai International Financial Centre.

**United Kingdom**

Neither the information in this document nor any other document relating to the offer has been delivered for approval to the Financial Services Authority in the United Kingdom and no prospectus (within the meaning of section 85 of the Financial Services and Markets Act 2000, as amended (“FSMA”)) has been published or is intended to be published in respect of the securities. This document is issued on a confidential basis to “qualified investors” (within the meaning of section 86(7) of FSMA) in the United Kingdom, and the securities may not be offered or sold in the United Kingdom by means of this document, any accompanying letter or any other document, except in circumstances which do not require the publication of a prospectus pursuant to section 86(1) FSMA. This document should not be distributed, published or reproduced, in whole or in part, nor may its contents be disclosed by recipients to any other person in the United Kingdom.

Any invitation or inducement to engage in investment activity (within the meaning of section 21 of FSMA) received in connection with the issue or sale of the securities has only been communicated or caused to be communicated and will only be communicated or caused to be communicated in the United Kingdom in circumstances in which section 21(1) of FSMA does not apply to our company.

In the United Kingdom, this document is being distributed only to, and is directed at, persons (i) who have professional experience in matters relating to investments falling within Article 19(5) (investment professionals) of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 (“FPO”), (ii) who fall within the categories of persons referred to in Article 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the FPO or (iii) to whom it may otherwise be lawfully communicated (together “relevant persons”). The investments to which this document relates are available only to, and any invitation, offer or agreement to purchase will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

**LEGAL MATTERS**

The validity of the securities offered in this prospectus is being passed upon for us by Sichenzia Ross Ference Kesner LLP. Certain legal matters in connection with this offering have been passed upon for the underwriters by Greenberg Traurig, LLP.

**EXPERTS**

Our financial statements at December 31, 2015 and 2014, and for each of the two years in the period ended December 31, 2015, appearing in this prospectus and related registration statement have been audited by Marcum, LLP, independent registered public accounting firm, as set forth in its report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

## WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the Commission a registration statement on Form S-1 under the Securities Act with respect to the shares offered hereby. This prospectus, which is part of such registration statement, omits certain information, exhibits, schedules and undertakings set forth in the registration statement. For further information pertaining to us and our common stock, reference is made to the registration statement and the exhibits and schedules to the registration statement. Statements contained in this prospectus as to the contents or provisions of any documents referred to in this prospectus are not necessarily complete, and in each instance where a copy of the document has been filed as an exhibit to the registration statement, reference is made to the exhibit for a more complete description of the matters involved.

As a result of this offering, we will become subject to the information and reporting requirements of the Exchange Act and, in accordance with this law, we will file periodic reports, proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection and copying at the Public Reference Room maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549 and the website of the SEC at [www.sec.gov](http://www.sec.gov). We also maintain a website at [www.toughbuilt.com](http://www.toughbuilt.com). After the closing of this offering, you may access our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act with the SEC free of charge at our website as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC.

INDEX TO FINANCIAL STATEMENTS

TOUGHBUILT INDUSTRIES, INC.

INDEX TO CONDENSED FINANCIAL STATEMENTS

SEPTEMBER 30, 2016  
(UNAUDITED)

	<u>Page</u>
<a href="#"><u>Condensed Balance Sheets</u></a>	F-2
<a href="#"><u>Condensed Statements of Operations</u></a>	F-3
<a href="#"><u>Condensed Statements of Changes in Stockholders' Deficit</u></a>	F-4
<a href="#"><u>Condensed Statements of Cash Flows</u></a>	F-5
<a href="#"><u>Notes to Condensed Financial Statements</u></a>	F-6 - F-19

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**TOUGHBUILT INDUSTRIES, INC.**

**(Formerly known as Phalanx, Inc.)**

**CONDENSED BALANCE SHEETS**

	<u>September 30, 2016</u>	<u>December 31, 2015</u>
	<u>(Unaudited)</u>	
<b>ASSETS</b>		
Current Assets		
Cash	\$ 3,235	\$ -
Accounts receivable	38,618	145,963
Factor receivables, net	468,097	1,038,555
Inventory	237,302	255,181
	<u>747,252</u>	<u>1,439,699</u>
Total Current Assets		
Property and equipment, net	60,714	71,428
Security deposit	13,332	12,832
Deferred debt issuance cost	102,500	-
	<u>923,798</u>	<u>1,523,959</u>
Total Assets		
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
Current Liabilities		
Bank overdraft	\$ -	\$ 4,319
Accounts payable	1,117,284	315,389
Accrued liabilities	124,222	258,783
Accrued payroll taxes	77,218	43,338
Customers deposits	86,331	-
Loan payable - third party	380,671	686,451
Short term advances	738	136,146
Related parties payable	194,920	-
Advance from officer	-	12,500
Notes payable - related parties	270,000	-
Note payable, net of debt discount of \$35,325 and \$0 at September 30, 2016 and December 31, 2015, respectively	110,389	500,000
	<u>2,361,773</u>	<u>1,956,926</u>
Total Current Liabilities		
Total Liabilities	<u>2,361,773</u>	<u>1,956,926</u>
Commitments and contingencies (See Note 9)		
Stockholders' Deficit		
Preferred Stock, \$0.0001 par value, 5,000,000 shares authorized, none issued and outstanding	-	-
Common stock, \$0.0001 par value, 100,000,000 shares authorized, 7,359,000 shares and 5,376,667 shares issued and outstanding at September 30, 2016 and December 31, 2015, respectively	736	538
Additional paid in capital	1,488,649	9,462
Accumulated deficit	(2,927,360)	(442,967)
	<u>(1,437,975)</u>	<u>(432,967)</u>
Total Stockholders' Deficit		
Total Liabilities and Stockholders' Deficit	<u>\$ 923,798</u>	<u>\$ 1,523,959</u>

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

**TOUGHBUILT INDUSTRIES, INC.****(Formerly known as Phalanx, Inc.)****CONDENSED STATEMENTS OF OPERATIONS**

	<b>For The Nine Months Ended September 30,</b>	
	<b>2016</b>	<b>2015</b>
	<b>(Unaudited)</b>	<b>(Unaudited)</b>
Revenues, net	\$ 6,360,139	\$ 6,130,471
Cost of goods sold	<u>5,019,367</u>	<u>4,438,005</u>
Gross Profit	1,340,772	1,692,466
Operating Expenses		
Depreciation	10,714	10,714
Selling, general and administrative	3,751,214	1,431,796
Research and development	7,121	25,454
Total Operating Expenses	<u>3,769,049</u>	<u>1,467,965</u>
Income (Loss) from Operations	<u>(2,428,277)</u>	<u>224,502</u>
Other Income (Expenses)		
Interest expense	(56,116)	(78,750)
Total Other Income (Expenses)	<u>(56,116)</u>	<u>(78,750)</u>
Income (Loss) Before Income Tax	(2,484,393)	145,752
Provision for income tax	-	-
Net Income (Loss)	<u>\$ (2,484,393)</u>	<u>\$ 145,752</u>
Basic and Diluted Net Income (Loss) Per Share	<u>\$ (0.36)</u>	<u>\$ 0.03</u>
Weighted Average Number of Shares Outstanding - Basic and Diluted	<u>\$ 6,930,405</u>	<u>\$ 5,376,667</u>

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

**TOUGHBUILT INDUSTRIES, INC.**

**(Formerly known as Phalanx, Inc.)**

**CONDENSED STATEMENT OF CHANGES IN STOCKHOLDERS' DEFICIT**

**(UNAUDITED)**

	<b>Common Stock</b>		<b>Additional Paid-in Capital</b>	<b>Accumulated Deficit</b>	<b>Total</b>
	<b>Number</b>	<b>Amount</b>			
Balance - January 1, 2016	5,376,667	\$ 538	\$ 9,462	\$ (442,967)	\$ (432,967)
Contributed capital by founders	-	-	3,225	-	3,225
Issuance and sale of common stock to employees and affiliates	1,693,500	169	609,491	-	609,660
Sale of common stock to unrelated parties	122,166	12	366,488	-	366,500
Issuance of common shares for debt settlement	166,667	17	499,983	-	500,000
Net loss	-	-	-	(2,484,393)	(2,484,393)
Balance - September 30, 2016	<u>7,359,000</u>	<u>\$ 736</u>	<u>\$ 1,488,649</u>	<u>\$ (2,927,360)</u>	<u>\$ (1,437,975)</u>

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

**TOUGHBUILT INDUSTRIES, INC.**

**(Formerly known as Phalanx, Inc.)**

**CONDENSED STATEMENTS OF CASH FLOWS**

	<b>For The Nine Months Ended September 30,</b>	
	<b>2016</b>	<b>2015</b>
	<b>(Unaudited)</b>	<b>(Unaudited)</b>
Cash Flows from Operating Activities:		
Net income (loss)	\$ (2,484,393)	\$ 145,752
Adjustment to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation	10,714	10,714
Original issuance of debt discount	44,675	-
Stock compensation expense	599,499	-
Changes in operating assets and liabilities:		
Decrease in accounts receivable	107,346	42,206
(Increase) decrease in factor receivables	570,459	(379,924)
(Increase) decrease in inventory	17,879	131,192
Increase in security deposits	(500)	(7,832)
Increase in accounts payable	801,895	323,949
Increase in accrued payroll taxes	33,880	12,551
Decrease in accrued liabilities	(134,561)	(59,082)
Increase in related parties payable	194,920	60,000
Increase in customer deposits	86,331	110,044
Net cash (used in) provided by operating activities	<u>(151,856)</u>	<u>389,570</u>
Cash Flows from Financing Activities:		
Bank overdraft	(4,319)	-
Proceeds from sale of common stock	379,886	-
Proceeds from notes payable - related parties	270,000	-
Proceeds from note payable	250,000	-
Payments on note payable	(184,286)	-
Payment of advance from officer	(12,500)	-
Payments for deferred issuance cost	(102,500)	-
Proceeds from short term advances	75,000	-
Payments on short term advances	(210,409)	(97,401)
Cash payments made for loans payable	<u>(305,781)</u>	<u>(258,238)</u>
Net cash provided by (used in) financing activities	<u>155,091</u>	<u>(355,639)</u>
Net increase in cash and cash equivalents	3,235	33,931
Cash, beginning of the period	<u>-</u>	<u>474</u>
Cash, end of the period	<u>\$ 3,235</u>	<u>\$ 34,405</u>
Supplemental disclosures of cash flow information:		
Cash paid for income taxes	<u>\$ -</u>	<u>\$ -</u>
Cash paid for interest	<u>\$ 44,675</u>	<u>\$ 76,000</u>
Supplemental disclosures of non-cash investing and financing activities:		
Common stock issued to employees and affiliates as stock compensation	<u>\$ 599,499</u>	<u>\$ -</u>

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



TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

**NOTE 1: NATURE OF OPERATIONS, BASIS OF PRESENTATION AND LIQUIDITY**

**Nature of Operations**

Phalanx, Inc. was incorporated under the laws of the State of Nevada on April 9, 2012. On December 29, 2015, Phalanx, Inc. changed its name to ToughBuilt Industries, Inc. (the “Company”, “We”, “ToughBuilt”). The Company was formed to design and distribute to the home improvement community and building industry, innovative tools and accessories of superior quality derived in part from enlightened creativity for the end users while enhancing performance, and building high brand loyalty. The Company has exclusive licenses to develop, manufacture, market, and distribute various home improvement and construction product lines for both Do-it-Yourself (“DIY”) and professional markets under TOUGHBUILT® brand name, within the global tool market industry.

TOUGHBUILT® distributes an array of high quality and rugged tool belts, tool bags and other personal tool organizer products. The Company distributes a complete line of knee pads for various construction applications. The Company’s line of job-site tools and material support products consist of a full line of miter-saws and table-saw stands, saw-horses/job site tables and roller stands. All of the Company’s products are designed and engineered in the United States and manufactured in China.

**Basis of Presentation**

The accompanying condensed financial statements are unaudited, but in the opinion of management of the Company, contain all adjustments, which include normal recurring adjustments necessary to present fairly the financial position at September 30, 2016, and the results of operations and cash flows for the nine months ended September 30, 2016 and 2015, respectively. The balance sheet as of December 31, 2015 is derived from the Company’s audited financial statements.

Certain information and footnote disclosures normally included in financial statements that have been prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission, although management of the Company believes that the disclosures contained in these financial statements are adequate to make the information presented therein not misleading.

**Liquidity**

The Company has faced significant liquidity shortages as shown in the accompanying financial statements. As of September 30, 2016, the Company’s total liabilities exceeded its total assets by \$1,437,975. The Company has recorded a net loss of \$2,484,393 for the nine months ended September 30, 2016 and an accumulated deficit of \$2,927,360 as of September 30, 2016. Net cash used in operating activities for the nine months ended September 30, 2016 was \$151,856. Although the Company has had difficulty in obtaining working lines of credit from financial institutions and trade credit from vendors, management has been able to raise capital from private placements and further expand the Company’s operations geographically to continue its revenue growth. In January 2016, the Company initiated a Private Placement of its securities, in which it sold 122,167 units at \$3.00 per unit, with each unit consisting of one share of Common Stock and one redeemable Class A Warrant, to certain accredited investors. The Company received \$366,500 in cash proceeds from the sale of 122,167 units. On February 25, 2016, management negotiated to convert a promissory note payable of \$500,000, in exchange for issuance of 166,667 shares of its common stock to the note holder. On October 17, 2016, the Company completed a private placement of 229,000 Units and received \$1,145,000 in cash proceeds, with each Unit consisting of (i) one share of its newly designated Class B Convertible Preferred Stock, par value \$0.0001 per share, and (ii) a warrant to purchase one share of its common stock, par value \$0.0001 per share, at an exercise price of \$6.00 per share, subject to adjustment, exercisable over a period of five years from the date of issuance. In addition, the Company sold a senior secured convertible debenture for \$5,700,000 at 8% annual rate of interest with original issuance debt discount of \$700,000, principal amounts of \$1,425,000 payable on March 1, 2018 and June 1, 2018, and remaining balance of \$2,850,000 payable on September 1, 2018.

Although the sales remained relatively unchanged during the nine months ended September 30, 2016 compared to the same period in 2015, the Company is continuing to focus its efforts on increased marketing campaigns, and distribution programs to strengthen the demand for its products. Management anticipates that the Company’s capital resources will improve if its products gain wider market recognition and acceptance resulting in increased product sales. If the Company is not successful with its marketing efforts to increase sales and weak demand continues, the Company will experience a shortfall in cash and it will be necessary to further reduce its operating expenses in a manner or obtain funds through equity or debt financing in sufficient amounts to avoid the need to curtail our operations subsequent to September 30, 2016. Given the liquidity and credit constraints in the markets, the business may suffer, should the credit markets not improve in the near future. The direct impact of these conditions is not fully known. However, there can be no assurance that the Company would be able to secure additional funds if needed and that if such funds were available on commercially reasonable terms or in the necessary amounts, and whether the terms or conditions would be acceptable to the Company. In such case, the reduction in operating expenses might need to be substantial in order for the Company to generate positive cash flow to sustain the operations of the Company.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company regularly evaluates estimates and assumptions related to the valuation of accounts and factored receivables, valuation of long-lived assets, stock based compensation, fair value of equity related instruments, accrued liabilities, note payable and deferred income tax asset valuation allowances. The Company bases its estimates and assumptions on current facts, historical experience and various other factors that it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities and the accrual of costs and expenses that are not readily apparent from other sources. The actual results experienced by the Company may differ materially and adversely from the Company's estimates. To the extent there are material differences between the estimates and the actual results, future results of operations will be affected.

**Accounts Receivable**

Accounts receivable represent invoices from the sale of tools and accessories for which the Company has not yet received payment, net of allowance for sales returns and uncollectible accounts. Accounts receivable are recorded at the invoiced amount and adjusted for the amounts management expects to collect from balances outstanding at period-end. The Company estimates the allowance for doubtful accounts and rebates based on an analysis of specific accounts and an assessment of the customer's ability to pay, among other factors.

The Company accounts for the transfer of accounts receivable to a third party under a factoring type arrangement in accordance with Accounting Standards Codification ("ASC") 860 "*Transfers and Servicing*". ASC 860 requires that several conditions be met in order to present the transfer of accounts receivable as a sale. Even though we have isolated the transferred (sold) assets and we have the legal right to transfer our assets (accounts receivable), we do not meet the third test of effective control since our accounts receivable sales agreement with the third party factor requires us to be liable in the event of default by one of our customers. Because we do not meet all three conditions, we do not qualify for sale treatment and our debt incurred with respect to the sale of our accounts receivable is presented as a secured loan liability "Loan payable - third party" on our balance sheet.

**Inventory**

Inventory consists of finished goods, is valued at the lower of (i) the actual cost of its purchase or (ii) its current market value. Inventory cost is determined on the first-in, first-out method ("FIFO"). The Company regularly reviews its inventory quantities on hand, and when appropriate, records a provision for excess and slow-moving inventory.

**Fair value of Financial Instruments and Fair Value Measurements**

ASC 820, "*Fair Value Measurements and Disclosures*", requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. ASC 820 establishes a fair value hierarchy based on the level of independent, objective evidence surrounding the inputs used to measure fair value. A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. ASC 820 prioritizes the inputs into three levels that may be used to measure fair value:

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

*Level 1*

Level 1 applies to assets or liabilities for which there are quoted prices in active markets for identical assets or liabilities.

*Level 2*

Level 2 applies to assets or liabilities for which there are inputs other than quoted prices that are observable for the asset or liability such as quoted prices for similar assets or liabilities in active markets; quoted prices for identical assets or liabilities in markets with insufficient volume or infrequent transactions (less active markets); or model-derived valuations in which significant inputs are observable or can be derived principally from, or corroborated by, observable market data. If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

*Level 3*

Level 3 applies to assets or liabilities for which there are unobservable inputs to the valuation methodology that are significant to the measurement of the fair value of the assets or liabilities.

The Company's financial instruments consist principally of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, customer deposits, loans payable, note payable and amounts due to related parties. Pursuant to ASC 820, "*Fair Value Measurements and Disclosures*" and ASC 825, "*Financial Instruments*", the fair value of our cash equivalents is determined based on "Level 1" inputs, which consist of quoted prices in active markets for identical assets. The Company believes that the recorded values of all of the other financial instruments approximate their current fair values because of their nature and respective maturity dates or durations.

**Revenue Recognition**

The Company recognizes revenues when the product is delivered to the customer and the ownership is transferred. The Company's revenue recognition policy is based on the revenue recognition criteria established under the SEC's Staff Accounting Bulletin No. 104. The criteria and how the Company satisfies each element is as follows: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred per the terms of the signed contract; (3) the price is fixed and determinable; and (4) collectability is reasonably assured.

**Income Taxes**

The Company accounts for income taxes using the asset and liability method in accordance with ASC 740, "*Income Taxes*". The asset and liability method provides that deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax basis of assets and liabilities, and for operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using the currently enacted tax rates and laws. The Company records a valuation allowance to reduce deferred tax assets to the amount that is believed more likely than not to be realized.

The Company follows the provisions of ASC 740, "*Income Taxes*". When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. In accordance with the guidance of ASC 740, the benefit of a tax position is recognized in the financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above should be reflected as a liability for unrecognized tax benefits in the accompanying balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination. Management makes estimates and judgments about our future taxable income that are based on assumptions that are consistent with our plans and estimates. Should the actual amounts differ from our estimates, the amount of our valuation allowance could be materially impacted. Any adjustment to the deferred tax asset valuation allowance would be recorded in the income statement for the periods in which the adjustment is determined to be required. The Company does not believe that it has taken any positions that would require the recording of any additional tax liability nor does it believe that there are any unrealized tax benefits that would either increase or decrease within the next year.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

**Earnings (Loss) Per Share**

The Company computes net earnings (loss) per share in accordance with ASC 260, “*Earnings per Share*”. ASC 260 requires presentation of both basic and diluted net earnings per share (“EPS”) on the face of the statement of operations. Basic EPS is computed by dividing earnings (loss) available to common shareholders (numerator) by the weighted average number of shares outstanding (denominator) during the period. Diluted EPS gives effect to all dilutive potential common shares outstanding during the period using the treasury stock method and convertible preferred stock using the if-converted method. In computing diluted EPS, the average stock price for the period is used in determining the number of shares assumed to be purchased from the exercise of stock options or warrants. Diluted EPS excludes all dilutive potential shares if their effect is anti-dilutive. As of September 30, 2016, the Company had issued warrants convertible into 183,617 shares of common stock, whereas, no warrants were issued and outstanding as of December 31, 2015.

**Recent Accounting Pronouncements**

In August 2016, the FASB issued ASU 2016-15, “*Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*” (“ASU 2016-15”). ASU 2016-15 will make eight targeted changes to how cash receipts and cash payments are presented and classified in the statement of cash flows. ASU 2016-15 is effective for fiscal years beginning after December 15, 2017. The new standard will require adoption on a retrospective basis unless it is impracticable to apply, in which case it would be required to apply the amendments prospectively as of the earliest date practicable. The Company is currently in the process of evaluating the impact of ASU 2016-15 on its condensed financial statements.

In November 2016, the FASB issued Accounting Standards Update No. 2016-18, “*Statement of Cash Flows (Topic 230): Restricted Cash*” (“ASU 2016-18”). The new guidance is intended to reduce diversity in practice by adding or clarifying guidance on classification and presentation of changes in restricted cash on the statement of cash flows. ASU 2016-18 is effective for annual and interim periods beginning after December 15, 2017. Early adoption is permitted. The amendments in this update should be applied retrospectively to all periods presented. The Company is currently evaluating the impact of adopting ASU 2016-18 noting it will only impact the Company to the extent it has restricted cash in the future.

In June 2016, the FASB issued Accounting Standards Update (“ASU”) 2016-13, “*Financial Instruments - Credit Losses (Topic 326)*.” The new standard amends guidance on reporting credit losses for assets held at amortized cost basis and available-for-sale debt securities. This ASU is effective for financial statements issued for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The Company is currently evaluating this guidance to determine the impact it may have on its financial statements.

In March 2016, the FASB issued ASU 2016-09, “*Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*.” The objective of this update is to simplify several aspects of the accounting for employee share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. This ASU is effective for fiscal years beginning after December 15, 2016, including interim periods within those fiscal years. Early adoption is permitted. If an entity adopts the amendments in an interim period, any adjustments should be reflected as of the beginning of the fiscal year that includes that interim period. An entity that elects early adoption must adopt all of the amendments in the same period. The Company is currently evaluating the timing of adopting the new guidance as well as the impact it may have on its financial statements.

In February 2016, the FASB issued ASU 2016-02, “*Leases (Topic 842)*.” The objective of this update is to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. This ASU is effective for fiscal years beginning after December 15, 2018, including interim periods within those annual periods and is to be applied utilizing a modified retrospective approach. The Company is currently evaluating this guidance to determine the impact it may have on its financial statements.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

In January 2016, the FASB issued ASU 2016-01, “*Financial Instruments - Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities*.” The main objective of this update is to enhance the reporting model for financial instruments to provide users of financial statements with more decision-useful information. The new guidance addresses certain aspects of recognition, measurement, presentation, and disclosure of financial instruments. This ASU is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. The Company is currently evaluating this guidance to determine the impact it may have on its financial statements.

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers: Topic 606* and issued subsequent amendments to the initial guidance in August 2015, March 2016, April 2016 and May 2016 within ASU 2015-14, ASU 2016-08, ASU 2016-10 and ASU 2016-12, respectively (ASU 2014-09, ASU 2015-14, ASU 2016-08, ASU 2016-10 and ASU 2016-12 collectively, Topic 606). Topic 606 supersedes nearly all existing revenue recognition guidance under GAAP. The core principle of Topic 606 is to recognize revenues when promised goods or services are transferred to customers in an amount that reflects the consideration that is expected to be received for those goods or services. Topic 606 defines a five-step process to achieve this core principle and, in doing so, it is possible more judgment and estimates may be required within the revenue recognition process than are required under existing GAAP, including identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation, among others. Topic 606 also provides guidance on the recognition of costs related to obtaining customer contracts. The revenue recognition standard affects all entities—public, private, and not-for-profit—that have contracts with customers with certain exceptions. The new revenue recognition standard eliminates the transaction- and industry-specific revenue recognition guidance under current GAAP and replaces it with a principle-based approach for determining revenue recognition. The guidance was originally effective for annual reporting periods of public entities beginning on or after December 15, 2016, including interim periods within that reporting period. For all other entities, the amendments in the new guidance were originally effective for annual reporting periods beginning after December 15, 2017, and interim periods within annual periods beginning after December 15, 2018. To allow entities additional time to implement systems, gather data and resolve implementation questions, the FASB issued ASU No. 2015-14, *Revenue From Contracts with Customers – Deferral of the Effective Date*, in August 2015, to defer the effective date of ASU No. 2014-09 for one year. Public business entities, certain not-for-profit entities, and certain employee benefit plans will apply the guidance in FASB ASU No. 2014-09 to annual reporting periods beginning after December 15, 2017, including interim reporting periods within that reporting period. Earlier application will be permitted only as of annual reporting periods beginning after December 15, 2016, including interim reporting periods within that reporting period. All other entities will apply the guidance in FASB ASU No. 2014-09 to annual reporting periods beginning after December 15, 2018, and interim reporting periods within annual reporting periods beginning after December 15, 2019. Application will be permitted earlier only as of an annual reporting period beginning after December 15, 2016, including interim reporting periods within that reporting period, or an annual reporting period beginning after December 15, 2016, and interim reporting periods within annual reporting periods beginning one year after the annual reporting period in which an entity first applies the guidance in ASU No. 2014-09. We are continuing to evaluate the impact to our revenues related to our pending adoption of Topic 606 and our preliminary assessments are subject to change. We are also continuing to evaluate the impact adoption of Topic 606 will have on our recognition of costs related to obtaining customer contracts.

In 2015, the FASB issued ASU No. 2015-17, “*Income Taxes*” (Topic 740): *Balance Sheet Classification of Deferred Taxes*, which requires all deferred tax assets and liabilities to be classified as noncurrent in a classified balance sheet. Current US GAAP requires an entity to separate deferred tax assets and liabilities into current and noncurrent amounts in a classified balance sheet. For public entities, ASU 2015-17 is effective for financial statements issued for annual periods beginning after December 15, 2016, and interim periods within those annual periods. For all other entities, ASU 2015-17 is effective for annual reporting periods beginning after December 15, 2017, and interim periods within annual periods beginning after December 15, 2018, and may be applied either prospectively or retrospectively, with early application permitted for financial statements that have not been previously issued. The Company has not yet determined the effect of the adoption of this standard on the Company’s financial position and results of operations.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

In August 2014, the FASB issued ASU No. 2014-15, “*Presentation of Financial Statements—Going Concern* (Subtopic 205-40): Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern”. This standard is intended to define management’s responsibility to evaluate whether there is substantial doubt about an organization’s ability to continue as a going concern and to provide related footnote disclosures. Under U.S. GAAP, financial statements are prepared under the presumption that the reporting organization will continue to operate as a going concern, except in limited circumstances. Financial reporting under this presumption is commonly referred to as the going concern basis of accounting. The going concern basis of accounting is critical to financial reporting because it establishes the fundamental basis for measuring and classifying assets and liabilities. Currently, U.S. GAAP lacks guidance about management’s responsibility to evaluate whether there is substantial doubt about the organization’s ability to continue as a going concern or to provide related footnote disclosures. This ASU provides guidance to an organization’s management, with principles and definitions that are intended to reduce diversity in the timing and content of disclosures that are commonly provided by organizations today in the financial statement footnotes. The amendments are effective for annual periods ending after December 15, 2016, and interim periods within annual periods beginning after December 15, 2016. Early application is permitted for annual or interim reporting periods for which the financial statements have not previously been issued. We are currently evaluating the impact of this accounting standard.

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

In April 2013, the Company entered into a financing arrangement with a third party purchase order financing company (the “Factor”), whereby the Company assigned to the Factor selected sales orders from its customers in exchange for opening a letter of credit (“LC”) with its vendors to manufacture its products. The Company pays a fixed fee of 5% of the cost of products it purchased from the vendor upon opening the LC, and 1% each 30 days thereafter, after the LC is funded by the Factor until such time the Factor receives the payment from the Company’s customers. The factoring agreement provides for full recourse against the Company for factored accounts receivable that are not collected by the Factor for any reason, and the collection of such accounts receivable are fully secured by substantially all the receivable of the Company (See NOTE 11). The factoring advances for the LCs at September 30, 2016 and December 31, 2015 which have been treated as loan payable to third party on the accompanying balance sheets were \$380,671 and \$686,451, respectively. The total accounts receivable factored during the nine months ended September 30, 2016 and 2015 were \$5,902,129 and \$5,762,897, respectively. The factor fees incurred during the nine months ended September 30, 2016 and 2015 were \$307,127 and \$281,461, respectively. Total outstanding accounts receivable factored, net of allowance for sales discounts and rebates of \$109,000 and \$13,000, were \$468,097 and 1,038,555 at September 30, 2016 and December 31, 2015 respectively.

The Factor also made short term loans to the Company for its working capital needs. The loans advanced are unsecured, non-interest bearing and due on demand. The Company received short term loans of \$75,000 and \$0 during the nine months ended September 30, 2016 and 2015, respectively, and made cash payments to the Factor of \$210,409 and \$97,401 to settle the short term loans during the nine months ended September 30, 2016 and 2015, respectively. The short term advances were \$738 and \$136,146 at September 30, 2016 and December 31, 2015, respectively.

**NOTE 4: INVENTORY**

Inventory consists of the following:

	September 30, 2016 (Unaudited)	December 31, 2015
Finished goods	\$ 237,302	\$ 255,181
Total inventory	<u>\$ 237,302</u>	<u>\$ 255,181</u>

**NOTE 5: PROPERTY AND EQUIPMENT**

Property and equipment consists of the following:

	September 30, 2016 (Unaudited)	December 31, 2015
Tooling & Moulds	\$ 100,000	\$ 100,000
Less: accumulated depreciation	(39,286)	(28,572)
Total	<u>\$ 60,714</u>	<u>\$ 71,428</u>

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

Depreciation expense for each of the nine months ended September 30, 2016 and 2015 was \$10,714.

**NOTE 6: NOTES PAYABLE**

Notes payable consists of the following:

	<u>September 30, 2016</u> (Unaudited)	<u>December 31, 2015</u>
Note payable, principal amount \$500,000, secured, bearing interest at the rate of 21% per annum, monthly interest installment of \$8,750, due one year from date of loan ("Note 1")	\$ -	\$ 500,000
Note payable, principal amount \$330,000, unsecured, original issuance debt ("OID") discount of \$80,000, bearing interest at the rate of 21% per annum, daily installment of principal and interest of \$2,142.86 each business day for 154 business days ("Note 2")	145,714	-
<b>Total</b>	<u>145,714</u>	<u>500,000</u>
 Note payable – current portion	 \$ 145,714	 \$ 500,000
Remaining OID discount – current portion	35,325	-
Note payable, net of OID discount – current portion	<u>\$ 110,389</u>	<u>\$ 500,000</u>
 Note payable – long term portion	 <u>\$ -</u>	 <u>\$ -</u>

On April 4, 2014, the Company executed a Promissory Note (the "Note 1") with a third party for \$500,000 at annual interest rate of 21%, calculated from the date on which the date Company received the loan proceeds and continuing until all principal, interest, fees and costs are paid in full. The Note 1 required the Company to pay twelve (12) equal monthly installments of interest only in the amount of \$8,750 beginning 30 days after initial funding of the loan, with all subsequent payments to be due on the same day of each month thereafter. In addition to the payment of interest on a monthly basis, Note 1 required the Company to pay four (4) equal payments of \$1,500 per month as closing costs incurred in this transaction.

The Company had the option to extend the Note 1 for one (1) year on the same terms and conditions as set forth in the Note 1, without the consent of the third party. The Note 1 was secured by substantially all the assets of the Company. The Security Agreement executed, concurrently with Note 1 and a Stipulation for Entry Judgment, was executed by the Company to be filed and enforced in case of default. The Note 1 was guaranteed by the Company and the President as individual guarantor.

On December 29, 2015, the Company and the third party (collectively referred to as the "Parties") entered into a Mutual Rescission Agreement and General Release to terminate and rescind the Note 1, Security Agreement and Stipulation for Entry of Judgment (collectively the "Agreements"). The rescission was effectuated by (a) the Company agreeing to issue 166,667 shares of its common stock to the third party in exchange for the \$500,000 Note, (b) the Parties agreeing to cancel the Agreements, and (c) any and all monies previously paid by the Company to the third party shall belong to the third party as money earned for services rendered to the Company. On February 25, 2016, the Company issued 166,667 shares of its common stock to the third party in exchange for a full settlement of Note 1 of \$500,000. The Company recorded interest expense of \$0 and \$78,750 on Note 1 for the nine months ended September 30, 2016 and 2015, respectively. Accrued interest on Note 1 at September 30, 2016 and December 31, 2015 was \$0 and \$22,250, respectively.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

On May 31, 2016, the Company executed a Promissory Note ("Note 2") with a third party financier with gross proceeds of \$250,000. The payment terms of the Note 2 required the Company to make a daily cash payment of principal and interest, amounting to \$2,142.86 on each business day, for a total of 154 business days. The total daily cash payments of principal and interest at maturity date would amount to \$330,000. The Note 2 was guaranteed by the Company and the President as individual guarantor. In connection with the issuance of Note 2, the Company recorded an OID discount of \$80,000 which is being amortized to interest expense over the term of Note 2 using the effective interest method. As of September 30, 2016, the Company has made total cash payments of \$184,286 on Note 2. The Company has recorded the amortization of OID discount as interest expense of \$44,675 for the nine months ended September 30, 2016. The unamortized portion of OID discount at September 30, 2016 was \$35,325 and the principal balance due on Note 2 at September 30, 2016 was \$110,389.

**NOTE 7 - NOTES PAYABLE – RELATED PARTIES**

Notes payable to Officers and Directors ("Related Parties") consist of:

	<b>September 30, 2016 (Unaudited)</b>
Notes payable to an officer, principal amount of \$50,000 and \$50,000 each, unsecured, bearing interest at the rate of 10% per annum, due on demand or before December 31, 2016	\$ 100,000
Note payable to an officer, principal amount \$170,000, unsecured, bearing interest at the rate of 10% per annum, due on demand or before December 31, 2016	\$ 170,000
<b>Total payable - Related Parties - Current portion</b>	<b>\$ 270,000</b>

On April 26, 2016 and September 1, 2016, the Company executed two promissory notes of \$50,000 each, with an officer and director, unsecured, bearing an interest rate of 10% per annum, due on demand or before December 31, 2016. The Company recorded an interest expense of \$2,562 for the nine months ended September 30, 2016, made cash payments of interest expense of \$1,740 and recorded accrued interest of \$822 as of September 30, 2016.

On May 10, 2016, the Company executed a promissory note of \$170,000 with an officer and director, unsecured, bearing an interest rate of 10% per annum, due on demand or before December 31, 2016. The Company recorded an interest expense of \$6,660 for the nine months ended September 30, 2016, made cash payments of interest expense of \$5,263, and recorded accrued interest of \$1,397 as of September 30, 2016.

**NOTE 8: RELATED PARTY TRANSACTIONS AND BALANCES**

The President/Chief Executive Officer ("President") made cash advances of \$12,500 to the Company for its working capital requirements during 2014. The balance due to the President was \$0 and \$12,500 at September 30, 2016 and December 31, 2015, respectively. Amount due to the President was unsecured, non-interest bearing and due on demand without specific repayment terms.

The Chief Financial Officer of the Company, an independent consultant and a shareholder, and our general counsel and shareholder provided services to the Company amounting to \$194,920 and \$0 for the nine months ended September 30, 2016 and 2015, respectively. Amounts due and payable to the related parties were \$194,920 and \$0 at September 30, 2016 and December 31, 2015, respectively.

**NOTE 9: COMMITMENTS AND CONTINGENCIES**

**Lease Commitments**



TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

During 2015, the Company (a) leased warehouse/office facilities in China on a month-to-month basis, (b) paid rent to its vendors for storing its inventory for future sales to its customers, and (c) paid rent to business suites for maintaining its corporate office address in Nevada.

On September 14, 2015, the Company executed a six month operating lease to rent its office space for a monthly rental of \$3,916. The Company paid a security deposit of \$10,832 upon the execution of the lease agreement and increased the security deposit by an additional \$2,500 on May 11, 2016 for a total security deposit of \$13,332 as of September 30, 2016. The lease commitments at September 30, 2016 and December 31, 2015 amounted to \$0 and \$9,790, respectively.

The Company has recorded rent expense of \$83,658 and \$34,508 for the nine months ended September 30, 2016 and 2015, respectively.

**Litigation Costs and Contingencies**

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

On August 16, 2016, Edwin Minassian, a former independent consultant to the Company, filed a complaint against the Company and Michael Panosian, our CEO, in the Superior Court of California, County of Los Angeles. The complaint alleges breach of oral contracts to pay Mr. Minassian for consulting and finder's fees, and to hire him as an employee. The complaint further alleges, among other things, fraud and misrepresentation relating to the alleged tender of \$20,000 to the Company in exchange for "a 2% stake in Toughbuilt" which was never delivered. The complaint seeks unspecified monetary damages, declaratory relief concerning the plaintiff's contention that he has an unresolved 9% ownership stake in Toughbuilt and other relief according to proof. Both the Company and Mr. Panosian believe the claims to be unfounded and plan to vigorously defend against the claims advanced and to counterclaim against the plaintiff for various actions including interference in the Company's business and unfair business practices.

Management is unable to predict the ultimate outcome relating to the pending litigation. Management believes that an unfavorable outcome could materially affect our business, liquidity, financial position or results of operation.

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

**NOTE 10: STOCKHOLDERS' EQUITY**

The Company's capitalization at September 30, 2016 was 100,000,000 authorized common shares and 5,000,000 authorized preferred shares, both with a par value of \$0.0001 per share.

**Common Stock**

The Company issued 1,667 shares of its common stock valued at \$10,000 to its founders upon formation of the Company on April 9, 2012.

On December 29, 2015, the Company amended its Articles of Incorporation with the Secretary of State of Nevada, and changed the par value of its common stock and preferred stock to be \$0.0001 per share. Subsequent to the change in the par value of common stock, the Company issued an additional 5,375,000 shares of its common stock to the founders. As a result of such issuances, the Company recorded in its financial statements, retroactively the common stock issuances to its founders on the date of formation.

On January 11, 2016, the Company offered to sell and sold thereafter, 1,693,500 of its common stock to its management team, consultants and friends and family for a total consideration of \$10,161. The Company recorded a compensation expense of \$599,499 for the fair value of the common stock issued. The issuances of securities were issued in a transaction exempt from the registration requirements of the Securities Act of 1933, pursuant to Section 4(a)(2) and Rule 506 of Regulation D thereof.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

In January 2016, the Company initiated a Private Placement of its securities, in which it sold 733,000 units at \$0.50 per unit, with each unit consisting of one share of Common Stock (equated to 122,167 shares of common stock after the reverse stock split described in Note 12 Subsequent Events) and one redeemable Class A Warrant, to certain accredited investors. The price per unit was determined by the Company's management and its Board of Directors. The Company received \$366,500 in cash proceeds from the sale of 733,000 units. Each Class A Warrant entitled the unit holder to purchase, at any time until December 31, 2018, one share of Company's Common Stock at an exercise price of \$6.00 per share. Assuming the full exercise of the Class A Warrants for cash, the Company would receive additional proceeds of \$733,000, for an aggregate of \$1,099,500 in proceeds from the sale of the units pursuant to the January 25, 2016 Private Placement and the exercise of the Class A Warrants. The fair value of the warrants granted, as estimated by management, was \$176,250, calculated using the Black-Scholes option pricing model using the assumptions of risk free discount rate of 1.11%, volatility of 250% (based upon comparable company data), 3 year term, and dividend yield of 0%. The issuances of securities described above were issued in a transaction exempt from the registration requirements of the Securities Act of 1933, pursuant to Section 4(a)(2) and Rule 506 of Regulation D thereof.

On February 25, 2016, the Company issued 166,667 shares of its common stock to a third party in exchange for a full settlement of a promissory note of \$500,000.

#### **2016 Equity Incentive Plan**

On July 6, 2016, the Company adopted 2016 Equity Incentive Plan and reserved 2,000,000 shares of common stock, par value \$0.0001 per share, for issuances thereunder. The Company did not grant any shares of common stock under the plan as of September 30, 2016.

#### **Warrants**

A summary of the Company's warrant activity during the nine months ended September 30, 2016 is presented below:

#### **Class A Warrants**

	<b>Number of Warrants</b>	<b>Weighted Average Exercise Price</b>	<b>Weighted Average Remaining Contractual Term</b>	<b>Aggregate Intrinsic Value</b>
Balance Outstanding, December 31, 2015	-	\$ -	-	-
Granted	122,167	6.00	3.00	-
Exercised	-	-	-	-
Forfeited	-	-	-	-
Expired	-	-	-	-
Balance Outstanding, September 30, 2016	<u>122,167</u>	<u>\$ 6.00</u>	<u>2.42</u>	<u>-</u>
Exercisable, September 30, 2016	<u>122,167</u>	<u>\$ 6.00</u>	<u>2.42</u>	<u>-</u>

The Company issued Class A warrants in 2016 in connection with the sale of 122,167 Units pursuant to a private placement in January 2016. No warrants were issued and outstanding as of December 31, 2015.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

**Preferred Stock**

The preferred stock may be issued from time to time in one or more series. The Board of Directors is authorized to fix the number of shares of any series of Preferred Stock and to determine the designation of any such series. The Board of Directors is also authorized to determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued series of preferred stock and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series. There are no shares of preferred stock issued and outstanding as of September 30, 2016 and December 31, 2015, respectively.

As a result of all common stock, preferred stock and warrant issuances as of September 30, 2016, the Company had 7,359,000 shares of common stock issued and outstanding, no preferred stock issued and outstanding, and 122,167 Class A Warrants issued and outstanding for conversion into common stock.

**NOTE 11: CONCENTRATIONS**

**Concentration of Purchase Order Financing**

The Company used a third party financier for the nine months ended September 30, 2016 and 2015, respectively, who provided letters of credit to vendors for a fee against the purchase orders received by the Company for sale of products to its customers. The letters of credit were issued to the vendors to manufacture Company's products pursuant to the purchase orders received by the Company (See NOTE 3).

**Concentration of Customers**

The Company sold its products to two customers that accounted for approximately 36% and 37% of total revenue for the nine months ended September 30, 2016, and the same two customers accounted for 43% and 37% of total revenue for the same comparable period in 2015. The same two customers accounted for 64% and 22% of the accounts receivable balance due to the Company at September 30, 2016, and one of the same two customers accounted for 69% of the accounts receivable balance at December 31, 2015. One other customer accounted for 12% of the accounts receivable balance due to the Company at December 31, 2015.

**Concentration of Suppliers**

The Company purchased products from two vendors for the nine months ended September 30, 2016 that accounted for approximately 42% and 54% of its cost of goods sold. The Company purchased products from the same two vendors for the nine months ended September 30, 2015 that accounted for 46% and 50% of its cost of goods sold.

**Concentration of Credit Risk**

The Company maintains its cash in bank and financial institution deposits that at times may exceed federally insured limits. The Company has not experienced any losses in such accounts through September 30, 2016 and December 31, 2015. The Company's bank balances did not exceed FDIC insured amounts as of September 30, 2016 and December 31, 2015, respectively.

**NOTE 12: SUBSEQUENT EVENTS**

Management has evaluated the subsequent events noting the following items that would impact the accounting for events or transactions in the current period or require additional disclosures.

**Note Payable to an officer and director**

On October 5, 2016, the Company executed a promissory note of \$30,000 with an officer and director, unsecured, bearing an interest rate of 10% per annum, due on demand or before December 31, 2016.

**Reverse Stock Split**

On October 5, 2016, the Company effectuated a reverse stock split of its Common Stock (the "Reverse Split"). As a result of the Reverse Split, each six (6) shares of Common Stock issued and outstanding prior to the Reverse Split were converted into one (1) share of Common Stock, and all options, warrants, and any other similar instruments convertible into, or exchangeable or exercisable for, shares of Common Stock were proportionally adjusted. These financial statements for the interim periods ended September 30, 2016 and 2015 have been retrospectively adjusted to reflect the Reverse Split.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

**Sale of Debenture**

On October 17, 2016, the Company consummated a debt financing whereby an investor purchased \$5,700,000 in a senior secured convertible debenture from us which includes an OID discount of \$700,000. The Company received the cash proceeds of \$4,906,954, net of due diligence fees of \$93,046. The maturity date of the debenture is September 1, 2018. In addition to the original issuance of debt discount, the debenture carries an annual interest rate of 8%, payable quarterly in arrears. Under the terms of the debenture, the Company also issued to the investor 168,750 shares of Class B Convertible Preferred Stock (as defined below). The debenture is secured by all of the Company's assets. As of September 30, 2016, the Company has recorded a deferred debt issuance cost of \$102,500 in connection with this transaction.

The debenture is convertible into the number of shares of our common stock (the "Conversion Shares") equal to (i) at the investor's option, the quotient obtained by dividing \$5,700,000, and any accrued interest thereon, by \$5.00 (the "Standard Conversion Price") or (ii) upon the listing of our common stock on a national securities exchange through an initial public offering (a "Public Offering"), 120% of the price at which our shares of common stock are offered (the "IPO Conversion Price" and, together with the Standard Conversion Price, the "Conversion Price"). During any such time as the debenture is outstanding, if the Company issues or grant any rights to our common stock or any type of security convertible into or exercisable or exchangeable for, our common stock, including any re-pricing of any such shares, at a price below the then-applicable Conversion Price (the "Dilutive Offering"), subject to certain exceptions, the Conversion Price under the debenture will be adjusted downward such that it will equal the sale price or conversion price, as applicable, under the Dilutive Offering. Such price shall not be less than \$1.00 per share. The shares of our common stock issuable upon any conversion of the debenture (other than any such shares issued by the Company to the lender in connection with amortization payments) will be subject to a lock-up arrangement until 180 days following the date of the final prospectus relating to this offering.

**Class B Convertible Preferred Stock**

The Company issued shares of Class B Convertible Preferred Stock, which we refer to as the Class B Shares, and Warrants, which we refer to as the Class B Warrants, in a private offering that was consummated in October of 2016, or the October 2016 Private Placement.

**Mandatory Conversion**

The Class B Shares will be automatically converted into that number of shares of common stock determined by dividing their stated value of \$5.00 by the then applicable Conversion Price (each as defined below, as applicable).

"Conversion Price" shall mean a per share price (in each case subject to anti-dilution adjustment as provided below) equal to, in the case of: (i) a Qualified IPO (as defined below), the lesser of (A) \$5.00 per share (as may be adjusted) and (B) seventy percent (70%) of the offering price per share of common stock in such Qualified IPO; (ii) a Non-Qualified IPO (as defined below), fifty percent (50%) of the lesser of (A) \$5.00 per share (as may be adjusted) and (B) the offering price per share of common stock in such Non-Qualified IPO, or (iii) an OTC Listing (as defined below), fifty percent (50%) of \$5.00 per share (as may be adjusted).

"Qualified IPO" shall mean the closing of a firm commitment underwritten public offering of shares of common stock which results in the common stock being traded on a national securities exchange.

"Non-Qualified IPO" shall mean the closing of an initial public offering of shares of common stock that is not a Qualified IPO which results in the common stock being traded on the OTCQX or OTCQB operated by OTC Markets Group, Inc.

"OTC Listing" shall mean the registration by our company of our shares of common stock under Section 12(g) of the Exchange Act, which results in such common stock being traded on the OTCQX or OTCQB operated by the OTC Markets Group, Inc.

**Optional Conversion**

The holders of the Class B Shares have the right to convert such shares at any time into shares of common stock at the then applicable Conversion Price. For purposes of an optional conversion absent an automatic conversion on the terms described above, the conversion price shall be a per share price equal to \$5.00 per share, as may be adjusted.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

On October 17, 2016, the Company conducted a private placement of its securities in which the Company sold units to certain accredited investors, with each such unit consisting of one share of Class B Convertible Preferred Stock and one warrant, to purchase one share of our common stock (the “October Units”). The Company received cash proceeds of \$400,400, net of commissions of \$491,600 earned by the placement agent on capital raise, \$130,000 in legal fees, \$3,000 escrow fees and \$120,000 in prepaid legal fees for filing the registration statement. The Company sold 229,000 October Units for the gross proceeds of \$1,145,000.

**Placement Agent Warrants**

On October 17, 2016, the Company issued warrants to purchase 61,450 shares of common stock to its placement agent for capital raise in October 2016. Each warrant entitled the holder to purchase one (1) share of common stock at a price of \$6.00 per share, through and including October 17, 2021. The exercise price and number of shares of common stock or other securities issuable on exercise of the warrants are subject to customary adjustment in certain circumstances, including in the event of a stock dividend, recapitalization, reorganization, merger or consolidation of our Company.

**Settlement of Notes Payable due to Officers and Directors**

On October 18, 2016, the Company settled and paid in full, all notes payable due to its officers and directors in the principal amount of \$300,000 and accrued interest of \$10,586.

**Employment Agreements**

On January 3, 2017, the Company entered into an employment agreement with its co-founder, President/Chief Executive Officer (“Officer”) for a five years term. The Officer received a sign-on-bonus of \$50,000 and is entitled to an annual base salary of \$350,000 and increasing by 10% each year commencing on January 1, 2018. The Officer was also granted a stock option to purchase 250,000 shares of the Company’s common stock at an exercise price of \$5.00 per share. The employment agreement also entitles the Officer to receive, among other benefits, the following compensation: (i) eligibility to receive an annual cash bonus at the sole discretion of the Board and as determined by the Compensation Committee commensurate with the policies and practices applicable to other senior executive officers of the Company; (ii) an opportunity to participate in any stock option, performance share, performance unit or other equity based long-term incentive compensation plan commensurate with the terms and conditions applicable to other senior executive officers and (iii) participation in welfare benefit plans, practices, policies and programs provided by the Company (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent available to our other senior executive officers.

On January 3, 2017, the Company entered into an employment agreement with its co-founder and Vice-President of Design and Development (“Vice-President”) for a five year term. Under the terms of this agreement, the Vice-President received a “sign-on-bonus” of \$35,000 and is entitled to an annual base salary of \$250,000 beginning on December 1, 2016 and increasing by 10% each year commencing on January 1, 2018. The employment Agreement also entitles our Vice-President to receive, among other benefits, the following compensation: (i) eligibility to receive an annual cash bonus at the sole discretion of the Board and as determined by the Compensation Committee commensurate with the policies and practices applicable to other senior executive officers of the Company; (ii) an opportunity to participate in any stock option, performance share, performance unit or other equity based long-term incentive compensation plan commensurate with the terms and conditions applicable to other senior executive officers and (iii) participation in welfare benefit plans, practices, policies and programs provided by the Company (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent available to our other senior executive officers.

On January 3, 2017, the Company entered into an employment agreement with its Chief Operating Officer and Secretary for a three years term. Under the terms of this agreement, the Officer is entitled to an annual base salary of \$180,000 beginning on January 1, 2017 and increasing by 10% each year commencing on January 1, 2018. The employment Agreement also entitles our Officer to receive, among other benefits, the following compensation: (i) eligibility to receive an annual cash bonus at the sole discretion of the Board and as determined by the Compensation Committee commensurate with the policies and practices applicable to other senior executive officers of the Company; (ii) an opportunity to participate in any stock option, performance share, performance unit or other equity based long-term incentive compensation plan commensurate with the terms and conditions applicable to other senior executive officers and (iii) participation in welfare benefit plans, practices, policies and programs provided by the Company (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent available to our other senior executive officers.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Condensed Notes to Financial Statements  
September 30, 2016 and 2015  
(Unaudited)

On January 3, 2017, the Company entered into an employment agreement with its Chief Financial Officer for a three years term. Under the terms of this agreement, the Officer is entitled to an annual base salary of \$250,000 beginning on January 1, 2017 and increasing by 10% each year commencing on January 1, 2018. The employment Agreement also entitles our Officer to receive, among other benefits, the following compensation: (i) eligibility to receive an annual cash bonus at the sole discretion of the Board and as determined by the Compensation Committee commensurate with the policies and practices applicable to other senior executive officers of the Company; (ii) an opportunity to participate in any stock option, performance share, performance unit or other equity based long-term incentive compensation plan commensurate with the terms and conditions applicable to other senior executive officers and (iii) participation in welfare benefit plans, practices, policies and programs provided by the Company (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent available to our other senior executive officers.

**Grant of Stock Options**

On January 3, 2017, the Board of Directors of the Company approved and granted to the President/Chief Executive Officer (“Officer”) of the Company an option to purchase Two Hundred Fifty Thousand (250,000) shares of the Company’s Common Stock (“Option”) under the Company’s 2016 Equity Incentive Plan (the “Plan”) The Option will have an exercise price that is no less than \$5.00 per share and will vest over four (4) years, with 25% of the total number of shares subject to the Option vesting on the one (1) year anniversary of the date of grant and, the remainder vesting in equal installments on the last day of each of the thirty-six (36) full calendar months thereafter. Vesting will depend on the Officer’s continued service as an employee with the Company and will be subject to the terms and conditions of the Plan and the written Stock Option Agreement governing the Option.

INDEX TO FINANCIAL STATEMENTS

TOUGHBUILT INDUSTRIES, INC.

INDEX TO CONDENSED FINANCIAL STATEMENTS

FOR THE YEARS ENDED DECEMBER 31, 2015 AND 2014

	<u>Page</u>
<a href="#"><u>Report of Independent Registered Public Accounting Firm</u></a>	F-21
<a href="#"><u>Balance Sheets as of December 31, 2015 and 2014</u></a>	F-22
<a href="#"><u>Statements of Operations for the Years Ended December 31, 2015 and 2014</u></a>	F-23
<a href="#"><u>Statements of Changes in Stockholders' Equity (Deficit) for the Years Ended December 31, 2015 and 2014</u></a>	F-24
<a href="#"><u>Statements of Cash Flows for the Years Ended December 31, 2015 and 2014</u></a>	F-25
<a href="#"><u>Notes to Financial Statements</u></a>	F- 26 - F-34

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of  
**Toughbuilt Industries, Inc. (Formerly known as Phalanx, Inc.)**

We have audited the accompanying balance sheets of Toughbuilt Industries, Inc. (Formerly known as Phalanx, Inc.) (the “Company”) as of December 31, 2015 and December 31, 2014, and the related statements of operations, changes in stockholders’ equity (deficit) and cash flows for the years then ended. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Toughbuilt Industries, Inc. (Formerly known as Phalanx, Inc.) as of December 31, 2015 and December 31, 2014, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

/s/ Marcum llp  
Marcum llp  
Los Angeles, CA

July 22, 2016, except for the effect of the reverse stock split as discussed in Note 12 to the financial statements, as to which the date is January 10, 2017.



**TOUGHBUILT INDUSTRIES, INC.**

**(Formerly known as Phalanx, Inc.)**

**BALANCE SHEETS**

	<u>December 31, 2015</u>	<u>December 31, 2014</u>
<b>ASSETS</b>		
Current Assets		
Cash and cash equivalents	\$ -	\$ 474
Accounts receivable	145,963	62,030
Factor Receivables, net	1,038,555	1,055,215
Inventory	255,181	399,587
Total Current Assets	<u>1,439,699</u>	<u>1,517,306</u>
Property and equipment, net	71,428	85,714
Security deposit	<u>12,832</u>	<u>-</u>
Total Assets	<u>\$ 1,523,959</u>	<u>\$ 1,603,020</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current Liabilities		
Bank overdraft	\$ 4,319	\$ -
Accounts payable	315,389	160,576
Accrued liabilities	258,783	240,691
Accrued payroll taxes	43,338	24,906
Loans payable - third party	686,451	1,032,226
Short term advances	136,146	97,401
Advance from officer	12,500	12,500
Note payable	500,000	500,000
Total Current Liabilities	<u>1,956,926</u>	<u>2,068,300</u>
Total Liabilities	<u>1,956,926</u>	<u>2,068,300</u>
Commitments and contingencies (See Note 8)		
Stockholders' Equity (Deficit)		
Preferred Stock, \$0.0001 par value, 5,000,000 shares authorized, none issued and outstanding	-	-
Common stock, \$0.0001 par value, 100,000,000 shares authorized, 5,376,667 shares issued and outstanding at December 31, 2015 and 2014, respectively	538	538
Additional paid in capital	9,462	9,462
Accumulated deficit	(442,967)	(475,280)
Total Stockholders' Equity (Deficit)	<u>(432,967)</u>	<u>(465,280)</u>
Total Liabilities and Stockholders' Equity (Deficit)	<u>\$ 1,523,959</u>	<u>\$ 1,603,020</u>

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

**TOUGHBUILT INDUSTRIES, INC.****(Formerly known as Phalanx, Inc.)****STATEMENTS OF OPERATIONS**

	<b>For The Year Ended December 31,</b>	
	<b>2015</b>	<b>2014</b>
Revenues, net of allowances	\$ 8,930,178	\$ 5,264,224
Cost of goods sold	<u>6,565,088</u>	<u>3,824,548</u>
Gross Profit	2,365,090	1,439,676
Operating Expenses		
Depreciation	14,286	14,286
Selling, general and administrative	2,178,454	1,703,673
Research and development	35,037	4,742
Total Operating Expenses	<u>2,227,777</u>	<u>1,722,701</u>
Operating Income (Loss) from Operations	<u>137,313</u>	<u>(283,025)</u>
Other Income (Expenses)		
Interest expense	(105,000)	(76,000)
Total Other Income (Expenses)	<u>(105,000)</u>	<u>(76,000)</u>
Income (Loss) Before Income Tax	32,313	(359,025)
Provision for income tax	-	-
Net Income (Loss)	<u>\$ 32,313</u>	<u>\$ (359,025)</u>
Basic and Diluted Net Income (Loss) Per Share	<u>\$ 0.01</u>	<u>\$ (0.07)</u>
Weighted Average Number of Shares Outstanding - Basic and Diluted	<u>5,376,667</u>	<u>5,376,667</u>

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

**TOUGHBUILT INDUSTRIES, INC.**

**(Formerly known as Phalanx, Inc.)**

**STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)**

**FOR THE YEARS ENDED DECEMBER 31, 2015 AND 2014**

	<u>Common Stock</u> <u>Number</u>	<u>Amount</u>	<u>Additional</u> <u>Paid-in Capital</u>	<u>Accumulated</u> <u>Deficit</u>	<u>Total</u>
Balance - January 1, 2014	5,376,667	\$ 538	\$ 9,462	\$ (116,255)	\$ (106,255)
Net loss	-	-	-	(359,025)	(359,025)
Balance - December 31, 2014	5,376,667	538	9,462	(475,280)	(465,280)
Net income	-	-	-	32,313	32,313
Balance - December 31, 2015	<u>5,376,667</u>	<u>\$ 538</u>	<u>\$ 9,462</u>	<u>\$ (442,967)</u>	<u>\$ (432,967)</u>

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

**TOUGHBUILT INDUSTRIES, INC.**

**(Formerly known as Phalanx, Inc.)**

**STATEMENTS OF CASH FLOWS**

	<b>For The Year Ended December 31,</b>	
	<b>2015</b>	<b>2014</b>
Cash Flows from Operating Activities:		
Net income (loss)	\$ 32,313	\$ (359,025)
Adjustment to reconcile net income or loss to net cash provided by (used in) operating activities:		
Depreciation	14,286	14,286
Changes in operating assets and liabilities:		
Increase in accounts receivable	(83,933)	(8,746)
(Increase) decrease in factor receivables	16,661	(955,569)
(Increase) decrease in inventory	144,406	(171,502)
Increase in security deposits	(12,832)	-
Increase in accounts payable	154,813	75,560
Increase in accrued payroll taxes	18,432	24,906
Increase in accrued liabilities	18,091	111,968
Net cash provided by (used in) operating activities	<u>302,237</u>	<u>(1,268,122)</u>
Cash Flows From Investing Activities:		
Cash paid for purchase of property and equipment	-	(100,000)
Net cash used in investing activities	<u>-</u>	<u>(100,000)</u>
Cash Flows from Financing Activities:		
Bank overdraft	4,319	-
Proceeds from note payable	-	500,000
Advance from officer	-	8,500
Proceeds from short term advances	200,000	243,874
Payments on short term advances	(161,255)	(146,473)
Cash proceeds (payments made) for loans payable	(345,775)	762,455
Net cash (used in) provided by financing activities	<u>(302,711)</u>	<u>1,368,356</u>
Net (decrease) increase in cash and cash equivalents	(474)	234
Cash and cash equivalents, beginning of the period	<u>474</u>	<u>240</u>
Cash and cash equivalents, end of the period	<u>\$ -</u>	<u>\$ 474</u>
Supplemental disclosures of cash flow information:		
Cash paid for income taxes	<u>\$ -</u>	<u>\$ -</u>
Cash paid for interest	<u>\$ 82,750</u>	<u>\$ 76,000</u>

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

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Notes to Financial Statements  
December 31, 2015 and 2014

**NOTE 1: NATURE OF OPERATIONS AND LIQUIDITY**

**Nature of Operations**

Phalanx, Inc. was incorporated under the laws of the State of Nevada on April 9, 2012. On December 29, 2015, Phalanx, Inc. changed its name to ToughBuilt Industries, Inc. (the “Company”, “ToughBuilt”). The Company was formed to design and distribute to the home improvement community and building industry, innovative tools and accessories of superior quality derived in part from enlightened creativity for the end users while enhancing performance, and building high brand loyalty. The Company has exclusive licenses to develop, manufacture, market, and distribute various home improvement and construction product lines for both Do-it-Yourself (“DIY”) and professional markets under TOUGHBUILT® brand name, within the global tool market industry.

TOUGHBUILT® distributes an array of high quality and rugged tool belts, tool bags and other personal tool organizer products. The Company distributes a complete line of knee pads for various construction applications. The Company’s line of job-site tools and material support products consist of a full line of miter-saws and table saw-stands, saw horses/job site tables and roller stands. All of the Company’s products are designed and engineered in the United States and manufactured in China.

**Liquidity**

The Company has faced significant liquidity shortages as shown in the accompanying financial statements. As of December 31, 2015 and 2014, the Company's total liabilities exceeded its total assets by \$432,967 and \$465,280, respectively. The Company has recorded a net income of \$32,313 for the year ended December 31, 2015 and a net loss of \$359,025 for the year ended December 31, 2014. The Company has recorded accumulated deficits of \$442,967 and \$475,280 as of December 31, 2015 and 2014, respectively. Net cash provided by the operating activities for the year ended December 31, 2015 were \$302,237 compared to the net cash used by operating activities of \$1,268,122 for the same comparable period of 2014. Although the Company has had difficulty in raising capital or obtaining working lines of credit from financial institutions and trade credit from vendors, management has been able to further expand the Company’s operations geographically to continue its revenue and profit growth. On February 25, 2016, management negotiated to convert a promissory note payable of \$500,000, in exchange for issuance of 166,667 shares of its common stock to the note holder. On May 24, 2016, the Company entered into a contractual agreement with an investment banking firm, offering to sell a minimum of 600,000 Units for \$3,000,000, each Unit consisting of (i) one share of the Company’s newly designated Class B Convertible Preferred Stock, par value \$0.0001 per share, and (ii) a warrant to purchase one share of Company’s common stock, par value \$0.0001 per share, at an exercise price of \$6.00 per share, subject to adjustment, exercisable over a period of five years from the date of issuance. The Company anticipates completion of this capital raise by August 15, 2016.

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company regularly evaluates estimates and assumptions related to the valuation of accounts and factored receivables, valuation of long-lived assets, accrued liabilities, note payable and deferred income tax asset valuation allowances. The Company bases its estimates and assumptions on current facts, historical experience and various other factors that it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities and the accrual of costs and expenses that are not readily apparent from other sources. The actual results experienced by the Company may differ materially and adversely from the Company’s estimates. To the extent there are material differences between the estimates and the actual results, future results of operations will be affected.

**Cash and Cash Equivalents**

The Company considers all highly liquid instruments with maturity of three months or less at the time of issuance to be cash equivalents. The Company did not have any cash equivalents as of December 31, 2015 and 2014, respectively.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Notes to Financial Statements  
December 31, 2015 and 2014

**Accounts Receivable**

Accounts receivable represent income earned from the sale of tools and accessories for which the Company has not yet received payment. Accounts receivable are recorded at the invoiced amount and adjusted for amounts management expects to collect from balances outstanding at period-end. The Company estimates the allowance for doubtful accounts based on an analysis of specific accounts and an assessment of the customer's ability to pay, among other factors.

The Company accounts for the transfer of accounts receivable to a third party under a factoring type arrangement in accordance with Accounting Standards Codification ("ASC") 860 "*Transfers and Servicing*". ASC 860 requires that several conditions be met in order to present the transfer of accounts receivable as a sale. Even though we have isolated the transferred (sold) assets and we have the legal right to transfer our assets (accounts receivable), we do not meet the third test of effective control since our accounts receivable sales agreement with the third party factor requires us to be liable in the event of default by one of our customers. Because we do not meet all three conditions, we do not qualify for sale treatment and our debt incurred with respect to the sale of our accounts receivable is presented as a secured loan liability "Loan payable - third party" on our balance sheet.

**Inventory**

Inventory, consists of finished goods, is valued at the lower of (i) the actual cost of its purchase or manufacture, or (ii) it's current market value. Inventory cost is determined on the first-in, first-out method ("FIFO"). The Company regularly reviews its inventory quantities on hand, and when appropriate, records a provision for excess and slow-moving inventory.

**Property and Equipment**

Property and equipment consists of tools and mold equipment, which is recorded at cost and depreciated on a straight-line basis over its estimated useful life of seven (7) years. Expenditures for renewals and betterments are capitalized. Expenditures for minor items, repairs and maintenance are charged to operations as incurred. Gain or loss upon sale or retirement due to obsolescence is reflected in the operating results in the period the event takes place.

**Long-lived Assets**

In accordance with ASC 360, "*Property, Plant, and Equipment*", the Company tests long-lived assets or asset groups for recoverability when events or changes in circumstances indicate that their carrying amount may not be recoverable. Circumstances which could trigger a review include, but are not limited to: significant decreases in the market price of the asset; significant adverse changes in the business climate or legal factors; accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of the asset; current period cash flow or operating losses combined with a history of losses or a forecast of continuing losses associated with the use of the asset; and current expectation that the asset will more likely than not be sold or disposed of significantly before the end of its estimated useful life. Recoverability is assessed based on the carrying amount of the asset compared to the estimated future undiscounted cash flows expected to result from the use and the eventual disposal of the asset, as well as specific appraisal in certain instances. An impairment loss equal to the excess of the carrying value over the assets fair market value is recognized when the carrying amount exceeds the undiscounted cash flows. The impairment loss is recorded as an expense and offsetting impairment allowance, while for other long-lived assets the impairment loss is recorded as an expense and a direct write-down of the asset.

**Fair value of Financial Instruments and Fair Value Measurements**

ASC 820, "*Fair Value Measurements and Disclosures*", requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. ASC 820 establishes a fair value hierarchy based on the level of independent, objective evidence surrounding the inputs used to measure fair value. A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. ASC 820 prioritizes the inputs into three levels that may be used to measure fair value:

*Level 1*

Level 1 applies to assets or liabilities for which there are quoted prices in active markets for identical assets or liabilities.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Notes to Financial Statements  
December 31, 2015 and 2014

*Level 2*

Level 2 applies to assets or liabilities for which there are inputs other than quoted prices that are observable for the asset or liability such as quoted prices for similar assets or liabilities in active markets; quoted prices for identical assets or liabilities in markets with insufficient volume or infrequent transactions (less active markets); or model-derived valuations in which significant inputs are observable or can be derived principally from, or corroborated by, observable market data. If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

*Level 3*

Level 3 applies to assets or liabilities for which there are unobservable inputs to the valuation methodology that are significant to the measurement of the fair value of the assets or liabilities.

The Company's financial instruments consist principally of cash and cash equivalents, accounts receivable, accounts payable, loans payable, note payable and amounts due to related party. Pursuant to ASC 820, "*Fair Value Measurements and Disclosures*" and ASC 825, "*Financial Instruments*", the fair value of our cash equivalents is determined based on "Level 1" inputs, which consist of quoted prices in active markets for identical assets. The Company believes that the recorded values of all of the other financial instruments approximate their current fair values because of their nature and respective maturity dates or durations.

**Revenue Recognition**

The Company recognizes revenues when persuasive evidence of an arrangement exists; delivery has occurred; price is fixed or determinable; and collectability of the related receivable is reasonably assured.

**Income Taxes**

The Company accounts for income taxes using the asset and liability method in accordance with ASC 740, "*Income Taxes*". The asset and liability method provides that deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax basis of assets and liabilities, and for operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using the currently enacted tax rates and laws. The Company records a valuation allowance to reduce deferred tax assets to the amount that is believed more likely than not to be realized.

The Company follows the provisions of ASC 740, "*Income Taxes*". When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. In accordance with the guidance of ASC 740, the benefit of a tax position is recognized in the financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above should be reflected as a liability for unrecognized tax benefits in the accompanying balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination.

The Company elected to include interest and penalties related to its tax contingencies in income tax expense. There were no accruals for interest and penalties related to uncertain tax positions for the years ended December 31, 2015 and 2014, respectively.

**Net Income (Loss) Per Share**

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

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Notes to Financial Statements  
December 31, 2015 and 2014

**Recent Accounting Pronouncements**

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2014-09, “*Revenue from Contracts with Customers*”. The new standard outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance. The new standard creates a five-step process to recognize revenue that requires entities to exercise judgment when considering contract terms and relevant facts and circumstances. The new standard also requires expanded disclosures surrounding revenue recognition. For public entities, the new standard will be effective for fiscal years and interim periods within those fiscal years, beginning after December 15, 2016. For nonpublic entities, the new standard will be effective for annual reporting periods beginning after December 15, 2017, and interim periods within annual periods beginning after December 15, 2018. The Company’s management is currently assessing the impact of the adoption of ASU No. 2014-09 and has not determined the effect of the standard on the Company’s financial statements.

In 2015, the FASB issued ASU No. 2015-17, “*Income Taxes*” (Topic 740): *Balance Sheet Classification of Deferred Taxes*, which requires all deferred tax assets and liabilities to be classified as noncurrent in a classified balance sheet. Current US GAAP requires an entity to separate deferred tax assets and liabilities into current and noncurrent amounts in a classified balance sheet. For public entities, ASU 2015-17 is effective for financial statements issued for annual periods beginning after December 15, 2016, and interim periods within those annual periods. For all other entities, ASU 2015-17 is effective for annual reporting periods beginning after December 15, 2017, and interim periods within annual periods beginning after December 15, 2018, and may be applied either prospectively or retrospectively, with early application permitted for financial statements that have not been previously issued. The Company has not yet determined the effect of the adoption of this standard on the Company’s financial position and results of operations.

The FASB issued ASU 2016-02, “*Leases*” (Topic 842). ASU 2016-01 requires that a lessee recognize the assets and liabilities that arise from operating leases. A lessee should recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. In transition, lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. Nonpublic business entities should apply the amendments for fiscal years beginning after December 15, 2019 (i.e. January 1, 2020, for a calendar year entity), and interim periods within fiscal years beginning after December 15, 2020. Early application is permitted for all nonpublic business entities upon issuance. The Company has not yet determined the effect of the adoption of this standard on the Company’s financial position and results of operations.

The Company has implemented all accounting pronouncements that are in effect that might have a material impact on its financial position or results of operations.

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

In April 2013, the Company entered into a financing arrangement with a third party purchase order financing company (the “Factor”), whereby the Company assigned to the Factor selected sales orders from its customers in exchange for opening a letter of credit (“LC”) with its vendors to manufacture its products. The Company pays a fixed fee of 5% of the cost of products it purchased from the vendor upon opening the LC, and 1% each 30 days thereafter, after the LC is funded by the Factor until such time the Factor receives the payment from the Company’s customers. The factoring agreement provides for full recourse against the Company for factored accounts receivable that are not collected by the Factor for any reason, and the collection of such accounts receivable are fully secured by substantially all the receivable of the Company (See NOTE 11). The factoring advances for the LCs at December 31, 2015 and 2014 which have been treated as loans payable to third party on the accompanying balance sheets were \$686,451 and \$1,032,226, respectively. The total accounts receivable factored during the year ended December 31, 2015 and 2014 were \$7,890,792 and \$4,952,073, respectively. The factor fees incurred during the years ended December 31, 2015 and 2014 were \$387,976 and \$304,086, respectively. Total outstanding accounts receivable factored, net of allowance for sales discounts of \$13,000, at December 31, 2015 and 2014 which are included in the accompanying balance sheets were \$1,038,555 and \$1,055,215, respectively.



TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Notes to Financial Statements  
December 31, 2015 and 2014

The Factor also made short term loans to the Company for its working capital needs. The loans advanced are unsecured, non-interest bearing and due on demand. The Company received short term loans of \$200,000 and \$243,874 for the years ended December 31, 2015 and 2014, respectively, and made cash payments to the Factor of \$161,255 and \$146,473 to settle the short term loans for the years ended December 31, 2015 and 2014, respectively. The short term advances were \$136,146 and \$97,401 at December 31, 2015 and 2014, respectively.

**NOTE 4: INVENTORY**

Inventory consists of the following:

	December 31, 2015	December 31, 2014
Finished goods	\$ 255,181	\$ 399,587
Total inventory	<u>\$ 255,181</u>	<u>\$ 399,587</u>

**NOTE 5: PROPERTY AND EQUIPMENT**

Property and equipment consists of the following:

	December 31, 2015	December 31, 2014
Tooling & Molds	\$ 100,000	\$ 100,000
Less: accumulated depreciation	(28,572)	(14,286)
Total	<u>\$ 71,428</u>	<u>\$ 85,714</u>

Depreciation expense for each of the years ended December 31, 2015 and 2014 was \$14,286.

**NOTE 6: NOTE PAYABLE**

Note payable consists of the following:

	December 31, 2015	December 31, 2014
Note payable, principal amount \$500,000, secured, bearing interest at the rate of 21% per annum, monthly interest installment of \$8,750, due one year from April 4, 2014	\$ 500,000	\$ 500,000
Total	<u>500,000</u>	<u>500,000</u>
Current portion - note payable	<u>\$ 500,000</u>	<u>\$ 500,000</u>
Long term portion - note payable	<u>\$ -</u>	<u>\$ -</u>

On April 4, 2014, the Company executed a Promissory Note (the "Note") with a third party for \$500,000 at annual interest rate of 21%, calculated from the date on which the date Company received the loan proceeds and continuing until all principal, interest, fees and costs are paid in full. The Note required the Company to pay twelve (12) equal monthly installments of interest only in the amount of \$8,750 beginning 30 days after initial funding of the loan, with all subsequent payments to be due on the same day of each month thereafter. In addition to the payment of interest on a monthly basis, the Note required the Company to pay four (4) equal payments of \$1,500 per month as closing costs incurred in this transaction. Such costs were recorded in the statements of operations for the year ended December 31, 2014.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Notes to Financial Statements  
December 31, 2015 and 2014

The Company has the option to extend the Note for one (1) year on the same terms and conditions as set forth in the Note, without the consent of the third party. The Note is secured by substantially all the assets of the Company. The Security Agreement executed, concurrently with the Note and a Stipulation for Entry Judgment, is executed by the Company to be filed and enforced in case of default. The Note is guaranteed by the Company and the President as individual guarantor.

On December 29, 2015, the Company and the third party (collectively referred to as the “Parties”) entered into a Mutual Rescission Agreement and General Release to terminate and rescind the Note, Security Agreement and Stipulation for Entry of Judgment (collectively the “Agreements”). The rescission is effectuated by (a) the Company agreeing to issue 166,667 shares of its common stock to the third party in exchange for the \$500,000 Note (See NOTE 12), (b) the Parties agree to cancel the Agreements, and (c) any and all monies previously paid by the Company to the third party shall belong to the third party as money earned for services rendered to the Company.

For the years ended December 31, 2015 and 2014, the Company recorded interest expense of \$105,000 and \$76,000, respectively. Accrued interest on the Note at December 31, 2015 and 2014 was \$22,250 and \$0, respectively.

#### **NOTE 7: RELATED PARTY TRANSACTIONS AND BALANCES**

The President/Chief Executive Officer (“Officer”) made cash advances of \$12,500 to the Company for its working capital requirements during 2014. Advances made by the Officer were \$12,500 at December 31, 2015 and 2014, respectively. Amounts due to the Officer are unsecured, non-interest bearing and due on demand without specific repayment terms.

#### **NOTE 8: COMMITMENTS AND CONTINGENCIES**

##### **Lease Commitments**

During 2014 and 2015, the Company (a) leased warehouse/office facilities in China on a month-to-month basis, (b) paid rent to its vendors for storing its inventory for future sales to its customers, and (c) paid rent to business suites for maintaining its corporate office address in Nevada.

On September 14, 2015, the Company executed a six months operating lease to rent its office space for a monthly rental of \$3,916. The Company paid a security deposit of \$10,832 upon the execution of the lease agreement. The lease commitments at December 31, 2015 amounted to \$9,790.

The Company recorded rent expense of \$50,044 and \$41,768 for the years ended December 31, 2015 and 2014, respectively.

##### **Litigation Costs and Contingencies**

In the normal course of business, the Company incurs costs to hire and retain external legal counsel to advise it on regulatory, litigation and other matters. The Company expenses these costs as the related services are received. If a loss is considered probable and the amount can be reasonable estimated, the Company recognizes an expense for the estimated loss. If the Company has the potential to recover a portion of the estimated loss from a third party, the Company makes a separate assessment of recoverability and reduces the estimated loss if recovery is also deemed probable.

The Company is not a party to any legal proceedings.

#### **NOTE 9: STOCKHOLDERS EQUITY**

The Company’s capitalization at December 31, 2015 was 100,000,000 authorized common shares and 5,000,000 authorized preferred shares, both with a par value of \$0.0001 per share.

##### **Common Stock**

The Company issued 1,667 shares of its common stock valued at \$10,000 to its founders upon formation of the Company on April 9, 2012.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Notes to Financial Statements  
December 31, 2015 and 2014

On December 29, 2015, the Company amended its Articles of Incorporation with the Secretary of State of Nevada, and changed the par value of its common stock and preferred stock to be \$0.0001 per share. Subsequent to the change in the par value of common stock, the Company issued an additional 5,375,000 shares of its common stock to the founders. As a result of such issuances, the Company recorded in its financial statements, retroactively, the common stock issuances to its founders on the date of formation.

As of December 31, 2015 and 2014, the Company reported 5,376,667 shares of common stock issued and outstanding.

**Preferred Stock**

The preferred stock may be issued from time to time in one or more series. The Board of Directors is authorized to fix the number of shares of any series of Preferred Stock and to determine the designation of any such series. The Board of Directors is also authorized to determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued series of preferred stock and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series. There are no shares of preferred stock issued and outstanding as of December 31, 2015 and 2014, respectively.

**NOTE 10: INCOME TAXES**

Income tax expense for the years ended December 31, 2015 and 2014 is summarized as follows.

	December 31, 2015	December 31, 2014
Deferred:		
Federal	\$ 11,760	\$ (117,561)
State	2,018	(20,174)
Change in valuation allowance	(13,778)	137,735
Income tax expense (benefit)	<u>\$ —</u>	<u>\$ —</u>

The following is a reconciliation of the provision for income taxes at the U.S. federal income tax rate of 34%, and the state income tax rate net of federal tax benefit of 5.83%, to the income taxes reflected in the Statements of Operations:

	December 31, 2015	December 31, 2014
Book Income (loss)	34.00%	34.00%
State taxes	5.83%	5.83%
Meals & entertainment	2.80%	-0.03%
Valuation allowance	-42.63%	-39.80%
Tax expense at actual rate	<u>—</u>	<u>—</u>

The tax effects of temporary differences that gave rise to significant portions of deferred tax assets and liabilities at December 31, 2015 and 2014 are as follows:

	December 31, 2015	December 31, 2014
Deferred tax assets:		
Net operating loss carry forward	\$ 175,446	\$ 138,224
Total gross deferred tax assets	175,446	138,224
Less - valuation allowance	(175,446)	(138,224)
Net deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Notes to Financial Statements  
December 31, 2015 and 2014

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

At December 31, 2015, the Company had accumulated deficit of approximately \$442,967 for U.S. federal and California income tax purposes available to offset future taxable income expiring on various dates through 2033. The Company has recorded a 100% valuation allowance on the deferred tax assets due to the uncertainty of its realization. The net change in the valuation allowance during the years ended December 31, 2015 and 2014 was a reduction of \$13,778 and increase of \$137,735, respectively.

In the normal course of business, the Company's income tax returns are subject to examination by various taxing authorities. Such examinations may result in future tax and interest assessment by these taxing authorities. Accordingly, the Company believes that it is more likely than not that it will realize the benefits of tax positions it has taken in its tax returns or for the amount of any tax benefit that exceeds the cumulative probability threshold in accordance with FASB ASC 740. Differences between the estimated and actual amounts determined upon ultimate resolution, individually or in the aggregate, are not expected to have a material adverse effect on the company's financial position. The Company believes its tax positions are all highly certain of being upheld upon examination. As such, the Company has not recorded a liability for unrecognized tax benefits. As of December 31, 2015, tax years 2012, 2013, 2014 and 2015 remain open for examination by the IRS and California. The Company has received no notice of audit from the Internal Revenue Service or California for any of the open tax years.

**NOTE 11: CONCENTRATIONS**

Concentration of Purchase Order Financing

The Company used a third party financier for the years ended December 2015 and 2014, respectively, who provided letters of credit to vendors for a fee against the purchase orders received by the Company for sale of products to its customers. The letters of credit were issued to the vendors to manufacture Company's products pursuant to the purchase orders received by the Company (See NOTE 3).

Concentration of Customers

The Company sold its products to two customers that accounted for approximately 44% and 34% of total revenue for the year ended December 31, 2015, and the same two customers accounted for 30% and 51% of total revenue for the year ended December 31, 2014. One of the two customers accounted for 69% of the accounts receivable balance due to the Company at December 31, 2015, and both the customers accounted for 73% and 20% of the accounts receivable balance due to the Company at December 31, 2014. One other customer accounted for 12% of the accounts receivable balance due to the Company at December 31, 2015.

Concentration of Suppliers

The Company purchased products from two vendors in 2015 that accounted for approximately 54% and 18% of its cost of goods sold. In addition, the Company purchased products from four vendors in 2014 that accounted for 34%, 29% and 10% of its cost of goods sold.

Concentration of Credit Risk

The Company maintains its cash in bank and financial institution deposits that at times may exceed federally insured limits. The Company has not experienced any losses in such accounts through December 31, 2015. The Company's bank balances did not exceed FDIC insured amounts as of December 31, 2015.

**NOTE 12: REVERSE STOCK SPLIT**

On October 5, 2016, the Company effectuated a reverse stock split of its Common Stock (the "Reverse Split"). The Reverse Split was approved by a majority of our stockholders. As a result of the Reverse Split, each six (6) shares of Common Stock issued and outstanding prior to the Reverse Split were converted into one (1) share of Common Stock, and all options, warrants, and any other similar instruments convertible into, or exchangeable or exercisable for, shares of Common Stock were proportionally adjusted. No fraction shares of our Common Stock were issued in connection with the Reverse Split. Any fractional shares were rounded up. There was no corresponding reduction in our authorized Common Stock. These financial statements have been restated to retrospectively reflect the Reverse Split as of January 1, 2014 and for the years ended December 31, 2015 and 2014.

TOUGHBUILT INDUSTRIES, INC.  
(Formerly known as Phalanx, Inc.)  
Notes to Financial Statements  
December 31, 2015 and 2014

**NOTE 13: SUBSEQUENT EVENTS**

Management has evaluated the subsequent events through July 22, 2016, except as disclosed in Note 12 as to which the date is January 9, 2017, the date the financial statements were available to be issued, noting the following items that would impact the accounting for events or transactions in the current period or require additional disclosures.

On January 11, 2016, the Company offered to sell and sold thereafter, 1,693,500 shares of its common stock to its management team, consultants and friends and family for a total consideration of \$10,161. The Company recorded an expense of approximately \$609,660 as compensation expense for the fair value of the common stock issued. The issuances of securities were issued in a transaction exempt from the registration requirements of the Securities Act of 1933, pursuant to Section 4(a)(2) and Rule 506 of Regulation D thereof.

In January 2016, the Company initiated a Private Placement of its securities, in which it sold 122,167 units at \$3.00 per unit, with each unit consisting of one share of Common Stock and one redeemable Class A Warrant, to certain accredited investors who were personally known to the Company. The Company received \$366,500 in cash proceeds from the sale of 122,167 units. Each Class A Warrant entitled the unit holder to purchase, at any time until December 31, 2018, one share of Company's Common Stock at an exercise price of \$6.00 per share. Assuming the full exercise of the Class A Warrants for cash, the Company would receive additional proceeds of \$733,000, for an aggregate of \$1,099,500 in proceeds from the sale of the units of the January Private Placement and the exercise of the Class A Warrants. The issuances of securities described above were issued in a transaction exempt from the registration requirements of the Securities Act of 1933, pursuant to Section 4(a)(2) and Rule 506 of Regulation D thereof.

On February 25, 2016, the Company issued 166,667 shares of its common stock to a third party in exchange for a full settlement of a promissory note of \$500,000 (See NOTE 6).

On April 26, 2016 and May 10, 2016, the two officers of the Company loaned the Company an aggregate cash proceeds of \$220,000 for its working capital requirements. Pursuant to the terms of the Promissory Notes, the loans must be repaid on or before December 31, 2016, with interest rate at 10% per annum, payable monthly.

On May 24, 2016, the Company entered into a financing arrangement with a third party and received cash proceeds of \$250,000. The Company is obligated to pay \$2,142.86 each business day for a total of 154 business days to settle the principal balance of \$250,000 received from the third party. Pursuant to the terms of the financing arrangement, the Company will pay \$330,000 in settlement of its obligation to the third party.

On July 6, 2016, the Company adopted 2016 Equity Incentive Plan and reserved 2,000,000 shares of common stock, par value \$0.0001 per share, for issuances there under. The Company has not issued any shares of common stock under the plan as of the date of filing of this report.

[ ] Shares of Common Stock



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PROSPECTUS

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**Joseph Gunnar & Co.**

\_\_\_\_\_, 2017

Through and including \_\_\_\_\_ (the 25<sup>th</sup> day after the date of this offering), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

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## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth the costs and expenses payable by us in connection with the issuance and distribution of the securities being registered hereunder. All of the amounts shown are estimates, except for the SEC Registration Fee.

SEC Registration Fee	\$ 1,604.91
FINRA Filing Fee	\$ *
NASDAQ Filing Fee	\$ *
Printing Fees and Expenses	\$ *
Accounting Fees and Expenses	\$ *
Legal Fees and Expenses	\$ *
Transfer Agent and Registrar Fees	\$ *
Miscellaneous Fees and Expenses	\$ *
<b>Total</b>	<b>\$ *</b>

\* To be completed by amendment.

#### ITEM 14. INDEMNIFICATION OF OFFICERS AND DIRECTORS

Our bylaws, as amended, provide to the fullest extent permitted by Nevada law, that our directors or officers shall not be personally liable to us or our shareholders for damages for breach of such director's or officer's fiduciary duty. The effect of this provision of our bylaws, as amended, is to eliminate our right and our shareholders (through shareholders' derivative suits on behalf of our company) to recover damages against a director or officer for breach of the fiduciary duty of care as a director or officer (including breaches resulting from negligent or grossly negligent behavior), except under certain situations defined by statute. We believe that the indemnification provisions in our bylaws, as amended, are necessary to attract and retain qualified persons as directors and officers.

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 Securities and Exchange 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.

#### ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES

We held a closing of units in a private placement conducted in February of 2016. We sold an aggregate of 733,000 units at a price of \$0.50 per such unit for aggregate gross proceeds of \$366,500. Each of the units contained one share of our common stock and one Class A Warrant to purchase one share of our common stock for an aggregate of 122,167 shares of our common stock and 122,167 Class A Warrants to purchase our common stock (in each case as a result of our reverse split effectuated on October 5, 2016).

We held a closing of units in the October 2016 Private Placement. We sold an aggregate of 229,000 units at a price of \$5.00 per such unit for aggregate gross proceeds of \$1,145,000. Each of the units contained one Class B Share and one Class B Warrant to purchase one share of our common stock for an aggregate of 229,000 Class B Shares and 229,000 Class B Warrants.

Contemporaneously with the October 2016 Private Placement, we consummated a debt financing whereby the investor purchased \$5,000,000 in a senior secured convertible debenture from us. We issued the debenture in the aggregate principal face amount of \$5,700,000. The maturity date of the debenture is September 1, 2018. In addition to the original issue discount, the debenture carries an annual interest rate of 8%, payable quarterly in arrears. Under the terms of the debenture, we also issued 168,750 Class B Shares to the investor. The debenture is secured by all of our and our subsidiaries' assets.

The securities issued in these offering are exempt from the registration requirements of the Securities Act pursuant to Section 4(a)(2) of the Securities Act and/or Regulations D promulgated thereunder because, among other things, the transactions did not involve a public offering, the purchasers were accredited investors, the purchasers took the securities for investment and not resale and we took appropriate measures to restrict the transfer of the securities.

## ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

The following exhibits are filed with this registration statement.

<b>Exhibit No.</b>	<b>Description</b>
1.1	Form of Underwriting Agreement*
3.1	Composite copy of Articles of Incorporation, as amended*
3.2	Bylaws*
3.3	Certificate of Designation of Class B Convertible Preferred Stock**
4.1	Form of Subscription Agreement dated January 25, 2016*
4.2	Form of Class A Warrant dated January 25, 2016*
4.3	Form of Subscription Agreement dated October 17, 2016*
4.4	Form of Class B Warrant dated October 17, 2016*
4.5	Form of Securities Purchase Agreement dated October 17, 2016*
4.6	Form of Debenture dated October 17, 2016*
4.7	2016 Equity Incentive Plan*
4.8	Form of Representative's Warrant**
4.9	Form of Placement Agency Warrant*
5.1	Opinion of Sichenzia Ross Ference Kesner LLP**
10.1	Form of Security Agreement dated October 17, 2016*
10.2	Employment Agreement dated as of January 3, 2017 by and between ToughBuilt Industries, Inc. and Michael Panosian*
10.3	Employment Agreement dated as of January 3, 2017 by and between ToughBuilt Industries, Inc. and Zareh Khachatoorian*
10.4	Employment Agreement dated as of January 3, 2017 by and between ToughBuilt Industries, Inc. and Manu Ohri*
10.5	Employment Agreement dated as of January 3, 2017 by and between ToughBuilt Industries, Inc. and Josh Keeler*
10.6	Project Statement of Work dated as of October 18, 2016 by and between ToughBuilt Industries, Inc. and Hon Hai Precision Ind. Co., Ltd. ("Foxconn")*
14.1	Code of Ethics*
21.1	List of Subsidiaries of the Company*
23.1	Consent of Marcum, LLP**
23.2	Consent of Sichenzia Ross Ference Kesner LLP (included in Exhibit 5.1)**
101.INS	XBRL Instance Document **
101.SCH	XBRL Taxonomy Extension Schema Document**
101.CAL	XBRL Taxonomy Calculation Linkbase Document**
101.LAB	XBRL Taxonomy Labels Linkbase Document**
101.PRE	XBRL Taxonomy Presentation Linkbase Document**
101.DEF	XBRL Definition Linkbase Document**
*	Filed herewith
**	To be filed by amendment

## ITEM 17. UNDERTAKINGS

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, or the 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the 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 Act and will be governed by the final adjudication of such issue.



(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 of 1933;
  - (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 set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;
  - (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;
- (2) That for the purpose of determining any liability under the Securities Act of 1933 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.
- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.
- (6) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.
- (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 SEC 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.
- (d) The undersigned Registrant hereby undertakes that it will:
  - (1) for determining any liability under the Securities Act, treat the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act as part of this registration statement as of the time the SEC declared it effective.
  - (2) for determining any liability under the Securities Act, treat each post-effective amendment that contains a form of prospectus as a new registration statement for the securities offered in the registration statement, and that offering of the securities at that time as the initial bona fide offering of those securities.

## SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Glendale, State of California on January 11, 2017.

### TOUGHBUILT INDUSTRIES, INC.

By: /s/ Michael Panosian

Name: Michael Panosian

Title: Chief Executive Officer and President

By: /s/ Manu Ohri

Name: Manu Ohri

Title: Chief Financial Officer

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

<b>Person</b>	<b>Capacity</b>	<b>Date</b>
<u>/s/ Michael Panosian</u> Michael Panosian	Chief Executive Officer and Director (Principal Executive Officer)	January 11, 2017
<u>/s/ Manu Ohri</u> Manu Ohri	Chief Financial Officer and Secretary (Principal Accounting Officer)	January 11, 2017
<u>/s/ Zareh Khachatoorian</u> Zareh Khachatoorian	Director, Chief Operating Officer and Secretary	January 11, 2017



ROSS MILLER  
Secretary of State  
204 North Carson Street, Suite 4  
Carson City, Nevada 89701-4520  
(775) 684-5708  
Website: [www.nvsos.gov](http://www.nvsos.gov)



\*040101\*

## Articles of Incorporation

(PURSUANT TO NRS CHAPTER 78)

Filed in the office of  Ross Miller Secretary of State State of Nevada	Document Number
	20120249357-35
	Filing Date and Time
	04/09/2012 3:55 PM
	Entity Number
	E0199732012-3

(This document was filed electronically.)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

<b>1. Name of Corporation:</b>	PHALANX INC.			
<b>2. Registered Agent for Service of Process:</b> (check only one box)	<input checked="" type="checkbox"/> Commercial Registered Agent: EASTBIZ.COM, INC. Name <input type="checkbox"/> Noncommercial Registered Agent (name and address below) <b>OR</b> <input type="checkbox"/> Office or Position with Entity (name and address below) Name of Noncommercial Registered Agent <b>OR</b> Name of Title of Office or Other Position with Entity Street Address City Nevada Zip Code Mailing Address (if different from street address) City Nevada Zip Code			
<b>3. Authorized Stock:</b> (number of shares corporation is authorized to issue)	Number of shares with par value:	10000	Par value per share: \$	1
			Number of shares without par value:	0
<b>4. Names and Addresses of the Board of Directors/Trustees:</b> (each Director/Trustee must be a natural person at least 18 years of age; attach additional page if more than two directors/trustees)	1) MICHAEL PANOSIAN-SEE ATTACHED Name 2425 CANADA BLVD. UNIT # GLENDALE CA 91208 Street Address City State Zip Code 2) Name Street Address City State Zip Code			
<b>5. Purpose:</b> (optional; see instructions)	The purpose of the corporation shall be:			
<b>6. Name, Address and Signature of Incorporator:</b> (attach additional page if more than one incorporator)	EASTBIZ.COM, INC. <b>X</b> EASTBIZ.COM, INC. Name Incorporator Signature 5348 VEGAS DRIVE LAS VEGAS NV 89108 Address City State Zip Code			
<b>7. Certificate of Acceptance of Appointment of Registered Agent:</b>	I hereby accept appointment as Registered Agent for the above named Entity. <b>X</b> EASTBIZ.COM, INC. Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity 4/9/2012 Date			

This form must be accompanied by appropriate fees.

Nevada Secretary of State NRS 78 Articles  
Revised: 4-10-09

## Articles of Incorporation

(PURSUANT TO NRS CHAPTER 78)

### CONTINUED

*Includes data that is too long to fit in the fields on the NRS 78 Form and  
all additional director/trustees and incorporators*

ENTITY NAME:	PHALANX INC.
--------------	--------------

FOREIGN NAME TRANSLATION:	Not Applicable
------------------------------	----------------

PURPOSE:	Not Applicable
----------	----------------

REGISTERED AGENT NAME:	EASTBIZ.COM, INC.
---------------------------	-------------------

STREET ADDRESS:	Not Applicable
--------------------	----------------

MAILING ADDRESS:	Not Applicable
---------------------	----------------

ADDITIONAL	Directors/Trustees
Name: MICHAEL PANOSIAN	
Address: 2425 CANADA BLVD, UNIT # 102	
City: GLENDALE	
State: CA	
Zip Code: 91208	

# SECRETARY OF STATE



## CORPORATE CHARTER

I, ROSS MILLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that **PHALANX INC.**, did on April 9, 2012, file in this office the original Articles of Incorporation; that said Articles of Incorporation are now on file and of record in the office of the Secretary of State of the State of Nevada, and further, that said Articles contain all the provisions required by the law of said State of Nevada.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on April 9, 2012.

ROSS MILLER  
Secretary of State

Certified By: Electronic Filing  
Certificate Number: C20120409-2888  
You may verify this certificate  
online at <http://www.nvsos.gov/>

STATE OF NEVADA

BARBARA K. CEGAVSKE  
Secretary of State



JEFFERY LANDERFELT  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

Certified Copy

December 29, 2015

**Job Number:** C20160104-1347  
**Reference Number:**  
**Expedite:**  
**Through Date:**

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
20150574184-97	Amendment	1 Pages/1 Copies



Respectfully,

*Barbara K. Cegavske*

BARBARA K. CEGAVSKE  
Secretary of State

Certified By: Nita Hibshman  
Certificate Number: C20160104-1347  
You may verify this certificate  
online at <http://www.nvsos.gov/>

**Commercial Recording Division**  
202 N. Carson Street  
Carson City, Nevada 89701-4201  
Telephone (775) 684-5708  
Fax (775) 684-7138



BARBARA K. CEGAVSKE  
Secretary of State  
202 North Carson Street  
Carson City, Nevada 89701-4201  
(775) 684-5708  
Website: [www.nvsos.gov](http://www.nvsos.gov)



\*090204\*

**Certificate of Amendment**  
(PURSUANT TO NRS 78.385 AND 78.390)

Filed in the office of <i>Barbara K. Cegavske</i>	Document Number <b>20150574184-97</b>
Barbara K. Cegavske Secretary of State State of Nevada	Filing Date and Time <b>12/29/2015 10:05 AM</b>
	Entity Number <b>E0199732012-3</b>

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**Certificate of Amendment to Articles of Incorporation**  
**For Nevada Profit Corporations**  
(Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)

1. Name of corporation:

Phalanx, Inc.

2. The articles have been amended as follows: (provide article numbers, if available)

Article 1. The name of the corporation is ToughBuilt Industries, Inc.

Article 3. The number of shares the corporation is authorized to issue is 105,000,000 shares consisting of 100,000,000 shares of Common Stock \$0.0001 par value and 5,000,000 shares of Preferred Stock \$0.0001 par value.

3. The vote by which the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation\* have voted in favor of the amendment is:

100%

4. Effective date and time of filing: (optional)

Date:

Time:

(must not be later than 90 days after the certificate is filed)

5. Signature: (required)

X

Signature of Officer

\*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

**IMPORTANT:** Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State Amend Profit After  
Revised: 1-5-15



# SECRETARY OF STATE



## NEVADA STATE BUSINESS LICENSE

**TOUGHBUILT INDUSTRIES, INC.**

Nevada Business Identification # NV20121228846

**Expiration Date: April 30, 2016**

In accordance with Title 7 of Nevada Revised Statutes, pursuant to proper application duly filed and payment of appropriate prescribed fees, the above named is hereby granted a Nevada State Business License for business activities conducted within the State of Nevada.

Valid until the expiration date listed unless suspended, revoked or cancelled in accordance with the provisions in Nevada Revised Statutes. License is not transferable and is not in lieu of any local business license, permit or registration.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on January 7, 2016

*Barbara K. Cegavske*

BARBARA K. CEGAVSKE  
Secretary of State

***You may verify this license at [www.nvsos.gov](http://www.nvsos.gov) under the Nevada Business Search.***

License must be cancelled on or before its expiration date if business activity ceases.  
Failure to do so will result in late fees or penalties which by law cannot be waived.

STATE OF NEVADA

BARBARA K. CEGAVSKE  
*Secretary of State*



JEFFERY LANDERFELT  
*Deputy Secretary  
for Commercial Recordings*

OFFICE OF THE  
SECRETARY OF STATE

**Certified Copy**

October 5, 2016

**Job Number:** C20161006-0242  
**Reference Number:**  
**Expedite:**  
**Through Date:**

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
20160442959-92	Stock Split	1 Pages/1 Copies



Respectfully,

*Barbara K. Cegavske*

BARBARA K. CEGAVSKE  
Secretary of State

Certified By: Nita Hibshman  
Certificate Number: C20161006-0242  
You may verify this certificate  
online at <http://www.nvsos.gov/>

**Commercial Recording Division**  
202 N. Carson Street  
Carson City, Nevada 89701-4201  
Telephone (775) 684-5708  
Fax (775) 684-7138



BARBARA K. CEGAVSKE  
Secretary of State  
202 North Carson Street  
Carson City, Nevada 89701-4201  
(775) 684-5708  
Website: [www.nvsos.gov](http://www.nvsos.gov)



\*090303\*

## Certificate of Change Pursuant to NRS 78.209

Filed in the office of <i>Barbara K. Cegavske</i> Barbara K. Cegavske Secretary of State State of Nevada	Document Number <b>20160442959-92</b> Filing Date and Time <b>10/05/2016 4:17 PM</b> Entity Number <b>E0199732012-3</b>
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USE BLACK INK ONLY - DO NOT HIGHLIGHT

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### Certificate of Change filed Pursuant to NRS 78.209 For Nevada Profit Corporations

1. Name of corporation:

TOUGHBUILT INDUSTRIES, INC.

2. The board of directors have adopted a resolution pursuant to NRS 78.209 and have obtained any required approval of the stockholders.

3. The current number of authorized shares and the par value, if any, of each class or series, if any, of shares before the change:

100,000,000 COMMON AT \$.0001 par value  
5,000,000 PREFERRED AT \$.0001 par value

4. The number of authorized shares and the par value, if any, of each class or series, if any, of shares after the change:

100,000,000 COMMON AT \$.0001 par value  
5,000,000 PREFERRED AT \$.0001 par value

5. The number of shares of each affected class or series, if any, to be issued after the change in exchange for each issued share of the same class or series:

Upon effectiveness of this certificate each Six (6) issued and outstanding shares of the Corporations Common Stock shall be reverse-split into One (1) share of this Corporations Common Stock

6. The provisions, if any, for the issuance of fractional shares, or for the payment of money or the issuance of scrip to stockholders otherwise entitled to a fraction of a share and the percentage of outstanding shares affected thereby:

None

7. Effective date and time of filing: (optional)

Date:

Time:

8. Signature: (required)

(must not be later than 90 days after the certificate is filed)

X

*[Signature]*

Signature of Officer

CEO

Title

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State Stock Split  
Revised: 1-5-15

Reset

**AMENDED AND RESTATED BYLAWS  
OF  
TOUGHBUILT INDUSTRIES, INC.  
(the "Corporation")**

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**ARTICLE I  
OFFICES**

Section 1.1. Registered Office. The registered office and registered agent of the Corporation shall be as from time to time set forth in the Corporation's Articles of Incorporation.

Section 1.2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Nevada, as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II  
STOCKHOLDERS**

Section 2.1. Place of Meetings. All meetings of the stockholders for the election of Directors shall be held at such place, within or without the State of Nevada, as may be fixed from time to time by the Board of Directors. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Nevada, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2.2. Annual Meeting. An annual meeting of the stockholders shall be held at such time as may be determined by the Board of Directors, at which meeting the stockholders shall elect a Board of Directors and transact such other business as may properly be brought before the meeting.

Section 2.3. List of Stockholders. At least ten days before each meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order, with the address of and the number of voting shares registered in the name of each, shall be prepared by the officer or agent having charge of the stock transfer books. Such list shall be kept on file at the registered office of the Corporation for a period of ten days prior to such meeting and shall be subject to inspection by any stockholder at any time during usual business hours. Such list shall be produced and kept open at the time and place of the meeting during the whole time thereof, and shall be subject to the inspection of any stockholder who may be present.

Section 2.4. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by law, by the Articles of Incorporation or by these Bylaws, may be called by the Chief Executive Officer (if any) or the President or the Board of Directors. Business transacted at all special meetings shall be confined to the purposes stated in the notice of the meeting unless all stockholders entitled to vote are present and consent.

Section 2.5. Notice. Written or printed notice stating the place, day and hour of any meeting of the stockholders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting, either personally or by mail, by or at the direction of the Chief Executive Officer, the President, the Secretary, or the officer or person calling the meeting, to each stockholder of record entitled to vote at the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the stockholder at his address as it appears on the stock transfer books and records of the Corporation or its transfer agent, with postage thereon prepaid.

Section 2.6. Quorum. At all meetings of the stockholders, the presence in person or by proxy of the holders of a majority of the shares issued and outstanding and entitled to vote shall be necessary and sufficient to constitute a quorum for the transaction of business except as otherwise provided by law, by the Articles of Incorporation or by these Bylaws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

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Section 2.7. Voting. When a quorum is present at any meeting of the Corporation's stockholders, the vote of the holders of a majority of the shares having voting power present in person or represented by proxy at such meeting shall decide any questions brought before such meeting, unless the question is one upon which, by express provision of law, the Articles of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 2.8. Method of Voting. Each outstanding share of the Corporation's capital stock shall be entitled to one vote on each matter submitted to a vote at a meeting of stockholders, except to the extent that the voting rights of the shares of any class or classes are otherwise provided by applicable law or the Articles of Incorporation, as amended from time to time. At any meeting of the stockholders, every stockholder having the right to vote shall be entitled to vote in person or by proxy appointed by an instrument in writing subscribed by such stockholder or by his duly authorized attorney-in-fact and bearing a date not more than 6 months prior to such meeting, unless such instrument provides for a longer period. Each proxy shall be revocable unless expressly provided therein to be irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power. Such proxy shall be filed with the Secretary of the Corporation prior to or at the time of the meeting. Voting for directors shall be in accordance with Article III of these Bylaws. Voting on any question or in any election may be by voice vote or show of hands unless the presiding officer shall order or any stockholder shall demand that voting be by written ballot.

Section 2.9. Record Date; Closing Transfer Books. The Board of Directors may fix in advance a record date for the purpose of determining stockholders entitled to notice of or to vote at a meeting of stockholders, such record date to be not less than ten nor more than sixty days prior to such meeting, or the Board of Directors may close the stock transfer books for such purpose for a period of not less than ten nor more than sixty days prior to such meeting. In the absence of any action by the Board of Directors, the date upon which the notice of the meeting is mailed shall be the record date.

Section 2.10. Action By Written Consent. Any action required or permitted by law, the Articles of Incorporation, or these Bylaws to be taken at a meeting of the stockholders of the Corporation may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, shall be signed by stockholders holding at least a majority of the voting power; provided that if a different proportion of voting power is required for such an action at a meeting, then that proportion of written consents is required. Such signed consent shall be delivered to the Secretary for inclusion in the Minute Book of the Corporation.

### **ARTICLE III BOARD OF DIRECTORS**

Section 3.1. Management. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, who may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Articles of Incorporation, a stockholders' agreement or these Bylaws directed or required to be exercised or done by the stockholders.

Section 3.2. Qualification; Election; Term. None of the directors need be a stockholder of the Corporation or a resident of the State of Nevada. The directors shall be elected by plurality vote at the annual meeting of the stockholders, except as hereinafter provided, and each director elected shall hold office until his successor shall be elected and qualified.

Section 3.3. Number. Unless otherwise provided in the Articles of Incorporation, the authorized number of directors shall be not less than 1 (minimum number) nor more than 9 (maximum number). The number of directors of the Corporation shall be fixed as the Board of Directors may from time to time designate. No decrease in the number of directors shall have the effect of shortening the term of any incumbent director.

Section 3.4. Removal. Any director may be removed either for or without cause at any special meeting of stockholders by the affirmative vote of at least two-thirds of the voting power of the issued and outstanding stock entitled to vote; provided, however, that notice of intention to act upon such matter shall have been given in the notice calling such meeting.

Section 3.5. Vacancies. Any vacancy occurring in the Board of Directors by death, resignation, removal or otherwise may be filled by an affirmative vote of at least a majority of the remaining directors though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of directors may be filled by the Board of Directors for a term of office only until the next election of one or more directors by the stockholders.

Section 3.6. Place of Meetings. Meetings of the Board of Directors, regular or special, may be held at such place within or without the State of Nevada as may be fixed from time to time by the Board of Directors.

Section 3.7. Annual Meeting. The first meeting of each newly elected Board of Directors shall be held without further notice immediately following the annual meeting of stockholders and at the same place, unless by unanimous consent or unless the directors then elected and serving shall change such time or place.

Section 3.8. Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by resolution of the Board of Directors.

Section 3.9. Special Meetings. Special meetings of the Board of Directors may be called by the Chief Executive Officer (if any) or President on oral or written notice to each director, given either personally, by telephone, by telegram or by mail, given at least forty-eight hours prior to the time of the meeting. Special meetings shall be called by the Chief Executive Officer, President or the Secretary in like manner and on like notice on the written request of a majority of directors. Except as may be otherwise expressly provided by law, the Articles of Incorporation or these Bylaws, neither the business to be transacted at, nor the purpose of, any special meeting need to be specified in a notice or waiver of notice.

Section 3.10. Quorum. At all meetings of the Board of Directors the presence of a majority of the number of directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the affirmative vote of at least a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by law, the Articles of Incorporation or these Bylaws. If a quorum shall not be present at any meeting of directors, the directors present thereat may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.11. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if: (1) the fact as to his relationship or interest and as to the contract or transaction is known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (2) the fact as to his relationship or interest and as to the contract or transaction is known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved, or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 3.12. Committees. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate committees, each committee to consist of two or more directors of the Corporation, which committees shall have such power and authority and shall perform such functions as may be provided in such resolution. Such committee or committees shall have such name or names as may be designated by the Board of Directors and shall keep regular minutes of their proceedings and report the same to the Board of Directors when required.

Section 3.13. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee of the Board of Directors may be taken without such a meeting if a consent or consents in writing, setting forth the action so taken, is signed by all the members of the Board of Directors or such other committee, as the case may be.

Section 3.14. Compensation of Directors. Directors shall receive such compensation for their services, and reimbursement for their expenses as the Board of Directors, by resolution, shall establish; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

#### **ARTICLE IV** **NOTICE**

Section 4.1. Notices. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the Nevada Revised Statutes, the articles of incorporation or these bylaws, any notice to stockholders given by the corporation under any provision of the Nevada Revised Statutes, the articles of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if:

(a) the stockholder is unable to receive by electronic transmission two (2) consecutive notices given by the corporation in accordance with such consent; and

(b) such inability becomes known to the Secretary or an Assistant Secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

An “**electronic transmission**” means any form or process of communication not directly involving the physical transmission of paper or another tangible medium that (i) is suitable for the retention, retrieval and reproduction of information by the recipient, and (ii) is retrievable and reproducible in paper form by the recipient through an automated process used in conventional commercial practice unless the sender and recipient have consented in writing to the use of the form of electronic transmission that cannot be directly reproduced in paper form, but is otherwise retrievable in perceivable form.

Section 4.2. Waivers. A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the express purpose of objecting, at the beginning of the meeting, to the transaction of business because the meeting is not lawfully called or convened.

#### **ARTICLE V** **OFFICERS AND AGENTS**

Section 5.1. In General. The officers of the Corporation shall be elected by the Board of Directors and shall be a President, a Treasurer, and a Secretary. The Board of Directors may also elect a Chairman of the Board of Directors, a Chief Executive Officer, a Chief Operating Officer, a Chief Financial Officer, and one or more Vice Presidents, Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any two or more offices may be held by the same person.

Section 5.2. Election. The Board of Directors, at its first meeting after each annual meeting of stockholders, shall elect the officers, none of whom need be a member of the Board of Directors.

Section 5.3. Other Officers and Agents. The Board of Directors may also elect and appoint such other officers and agents as it shall deem necessary, who shall be elected and appointed for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 5.4. Salaries. The salaries of all officers and agents of the Corporation shall be fixed by the Board of Directors or any committee of the Board of Directors, if so authorized by the Board of Directors.

Section 5.5. Term of Office and Removal. Each officer of the Corporation shall hold office until his death, or his resignation or removal from office, or the election and qualification of his successor, whichever shall first occur. Any officer or agent elected or appointed by the Board of Directors may be removed at any time, for or without cause, by the affirmative vote of a majority of the whole Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

Section 5.6. Employment and Other Contracts. The Board of Directors may authorize any officer or officers or agent or agents to enter into any contract or execute and deliver any instrument in the name or on behalf of the Corporation, and such authority may be general or confined to specific instances. The Board of Directors may, when it believes the interest of the Corporation will best be served thereby, authorize executive employment contracts which will contain such terms and conditions as the Board of Directors deems appropriate.

Section 5.7. Chairman of the Board of Directors. The Chairman of the Board of Directors, subject to the direction of the Board of Directors, shall perform such executive, supervisory and management functions and duties as from time to time may be assigned to him or her by the Board of Directors. The Chairman of the Board of Directors shall preside at all meetings of the stockholders of the Corporation and all meetings of the Board of Directors.

Section 5.8. Chief Executive Officer. The Chief Executive Officer shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Chief Executive Officer shall preside at all meetings of the stockholders of the Corporation and all meetings of the Board of Directors in the absence of the Chairman of the Board of Directors.

Section 5.9. President. The President shall be subject to the direction of the Board of Directors and the Chief Executive Officer (if any), and shall have general charge of the business, affairs and property of the Corporation and general supervision over its other officers and agents. The President shall see that the officers carry all orders and resolutions of the Board of Directors into effect. The President shall execute all authorized conveyances, contracts, or other obligations in the name of the Corporation except where required by law to be otherwise signed and executed and except where the signing and execution shall be expressly delegated by the Board of Directors to another officer or agent of the Corporation or reserved to the Board of Directors or any committee thereof. The President shall preside at all meetings of the stockholders of the Corporation and all meetings of the Board of Directors in the absence of the Chairman of the Board of Directors and the Chief Executive Officer. The President shall perform all duties incident to the office of the President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 5.10. Chief Operating Officer. The Chief Operating Officer shall be subject to the direction of the Chief Executive Officer (if any), the President and the Board of Directors and shall have day-to-day managerial responsibility for the operation of the Corporation.

Section 5.11. Chief Financial Officer. The Chief Financial Officer shall be subject to the direction of the Chief Executive Officer (if any), the President and the Board of Directors and shall have day-to-day managerial responsibility for the finances of the Corporation.

Section 5.12. Vice Presidents. Each Vice President shall have such powers and perform such duties as the Board of Directors or any committee thereof may from time to time prescribe, or as the President may from time to time delegate to him. In the absence or disability of the President, any Vice President may perform the duties and exercise the powers of the President.

Section 5.13. Secretary. The Secretary shall attend all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose. The Secretary shall perform like duties for the Board of Directors when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors under whose supervision he shall be. He shall keep in safe custody the seal of the Corporation. He shall be under the supervision of the President. He shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe or as the President may from time to time delegate.



Section 5.14. Assistant Secretaries. Each Assistant Secretary shall have such powers and perform such duties as the Board of Directors may from time to time prescribe or as the President may from time to time delegate to him.

Section 5.15. Treasurer. The Treasurer shall have the custody of all corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, shall render to the Directors, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation, and shall perform such other duties as the Board of Directors may prescribe or the President may from time to time delegate.

Section 5.16. Assistant Treasurers. Each Assistant Treasurer shall have such powers and perform such duties as the Board of Directors may from time to time prescribe or as the President may from time to time delegate to him.

Section 5.17. Bonding. If required by the Board of Directors, all or certain of the officers shall give the Corporation a bond, in such form, in such sum, and with such surety or sureties as shall be satisfactory to the Board of Directors, for the faithful performance of the duties of their office and for the restoration to the Corporation, in case of their death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation.

## **ARTICLE VI**

### **CERTIFICATES OF SHARES**

Section 6.1. Form of Certificates. The Corporation may, but is not required to, deliver to each stockholder a certificate or certificates, in such form as may be determined by the Board of Directors, representing shares to which the stockholder is entitled. Such certificates shall be consecutively numbered and shall be registered on the books and records of the Corporation or its transfer agent as they are issued. Each certificate shall state on the face thereof the holder's name, the number, class of shares, and the par value of such shares or a statement that such shares are without par value.

Section 6.2. Shares without Certificates. The Board of Directors may authorize the issuance of uncertificated shares of some or all of the shares of any or all of its classes or series. The issuance of uncertificated shares has no effect on existing certificates for shares until surrendered to the Corporation, or on the respective rights and obligations of the stockholders. Unless otherwise provided by the Nevada Revised Statutes, the rights and obligations of stockholders are identical whether or not their shares of stock are represented by certificates. Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send the stockholder a written statement containing the information required on the certificates pursuant to Section 6.1.

Section 6.3. Lost Certificates. The Board of Directors may direct that a new certificate be issued, or that uncertificated shares be issued, in place of any certificate theretofore issued by the Corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost or destroyed. When authorizing such issue of a new certificate or uncertificated shares, the Board of Directors, in its discretion and as a condition precedent to the issuance thereof, may require the owner of such lost or destroyed certificate, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond, in such form, in such sum, and with such surety or sureties as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed. When a certificate has been lost, apparently destroyed or wrongfully taken, and the holder of record fails to notify the Corporation within a reasonable time after he has notice of it, and the Corporation registers a transfer of the shares represented by the certificate before receiving such notification, the holder of record is precluded from making any claim against the Corporation for the transfer or a new certificate or uncertificated shares.

Section 6.4. Transfer of Shares. Shares of stock shall be transferable only on the books of the Corporation or its transfer agent by the holder thereof in person or by his duly authorized attorney. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate representing shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation or the transfer agent of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6.5. Registered Stockholders. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

## **ARTICLE VII INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Section 7.1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “proceeding”), by reason of the fact that he or she (or a person for whom he or she is a representative) is or was a director or an officer of the corporation or is or was serving at the request of the corporation in any position or capacity for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise (hereinafter an “indemnatee”), whether the basis of such proceeding is alleged action in an official capacity or in any other capacity shall be indemnified and held harmless by the corporation to the fullest extent permitted by Nevada law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than such law permitted the corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) incurred or suffered by such indemnatee in connection therewith; provided, however, that, except as provided in Section 3 of this Article VIII with respect to proceedings to enforce rights to indemnification, the corporation shall indemnify any such indemnatee in connection with a proceeding (or part thereof) initiated by such indemnatee only if such proceeding (or part thereof) was authorized by the Board of Directors of the corporation.

Section 7.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 7.1 of this Article VII, the corporation shall, to the fullest extent not prohibited by applicable law, pay the expenses (including attorney’s fees) incurred by an indemnatee in defending any such proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); provided, however, that, an advancement of expenses incurred by an indemnatee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnatee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnatee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnatee is not entitled to be indemnified for such expenses under this Section 2 or otherwise.

Section 7.3. Right of Indemnatee to Bring Suit. If a claim under Section 7.1 or 7.2 of this Article VII is not paid in full by the corporation within 60 days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnatee may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnatee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnatee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnatee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnatee has not met any applicable standard for indemnification set forth in the Nevada Revised Statutes. Neither the failure of the corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnatee is proper in the circumstances because the indemnatee has met the applicable standard of conduct set forth in the Nevada Revised Statutes, nor an actual determination by the corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnatee has not met such applicable standard of conduct, shall create a presumption that the indemnatee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnatee, be a defense to such suit. In any suit brought by the indemnatee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnatee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the corporation.

Section 7.4. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the corporation's articles of incorporation, these bylaws, agreement, vote of stockholders or directors, or otherwise.

Section 7.5. Insurance. The corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the Nevada Revised Statutes.

Section 7.6. Indemnification of Employees and Agents of the Corporation. The corporation may, to the extent authorized from time to time by the Board of Directors or a duly authorized committee thereof, grant rights to indemnification and to the advancement of expenses to any employee or agent of the corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of directors and officers of the corporation.

Section 7.7. Nature of Rights. The rights conferred upon indemnitees in this Article VII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent of the corporation and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VII that adversely affects any right of an indemnitee or his or her successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

Section 8.1. Dividends. Dividends upon the outstanding shares of the Corporation, subject to the provisions of the Articles of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting. Dividends may be declared and paid in cash, in property, or in shares of the Corporation, subject to the provisions of the Nevada Revised Statutes and the Articles of Incorporation. The Board of Directors may fix in advance a record date for the purpose of determining stockholders entitled to receive payment of any dividend, such record date to be not more than sixty days prior to the payment date of such dividend, or the Board of Directors may close the stock transfer books for such purpose for a period of not more than sixty days prior to the payment date of such dividend. In the absence of any action by the Board of Directors, the date upon which the Board of Directors adopts the resolution declaring such dividend shall be the record date.

Section 8.2. Reserves. There may be created by resolution of the Board of Directors out of the surplus of the Corporation such reserve or reserves as the directors from time to time, in their discretion, think proper to provide for contingencies, or to equalize dividends, or to repair or maintain any property of the Corporation, or for such other purpose as the directors shall think beneficial to the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created. Surplus of the Corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the Corporation.

Section 8.3. Telephone and Similar Meetings. Stockholders, directors and committee members may participate in and hold a meeting by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 8.4. Books and Records. The Corporation shall keep correct and complete books and records of account and minutes of the proceedings of its stockholders and Board of Directors, and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders and the number and class of the shares held by each.

Section 8.5. Checks and Notes. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 8.6. Loans. No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 8.7. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

Section 8.8. Seal. The Corporation may have a seal, and such seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. Any officer of the Corporation shall have authority to affix the seal to any document requiring it.

Section 8.9. Resignation. Any director, officer or agent may resign by giving written notice to the President or the Secretary. Such resignation shall take effect at the time specified therein or immediately if no time is specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.10. Amendment of Bylaws. These Bylaws may be altered, amended or repealed at any meeting of the Board of Directors at which a quorum is present, by the affirmative vote of a majority of the Directors present at such meeting.

Section 8.11. Invalid Provisions. If any part of these Bylaws shall be held invalid or inoperative for any reason, the remaining parts, so far as possible and reasonable, shall be valid and operative.

Section 8.12. Relation to Articles of Incorporation. These Bylaws are subject to, and governed by, the Articles of Incorporation.

\*\*\*

CERTIFICATE

I hereby certify that the foregoing Bylaws, consisting of 10 pages, including this page, constitute the Amended Bylaws of ToughBuilt Industries, Inc. approved by the Board of Directors of the corporation effective as of July 6, 2016.

/s/ Michael Panosian

Michael Panosian, President

STATE OF NEVADA

BARBARA K. CEGAVSKE  
Secretary of State



JEFFERY LANDERFELT  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

Certified Copy

October 5, 2016

**Job Number:** C20161006-0242  
**Reference Number:**  
**Expedite:**  
**Through Date:**

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
20160442960-24	Certificate of Designation	15 Pages/1 Copies



Respectfully,  
/s/ Barbara K. Cegavske  
BARBARA K. CEGAVSKE  
Secretary of State

Certified By: Nita Hibshman  
Certificate Number: C20161006-0242  
You may verify this certificate  
online at <http://www.nvsos.gov/>

**Commercial Recording Division**  
202 N. Carson Street  
Carson City, Nevada 89701-4201  
Telephone (775) 684-5708  
Fax (775) 684-7138



\*150103\*



BARBARA K. CEGAVSKE  
Secretary of State  
202 North Carson Street  
Carson City, Nevada 89701-4201  
(775) 684-5708  
Website: WWW.nvsos.gov

Filed in the office of  
/s/ Barbara K. Cegavske  
Barbara K. Cegavske  
Secretary of State  
State of Nevada

Document Number  
**20160442960-24**  
Filing Date and Time  
**10/05/2016 4:17PM**  
Entity Number  
**E0199732012-3**

## Certificate of Designation

(PURSUANT TO NRS 78.1955)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

Certificate of Designation For  
Nevada Profit Corporations  
(Pursuant to NRS 78.1955)

1. Name of corporation:

TOUGHBUILT INDUSTRIES, INC.

2. By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.

That pursuant to authority conferred upon the Board of Directors of the Corporation (the "Board") by the Articles of Incorporation of said Corporation, and pursuant to the provisions of Section 78.1955 of the Nevada Revised Statutes ("NRS"), the Board has duly determined that seven hundred and fifty thousand (750,000) shares of preferred stock, par value \$0.0001 per share, shall be designated "Class B Convertible Preferred Stock," and to that end the Board has adopted a resolution providing for the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions, of the Class B Convertible Preferred Stock (this "Certificate of Designation"), are included in Exhibit A attached hereto.

3. Effective date of filing: (optional)

(must not be later than 90 days after the certificate is filed)

4. Signature: (required)

/s/ Michael Panosian  
**Signature of Officer**

Filing Fee: \$175.00

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

*This form must be accompanied by appropriate fees.*

Nevada Secretary of State Stock Designation  
Revised: 1-5-15

**Reset**

**TOUGHBUILT INDUSTRIES, INC.**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**PREFERENCES, RIGHTS AND LIMITATIONS**  
**OF**  
**CLASS B CONVERTIBLE PREFERRED STOCK**  
**PURSUANT TO SECTION 78.1955**  
**OF THE NEVADA REVISED STATUTES**

**TOUGHBUILT INDUSTRIES, INC.**, a corporation organized and existing under the Nevada Revised Statutes (the “Corporation”)

**DOES HEREBY CERTIFY:**

That pursuant to authority conferred upon the Board of Directors of the Corporation (the “**Board**”) by the Articles of Incorporation of said Corporation, and pursuant to the provisions of Section 78.1955 of the Nevada Revised Statutes (“**NRS**”), the Board has duly determined that seven hundred and fifty thousand (750,000) shares of preferred stock, par value \$0.0001 per share, shall be designated “Class B Convertible Preferred Stock,” and to that end the Board has adopted a resolution providing for the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions, of the Class B Convertible Preferred Stock, which resolution is as follows:

**RESOLVED**, that the Certificate of Designations, Preferences and Limitations of Class B Convertible Preferred Stock dated October 4, 2016 (the “**Certificate of Designations**”) be, and hereby is, authorized and approved, which Certificate of Designations shall be filed with the Secretary of State of the State of Nevada in the form as follows:

**1. Designation and Amount.** Seven hundred and fifty thousand (750,000) shares of the preferred stock of the Corporation, par value \$0.0001 per share, shall constitute a class of preferred stock designated as “Class B Convertible Preferred Stock” (the “**Class B Preferred Stock**”). The relative rights, preferences and limitations of the Class B Preferred Stock shall be in all respects identical, share for share, to the Common Stock of the Corporation, except as otherwise provided herein.

**2. Certain Definitions.** The following terms shall have the meanings defined in this Section 2:

(a) “**Affiliate**” shall have the meaning ascribed to such term in Rule 405 of the Securities Act.

(b) “**Business Day**” means any day, other than a Saturday or Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law, regulation, or executive order to close.

(c) “**Change of Control Event**” shall mean the occurrence of any of the following in one or a series of related transactions:

(i) one or more acquisitions after the date hereof by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) under the Exchange Act), resulting in a majority or more of the voting rights or equity interests in the Corporation being transferred to such Persons or their Affiliates;

(ii) a replacement of more than a majority of the members of the Board that is not approved by those individuals who are members of the Board on the date hereof (or other directors previously approved by such individuals);

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(iii) a merger or consolidation of the Corporation or any one or more Subsidiaries owning a majority of the consolidated assets of the Corporation and all Subsidiaries, or a sale of all or substantially all of the assets of the Corporation and its consolidated Subsidiaries in one or a series of related transactions, unless following such transaction or series of transactions, the Holders of the Corporation's securities immediately prior to the first such transaction continue to hold at least a majority of the voting rights and equity interests in the surviving entity or acquirer of such assets;

(iv) a recapitalization, reorganization or other transaction involving the Corporation or any Subsidiary that constitutes or results in a transfer of a majority or more of the voting rights or equity interests in the Corporation to any Persons; or

(v) the execution by the Corporation or its controlling stockholders of an agreement providing for any of the foregoing events.

(d) **"Commission"** means the United States Securities and Exchange Commission.

(e) **"Common Stock"** means (i) the common stock, par value \$0.0001 per share, of the Corporation and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(f) **"Exchange Act"** means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder, all as in effect at the time

(g) **"Holder"** or **"Holders"** shall mean each holder of shares of Class B Preferred Stock.

(h) **"Initial Closing Date"** means the date of the initial closing date for units including the shares of Class B Preferred Stock pursuant to the Subscription Agreement.

(i) **"Majority Holders"** means any Holder(s) of a majority of the then outstanding shares of Class B Preferred Stock.

(j) **"Person"** means an individual, a corporation, a partnership, an association, a limited liability company, an unincorporated business organization, a trust or other entity or organization, and any government or political subdivision or any agency or instrumentality thereof.

(k) **"Securities Act"** means the Securities Act of 1933, as amended, as amended, and the rules and regulations of the Commission thereunder, all as in effect at the time.

(l) **"Subscription Agreement"** means the subscription agreement entered into by and between the Corporation and each individual investor in the Units (as hereinafter defined), including the shares of Class B Preferred Stock, as the same may from time to time be amended.

(m) **"Stated Value"** means \$5.00 per share of Class B Preferred Stock.

(n) **"Subsidiary"** or **"Subsidiaries"** of any Person means (i) any corporation with respect to which more than 50% of the issued and outstanding voting equity interests of such corporation is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries, or (ii) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than 50% or of which any such Person is a general partner or may exercise the powers of a general partner.

(o) **"Trading Day"** means any day on which the principal United States securities exchange or trading market where the Common Stock is then listed or traded, is open for trading.

(p) **"Unit"** means one of several units consisting of the shares of Series B Preferred Stock and warrants being offered for sale by the Corporation pursuant to the Subscription Agreement.

3. **Dividends.** The Class B Preferred Stock shall pay no dividend.

4. **Rank; Rights on Liquidation, Merger, Sale, etc.**

(a) **Rank.** All shares of the Class B Preferred Stock shall rank (i) senior to (A) all classes of Common Stock, and (B) any other class or series of capital stock of the Corporation hereafter created that specifically subordinates such class or series to the Preferred Shares (collectively with the Common Stock, “**Junior Securities**”), and (ii) *pari passu* with any class or series of capital stock of the Corporation hereafter created specifically ranking, by its terms, on parity with the Class B Preferred Stock (the “**Pari Passu Securities**”). Without the prior written consent of the Majority Holders, the Corporation shall not create or issue any class or series of capital stock specifically ranking, by its terms, senior to the Class B Preferred Stock (collectively, the “**Senior Securities**”), as to distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

(b) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (a “**Liquidation**”), the assets of the Corporation available for distribution to its shareholders whether from capital, surplus or earnings, shall be distributed as follows:

(i) The Holders of Class B Preferred Stock shall be entitled to receive, prior and in preference to any distribution to the Holders of the Common Stock or any other class of the Corporation's capital stock, whether now existing or hereafter created, for each share of Class B Preferred Stock held by such Holders, an amount equal to the Stated Value. If upon any Liquidation, the assets of the Corporation available for distribution to its stockholders are insufficient to pay all Holders of Class B Preferred Stock the full preference amount to which they shall be entitled, the Holders of Class B Preferred Stock shall share pro rata in any distribution of assets in accordance with their applicable full preference amounts;

(ii) After distribution of the amounts set forth in Section 4(b)(i) hereof to the Holders of the Class B Preferred Stock, the remaining assets of the Corporation available for distribution, if any, to the stockholders of the Corporation shall be distributed to the holders of outstanding Common Stock and to all Holders of Class B Preferred Stock, on a pro rata basis, as if such Holders of Class B Preferred Stock had converted all outstanding shares of such Class B Preferred Stock into Common Stock pursuant to Section 6 hereof immediately prior to the Liquidation or Change of Control Event, based upon their respective holdings.

(c) Unless otherwise approved by the prior written consent of all Holders of Class B Preferred Stock, for purposes of this Section 4, any transaction constituting a Change of Control Event shall be treated as and deemed to be a Liquidation.

(d) Unless otherwise approved by the prior written consent of the Majority Holders, voting as a separate class, upon consummation of a Change of Control Event, the Corporation shall pay or cause to be paid to the Holders of Class B Preferred Stock an amount equal to the amount they would be entitled to receive pursuant to Section 4(b) hereof as if the Corporation, on the date of consummation of such Change of Control Event, had assets available for distribution equal to the aggregate amount payable to the Corporation and all stockholders thereof in connection with such Change of Control Event (the “**Disposition Proceeds**”). The amount payable pursuant to this Section 4(d) shall be payable in accordance with and in order of the priorities set forth in Section 4(b) immediately following the closing of the Change of Control Event.

5. **Voting Rights.** Holders of shares of Class B Preferred Stock will vote together with the Common Stock and not as a separate class, except as required by law and as provided in this Certificate of Designations. Each share of Class B Preferred Stock shall have a number of votes equal to the number of shares of Common Stock then issuable upon an Optional Conversion of each share of Class B Preferred Stock. Without limiting the foregoing, as long as any shares of Class B Preferred Stock are outstanding, the Corporation shall not, without the prior written consent of the Majority Holders, (a) alter or change adversely the powers, preferences or rights given to the Class B Preferred Stock or alter or amend this Certificate of Designations, (b) amend its Articles of Incorporation or other charter documents in any manner that adversely affects any rights of the Holders of Class B Preferred Stock, (c) increase or decrease the number of authorized shares of Class B Preferred Stock, (d) without limiting the provisions of Section 11, whether or not prohibited by the terms of the Class B Preferred Stock, circumvent a right or preference of the Class B Preferred Stock, or (e) enter into any agreement with respect to any of the foregoing. Holders of the Class B Preferred Stock shall be entitled to written notice of all shareholder meetings or written consents (and copies of proxy materials and other information sent to shareholders) with respect to which they would be entitled to vote, which notice shall be provided pursuant to the Corporation's Bylaws and the NRS.

## 6. Conversion of Class B Preferred Stock.

(a) Optional Conversion; Conversion Rate. Each share of Class B Preferred Stock shall be convertible, at any time and from time to time prior to the occurrence of any of (i) a Qualified IPO, (ii) a Non-Qualified IPO or (iii) an OTC Listing (each as hereinafter defined), at the option of a Holder, into such number of fully paid and non-assessable shares of Common Stock determined by dividing the Stated Value of such share of Class B Preferred Stock by the then applicable Conversion Price (as hereinafter defined) (the “**Conversion Rate**”). The Conversion Price and Conversion Rate shall be subject to adjustment as provided in Section 6(e) below.

(b) Automatic Conversion; Conversion Price. Each share of Class B Preferred Stock not previously converted into shares of Common Stock shall automatically, without any further action by the Holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, be converted into such number of fully paid and non-assessable shares of Common Stock determined by dividing the Stated Value of such share of Class B Preferred Stock by the then applicable Conversion Price (as hereinafter defined), upon the earliest to occur of: (i) the closing of a firm commitment underwritten public offering of shares of Common Stock which results in the Common Stock being traded on a national securities exchange (a “**Qualified IPO**”); (ii) the closing of an initial public offering of shares of Common Stock that is not a Qualified IPO which results in the Common Stock being traded on the OTCQX or OTCQB operated by OTC Markets Group, Inc. (a “**Non-Qualified IPO**”), or (iii) the registration by the Corporation of its shares of Common Stock under Section 12(g) of the Securities Exchange Act of 1934, as amended, which results in such Common Stock being traded on the OTCQX or OTCQB operated by the OTC Markets Group, Inc. (an “**OTC Listing**” and collectively with the Qualified IPO and the Non-Qualified IPO, an “**Offering**”).

For purposes hereof, the term “**Conversion Price**” shall mean (i) in the case of an optional conversion pursuant to Section 6(a) above, a per share price equal to \$5.00 (subject to adjustment as provided in Section 6(e) below); and (ii) in the case of an automatic conversion pursuant to this Section 6(b), a per share price equal to, in the case of: (A) a Qualified IPO, the lesser of (1) \$5.00 per share (subject to adjustment as provided in Section 6(e) below) and (2) seventy percent (70%) of the offering price per share of Common Stock in such Qualified IPO; (B) a Non-Qualified IPO, fifty percent (50%) of the lesser of (1) \$5.00 per share (subject to adjustment as provided in Section 6(e) below) and (2) the offering price per share of Common Stock in such Non-Qualified IPO, or (C) an OTC Listing, fifty percent (50%) of \$5.00 per share (subject to adjustment as provided in Section 6(e) below). In all cases, the Conversion Price shall be subject to adjustment as provided in Section 6(e) below.

(c) Mechanics of Conversion.

(i) Before any Holder of Class B Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section 6(a) hereof, such Holder shall give written notice to the Corporation at its principal corporate office of the election to convert shares of Class B Preferred Stock, the number of shares of Class B Preferred Stock to be converted, the number of shares of Class B Preferred Stock owned subsequent to the conversion at issue, and the name or names in which the certificate or certificates for shares of Common Stock are to be issued (each, a “**Notice of Conversion**”). No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Class B Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Class B Preferred Stock to the Corporation unless all of the shares of Class B Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Class B Preferred Stock promptly following the Conversion Date at issue.

(ii) Not later than two (2) Business Days following the consummation of an Offering, the Corporation shall deliver written notice (each, an “**Automatic Conversion Notice**” and the date all of the Holders receive such notice is referred to as to the “**Automatic Conversion Notice Date**”), to each Holder of shares of Class B Preferred Stock and such Automatic Conversion Notice shall confirm that all of such Holder’s Class B Preferred Stock have been automatically converted into shares of Common Stock pursuant to Section 6(b) hereof. Each Automatic Conversion Notice shall be irrevocable by the Corporation and may not be revoked by the Corporation. Promptly following receipt of an Automatic Conversion Notice in respect of Class B Preferred Stock, the Holder or Holders of such Class B Preferred Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Class B Preferred Stock, and shall give written notice to the Corporation at its principal corporate office of the name or names in which the certificate or certificates for shares of Common Stock are to be issued.

(iii) Shares of Class B Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued. The Corporation shall, as soon as practicable after delivery of the Notice of Conversion, in the case of a conversion pursuant to Section 6(a), and as soon as practicable after delivery of the certificate(s) evidencing the Class B Preferred Stock, in the case of an automatic conversion pursuant to Section 6(b), and in either case in any event within three (3) Business Days thereafter (the “**Share Delivery Date**”), issue and deliver or cause to be delivered to such Holder or Holders of Class B Preferred Stock, or to the nominee or nominees thereof, a certificate or certificates representing the number of validly issued, fully paid and non-assessable shares of Common Stock to which such Holder or Holders shall be entitled as aforesaid. Conversion under this Section 6 shall be deemed to have been made (i) with respect to conversion pursuant to Section 6(a) hereof, immediately prior to the close of business on the date of delivery of the Notice of Conversion, unless a later date is specified in the Notice of Conversion, (ii) with respect to conversion pursuant to Section 6(b)(iii) hereof, immediately prior to the close of business on the date of such surrender of the shares of Class B Preferred Stock to be converted, and (ii) with respect to conversion pursuant to Section 6(b)(i) and 6(b)(ii) hereof, on the date of consummation of the Qualified IPO or Non-Qualified IPO, as the case may be, and in either case the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date (such date, the “**Conversion Date**”). If, in the case of any conversion of the Class B Preferred Stock pursuant to Section 6, such shares of Common Stock are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such shares of Common Stock, to rescind such conversion, in which event the Corporation shall promptly return to the Holder any original Class B Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the shares of Common Stock issued to such Holder pursuant to the rescinded conversion. The Corporation's obligation to issue and deliver the shares of Common Stock upon conversion of Class B Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such shares of Common Stock. In the event a Holder shall elect to convert any or all of the Stated Value of its Class B Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Class B Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Class B Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue shares of Common Stock and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such shares of Common Stock pursuant to Section 6 by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 of Stated Value of Class B Preferred Stock being converted, \$50 per Business Day (increasing to \$100 per Business Day on the third Business Day and increasing to \$200 per Business Day on the sixth Business Day after such damages begin to accrue) for each Business Day after the Share Delivery Date until such Shares of Common Stock are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver shares of Common Stock within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(d) Fractional Shares; Computation Certificates.

(i) No fractional shares shall be issued upon conversion of the Class B Preferred Stock into shares of Common Stock and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share for any shares in excess of one-half ( 1/2).

(ii) Upon the occurrence of each adjustment of the Conversion Rate and the Conversion Price of Class 8 Preferred Stock pursuant to this Section 6, the Corporation, at its expense, shall promptly compute such adjustment in accordance with the terms hereof and prepare and furnish to each Holder of Class 8 Preferred Stock a statement, signed by its independent certified public accountants, setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based. The Corporation shall, upon the written request at any time of any Holder of Class 8 Preferred Stock, furnish or cause to be furnished to such Holder a like certificate setting forth (A) such adjustment, (B) the Conversion Price and Conversion Rate for such Class B Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such Class B Preferred Stock.

(iii) No adjustment in the Conversion Price or Conversion Rate for the Class B Preferred Stock shall be required unless such adjustment would require an increase or decrease of at least one cent (\$0.01) in such Conversion Price; provided, however, that any adjustments which by reason of this Section 6(d)(iii) are not required to be made shall be carried forward and taken into account in any subsequent adjustment required to be made hereunder. All calculations under this Section 6(d) shall be made to the nearest one cent (\$0.01).

( e ) Adjustments for Dilutive Issues. The Conversion Rate and the Conversion Price of the Class B Preferred Stock shall be subject to adjustment from time to time as follows:

(i) If the Corporation shall issue, sell or grant (or shall be deemed to have issued, sold or granted), on any one or more occasions after the Initial Closing Date, any shares of Common Stock (including shares of Common Stock held in the Corporation's treasury), but excluding any Excluded Securities, for no consideration or for a consideration or purchase price per share less than the Conversion Price in effect immediately prior to the issuance, sale or grant (or deemed issuance, sale or grant) of such Common Stock, then, in each case, immediately thereafter and automatically, without any further action by the Corporation or the Holders of such shares, the Conversion Price shall be reduced to a price per share that shall be equal to the lowest consideration or purchase price per share of such Common Stock so issued, sold or granted (or deemed to have been issued, sold or granted). If the Corporation shall issue, sell or grant (or shall be deemed to have issued, sold or granted), on any one or more occasions after the Initial Closing Date, any Common Stock Equivalents (as hereinafter defined) (including Common Stock Equivalents held in the Corporation's treasury), but excluding any Excluded Securities, and the lowest price per share for which one share of Common Stock is issuable upon the exercise, conversion or exchange of any such Common Stock Equivalent, or upon the exercise, conversion or exchange of any Common Stock Equivalent issuable upon exercise, conversion or exchange of any such Common Stock Equivalent, is less than the Conversion Price in effect immediately prior to the issuance, sale or grant (or deemed issuance, sale or grant) of such Common Stock Equivalent, then, in each case, immediately thereafter and automatically, without any further action by the Corporation or the Holders of such shares, the Conversion Price shall be reduced to a price per share that shall be equal to the lowest exercise price, conversion price or exchange price per share of such Common Stock Equivalent so issued, sold or granted (or deemed to have been issued, sold or granted).

(ii) **"Common Stock Equivalents"** as used herein shall mean any securities of the Corporation or any of its Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

(iii) **"Excluded Securities"** as used herein shall mean any of the following:

(A) Common Stock issued or issuable upon conversion of the Class B Preferred Stock;

(B) Common Stock issued in an Offering;

(C) Common Stock issued upon exercise of any options, warrants or other convertible securities outstanding as of the Initial Closing Date, including the issued and outstanding Class A Warrants, the Warrants offered as part of the Units or any other warrant granted to the Holders of the Class B Preferred Stock pursuant to any Subscription Agreement;

(D) Common Stock, options or similar awards issued to officers, directors or employees of the Corporation pursuant to an Incentive Plan duly adopted by the Board and existing and disclosed to the Holders as of the Initial Closing Date; provided, however, that any awards issued pursuant to an Incentive Plan under this Section 6(e)(iii)(D) that are in excess (or are convertible into or exercisable or exchangeable for an amount in excess) of an aggregate of 750,000 shares of Common Stock (such amount, the “**Maximum Amount**”) shall no longer be deemed Excluded Securities from and including the first share in excess of such Maximum Amount;

(E) Any stock issued as a dividend or distribution on Class B Preferred Stock.

With respect to subparagraphs (A) through (E) above, if at any time the Corporation shall:

- (x) declare, order, pay or make a dividend payable in additional shares of Common Stock;
- (y) subdivide its outstanding shares of Common Stock into a larger number of shares of Common Stock; or
- (z) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock;

then the number of shares of Common Stock to be included in Excluded Securities immediately after the happening of such an event shall be adjusted to equal the number of shares of Common Stock which a record holder of the same number of shares of Common Stock immediately prior to the happening of such event would own or be entitled to receive after the happening of such event.

(iv) Except to the limited extent provided for in Section 6(e)(viii) hereof, no adjustment of the Conversion Price or Conversion Rate pursuant to this Section 6(e) shall have the effect of increasing the Conversion Price for the Class B Preferred Stock above the Conversion Price for the Class B Preferred Stock in effect immediately prior to such adjustment.

(v) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by a majority of the Board.

(vi) In the case of the issuance after the Initial Closing Date of Common Stock Equivalents (other than Excluded Securities), the following provisions shall apply for all purposes of this Section 6(e):

(A) The aggregate maximum number of shares of Common Stock deliverable upon the conversion, exercise or exchange of such Common Stock Equivalents (without taking into account potential anti-dilution adjustments), or deliverable upon the conversion, exercise or exchange of any Common Stock Equivalents issuable upon conversion, exercise or exchange of any such Common Stock Equivalents (without taking into account potential anti-dilution adjustments), together with any increases or other adjustments to such Common Stock Equivalents approved by the Board, shall be deemed to have been issued at the time such Common Stock Equivalents were issued.

(B) For purposes of Section 6(e)(i), the “lowest price per share for which one share of Common Stock is issuable upon the exercise, conversion or exchange of any such Common Stock Equivalent, or upon the exercise, conversion or exchange of any Common Stock Equivalent issuable upon exercise, conversion or exchange of any such Common Stock Equivalent” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon the granting, issuance or sale of such Common Stock Equivalent, upon exercise, conversion or exchange of such Common Stock Equivalent and upon exercise, conversion or exchange of any Common Stock Equivalent issuable upon exercise, conversion or exchange of such Common Stock Equivalent and (y) the lowest exercise, conversion or exchange price set forth in such Common Stock Equivalent for which one share of Common Stock is issuable upon the exercise, conversion or exchange of any such Common Stock Equivalent or upon conversion, exercise or exchange of any Common Stock Equivalent issuable upon exercise, conversion or exchange of any such Common Stock Equivalent minus (2) the sum of all amounts paid or payable to the holder of such Common Stock Equivalent (or any other Person) upon the granting, issuance or sale of such Common Stock Equivalent, upon exercise, conversion or exchange of such Common Stock Equivalent and upon conversion, exercise or exchange of any Common Stock Equivalent issuable upon exercise of such Common Stock Equivalent, plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Common Stock Equivalent (or any other Person).

(C) In the event of any change in (i) the number of shares of Common Stock deliverable, (ii) the exercise, conversion or exchange price of, or (iii) the consideration payable to the Corporation, in each case upon exercise, conversion or exchange of such Common Stock Equivalents, or upon the conversion, exercise or exchange of any Common Stock Equivalents issuable upon conversion, exercise or exchange of any such Common Stock Equivalents, the Conversion Price of the Class B Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise, conversion or exchange of any such Common Stock Equivalents. No adjustment pursuant to this Section 6(e)(vi)(C) shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(vii) In the event the Corporation should at any time or from time to time after the Initial Closing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Class B Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable upon conversion of each share of such Class B Preferred Stock shall be increased in proportion to such increase in the aggregate of shares of Common Stock outstanding and issuable with respect to such Common Stock Equivalents.

(viii) If the number of shares of Common Stock outstanding at any time after the Initial Closing Date is decreased by a combination of the outstanding shares of Common Stock (by reverse stock split or otherwise), then, following the record date of such combination, the Conversion Price for the Class B Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of each series shall be decreased in proportion to such decrease in outstanding shares.

(ix) In the event that the Corporation (or any Subsidiary) shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect any Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 6 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Board shall in good faith determine and implement an appropriate adjustment in the Conversion Price so as to protect the rights of such Holder, provided that no such adjustment pursuant to this Section 6(e)(ix) will increase the Conversion Price as otherwise determined pursuant to this Section 6, provided further that if such Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Board and such Holder shall agree, in good faith, upon an independent investment bank or accounting firm recognized standing to make such appropriate adjustments, whose determination shall be final and binding and whose fees and expenses shall be borne fifty percent (50%) by the Holder and fifty percent (50%) by the Corporation.

(f) Adjustments for Distribution. In addition to any adjustments pursuant to Section 6(e) hereof, in the event the Corporation shall declare a distribution payable in Common Stock, Common Stock Equivalents or other securities of the Corporation, any Subsidiary or any other Persons, evidences of indebtedness issued by the Corporation, any Subsidiary or other Persons, assets (or rights to acquire assets), or options, rights or other property not referred to in Section 6(e) hereof to the holders of Common Stock, in each case whether by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (each, a **“Distribution”**), then, in each such case for the purpose of this Section 6(f), the Holders of the Class B Preferred Stock shall be entitled to a proportionate share of any such Distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Class B Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such Distribution.

(g) Adjustments for Recapitalization. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 6), provision shall be made so that the Holders of the Class B Preferred Stock shall thereafter be entitled to receive upon conversion of the Class B Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 6 with respect to the rights of the Holders of the Class B Preferred Stock after the recapitalization to the end that the provisions of this Section 6 (including, without limitation, provisions for adjustments of the Conversion Price and the number of shares of Common Stock issuable upon conversion of the Class B Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(h) Good Faith Assistance. The Corporation will not, by amendment of its Articles of Incorporation or Bylaws or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 6 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holders of the Class B Preferred Stock against impairment.

(i) Adjustment for Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Corporation or a Change of Control Event, shall be effected while any shares of Class B Preferred Stock are outstanding in such a manner that holders of shares of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, or Change of Control Event, lawful and adequate provision shall be made whereby each holder of Class B Preferred Stock who has not received the amounts to be distributed to such holder in accordance with this Certificate shall thereafter have the right to receive upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon conversion of Class B Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore so receivable had such reorganization, reclassification or Change of Control Event not taken place, and in such case appropriate provision shall be made with respect to the rights and interests of the Holders of Class B Preferred Stock to the end that the provisions hereof (including, without limitation, provisions for adjustments of the Conversion Price, Conversion Rate and the number of shares of Common Stock issuable upon conversion of the Class B Preferred Stock) shall thereafter be applicable, as nearly as may be possible, in relation to any shares of stock, securities or assets thereafter deliverable upon the conversion of such shares of Class B Preferred Stock. Prior to or simultaneously with the consummation of any such reorganization, reclassification or Change of Control Event, the survivor or successor corporation (if other than the Corporation) resulting from such reorganization, reclassification or Change of Control Event shall assume by written instrument executed and mailed or delivered to each Holder of Class B Preferred Stock, the obligation to deliver to such Holders of Class B Preferred Stock such shares of stock, securities or assets as, in accordance with the foregoing provisions, such Holder of Class B Preferred Stock may be entitled to receive, and containing the express assumption by such successor corporation of the due and punctual performance and observance of every provision of this Certificate of Designations to be performed and observed by the Corporation and of all liabilities and obligations of the Corporation hereunder with respect to the Class B Preferred Stock.



( j ) Notice of Record Taking. In the event of any taking by the Corporation of a record of the Holders of any class of securities for the purpose of determining the Holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each Holder of Class B Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

( k ) Reservation of Shares. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Class B Preferred Stock, 150% of the number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Preferred Stock (the "Required Reserve Amount"); and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to enable the Corporation to satisfy its obligation to have available for issuance upon conversion of the Class B Preferred Shares at least a number of shares of Common Stock equal to the Required Reserve Amount, then, in addition to such other remedies as shall be available to the Holder of such Class B Preferred Stock, the Corporation will immediately take all such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, using its best efforts to obtain the requisite stockholder approval of any necessary amendment to these provisions as soon as possible.

( l ) Payment of Taxes. The Corporation shall pay all documentary, stamp or other transactional taxes (exclusive of income taxes) attributable to the issuance or delivery of shares of capital stock of the Corporation upon conversion of any shares of Class B Preferred Stock; provided, however, that the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the holder of the shares of Class B Preferred Stock in respect of which such shares are being issued.

( m ) Status of Shares. All shares of Common Stock that may be issued in connection with the conversion provisions set forth herein will, upon issuance by the Corporation, be validly issued, fully paid and non-assessable and free from all taxes, liens or charges with respect thereto.

( n ) Notice. Any notice required by the provisions of this Section 6 to be given to the Holders of shares of Class B Preferred Stock shall be deemed given upon hand delivery, one (1) Business Day after the notice is sent by overnight courier or three (3) Business Days after the notice is deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the stock books of the Corporation. The Corporation shall provide each Holder of Class B Preferred Stock with prompt written notice of all actions taken pursuant to the terms of this Certificate of Designations, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Corporation shall give written notice to each Holder (i) promptly following any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least ten (10) days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or Distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Common Stock, Common Stock Equivalents, assets or other property to all holders of shares of Common Stock as a class or (C) for determining rights to vote with respect to any matter on which the holders of Common Stock shall have the right to vote.

( o ) In the event any shares of Class B Preferred Stock shall be converted pursuant to Section 6 hereof or otherwise reacquired by the Corporation, the shares so converted or reacquired shall be canceled and may not be reissued. The Articles of Incorporation of the Corporation may be appropriately amended from time to time to effect the corresponding reduction in the Corporation's authorized capital stock.

( p ) Conversion Disputes. In the case of any dispute with respect to a conversion, the Corporation shall promptly issue such number of shares of Common Stock in accordance with subparagraph (c) above as are not disputed. If such dispute involves the calculation of the Conversion Price, and such dispute is not promptly resolved by discussion between the relevant Holder and the Corporation, the Corporation shall submit the disputed calculations to an independent outside accountant via facsimile within ten (10) Business Days of receipt of notice of such dispute. The accountant, at the Corporation's sole expense, shall promptly audit the calculations and notify the Corporation and the holder of the results no later than ten (10) Business Days from the date it receives the disputed calculations. The accountant's calculation shall be deemed conclusive, absent manifest error. The Corporation shall then issue the appropriate number of shares of Common Stock in accordance with subparagraph (c) above. If the accountant determines the Corporation's calculations are correct, the holder shall reimburse the Corporation for the accountant's expense.

7 . Restrictions on Issuance of Shares Pursuant to Incentive Plan. At any time that any shares of Class B Preferred Stock remain outstanding, the Corporation shall not issue any shares of Common Stock, options or similar awards to officers, directors or employees of the Corporation under its Incentive Plan in excess of the Maximum Amount.

8 . Optional Redemption. The shares of Preferred Stock shall be subject to redemption in cash at the option of the Holders thereof at any time after the second anniversary of the Initial Closing Date in an amount per share equal to 120% of the greater of (a) the Stated Value and (b) the fair market value of such shares of Preferred Stock. Funds available for redemption will be paid prior to any payment to any holder of any other class or series of capital stock (the "**Redemption Price**"). Unless previously converted into Common Stock by the Holder(s) of Class B Preferred Stock, such shares of Class B Preferred Stock shall be redeemed and the Redemption Price shall be paid on a date that shall be not more than sixty (60) days following the date that written notice to the Corporation is given by the Holder's intention to redeem such shares and the number of shares of Preferred Stock to be redeemed. Except as expressly contemplated by this Section 8, the shares of Class B Preferred Stock shall not be redeemable at the Corporation's option at any time.

9 . Waiver. Any right or privilege of the Class B Preferred Stock may be waived (either generally or in a particular instance and either retroactively or prospectively) by and only by the written consent of the Corporation and the Majority Holders and any such waiver shall be binding upon each holder of Class B Preferred Stock or other securities exercisable for or convertible into Class B Preferred Stock. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

10 . Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any certificates representing Class B Preferred Stock (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of an indemnification undertaking by the applicable Holder to the Corporation in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of the certificate(s), the Corporation shall execute and deliver new certificate(s) of like tenor and date.

11 . Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations and any of the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit any Holder's right to pursue actual and consequential damages for any failure by the Corporation to comply with the terms of this Certificate of Designations. The Corporation covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by a Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, each Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required, to the extent permitted by applicable law. The Corporation shall provide all information and documentation to a Holder that is requested by such Holder to enable such Holder to confirm the Corporation's compliance with the terms and conditions of this Certificate of Designations.

12 . Noncircumvention. The Corporation hereby covenants and agrees that the Corporation will not, by amendment of its Articles of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designations, and will at all times in good faith carry out all the provisions of this Certificate of Designations and take all action as may be required to protect the rights of the Holders. Without limiting the generality of the foregoing or any other provision of this Certificate of Designations, the Corporation (i) shall not increase the par value of any shares of Common Stock receivable upon the conversion of any shares of Class B Preferred Stock above the Conversion Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of Class B Preferred Stock and (iii) shall, so long as any shares of Class B Preferred Stock are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Class B Preferred Stock, the Required Reserve Amount.

13. Transfer of Class B Preferred Stock. A Holder may transfer some or all of its shares of Class B Preferred Stock without the consent of the Corporation.

14. Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the shares of Class B Preferred Stock, in which the Corporation shall record the name, address and facsimile number of the Persons in whose name the shares of Class B Preferred Stock have been issued, as well as the name and address of each transferee. The Corporation may treat the Person in whose name any shares of Class B Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

15. Amendment. This Certificate of Designations or any provision hereof may be amended by obtaining the affirmative vote at a meeting duly called for such purpose, or by written consent without a meeting in accordance with the NRS, of the Majority Holders, voting separately as a single class, and with such other shareholder approval, if any, as may then be required pursuant to the NRS and the Corporation's Articles of Incorporation and Bylaws.

16. Severability. If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the balance of this Certificate of Designations shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

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

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

**[Signature Page Follows]**

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designations as of this 4th day of October 2016.

**TOUGHBUILT INDUSTRIES, INC.**

By: /s/ Michael Panosian  
Name: Michael Panosian  
Title: Chief Executive Officer

**FORM OF CONVERSION NOTICE**

To: TOUGHBUILT INDUSTRIES, INC.

The undersigned owner of this Series B Convertible Preferred Stock (the “**Series B Preferred Stock**”) issued by ToughBuilt Industries, Inc. (the “**Corporation**”) hereby irrevocably exercises its option to convert \_\_\_\_\_ shares of the Series B Preferred Stock into shares of the common stock, par value \$0.0001 per share (“**Common Stock**”), of the Corporation in accordance with the terms of the Corporation’s Series B Convertible Certificate of Designations (the “**Certificate of Designations**”). The undersigned hereby instructs the Corporation to convert the number of shares of the Series B Preferred Stock specified above into shares of Common Stock issued at conversion in accordance with the provisions of Article 6 of the Certificate of Designations. The undersigned directs that the Common Stock issuable and certificates therefor deliverable upon conversion and the recertificated Series B Preferred Stock, if any, not being surrendered for conversion hereby, be issued in the name of and delivered to the undersigned unless a different name has been indicated below. All capitalized terms used and not defined herein have the respective meanings assigned thereto in the Certificate of Designations. So long as the Series B Preferred Stock shall have been surrendered for conversion hereby, the conversion pursuant hereto shall be deemed to have been effected at the date and time specified below, and at such time the rights of the undersigned as a Holder of the Series B Preferred Stock shall cease and the Person or Persons in whose name or names the Common Stock issued at conversion shall be issuable shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby and all voting and other rights associated with the beneficial ownership of such shares of Common Stock shall at such time vest with such Person or Persons.

Date and time: \_\_\_\_\_

\_\_\_\_\_  
Signature

Please print name and address (including zip code number):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

500,000 UNITS

TOUGHBUILT INDUSTRIES, INC.

THIS MEMORANDUM CONSTITUTES AN OFFER ONLY IF A NAME APPEARS IN THE APPROPRIATE SPACE PROVIDED BELOW AND IS AN OFFER ONLY TO THE NAMED OFFEREE.

NO PORTION OF THIS MEMORANDUM MAY BE DUPLICATED FOR ANY PURPOSE. THIS MEMORANDUM CONTAINS CONFIDENTIAL AND/OR TRADE SECRET INFORMATION.

NO OFFEREE IS AUTHORIZED TO RELY UPON ANY INFORMATION WITH RESPECT TO THE SECURITIES DESCRIBED IN THIS MEMORANDUM OTHER THAN INFORMATION CONTAINED IN THIS MEMORANDUM.

JANUARY 25, 2016

Name: \_\_\_\_\_

No.: \_\_\_\_\_

500,000 Units

# TOUGHBUILT INDUSTRIES, INC.

**\$0.50 per Unit; Minimum Investment – 5,000 Units (\$2,500)  
Each UNIT Consists of One Share of Common Stock and  
One Warrant to Purchase One Share of Common Stock**

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Each unit (a “Unit”) consists of one share Common Stock, par value \$.0001 per share (the “Common Stock”) and one redeemable Class A Warrant (the “Class A Warrant(s)”) of ToughBuilt Industries, Inc., a Nevada corporation (the “Company”). Each Class A Warrant entitles the holder thereof to purchase, at any time until December 31, 2018 (the “Expiration Date”), one (1) share of Common Stock at an exercise price of \$1.00 per share, subject to adjustment. The Class A Warrants are redeemable by the Company, at a redemption price of \$.05 per Warrant, upon at least 30 days’ prior written notice, commencing six months after the date of this Memorandum, if the average of the closing bid price of the Common Stock, as reported on the Over-the-Counter Pink Markets (the “OTCQB”) or other exchange, shall equal or exceed \$2.00 per share (subject to adjustment) for ten (10) consecutive business days prior to the notice of redemption. See “Description of Securities”.

The minimum subscription is \$2,500 for 5,000 Units. The Units are being offered on a "best efforts basis" by the Company through its officers and directors and selected finders and broker/dealers.

The Company’s Common Stock is not traded on any market exchange. The Company intends to apply for trading in the future, although there is no assurance that its application for trading will be accepted or, if accepted, that a trading market will develop. The Class A Warrants are not traded on any market exchange nor is it anticipated that they will ever trade in a public market.

The Securities are being offered to “Accredited” and/or “Qualified” Investors only. See “Suitability Standards”.

THE SECURITIES OFFERED HEREIN ARE SPECULATIVE, INVOLVE A HIGH DEGREE OF RISK, AND SHOULD NOT BE PURCHASED BY INVESTORS WHO CANNOT AFFORD THE LOSS OF THEIR ENTIRE INVESTMENT. SEE "RISK FACTORS."

	Offering Price	Sales Commission <sup>(1)</sup>	Net Proceeds to Company <sup>(2)</sup>
Per Unit	\$ 0.50	\$ 0.05	\$ 0.45
Total	\$ 250,000	\$ 25,000	\$ 225,000

(1) The Company is offering the Units through its officers and directors, selected finders and broker/dealers.

(2) Before deducting estimated expenses of \$40,000 payable by the Company.

**THESE SECURITIES ARE BEING SOLD IN TRANSACTIONS NOT INVOLVING A PUBLIC OFFERING. THE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933 AS AMENDED, IN RELIANCE UPON EXEMPTIONS UNDER SECTION 4(2), REGULATION D AND SECTION CE.**

**THE SECURITIES HAVE NOT BEEN QUALIFIED WITH THE DEPARTMENT OF CORPORATIONS OF THE STATE OF CALIFORNIA IN RELIANCE UPON AN EXEMPTION UNDER SECTIONS 25102(f) AND 25102(n) OF THE CORPORATIONS CODE OF 1977, AS AMENDED. THESE SECURITIES ARE SPECULATIVE, NONLIQUID AND INVOLVE SIGNIFICANT RISKS.**

The date of this Memorandum is January 25, 2016

THIS PRIVATE PLACEMENT MEMORANDUM AND THE EXHIBITS HERETO (COLLECTIVELY, THE "MEMORANDUM") HAVE BEEN SUBMITTED ON A CONFIDENTIAL BASIS FOR USE BY A LIMITED NUMBER OF SOPHISTICATED INVESTORS SOLELY FOR, AND SHOULD BE USED ONLY IN CONNECTION WITH, A PROSPECTIVE INVESTOR'S CONSIDERATION OF AN INVESTMENT IN THE SECURITIES OF TOUGHBUILT INDUSTRIES, INC. ("TOUGHBUILT" OR THE "COMPANY") DESCRIBED HEREIN. ITS USE FOR ANY OTHER PURPOSE IS NOT AUTHORIZED. THIS MEMORANDUM CONSTITUTES AN OFFER ONLY TO THE OFFEREE TO WHOM THE MEMORANDUM HAS BEEN DISTRIBUTED. ANY REPRODUCTION OR DISTRIBUTION OF THIS MEMORANDUM OR RETRANSMITTAL OF ITS CONTENTS, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY IS PROHIBITED. THE COMPANY DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN, AND NONE MAY BE IMPLIED.

THIS MEMORANDUM CONTAINS CERTAIN INFORMATION OF A HIGHLY CONFIDENTIAL NATURE. THE RECEIPT OF THIS MEMORANDUM CONSTITUTES AN AGREEMENT ON THE PART OF THE RECIPIENT HEREOF TO MAINTAIN THE CONFIDENTIALITY OF THE INFORMATION CONTAINED HEREIN OR ANY ADDITIONAL INFORMATION SUBSEQUENTLY DELIVERED IN CONNECTION HERewith. PROSPECTIVE INVESTORS WHO ACCEPT THIS MEMORANDUM OR BECOME AWARE OF THE INFORMATION CONTAINED HEREIN MUST UNDERSTAND AND COMPLY WITH THE EXTENSIVE FEDERAL AND STATE SECURITIES LAW RESTRICTIONS PLACED UPON THEIR ABILITY TO DISCLOSE INFORMATION CONTAINED HEREIN TO OTHERS OR TO PARTICIPATE IN OR OTHERWISE EFFECT OR FACILITATE ANY TRANSACTION RELATING TO ANY SECURITIES OF THE COMPANY. PROSPECTIVE INVESTORS WHO CANNOT COMPLY FULLY WITH SUCH RESTRICTIONS SHOULD NOT REVIEW THE INFORMATION CONTAINED HEREIN AND SHOULD IMMEDIATELY RETURN THIS MEMORANDUM TO THE COMPANY.

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED WITH OR APPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION ("SEC") OR ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION, NOR HAS THE SEC OR ANY SUCH AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL. THE SECURITIES OFFERED HEREBY MAY NOT BE DIRECTLY OR INDIRECTLY OFFERED, SOLD OR DELIVERED TO ANY PERSON IN ANY JURISDICTION EXCEPT IN COMPLIANCE WITH APPLICABLE LAW. THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER OR SOLICITATION TO ANY PERSON IN ANY STATE OR OTHER JURISDICTION IF SUCH OFFER OR SOLICITATION IS NOT LAWFUL. AS A PURCHASER OF THE SECURITIES IN A PRIVATE PLACEMENT NOT REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), OR OTHER APPLICABLE LAW, EACH INVESTOR SHOULD PROCEED ON THE ASSUMPTION THAT IT MUST BEAR THE ECONOMIC RISK OF THE INVESTMENT FOR AN INDEFINITE PERIOD, SINCE THE SECURITIES OFFERED HEREBY MAY NOT BE RESOLD UNLESS THEY ARE SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT, OR OTHER APPLICABLE LAW, OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE. ALL INVESTORS WILL BE REQUIRED TO UNDERSTAND THAT THEY WILL NOT RESELL THE SECURITIES EXCEPT IN A TRANSACTION WHICH DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT, OR OTHER APPLICABLE LAW, AS CONFIRMED BY AN ACCEPTABLE LEGAL OPINION, IF SUCH LEGAL OPINION IS REQUIRED BY THE COMPANY. THE SECURITIES OFFERED HEREBY WILL BEAR A LEGEND DESCRIBING THE FOREGOING RESTRICTIONS.

NO PERSON HAS BEEN AUTHORIZED TO MAKE ANY REPRESENTATIONS OR GIVE ANY INFORMATION WITH RESPECT TO THE COMPANY OR THE OFFERED SECURITIES, EXCEPT THE INFORMATION CONTAINED HEREIN. PROSPECTIVE INVESTORS SHOULD NOT RELY ON ANY INFORMATION NOT CONTAINED IN THIS MEMORANDUM. REPRESENTATIVES OF THE COMPANY WILL BE AVAILABLE TO DISCUSS WITH PROSPECTIVE INVESTORS, ON REQUEST, THE INFORMATION AND PROJECTIONS CONTAINED HEREIN.

PROSPECTIVE INVESTORS ARE NOT TO CONSTRUE THE CONTENTS OF THIS MEMORANDUM OR ANY WRITTEN OR ORAL COMMUNICATION FROM THE COMPANY OR ITS EMPLOYEES AS LEGAL, BUSINESS OR TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN ATTORNEY, BUSINESS ADVISOR AND TAX ADVISOR AS TO LEGAL, BUSINESS, TAX AND RELATED MATTERS CONCERNING THIS OFFERING. THE COMPANY IS MAKING NO REPRESENTATION TO AN OFFEREE OR PURCHASER OF THE SECURITIES OFFERED HEREBY REGARDING THE LEGALITY OF AN INVESTMENT THEREIN BY SUCH OFFEREE OR PURCHASER UNDER APPROPRIATE LEGAL INVESTMENT OR SIMILAR LAWS.

NEITHER THE DELIVERY OF THIS MEMORANDUM AT ANY TIME NOR ANY SALE MADE PURSUANT TO THIS MEMORANDUM SHALL IMPLY THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE SET FORTH HEREIN.



EACH PROSPECTIVE INVESTOR, BY ACCEPTING DELIVERY OF THIS MEMORANDUM, AGREES TO RETURN IT TO THE COMPANY IF THE PROSPECTIVE INVESTOR DOES NOT PURCHASE THE SECURITIES DESCRIBED HEREIN OR IF THE OFFERING IS TERMINATED.

**THIS INVESTMENT IS SPECULATIVE AND SUITABLE ONLY FOR PERSONS WHO HAVE SUBSTANTIAL FINANCIAL RESOURCES AND MEET CERTAIN SUITABILITY REQUIREMENTS, WHO DO NOT ANTICIPATE THAT THEY WILL BE REQUIRED TO LIQUIDATE ANY INVESTMENT ACQUIRED HEREUNDER IN THE FORESEEABLE FUTURE, AND WHO UNDERSTAND OR HAVE BEEN ADVISED WITH RESPECT TO ANY RISK FACTORS ASSOCIATED WITH THIS OFFERING. SEE "RISK FACTORS" AND "INVESTOR SUITABILITY". THERE MAY BE MATERIAL INVESTMENT RISKS ASSOCIATED WITH THIS OFFERING WHICH CANNOT BE IDENTIFIED AT THIS TIME.**

**NO TRADING MARKET IS EXPECTED TO DEVELOP FOR THE COMMON STOCK IN THE NEAR FUTURE. SUBSTANTIAL RESTRICTIONS WILL BE IMPOSED ON ANY SALE OR TRANSFER OF ANY OF THE SECURITIES OFFERED HEREBY. SEE "RISK FACTORS – RESTRICTION ON TRANSFERABILITY".**

THIS MEMORANDUM IS TO BE EMPLOYED SOLELY IN CONNECTION WITH THE PRIVATE OFFERING OF THE SECURITIES. DELIVERY OF THIS MEMORANDUM TO ANY OTHER PERSON OR IN ANY OTHER MANNER IS NOT TO BE CONSTRUED AS AN OFFER. PURCHASE OF THE SECURITIES MAY ONLY BE MADE BY PERSONS TO WHOM OFFERS ARE MADE AND ONLY IN ACCORDANCE WITH THE PROCEDURES DESCRIBED IN THIS MEMORANDUM. ALL PURCHASES ARE SUBJECT TO ACCEPTANCE BY THE COMPANY.

**THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE CALIFORNIA CORPORATE SECURITIES LAW AND ARE BEING SOLD IN RELIANCE UPON THE EXEMPTION CONTAINED IN SECTION 25102(f) and 25102(n) OF SUCH ACT. THESE SECURITIES MAY NOT BE SOLD OR TRANSFERRED WITHOUT REGISTRATION UNDER SUCH ACT OR EXEMPTION THEREFROM. THEREFORE, ANY SALE OF THESE SECURITIES IN CALIFORNIA WILL BEAR A LEGEND RESTRICTING SALES AND TRANSFERS.**

## TABLE OF CONTENTS

	<u>Page</u>
Summary of the Offering	6
Plan of Distribution	7
Method of Subscription	7
Suitability Standards	8
Risk Factors	10
Use of Proceeds	13
Business	13
Management	16
Principal Shareholders	17
Description and Securities	18
Availability of Additional Information	20
<u>Exhibits</u>	
A. Offeree Questionnaire	
B. Subscription Agreement	
C. Class A Warrant Agreement	

## SUMMARY OF THE OFFERING

The following is qualified in its entirety by more detailed information and financial statements appearing elsewhere in this memorandum.

### THE COMPANY

Securities Offered	500,000 Units at \$0.50 per Unit. Each Unit consists of one share of Common Stock and one Class A Warrant. "See "Description of Securities."
Minimum Purchase	5,000 Units = \$2,500
Common Stock Outstanding	
Before Offering	40,086,000
After Offering <sup>(1)</sup>	40,586,000_
Class A Warrants to be Outstanding <sup>(1)</sup>	500,000 Warrants
Expiration Date	Class A Warrants expire December 31, 2018
Exercise Terms	Each Class A Warrant entitles the holder to purchase one (1) share of Common Stock for \$1.00 per share until the Expiration Date. The exercise prices and the number of Units issuable upon the exercise of the Warrants are subject to adjustment in certain circumstances.
Redemption	Redeemable by the Company at any time commencing six months from the date of this Memorandum, at a price of \$.05 per Warrant, upon not less than 30 days' notice to the holders of the Warrants called for redemption, provided that the average closing bid price of the Common Stock exceeds \$2.00 for 10 consecutive trading days prior to the notice of redemption. The holders of Warrants called for redemption shall have exercise rights until the close of business on the date fixed for redemption. See "Description of Securities."
Use of Proceeds	The Company intends to use the net proceeds of this offering for research and development and for general corporate purposes. See "Use of Proceeds."
Eligible Investors	The Units offered hereby shall be offered to only "Accredited Investors" in accordance with Regulation D under the Act and "Qualified Investors" in accordance with Section CE under the Act and Section 25102(n) under the California Securities Act. Investors will be required to make certain representations with respect to their status and business experience and to represent, among other things, that they have received a copy of this Memorandum, understand the terms of this Offering and meet certain investor suitability standards. We may accept or reject subscriptions in our discretion. See "Suitability Standards."
Resale Restrictions	The Common Stock underlying the Class A Warrants shall be restricted securities under the Securities Act and applicable state securities laws and, therefore, may only be transferred pursuant to the registration requirements of federal and state securities laws or pursuant to an exemption from such registration requirements. The certificates representing the underlying Units will bear a restrictive legend stating these resale restrictions. Holders will be required to furnish a legal opinion satisfactory to us before offering, reselling, pledging or transferring such securities except pursuant to an effective registration statement under the Securities Act.
Risk Factors	The securities offered hereby involve a <b>HIGH DEGREE OF RISK</b>

(1) Assumes the issuance of all 500,000 Units being offered herein.

## **PLAN OF DISTRIBUTION**

The Units are being offered to “Accredited Investors” as defined under Regulation D and/or Section 4(2) of the Securities Act of 1933 and to “Qualified Investors” under Section 25102(n) of the California Securities Laws. The Units will be offered and sold on behalf of the Company, on a “best efforts” basis by officers and directors of the Company and certain selected finders and broker/dealers. Cash commissions of up to ten percent (10%) of the total amount of subscriptions sold will only be paid to certain selected Financial Industry Regulatory Authority (“FINRA”) broker/dealers as sales are made. The maximum amount of commission payable by the Company shall not exceed ten percent. Officers and directors of the Company who sell the Units will not receive any commissions.

There is no firm commitment to purchase any of the Units and no estimate can be made on the number of brokers/dealers, if any, that may participate in this offering. There is no escrow of the proceeds from this offering and proceeds will be utilized by the Company as received. There is no assurance that all of the Units will be sold. If less than all of the Units are sold within 60 days (90 days if extended) from the date of this Memorandum, the various uses of the proceeds will be reduced proportionately (See “Use of Proceeds”).

The Company may indemnify the FINRA broker/dealers against certain civil liabilities, including liabilities arising under the Securities Act of 1933, as amended, which may arise in connection with this offering as a result of disclosures for which the Company is responsible. The FINRA broker/dealers will pay their own costs and expenses in connection with the offering in excess of the selling commissions described above.

Other than this Memorandum and the exhibits hereto no other offering literature will be employed in the offering of the Units.

## **METHOD OF SUBSCRIPTION**

Each person intending to purchase the Units offered hereby, must deliver the following items to the Company:

- (a) a check in the amount of \$0.50 multiplied by the number of Units subscribed for (minimum investment: \$2,500<sup>1</sup>) made payable to “Toughbuilt Industries, Inc.”; and
- (b) a completed and signed Offeree Questionnaire, a copy of which is attached hereto as Exhibit A; and
- (c) a completed and signed Subscription Agreement, a copy of which is attached hereto as Exhibit B, with the number of Units desired indicated thereon.

These items should be delivered to the Company at the following address:

ToughBuilt Industries, Inc.  
655 N. Central Ave., Suite 1727  
Glendale, CA 91203

Upon acceptance by the Company of a subscription, confirmation of such acceptance will be sent to the subscriber. Common Stock Certificates and Class A Warrant Agreements are intended to be sent to subscribers within four weeks after the close of the offering. The Company reserves the right to reject any subscriptions or portions of subscriptions at its own discretion.

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<sup>1</sup> The Company reserves the right to reduce, at its discretion, the minimum investment.

## SUITABILITY STANDARDS

INVESTMENT IN THE UNITS INVOLVES A HIGH DEGREE OF RISK AND IS SUITABLE ONLY FOR THOSE INVESTORS WHO HAVE SUBSTANTIAL FINANCIAL RESOURCES IN RELATION TO THEIR INVESTMENT AND WHO UNDERSTAND THE PARTICULAR RISK FACTORS OF THIS INVESTMENT. IN ADDITION, INVESTMENT IN THE UNITS IS SUITABLE ONLY FOR AN INVESTOR WHO DOES NOT NEED LIQUIDITY IN HIS INVESTMENT AND IS WILLING TO ACCEPT RESTRICTIONS ON THE TRANSFER OF THE UNITS.

### Investor Suitability

Units will be offered and sold only to those investors who are "Accredited Investors" and who submit an Offeree Questionnaire in the form attached hereto as Exhibit "A" establishing to the satisfaction of the Company that:

1. The investor is a "Qualified Investor" as defined in SEC Section CE and California Section 25102(n), that is:
  - (i) a natural person who, either individually or jointly with his/or her spouse, has a minimum net worth of \$500,000, or a minimum net worth of \$250,000, and, during the last taxable year had, and during the current year expects to have, a minimum gross income of \$100,000 (net worth shall be determined exclusive of home, home furnishings and automobiles);
  - (ii) a self-employed individual retirement plan or an individual retirement account (IRA), if the investment decisions are made solely by persons who are qualified purchasers.
  - (iii) any organization described in section 501(c)(3) of the Internal Revenue Code, a corporation, Massachusetts or similar business trust, or a partnership, not formed for a specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000; or
  - (iv) any entity in which all the equity owners are "Qualified Investors" as defined above.
2. The investor has such knowledge and experience in financial and business matters that he is able to evaluate the merits and risks of an investment in the Units.
3. The investor has the financial ability to bear the economic risk of an investment in the Units, adequate means of providing for his current needs and personal contingencies and no need for liquidity in an investment in the Units.
4. The investor is acquiring the Units for his own account for investment and not with a view to resale or distribution.
5. The investor is an "Accredited Investor" as defined in Regulation D, that is:
  - (i) Any bank as defined in Section 3 (a) (2) of the Securities Act of 1933, as amended (the "Act"), or any savings and loan association or other institution as defined in Section 3(1) (5) (A) of the Act, whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; an insurance company as defined in Section 2(13) of the Act; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a) (48) of that act; a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Administration Act of 1958; an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary as defined in Section 3(21) of such Act, which is either a bank, an insurance company or a registered investment advisor, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

- (ii) Any private business development company as defined in Section 202(a)(22) of the Investment Advisors Act of 1940;
- (iii) Any organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
- (iv) Any director, executive officer or manager of the Company;
- (v) Any natural person whose individual net worth or joint net worth with that person's spouse, at the time of purchase exceeds \$1,000,000, exclusive of home;
- (vi) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- (vii) Any trust with total assets in excess of \$5,000,000 not formed for the specific purpose of acquiring the securities offered hereby, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) of Regulation D; or
- (viii) Any entity in which all the equity owners are "Accredited Investors" as defined above.

Each investor will also be required to represent that: (a) he or she knows that neither the Units, or the underlying common stock have been registered under the Securities Act of 1933, as amended, and he or she has no right to require such registration; (b) he or she understands that his or her Units, the underlying common stock will be restricted as set forth in the Memorandum, which includes restrictions against transfer unless the transfer is not in violation of the Securities Act of 1933, as amended, and applicable state securities laws (including investment suitability standards); (c) payment for the Units will cause no undue hardship without undue difficulty; and (d) the subscriber's commitment to other investment programs, combined with the subscription for Units, is reasonable in relationship to the investor's net worth.

Please study the terms of the Subscription Agreement, this Memorandum and all related documents carefully before you decide to subscribe for Units.

The Company will review all subscription documents and will not accept subscriptions from any person who does not represent that he complies with the applicable standards specified above.

#### Ability to Accept Limitations on Transferability

It is unlikely that investors will be able to liquidate their investments in the Units in the event of an emergency. A public market for the units, warrants or common stock does not exist and there is no assurance that one will ever develop. Moreover, the transferability of the Units or common stock will be affected by restrictions on resale imposed under federal and state securities laws. See "Risk Factors — Substantial Restrictions on Transferability."

#### Ability and Willingness to Accept Risks

The economic benefit from an investment in the Company depends upon many factors beyond the control of the Company. Accordingly, the suitability for any particular investor of a purchase of the Units will depend upon, among other things, such investor's investment objectives and such investor's ability to accept speculative risks.

## RISK FACTORS

*This investment has a high degree of risk. Before you invest you should carefully consider the risks and uncertainties described below and the other information in this prospectus. If any of the following risks actually occur, our business, operating results and financial condition could be harmed and the value of our stock could go down. This means you could lose all or a part of your investment.*

ToughBuilt Industries, Inc. is currently a private company whereby market quotation for its securities is not available on a stock exchange. The Company's limited operating history makes it difficult for you to judge its prospects based upon which an evaluation of the Company, its current business and its prospects can be based. You should consider any purchase of the Company's Units in light of the risks, expenses and problems frequently encountered by all companies in the early stages of its corporate development. If any of the events described below were to occur, our business, prospects, financial condition, result from operations or cash flow could be materially affected.

### **RISKS RELATED TO OUR BUSINESS:**

#### **We have a limited operating history on which to judge our business prospects and management.**

The Company was incorporated and commenced operations in April, 2012. Accordingly, we have only a limited operating history upon which to base an evaluation of our business and prospects. Operating results for future periods are subject to numerous uncertainties and we cannot assure you that the Company will achieve or sustain profitability. The Company's prospects must be considered in light of the risks encountered by companies in the early stage of development, particularly companies in new and rapidly evolving markets. Future operating results will depend upon many factors, including increasing the number of affiliates, our success in attracting and retaining motivated and qualified personnel, our ability to establish short term credit lines, our ability to develop and market new products, control costs, and general economic conditions. We cannot assure you that the Company will successfully address any of these risks.

#### **We are significantly influenced by our officers, directors and entities affiliated with them.**

In the aggregate, ownership of the Company's Units by management and affiliated parties, and assuming all Units offered are sold, represents approximately 79.9% of the issued and outstanding shares of common stock. These shareholders, if acting together, will be able to significantly influence all matters requiring approval by shareholders, including the election of directors and the approval of mergers or other business combinations transactions. Our future performance is dependent on the ability to retain key personnel. The Company performance is substantially dependent on the performance of senior management. The loss of the services of any of its executive officers or other key employees could have a material adverse effect on the Company's business, results of operations and financial condition.

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

Provisions of our articles of incorporation adopted by our board of director may delay or frustrate the removal of incumbent directors and may prevent or delay a merger, tender offer or proxy contest involving the Company that is not approved by our board of directors, even if those events may be beneficial to the interest of our stockholders. For example, Michael Panosian our Chairman of the Board, President and Chief Executive Officer, will be issued all of the 100,000 authorized, issued and outstanding shares of our Class A Convertible Preferred Stock. Under an amendment to our articles of incorporation, each share of Class A Preferred Stock is entitled to 100 non-cumulative votes per share on all matters presented to our stockholders for action. Consequently, Mr. Panosian has sufficient voting power to control the outcome of all corporate matters submitted to the vote of our common stockholders. Those matters could include the election of directors, changes in the size and composition of the board of directors, and mergers and other business combinations involving the Company. In addition, through his control of the board of directors and voting power, he may be able to control certain decisions, including decisions regarding the qualification and appointment of officers, dividend policy, access to capital (including borrowing from third-party lenders and the issuance of additional equity securities), and the acquisition or disposition of assets by the Company. In addition, the concentration of voting power in the hands of Mr. Panosian could have the effect of delaying or preventing a change in control of the Company, even if the change in control would benefit our stockholders, and may adversely affect the future market price of our common stock.

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

We have relied upon cash from financing activities and in the future we intend to rely on revenues generated from operations to fund all of the cash requirements of our activities. There is no assurance that we will be able to generate any significant cash from our operating activities in the future. Deteriorating global economic conditions and the effects of ongoing military actions against terrorists may cause prolonged declines in investor confidence in and accessibility to capital markets. Future financing may not be available on a timely basis, in sufficient amounts or on terms acceptable to us. This financing may also dilute existing stockholders' equity. Any debt financing or other financing of securities senior to common stock will likely include financial and other covenants that will restrict our flexibility. At a minimum, we expect these covenants to include restrictions on our ability to pay dividends on our common stock. Any failure to comply with these covenants would have a material adverse effect on our business, prospects, financial condition and results of operations because we could lose our existing sources of funding and impair our ability to secure new sources of funding.

**Many very large and well-funded companies have or are entering into various aspects of the home improvement and construction industry market that we intend serve or that they are offering products that directly or indirectly compete with our current and proposed products and services.**

Construction tools and associated products for many years have not seen much innovation. Numerous world class companies are currently in various aspects of our market. There currently are a number of companies worldwide that have already occupied a big portion of the market in which we intend to operate. As a small, early-stage company, it is uncertain if and how we will be able to compete with the new competitors and products that are being announced and deployed. While we believe that we currently have a competitive advantage because of our innovations and creativity and specialized products and marketing strategy we cannot give any assurance that we will in fact be able to successfully compete with the existing or new competitors in this mature and evolving marketplace.

**We have no manufacturing capabilities and we are dependent upon third parties to manufacture our product.**

We are dependent upon our relationships with independent manufacturers to fulfill our product needs. We currently will be using only one manufacturer for each of our proposed products. Accordingly, we are dependent on the uninterrupted and efficient operation of these manufacturers' facilities. Our ability to market and sell our products requires that our product be manufactured in commercial quantities, without significant delay and in compliance with applicable federal and state regulatory requirements. In addition, we must be able to have our products manufactured at a cost that permits us to charge a price acceptable to the customer while also accommodating any distribution costs or third-party sales compensation. If our current manufacturers are unable for any reason to fulfill our requirements, or seek to impose unfavorable terms, we will have to seek out other contract manufacturers which could disrupt our operations and have a material adverse effect on our results of operation and financial condition. Competitors who perform their own manufacturing may have an advantage over us with respect to pricing, availability of product, and in other areas through their control of the manufacturing process.

#### **RISK FACTORS RELATING TO THIS OFFERING:**

**There is no public market for our securities.**

There is currently no trading market for our Common Stock. Although the Company intends to file for trading it is not anticipated that a trading market will develop in the foreseeable future. If no market develops, it may be difficult or impossible for you to resell your shares if you should desire to do so. There can be no assurance that you will be able to resell your shares at the purchase price paid in this offering or at any price.



**We will have broad discretion in using the net proceeds from this offering.**

A substantial portion of the estimated net proceeds from this offering has been allocated to working capital and general corporate purposes. Accordingly, the Company will have broad discretion as to the application of such proceeds. You will not have an opportunity to evaluate the economic, financial or other factors upon which we base our decision on how to use the net proceeds. See “Use of Proceeds.”

**Offering Price Arbitrarily Determined**

The offering Price of the Units being offered hereby was determined by the Company and bears no relationship to the Company’s assets, book value, net worth or operations, and may not be indicative of the actual value of the Company.

**Restricted Securities and Limited Liquidity**

The Common Stock is restricted securities under the 1933 Act. Investors will be required to hold these securities for which there will be no current market. Under Rule 144 promulgated under the Securities Exchange Act of 1934, as amended, the securities will have to be held for at least one year prior to sales, unless a registration statement is sooner filed for the benefit of the investors. Even if such a registration statement were filed by the Company, there may be no underwriting of additional Units in a conventional fashion and thus no market support for the securities from the broker-dealer community. It is unlikely that investors will be able to liquidate their investments in the Units in the event of an emergency. A public market for the Common Stock does not exist and there is no assurance that one will ever develop. Moreover, the transferability of the Common Stock will be affected by restrictions on resale imposed under federal and state securities laws.

**Immediate Dilution**

Purchasers of the Units in the Offering will experience immediate substantial dilution in the net tangible book value of the Units from the offering price herein.

**We may issue additional common stock at prices and on terms determined by our board of directors, without shareholder consent or approval that upon issuance may result in substantial dilution of our shareholders’ interests as well as the market price and value of our Common Stock.**

Assuming the sale of all 500,000 Units, the Company will still have approximately 59,400,000 shares of common stock available for issuance. We have the right to offer these shares at offering prices to be determined in sole discretion of our board of directors. The sale of these shares may result in substantial dilution to our shareholders. These stock issuances may adversely affect the market price or value of our common stock.

**We are not likely to issue dividends for the foreseeable future.**

We cannot assure you that our proposed operations will result in sufficient revenues to enable profitable operations or to generate positive cash flow. For the foreseeable future, we anticipate that we will use any funds available to finance the growth of the Company and that we will not pay cash dividends to stockholders.

**Ability and Willingness to Accept Risks**

The economic benefit from an investment in the Company depends upon many factors beyond the control of the Company. Accordingly, the suitability for any particular investor of a purchase of the Units will depend upon, among other things, such investor's investment objectives and such investor's ability to accept speculative risks.

## USE OF PROCEEDS

The net proceeds to the Company from the Offering, after deduction of commission and expenses will be approximately \$185,000 in the event of the maximum offering being sold. Management anticipates the proceeds to be allocated in the following priority:

Description of Use	Amount	Percent
Research and Development	\$ 100,000	54%
Working Capital	\$ 85,000	46%
<b>TOTAL</b>	<b>\$ 185,000</b>	<b>100%</b>

The amounts set forth above represent the Company's present intentions for the use of the proceeds from this Offering. However, actual expenditures could vary considerably depending upon many factors, including, without limitation, changes in economic conditions, unanticipated complications, delays and expenses, or problems relating to the development of its products or its marketing and sales planning will be made in the of the Board of Directors but will be in furtherance of the Company's strategy to achieve growth and profitable operations. The Company's working capital requirements are a function of its future sales growth and profitable operations, neither of which can be predicted with any reasonable degree of certainty. As a result, although the Company estimates such proceeds will meet cash operating requirements for approximately six months the Company is unable to precisely forecast the period of time for which proceeds of this Offering will meet such requirements. Pending use of the net proceeds of the Offering, the funds will be invested temporarily in certificates of deposit, short-term government securities or similar investments. Any income from these short-term investments will be used for working capital.

## BUSINESS

The Company was formed on April 9, 2012 under the name Phalanx, Inc., under the laws of the State of Nevada and changed its name to ToughBuilt Industries, Inc. on December 29, 2015. The Company was formed to manufacture and distribute innovative tools and accessories to the building industry. The global tool market industry is a multibillion dollar a year business.

### Corporate Overview

The mission of the Company includes, but is not limited to, providing products to the building and home improvement communities that are innovative, of superior quality and enlightened creativity for our end users while enhancing performance, improving well-being and building extreme brand loyalty.

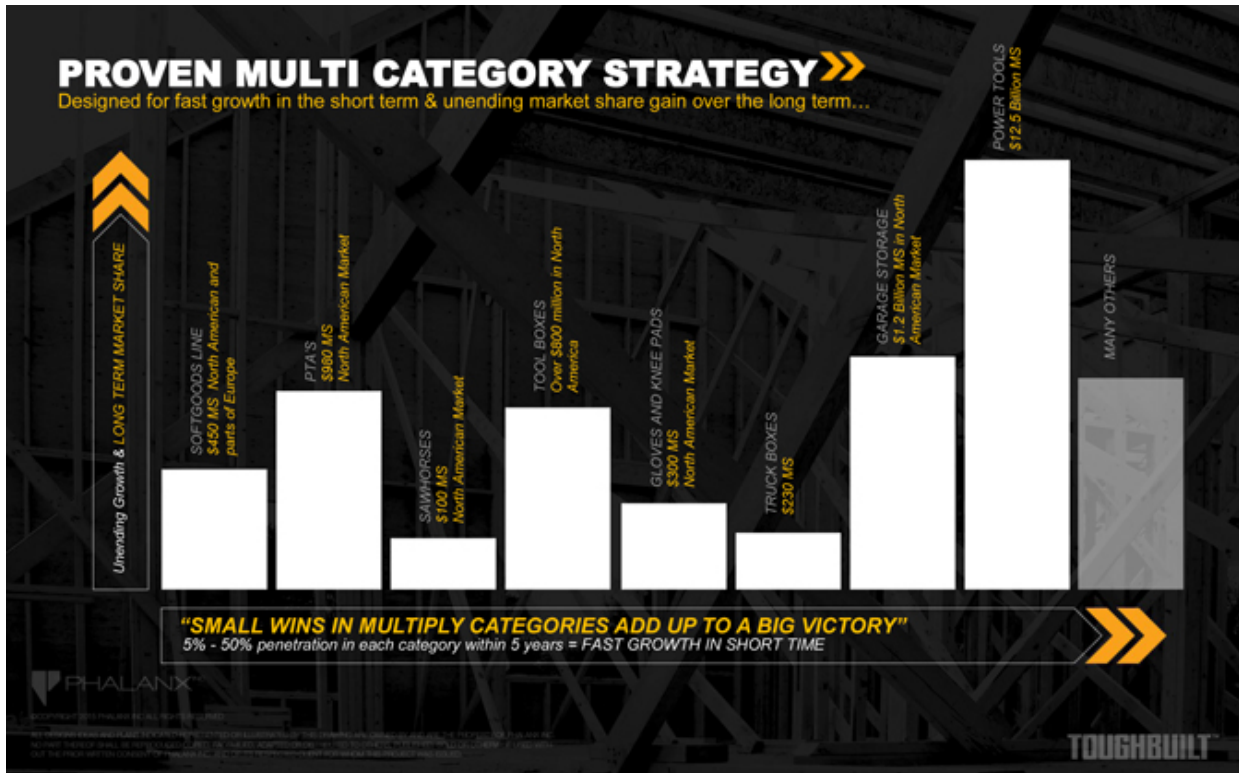


ToughBuilt® brand was founded in 2006 with an agenda to seek & solve evolving industry challenges and end-user needs within the hardware and home improvement channels. Our mission is to reach the end users directly and to engage, excite, educate, entertain, and establish ToughBuilt Industries as the leading hub/ platform for professionals and building enthusiasts.

The company product strategy is to participate in multi category product lines rather than focus on single line of goods. This approach allows for rapid growth, wider brand recognition, and ultimately will result in a large company within a much shorter time period. All the achievements, recognition and strategy is based on the core competency of the company.

The robust capabilities at ToughBuilt stands above most competitors as not every distributor or factory has the ability to quickly identify industry and end user opportunities and execute quickly to deliver winning product lines consistently. Also, most distributors and factories do not have such a highly recognizable and reputable brand or the proven ability to reach major retailers globally to position their products and brands.

Flexible capabilities, unique skill sets and commercialization savvy is embedded in the company DNA that delivers successful products to market faster.



The teams behind Toughbuilt are seasoned professional innovators and commercialization experts turned manufacturers and distributor, not importers or factories with hit and miss innovation skill level. The company culture is highly dynamic, customer centric and views itself as “the antidote to sameness”.

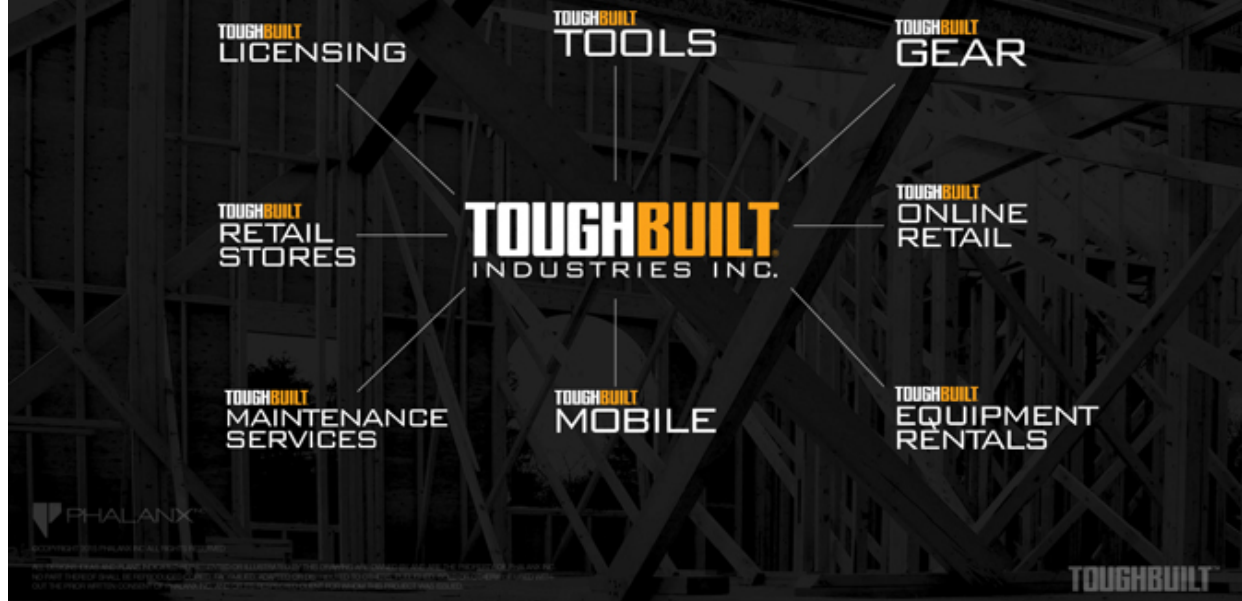
Currently, the company has strong placement in Home Depot, Menards, OSH, B&Q (UK), Bunning’s (Australia), Princess Auto (Canada), and has growing sales in global markets such as, Western and central Europe, Russia & Eastern Europe, Africa and the Middle East.

Toughbuilt is currently in line reviews and discussions with Lowe's, B&Q (Germany), True Value, Best buys and many other major retailers around the world. It is expected that 3 major retailers and numerous distributors and private retailers will join every year within 6 sectors and 56-targeted countries.



Toughbuilt is a unique brand with a driven team that is confidently poised to scale into a highly recognized global entity. We aim to grow TOUGHBUILT INDUSTRIES INC.® with many relevant subsidiaries in the next few short years to become the hub/ platform for professionals, DIY (Do it yourselves) and passionate builders everywhere.

## POSSIBLE BRAND SUBSIDIARIES >>>



### MANAGEMENT

#### DIRECTORS AND EXECUTIVE OFFICERS

Name	Age	Position
Michael Panosian	53	President/CEO/CFO & Director
Josh Keeler	38	Secretary & Director of R & D
Ed Martin	50	President/US Sales

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

**MICHAEL PANOSIAN**, Founder, President/CEO/CFO & Director

Michael has over 16 years of extensive experience in innovation, design direction, product development, brand management, marketing, merchandising, sales, supply chain and commercialization experience in the hardware industry. He has launched over 220+ product projects spanning several fields.

Michael has deep knowledge of doing business in China where he managed a team of over 350 engineers, industrial designers and marketing professionals while stationed in Suzhou China with his team for 4 years.

Michael is a graduate of Northrop University in Aerospace engineering with numerous specializations; he holds numerous patents and Trademarks that are shared with some of his colleagues at **TOUGHBUILT®** and other development teams.

**JOSH KEELER**, Co-Founder, Secretary & Director of R&D

As the Director of R&D at **TOUGHBUILT®** Josh is responsible for all product development. Josh is one of the founding partners and works directly with Michael in bringing innovative ideas to market.

Josh is a graduate of Art Center College of Design with a BS in Industrial Design. Josh has over 12 years of product development experience, working on projects spanning several fields, including: automotive, personal electronics, sporting goods and a wide expanse of tools. He has lived in China and has extensive experience working directly with manufacturers to get designs into production.

**ED MARTIN**, President, US Sales

Mr. Martin received his education from Cartridge College in Kenosha, where he obtained a BA in Criminal Justice. Mr. Martin spent 23 years in the retail industry, 18 of which were with Home Depot.

Ed also serves as Co-Chairman on the Board of Directors for NARMS, the National Association for Merchandising Services which is a legal forum to join all facets of the retail service industry to network and discuss common issues. Ed's main duty at **TOUGHBUILT®** is on boarding of all top accounts in North America and some major South American retailers

**PRINCIPAL SHAREHOLDERS**

The following table sets forth, as of the date of this Memorandum, the number of share of the Company's Common Stock and percentage of the outstanding shares of the Company's Common Stock owned beneficially (1) by each officer and director who owns any such shares of the Company; (2) by all officers and directors of the Company as a group; and (3) by all persons who are known to the Company to own more than five percent of the Company's Common Stock. The table also reflects percentage shareholdings assuming the completion of this offering.

Name and Address <sup>(1)</sup>	Number of Shares Beneficially Owned	Percentage of Outstanding Shares*	
		Prior to Offering	After Offering <sup>(2)</sup>
Michael Panosian	25,000,000	62.0	61.6
Josh Keeler	6,750,000	16.8	16.3
Ed Martin	811,000	2.0	2.0
Officers and Directors as a group (3 persons)	32,561,000	80.8	79.9

\* As of January 252, 2016, the Company had 40,086,000 shares of its common stock issued and outstanding

(1) The address for each of the beneficial owners identified is 655 N. Central Ave., Suite 1700, Glendale, CA 91203

(2) Assumes the issuance of all of the 500,000 shares being offered herein.

## DESCRIPTION OF SECURITIES

### General

The Company is authorized to issue two classes of stock. The total number of shares of stock which the Company is authorized to issue is one hundred and five million (105,000,000) shares, consisting of one hundred million (100,000,000) shares of Common Stock, \$.0001 par value and five million (5,000,000) shares of preferred stock, \$.0001 par value.

### Common Stock

As of the date of this Memorandum, the Company had 40,086,000 shares of Common Stock issued and outstanding.

### Voting

The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meeting). There shall be no cumulative voting. The holders of shares of Common Stock are entitled to dividends when and as declared by the Board of Directors from funds legally available therefore, and upon liquidation are entitled to share pro rata in any distribution to holders of Common Stock. There are no preemptive, conversion or redemption privileges, nor sinking fund provisions with respect to the Common Stock.

### Changes in Authorized Number

The number of authorized shares of Common Stock may be increased or decreased subject to the Company's legal commitments at any time and from time to time to issue them, by the affirmative vote of the holders of a majority of the stock of the Company entitled to vote.

### Preferred Stock In General

The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is authorized to fix the number of shares of any series of Preferred Stock and to determine the designation of any such series. The Board of Directors is also authorized to determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series. Currently there are no shares of Preferred Stock issued and outstanding.

### Class A Convertible Preferred Stock

The Board of Directors has authorized the issuance of 100,000 shares of our Class A Convertible Preferred Stock (the "Class A Preferred") to Michael Panosion, CEO of the Company. The holders of outstanding shares of Class A Preferred are entitled to receive dividends together with the common stock holders out of assets legally available at times and in amounts as the board of directors may from time to time determine.

Holders of Class A Preferred are entitled to 100 non-cumulative votes per share on all matters presented to our stockholders for action. This right could adversely affect the voting power of the holders of common stock and could have the effect of making it more difficult for a third party to acquire, or could discourage or delay a third party from acquiring, a majority of our outstanding stock. In addition, the affirmative vote of the holders of a majority of the Class A Preferred then outstanding, voting as a separate class, is required for the Company to do any of the following:

- i. amend, alter or repeal any of the preferences or rights of the Class A Preferred;
- ii. authorize any reclassification of the Class A Preferred;
- iii. increase the authorized number of shares of the Class A Preferred; or
- iv. create any class or series of shares ranking prior to the Class A Preferred as to dividends or liquidation.

Shares of Class A Preferred are not entitled to preemptive rights.

Shares of Class A Preferred have a liquidation preference of \$.10 per share plus accumulated and unpaid dividends. After payment of the full amount of the liquidating distribution to which they are entitled, holders of Class A Preferred will not be entitled to any further participation in any distribution of assets by the Company.

The Class A Preferred may be redeemed by the Company at any time upon 30 days' prior written notice at a redemption price of \$5.00 per share. Holders of Class A Preferred have the right to convert their shares of Class A Preferred into our common stock until the third business day prior to the end of the 30-day notice period. The redemption price for Class A Preferred is payable together with accumulated and unpaid dividends to the date fixed for redemption. If full cumulative dividends on the Class A Preferred through the most recent dividend payment date have not been paid, the Class A Preferred may not be redeemed in part unless approved by the holders of a majority of the outstanding shares of Class A Preferred, and we may not purchase or acquire any share of Class A Preferred other than under a purchase or exchange offer made on the same terms to all holders of Class A Preferred. If less than all outstanding shares of Class A Preferred are to be redeemed, we will select those to be redeemed by lot or a substantially equivalent method.

The shares of Class A Preferred are not subject to any sinking fund or other similar provision. The redemption by us of all or part of the Class A Preferred is subject to the availability of cash. Moreover, under Nevada law, shares of capital stock shall not be redeemed when the capital of a company is impaired or when the redemption would cause any impairment of capital.

Holders of Class A Preferred have the right to convert their shares of Class A Preferred into shares of common stock at any time before the third business day prior to the end of any 30-day redemption notice period, at a conversion rate equal to one-tenth of one share of common stock per share of Class A Preferred. The conversion rate is subject to anti-dilution adjustments. If we disappear in a merger or consolidation or we sell substantially all of our assets, then each share of Class A Preferred will entitle the holder to convert such share into the kind and amount of consideration that the holder would have been entitled to receive immediately after the merger, consolidation or sale.

### **Units**

Each Unit consists of one share of common stock and one Class A Warrant.

### **Class A Warrants**

Each Class A Warrant entitles the holder thereof to purchase one (1) share of Common Stock at a price of \$1.00 per share, through and including December 31, 2018.

The Warrants are redeemable by the Company, upon thirty (30) days notice, at a price of \$.05 per Warrant, provided the average of the closing bid price of the Common Stock, as reported by the National Association of Securities Dealers Automated Quotation ("NASDAQ") System (or the average of the last sale price if the Common Stock is then listed on the NASDAQ National Market System or a securities exchange), shall equal or exceed \$2.00 per share (subject to adjustment) for 10 consecutive trading days prior to the date on which the Company gives notice of redemption. The holders of Warrants called for redemption have exercise rights until the close of business on the date fixed for redemption.



The exercise price and number of shares of Common Stock or other securities issuable on exercise of the Warrants are subject to adjustment in certain circumstances, including in the event of a stock dividend, recapitalization, reorganization, merger or consolidation of the Company. However, no Warrant is subject to adjustment for issuances of Common Stock at a price below the exercise price of that Warrant.

The Warrants may be exercised upon surrender of the Warrant certificate on or prior to the expiration date at the offices of the Company, with the exercise form on the reverse side of the certificate completed and executed as indicated, accompanied by full payment of the exercise price (by certified check payable to the Company) to the Company for the number of Warrants being exercised. The Warrant holders do not have the rights or privilege of holders of Common Stock.

Warrants are generally more speculative than the shares of Common Stock purchasable upon the exercise thereof. Historically, the percentage increase or decrease in the market price of a Warrant has tended to be greater than the percentage increase or decrease in the market price of the underlying common shares. Warrants may become valueless, or of reduced value, if the market price of the shares of Common Stock decreases, or increases only modestly, over the term of the Warrants. The Company has no present intent to have the warrants trade in any market.

No fractional shares will be issued upon exercise of the Warrants. However, if a Warrant holder exercises all Warrants then owned of record by him, the Company will pay to such Warrant holder, in lieu of the issuance of any fractional share which is otherwise issuable, an amount in cash based on the market value of the common stock on the last trading day prior to the exercise date.

#### **AVAILABILITY OF ADDITIONAL INFORMATION**

The Company will make available to each potential investor the opportunity to ask questions and receive answers concerning this Offering and the Company, and to obtain any additional information, which the Company possesses or can acquire without unreasonable effort, or expense that is necessary to verify the accuracy of the information furnished in this Private Placement Memorandum. Copies of the Company's Articles of Incorporation, Bylaws, material contracts and other relevant information will be made available upon request to the extent the Company can do so without unreasonable expense or effort. Questions regarding this Offering should be directed to: Investor Relations, ToughBuilt Industries, Inc., 655 N. Central Ave., Suite 1727, Glendale, CA 91203.

**TOUGHBUILT INDUSTRIES, INC.**  
**CLASS A WARRANT AGREEMENT**

Certificate No. W-A\_\_\_\_

CLASS A WARRANT

TO PURCHASE \_\_\_\_\_ SHARES OF COMMON STOCK

OF

**TOUGHBUILT INDUSTRIES, INC.**

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "1933 ACT") OR UNDER ANY STATE SECURITIES OR "BLUE SKY" LAWS ("BLUE SKY LAWS"). NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THIS WARRANT OR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT OR ANY INTEREST THEREIN MAY BE MADE EXCEPT (a) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE 1933 ACT AND ANY APPLICABLE BLUE SKY LAWS OR (b) IF THE CORPORATION HAS BEEN FURNISHED WITH AN OPINION OF COUNSEL FOR THE HOLDER, WHICH OPINION AND COUNSEL SHALL BE REASONABLY SATISFACTORY TO THE CORPORATION, TO THE EFFECT THAT NO REGISTRATION IS REQUIRED BECAUSE OF THE AVAILABILITY OF AN EXEMPTION FROM REGISTRATION UNDER THE 1933 ACT AND APPLICABLE BLUE SKY LAWS.

THIS CERTIFIES THAT, for good and valuable consideration \_\_\_\_\_ (the "Holder"), or the Holder's registered assigns, is entitled to subscribe for and purchase from Toughbuilt Industries, Inc., a Nevada corporation (the "Corporation"), at any time after the date hereof to and including December 31, 2018, \_\_\_\_\_ (\_\_\_\_\_) fully paid and nonassessable shares of the Common Stock of the Corporation at the price of \$1.00 per share (the "Warrant Exercise Price"), subject to the anti-dilution provisions of this Warrant.

The shares which may be acquired upon exercise of this Warrant are referred to herein as the "Warrant Shares." As used herein, the term "Holder" means the Holder, any party who acquires all or a part of this Warrant as a registered transferee of the Holder, or any record holder or holders of the Warrant Shares issued upon exercise, whether in whole or in part, of the Warrant. The term "Common Stock" means the common stock, no par value per share, of the Corporation. This Warrant is part of a series of Warrants (the "Series") issued in connection with a private placement by the Corporation pursuant to a Private Placement Memorandum dated January 25, 2016.

This Warrant is subject to the following provisions, terms and conditions:

1. EXERCISE; TRANSFERABILITY.

(a) The rights represented by this Warrant may be exercised by the Holder hereof, in whole or in part (but not as to a fractional share of Common Stock), by written notice of exercise (in the form attached hereto) delivered to the Corporation at the principal office of the Corporation prior to the expiration of this Warrant and accompanied or preceded by the surrender of this Warrant along with a check in payment of the Warrant Exercise Price for such Warrant Shares.

(b) Except as provided in Section 7 hereof, this Warrant may not be sold, transferred, assigned, hypothecated or divided into two or more Warrants of smaller denominations, nor may any Warrant Shares issued pursuant to exercise of this Warrant be transferred.

2. EXCHANGE AND REPLACEMENT. Subject to Sections 1 and 7 hereof, this Warrant is exchangeable upon the surrender hereof by the Holder to the Corporation at its office for new Warrants of like tenor and date representing in the aggregate the right to purchase the number of Warrant Shares purchasable hereunder, each of such new Warrants to represent the right to purchase such number of Warrant Shares (not to exceed the aggregate total number purchasable hereunder) as shall be designated by the Holder at the time of such surrender. Upon receipt by the Corporation of evidence reasonably satisfactory to it of the loss, theft, destruction, or mutilation of this Warrant, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it, and upon surrender and cancellation of this Warrant, if mutilated, the Corporation will make and deliver a new Warrant of like tenor, in lieu of this Warrant. This Warrant shall be promptly canceled by the Corporation upon the surrender hereof in connection with any exchange or replacement. The Corporation shall pay all expenses, taxes (other than stock transfer taxes), and other charges payable in connection with the preparation, execution, and delivery of Warrants pursuant to this Section 2.

3. ISSUANCE OF THE WARRANT SHARES.

(a) The Corporation agrees that the Warrant Shares shall be and are deemed to be issued to the Holder as of the close of business on the date on which this Warrant shall have been surrendered and the payment made for such Warrant Shares as aforesaid. Subject to the provisions of paragraph (b) of this Section 3, certificates for the Warrant Shares so purchased shall be delivered to the Holder within a reasonable time after the rights represented by this Warrant shall have been so exercised, and, unless this Warrant has expired, a new Warrant representing the right to purchase the number of Warrant Shares, if any, with respect to which this Warrant shall not then have been exercised shall also be delivered to the Holder.

(b) Notwithstanding the foregoing, however, the Corporation shall not be required to deliver any certificate for Warrant Shares upon exercise of this Warrant except in accordance with exemptions from the applicable securities registration requirements or registrations under applicable securities laws. Nothing herein shall obligate the Corporation to effect registrations under federal or state securities laws. If registrations are not in effect and if exemptions are not available when the Holder seeks to exercise the Warrant, the Warrant exercise period will be extended, if need be, to prevent the Warrant from expiring, until such time as either registrations become effective or exemptions are available, and the Warrant shall then remain exercisable for a period of at least 30 calendar days from the date the Corporation delivers to the Holder written notice of the availability of such registrations or exemptions. The Holder agrees to execute such documents and make such representations, warranties, and agreements as may be required solely to comply with the exemptions relied upon by the Corporation, or the registrations made, for the issuance of the Warrant Shares.

4. COVENANTS OF THE CORPORATION. The Corporation covenants and agrees that all Warrant Shares will, upon issuance, be duly authorized and issued, fully paid, nonassessable and free from all taxes, liens and charges with respect to the issue thereof. The Corporation further covenants and agrees that during the period within which the rights represented by this Warrant may be exercised, the Corporation will at all times have authorized and reserved for the purpose of issue or transfer upon exercise of the subscription rights evidenced by this Warrant a sufficient number of shares of Common Stock to provide for the exercise of the rights represented by this Warrant.

5. ANTI-DILUTION ADJUSTMENTS. The provisions of this Warrant are subject to adjustment as provided in this Section 5.

(a) The Warrant Exercise Price shall be adjusted from time to time such that in case the Corporation shall hereafter:

- (i) pay any dividends on any class of stock of the Corporation payable in Common Stock or securities convertible into Common Stock;
- (ii) subdivide its then outstanding shares of Common Stock into a greater number of shares; or

(iii) combine outstanding shares of Common Stock, by reclassification or otherwise; then, in any such event, the Warrant Exercise Price in effect immediately prior to such event shall (until adjusted again pursuant hereto) be adjusted immediately after such event to a price (calculated to the nearest full cent) determined by dividing (A) the number of shares of Common Stock outstanding immediately prior to such event, multiplied by the then existing Warrant Exercise Price, by (B) the total number of shares of Common Stock outstanding immediately after such event (including in each case the maximum number of shares of Common Stock issuable in respect of any securities convertible into Common Stock), and the resulting quotient shall be the adjusted Warrant Exercise Price per share. An adjustment made pursuant to this Subsection shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification. If, as a result of an adjustment made pursuant to this Subsection, the Holder of any Warrant thereafter surrendered for exercise shall become entitled to receive shares of two or more classes of capital stock or shares of Common Stock and other capital stock of the Corporation, the Board of Directors (whose determination shall be conclusive) shall determine the allocation of the adjusted Warrant Exercise Price between or among shares of such classes of capital stock or shares of Common Stock and other capital stock. All calculations under this Subsection shall be made to the nearest cent or to the nearest 1/100 of a share, as the case may be. In the event that at any time as a result of an adjustment made pursuant to this Subsection, the holder of any Warrant thereafter surrendered for exercise shall become entitled to receive any shares of the Corporation other than shares of Common Stock, thereafter the Warrant Exercise Price of such other shares so receivable upon exercise of any Warrant shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this Section

(b) Upon each adjustment of the Warrant Exercise Price pursuant to Section 5(a) above, the Holder of each Warrant shall thereafter (until another such adjustment) be entitled to purchase at the adjusted Warrant Exercise Price the number of shares, calculated to the nearest full share, obtained by multiplying the number of shares specified in such Warrant (as adjusted as a result of all adjustments in the Warrant Exercise Price in effect prior to such adjustment) by the Warrant Exercise Price in effect prior to such adjustment and dividing the product so obtained by the adjusted Warrant Exercise Price.

(c) In case of any consolidation or merger to which the Corporation is a party other than a merger or consolidation in which the Corporation is the continuing corporation, or in case of any sale or conveyance to another corporation of the property of the Corporation as an entirety or substantially as an entirety, or in the case of any statutory exchange of securities with another corporation (including any exchange effected in connection with a merger of a third corporation into the Corporation), there shall be no adjustment under Subsection (a) of this Section 5 but the Holder of each Warrant then outstanding shall have the right thereafter to convert such Warrant into the kind and amount of shares of stock and other securities and property which he would have owned or have been entitled to receive immediately after such consolidation, merger, statutory exchange, sale, or conveyance had such Warrant been converted immediately prior to the effective date of such consolidation, merger, statutory exchange, sale, or conveyance and, in any such case, if necessary, appropriate adjustment shall be made in the application of the provisions set forth in this Section with respect to the rights and interests thereafter of any Holders of the Warrant, to the end that the provisions set forth in this Section shall thereafter correspondingly be made applicable, as nearly as may reasonably be, in relation to any shares of stock and other securities and property thereafter deliverable on the exercise of the Warrant. The provisions of this Subsection shall similarly apply to successive consolidations, mergers, statutory exchanges, sales or conveyances.

(d) Upon any adjustment of the Warrant Exercise Price, then and in each such case, the Corporation shall give written notice thereof, by first-class mail, postage prepaid, addressed to the Holder as shown on the books of the Corporation, which notice shall state the Warrant Exercise Price resulting from such adjustment and the increase or decrease, if any, in the number of shares of Common Stock purchasable at such price upon the exercise of this Warrant, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

6. NO VOTING RIGHTS. This Warrant shall not entitle the Holder to any voting rights or other rights as a shareholder of the Corporation.

7. NOTICE OF TRANSFER OF WARRANT OR RESALE OF THE WARRANT SHARES.

(a) Subject to the sale, assignment, hypothecation, or other transfer restrictions set forth in Section 1 hereof, the Holder, by acceptance hereof, agrees to give written notice to the Corporation before transferring this Warrant or transferring any Warrant Shares of such Holder's intention to do so, describing briefly the manner of any proposed transfer. Promptly upon receiving such written notice, the Corporation shall present copies thereof to the Corporation's counsel. If in the opinion of such counsel the proposed transfer may be effected without registration or qualification (under any federal or state securities laws), the Corporation, as promptly as practicable, shall notify the Holder of such opinion, whereupon the Holder shall be entitled to transfer this Warrant or to dispose of Warrant Shares received upon the previous exercise of this Warrant, all in accordance with the terms of the notice delivered by the Holder to the Corporation; provided that an appropriate legend may be endorsed on this Warrant or the certificates for such Warrant Shares respecting restrictions upon transfer thereof necessary or advisable in the opinion of counsel and satisfactory to the Corporation to prevent further transfers which would be in violation of Section 5 of the 1933 Act and applicable state securities laws; and provided further that the prospective transferee or purchaser shall execute such documents and make such representations, warranties, and agreements as may be required solely to comply with the exemptions relied upon by the Corporation for the transfer or disposition of the Warrant or Warrant Shares.

(b) If, in the opinion of the Corporation's counsel, the proposed transfer or disposition of the Warrant or such Warrant Shares described in the written notice given pursuant to this Section 7 may not be effected without registration or qualification of this Warrant or such Warrant Shares, the Corporation shall promptly give written notice thereof to the Holder, and the Holder will limit its activities in respect to such transfer or disposition as, in the opinion of such counsel, are permitted by law.

8. FRACTIONAL SHARES. Fractional shares shall not be issued upon the exercise of this Warrant, but in any case where the holder would, except for the provisions of this Section, be entitled under the terms hereof to receive a fractional share, the Corporation shall, upon the exercise of this Warrant for the largest number of whole shares then called for, pay a sum in cash equal to the sum of (a) the excess, if any, of the Market Price of such fractional share over the proportional part of the Warrant Exercise Price represented by such fractional share, plus (b) the proportional part of the Warrant Exercise Price represented by such fractional share. For purposes of this Section, the term "Market Price" with respect to shares of Common Stock of any class or series means the last reported sale price or, if none, the average of the last reported closing bid and asked prices on any national or regional securities exchange or quoted in the National Association of Securities Dealers, Inc.'s Automated Quotations System ("Nasdaq"), or if not listed on a national or regional securities exchange or quoted in Nasdaq, the average of the last reported closing bid and asked prices as reported by the Electronic Bulletin Board of the National Association of Securities Dealers, Inc. from quotations by market makers in such Common Stock on the over-the-counter market, or if no quotations in such Common Stock are available, the fair market value of the shares as determined in good faith by the Board of Directors of the Corporation.

9. REDEMPTION. The Warrants may be redeemed by the Corporation, in whole or in part, at a redemption price of \$0.05 per Warrant (subject to appropriate adjustment as determined by the Corporation's Board of Directors in the event of the occurrence of the events described in Sections 5(a)(i), (ii) and (iii)) upon notice of such redemption given by the Corporation not less than thirty (30) days prior to the date fixed for redemption mailed to the holders of Warrants at their last registered addresses. The Corporation shall be entitled to redeem the Warrants as provided in this Section 9 only if the average closing bid price of the Common Stock exceeds \$2.00 per share (subject to appropriate adjustment as determined by the Corporation's Board of Directors in the event of the occurrence of the events described in Sections 5(a)(i), (ii) and (iii)) for any ten (10) consecutive trading days prior to third day such notice of redemption has been given. If notice of redemption shall have been given to the Holders, the exercise rights of the Warrants identified for redemption shall expire at the close of business on such date of redemption, unless extended by the Corporation.

#### 10. MISCELLANEOUS.

(a) NOTICES. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, or (c) two (2) business days after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Corporation at the address as set forth on the signature page hereof, to the Holder at \_\_\_\_\_ or at such other address as the Corporation or Holder may designate by ten (10) days advance written notice to the other party hereto.

(b) ATTORNEYS' FEES. If any action at law or in equity is necessary to enforce or interpret the terms of this Warrant, the prevailing party shall be entitled to reasonable attorneys' fees, costs and disbursements in addition to any other relief to which such party may be entitled.



(c) AMENDMENTS AND WAIVERS. This Warrant may be amended or modified only upon the written consent of both Holder and the Corporation. This Warrant and any provision hereof may be waived only by an instrument in writing signed by the party against which enforcement of the same is sought.

(d) SEVERABILITY. If one or more provisions of this Warrant are held to be unenforceable under applicable law, such provision shall be excluded from this Warrant and the balance of the Warrant shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

(e) GOVERNING LAW. This Warrant shall be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to its conflicts of laws principles.

IN WITNESS WHEREOF, Toughbuilt Industries, Inc. has caused this Warrant to be signed by its duly authorized officer and this Warrant to be dated \_\_\_\_\_, 2016.

TOUGHBUILT INDUSTRIES, INC.  
a Nevada corporation

By: \_\_\_\_\_  
Michael Panosian  
President & CEO

655 N. Central Ave. Ste. 1700  
Glendale, CA 91203  
(800) 604-3259 Fax

(To Be Executed by the Registered Holder in Order to Exercise the Warrant)

To: Toughbuilt Industries, Inc.

The undersigned hereby irrevocably elects to exercise the attached Warrant to purchase for cash, \_\_\_\_\_ of the shares issuable upon the exercise of such Warrant, and requests that certificates for such shares (together with a new Warrant to purchase the number of shares, if any, with respect to which this Warrant is not exercised) shall be issued in the name of:

NAME: \_\_\_\_\_

**SOC. SEC. or  
TAX I.D. NO.**

\_\_\_\_\_

**ADDRESS:**

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_ Signature \*

\* The signature on the Notice of Exercise of Warrant must correspond to the name as written upon the face of the Warrant in every particular without alteration or enlargement or any change whatsoever. When signing on behalf of a corporation, partnership, trust or other entity, please indicate your position(s) and title(s) with such entity.

#### **ASSIGNMENT FORM**

(To be Executed by the Registered Holder in Order to Transfer the Warrant)

To: Toughbuilt Industries, Inc.

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_ the right to purchase the securities of Toughbuilt Industries, Inc. to which the within Warrant relates and appoints \_\_\_\_\_, attorney, to transfer said right on the books of Toughbuilt Industries, Inc. with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature

Address: \_\_\_\_\_

\_\_\_\_\_

**SUBSCRIPTION AGREEMENT**

**To subscribe for Units of Class B Preferred Stock and Warrants  
in the private offering of**

**TOUGHBUILT INDUSTRIES, INC.**

**1. Complete and Date, Initial and Sign where applicable, the following pages included in the Subscription Agreement:**

- Signature Page attached to this Subscription Agreement
- Accredited Investor Certification
- Purchaser Questionnaire
- Form of Payment & Securities Delivery Instructions
- If applicable, Bad Actor Disqualification Questionnaire
- If applicable, Wire Transfer Authorization

**2. Return all forms to your Joseph Gunnar Account Executive or by email: [elord@jgunnar.com](mailto:elord@jgunnar.com) or fax: (212) 440-9614 and send a check (if applicable) to:**

**Joseph Gunnar & Co., LLC  
30 Broad Street, 11<sup>th</sup> Floor  
New York, NY 10004  
Attn: Eric Lord**

**3. Please make your subscription payment payable to the order of "Signature Bank, as Escrow Agent for ToughBuilt Industries, Inc." Account No. **xxxxxx**.**

**For wiring funds directly to the escrow account, use the following instructions:**

<b>Bank Name:</b>	<b>Signature Bank 261 Madison Avenue New York, NY 10016</b>
<b>Acct. Name:</b>	<b>Signature Bank as Escrow Agent for ToughBuilt Industries,, Inc.</b>
<b>ABA Number:</b>	<b>026013576</b>
<b>SWIFT Code:</b>	<b>SIGNUS33</b>
<b>A/C Number:</b>	<b>xxxxxx</b>
<b>FBO:</b>	<b>Investor Name Social Security Number Address</b>

**ALL SUBSCRIPTION DOCUMENTS MUST BE FILLED IN AND SIGNED EXACTLY AS SET FORTH WITHIN.**

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**SUBSCRIPTION AGREEMENT**  
**FOR**  
**TOUGHBUILT INDUSTRIES, INC.**

ToughBuilt Industries, Inc.  
c/o Joseph Gunnar & Co., LLC  
30 Broad Street, 11<sup>th</sup> Floor  
New York, NY 10004

Ladies and Gentlemen:

1. **Subscription.** The undersigned (the “**Purchaser**”) will purchase the number of Units of ToughBuilt Industries, Inc., a Nevada corporation (the “**Company**”), set forth on the signature page to this Subscription Agreement. Each Unit consists of one share of Class B Preferred Stock and one Warrant to purchase a share of Common Stock at \$6.00 per share of Common Stock. The Units are being offered (the “**Offering**”) by the Company pursuant to the offering terms set forth in the Company’s Confidential Private Placement Memorandum, dated \_\_\_\_\_, 2016, as may be amended and/or supplemented, from time to time (collectively, the “**Memorandum**”).

The Units are being offered on a “*reasonable efforts, all or none*” basis with respect to the minimum of \$3,000,000 (the “**Minimum Offering**”) and thereafter on a “*reasonable efforts*” basis up to the maximum of \$5,000,000 (the “**Maximum Offering**”), (subject to the right of the Company to increase the maximum by 15% to \$5,750,000 to cover over-allotments). The Units may be sold at one or more closings of the Offering (each a “**Closing**,” and, collectively, the “**Closings**”), at any time during the Offering Period (as hereinafter defined); provided, however, that no Closing may be effectuated unless and until irrevocable subscriptions for at least the Minimum Offering have been deposited in the Escrow Account (defined hereafter). The minimum investment amount that may be purchased by an Investor is 20,000 Units at a price of \$5.00 per Unit (the “**Investor Minimum Investment**”); provided, however, the Company, in its sole discretion, may accept an Investor subscription for an amount less than the Investor Minimum Investment. The subscription for the Units will be made in accordance with and subject to the terms and conditions of the Subscription Agreement and the Memorandum.

The Units will be offered through \_\_\_\_\_, 2016 commencing on the date of the Memorandum (the “**Initial Offering Period**”), which period may be extended by the Company and Joseph Gunnar & Co., LLC (the “**Placement Agent**”) in their sole discretion, without further notice to prospective investors by the Company to a date not later than \_\_\_\_\_, 2016 (the “**Termination Date**”), with this additional period, together with the Initial Offering Period, being referred to herein as the “**Offering Period**”. In the event that (i) subscriptions for the Offering are rejected in whole (at the sole discretion of the Company), (ii) the Minimum Offering has not been subscribed for prior to the expiration of the Initial Offering Period or, if extended, prior to the Termination Date or (iii) the Offering is otherwise terminated by the Company, then the Escrow Agent will refund all subscription funds held in the Escrow Account to the persons who submitted such funds, without interest, penalty or deduction. If a subscription is rejected in part (at the sole discretion of the Company) and the Company accepts the portion not so rejected, the funds for the rejected portion of such subscription will be returned without interest, penalty, expense or deduction.

The terms of the Offering are more completely described in the Memorandum and such terms are incorporated herein in their entirety. Certain capitalized terms used, but not otherwise defined herein, will have the respective meanings provided in the Memorandum.

2. **Payment.** The Purchaser encloses herewith a check payable to, or will immediately make a wire transfer payment to, “**Signature Bank, as Escrow Agent for ToughBuilt Industries, Inc.,**” in the full amount of the purchase price of the Units being subscribed for. Together with the check for, or wire transfer of, the full purchase price, the Purchaser is delivering a completed and executed Signature Page to this Subscription Agreement along with a completed and executed Accredited Investor Certification, which are annexed hereto.

3 . **Deposit of Funds.** All payments made as provided in Section 2 hereof by Purchasers subscribing pursuant to the Memorandum will be deposited by the Purchaser as soon as practicable with Signature Bank, as escrow agent (the “**Escrow Agent**”), or such other escrow agent appointed by the Placement Agent and the Company, in a non-interest bearing escrow account (the “**Escrow Account**”). In the event that the Company does not effect a Closing under the Subscription Agreement during the Offering Period, the Escrow Agent will refund all subscription funds, without deduction and/or interest accrued thereon, and will return the subscription documents to each Purchaser. If the Company rejects a subscription, either in whole or in part (at the sole discretion of the Company), the rejected subscription funds or the rejected portion thereof will be returned promptly to such Purchaser without interest, penalty, expense or deduction.

4 . **Acceptance of Subscription.** The Purchaser understands and agrees that the Company, in its sole discretion, reserves the right to accept this or any other subscription for the Units, in whole or in part, notwithstanding prior receipt by the Purchaser of notice of acceptance of this or any other subscription. The Company will have no obligation hereunder until the Company executes and delivers to the Purchaser an executed copy of the Subscription Agreement.

5 . **Representations and Warranties of the Purchaser.** The Purchaser hereby acknowledges, represents, warrants, and agrees as follows:

(a) None of the Units, the component Preferred Stock or Warrants, nor the shares of common Stock issuable upon conversion of the Preferred Stock or exercise of the Warrants are registered under the Securities Act of 1933, as amended (the “**Securities Act**”), or any state securities laws. The Purchaser understands that the offering and sale of the Units is intended to be exempt from registration under the Securities Act, by virtue of Section 4(a)(2) thereof and the provisions of Regulation D promulgated thereunder, based, in part upon the representations, warranties and agreements of the Purchaser contained in this Subscription Agreement;

(b) The Purchaser and the Purchaser’s attorney, accountant, purchaser representative and/or tax advisor, if any (collectively, “**Advisors**”), have received and have carefully reviewed the Memorandum, this Subscription Agreement, and the agreements and instruments referenced in the Memorandum (collectively, the “**Transaction Documents**”) and all other documents requested by the Purchaser or its Advisors, if any, and understand the information contained therein, prior to the execution of this Subscription Agreement;

(c) Neither the Securities and Exchange Commission (the “**Commission**”) nor any state securities commission has approved or disapproved of the Units or their component securities or passed upon or endorsed the merits of the Offering or confirmed the accuracy or determined the adequacy of the Memorandum. The Memorandum has not been reviewed by any Federal, state or other regulatory authority. Any representation to the contrary may be a criminal offense;

(d) All documents, records, and books pertaining to the investment in the Units including, but not limited to, all information regarding the Company and the Units, have been made available for inspection and reviewed by the Purchaser and its Advisors, if any;

(e) The Purchaser and its Advisors, if any, have had a reasonable opportunity to ask questions of and receive answers from the Company’s officers and any other persons authorized by the Company to answer such questions, concerning, among other related matters, the Offering, the Units, the Transaction Documents and the business, financial condition, results of operations and prospects of the Company and all such questions have been answered by the Company to the full satisfaction of the Purchaser and its Advisors, if any;

(f) In evaluating the suitability of an investment in the Company, the Purchaser has not relied upon any representation or other information (oral or written) other than as stated in the Memorandum, or as contained in documents so furnished to the Purchaser or its Advisors, if any, by the Company in writing;

(g) The Purchaser is unaware of, is in no way relying on, and did not become aware of the offering of the Units through or as a result of, any form of general solicitation or general advertising including, without limitation, any article, notice, advertisement or other communication published in any newspaper, magazine or similar media or broadcast over television, radio or over the Internet, in connection with the offering and sale of the Units and is not subscribing for the Units and did not become aware of the Offering through or as a result of any seminar or meeting to which the Purchaser was invited by, or any solicitation of a subscription by, a person not previously known to the Purchaser in connection with investments in securities generally;

(h) The Purchaser has taken no action which would give rise to any claim by any person for brokerage commissions, finders' fees or the like relating to this Subscription Agreement or the transactions contemplated hereby (other than fees to be paid by the Company to the Placement Agent, as described in the Memorandum);

(i) The Purchaser, either alone or together with its Advisors, if any, has such knowledge and experience in financial, tax, and business matters, and, in particular, investments in securities of private companies, so as to enable it to utilize the information made available to it in connection with the Offering to evaluate the merits and risks of an investment in the Units and the Company and to make an informed investment decision with respect thereto;

(j) The Purchaser is not relying on the Company, the Placement Agent or any of their respective employees or agents with respect to the legal, tax, economic and related considerations of an investment in any of the Units and the Purchaser has relied on the advice of, or has consulted with, only its own Advisors;

(k) The Purchaser is acquiring the Units solely for such Purchaser's own account for investment and not with a view to resale or distribution thereof, in whole or in part. The Purchaser has no agreement or arrangement, formal or informal, with any person to sell or transfer all or any part of any of the Units and the Purchaser has no plans to enter into any such agreement or arrangement;

(l) The Purchaser understands and agrees that purchase of the Units and the component securities is a high risk investment and the Purchaser is able to afford an investment in a speculative venture having the risks and objectives of the Company. The Purchaser must bear the substantial economic risks of the investment in the Units indefinitely because none of the Units or the component securities may be sold, hypothecated or otherwise disposed of unless subsequently registered under the Securities Act and applicable state securities laws or an exemption from such registration is available. Legends will be placed on the certificates representing the component securities to the effect that such securities have not been registered under the Securities Act or applicable state securities laws and appropriate notations thereof will be made in the Company's books. The Purchaser understands that there is no public market for the Units, the Preferred Stock or the Warrant to be issued in the Offering nor for the Common Stock underlying conversion of the Preferred Stock and exercise of the Warrant and the Company has no intention of seeking an active trading market for any of these securities;

(m) The Purchaser has adequate means of providing for such Purchaser's current financial needs and foreseeable contingencies and has no need for liquidity from its investment in the Units for an indefinite period of time;

(n) The Purchaser is aware that an investment in the Units involves a number of very significant risks and has carefully read and considered the matters set forth in the Memorandum and, in particular, the matters under the caption "Risk Factors" therein and understands any of such risk may materially adversely affect the Company's operations and future prospects;

(o) The Purchaser is an "accredited investor" within the meaning of Regulation D, Rule 501(a), promulgated by the Commission under the Securities Act and has truthfully and accurately completed the Purchaser Questionnaire attached to this Subscription Agreement and will submit to the Company such further assurances of such status as may be reasonably requested by the Company;

(p) The Purchaser: (i) if a natural person, represents that the Purchaser has reached the age of 21 and has full power and authority to execute and deliver this Subscription Agreement and all other related agreements or certificates and to carry out the provisions hereof and thereof; (ii) if a corporation, partnership, or limited liability company, or association, joint stock company, trust, unincorporated organization or other entity, represents that such entity was not formed for the specific purpose of acquiring the Units, such entity is duly organized, validly existing and in good standing under the laws of the state of its organization, the consummation of the transactions contemplated hereby is authorized by, and will not result in a violation of state law or its charter or other organizational documents, such entity has full power and authority to execute and deliver this Subscription Agreement and all other related agreements or certificates and to carry out the provisions hereof and thereof and to purchase and hold the Units, the execution and delivery of this Subscription Agreement has been duly authorized by all necessary action, this Subscription Agreement has been duly executed and delivered on behalf of such entity and is a legal, valid and binding obligation of such entity; or (iii) if executing this Subscription Agreement in a representative or fiduciary capacity, represents that it has full power and authority to execute and deliver this Subscription Agreement in such capacity and on behalf of the subscribing individual, ward, partnership, trust, estate, corporation, or limited liability company or partnership, or other entity for whom the Purchaser is executing this Subscription Agreement, and such individual, partnership, ward, trust, estate, corporation, or limited liability company or partnership, or other entity has full right and power to perform pursuant to this Subscription Agreement and make an investment in the Company, and represents that this Subscription Agreement constitutes a legal, valid and binding obligation of such entity. The execution and delivery of this Subscription Agreement will not violate or be in conflict with any order, judgment, injunction, agreement or controlling document to which the Purchaser is a party or by which it is bound;

(q) The Purchaser and its Advisors, if any, have had the opportunity to obtain any additional information, to the extent the Company had such information in its possession or could acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information contained in the Memorandum and the documents incorporated by reference in the Memorandum, including, but not limited to, the terms and conditions of the Units, the Preferred Stock and the Warrants as set forth therein and the Transaction Documents and all other related documents, received or reviewed in connection with the purchase of the Units and have had the opportunity to have representatives of the Company provide them with such additional information regarding the terms and conditions of this particular investment and the financial condition, results of operations, business and prospects of the Company deemed relevant by the Purchaser or its Advisors, if any, and all such requested information, to the extent the Company had such information in its possession or could acquire it without unreasonable effort or expense, has been provided by the Company in writing to the full satisfaction of the Purchaser and its Advisors, if any;

(r) The Purchaser represents to the Company that any information which the undersigned has heretofore furnished or is furnishing herewith to the Company is complete and accurate and may be relied upon by the Company in determining the availability of an exemption from registration under Federal and state securities laws in connection with the offering of securities as described in the Memorandum;

(s) The Purchaser has significant prior investment experience, including investment in non-listed and non-registered securities. The Purchaser has a sufficient net worth to sustain a loss of its entire investment in the Company in the event such a loss should occur. The Purchaser's overall commitment to investments which are not readily marketable is not excessive in view of the Purchaser's net worth and financial circumstances and the purchase of the Units will not cause such commitment to become excessive. This investment is a suitable one for the Purchaser;

(t) The Purchaser acknowledges that any and all estimates or forward-looking statements or projections included in the Memorandum were prepared by the Company in good faith, but that the attainment of any such projections, estimates or forward-looking statements cannot be guaranteed, will not be updated by the Company and should not be relied upon;

(u) No oral or written representations have been made, or oral or written information furnished, to the Purchaser or its Advisors, if any, in connection with the offering of the Units which are in any way inconsistent with the information contained in the Memorandum;

(v) Within five (5) days after receipt of a request from the Company, the Purchaser will provide such information and deliver such documents as may reasonably be necessary to comply with any and all laws and ordinances to which the Company is subject;

(w) THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OR THE SECURITIES LAWS OF CERTAIN STATES AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND SUCH LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER SAID ACT AND SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THE MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL;

(x) **(For ERISA plans only)** The fiduciary of the ERISA plan (the “**Plan**”) represents that such fiduciary has been informed of and understands the Company’s investment objectives, policies and strategies, and that the decision to invest “plan assets” (as such term is defined in ERISA) in the Company is consistent with the provisions of ERISA that require diversification of plan assets and impose other fiduciary responsibilities. The Purchaser or Plan fiduciary (a) is responsible for the decision to invest in the Company; (b) is independent of the Company and any of its affiliates; (c) is qualified to make such investment decision; and (d) in making such decision, the Purchaser or Plan fiduciary has not relied on any advice or recommendation of the Company or any of its affiliates; and

6. **Representations and Warranties of the Company.** Except as set forth in the Memorandum, which Memorandum shall be deemed a part hereof and shall qualify any representation made herein to the extent of the disclosure contained in the corresponding section of the Memorandum, the Company hereby makes the following representations and warranties to each Purchaser:

(a) **Subsidiaries.** All of the direct and indirect subsidiaries of the Company are set forth in the Memorandum. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) **Organization and Qualification.** The Company is an entity duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. The Company is not in violation or default of any of the provisions of its articles of incorporation, bylaws or other organizational or charter documents. The Company is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, or condition (financial or otherwise) of the Company, or (iii) a material adverse effect on the Company’s ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a “**Material Adverse Effect**”) and no legal proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) **Authorization; Enforcement.** The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors’ rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.



( d ) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents, the issuance and sale of the Units and the consummation by it of the transactions contemplated hereby and thereby to which it is a party do not and will not: (i) conflict with or violate any provision of the Company's articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company debt or otherwise) or other understanding to which the Company is a party or by which any property or asset of the Company is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

( e ) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents that has not been obtained, other than: (i) the filing of a Form D with the Commission, and (ii) such filings as are required to be made under applicable state securities laws (collectively, the "**Required Approvals**").

( f ) Issuance of the Units. The Units and the component Preferred Stock and Warrants are each duly authorized and, when issued and paid for in accordance with this Subscription Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all liens imposed by the Company. Upon conversion of the Preferred Stock in accordance with its terms, the Conversion Shares will be duly and validly issued, fully paid and nonassessable, and upon exercise of any Warrants in accordance with their terms, the Warrant Shares will be duly and validly issued, fully paid and nonassessable.

( g ) Capitalization. The capitalization of the Company is as set forth in the Memorandum. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in material compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any shareholder, the Board of Directors or others is required for the issuance and sale of the Units.

( h ) Financial Statements. The financial statements of the Company included as **Exhibit A** to the Memorandum comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("**GAAP**"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

( i ) Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "**Action**") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Except as described in the Memorandum, neither the Company nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission or any state securities administrator involving the Company or any current or former director or officer of the Company.

(j) Compliance. The Company: (i) is not in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company under), nor has the Company received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(k) Regulatory Permits. The Company possesses all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct its business as presently conducted, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect (“**Material Permits**”), and the Company has not received any notice of proceedings relating to the revocation or modification of any Material Permit.

(l) Title to Assets. The Company has good and marketable title in all personal property owned by it that is material to the business of the Company. Any real property and facilities held under lease by the Company are held by it under valid, subsisting and enforceable leases with which the Company is in compliance.

(m) Intellectual Property.

(i) The term “**Intellectual Property Rights**” includes:

1. the name of the Company, all, registered and unregistered trademarks, service marks, and applications (collectively, “**Marks**”);
2. all patents, patent applications, and inventions and discoveries that may be patentable owned by the Company or licensed from third parties (collectively, “**Patents**”);
3. all copyrights in both published works and unpublished works owned by the Company or licensed from third parties (collectively, “**Copyrights**”);
4. all rights in mask works owned by the Company or licensed from third parties (collectively, “**Rights in Mask Works**”); and
5. all know-how, trade secrets, confidential information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints (collectively, “**Trade Secrets**”); owned, used, or licensed by the Company as licensee or licensor.

(ii) Agreements. The Memorandum accurately summarizes all contracts relating to the Intellectual Property Rights to which the Company is a party or by which the Company is bound, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available software programs with a value of less than \$10,000 under which the Company is the licensee. There are no outstanding and, to Company’s knowledge, no threatened disputes or disagreements with respect to any such agreement.

(iii) Know-How Necessary for the Business. The Intellectual Property Rights are all those necessary for the operation of the Company’s businesses as it is currently conducted. The Company is the owner or licensee of all right, title, and interest in and to each of the Intellectual Property Rights. To the Company’s knowledge, no employee of the Company has entered into any contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign, or disclose information concerning his work to anyone other than of the Company.

(n) Insurance. The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company is engaged. The Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

( o ) Transactions with Affiliates and Employees. Except as described in the Memorandum, none of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is presently a party to any transaction with the Company (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of \$120,000 other than for: (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

( p ) No General Solicitation. Neither the Company nor, to the knowledge of the Company, any person acting on behalf of the Company has offered or sold any of the Units by any form of general solicitation or general advertising. The Company has offered the Units for sale only to the Purchasers and certain other “accredited investors” within the meaning of Rule 501 under the Securities Act.

( q ) Certain Fees. No brokerage, finder’s fees, commissions or due diligence fees are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents except as set forth in the Memorandum. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 6(q) that may be due in connection with the transactions contemplated by the Transaction Documents.

( r ) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an “investment company” within the meaning of the Investment Company Act of 1940, as amended. The Company intends to conduct its business in a manner so that it will not become an “investment company” subject to registration under the Investment Company Act of 1940, as amended.

( s ) Private Placement. Assuming the accuracy of the Purchasers’ representations and warranties set forth in Section 5, no registration under the Securities Act is required for the offer and sale of the Units by the Company to the Purchasers as contemplated hereby.

( t ) Disclosure. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company, its businesses and the transactions contemplated hereby, including the Memorandum, when taken together as a whole, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

( u ) No Integrated Offering. Assuming the accuracy of the Purchasers’ representations and warranties set forth in Section 5, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Units to be integrated with prior offerings by the Company for purposes of the Securities Act which would require the registration of any such securities under the Securities Act.

( v ) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

( w ) Foreign Corrupt Practices. The Company, nor to the knowledge of the Company, any agent or other person acting on behalf of the Company, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

( x ) Accountants. The Company's accounting firm is Marcum LLP. To the knowledge and belief of the Company, such accounting firm is registered with the Public Company Accounting Oversight Board, and has expressed its opinion with respect to the financial statements of the Company for the fiscal year ending December 31, 2015 included herewith as Exhibit A to the Memorandum.

( y ) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

## 7. **Demand Registration Rights.**

(a) Following the consummation of the Company's planned initial public offering (the "**IPO**") and the subsequent expiration of the Lock-Up Period that shall commence upon the date of such IPO (the "**Expiration Date**"), in the event that Rule 144 of the Securities Act is not then available for the resale of the Conversion Shares and the Warrant Shares (collectively, the "**Registrable Securities**"), each Purchaser shall have the right, by written notice (the "**Demand Notice**") given to the Company, to request the Company to register under and in accordance with the provisions of the Securities Act all or part of the Registrable Securities designated by such Purchaser. Upon receipt of any such Demand Notice, the Company will promptly notify all other Purchasers of the receipt of such Demand Notice and allow them the opportunity to include the Registrable Securities held by them in the proposed registration by submitting their own Demand Notice. The Purchasers as a group shall be entitled to one Demand Registration pursuant to this Agreement unless any such Demand Registration did not become effective or was not maintained effective for a period (whether or not continuous) of at least four (4) years or such shorter period which shall terminate when all Registrable Securities covered by such Demand Registration have been disposed of pursuant thereto. The Company will use its commercially reasonable efforts to prepare and file with the SEC, within thirty (30) days after the Company first receives a Demand Notice (the "**Filing Deadline**") , a registration statement for the purpose of effecting a registration under the Securities Act in accordance with the method or methods of distribution specified by such Purchasers in the Demand Notices, and will use its reasonable best efforts to have the registration statement declared effective promptly thereafter, subject to compliance with review by the SEC; *provided, however*, that the Company shall not be required to comply with a Demand Notice if the Company has filed a registration statement with respect to which the Purchaser is entitled to piggyback registration rights pursuant to Section 8 hereof and the Purchaser has elected to participate in the offering covered by such registration statement.

(b) The Company shall bear all fees and expenses attendant to the registration of the Registrable Securities pursuant to this Section 7, but the Purchasers shall pay any and all underwriting commissions and the expenses of any legal counsel selected by the Purchasers to represent them in connection with the sale of the Registrable Securities. The Company agrees to use its reasonable best efforts to qualify or register the Registrable Securities in such states as are reasonably requested by the Purchaser; *provided, however*, that in no event shall the Company be required to register the Registrable Securities in a state in which such registration would cause: (i) the Company to be obligated to register or license to do business in such State or submit to general service of process in such State, or (ii) the principal shareholders of the Company to be obligated to escrow their shares of capital stock of the Company. The Purchaser shall only use the prospectuses provided by the Company to sell the shares covered by such registration statement, and will immediately cease to use any prospectus furnished by the Company if the Company advises the Purchaser that such prospectus may no longer be used due to a material misstatement or omission.

(c) In the case of each registration, qualification or compliance effected by the Company pursuant to this Agreement, the Company will keep each Purchaser participating therein advised in writing as to the initiation of each registration, qualification and compliance and as to the completion thereof. At its expense, the Company will:

(i) use its best efforts to keep the registration statement continuously effective until four years after the date the registration statement is first declared effective or until the holders have sold all the Registrable Securities covered by the registration statement, whichever occurs first;

(ii) furnish to the Purchasers of Registrable Securities included in such registration statement such number of copies of the registration statement preliminary prospectus, final prospectus and other documents incident thereto as such Purchasers from time to time may reasonably request;

(iii) prepare and file with the SEC (and promptly notify the participating Purchasers of such event) such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement; and

(iv) notify each Purchaser of Registrable Securities included in such registration statement, at any time when a prospectus relating thereto is covered by such registration statement is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

#### **8. Piggyback Registration Rights.**

(a) In addition to the demand right of registration described in Section 7 hereof, the Purchaser shall have the right to include the Registrable Securities as part of any other registration of securities filed by the Company in a registration statement under Securities Act (including, but not limited to, registration statements relating to secondary offerings of securities of the Company but excluding any registration statements (i) on Form S-4 or S-8 (or any successor or substantially similar form), or of any employee stock option, stock purchase or compensation plan or of securities issued or issuable pursuant to any such plan, or a dividend reinvestment plan, (ii) otherwise relating to any employee, benefit plan or corporate reorganization or other transactions covered by Rule 145 promulgated under the Securities Act, or (iii) on any registration form that does not permit secondary sales or does not include substantially the same information as would be required to be included in a registration statement covering the resale of the Registrable Securities). In the event the Purchaser desires to include in any such registration statement all or any part of the Registrable Securities held by the Purchaser, the Purchaser shall within fifteen (15) days after the above-described notice from the Company, so notify the Company in writing, including the number of such Registrable Securities that the Purchaser wishes to include in such registration statement. If the Purchaser decides not to include all of its Registrable Securities in any registration statement thereafter filed by the Company, and Rule 144 under the Securities Act remains unavailable for the resale of such Registrable Securities, the Purchaser shall continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company until the Purchasers have sold all of the Registrable Securities held by them. The Company shall bear all fees and expenses attendant to registering the Registrable Securities pursuant to Section 8 hereof, but the Purchasers shall pay any and all underwriting commissions and the expenses of any legal counsel selected by the Purchasers to represent them in connection with the sale of the Registrable Securities.

(b) Notwithstanding the foregoing, if the managing underwriter or underwriters of any such proposed public offering advise the Company that the total amount or kind of securities that the Purchaser, the Company and any other persons intended to be included in such proposed public offering is sufficiently large to adversely affect the success of such proposed public offering, then the amount or kind of securities to be offered for the various parties wishing to have shares of the Company's common stock registered shall be included in the following order:

(i) if the Company proposes to register treasury shares or authorized but unissued shares of its common stock (collectively, "**Primary Securities**"):

(A) first, the Primary Securities;

(B) second, the Registrable Securities requested to be included in such registration statement, together with shares of its common stock that do not constitute Registrable Securities or Primary Securities ("**Other Securities**") held by parties exercising similar piggy-back registration rights (or if necessary, such Registrable Securities and Other Securities pro rata among the holders thereof based upon the number of such Registrable Securities and Other Securities requested to be registered by each such holder).

(ii) if the Company proposes to register Other Securities:

(A) first, the Other Securities requested to be included in such registration by holders exercising demand registration rights;

(B) second, the Registrable Securities requested to be included in such registration, together with Other Securities held by parties exercising similar piggy-back registration rights (or if necessary, such Registrable Securities and Other Securities pro rata among the holders thereof based upon the number of such Registrable Securities and Other Securities requested to be registered by each such holder).

Anything to the contrary in this Agreement notwithstanding, the Company may withdraw or postpone a registration statement referred to herein (a "**Registration Statement**") at any time before it becomes effective or withdraw, postpone or terminate the offering after it becomes effective without obligation to any Purchaser.

(c) As a condition to the inclusion of its Registrable Securities, each Purchaser shall furnish to the Company such information regarding the Purchaser and the distribution proposed by the Purchaser as the Company may request in writing or as shall be required in connection with any registration, qualification or compliance referred to in this Agreement.

(d) The Purchaser agrees by acquisition of the Registrable Securities that, upon receipt of any notice from the Company of the happening of any event that, in the good faith judgment of the Company's Board of Directors, requires the suspension of the Purchaser's rights under this Section 8, the Purchaser will forthwith discontinue disposition of the Registrable Securities pursuant to the then current prospectus included in the Registration Statement, as the same may be amended or supplemented (including such prospectus subject to completion) (the "**Prospectus**"), until the Purchaser is advised in writing by the Company that the use of the Prospectus may be resumed. If so directed by the Company, on the happening of such event, the Purchaser will deliver to the Company all copies, other than permanent file copies then in the Purchaser's possession, of the Prospectus covering the Registrable Securities at the time of receipt of such notice.

(e) The Purchaser hereby covenants with the Company (i) not to make any sale of Registrable Securities without effectively causing the prospectus delivery requirements under the Securities Act to be satisfied, and (ii) if such Registrable Securities are to be sold by any method or in any transaction other than on a national securities exchange, or in the over-the-counter market, in privately negotiated transactions, or in a combination of such methods, to notify the Company at least 5 business days prior to the date on which the Purchaser first offers to sell any such Registrable Securities.

(f) The Purchaser acknowledges and agrees that the Registrable Securities sold pursuant to a registration statement described in this Section 8 are not transferable on the books of the Company unless the stock certificate submitted to the transfer agent evidencing the Registrable Securities is accompanied by a certificate reasonably satisfactory to the Company to the effect that (x) the Registrable Securities have been sold in accordance with such registration statement and (y) the requirement of delivering a current Prospectus has been satisfied.

(g) The Purchaser shall not take any action with respect to any distribution deemed to be made pursuant to such registration statement that would constitute a violation of Regulation M under the Exchange Act, or any other applicable rule, regulation or law.

(h) Upon the expiration of the effectiveness of any registration statement described in this Section 8, the Purchaser shall discontinue sales of the Registrable Securities pursuant to such registration statement upon receipt of notice from the Company of the Company's intention to remove from registration the Registrable Securities covered by such registration statement that remain unsold, and the Purchaser shall notify the Company of the number of registered Registrable Securities that remain unsold immediately upon receipt of such notice from the Company.

(i) In the case of the registration of any underwritten primary offering initiated by the Company (other than any registration by the Company on Form S-4 or Form S-8 (or any successor or substantially similar form), or of (i) an employee stock option, stock purchase or compensation plan or of securities issued or issuable pursuant to any such plan, or (ii) a dividend reinvestment plan) or any underwritten secondary offering initiated at the request of a holder of securities of the Company pursuant to registration rights granted by the Company, the Purchaser agrees not to effect any public sale or distribution of securities of the Company, except as part of such underwritten registration, during the period beginning fifteen (15) days prior to the closing date of such underwritten offering and during the period ending ninety (90) days after such closing date (or such longer period as may be reasonably requested by the Company or by the managing underwriter or underwriters).

(j) In furtherance and not in limitation of the foregoing, the Purchaser shall have no rights pursuant to this Section 8 at such time as all of the Purchaser's Registrable Securities may be sold without limitation pursuant to Rule 144.

9 . **Indemnification.** The Purchaser agrees to indemnify and hold harmless the Company, the Placement Agent and each of their respective officers, directors, managers, employees, agents, attorneys, control persons and affiliates from and against all losses, liabilities, claims, damages, costs, fees and expenses whatsoever (including, but not limited to, any and all expenses incurred in investigating, preparing or defending against any litigation commenced or threatened) based upon or arising out of any actual or alleged false acknowledgement, representation or warranty, or misrepresentation or omission to state a material fact, or breach by the Purchaser of any covenant or agreement made by the Purchaser herein or in any other document delivered in connection with this Subscription Agreement.

10 . **Irrevocability; Binding Effect.** The Purchaser hereby acknowledges and agrees that the subscription hereunder is irrevocable by the Purchaser, except as required by applicable law, and that this Subscription Agreement will survive the death or disability of the Purchaser and will be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives, and permitted assigns. If the Purchaser is more than one person, the obligations of the Purchaser hereunder will be joint and several and the agreements, representations, warranties and acknowledgments herein will be deemed to be made by and be binding upon each such person and such person's heirs, executors, administrators, successors, legal representatives and permitted assigns.

11 . **Modification.** This Subscription Agreement will not be modified or waived except by an instrument in writing signed by the party against whom any such modification or waiver is sought.

12. **Notices.** Any notice or other communication required or permitted to be given hereunder will be in writing and will be mailed by certified mail, return receipt requested, or delivered against receipt to the party to whom it is to be given (a) if to the Company, at the address set forth in the Memorandum or (b) if to the Purchaser, at the address set forth on the signature page hereof (or, in either case, to such other address as the party will have furnished in writing in accordance with the provisions of this Section 12). Any notice or other communication given by certified mail will be deemed given at the time of certification thereof, except for a notice changing a party's address which will be deemed given at the time of receipt thereof.

13. **Assignability.** This Subscription Agreement and the rights, interests and obligations hereunder are not transferable or assignable by the Purchaser and the transfer or assignment of any of the Units or component securities will be made only in accordance with all applicable laws.

14. **Applicable Law.** This Subscription Agreement will be governed by and construed under the laws of the State of New York as applied to agreements among New York residents entered into and to be performed entirely within New York. The parties hereto (1) agree that any legal suit, action or proceeding arising out of or relating to this Subscription Agreement will be instituted exclusively in New York State Supreme Court, County of New York, or in the United States District Court for the Southern District of New York, (2) waive any objection which the parties may have now or hereafter to the venue of any such suit, action or proceeding, and (3) irrevocably consent to the jurisdiction of the New York State Supreme Court, County of New York, and the United States District Court for the Southern District of New York in any such suit, action or proceeding. Each of the parties hereto further agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in the New York State Supreme Court, County of New York, or in the United States District Court for the Southern District of New York and agrees that service of process upon it mailed by certified mail to its address will be deemed in every respect effective service of process upon it, in any such suit, action or proceeding. THE PARTIES HERETO AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS SUBSCRIPTION AGREEMENT OR ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY.

15. **Blue Sky Qualification.** The purchase of Units pursuant to this Subscription Agreement is expressly conditioned upon the exemption from qualification of the offer and sale of the Units from applicable federal and state securities laws.

16. **Use of Pronouns.** All pronouns and any variations thereof used herein will be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require.

17. **Confidentiality.** The Purchaser acknowledges and agrees that any information or data the Purchaser has acquired from or about the Company not otherwise properly in the public domain, was received in confidence. The Purchaser agrees not to divulge, communicate or disclose, except as may be required by law or for the performance of this Subscription Agreement, or use to the detriment of the Company or for the benefit of any other person or persons, or misuse in any way, any confidential information of the Company, including any trade or business secrets of the Company and any business materials that are treated by the Company as confidential or proprietary, including, without limitation, confidential information obtained by or given to the Company about or belonging to third parties.

18. **Miscellaneous.**

(a) This Subscription Agreement, together with the other Transaction Documents, constitute the entire agreement between the Purchaser and the Company with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings, if any, relating to the subject matter hereof. The terms and provisions of this Subscription Agreement may be waived, or consent for the departure therefrom granted, only by a written document executed by the party entitled to the benefits of such terms or provisions.

(b) Each of the Purchaser's and the Company's representations and warranties made in this Subscription Agreement will survive the execution and delivery hereof and delivery of the Units.



(c) Each of the parties hereto will pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) in connection with this Subscription Agreement and the transactions contemplated hereby whether or not the transactions contemplated hereby are consummated.

(d) This Subscription Agreement may be executed in one or more counterparts each of which will be deemed an original, but all of which will together constitute one and the same instrument.

(e) Each provision of this Subscription Agreement will be considered separable and, if for any reason any provision or provisions hereof are determined to be invalid or contrary to applicable law, such invalidity or illegality will not impair the operation of or affect the remaining portions of this Subscription Agreement.

(f) Paragraph titles are for descriptive purposes only and will not control or alter the meaning of this Subscription Agreement as set forth in the text.

**19. Signature Page. It is hereby agreed by the parties hereto that the execution by the Purchaser of this Subscription Agreement, in the place set forth herein below, will be deemed and constitute the agreement by the Purchaser to be bound by all of the terms and conditions hereof as well as by the each of the other Transaction Documents, and will be deemed and constitute the execution by the Purchaser of all such Transaction Documents without requiring the Purchaser's separate signature on any of such Transaction Documents.**

## ANTI-MONEY LAUNDERING REQUIREMENTS

### The USA PATRIOT Act

### What is money laundering?

### How big is the problem and why is it important?

The USA PATRIOT Act is designed to detect, deter, and punish terrorists in the United States and abroad. The Act imposes new anti-money laundering requirements on brokerage firms and financial institutions. Since April 24, 2002 all brokerage firms have been required to have new, comprehensive anti-money laundering programs.

Money laundering is the process of disguising illegally obtained money so that the funds appear to come from legitimate sources or activities. Money laundering occurs in connection with a wide variety of crimes, including illegal arms sales, drug trafficking, robbery, fraud, racketeering, and terrorism

The use of the U.S. financial system by criminals to facilitate terrorism or other crimes could well taint our financial markets. According to the U.S. State Department, one recent estimate puts the amount of worldwide money laundering activity at \$1 trillion a year.

To help you understand these efforts, we want to provide you with some information about money laundering and our steps to implement the USA PATRIOT Act.

### What are we required to do to eliminate money laundering?

Under new rules required by the USA PATRIOT Act, our anti-money laundering program must designate a special compliance officer, set up employee training, conduct independent audits, and establish policies and procedures to detect and report suspicious transaction and ensure compliance with the new laws.

As part of our required program, we may ask you to provide various identification documents or other information. Until you provide the information or documents we need, we may not be able to effect any transactions for you.

**TOUGHBUILT INDUSTRIES, INC.  
SIGNATURE PAGE TO  
SUBSCRIPTION AGREEMENT**

**Purchaser hereby elects to purchase a total of \_\_\_\_\_ Units (the “Units”), at a purchase price of \$5.00 per Unit (NOTE: to be completed by the Purchaser).**

Date (NOTE: To be completed by the Purchaser): \_\_\_\_\_, 2016

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If the Purchaser is an INDIVIDUAL, and if purchased as JOINT TENANTS, as TENANTS IN COMMON, or as COMMUNITY PROPERTY:

\_\_\_\_\_  
**Print Name(s)**

\_\_\_\_\_  
**Social Security Number(s)**

\_\_\_\_\_  
**Signature(s) of Purchaser(s)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Address**

If the Purchaser is a PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY or TRUST:

\_\_\_\_\_  
**Name of Partnership,  
Corporation, Limited  
Liability Company or Trust**

\_\_\_\_\_  
**Federal Taxpayer  
Identification Number**

**By:** \_\_\_\_\_

**Name:**  
**Title:**

\_\_\_\_\_  
**State of Organization**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Address**

**AGREED AND ACCEPTED:**

**TOUGHBUILT INDUSTRIES, INC.**

**By:** \_\_\_\_\_

Name: Michael Panosian  
Title: Chief Executive Officer

\_\_\_\_\_  
Date

**TOUGHBUILT INDUSTRIES, INC.**  
**ACCREDITED INVESTOR CERTIFICATION**

**For Individual Investors Only**

**(All individual investors must *INITIAL* where appropriate. Where there are joint investors both parties must *INITIAL*):**

**Initial** \_\_\_\_\_ I certify that I have a “net worth” of at least \$1 million either individually or through aggregating my individual holdings and those in which I have a joint, community property or other similar shared ownership interest with my spouse. For purposes hereof, “net worth” shall be deemed to include all of your assets, liquid or illiquid (excluding the value of your principal residence), minus all of your liabilities (excluding the amount of indebtedness secured by your principal residence up to its fair market value.)

**Initial** \_\_\_\_\_ I certify that I have had an annual gross income for the past two years of at least \$200,000 (or \$300,000 jointly with my spouse) and expect my income (or joint income, as appropriate) to reach the same level in the current year.

**For Non-Individual Investors**

**(all Non-Individual Investors must *INITIAL* where appropriate):**

**Initial** \_\_\_\_\_ The undersigned certifies that it is a partnership, corporation, limited liability company or business trust that is 100% owned by persons who meet either of the criteria for Individual Investors, above.

**Initial** \_\_\_\_\_ The undersigned certifies that it is a partnership, corporation, limited liability company or business trust that has total assets of at least \$5 million and was not formed for the purpose of investing in Company.

**Initial** \_\_\_\_\_ The undersigned certifies that it is an employee benefit plan whose investment decision is made by a plan fiduciary (as defined in ERISA §3(21)) that is a bank, savings and loan association, insurance company or registered investment adviser.

**Initial** \_\_\_\_\_ The undersigned certifies that it is an employee benefit plan whose total assets exceed \$5,000,000 as of the date of the Subscription Agreement.

**Initial** \_\_\_\_\_ The undersigned certifies that it is a self-directed employee benefit plan whose investment decisions are made solely by persons who meet either of the criteria for Individual Investors, above.

**Initial** \_\_\_\_\_ The undersigned certifies that it is a U.S. bank, U.S. savings and loan association or other similar U.S. institution acting in its individual or fiduciary capacity.

**Initial** \_\_\_\_\_ The undersigned certifies that it is a broker-dealer registered pursuant to §15 of the Securities Exchange Act of 1934.

**Initial** \_\_\_\_\_ The undersigned certifies that it is an organization described in §501(c)(3) of the Internal Revenue Code with total assets exceeding \$5,000,000 and not formed for the specific purpose of investing in Company.

**Initial** \_\_\_\_\_ The undersigned certifies that it is a trust with total assets of at least \$5,000,000, not formed for the specific purpose of investing in Company, and whose purchase is directed by a person with such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment.

**Initial** \_\_\_\_\_ The undersigned certifies that it is a plan established and maintained by a state or its political subdivisions, or any agency or instrumentality thereof, for the benefit of its employees, and which has total assets in excess of \$5,000,000.

**Initial** \_\_\_\_\_ The undersigned certifies that it is an insurance company as defined in §2(a)(13) of the Securities Act of 1933, as amended, or a registered investment company.

## **BAD ACTOR DISQUALIFICATION QUESTIONNAIRE**

**Instructions:** On September 23, 2013, the Securities and Exchange Commission (the “SEC”) rule disqualifying securities offerings involving certain “felons and other ‘bad actors’” from reliance on Rule 506 of Regulation D promulgated under the Securities Act of 1933, as amended (the “Securities Act”) went into effect. The new rule triggers disclosure of bad actors and bad acts that occurred on or prior to September 23, 2013, and provides that bad actors/bad acts occurring after September 23, 2013 cause the disqualification from reliance on Rule 506. In order to confirm that ToughBuilt Industries, Inc. (the “Company”) remains eligible to rely on Rule 506 and to comply with the related disclosure requirements, each (i) director, executive officer, other officer participating in an offering of securities, general partner or managing member of the Company, (ii) beneficial owner of 20% or more of the Company’s outstanding voting equity securities, (iii) any promoter connected with the Company at the time of the sale of the offering, (iv) any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of securities in the offering (a “Solicitor”), (v) any general partner or managing member of any Solicitor, and (vi) any director, executive officer or other officer participating in the offering of any Solicitor or general partner or managing member of any Solicitor is required to complete and execute this Bad Actor Disqualification Questionnaire (this “Questionnaire”).

If you are a person described in clauses (i) through (vi) above, you need to complete this Questionnaire. Please answer “Yes” or “No” with respect to each of the items set forth below. If you answer “Yes” to any of the following, please provide a detailed written description of all relevant facts and circumstances relating the applicable event, conviction, order, proceeding or action.

- (1) Have you been convicted, within the prior ten years, of any felony or misdemeanor: (A) in connection with the purchase or sale of any security; (B) involving the making of any false filing with the SEC; or (C) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities? ☐ Yes ☐ No
- (2) Are you subject to any order, judgment or decree of any court of competent jurisdiction, entered within the prior five years, that restrains or enjoins you from engaging or continuing to engage in any conduct or practice: (A) in connection with the purchase or sale of any security; (B) involving the making of any false filing with the SEC; or (C) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities? ☐ Yes ☐ No
- (3) Are you subject to a final order of a U.S. state securities commission (or an agency or officer of a U.S. state performing like functions); a U.S. state authority that supervises or examines banks, savings associations, or credit unions; a U.S. state insurance commission (or an agency or officer of a state performing like functions); an appropriate U.S. federal banking agency; the U.S. Commodity Futures Trading Commission (the “CFTC”); or the U.S. National Credit Union Administration that: (A) bars you from: (1) association with an entity regulated by such commission, authority, agency, or officer; (2) engaging in the business of securities, insurance or banking; or (3) engaging in savings association or credit union activities; or (B) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within the last ten years? ☐ Yes ☐ No

- (4) Are you subject to an order of the SEC entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), or section 203(e) or (f) of the Investment Advisers Act of 1940, as amended (the “**Advisers Act**”), that, (A) suspends or revokes your registration as a broker, dealer, municipal securities dealer or investment adviser; (B) places limitations on your activities, functions or operations; or (C) bars you from being associated with any entity or from participating in the offering of any penny stock? ☐ Yes ☐ No
- (5) Are you subject to any order of the SEC entered within the last five years that orders you to cease and desist from committing or causing a violation or future violation of: (A) any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act, section 10(b) of the Exchange Act, and 17 CFR 240.10b-5, section 15(c)(1) of the Exchange Act and section 206(1) of the Advisers Act, or any other rule or regulation thereunder; or (B) Section 5 of the Securities Act? ☐ Yes ☐ No
- (6) Are you suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade? ☐ Yes ☐ No
- (7) Have you filed (as a registrant or issuer), or were you an underwriter or were you named as an underwriter in, any registration statement or Regulation A offering statement filed with the SEC that, within the prior five years, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or are you the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued? ☐ Yes ☐ No
- (8) Are you subject to a United States Postal Service false representation order entered within the last five years, or are you subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations? ☐ Yes ☐ No
- (9) To the best of your knowledge, are you now the subject of any action, regulatory complaint, proceeding or other event that could result in a “yes” answer to any part of items 1-8 above? ☐ Yes ☐ No

**You hereby certify, represent and warrant that each of the above statements is true and correct and agree to immediately notify the company if such information becomes inaccurate in any respect. You further agree to immediately notify the company of any action, proceeding, investigation, event, action or development that could result in a “Yes” answer to any of the statements set forth above.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**TOUGHBUILT INDUSTRIES, INC.**

**Investor Profile**

*(Must be completed by Investor)*

**Section A - Personal Investor Information**

Title in Which Securities Should be Held: \_\_\_\_\_

Individual executing Profile: \_\_\_\_\_

Social Security Number(s) / Federal I.D. Number: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Marital Status: \_\_\_\_\_

Joint Party Date of Birth: \_\_\_\_\_

Investment Experience (Years): \_\_\_\_\_

Annual Income: \_\_\_\_\_

Liquid Net Worth: \_\_\_\_\_

Net Worth: \_\_\_\_\_

Investment Objectives (*circle one or more*): Long Term Capital Appreciation, Short Term Trading, Businessman's Risk, Income, Safety of Principal, Tax Exempt Income or other

Home Street Address: \_\_\_\_\_

Home City, State & Zip Code: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Home Fax: \_\_\_\_\_

Home Email: \_\_\_\_\_

Employer: \_\_\_\_\_

Employer Street Address: \_\_\_\_\_

Employer City, State & Zip Code: \_\_\_\_\_

Bus. Phone: \_\_\_\_\_ Bus. Fax: \_\_\_\_\_

Bus. Email: \_\_\_\_\_

Type of Business: \_\_\_\_\_

☐ Please check if you are a FINRA member or affiliate of a FINRA member firm

JOSEPH GUNNAR Account Executive / Outside Broker/Dealer: \_\_\_\_\_

**TOUGHBUILT INDUSTRIES, INC.**  
**Investor Profile**  
*(Must be completed by Purchaser)*

**Section B – Entity Investor Information**

Title in Which Securities Should be Held: \_\_\_\_\_

Authorized Individual executing Profile or Trustee: \_\_\_\_\_

Social Security Numbers / Federal I.D. Number: \_\_\_\_\_

Investment Experience (Years): \_\_\_\_\_

Annual Income: \_\_\_\_\_

Net Worth: \_\_\_\_\_

Was the Trust formed for the specific purpose of purchasing the Units? ☐ Yes ☐ No

Principal Purpose (Trust) \_\_\_\_\_

Type of Business: \_\_\_\_\_

Investment Objectives (*circle one or more*): Long Term Capital Appreciation, Short Term Trading, Businessman's Risk, Income, Safety of Principal, Tax Exempt Income or other

Street Address: \_\_\_\_\_

City, State & Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

☐ Please check if you are a FINRA member or affiliate of a FINRA member firm:

Joseph Gunnar Account Executive / Outside Broker/Dealer: \_\_\_\_\_



**TOUGHBUILT INDUSTRIES, INC.**  
**Form of Payment & Securities Delivery Instructions**

**Section C – Form of Payment – Check or Wire Transfer**

- ☐ Check payable to “**SIGNATURE BANK, AS ESCROW AGENT FOR TOUGHBUILT INDUSTRIES, INC.**”
- ☐ Wire funds from my outside account according to the “To subscribe for shares of Common Stock in the private offering of TOUGHBUILT INDUSTRIES, INC.” page (page “i”)
- ☐ Wire funds from my JOSEPH GUNNAR Account – See following page
- ☐ The funds for this investment are rolled over, tax deferred from \_\_\_\_\_ within the Allowed 60-day window

**Section D – Securities Delivery Instructions (check one)**

- ☐ Please deliver my securities to Joseph Gunnar for deposit into my brokerage account.
- ☐ Please deliver my securities to the address listed in the above Investor Profile.
- ☐ Please deliver my securities to the below address:

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## EXECUTION COPY

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

TOUGHBUILT INDUSTRIES, INC.

Warrant To Purchase Common Stock

Warrant No.: \_\_\_\_\_

Date of Issuance: \_\_\_\_\_, 2016 (“**Issuance Date**”)

TOUGHBUILT INDUSTRIES, INC., a Nevada corporation (the “**Company**”), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_, the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon exercise of this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the “**Warrant**”), at any time or times on or after the Issuance Date, but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), \_\_\_\_\_ (subject to adjustment as provided herein) fully paid and non-assessable shares of Common Stock (as defined below) (the “**Warrant Shares**”). Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 16. This Warrant is one of the Warrants to Purchase Common Stock (the “**Warrants**”) issued pursuant to that certain Subscription Agreement, dated as of \_\_\_\_\_, 2016 (as may be amended from time to time, the “**Subscription Agreement**”) pursuant to which the Company has offered and sold to the signatories thereto units (the “**Units**”) of the Company’s securities consisting of Class B Convertible Preferred Stock, par value \$0.0001 per share (the “**Class B Preferred Stock**”), and Warrants.

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1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder on any day on or after the Issuance Date, in whole or in part, by delivery (whether via e-mail, facsimile or otherwise) of a written notice, in the form attached hereto as **Exhibit A** (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant. Within one (1) Business Day following an exercise of this Warrant as aforesaid, the Holder shall deliver payment to the Company of an amount equal to the Exercise Price in effect on the date of such exercise multiplied by the number of Warrant Shares as to which this Warrant was so exercised (the “**Aggregate Exercise Price**”) in cash or via wire transfer of immediately available funds if the Holder did not notify the Company in such Exercise Notice that such exercise was made pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original of this Warrant in order to effect an exercise hereunder. Execution and delivery of an Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original of this Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. Execution and delivery of an Exercise Notice for all of the then-remaining Warrant Shares shall have the same effect as cancellation of the original of this Warrant after delivery of the Warrant Shares in accordance with the terms hereof. On or before the first (1<sup>st</sup>) Business Day following the date on which the Company has received an Exercise Notice, the Company shall transmit by e-mail or facsimile an acknowledgment of confirmation of receipt of such Exercise Notice, in the form attached hereto as **Exhibit B**, to the Company’s transfer agent (the “**Transfer Agent**”). On or before the third (3<sup>rd</sup>) Business Day following the date on which the Company has received an Exercise Notice from the Holder, the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the Holder or, at the Holder’s instruction pursuant to the Exercise Notice, the Holder’s agent or designee, in each case, sent by reputable overnight courier to the address as specified in the applicable Exercise Notice, a certificate, registered in the Company’s share register in the name of the Holder or its designee (as indicated in the applicable Exercise Notice), for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. Upon delivery of an Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares (as the case may be). If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then, at the request of the Holder, the Company shall as soon as practicable and in no event later than three (3) Business Days after any exercise and at its own expense, issue and deliver to the Holder (or its designee) a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all taxes and fees which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant.

(b) Exercise Price. For purposes of this Warrant, “**Exercise Price**” means \$6.00, subject to adjustment as provided herein.

(c) Company’s Failure to Timely Deliver Securities. If the Company shall fail, for any reason or for no reason, to issue to the Holder within three (3) Business Days after receipt of the applicable Exercise Notice, a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company’s share register or to credit the Holder’s balance account with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise of this Warrant (as the case may be), then, in addition to all other remedies available to the Holder, the Company shall pay in cash to the Holder on each day after such third (3<sup>rd</sup>) Business Day that the issuance of such shares of Common Stock is not timely effected, (A) if the Common Stock is not then listed or quoted on an Eligible Market, an amount equal to \$10.00 per Business Day (increasing to \$25.00 per Business Day on the third Business Day and increasing to \$50.00 per Business Day on the sixth Business Day after such damages begin to accrue) for each Business Day after the last possible date on which the Company could have issued such shares of Common Stock to the Holder without violating Section 1(a) until such shares of Common Stock are delivered or the Holder rescinds such exercise, and (B) if the Common Stock is then listed or quoted on an Eligible Market, 2.0% of the product of (1) the aggregate number of shares of Common Stock not issued to the Holder on a timely basis and to which the Holder is entitled and (2) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the last possible date on which the Company could have issued such shares of Common Stock to the Holder without violating Section 1(a). In addition to the foregoing, if within three (3) Business Days after the Company’s receipt of the applicable Exercise Notice, the Company shall fail to issue and deliver a certificate to the Holder and register such shares of Common Stock on the Company’s share register or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise hereunder (as the case may be), and if on or after such third (3<sup>rd</sup>) Business Day the Holder (or any other Person in respect, or on behalf, of the Holder) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such exercise that the Holder so anticipated receiving from the Company, then, in addition to all other remedies available to the Holder, the Company shall, within three (3) Business Days after the Holder’s request and in the Holder’s discretion, either (i) pay cash to the Holder in an amount equal to the Holder’s total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the “**Buy-In Price**”), at which point the Company’s obligation to so issue and deliver such certificate or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (ii) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock multiplied by (B) the lowest Closing Sale Price of the Common Stock on any Business Day during the period commencing on the date of the applicable Exercise Notice and ending on the date of such issuance and payment under this clause (ii).

( d ) Cashless Exercise. Notwithstanding anything contained herein to the contrary (other than Section 1(f) below), if at the time of exercise hereof a registration statement registering the resale by the Holder of all of the Warrant Shares under the Securities Act of 1933, as amended (the “**Securities Act**”), is not effective (or the prospectus contained therein is not available for use), then the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the “Net Number” of shares of Common Stock determined according to the following formula (a “**Cashless Exercise**”):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

B

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= the VWAP of the Common Stock (as reported by Bloomberg) on the date immediately preceding the date of the Notice of Exercise.

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the number of Warrant Shares to be issued pursuant to the terms hereof, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 13.

( f ) Limitations on Exercises. Notwithstanding anything to the contrary contained in this Warrant, from and after such date (the “**Registration Date**”) that shares of the Company’s Common Stock are registered under Section 12 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), this Warrant shall not be exercisable by the Holder hereof to the extent (but only to the extent) that the Holder or any of its affiliates would beneficially own in excess of 4.99% (the “**Maximum Percentage**”) of the Common Stock outstanding immediately after giving effect to such issuance. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder or any of its affiliates) and of which such securities shall be exercisable (as among all such securities owned by the Holder) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. The limitations contained in this paragraph shall apply to a successor Holder of this Warrant. The holders of Common Stock shall be third party beneficiaries of this paragraph and the Company may not amend or waive this paragraph without the consent of holders of a majority of its Common Stock. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Subscription Agreement. By written notice to the Company, at any time the Holder may increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% specified in such notice; provided that (i) any such increase will not be effective until the 61st day after such notice is delivered to the Company, and (ii) any such increase or decrease will apply only to the Holder sending such notice and not to any other holder of Warrants.

( g ) Insufficient Authorized Shares. The Company shall at all times keep reserved for issuance under this Warrant a number of shares of Common Stock equal to not less than 150% of the maximum number of shares of Common Stock issuable upon exercise of this Warrant (without regard to any limitation otherwise contained herein with respect to the number of shares of Common Stock that may be acquirable upon exercise of this Warrant) (the “**Required Reserve Amount**”). If, notwithstanding the foregoing, and not in limitation thereof, at any time while any of the Warrants remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of this Warrant at least a number of shares of Common Stock equal to the Required Reserve Amount (an “**Authorized Share Failure**”), then the Company shall immediately take all action necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for all the Warrants then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders’ approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

2 . ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 2.

(a) Stock Dividends and Splits. Without limiting any provision of Section 2(b) or Section 4, if the Company, at any time on or after the date of the Subscription Agreement, (i) pays a stock dividend on one or more classes of its then outstanding shares of Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its then outstanding shares of Common Stock into a larger number of shares or (iii) combines (by combination, reverse stock split or otherwise) one or more classes of its then outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this paragraph occurs during the period that an Exercise Price is calculated hereunder, then the calculation of such Exercise Price shall be adjusted appropriately to reflect such event.

(b) Adjustment Upon Issuance of Shares of Common Stock. If and whenever on or after the date on which no shares of Class B Preferred Stock shall remain outstanding, the Company issues or sells, or in accordance with this Section 2(b) is deemed to have issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding any Excluded Securities issued or sold or deemed to have been issued or sold) for a consideration per share (the “**New Issuance Price**”) less than a price equal to the Exercise Price in effect immediately prior to such issue or sale or deemed issuance or sale (such Exercise Price then in effect is referred to as the “**Applicable Price**”) (the foregoing a “**Dilutive Issuance**”), then immediately after such Dilutive Issuance, the Exercise Price then in effect shall be reduced to an amount equal to the New Issuance Price. For all purposes of the foregoing (including, without limitation, determining the adjusted Exercise Price and consideration per share under this Section 2(b)), the following shall be applicable:

(i) Issuance of Options. If the Company in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the grant or sale of such Option for such price per share. For purposes of this Section 2(b)(i), the “lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such shares of Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Company in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 2(b)(ii), the “lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable upon conversion, exercise or exchange thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) upon the issuance or sale of such Convertible Security plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of this Warrant has been or is to be made pursuant to other provisions of this Section 2(b), except as contemplated below, no further adjustment of the Exercise Price shall be made by reason of such issue or sale.



(iii) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time, the Exercise Price in effect at the time of such increase or decrease shall be adjusted to the Exercise Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 2(b)(iii), if the terms of any Option or Convertible Security that was outstanding as of the date of issuance of this Warrant are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 2(b) shall be made if such adjustment would result in an increase of the Exercise Price then in effect.

(iv) Calculation of Consideration Received. If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount of consideration received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the VWAPs of such security for each of the five (5) Business Days immediately preceding the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the “**Valuation Event**”), the fair value of such consideration will be determined within five (5) Business Days after the tenth (10<sup>th</sup>) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

(v) Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

(c) Adjustment of Exercise Price Upon Adjustment of Class B Preferred Stock. If and whenever on or after the date hereof and so long as any shares of Class B Preferred Stock shall remain outstanding, the Company issues or sells, or is deemed to have issued or sold, any shares of Common Stock, Options or Convertible Securities resulting in an adjustment in the Conversion Price (as defined in the Class B Certificate of Designations) or Conversion Rate (as defined in the Class B Certificate of Designations) for the Class B Preferred Stock pursuant to Section 6 of the Class B Certificate of Designations (each, a “**Class B Preferred Dilutive Event**”), then, in each case, immediately after such Class B Preferred Dilutive Event and automatically, without any further action by the Company or the Holder of this Warrant, the Exercise Price of this Warrant shall be reduced to a price per share that shall be equal to the product of (I) the Conversion Price of the Class B Preferred Shares, as so adjusted, multiplied by (II) 1.20. For the purposes of clarity, the provisions of this Section 2(c) shall apply in lieu of Section 2(b) for so long as any shares of Class B Preferred Stock shall remain outstanding, and the provisions of Section 2(b) shall apply in lieu of this Section 2(c) from and after the date on which no shares of Class B Preferred Stock shall remain outstanding.

(d) Other Events. In the event that the Company or any Subsidiary shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect the Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 2 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company’s board of directors shall in good faith determine and implement an appropriate adjustment in the Exercise Price and the number of Warrant Shares (if applicable) so as to protect the rights of the Holder, provided that no such adjustment pursuant to this Section 2(d) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2, provided further that if the Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Company’s board of directors and the Holder shall agree, in good faith, upon an independent investment bank to make such appropriate adjustments, whose determination shall be final and binding and whose fees and expenses shall be borne fifty percent (50%) by the Holder and fifty percent (50%) by the Company.

(e) Calculations. All calculations under this Section 2 shall be made by rounding to the nearest one-hundred thousandth of a cent or the nearest 1/100<sup>th</sup> of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

3. **RIGHTS UPON DISTRIBUTION OF ASSETS.** In addition to any adjustments pursuant to Section 2 above, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to all or substantially all of the holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “**Distribution**”), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder’s right to participate in any such Distributions would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (or the beneficial ownership of any such shares of Common Stock as a result of such Distribution to such extent) and such Distribution to such extent shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage).

4. **PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.**

(a) **Purchase Rights.** In addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of shares of Common Stock (the “**Purchase Rights**”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which such record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder’s right to participate in any such Purchase Right would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage).

( b ) Fundamental Transactions. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Warrant and the other Transaction Documents (as defined in the Subscription Agreement) in accordance with the provisions of this Section 4(b) pursuant to written agreements in form and substance satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction) and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the consummation of each Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to the applicable Fundamental Transaction, such shares of publicly traded common stock (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a “**Corporate Event**”), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). Provision made pursuant to the preceding sentence shall be in form and substance reasonably satisfactory to the Holder.

( c ) Application. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied as if this Warrant (and any such subsequent warrants) were fully exercisable and without regard to any limitations on the exercise of this Warrant (provided that the Holder shall continue to be entitled to the benefit of the Maximum Percentage, applied however with respect to shares of capital stock registered under the Exchange Act and thereafter receivable upon exercise of this Warrant (or any such other warrant)).

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its articles of incorporation or bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant, and (iii) shall, so long as any of the Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the Warrants, 150% of the maximum number of shares of Common Stock as shall from time to time be necessary to effect the exercise of the Warrants then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in its capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in its capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which it is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. Subject to Section 15, if this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, no warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in the manner and to the addresses set forth in the Subscription Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon each adjustment of the Exercise Price and the number of Warrant Shares, setting forth in reasonable detail, and certifying, the calculation of such adjustment(s) and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to all or substantially all of the holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder and (iii) at least ten (10) Business Days prior to the consummation of any Fundamental Transaction. From and after the Registration Date, to the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its Subsidiaries, the Company shall simultaneously file such notice with the Commission (as defined in the Subscription Agreement) pursuant to a Current Report on Form 8-K.

9. AMENDMENT AND WAIVER. Except as otherwise expressly set forth herein, the provisions of this Warrant (other than Section 1(f)) may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder. The Holder shall be entitled, at its option, to the benefit of any amendment of (i) any other similar warrant issued under the Subscription Agreement or (ii) any other similar warrant. Except as otherwise expressly set forth herein, no waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

10. SEVERABILITY. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

11. GOVERNING LAW. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, County of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall (i) be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder or to enforce a judgment or other court ruling in favor of the Holder or (ii) limit, or be deemed to limit, any provision of Section 13. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

12. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

13. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via email or facsimile within two (2) Business Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within five (5) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two (2) Business Days submit via email or facsimile (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. The expenses of the investment bank and accountant will be borne by the Company unless the investment bank or accountant determines that the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares by the Holder was incorrect, in which case the expenses of the investment bank and accountant will be borne by the Holder.

14. REMEDIES, CHARACTERIZATION, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue damages for any failure by the Company to comply with the terms of this Warrant. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, exercises and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant (including, without limitation, compliance with Section 2 hereof). The issuance of shares and certificates for shares as contemplated hereby upon the exercise of this Warrant shall be made without charge to the Holder or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the Holder or its agent on its behalf.



15. RESTRICTIONS ON TRANSFER; LEGENDS.

( a ) Registration or Exemption Required. Assuming the accuracy of the representations and warranties of the Holder contained in the Subscription Agreement, this Warrant has been issued in a transaction exempt from the registration requirements of the Securities Act by virtue of Section 4(a)(2) of the Securities Act and Regulation D promulgated thereunder and exempt from state registration or qualification under applicable state laws. The Holder acknowledges that the Holder has been advised by the Company that this Warrant and the Warrant Shares issuable upon exercise thereof have not been registered under the Securities Act. Neither this Warrant nor the Warrant Shares may be pledged, transferred, sold or assigned except pursuant to an effective registration statement or an exemption to the registration requirements of the Securities Act and applicable state laws. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws, the Company may require, as a condition of allowing such transfer (i) that the Holder or transferee of this Warrant, as the case may be, will furnish to the Company such documentation as reasonably requested to enable the Company to obtain an opinion of counsel (at the Company's expense) to the effect that such transfer may be made without registration under the Securities Act and under applicable state securities or blue sky laws, (ii) that the holder or transferee execute and deliver to the Company an investment letter in form and substance acceptable to the Company and (iii) that the transferee be an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act or a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act.

(b) Representation of Holder. The Holder represents and warrants that the Holder has acquired this Warrant and will acquire the Warrant Shares for the Holder's own account for investment and not with a view to the sale or distribution thereof or the granting of any participation therein, and that the holder has no present intention of distributing or selling to others any of such interest or granting any participation therein. The Holder acknowledges that the Warrant and Warrant Shares must be held indefinitely unless a subsequent disposition thereof is registered under the Securities Act or registered or qualified under any applicable state securities or "blue-sky" laws or is exempt from registration or qualification. The Holder has no need for liquidity in its investment in the Company, and is able to bear the economic risk of such investment for an indefinite period and to afford a complete loss thereof. The Holder is an "accredited investor" as such term is defined in Rule 501 (the provisions of which are known to the Holder) promulgated under the Securities Act.

( c ) Restrictive Legend. The Holder understands that until such time as the Warrant Shares have been registered under the Securities Act, or otherwise may be sold pursuant to Rule 144 under the Securities Act or an exemption from registration under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, this Warrant and the Warrant Shares, as applicable, shall bear a restrictive legend in substantially the form set forth on the cover page of this Warrant (and a stop-transfer order may be placed against transfer of the certificates for such securities).

( d ) Disposition of Warrant or Warrant Shares. With respect to any offer, sale or other disposition of this Warrant or any Warrant Shares prior to registration of such Warrant Shares, the Holder agrees to give written notice to the Company prior thereto, describing briefly the manner thereof, together with evidence, reasonably satisfactory to the Company (which shall include such representation of the transferee regarding investment intent as the Company may request), to the effect that such offer, sale or other disposition may be effected without registration or qualification (under the Securities Act as then in effect or any federal or state securities law then in effect) of this Warrant or such Warrant Shares and indicating whether or not under the Securities Act certificates for this Warrant or Warrant Shares to be sold or otherwise disposed of require any restrictive legend as to applicable restrictions on transferability in order to ensure compliance with such law. Upon receiving such written notice and reasonably satisfactory evidence, the Company, as promptly as practicable but no later than seven (7) days after receipt of the written notice, shall notify the Holder that the Holder may sell or otherwise dispose of this Warrant or Warrant Shares, all in accordance with the terms of the notice delivered to the Company. If the Company determines that the evidence is not reasonably satisfactory to the Company, the Company shall so notify the Holder promptly with details thereof after such determination has been made. Notwithstanding the foregoing, any Warrant Shares may be offered, sold or otherwise disposed of in accordance with Rule 144 under the Securities Act and in compliance with the applicable statutory resale restrictions imposed by state securities laws, provided that the Company shall have been furnished with such information as the Company may reasonably request to provide a reasonable assurance that the provisions of Rule 144 and the applicable resale restrictions imposed by state securities laws have been satisfied. Each certificate representing this Warrant or the Warrant Shares thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with such laws, unless pursuant to an opinion of counsel for the Holder, such legend is not required in order to ensure compliance with such laws. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

( e ) Removal of Restrictive Legends. The certificates evidencing the Warrant Shares shall not contain any legend restricting the transfer thereof: (A) while a registration statement covering the sale or resale of the Warrant Shares is effective under the Securities Act and such legend removal is permitted under applicable securities laws (including compliance with the prospectus delivery requirements of the Securities Act), or (B) following any sale of such Warrant Shares pursuant to Rule 144, or (C) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) and the Company shall have received an opinion of counsel to the Holder in form reasonably acceptable to the Company to such effect (collectively, the “**Unrestricted Conditions**”); provided that the Company shall bear the reasonable expense of any legal opinions relating to (I) sales of Warrants or Warrant Shares made in reliance on Rule 144 by any Purchaser that is not an “affiliate” as defined in Rule 144 made after the first anniversary of the Closing Date or (II) any private sale or other transfer of this Warrant or the Warrant Shares. The Company shall cause its counsel to issue a legal opinion to its transfer agent if required by the transfer agent to effect the issuance of the Warrant Shares, as applicable, without a restrictive legend or removal of the legend hereunder. The Company agrees that at such time as the Unrestricted Conditions are met, it will, no later than three (3) Business Days following the delivery by the Holder to the Company or the transfer agent of a certificate representing Warrant Shares, issued with a restrictive legend, deliver or cause to be delivered to such Holder a certificate (or electronic transfer) representing such Warrant Shares that is free from all restrictive and other legends.

16. REGISTRATION RIGHTS. This Warrant shall be subject to the registration rights set forth in the Subscription Agreement.

17. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) **“Approved Stock Plan”** means any employee benefit plan which has been approved by the board of directors of the Company and existing prior to the date hereof and disclosed in the Memorandum, pursuant to which shares of Common Stock and standard options to purchase Common Stock may be issued to any employee, officer, consultant or director for services provided to the Company in their capacity as such.

(b) **“Bid Price”** means, for any security as of the particular time of determination, the bid price for such security on the Principal Market as reported by Bloomberg as of such time of determination, or, if the Principal Market is not the principal securities exchange or trading market for such security, the bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg as of such time of determination, or if the foregoing does not apply, the bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg as of such time of determination, or, if no bid price is reported for such security by Bloomberg as of such time of determination, the average of the bid prices of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. as of such time of determination. If the Bid Price cannot be calculated for a security as of the particular time of determination on any of the foregoing bases, the Bid Price of such security as of such time of determination shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(c) **“Bloomberg”** means Bloomberg, L.P.

(d) **“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(e) **“Class B Certificate of Designations”** means that certain Certificate of Designations of Preferences, Rights and Limitations of Class B Convertible Preferred Stock, dated July \_\_\_, 2016, a form of which is included as Exhibit D to the Memorandum.

(f) **“Closing Sale Price”** means, for any security as of any date, the last trade price for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing does not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the ask prices of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(g) **“Common Stock”** means (i) the Company’s shares of common stock, \$0.0001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(h) **“Convertible Securities”** means any stock, note, debenture or other security (other than Options) that is, or may become, at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(i) **“Eligible Market”** means The NASDAQ Capital Market, The NASDAQ Global Market, The NASDAQ Global Select Market, the New York Stock Exchange, the NYSE MKT, the NYSE Arca, or the OTCQB or OTCQX operated by the OTC Markets Group, Inc. (or any nationally recognized successor to any of the foregoing).

(j) **“Excluded Securities”** shall have the meaning ascribed thereto in the Class B Certificate of Designations.

(k) **“Expiration Date”** means the date that is the fifth (5<sup>th</sup>) anniversary of the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a **“Holiday”**), the next date that is not a Holiday.

(l) **“Fundamental Transaction”** means that (i) the Company or any of its Subsidiaries shall, directly or indirectly, in one or more related transactions, (1) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) any other Person, or (2) sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other Person, or (3) allow any other Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (4) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (ii) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act and the rules and regulations promulgated thereunder) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company.

(m) **“Memorandum”** means the Company’s Confidential Private Placement Memorandum, dated July 11, 2016, as may be amended and/or supplemented, from time to time, setting forth the terms of the sale of the units under the Subscription Agreement.

(n) **“Options”** means any rights, warrants or options to subscribe for, purchase or otherwise acquire any shares of Common Stock or Convertible Securities.

(o) **“Parent Entity”** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(p) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(q) **“Principal Market”** means The NASDAQ Capital Market, The NASDAQ Global Market, The NASDAQ Global Select Market, the New York Stock Exchange, the NYSE MKT, the NYSE Arca, or the OTCQB or OTCQX operated by the OTC Markets Group, Inc. (or any nationally recognized successor to any of the foregoing), whichever is at the time the principal trading exchange or market for the Common Stock.

(r) **“Subsidiary” or “Subsidiaries”** of any Person means (i) any corporation with respect to which more than 50% of the issued and outstanding voting equity interests of such corporation is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries, or (ii) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than 50% or of which any such Person is a general partner or may exercise the powers of a general partner.

(s) **“Successor Entity”** means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(t) **“Trading Day”** means, as applicable, (x) with respect to all price determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(u) **“Voting Stock”** of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(v) **“VWAP”** means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on an Eligible Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Eligible Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on an Eligible Market and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

*[signature page follows]*

**IN WITNESS WHEREOF**, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

**TOUGHBUILT INDUSTRIES, INC.**

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

\_\_\_\_\_

## EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS  
WARRANT TO PURCHASE COMMON STOCK

## TOUGHBUILT INDUSTRIES, INC.

The undersigned holder hereby exercises the right to purchase \_\_\_\_\_ of the shares of Common Stock (“**Warrant Shares**”) of TOUGHBUILT INDUSTRIES, INC., a Nevada corporation (the “**Company**”), evidenced by Warrant to Purchase Common Stock No. \_\_\_\_\_ (the “**Warrant**”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

\_\_\_\_\_ a “Cash Exercise” with respect to \_\_\_\_\_ Warrant Shares; and/or

\_\_\_\_\_ a “Cashless Exercise” with respect to \_\_\_\_\_ Warrant Shares.

In the event that the Holder has elected a Cashless Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder hereby represents and warrants that (i) this Exercise Notice was executed by the Holder at \_\_\_\_\_ [a.m.][p.m.] on the date set forth below and (ii) if applicable, the Bid Price as of such time of execution of this Exercise Notice was \$ \_\_\_\_\_.

2. Payment of Exercise Price. In the event that the Holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder shall pay the Aggregate Exercise Price in the sum of \$ \_\_\_\_\_ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to Holder, or its designee or agent as specified below, \_\_\_\_\_ Warrant Shares in accordance with the terms of the Warrant. Delivery shall be made to Holder, or for its benefit, to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Name of Registered Holder

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_



**ACKNOWLEDGMENT**

The Company hereby acknowledges this Exercise Notice and hereby directs \_\_\_\_\_ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated \_\_\_\_\_, 20\_\_, from the Company and acknowledged and agreed to by \_\_\_\_\_.

**TOUGHBUILT INDUSTRIES, INC.**

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

\_\_\_\_\_

**SECURITIES PURCHASE AGREEMENT**

This Securities Purchase Agreement (this “Agreement”) is dated as of October 17, 2016, between ToughBuilt Industries, Inc., a Nevada corporation (the “Company”), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a “Purchaser” and collectively, the “Purchasers”).

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Rule 506 promulgated thereunder, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

**ARTICLE I.  
DEFINITIONS**

1.1 **Definitions.** In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Debentures (as defined herein), the Certificate of Designation (as defined herein) and (b) the following terms have the meanings set forth in this Section 1.1:

“Acquiring Person” shall have the meaning ascribed to such term in Section 4.7.

“Action” shall have the meaning ascribed to such term in Section 3.1(j).

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Certificate of Designation” means the Certificate of Designation to be filed prior to the Closing by the Company with the Secretary of State of Nevada, in the form of Exhibit B attached hereto.

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“Closing” means the closing of the purchase and sale of the Securities pursuant to Section 2.1.

“Closing Date” means the Business Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers’ obligations to pay the Subscription Amount and (ii) the Company’s obligations to deliver the Securities, in each case, have been satisfied or waived.

“Closing Statement” means the Closing Statement in the form on Annex A attached hereto.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company Counsel” means Sichenzia Ross Friedman Ference LLP, with offices located at 61 Broadway, 32<sup>nd</sup> Floor, New York, NY 10016.

“Conversion Price” shall have the meaning ascribed to such term in the Debentures and the Certificate of Designation, as applicable.

“Conversion Shares” shall have the meaning ascribed to such term in the Debentures and the shares of Common Stock into which the Class B Preferred Stock is convertible as set forth in the Certificate of Designation.

“Debentures” means the 8% Original Issue Discount Senior Secured Convertible Debentures due, subject to the terms therein, September 1, 2018, issued by the Company to the Purchasers hereunder, in the form of Exhibit A attached hereto.

“Disclosure Schedules” shall have the meaning ascribed to such term in Section 3.1.

“EGS” means Ellenoff Grossman & Schole LLP, with offices located at 1345 Avenue of the Americas, New York, New York 10105-0302.

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

“Exempt Issuance” as used herein shall mean any of the following:

(a) The issuance of up to \$2.0 million of Class B Preferred Stock provided that such issuance occurs on or before the Closing Date, along with Common Stock issued or issuable upon conversion of Class B Preferred Stock, provided that such Preferred Stock have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities;

(b) Common Stock issued in an Offering;

(c) Shares of Preferred Stock and common stock purchase warrants (including the shares issuable thereunder) issued in the Private Offering, on the terms disclosed to the Purchasers on or prior to the date hereof, provided any such issuances are consummated on or before the Closing Date and the gross proceeds raised in the Private Offering are not less than \$1 million and not more than \$2 million;

(d) Common Stock issued upon exercise of any options, warrants or other convertible securities outstanding as of the Closing Date; provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities; and

(e) options or similar awards exercisable into up to 350,000 shares of Common Stock with an exercise price of not less than \$5.00 per share (both subject to adjustment for reverse and forward stock splits and the like) issued to officers, directors or employees of the Company pursuant to an Incentive Plan duly adopted by the Board.

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended.

“GAAP” shall have the meaning ascribed to such term in Section 3.1(h).

“Indebtedness” shall have the meaning ascribed to such term in Section 3.1(aa).

“Intellectual Property Rights” shall have the meaning ascribed to such term in Section 3.1(o).

“Legend Removal Date” shall have the meaning ascribed to such term in Section 4.1(c).

“Liens” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Material Adverse Effect” shall have the meaning assigned to such term in Section 3.1(b).

“Material Permits” shall have the meaning ascribed to such term in Section 3.1(n).

“Maximum Rate” shall have the meaning ascribed to such term in Section 5.17.

“Offering” a firm commitment underwritten initial public offering of shares of Common Stock which results in the Common Stock being traded on a national securities exchange.

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

“Preferred Stock” means the up to 168,750 shares of the Company’s Class B Convertible Preferred Stock issued hereunder having the rights, preferences and privileges set forth in the Certificate of Designation, in the form of Exhibit B hereto.

“Principal Amount” means, as to each Purchaser, the amounts set forth below such Purchaser’s signature block on the signature pages hereto next to the heading “Principal Amount,” in United States Dollars, which shall equal such Purchaser’s Subscription Amount multiplied by 1.14.

“Private Offering” shall have the meaning set forth in Section 2.3.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Public Company Date” means the earliest of (i) the date the Company consummates an initial public offering, (ii) the date the Company (or any successor/surviving entity in a reverse merger or other business combination transaction) becomes subject to the reporting requirements under the Exchange Act or (iii) the date the Common Stock is listed or quoted on any Trading Market.

“Public Information Failure” shall have the meaning ascribed to such term in Section 4.3(b).

“Public Information Failure Payments” shall have the meaning ascribed to such term in Section 4.3(b).

“Purchaser Party” shall have the meaning ascribed to such term in Section 4.10.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Required Minimum” means, as of any date, the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Shares issuable pursuant to the Debentures and on conversion of the Preferred Stock, ignoring any conversion limits set forth therein, and assuming that the Conversion Price is at all times on and after the date of determination 75% of the then Conversion Price on the Trading Day immediately prior to the date of determination.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Securities” means the Debentures, the Preferred Stock and the Underlying Shares.

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

“Security Agreement” means the Security Agreement, dated the date hereof, among the Company and the Purchasers, in the form of Exhibit D attached hereto.

“Security Documents” shall mean the Security Agreement, and any other documents and filing required thereunder in order to grant the Purchasers a first priority security interest in the assets of the Company as provided in the Security Agreement, including all UCC-1 filing receipts.

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

“Subscription Amount” means, as to each Purchaser, the aggregate amount to be paid for Debentures purchased hereunder as specified below such Purchaser’s name on the signature page of this Agreement and next to the heading “Subscription Amount,” in United States dollars and in immediately available funds.

“Subsidiary” means any subsidiary of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTCQB or OTCQX (or any successors to any of the foregoing).

“Transaction Documents” means this Agreement, the Debentures, the Certificate of Designation and the Security Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Transfer Agent” means VStock Transfer, LLC, the current transfer agent of the Company, with a mailing address of 18 Lafayette Place, Woodmere, NY 11598 and a facsimile number of (646) 536-3179, and any successor transfer agent of the Company.

“Underlying Shares” means the (i) shares of Common Stock issued and issuable pursuant to the terms of the Debenture, including without limitation, shares of Common Stock issued and issuable in lieu of the cash payment of interest on the Debentures in accordance with the terms of the Debentures, in each case without respect to any limitation or restriction on the conversion of the Debentures and (ii) the shares of Common Stock issued and issuable upon conversion of the Preferred Stock in accordance with the terms of the Certificate of Designation.

“Variable Rate Transaction” shall have the meaning ascribed to such term in Section 4.13(b).

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on a Trading Market and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

**ARTICLE II.  
PURCHASE AND SALE**

2.1 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, up to an aggregate of \$5,700,000 in principal amount of the Debentures (corresponding to an aggregate Subscription Amount of up to \$5,000,000). At the Closing, each Purchaser shall deliver to the Company, via wire transfer or a certified check, immediately available funds equal to such Purchaser's Subscription Amount as set forth on the signature page hereto executed by such Purchaser, and the Company shall deliver to each Purchaser its respective Debenture and shares of Preferred Stock, as determined pursuant to Section 2.2(a), and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur at the offices of EGS or such other location as the parties shall mutually agree.

2.2 Deliveries.

(a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:

- (i) this Agreement duly executed by the Company;
- (ii) a legal opinion of Company Counsel, substantially in the form of Exhibit C attached hereto;
- (iii) a Debenture with a principal amount equal to such Purchaser's Subscription Amount multiplied by 1.14, registered in the name of such Purchaser;
- (iv) a certificate evidencing a number of shares of Preferred Stock equal to such Purchaser's pro-rata portion (based on Subscription Amounts hereunder) of 168,750, registered in the name of such Purchaser and evidence of the filing and acceptance of the Certificate of Designation from the Secretary of State of Nevada;
- (v) the Security Agreement, duly executed by the Company, along with all of the Security Documents;
- (vi) pay-off letters for all outstanding debt held by Knight Capital Funding, LLC, Zareh Khachatoorian and Manu Ohri, which Indebtedness shall be paid in full at the Closing; and
- (vii) the Company shall have provided each Purchaser with the Company's wire instructions, on Company letterhead and executed by the Chief Executive Officer or Chief Financial Officer.

(b) On or prior to the Closing Date, each Purchaser shall deliver or cause to be delivered to the Company the following:

- (i) this Agreement duly executed by such Purchaser;



- (ii) the Security Agreement duly executed by such Purchaser; and
- (iii) such Purchaser's Subscription Amount by wire transfer to the account specified in writing by the Company.

2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

- (i) the accuracy in all material respects on (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) the Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);
- (ii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to the Closing Date shall have been performed; and
- (iii) the delivery by each Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The respective obligations of the Purchasers hereunder in connection with the Closing are subject to the following conditions being met:

- (i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);
- (ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed;
- (iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;
- (iv) there shall have been no Material Adverse Effect with respect to the Company since the date hereof;
- (v) the Company shall receive at least \$1 million, and not more than \$2 million, in gross proceeds from a simultaneous private placement with the Placement Agent ("Private Offering"); and

(vi) from the date hereof to the Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of such Purchaser, makes it impracticable or inadvisable to purchase the Securities at the Closing.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES**

3 . 1 Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to each Purchaser:

( a ) Subsidiaries. The Company has no Subsidiaries and shall not form any subsidiaries unless such subsidiary executes a Subsidiary Guarantee in form and substance reasonably satisfactory to the Purchaser.

( b ) Organization and Qualification. The Company is an entity duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. The Company is not in violation or default of any of the provisions of its articles of incorporation, bylaws or other organizational or charter documents. The Company is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement.

The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

( d ) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not: (i) conflict with or violate any provision of the Company's articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company debt or otherwise) or other understanding to which the Company is a party or by which any property or asset of the Company is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

( e ) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.6 of this Agreement, (ii) on or prior to the Public Company Date, a notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Securities and the listing of the Underlying Shares for trading thereon in the time and manner required thereby, and (iii) the filing of a Form D with the Commission and such filings as are required to be made under applicable state securities laws (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Company has reserved from its duly authorized capital stock a number of shares of Common Stock for issuance of the Underlying Shares at least equal to the Required Minimum on the date hereof.

(g) Capitalization. The capitalization of the Company is as set forth on Schedule 3.1(g), which Schedule 3.1(g) shall also include the number of shares of Common Stock owned beneficially, and of record, by Affiliates of the Company as of the date hereof. The Company has not issued any capital stock since June 30, 2016 (the "Balance Sheet Date"), other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding. Except as set forth on Schedule 3.1(g), attached hereto, no Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Securities or as set forth on Schedule 3.1(g) attached hereto, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. Except as set forth on Schedule 3.1(g) attached hereto, there are no outstanding securities or instruments of the Company that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company is or may become bound to redeem a security of the Company. Except as set forth in Schedule 3.1(g) attached hereto, the Company does not have any stock appreciation rights or "phantom stock" plans or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

( h ) Financial Statements. Attached hereto as Schedule 3.1(h) are audited financial statements for the Company for the past two fiscal years. Such financial statements comply in all material respects with applicable accounting requirements. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“GAAP”), except as may be otherwise specified in such financial statements or the notes thereto, and fairly present in all material respects the financial position of the Company as of and for the dates thereof and the results of operations and cash flows for the periods then ended. Attached hereto as Schedule 3.1(h) are a balance sheet, an income statement and a statement of cash flows (the “Interim Unaudited Financial Statements”) for the six-month period ending on the Balance Sheet Date. Such financial statements comply in all material respects with applicable accounting requirements. Such financial statements have been prepared in accordance with GAAP, except (i) as may be otherwise specified in such financial statements, and (ii) that the Interim Unaudited Financial Statements may not contain all the footnotes. The Interim Unaudited Financial Statements fairly present in all material respects the financial position of the Company as of the Balance Sheet Date, subject to normal, immaterial, year-end audit adjustments.

( i ) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest unaudited financial statements made available hereunder: (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company’s financial statements pursuant to GAAP, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans.

( j ) Litigation. Except as disclosed on Schedule 3.1(j), there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an “Action”) which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company.

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's employees is a member of a union that relates to such employee's relationship with the Company, and the Company is not a party to a collective bargaining agreement, and the Company believes that its relationships with its employees are good. To the knowledge of the Company, no executive officer of the Company is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company to any liability with respect to any of the foregoing matters. The Company is in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. The Company: (i) is not in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company), nor has the Company received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is not in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) neither is nor has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Environmental Laws. The Company (i) is in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) has received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) is in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(n) Regulatory Permits. The Company possesses all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct its business, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect (“Material Permits”), and the Company has not received any notice of proceedings relating to the revocation or modification of any Material Permit.

(o) Title to Assets. The Company has good and marketable title in fee simple to all real property owned by it and good and marketable title in all personal property owned by it that is material to the business of the Company, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company are held by it under valid, subsisting and enforceable leases with which the Company is in compliance.

(p) Intellectual Property. The Company has, or has rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights as necessary or required for use in connection with its business and which the failure to so have could have a Material Adverse Effect (collectively, the “Intellectual Property Rights”). The Company has not received a notice (written or otherwise) that any of the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. The Company has not received a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company has taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Insurance. The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company is engaged. The Company is in the process of obtaining directors and officers insurance coverage of at least \$5 million. Such insurance shall be obtained within 30 days of the date hereof. The Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

( r ) Transactions With Affiliates and Employees. Except as set forth in Schedule 3.1(r), none of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is presently a party to any transaction with the Company (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from providing for the borrowing of money from or lending of money to, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of \$120,000 other than for: (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

( s ) Internal Accounting Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

( t ) Certain Fees. Except as disclosed on Schedule 3.1(t), no brokerage or finder's fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

( u ) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby.

( v ) Investment Company. The Company is not and immediately after receipt of payment for the Securities, will not be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company has conducted its business in a manner so that it is not an "investment company" subject to registration under the Investment Company Act of 1940, as amended.



( w ) Registration Rights. Except as set forth on Schedule 3.1(v), no Person has any right to cause the Company to effect the registrations under the Securities Act of any securities of the Company.

( x ) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's articles of incorporation or the laws of its state of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

( y ) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided any of the Purchasers or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchasers will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company, its business and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

( z ) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the Securities Act which would require the registration of any such securities under the Securities Act.

( a a ) Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder: (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. Schedule 3.1(aa) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company, or for which the Company has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP. The Company is not in default with respect to any Indebtedness.

(bb) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

( c c ) No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered the Securities for sale only to the Purchasers and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(dd) Foreign Corrupt Practices. Neither the Company nor, to the knowledge of the Company, any agent or other person acting on behalf of the Company, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(ee) Accountants. The Company's accounting firm is set forth on Schedule 3.1(ee) of the Disclosure Schedules. To the knowledge and belief of the Company, such accounting firm is a registered public accounting firm as required by the Exchange Act.

( f f ) Seniority. As of the Closing Date, no Indebtedness or other claim against the Company is senior to the Debentures in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(gg) No Disagreements with Accountants and Lawyers. There are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and, immediately following the Closing, the Company is (or will be) current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(hh) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

( i i ) Stock Option Plans. Each stock option granted by the Company under the Company's stock option plan was granted (i) in accordance with the terms of the Company's stock option plan and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its financial results or prospects.

( j j ) Office of Foreign Assets Control. Neither the Company nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

( k k ) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

( l l ) Bank Holding Company Act. Neither the Company nor any of its Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

( m m ) Money Laundering. The operations of the Company are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(nn) No Disqualification Events. With respect to the Securities to be offered and sold hereunder in reliance on Rule 506 under the Securities Act, none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Purchasers a copy of any disclosures provided thereunder.

(oo) Other Covered Persons. The Company is not aware of any person (other than any Issuer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Securities.

(pp) Notice of Disqualification Events. The Company will notify the Purchasers in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

3 . 2 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Organization; Authority. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

( b ) Own Account. Such Purchaser understands that the Securities are “restricted securities” and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Purchaser’s right to sell the Securities in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

( c ) Purchaser Status. At the time such Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it converts any Debentures or Preferred Stock it will be an “accredited investor” as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act.

( d ) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

( e ) General Solicitation. Such Purchaser is not, to such Purchaser’s knowledge, purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

( f ) Confidentiality. Other than to other Persons party to this Agreement or to such Purchaser’s representatives, including, without limitation, its officers, directors, partners, legal and other advisors, employees, agents and Affiliates, such Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

The Company acknowledges and agrees that the representations contained in this Section 3.2 shall not modify, amend or affect such Purchaser’s right to rely on the Company’s representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby.

**ARTICLE IV.  
OTHER AGREEMENTS OF THE PARTIES**

**4.1      Transfer Restrictions.**

(a)      The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and shall have the rights and obligations of a Purchaser under this Agreement.

(b)      The Purchasers agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities in the following form:

[NEITHER] THIS SECURITY [NOR THE SECURITIES INTO WHICH THIS SECURITY IS [CONVERTIBLE]] HAS [NOT] BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON [CONVERSION] OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities.

(c) Certificates evidencing the Underlying Shares shall not contain any legend (including the legend set forth in Section 4.1(b) hereof): (i) while a registration statement covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Underlying Shares pursuant to Rule 144, (iii) if such Underlying Shares are eligible for sale under Rule 144, or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent if required by the Transfer Agent to effect the removal of the legend hereunder. If all or any portion of a Debenture or Preferred Stock is converted at a time when there is an effective registration statement to cover the resale of the Underlying Shares, or if such Underlying Shares may be sold under Rule 144 without restrictions or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Underlying Shares shall be issued free of all legends. The Company agrees that following such time as such legend is no longer required under this Section 4.1(c) or applicable law, it will, no later than three Trading Days following the delivery by a Purchaser to the Company or the Transfer Agent of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend (such third Trading Day, the “**Legend Removal Date**”), deliver or cause to be delivered to such Purchaser a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4. Certificates for Underlying Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser’s prime broker with the Depository Trust Company System as directed by such Purchaser provided that the Common Stock is then registered under Section 12(b) or 12(g) of the Exchange Act.

(d) In addition to such Purchaser’s other available remedies, the Company shall pay to a Purchaser, in cash, (i) as partial liquidated damages and not as a penalty, for each \$1,000 of Underlying Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 4.1(c), \$10 per Trading Day (increasing to \$20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such certificate is delivered without a legend and (ii) if the Company fails to (a) issue and deliver (or cause to be delivered) to a Purchaser by the Legend Removal Date a certificate representing the Securities so delivered to the Company by such Purchaser that is free from all restrictive and other legends and (b) if after the Legend Removal Date such Purchaser purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Purchaser of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock that such Purchaser anticipated receiving from the Company without any restrictive legend, then, an amount equal to the excess of such Purchaser’s total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) (the “**Buy-In Price**”) over the product of (A) such number of Underlying Shares that the Company was required to deliver to such Purchaser by the Legend Removal Date multiplied by (B) the lowest closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the delivery by such Purchaser to the Company of the applicable Underlying Shares (as the case may be) and ending on the date of such delivery and payment under this clause (ii).



(e) Each Purchaser, severally and not jointly with the other Purchasers, agrees with the Company that such Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

4.2 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Underlying Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.3 Furnishing of Information; Public Information.

(a) From and after the Public Company Date and until the time that no Purchaser owns Securities, the Company covenants to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

(b) From and after the Public Company Date, if the Company (i) shall fail for any reason to satisfy the current public information requirement under Rule 144(c) or (ii) has ever been an issuer described in Rule 144 (i)(1)(i) or becomes such an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a "Public Information Failure") then, in addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Securities, an amount in cash equal to two percent (2.0%) of the aggregate Subscription Amount of such Purchaser on the day of a Public Information Failure and on every thirtieth (30<sup>th</sup>) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for the Purchasers to transfer the Underlying Shares pursuant to Rule 144. The payments to which a Purchaser shall be entitled pursuant to this Section 4.3(b) are referred to herein as "Public Information Failure Payments." Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3<sup>rd</sup>) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Public Information Failure, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

4 . 4      Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities.

4.5      Conversion Procedures. Each of the form of Notice of Conversion included in the Debentures and the Preferred Stock set forth the totality of the procedures required of the Purchasers in order to convert the Debentures or Preferred Stock. Without limiting the preceding sentences, no ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required in order to convert the Debentures or Preferred Stock. No additional legal opinion, other information or instructions shall be required of the Purchasers to convert their Debentures or Preferred Stock. The Company shall, subject to applicable law, honor conversions of the Debentures and Preferred Stock and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4 . 6      Securities Laws Disclosure; Publicity. The Company and each Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser, or without the prior consent of each Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication.

4 . 7      Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Purchaser is an “Acquiring Person” under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

4.8 Non-Public Information. From and after the Public Company Date, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide any Purchaser or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto such Purchaser shall have consented to the receipt of such information and agreed with the Company to keep such information confidential. On or prior to the Public Company Date, the Company agrees to publicly disclose any and all material non-public information provided to the Purchasers. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. To the extent that the Company delivers any material, non-public information to a Purchaser without such Purchaser's consent, the Company hereby covenants and agrees that such Purchaser shall not have any duty of confidentiality to Company or any of their respective officers, directors, agents, employees or Affiliates, or a duty to the Company or any of their respective officers, directors, agents, employees or Affiliates not to trade on the basis of, such material, non-public information, provided that the Purchaser shall remain subject to applicable law. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K within applicable time periods. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.9 Use of Proceeds. Except as set forth on Schedule 4.9 attached hereto, the Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes and shall not use such proceeds: (a) for the satisfaction of any portion of the Company's debt (other than payment of trade payables in the ordinary course of the Company's business and prior practices), (b) for the redemption of any Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation, or (d) in violation of FCPA or OFAC regulations.

4.10 Indemnification of Purchasers. Subject to the provisions of this Section 4.10, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a “Purchaser Party”) harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys’ fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Purchaser Party’s representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which constitutes fraud, gross negligence, willful misconduct or malfeasance). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company’s prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party’s breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.10 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.11 Reservation and Listing of Securities.

(a) The Company shall maintain a reserve of the Required Minimum from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date, then the Board of Directors shall use commercially reasonable efforts to amend the Company’s certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than the 75th day after such date.

(c) The Company shall, if applicable: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market as soon as possible thereafter, (iii) provide to the Purchasers evidence of such listing or quotation and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. The Company agrees to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.12 Termination of Factoring Facility. After the date hereof, the Company shall make no further advances under its existing factoring facility with Quetico and all amounts owed thereunder shall be satisfied in full as soon as possible from receivables received from the Company.

4.13 Subsequent Equity Sales.

(a) Other than pursuant to Section 4.18 hereof or with the prior written consent of each Purchaser, after the date hereof until the Public Company Date, the Company shall not issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents.

(b) During the term of any Lock-Up Agreement (as defined in Section 4.16), the Company shall not issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents.

(c) From the date hereof until such time as no Purchaser holds any of the Preferred Stock or Debentures, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company of Common Stock or Common Stock Equivalents (or a combination of units thereof) involving a Variable Rate Transaction. “Variable Rate Transaction” means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(d) From the date hereof until such time as the Preferred Stock and Debentures are no longer outstanding, the Company shall not make any issuance whatsoever of Common Stock or Common Stock Equivalents at an effective price per share below \$1.00 (subject to adjustment for forward and reverse stock splits and the like that occur after the Closing Date). Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(e) Notwithstanding the foregoing, this Section 4.13 shall not apply in respect of an Exempt Issuance.

4.14 Equal Treatment of Purchasers. No consideration (including any modification of any Transaction Document) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of the Transaction Documents unless the same consideration is also offered to all of the parties to such Transaction Documents. Further, the Company shall not make any payment of principal or interest on the Debentures in amounts which are disproportionate to the respective principal amounts outstanding on the Debentures at any applicable time. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise.

4.15 Form D; Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon request of any Purchaser. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers at the Closing under applicable securities or “Blue Sky” laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Purchaser.

4.16 Lock-Up of Convertible Securities. In the event that the Company consummates an Offering with net cash proceeds of at least \$10 million on or before the 12 month anniversary of the date of this Agreement (the “Public Offering”), then each Purchaser agrees to execute a lock-up agreement with respect to the Underlying Shares (the “Lock-Up Agreement”) in the same form contemplated by the investors in the Private Offering, which shall be reasonably satisfactory to the Purchasers. The term of the Lock-Up Agreement shall in no event exceed the 6-month anniversary of the date of the final prospectus for the Public Offering. For the purposes of clarification, the Lock-Up Agreement shall only apply to the Underlying Shares; provided, however, that the Lock-Up Agreement shall not apply to shares of Common Stock issued in lieu of cash for a Quarterly Redemption (as defined in the Debentures).

4.17 Initial Public Offering; Pre IPO Information Rights. The Company hereby agrees to use its commercially reasonable best efforts to consummate the Public Offering as promptly as possible and in any event prior to September 30, 2017. Prior to the Public Offering, the Company shall provide each Purchaser or its designated representative with:

(a) on or prior to the 15<sup>th</sup> Business Day following the end of a calendar month, the consolidated balance sheet, consolidated statements of income and cash flows for the calendar month then ended;

(b) within 90 days after the end of each fiscal year of the Company, the consolidated balance sheet of the Company and its Subsidiaries, if any, as at the end of each such fiscal year and the consolidated statements of income, cash flows and changes in stockholders' equity for such year of the Company and its Subsidiaries, accompanied by the report of independent certified public accountants of recognized national standing; and

(c) the Company shall, and shall cause its Subsidiaries (if any), officers, directors and employees to (i) afford the officers, employees, auditors and other agents of each Purchaser, during normal business hours and upon reasonable notice, reasonable access at all reasonable times to its officers, employees, auditors, properties, offices, plants and other facilities and to all books and records, and (ii) afford such Purchaser the opportunity to consult with the Company's officers from time to time regarding the Company's and its Subsidiaries' affairs, finances and accounts as each such Purchaser may reasonably request upon reasonable notice.

#### 4.18 Additional Option.

(a) Subject to the Company's approval, which approval may be denied within its sole and absolute discretion, from the date hereof until the earlier of (i) September 1, 2017, (ii) the consummation of the Public Offering, or (iii) the occurrence of a Change of Control Event (as such term is defined in the Certificate of Designations), each Purchaser may elect to purchase, severally and not jointly with the other Purchasers and in one or more purchases, in the ratio of such Purchaser's original Subscription Amount to the original aggregate Subscription Amount of all Purchasers, additional Debentures with an aggregate subscription amount thereof equal to \$5,000,000 and receive Preferred Stock in accordance with the calculations in Section 2.2 (such securities, the "Additional Securities" and such right to receive the Additional Securities pursuant to this Section 4.18, the "Option Additional Rights").

(b) The exercise of any Option Additional Right to invest exercised by a Purchaser shall be completed on the 5<sup>th</sup> Business Day following the delivery to the Company of a duly delivered exercise notice by the exercising Purchaser. Any additional investment in the Additional Securities shall be on prices, terms (including, without limitation, provisions related to due diligence and other expense reimbursements) and maturity dates identical to those set forth in the Transaction Documents, *mutatis mutandis*. In order to effectuate a purchase and sale of the Additional Securities, the Company and the Purchasers shall enter into a Securities Purchase Agreement and other transaction documents identical to this Agreement and the exhibits hereto, *mutatis mutandis* and shall include updated disclosure schedules.

**ARTICLE V.**  
**MISCELLANEOUS**

5.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Closing has not been consummated on or before October 31, 2016; provided, however, that such termination will not affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. At the Closing, the Company has agreed to reimburse Hillair Capital Management LLC ("Hillair") for all of its legal fees and expenses, \$20,000 of which has been paid prior to the Closing. The Company has also agreed to reimburse Hillair \$93,750 for its due diligence expenses and reimburse Hillair for all reasonable travel expenses \$20,000 of which has been paid prior to the Closing. In addition to the foregoing, the Company represents that it has paid all invoices associated with background checks requested by Hillair on or before the date hereof. The Company shall deliver to each Purchaser, prior to the Closing, a completed and executed copy of the Closing Statement, attached hereto as Annex A. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion notice delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2<sup>nd</sup>) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.



5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and Purchasers holding at least 67% in interest of the Debentures then outstanding or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought, provided that if any amendment, modification or waiver disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) shall also be required. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. Any proposed amendment or waiver that disproportionately, materially and adversely affects the rights and obligations of any Purchaser relative to the comparable rights and obligations of the other Purchasers shall require the prior written consent of such adversely affected Purchaser. Any amendment effected in accordance with this Section 5.5 shall be binding upon each Purchaser and holder of Securities and the Company.

5 . 6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5 . 7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5 . 8 No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.10.

5 . 9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party hereto shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.10, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

5 . 1 0     Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Securities.

5 . 1 1     Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

5.12     Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5 . 1 3     Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that in the case of a rescission of a conversion of a Debenture or Preferred Stock, the applicable Purchaser shall be required to return any shares of Common Stock subject to any such rescinded conversion.

5 . 1 4     Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5 . 1 5     Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5 . 1 6     Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5 . 1 7     Usury. To the extent it may lawfully do so, the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any Action or Proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by the Company to any Purchaser with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by such Purchaser to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Purchaser's election.

5.18 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. For reasons of administrative convenience only, each Purchaser and its respective counsel have chosen to communicate with the Company through EGS. EGS does not represent any of the Purchasers, other than Hillair. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers.

5.19 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

5.20 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.21 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

5 . 2 2     **WAIVER OF JURY TRIAL.** IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**TOUGHBUILT INDUSTRIES, INC.**

Address for Notice:

Fax: (800) 604-3259

By:

\_\_\_\_\_  
Name: Michael Panosian  
Title: Chief Executive Officer

With a copy to (which shall not constitute notice):  
Sichenzia Ross Friedman Ference LLP  
Attn. Marc J. Ross, Esq.

Fax: (212) 930-9725

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

[PURCHASER SIGNATURE PAGES TO TOUGHBUILT SECURITIES PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: \_\_\_\_\_

*Signature of Authorized Signatory of Purchaser:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Email Address of Authorized Signatory: \_\_\_\_\_

Facsimile Number of Authorized Signatory: \_\_\_\_\_

Address for Notice to Purchaser:

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Subscription Amount: \$ \_\_\_\_\_

Principal Amount (*1.14 x Subscription Amount*): \$ \_\_\_\_\_

Preferred Stock: \_\_\_\_\_

EIN Number: \_\_\_\_\_

[SIGNATURE PAGES CONTINUE]

**CLOSING STATEMENT**

Pursuant to the attached Securities Purchase Agreement, dated as of the date hereto, the purchasers shall purchase up to \$5,700,000 of Debentures and Preferred Stock from ToughBuilt Industries, Inc., a Nevada corporation (the “Company”) for an aggregate subscription amount of up to \$5,000,000. All funds will be wired into an account maintained by the Company. All funds will be disbursed in accordance with this Closing Statement.

**Disbursement Date:** \_\_\_\_\_, 2016

**I. PURCHASE PRICE**

**Gross Proceeds to be Received** \$

**II. DISBURSEMENTS**

\$  
\$  
\$  
\$  
\$

**Total Amount Disbursed:** \$

**WIRE INSTRUCTIONS:**

To: \_\_\_\_\_

To: \_\_\_\_\_



NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES

Original Issue Date: October 17, 2016

Original Conversion Price (subject to adjustment herein): **\$5.00**

\$5,700,000.00

**8% ORIGINAL ISSUE DISCOUNT SENIOR SECURED CONVERTIBLE DEBENTURE  
DUE SEPTEMBER 1, 2018**

THIS 8% ORIGINAL ISSUE DISCOUNT SENIOR SECURED CONVERTIBLE DEBENTURE is one of a series of duly authorized and validly issued 8% Original Issue Discount Senior Secured Convertible Debentures of ToughBuilt Industries, Inc., a Nevada corporation, (the "Company"), having its principal place of business at 665 N. Central Ave., Suite 1700, Glendale, CA 91203, designated as its 8% Original Issue Discount Senior Secured Convertible Debenture due September 1, 2018 (this debenture, the "Debenture" and, collectively with the other debentures of such series, the "Debentures").

FOR VALUE RECEIVED, the Company promises to pay to Hillair Capital Investments L.P. or its registered assigns (the "Holder"), the principal sum of \$5,700,000 on September 1, 2018 (the "Maturity Date") or such earlier date as this Debenture is required or permitted to be repaid as provided hereunder, and to pay interest to the Holder on the aggregate unconverted and then outstanding principal amount of this Debenture in accordance with the provisions hereof. This Debenture is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Debenture, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement and (b) the following terms shall have the following meanings:

"Alternate Consideration" shall have the meaning set forth in Section 5(e).

“Bankruptcy Event” means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Company or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, (g) the Company or any Significant Subsidiary thereof admits in writing that it is generally unable to pay its debts as they become due, (h) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Base Conversion Price” shall have the meaning set forth in Section 5(b).

“Beneficial Ownership Limitation” shall have the meaning set forth in Section 4(d).

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Buy-In” shall have the meaning set forth in Section 4(c)(v).

“Change of Control Transaction” means occurrence of any of the following in one or a series of related transactions:

(i) One or more acquisitions after the date hereof by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) under the Exchange Act), resulting in 40% or more of the voting rights or equity interest in the Company being transferred to such Persons or their Affiliates;

(ii) A replacement of more than a majority of the members of the Board that is not approved by those individuals who are members of the Board on the date hereof (or other directors previously approved by such individuals);

(iii) A merger or consolidation of the Company or any one or more Subsidiaries owning a majority of the consolidated assets of the Company and all Subsidiaries, or a sale of all or substantially all of the assets of the Company and its consolidated Subsidiaries in one or a series of related transactions, unless following such transaction or series of transactions, the Holders of the Company's securities immediately prior to the first transaction continue to hold at least 60% of the voting rights and equity interest in the surviving entity or acquirer of such assets;

(iv) A recapitalization, reorganization or other transaction involving the Company or any Subsidiary that constitutes or results in a transfer of 40% or more of the voting rights or equity interest in the Company to any Persons; or

(v) the execution by the Company or its controlling stockholders of an agreement providing for any of the foregoing events.

"Conversion" shall have the meaning ascribed to such term in Section 4.

"Conversion Date" shall have the meaning set forth in Section 4(a).

"Conversion Price" shall have the meaning set forth in Section 4(b).

"Conversion Schedule" means the Conversion Schedule in the form of Schedule 1 attached hereto.

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of this Debenture in accordance with the terms hereof.

"Debenture Register" shall have the meaning set forth in Section 2(c).

"Dilutive Issuance" shall have the meaning set forth in Section 5(b).

"Dilutive Issuance Notice" shall have the meaning set forth in Section 5(b).

“Equity Conditions” means, during the period in question, (a) the Company shall have duly honored all conversions and redemptions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the Holder, if any, (b) the Company shall have paid all liquidated damages and other amounts owing to the Holder in respect of this Debenture, (c) all of the Conversion Shares issuable pursuant to the Transaction Documents (and shares issuable in lieu of cash payments of interest) may be resold pursuant to Rule 144 without volume or manner-of-sale restrictions or current public information requirements as determined by the counsel to the Company as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the Holder, (d) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed or quoted for trading on such Trading Market (and the Company believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (e) there is a sufficient number of authorized but unissued and otherwise unreserved shares of Common Stock for the issuance of all of the shares then issuable pursuant to the Transaction Documents, (f) there is no existing Event of Default and no existing event which, with the passage of time or the giving of notice, would constitute an Event of Default, (g) the issuance of the shares in question (or, in the case of an Optional Redemption or Quarterly Redemption, the shares issuable upon conversion in full of the Optional Redemption Amount or Quarterly Redemption Amount) to the Holder would not violate the limitations set forth in Section 4(d) herein, (h) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (i) the applicable Holder is not in possession of any information provided by the Company, any of its Subsidiaries, or any of their officers, directors, employees, agents or Affiliates, that constitutes, or may constitute, material non-public information, (j) for each Trading Day in a period of 20 consecutive Trading Days prior to the applicable date in question, the VWAP for the Common Stock on the principal Trading Market exceeds \$1.11 per Trading Day, (k) the number of shares of Common Stock proposed to be issued in respect of such payments at issue, in each case as attributable to all holders of Debentures, is less than 20% of the aggregate number of shares of Common Stock traded on the principal Trading Market during the 20 Trading Days immediately prior to such payment date and (l) the Lock-Up Agreement (as defined in the Purchase Agreement) shall not be in effect.

“Event of Default” shall have the meaning set forth in Section 8(a).

“Fundamental Transaction” shall have the meaning set forth in Section 5(e).

“Going Public Event” means (i) the Company’s offering of securities on a registration statement pursuant to the Securities Act or the Company’s merger, reverse merger, consolidation, transfer, or share exchange transaction pursuant to which the Company becomes subject to the reporting requirements of the Exchange Act and (ii) the contemporaneous listing or quoting of the Common Stock on a Trading Market.

“Going Public Event Date” means the date of the effectiveness of the Going Public Event.

“Going Public Redemption Amount” means the sum of (a) 120% of up to 50% of the then outstanding principal amount of the Debenture, (b) accrued but unpaid interest and (c) all liquidated damages and other amounts due in respect of the Debenture

“Interest Payment Date” shall have the meaning set forth in Section 2(a).

“Late Fees” shall have the meaning set forth in Section 2(d).

“Mandatory Default Amount” means the sum of (a) the greater of (i) the outstanding principal amount of this Debenture, plus all accrued and unpaid interest hereon, divided by the Conversion Price on the date the Mandatory Default Amount is either (A) demanded (if demand or notice is required to create an Event of Default) or otherwise due or (B) paid in full, whichever has a lower Conversion Price, multiplied by the VWAP on the date the Mandatory Default Amount is either (x) demanded or otherwise due or (y) paid in full, whichever has a higher VWAP, or (ii) 130% of the outstanding principal amount of this Debenture, plus 100% of accrued and unpaid interest hereon, and (b) all other amounts, costs, expenses and liquidated damages due in respect of this Debenture.

“New York Courts” shall have the meaning set forth in Section 9(d).

“Notice of Conversion” shall have the meaning set forth in Section 4(a).

“Optional Redemption” shall have the meaning set forth in Section 6(a).

“Optional Redemption Amount” means the sum of (a)(i) 110% of the then outstanding principal amount of the Debenture, in the event an Optional Redemption occurs prior to the twelve month anniversary of the Original Issue Date or (ii) 120% of the then outstanding principal amount of the Debenture in the event an Optional Redemption occurs on or after the twelve month anniversary of the Original Issue Date, (b) accrued but unpaid interest and (c) all liquidated damages and other amounts due in respect of the Debenture.

“Optional Redemption Date” shall have the meaning set forth in Section 6(a).

“Optional Redemption Notice” shall have the meaning set forth in Section 6(a).

“Optional Redemption Notice Date” shall have the meaning set forth in Section 6(a).

“Optional Redemption Period” shall have the meaning set forth in Section 6(a).

“Original Issue Date” means the date of the first issuance of the Debentures, regardless of any transfers of any Debenture and regardless of the number of instruments which may be issued to evidence such Debentures.

“Permitted Indebtedness” means (a) the indebtedness evidenced by the Debentures, (b) the Indebtedness existing on the Original Issue Date and set forth on Schedule 3.1(aa) attached to the Purchase Agreement, (c) a revolving credit facility or line of credit provided to the Company by one or more licensed commercial lending institutions in the maximum aggregate amount of \$3,000,000, that may be secured by up to 60% of the Company’s accounts receivables and (d) indebtedness that (i) is expressly subordinate to the Debentures pursuant to a written subordination agreement with the Purchasers that is acceptable to each Purchaser in its sole and absolute discretion and (ii) matures at a date later than the 91<sup>st</sup> day following the Maturity Date.

“Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Company’s business, such as carriers’, warehousemen’s and mechanics’ Liens, statutory landlords’ Liens, and other similar Liens arising in the ordinary course of the Company’s business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clauses (a) and (b) thereunder.

“Pre-Redemption Conversion Shares” shall have the meaning set forth in Section 6(b)(i) hereof.

“Purchase Agreement” means the Securities Purchase Agreement, dated as of October 17, 2016 among the Company and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms.

“Quarterly Conversion Period” shall have the meaning set forth in Section 6(b) hereof.

“Quarterly Conversion Price” shall have the meaning set forth in Section 6(b) hereof.

“Quarterly Redemption” means the redemption of this Debenture pursuant to Section 6(b) hereof.

“Quarterly Redemption Amount” means, (i) \$1,140,000 as to a Quarterly Redemption occurring on March 1, 2018 and June 1, 2018, and (ii) \$2,280,000 as to a Quarterly Redemption occurring on September 1, 2018, plus accrued but unpaid interest, liquidated damages and any other amounts then owing to the Holder in respect of this Debenture.

“Quarterly Redemption Date” means each of March 1, 2018, June 1, 2018, and September 1, 2018.

“Quarterly Redemption Notice” shall have the meaning set forth in Section 6(b) hereof.

“Registration Statement” means a registration statement filed with the Commission registering the resale of the Underlying Shares by each Holder.

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

“Share Delivery Date” shall have the meaning set forth in Section 4(c)(ii).

“Successor Entity” shall have the meaning set forth in Section 5(e).

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTCQB or OTCQX (or any successors to any of the foregoing).

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

## Section 2. Interest.

a) Payment of Interest in Cash. The Company shall pay interest to the Holder on the aggregate unconverted and then outstanding principal amount of this Debenture at the rate of 8% per annum, payable quarterly on September 1, December 1, March 1 and June 1, beginning on September 1, 2017, on each Quarterly Redemption Date (as to that principal amount then being redeemed), on each Conversion Date (as to that principal amount then being converted), on each Optional Redemption Date (as to that principal amount then being redeemed) and on the Maturity Date (each such date, an “Interest Payment Date”) (if any Interest Payment Date is not a Business Day, then the applicable payment shall be due on the next succeeding Business Day), in cash.

b) [RESERVED].

c ) Interest Calculations. Interest shall be calculated on the basis of a 360-day year, consisting of twelve 30 calendar day periods, and shall accrue daily commencing on the Original Issue Date until payment in full of the outstanding principal, together with all accrued and unpaid interest, liquidated damages and other amounts which may become due hereunder, has been made. Interest shall cease to accrue with respect to any principal amount converted, provided that, the Company actually delivers the Conversion Shares within the time period required by Section 4(c)(ii) herein. Interest hereunder will be paid to the Person in whose name this Debenture is registered on the records of the Company regarding registration and transfers of this Debenture (the "Debenture Register").

d ) Late Fee. All overdue accrued and unpaid interest to be paid hereunder shall entail a late fee at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law (the "Late Fees") which shall accrue daily from the date such interest is due hereunder through and including the date of actual payment in full.

e ) Prepayment. Except as otherwise set forth in this Debenture, the Company may not prepay any portion of the principal amount of this Debenture without the prior written consent of the Holder.

Section 3. Registration of Transfers and Exchanges.

a ) Different Denominations. This Debenture is exchangeable for an equal aggregate principal amount of Debentures of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

b ) Investment Representations. This Debenture has been issued subject to certain investment representations of the original Holder set forth in the Purchase Agreement and may be transferred or exchanged only in compliance with the Purchase Agreement and applicable federal and state securities laws and regulations.

c ) Reliance on Debenture Register. Prior to due presentment for transfer to the Company of this Debenture, the Company and any agent of the Company may treat the Person in whose name this Debenture is duly registered on the Debenture Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Debenture is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.



Section 4.        Conversion.

a)        Voluntary Conversion. At any time after the Original Issue Date until this Debenture is no longer outstanding, this Debenture shall be convertible, in whole or in part, into shares of Common Stock at the option of the Holder, at any time and from time to time (subject to the conversion limitations set forth in Section 4(d) hereof). The Holder shall effect conversions by delivering to the Company a Notice of Conversion, the form of which is attached hereto as Annex A (each, a “Notice of Conversion”), specifying therein the principal amount of this Debenture to be converted and the date on which such conversion shall be effected (such date, the “Conversion Date”). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions hereunder, the Holder shall not be required to physically surrender this Debenture to the Company unless the entire principal amount of this Debenture, plus all accrued and unpaid interest thereon, has been so converted in which case the Holder shall surrender this Debenture as promptly as is reasonably practicable after such conversion without delaying the Company’s obligation to deliver the shares on the Share Delivery Date. Conversions hereunder shall have the effect of lowering the outstanding principal amount of this Debenture in an amount equal to the applicable conversion. The Holder and the Company shall maintain records showing the principal amount(s) converted and the date of such conversion(s). The Company may deliver an objection to any Notice of Conversion within one (1) Business Day of delivery of such Notice of Conversion. In the event of any dispute or discrepancy, the records of the Holder shall be controlling and determinative in the absence of manifest error. **The Holder, and any assignee by acceptance of this Debenture, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of this Debenture, the unpaid and unconverted principal amount of this Debenture may be less than the amount stated on the face hereof.**

b )        Conversion Price. The conversion price in effect on any Conversion Date shall be equal to **\$5.00**, subject to adjustment herein (the “Conversion Price”). In addition, on the Going Public Event Date, the Conversion Price shall be adjusted to 120% of the effective per share price of Common Stock issued in the Going Public Event, subject to adjustment hereunder. The Company shall notify each Holder of the applicable adjustment to the Conversion Price as of such date (a “Going Public Event Date Adjustment Notice”). For purposes of clarification, whether or not the Company provides a Going Public Event Date Adjustment Notice pursuant to this Section 4(b), the Holder shall receive a number of Conversion Shares based upon the Conversion Price as adjusted pursuant to this Section, regardless of whether the Holder accurately refers to such price in any Notice of Conversion.

c) Mechanics of Conversion.

i . Conversion Shares Issuable Upon Conversion of Principal Amount. The number of Conversion Shares issuable upon a conversion hereunder shall be determined by the quotient obtained by dividing (x) the outstanding principal amount of this Debenture to be converted by (y) the Conversion Price.

i i . Delivery of Conversion Shares Upon Conversion. Not later than three (3) Trading Days after each Conversion Date (the “Share Delivery Date”), the Company shall deliver, or cause to be delivered, to the Holder (A) the Conversion Shares which, on or after Going Public Event Date, shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Purchase Agreement) representing the number of Conversion Shares being acquired upon the conversion of this Debenture and (B) a bank check in the amount of accrued and unpaid interest (if the Company has elected or is required to pay accrued interest in cash). On or after the earlier of (i) the six month anniversary of the Original Issue Date or (ii) the Effective Date, the Company shall deliver any Conversion Shares required to be delivered by the Company under this Section 4(c) electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

iii. Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Company at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any original Debenture delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

i v . Obligation Absolute; Partial Liquidated Damages. The Company's obligations to issue and deliver the Conversion Shares upon conversion of this Debenture in accordance with the terms hereof are, subject to Section 4(d) hereof, absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action the Company may have against the Holder. In the event the Holder of this Debenture shall elect to convert any or all of the outstanding principal amount hereof, the Company may not refuse conversion based on any claim that the Holder or anyone associated or affiliated with the Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and or enjoining conversion of all or part of this Debenture shall have been sought and obtained, and the Company posts a surety bond for the benefit of the Holder in the amount of 150% of the outstanding principal amount of this Debenture, which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to the Holder to the extent it obtains judgment. In the absence of such injunction, the Company shall issue Conversion Shares or, if applicable, cash, upon a properly noticed conversion. If the Company fails for any reason to deliver to the Holder such Conversion Shares pursuant to Section 4(c) (ii) by the Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of principal amount being converted, \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth (5<sup>th</sup>) Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare an Event of Default pursuant to Section 8 hereof for the Company's failure to deliver Conversion Shares within the period specified herein and the Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

v. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. Following the Going Public Event Date, in addition to any other rights available to the Holder, if the Company fails for any reason to deliver to the Holder such Conversion Shares by the Share Delivery Date pursuant to Section 4(c)(ii), and if after such Share Delivery Date the Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Conversion Shares which the Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Company shall (A) pay in cash to the Holder (in addition to any other remedies available to or elected by the Holder) the amount, if any, by which (x) the Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that the Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the Holder, either reissue (if surrendered) this Debenture in a principal amount equal to the principal amount of the attempted conversion (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 4(c)(ii). For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of this Debenture with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Conversion Shares upon conversion of this Debenture as required pursuant to the terms hereof.

vi. Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of this Debenture and payment of interest on this Debenture, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Debentures), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 5) upon the conversion of the then outstanding principal amount of this Debenture and payment of interest hereunder. The Company covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

vii. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of this Debenture. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Company shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

viii. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Debenture shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holder of this Debenture so converted and the Company shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

d ) Holder's Conversion Limitations. Following the Going Public Event Date, the Company shall not effect any conversion of this Debenture, and a Holder shall not have the right to convert any portion of this Debenture, to the extent that after giving effect to the conversion set forth on the applicable Notice of Conversion, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of this Debenture with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted principal amount of this Debenture beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, any other Debentures or shares of Class B Preferred Stock) beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 4(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 4(d) applies, the determination of whether this Debenture is convertible (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which principal amount of this Debenture is convertible shall be in the sole discretion of the Holder, and the submission of a Notice of Conversion shall be deemed to be the Holder's determination of whether this Debenture may be converted (in relation to other securities owned by the Holder together with any Affiliates or Attribution Parties) and which principal amount of this Debenture is convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, the Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 4(d), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company, or (iii) a more recent written notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Debenture, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of this Debenture held by the Holder. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 4(d), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Debenture held by the Holder and the Beneficial Ownership Limitation provisions of this Section 4(d) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Company. The Beneficial Ownership Limitation provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Debenture.

Section 5. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Company, at any time while this Debenture is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon conversion of, or payment of interest on, the Debentures), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If, at any time while this Debenture is outstanding, the Company or any Subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the “Base Conversion Price” and such issuances, collectively, a “Dilutive Issuance”) (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 5(b) in respect of an Exempt Issuance and in no event shall the Conversion Price be reduced pursuant to this Section 5(b) to less than \$1.00, subject to adjustment for reverse and forward stock splits and the like. If the Company enters into a Variable Rate Transaction, despite the prohibition set forth in the Purchase Agreement, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Company shall notify the Holder in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 5(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the “Dilutive Issuance Notice”). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 5(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

c ) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 5(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Debenture (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d ) Pro Rata Distributions. During such time as this Debenture is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Debenture, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Debenture (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

e ) Fundamental Transaction. If, at any time while this Debenture is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then, upon any subsequent conversion of this Debenture, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 4(d) on the conversion of this Debenture), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Debenture is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 4(d) on the conversion of this Debenture). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one (1) share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Debenture following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Company under this Debenture and the other Transaction Documents (as defined in the Purchase Agreement) in accordance with the provisions of this Section 5(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Debenture, deliver to the Holder in exchange for this Debenture a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Debenture which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Debenture (without regard to any limitations on the conversion of this Debenture) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Debenture immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Debenture and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Debenture and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.



f ) Calculations. All calculations under this Section 5 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 5, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Company) issued and outstanding.

g) Notice to the Holder.

i . Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 5, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

i i . Notice to Allow Conversion by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of this Debenture, and shall cause to be delivered to the Holder at its last address as it shall appear upon the Debenture Register, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert this Debenture during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 6.      Redemption.

a )      Optional Redemption at Election of Company. Subject to the provisions of this Section 6(a), at any time after the Original Issue Date, the Company may deliver a notice to the Holder (an “Optional Redemption Notice” and the date such notice is deemed delivered hereunder, the “Optional Redemption Notice Date”) of its irrevocable election to redeem some or all of the then outstanding principal amount of this Debenture for cash in an amount equal to the Optional Redemption Amount on the 10<sup>th</sup> Trading Day following the Optional Redemption Notice Date (such date, the “Optional Redemption Date”, such 10 Trading Day period, the “Optional Redemption Period” and such redemption, the “Optional Redemption”). The Optional Redemption Amount is payable in full on the Optional Redemption Date. The Company may only effect an Optional Redemption if each of the Equity Conditions shall have been met (unless waived in writing by the Holder) on each Trading Day during the period commencing on the Optional Redemption Notice Date through to the Optional Redemption Date and through and including the date payment of the Optional Redemption Amount is actually made in full. If any of the Equity Conditions shall cease to be satisfied at any time during the Optional Redemption Period, then the Holder may elect to nullify the Optional Redemption Notice by notice to the Company within 3 Trading Days after the first day on which any such Equity Condition has not been met (provided that if, by a provision of the Transaction Documents, the Company is obligated to notify the Holder of the non-existence of an Equity Condition, such notice period shall be extended to the third Trading Day after proper notice from the Company) in which case the Optional Redemption Notice shall be null and void, ab initio. The Company covenants and agrees that it will honor all Notices of Conversion tendered from the time of delivery of the Optional Redemption Notice through the date all amounts owing thereon are due and paid in full. The Company’s determination to pay an Optional Redemption in cash shall be applied ratably to all of the holders of the then outstanding Debentures based on their (or their predecessor’s) initial purchases of Debentures pursuant to the Purchase Agreement. In the event of a Change of Control Transaction, the Company shall redeem the Debentures in full, in accordance with this Section 6(a).

b )      Optional Redemption at Election of the Company in the Event of a Going Public Event. Within 1 Trading Day following the consummation of a Going Public Event that is a bona fide firm commitment underwritten public offering of the Common Stock for gross proceeds of at least \$10 million, in the aggregate, with a contemporaneous listing of the Common Stock on a Trading Market and with an investment bank acting as the lead book-runner, the Company may deliver a notice to the Holder (an “Going Public Redemption Notice” and the date such notice is deemed delivered hereunder, the “Going Public Redemption Notice Date”) of its irrevocable election to redeem some or all of the then outstanding principal amount of this Debenture for cash in an amount equal to the Going Public Redemption Amount on the 3<sup>rd</sup> Trading Day following the Going Public Redemption Notice Date (such date, the “Going Public Redemption Date”, such 3 Trading Day period, the “Going Public Redemption Period” and such redemption, the “Going Public Redemption”). The Going Public Redemption Amount is payable in full on the Going Public Redemption Date. The Holder covenants and agrees that it will not tender any Notices of Conversion for the Going Public Redemption Amount being redeemed from the time of delivery of the Going Public Redemption Notice through the Going Public Redemption Date; provided, however, in the event that the Company has not paid all amounts owing thereon in full on or before the Going Public Redemption Date, then the Holder shall have the right to convert the principal amount of this Debenture being redeemed. The Company’s determination to pay an Optional Redemption in cash shall be applied ratably to all of the holders of the then outstanding Debentures based on their (or their predecessor’s) initial purchases of Debentures pursuant to the Purchase Agreement

c) Quarterly Redemption.

- i. On each Quarterly Redemption Date, the Company shall redeem the Quarterly Redemption Amount (the “Quarterly Redemption”). The Quarterly Redemption Amount payable on each Quarterly Redemption Date shall be paid in cash; provided, however, as to any Quarterly Redemption and upon 20 Trading Days’ prior written irrevocable notice (the “Quarterly Redemption Notice”), in lieu of a cash redemption payment the Company may elect to pay all or part of a Quarterly Redemption Amount in Conversion Shares based on a conversion price equal to the lesser of (i) the then Conversion Price less \$0.01 and (ii) 90% of the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the applicable Quarterly Redemption Date (subject to adjustment for any stock dividend, stock split, stock combination or other similar event affecting the Common Stock during such 10 Trading Day period) (the price calculated during the 20 Trading Day period immediately prior to the Quarterly Redemption Date, the “Quarterly Conversion Price” and such 10 Trading Day period, the “Quarterly Conversion Period”); provided, further, that the Company may not pay the Quarterly Redemption Amount in Conversion Shares unless (y) from the date the Holder receives the duly delivered Quarterly Redemption Notice through and until the date such Quarterly Redemption is paid in full, the Equity Conditions have been satisfied, unless waived in writing by the Holder, and (z) as to such Quarterly Redemption, prior to such Quarterly Conversion Period (but not more than 5 Trading Days prior to the commencement of the Quarterly Conversion Period), the Company shall have delivered to the Holder’s account with The Depository Trust Company a number of shares of Common Stock to be applied against such Quarterly Redemption Amount equal to the quotient of (x) the applicable Quarterly Redemption Amount divided by (y) the lesser of (A) the Conversion Price and (B) 90% of the average of the 10 VWAPs during the period ending on the 3<sup>rd</sup> Trading Day immediately prior to the date of the Quarterly Redemption Notice (the “Pre-Redemption Conversion Shares”). The Holder may convert, pursuant to Section 4(a), any principal amount of this Debenture subject to a Quarterly Redemption at any time prior to the date that the Quarterly Redemption Amount, plus accrued but unpaid interest, liquidated damages and any other amounts then owing to the Holder are due and paid in full. Unless otherwise indicated by the Holder in the applicable Notice of Conversion, any principal amount of this Debenture converted during the applicable Quarterly Conversion Period until the date the Quarterly Redemption Amount is paid in full shall be first applied to the principal amount subject to the Quarterly Redemption Amount payable in cash and then to the Quarterly Redemption Amount payable in Conversion Shares. Any principal amount of this Debenture converted during the applicable Quarterly Conversion Period in excess of the Quarterly Redemption Amount shall be applied against the last principal amount of this Debenture scheduled to be redeemed hereunder, in reverse time order from the Maturity Date; provided, however, if any such conversion is applied against such Quarterly Redemption Amount, the Pre-Redemption Conversion Shares, if any were issued in connection with such Quarterly Redemption or were not already applied to such conversions, shall be first applied against such conversion. The Company covenants and agrees that it will honor all Notices of Conversion tendered up until such amounts are paid in full. The Company’s determination to pay a Quarterly Redemption in cash, shares of Common Stock or a combination thereof shall be applied ratably to all of the holders of the then outstanding Debentures based on their (or their predecessor’s) initial purchases of Debentures pursuant to the Purchase Agreement. At any time the Company delivers a notice to the Holder of its election to pay the Quarterly Redemption Amount in shares of Common Stock, the Company shall file a prospectus supplement pursuant to Rule 424 disclosing such election.

- ii. Additional Shares Issuable for certain Quarterly Redemption(s). In addition to the amounts and shares issuable pursuant to Section 6(b)(i) above, in the event that (x) Company elects or is required to pay the Quarterly Redemption Amount in cash and (y) the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the applicable Quarterly Redemption Date (the “Average Market Price”) is greater than the then effective Conversion Price, then on the applicable Quarterly Redemption Date, the Company will deliver to the Holder a number of shares (the “Additional Redemption Shares”) derived from the following formula:  $A/B$ , where A equals the Average Market Price minus the then effective Conversion Price multiplied by the applicable Quarterly Redemption Amount divided by the then effective Conversion Price and B equals the then effective Conversion Price. *By way of an example, if the Quarterly Redemption Amount is \$100, the Average Market Price is \$1.00 and the then effective Conversion Price is \$0.50, then, in addition to the amounts issued pursuant to Section 6(b)(i), the Company would issue the Holder 200 shares of Common Stock.* In implementation of the foregoing, to the extent that an issuance of Additional Redemption Shares pursuant to this Section 6(b)(ii) would result in a Holder exceeding the Beneficial Ownership Limitation, then the Company shall initially issue only such number of shares up to the Beneficial Ownership Limitation with the remaining Additional Redemption Shares only being issued from time to time on the Trading Day that the Holder makes a representation to the Company that such issuance would not exceed the Beneficial Ownership Limitation.

d) Redemption Procedure. The payment of cash or issuance of Common Stock, as applicable, pursuant to an Optional Redemption, Going Public Redemption Date or a Quarterly Redemption shall be payable on the Optional Redemption Date, Going Public Redemption Date or Quarterly Redemption Date, as applicable. If any portion of the payment pursuant to an Optional Redemption, Going Public Redemption or Quarterly Redemption shall not be paid by the Company by the applicable due date, interest shall accrue thereon at an interest rate equal to the lesser of 15% per annum or the maximum rate permitted by applicable law until such amount is paid in full. Notwithstanding anything herein contained to the contrary, if any portion of the Optional Redemption Amount, Going Public Redemption Amount or Quarterly Redemption Amount remains unpaid after such date, the Holder may elect, by written notice to the Company given at any time thereafter, to invalidate such Optional Redemption, Going Public Redemption or Quarterly Redemption, ab initio, and, with respect to the Company's failure to honor the Optional Redemption, the Company shall have no further right to exercise such Optional Redemption. Notwithstanding anything to the contrary in this Section 6, the Company's determination to redeem in cash or its elections under Section 6(b) shall be applied ratably among the Holders of Debentures. Subject to the limitation set forth in this Section 6, the Holder may elect to convert the outstanding principal amount of the Debenture pursuant to Section 4 prior to actual payment in cash for any redemption under this Section 6 by the delivery of a Notice of Conversion to the Company.

Section 7. Negative Covenants. As long as any portion of this Debenture remains outstanding, the Company shall not, directly or indirectly:

a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including, but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

c) amend its charter documents, including, without limitation, its articles of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock or Common Stock Equivalents other than as to (i) the Conversion Shares as permitted or required under the Transaction Documents and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Company, provided that such repurchases shall not exceed an aggregate of \$100,000 for all officers and directors during the term of this Debenture;

e) except with respect to the debts as disclosed on Schedule 3.1(aa) of the Purchase Agreement, repay, repurchase or offer to repay, repurchase or otherwise acquire any Indebtedness, other than the Debentures if on a pro-rata basis, other than regularly scheduled principal and interest payments as such terms are in effect as of the Original Issue Date, provided that such payments shall not be permitted if, at such time, or after giving effect to such payment, any Event of Default exist or occur, except for repayments to the Company's officers and directors in an amount not to exceed an aggregate of \$100,000 for all officers and directors during the term of this Debenture;

f) pay cash dividends or distributions on any equity securities of the Company;

g) enter into any transaction with any Affiliate of the Company which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval); or

h) enter into any agreement with respect to any of the foregoing.

Section 8. Events of Default.

a) "Event of Default" means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. any default in the payment of (A) the principal amount of any Debenture or (B) interest, liquidated damages and other amounts owing to a Holder on any Debenture, as and when the same shall become due and payable (whether on a Conversion Date or the Maturity Date or by acceleration or otherwise) which default, solely in the case of an interest payment or other default under clause (B) above, is not cured within 5 Trading Days;

ii. the Company shall fail to observe or perform any other covenant or agreement contained in the Debentures (other than a breach by the Company of its obligations to deliver shares of Common Stock to the Holder upon conversion, which breach is addressed in clause (xi) below) or in any Transaction Document, which failure is not cured, if possible to cure, within the earlier to occur of (A) 5 Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) 10 Trading Days after the Company has become or should have become aware of such failure;

iii. a default or event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur under (A) any of the Transaction Documents or (B) any other material agreement, lease, document or instrument to which the Company or any Subsidiary is obligated (and not covered by clause (vi) below);

iv. any representation or warranty made in this Debenture, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

v. the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) shall be subject to a Bankruptcy Event;

vi. the Company shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than \$150,000, whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

vii. after the Going Public Event Date, the Common Stock shall not be eligible for listing or quotation for trading on a Trading Market and shall not be eligible to resume listing or quotation for trading thereon within five Trading Days;

viii. the Company shall be a party to any Change of Control Transaction or Fundamental Transaction or shall agree to sell or dispose of all or in excess of 33% of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction);

ix. after the Going Public Event Date, the Company does not meet the current public information requirements under Rule 144;

x. [RESERVED];

xi. the Company shall fail for any reason to deliver Conversion Shares to a Holder prior to the fifth Trading Day after a Conversion Date pursuant to Section 4(c) or the Company shall provide at any time notice to the Holder, including by way of public announcement, of the Company's intention to not honor requests for conversions of any Debentures in accordance with the terms hereof;

xii. any Person shall breach any agreement delivered to the initial Holders pursuant to Section 2.2 of the Purchase Agreement;

xiii. after the Going Public Event Date, the electronic transfer by the Company of shares of Common Stock through the Depository Trust Company or another established clearing corporation is no longer available or is subject to a "chill";

xiv. any monetary judgment, writ or similar final process shall be entered or filed against the Company, any subsidiary or any of their respective property or other assets for more than \$100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days; or

xv. a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company that the Equity Conditions are satisfied or that there has been no Equity Conditions Failure or as to whether any Event of Default has occurred.

b ) Remedies Upon Event of Default. If any Event of Default occurs, the outstanding principal amount of this Debenture, plus accrued but unpaid interest, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash at the Mandatory Default Amount. Commencing 5 days after the occurrence of any Event of Default that results in the eventual acceleration of this Debenture, the interest rate on this Debenture shall accrue at an interest rate equal to the lesser of 15% per annum or the maximum rate permitted under applicable law. Upon the payment in full of the Mandatory Default Amount, the Holder shall promptly surrender this Debenture to or as directed by the Company. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Debenture until such time, if any, as the Holder receives full payment pursuant to this Section 8(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon. In the event of an Event of Default specified in Section 8(a)(i), the principal amount of this Debenture shall automatically be increased by 0.5% upon the occurrence of each Event of Default specified in Section 8(a)(i).



Section 9. Miscellaneous.

a ) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder, including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, by email attachment, or sent by a nationally recognized overnight courier service, addressed to the Company, at the address set forth above, or such other facsimile number, email address, or address as the Company may specify for such purposes by notice to the Holder delivered in accordance with this Section 9(a). Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile, by email attachment, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or email address or address of the Holder appearing on the books of the Company, or if no such facsimile number or email attachment or address appears on the books of the Company, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment to the email address set forth on the signature pages attached hereto prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment to the email address set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (iv) upon actual receipt by the party to whom such notice is required to be given.

b ) Absolute Obligation. Except as expressly provided herein, no provision of this Debenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, liquidated damages and accrued interest, as applicable, on this Debenture at the time, place, and rate, and in the coin or currency, herein prescribed. This Debenture is a direct debt obligation of the Company. This Debenture ranks pari passu with all other Debentures now or hereafter issued under the terms set forth herein.

c ) Lost or Mutilated Debenture. If this Debenture shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Debenture, or in lieu of or in substitution for a lost, stolen or destroyed Debenture, a new Debenture for the principal amount of this Debenture so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Debenture, and of the ownership hereof, reasonably satisfactory to the Company.

d ) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Debenture shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the “New York Courts”). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Debenture and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Debenture or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Debenture, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e ) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Debenture shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Debenture. The failure of the Company or the Holder to insist upon strict adherence to any term of this Debenture on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Debenture on any other occasion. Any waiver by the Company or the Holder must be in writing.

f ) Severability. If any provision of this Debenture is invalid, illegal or unenforceable, the balance of this Debenture shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on this Debenture as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Debenture, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

g ) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Debenture shall be cumulative and in addition to all other remedies available under this Debenture and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Debenture. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Debenture.

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

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

j ) Secured Obligation. The obligations of the Company under this Debenture are secured by all assets of the Company pursuant to the Security Agreement, dated as of October 17, 2016 between the Company, the Subsidiaries of the Company and the Secured Parties (as defined therein).

Section 10. Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Debenture, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within two (2) Business Days after such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

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*(Signature Pages Follow)*

IN WITNESS WHEREOF, the Company has caused this Debenture to be duly executed by a duly authorized officer as of the date first above indicated.

**TOUGHBUILT INDUSTRIES, INC.**

By: \_\_\_\_\_  
Name: Michael Panosian  
Title: Chief Executive Officer  
Facsimile No. for delivery of Notices: \_\_\_\_\_

## ANNEX A

### NOTICE OF CONVERSION

The undersigned hereby elects to convert principal under the 8% Original Issue Discount Senior Secured Convertible Debenture due September 1, 2018 of ToughBuilt Industries, Inc., a Nevada corporation (the "Company"), into shares of common stock (the "Common Stock"), of the Company according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by the Company in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

By the delivery of this Notice of Conversion the undersigned represents and warrants to the Company that its ownership of the Common Stock does not exceed the amounts specified under Section 4 of this Debenture, as determined in accordance with Section 13(d) of the Exchange Act.

The undersigned agrees to comply with the prospectus delivery requirements under the applicable securities laws in connection with any transfer of the aforesaid shares of Common Stock.

Conversion calculations:

Date to Effect Conversion:

Principal Amount of Debenture to be Converted:

Payment of Interest in Common Stock \_\_ yes \_\_ no

If yes, \$ \_\_\_\_\_ of Interest Accrued on Account of Conversion at Issue.

Number of shares of Common Stock to be issued:

Signature:

Name:

Address for Delivery of Common Stock Certificates:

Or

DWAC Instructions:

Broker No: \_\_\_\_\_

Account No: \_\_\_\_\_

**Schedule 1**

**CONVERSION SCHEDULE**

The 8% Original Issue Discount Senior Secured Convertible Debentures due on September 1, 2018 in the aggregate principal amount of \$5,700,000 are issued by ToughBuilt Industries, Inc., a Nevada corporation. This Conversion Schedule reflects conversions made under Section 4 of the above referenced Debenture.

Dated:

Date of Conversion (or for first entry, Original Issue Date)	Amount of Conversion	Aggregate Principal Amount Remaining Subsequent to Conversion (or original Principal Amount)	Company Attest
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**TOUGHBUILT INDUSTRIES, INC.**  
**2016 EQUITY INCENTIVE PLAN**

**1. PURPOSE.** The purpose of this Plan is to provide incentives to attract, retain and motivate eligible persons whose present and potential contributions are important to the success of the Company, and any Parents and Subsidiaries that exist now or in the future, by offering them an opportunity to participate in the Company's future performance through the grant of Awards. Capitalized terms not defined elsewhere in the text are defined in Section 27.

**2. SHARES SUBJECT TO THE PLAN.**

2.1 Number of Shares Available. Subject to Sections 2.6 and 21 and any other applicable provisions hereof, the total number of Shares reserved and available for grant and issuance pursuant to this Plan as of the date of adoption of the Plan by the Board is 12,000,000 shares.

2.2 Lapsed, Returned Awards. Shares subject to Awards, and Shares issued under the Plan under any Award, will again be available for grant and issuance in connection with subsequent Awards under this Plan to the extent such Shares: (a) are subject to issuance upon exercise of an Option or SAR granted under this Plan but which cease to be subject to the Option or SAR for any reason other than exercise of the Option or SAR; (b) are subject to Awards granted under this Plan that are forfeited or are repurchased by the Company at the original issue price; (c) are subject to Awards granted under this Plan that otherwise terminate without such Shares being issued; or (d) are surrendered pursuant to an Exchange Program. To the extent an Award under the Plan is paid out in cash rather than Shares, such cash payment will not result in reducing the number of Shares available for issuance under the Plan. Shares used or withheld to pay the exercise price of an Award or to satisfy the tax withholding obligations related to an Award will become available for future grant or sale under the Plan. For the avoidance of doubt, Shares that otherwise become available for grant and issuance because of the provisions of this Section 2.2 shall not include Shares subject to Awards that initially became available because of the substitution clause in Section 21.2 hereof.

2.3 Minimum Share Reserve. At all times the Company shall reserve and keep available a sufficient number of Shares as shall be required to satisfy the requirements of all outstanding Awards granted under this Plan.

2.4 Automatic Share Reserve Increase. The number of Shares available for grant and issuance under the Plan shall be increased on January 1, of each of the ten (10) calendar years during the term of the Plan, by the lesser of (i) two and one half percent (2.5%) of the number of Shares issued and outstanding on each December 31 immediately prior to the date of increase or (ii) such number of Shares determined by the Board.

2.5 Limitations. No more than 3,000,000 Shares shall be issued pursuant to the exercise of ISO's.

2.6 Adjustment of Shares. If the number of outstanding Shares is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company, without consideration, then (a) the number of Shares reserved for issuance and future grant under the Plan set forth in Section 2.1, (b) the Exercise Prices of and number of Shares subject to outstanding Options and SARs, (c) the number of Shares subject to other outstanding Awards, (d) the maximum number of shares that may be issued as ISO's set forth in Section 2.5, (e) the maximum number of Shares that may be issued to an individual or to a new Employee in any one calendar year set forth in Section 3 and (f) the number of Shares that are granted as Awards to Non-Employee Directors as set forth in Section 12, shall be proportionately adjusted, subject to any required action by the Board or the stockholders of the Company and in compliance with applicable securities laws; provided that fractions of a Share will not be issued.

**3. ELIGIBILITY.** ISO's may be granted only to Employees. All other Awards may be granted to Employees, Consultants, Directors and Non-Employee Directors of the Company or any Parent or Subsidiary of the Company; provided such Consultants, Directors and Non-Employee Directors render bona fide services not in connection with the offer and sale of securities in a capital-raising transaction. No Employee will be eligible to receive more than 250,000 Shares in any calendar year under this Plan pursuant to the grant of Awards.

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#### 4. ADMINISTRATION.

4.1 Committee Composition; Authority. This Plan will be administered by the Committee or by the Board acting as the Committee. Subject to the general purposes, terms and conditions of this Plan, and to the direction of the Board, the Committee will have full power to implement and carry out this Plan, except, however, the Board shall establish the terms for the grant of an Award to Non-Employee Directors. The Committee will have the authority to:

- (a) construe and interpret this Plan, any Award Agreement and any other agreement or document executed pursuant to this Plan;
- (b) prescribe, amend and rescind rules and regulations relating to this Plan or any Award;
- (c) select persons to receive Awards;
- (d) determine the form and terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Awards may vest and be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Committee will determine;
- (e) determine the number of Shares or other consideration subject to Awards;
- (f) determine the Fair Market Value in good faith and interpret the applicable provisions of this Plan and the definition of Fair Market Value in connection with circumstances that impact the Fair Market Value, if necessary;
- (g) determine whether Awards will be granted singly, in combination with, in tandem with, in replacement of, or as alternatives to, other Awards under this Plan or any other incentive or compensation plan of the Company or any Parent or Subsidiary of the Company;
- (h) grant waivers of Plan or Award conditions;
- (i) determine the vesting, exercisability and payment of Awards;
- (j) correct any defect, supply any omission or reconcile any inconsistency in this Plan, any Award or any Award Agreement;
- (k) determine whether an Award has been earned;
- (l) determine the terms and conditions of any, and to institute any Exchange Program;
- (m) reduce or waive any criteria with respect to Performance Factors;
- (n) adjust Performance Factors to take into account changes in law and accounting or tax rules as the Committee deems necessary or appropriate to reflect the impact of extraordinary or unusual items, events or circumstances to avoid windfalls or hardships provided that such adjustments are consistent with the regulations promulgated under Section 162(m) of the Code with respect to persons whose compensation is subject to Section 162(m) of the Code;
- (o) adopt rules and/or procedures (including the adoption of any subplan under this Plan) relating to the operation and administration of the Plan to accommodate requirements of local law and procedures outside of the United States;
- (p) make all other determinations necessary or advisable for the administration of this Plan; and

(q) delegate any of the foregoing to a subcommittee consisting of one or more executive officers pursuant to a specific delegation.

4.2 Committee Interpretation and Discretion. Any determination made by the Committee with respect to any Award shall be made in its sole discretion at the time of grant of the Award or, unless in contravention of any express term of the Plan or Award, at any later time, and such determination shall be final and binding on the Company and all persons having an interest in any Award under the Plan. Any dispute regarding the interpretation of the Plan or any Award Agreement shall be submitted by the Participant or Company to the Committee for review. The resolution of such a dispute by the Committee shall be final and binding on the Company and the Participant. The Committee may delegate to one or more executive officers the authority to review and resolve disputes with respect to Awards held by Participants who are not Insiders, and such resolution shall be final and binding on the Company and the Participant.

4.3 Section 162(m) of the Code and Section 16 of the Exchange Act. When necessary or desirable for an Award to qualify as “performance-based compensation” under Section 162(m) of the Code the Committee shall include at least two persons who are “outside directors” (as defined under Section 162(m) of the Code) and at least two (or a majority if more than two then serve on the Committee) such “outside directors” shall approve the grant of such Award and timely determine (as applicable) the Performance Period and any Performance Factors upon which vesting or settlement of any portion of such Award is to be subject. When required by Section 162(m) of the Code, prior to settlement of any such Award at least two (or a majority if more than two then serve on the Committee) such “outside directors” then serving on the Committee shall determine and certify in writing the extent to which such Performance Factors have been timely achieved and the extent to which the Shares subject to such Award have thereby been earned. Awards granted to Participants who are subject to Section 16 of the Exchange Act must be approved by two or more “non-employee directors” (as defined in the regulations promulgated under Section 16 of the Exchange Act). With respect to Participants whose compensation is subject to Section 162(m) of the Code, and provided that such adjustments are consistent with the regulations promulgated under Section 162(m) of the Code, the Committee may adjust the performance goals to account for changes in law and accounting and to make such adjustments as the Committee deems necessary or appropriate to reflect the impact of extraordinary or unusual items, events or circumstances to avoid windfalls or hardships, including without limitation (i) restructurings, discontinued operations, extraordinary items, and other unusual or non-recurring charges, (ii) an event either not directly related to the operations of the Company or not within the reasonable control of the Company’s management, or (iii) a change in accounting standards required by generally accepted accounting principles.

4.4 Documentation. The Award Agreement for a given Award, the Plan and any other documents may be delivered to, and accepted by, a Participant or any other person in any manner (including electronic distribution or posting) that meets applicable legal requirements.

5. **OPTIONS.** The Committee may grant Options to Participants and will determine whether such Options will be Incentive Stock Options within the meaning of the Code (“ISO’s”) or Nonqualified Stock Options (“NQSO’s”), the number of Shares subject to the Option, the Exercise Price of the Option, the period during which the Option may vest and be exercised, and all other terms and conditions of the Option, subject to the following:

5.1 Option Grant. Each Option granted under this Plan will identify the Option as an ISO or an NQSO. An Option may be, but need not be, awarded upon satisfaction of such Performance Factors during any Performance Period as are set out in advance in the Participant’s individual Award Agreement. If the Option is being earned upon the satisfaction of Performance Factors, then the Committee will: (x) determine the nature, length and starting date of any Performance Period for each Option; and (y) select from among the Performance Factors to be used to measure the performance, if any. Performance Periods may overlap and Participants may participate simultaneously with respect to Options that are subject to different performance goals and other criteria.

5.2 Date of Grant. The date of grant of an Option will be the date on which the Committee makes the determination to grant such Option, or a specified future date. The Award Agreement and a copy of this Plan will be delivered to the Participant within a reasonable time after the granting of the Option.

5.3 Exercise Period. Options may be vested and exercisable within the times or upon the conditions as set forth in the Award Agreement governing such Option; provided, however, that no Option will be exercisable after the expiration of ten (10) years from the date the Option is granted; and provided further that no ISO granted to a person who, at the time the ISO is granted, directly or by attribution owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any Parent or Subsidiary of the Company (“**Ten Percent Stockholder**”) will be exercisable after the expiration of five (5) years from the date the ISO is granted. The Committee also may provide for Options to become exercisable at one time or from time to time, periodically or otherwise, in such number of Shares or percentage of Shares as the Committee determines.

5 . 4      Exercise Price. The Exercise Price of an Option will be determined by the Committee when the Option is granted; provided that: (i) the Exercise Price of an Option will be not less than one hundred percent (100%) of the Fair Market Value of the Shares on the date of grant and (ii) the Exercise Price of any ISO granted to a Ten Percent Stockholder will not be less than one hundred ten percent (110%) of the Fair Market Value of the Shares on the date of grant. Payment for the Shares purchased may be made in accordance with Section 11 and the Award Agreement and in accordance with any procedures established by the Company.

5.5      Method of Exercise. Any Option granted hereunder will be vested and exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Committee and set forth in the Award Agreement. An Option may not be exercised for a fraction of a Share. An Option will be deemed exercised when the Company receives: (i) notice of exercise (in such form as the Committee may specify from time to time) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised (together with applicable withholding taxes). Full payment may consist of any consideration and method of payment authorized by the Committee and permitted by the Award Agreement and the Plan. Shares issued upon exercise of an Option will be issued in the name of the Participant. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares, notwithstanding the exercise of the Option. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 2.6 of the Plan. Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

5.6      Termination. The exercise of an Option will be subject to the following (except as may be otherwise provided in an Award Agreement):

(a)      If the Participant is Terminated for any reason except for Cause or the Participant's death or Disability, then the Participant may exercise such Participant's Options only to the extent that such Options would have been exercisable by the Participant on the Termination Date no later than ninety (90) days after the Termination Date (or such shorter time period or longer time period not exceeding five (5) years as may be determined by the Committee, with any exercise beyond three (3) months after the Termination Date deemed to be the exercise of an NQSO), but in any event no later than the expiration date of the Options.

(b)      If the Participant is Terminated because of the Participant's death (or the Participant dies within ninety (90) days after a Termination other than for Cause or because of the Participant's Disability), then the Participant's Options may be exercised only to the extent that such Options would have been exercisable by the Participant on the Termination Date and must be exercised by the Participant's legal representative, or authorized assignee, no later than twelve (12) months after the Termination Date (or such shorter time period not less than six (6) months or longer time period not exceeding five (5) years as may be determined by the Committee), but in any event no later than the expiration date of the Options.

(c)      If the Participant is Terminated because of the Participant's Disability, then the Participant's Options may be exercised only to the extent that such Options would have been exercisable by the Participant on the Termination Date and must be exercised by the Participant (or the Participant's legal representative or authorized assignee) no later than six (6) months after the Termination Date (with any exercise beyond (a) three (3) months after the Termination Date when the Termination is for a Disability that is not a "permanent and total disability" as defined in Section 22(e)(3) of the Code, or (b) twelve (12) months after the Termination Date when the Termination is for a Disability that is a "permanent and total disability" as defined in Section 22(e)(3) of the Code, deemed to be exercise of an NQSO), but in any event no later than the expiration date of the Options.

(d)      If the Participant is terminated for Cause, then Participant's Options shall expire on such Participant's Termination Date, or at such later time and on such conditions as are determined by the Committee, but in any no event later than the expiration date of the Options. Unless otherwise provided in the Award Agreement, Cause will have the meaning set forth in the Plan.

5.7 Limitations on Exercise. The Committee may specify a minimum number of Shares that may be purchased on any exercise of an Option, provided that such minimum number will not prevent any Participant from exercising the Option for the full number of Shares for which it is then exercisable.

5.8 Limitations on ISO's. With respect to Awards granted as ISO's, to the extent that the aggregate Fair Market Value of the Shares with respect to which such ISO's 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 one hundred thousand dollars (\$100,000), such Options will be treated as NQSO's. For purposes of this Section 5.8, ISO's 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. In the event that the Code or the regulations promulgated thereunder are amended after the Effective Date to provide for a different limit on the Fair Market Value of Shares permitted to be subject to ISO's, such different limit will be automatically incorporated herein and will apply to any Options granted after the effective date of such amendment.

5.9 Modification, Extension or Renewal. The Committee may modify, extend or renew outstanding Options and authorize the grant of new Options in substitution therefor, provided that any such action may not, without the written consent of a Participant, impair any of such Participant's rights under any Option previously granted. Any outstanding ISO that is modified, extended, renewed or otherwise altered will be treated in accordance with Section 424(h) of the Code. Subject to Section 18 of this Plan, by written notice to affected Participants, the Committee may reduce the Exercise Price of outstanding Options without the consent of such Participants; provided, however, that the Exercise Price may not be reduced below the Fair Market Value on the date the action is taken to reduce the Exercise Price.

5.10 No Disqualification. Notwithstanding any other provision in this Plan, no term of this Plan relating to ISO's will be interpreted, amended or altered, nor will any discretion or authority granted under this Plan be exercised, so as to disqualify this Plan under Section 422 of the Code or, without the consent of the Participant affected, to disqualify any ISO under Section 422 of the Code.

## **6. RESTRICTED STOCK AWARDS.**

6.1 Awards of Restricted Stock. A Restricted Stock Award is an offer by the Company to sell to a Participant Shares that are subject to restrictions ("**Restricted Stock**"). The Committee will determine to whom an offer will be made, the number of Shares the Participant may purchase, the Purchase Price, the restrictions under which the Shares will be subject and all other terms and conditions of the Restricted Stock Award, subject to the Plan.

6.2 Restricted Stock Purchase Agreement. All purchases under a Restricted Stock Award will be evidenced by an Award Agreement. Except as may otherwise be provided in an Award Agreement, a Participant accepts a Restricted Stock Award by signing and delivering to the Company an Award Agreement with full payment of the Purchase Price, within thirty (30) days from the date the Award Agreement was delivered to the Participant. If the Participant does not accept such Award within thirty (30) days, then the offer of such Restricted Stock Award will terminate, unless the Committee determines otherwise.

6.3 Purchase Price. The Purchase Price for a Restricted Stock Award will be determined by the Committee and may be less than Fair Market Value on the date the Restricted Stock Award is granted. Payment of the Purchase Price must be made in accordance with Section 11 of the Plan, and the Award Agreement and in accordance with any procedures established by the Company.

6.4 Terms of Restricted Stock Awards. Restricted Stock Awards will be subject to such restrictions as the Committee may impose or are required by law. These restrictions may be based on completion of a specified number of years of service with the Company or upon completion of Performance Factors, if any, during any Performance Period as set out in advance in the Participant's Award Agreement. Prior to the grant of a Restricted Stock Award, the Committee shall: (a) determine the nature, length and starting date of any Performance Period for the Restricted Stock Award; (b) select from among the Performance Factors to be used to measure performance goals, if any; and (c) determine the number of Shares that may be awarded to the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Restricted Stock Awards that are subject to different Performance Periods and having different performance goals and other criteria.

6.5 Termination of Participant. Except as may be set forth in the Participant's Award Agreement, vesting ceases on such Participant's Termination Date (unless determined otherwise by the Committee).

## **7. STOCK BONUS AWARDS.**

7.1 Awards of Stock Bonuses. A Stock Bonus Award is an award to an eligible person of Shares for services to be rendered or for past services already rendered to the Company or any Parent or Subsidiary. All Stock Bonus Awards shall be made pursuant to an Award Agreement. No payment from the Participant will be required for Shares awarded pursuant to a Stock Bonus Award.

7.2 Terms of Stock Bonus Awards. The Committee will determine the number of Shares to be awarded to the Participant under a Stock Bonus Award and any restrictions thereon. These restrictions may be based upon completion of a specified number of years of service with the Company or upon satisfaction of performance goals based on Performance Factors during any Performance Period as set out in advance in the Participant's Stock Bonus Agreement. Prior to the grant of any Stock Bonus Award the Committee shall: (a) determine the nature, length and starting date of any Performance Period for the Stock Bonus Award; (b) select from among the Performance Factors to be used to measure performance goals; and (c) determine the number of Shares that may be awarded to the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Stock Bonus Awards that are subject to different Performance Periods and different performance goals and other criteria.

7.3 Form of Payment to Participant. Payment may be made in the form of cash, whole Shares, or a combination thereof, based on the Fair Market Value of the Shares earned under a Stock Bonus Award on the date of payment, as determined in the sole discretion of the Committee.

7.4 Termination of Participation. Except as may be set forth in the Participant's Award Agreement, vesting ceases on such Participant's Termination Date (unless determined otherwise by the Committee).

## **8. STOCK APPRECIATION RIGHTS.**

8.1 Awards of SARs. A Stock Appreciation Right ("SAR") is an award to a Participant that may be settled in cash, or Shares (which may consist of Restricted Stock), having a value equal to (a) the difference between the Fair Market Value on the date of exercise over the Exercise Price multiplied by (b) the number of Shares with respect to which the SAR is being settled (subject to any maximum number of Shares that may be issuable as specified in an Award Agreement). All SARs shall be made pursuant to an Award Agreement.

8.2 Terms of SARs. The Committee will determine the terms of each SAR including, without limitation: (a) the number of Shares subject to the SAR; (b) the Exercise Price and the time or times during which the SAR may be settled; (c) the consideration to be distributed on settlement of the SAR; and (d) the effect of the Participant's Termination on each SAR. The Exercise Price of the SAR will be determined by the Committee when the SAR is granted, and may not be less than Fair Market Value. A SAR may be awarded upon satisfaction of Performance Factors, if any, during any Performance Period as are set out in advance in the Participant's individual Award Agreement. If the SAR is being earned upon the satisfaction of Performance Factors, then the Committee will: (x) determine the nature, length and starting date of any Performance Period for each SAR; and (y) select from among the Performance Factors to be used to measure the performance, if any. Performance Periods may overlap and Participants may participate simultaneously with respect to SARs that are subject to different Performance Factors and other criteria.

8.3 Exercise Period and Expiration Date. A SAR will be exercisable within the times or upon the occurrence of events determined by the Committee and set forth in the Award Agreement governing such SAR. The SAR Agreement shall set forth the expiration date; provided that no SAR will be exercisable after the expiration of ten (10) years from the date the SAR is granted. The Committee may also provide for SARs to become exercisable at one time or from time to time, periodically or otherwise (including, without limitation, upon the attainment during a Performance Period of performance goals based on Performance Factors), in such number of Shares or percentage of the Shares subject to the SAR as the Committee determines. Except as may be set forth in the Participant's Award Agreement, vesting ceases on such Participant's Termination Date (unless determined otherwise by the Committee). Notwithstanding the foregoing, the rules of Section 5.6 also will apply to SARs.

8 . 4 Form of Settlement. Upon exercise of a SAR, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying (i) the difference between the Fair Market Value of a Share on the date of exercise over the Exercise Price; times (ii) the number of Shares with respect to which the SAR is exercised. At the discretion of the Committee, the payment from the Company for the SAR exercise may be in cash, in Shares of equivalent value, or in some combination thereof. The portion of a SAR being settled may be paid currently or on a deferred basis with such interest or dividend equivalent, if any, as the Committee determines, provided that the terms of the SAR and any deferral satisfy the requirements of Section 409A of the Code.

8 . 5 Termination of Participation. Except as may be set forth in the Participant's Award Agreement, vesting ceases on such Participant's Termination Date (unless determined otherwise by the Committee).

## **9. RESTRICTED STOCK UNITS.**

9 . 1 Awards of Restricted Stock Units. A Restricted Stock Unit ("RSU") is an award to a Participant covering a number of Shares that may be settled in cash, or by issuance of those Shares (which may consist of Restricted Stock). All RSU's shall be made pursuant to an Award Agreement.

9 . 2 Terms of RSU's. The Committee will determine the terms of an RSU including, without limitation: (a) the number of Shares subject to the RSU; (b) the time or times during which the RSU may be settled; (c) the consideration to be distributed on settlement; and (d) the effect of the Participant's Termination on each RSU. An RSU may be awarded upon satisfaction of such performance goals based on Performance Factors during any Performance Period as are set out in advance in the Participant's Award Agreement. If the RSU is being earned upon satisfaction of Performance Factors, then the Committee will: (x) determine the nature, length and starting date of any Performance Period for the RSU; (y) select from among the Performance Factors to be used to measure the performance, if any; and (z) determine the number of Shares deemed subject to the RSU. Performance Periods may overlap and participants may participate simultaneously with respect to RSU's that are subject to different Performance Periods and different performance goals and other criteria.

9.3 Form and Timing of Settlement. Payment of earned RSU's shall be made as soon as practicable after the date(s) determined by the Committee and set forth in the Award Agreement. The Committee, in its sole discretion, may settle earned RSU's in cash, Shares, or a combination of both. The Committee may also permit a Participant to defer payment under a RSU to a date or dates after the RSU is earned provided that the terms of the RSU and any deferral satisfy the requirements of Section 409A of the Code.

9.4 Termination of Participant. Except as may be set forth in the Participant's Award Agreement, vesting ceases on such Participant's Termination Date (unless determined otherwise by the Committee).

## **10. PERFORMANCE AWARDS.**

10 . 1 Performance Awards. A Performance Award is an award to a Participant of a cash bonus or a Performance Share bonus. Grants of Performance Awards shall be made pursuant to an Award Agreement.

10.2 Terms of Performance Awards. The Committee will determine, and each Award Agreement shall set forth, the terms of each award of Performance Award including, without limitation: (a) the amount of any cash bonus; (b) the number of Shares deemed subject to a Performance Share bonus; (c) the Performance Factors and Performance Period that shall determine the time and extent to which each Performance Award shall be settled; (d) the consideration to be distributed on settlement; and (e) the effect of the Participant's Termination on each Performance Award. In establishing Performance Factors and the Performance Period the Committee will: (x) determine the nature, length and starting date of any Performance Period; and (y) select from among the Performance Factors to be used. Prior to settlement the Committee shall determine the extent to which Performance Awards have been earned. Performance Periods may overlap and Participants may participate simultaneously with respect to Performance Awards that are subject to different Performance Periods and different performance goals and other criteria. No Participant will be eligible to receive more than \$100,000 in Performance Awards in any calendar year under this Plan.

10.3 Value, Earning and Timing of Performance Shares. Any Performance Share bonus will have an initial value equal to the Fair Market Value of a Share on the date of grant. After the applicable Performance Period has ended, the holder of a Performance Share bonus will be entitled to receive a payout of the number of Shares earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding Performance Factors or other vesting provisions have been achieved. The Committee, in its sole discretion, may pay an earned Performance Share bonus in the form of cash, in Shares (which have an aggregate Fair Market Value equal to the value of the earned Performance Shares at the close of the applicable Performance Period) or in a combination thereof. Performance Share bonuses may also be settled in Restricted Stock.

10.4 Termination of Participant. Except as may be set forth in the Participant's Award Agreement, vesting ceases on such Participant's Termination Date (unless determined otherwise by the Committee).

## **11. PAYMENT FOR SHARE PURCHASES.**

Payment from a Participant for Shares purchased pursuant to this Plan may be made in cash or by check or, where expressly approved for the Participant by the Committee and where permitted by law (and to the extent not otherwise set forth in the applicable Award Agreement):

- (a) by cancellation of indebtedness of the Company to the Participant;
- (b) by surrender of shares of the Company held by the Participant that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Award will be exercised or settled;
- (c) by waiver of compensation due or accrued to the Participant for services rendered or to be rendered to the Company or a Parent or Subsidiary of the Company;
- (d) by consideration received by the Company pursuant to a broker-assisted or other form of cashless exercise program implemented by the Company in connection with the Plan;
- (e) by any combination of the foregoing; or
- (f) by any other method of payment as is permitted by applicable law.

## **12. GRANTS TO NON-EMPLOYEE DIRECTORS.**

12.1 Types of Awards. Non-Employee Directors are eligible to receive any type of Award offered under this Plan except ISO's. Awards pursuant to this Section 12 may be automatically made pursuant to policy adopted by the Board, or made from time to time as determined in the discretion of the Board.

12.2 Eligibility. Awards pursuant to this Section 12 shall be granted only to Non-Employee Directors. A Non-Employee Director who is elected or re-elected as a member of the Board will be eligible to receive an Award under this Section 12.

12.3 Vesting, Exercisability and Settlement. Except as set forth in Section 21, Awards shall vest, become exercisable and be settled as determined by the Board. With respect to Options and SARs, the exercise price granted to Non-Employee Directors shall not be less than the Fair Market Value of the Shares at the time that such Option or SAR is granted.

12.4 Election to receive Awards in Lieu of Cash. A Non-Employee Director may elect to receive his or her annual retainer payments and/or meeting fees from the Company in the form of cash or Awards or a combination thereof, as determined by the Committee. Such Awards shall be issued under the Plan. An election under this Section 12.4 shall be filed with the Company on the form prescribed by the Company.

## **13. WITHHOLDING TAXES.**

13.1 Withholding Generally. Whenever Shares are to be issued in satisfaction of Awards granted under this Plan, the Company may require the Participant to remit to the Company, or to the Parent or Subsidiary employing the Participant, an amount sufficient to satisfy applicable U.S. federal, state, local and international withholding tax requirements or any other tax liability legally due from the Participant prior to the delivery of Shares pursuant to exercise or settlement of any Award. Whenever payments in satisfaction of Awards granted under this Plan are to be made in cash, such payment will be net of an amount sufficient to satisfy applicable U.S. federal, state, local and international withholding tax requirements or any other tax liability legally due from the Participant. The Fair Market Value of the Shares will be determined as of the date that the taxes are required to be withheld and such Shares will be valued based on the value of the actual trade or, if there is none, the Fair Market Value of the Shares as of the previous trading day.

13.2 Stock Withholding. The Committee, in its sole discretion and pursuant to such procedures as it may specify from time to time and to limitations of local law, may require or permit a Participant to satisfy such tax withholding obligation or any other tax liability legally due from the Participant, in whole or in part by (without limitation) (i) paying cash, (ii) electing to have the Company withhold otherwise deliverable cash or Shares having a Fair Market Value equal to the minimum statutory amount required to be withheld, or (iii) delivering to the Company already-owned Shares having a Fair Market Value equal to the minimum amount required to be withheld.

#### **14. TRANSFERABILITY.**

14.1 Transfer Generally. Unless determined otherwise by the Committee or pursuant to Section 14.2, an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution. If the Committee makes an Award transferable, including, without limitation, by instrument to an inter vivos or testamentary trust in which the Awards are to be passed to beneficiaries upon the death of the trustor (settlor) or by gift to a Permitted Transferee, such Award will contain such additional terms and conditions as the Committee deems appropriate. All Awards shall be exercisable: (i) during the Participant's lifetime only by (A) the Participant, or (B) the Participant's guardian or legal representative; (ii) after the Participant's death, by the legal representative of the Participant's heirs or legatees; and (iii) in the case of all awards except ISO's, by a Permitted Transferee.

14.2 Award Transfer Program. Notwithstanding any contrary provision of the Plan, the Committee shall have all discretion and authority to determine and implement the terms and conditions of any Award Transfer Program instituted pursuant to this Section 14.2 and shall have the authority to amend the terms of any Award participating, or otherwise eligible to participate in, the Award Transfer Program, including (but not limited to) the authority to (i) amend (including to extend) the expiration date, post-termination exercise period and/or forfeiture conditions of any such Award, (ii) amend or remove any provisions of the Award relating to the Award holder's continued service to the Company, (iii) amend the permissible payment methods with respect to the exercise or purchase of any such Award, (iv) amend the adjustments to be implemented in the event of changes in the capitalization and other similar events with respect to such Award, and (v) make such other changes to the terms of such Award as the Committee deems necessary or appropriate in its sole discretion.

#### **15. PRIVILEGES OF STOCK OWNERSHIP; RESTRICTIONS ON SHARES.**

15.1 Voting and Dividends. No Participant will have any of the rights of a stockholder with respect to any Shares until the Shares are issued to the Participant, except for any dividend equivalent rights permitted by an applicable Award Agreement. After Shares are issued to the Participant, the Participant will be a stockholder and have all the rights of a stockholder with respect to such Shares, including the right to vote and receive all dividends or other distributions made or paid with respect to such Shares; provided, that if such Shares are Restricted Stock, then any new, additional or different securities the Participant may become entitled to receive with respect to such Shares by virtue of a stock dividend, stock split or any other change in the corporate or capital structure of the Company will be subject to the same restrictions as the Restricted Stock; provided, further, that the Participant will have no right to retain such stock dividends or stock distributions with respect to Shares that are repurchased at the Participant's Purchase Price or Exercise Price, as the case may be, pursuant to Section 15.2.

15.2 Restrictions on Shares. At the discretion of the Committee, the Company may reserve to itself and/or its assignee(s) a right to repurchase (a "**Right of Repurchase**") a portion of any or all Unvested Shares held by a Participant following such Participant's Termination at any time within ninety (90) days after the later of the Participant's Termination Date and the date the Participant purchases Shares under this Plan, for cash and/or cancellation of purchase money indebtedness, at the Participant's Purchase Price or Exercise Price, as the case may be.



**16. CERTIFICATES.** All Shares or other securities whether or not certificated, delivered under this Plan will be subject to such stock transfer orders, legends and other restrictions as the Committee may deem necessary or advisable, including restrictions under any applicable U.S. federal, state or foreign securities law, or any rules, regulations and other requirements of the SEC or any stock exchange or automated quotation system upon which the Shares may be listed or quoted and any non-U.S. exchange controls or securities law restrictions to which the Shares are subject.

**17. ESCROW; PLEDGE OF SHARES.** To enforce any restrictions on a Participant's Shares, the Committee may require the Participant to deposit all certificates representing Shares, together with stock powers or other instruments of transfer approved by the Committee, appropriately endorsed in blank, with the Company or an agent designated by the Company to hold in escrow until such restrictions have lapsed or terminated, and the Committee may cause a legend or legends referencing such restrictions to be placed on the certificates. Any Participant who is permitted to execute a promissory note as partial or full consideration for the purchase of Shares under this Plan will be required to pledge and deposit with the Company all or part of the Shares so purchased as collateral to secure the payment of the Participant's obligation to the Company under the promissory note; provided, however, that the Committee may require or accept other or additional forms of collateral to secure the payment of such obligation and, in any event, the Company will have full recourse against the Participant under the promissory note notwithstanding any pledge of the Participant's Shares or other collateral. In connection with any pledge of the Shares, the Participant will be required to execute and deliver a written pledge agreement in such form as the Committee will from time to time approve. The Shares purchased with the promissory note may be released from the pledge on a pro rata basis as the promissory note is paid.

**18. REPRICING; EXCHANGE AND BUYOUT OF AWARDS .** Without prior stockholder approval the Committee may (i) reprice Options or SARS (and where such repricing is a reduction in the Exercise Price of outstanding Options or SARS, the consent of the affected Participants is not required provided written notice is provided to them, notwithstanding any adverse tax consequences to them arising from the repricing), and (ii) with the consent of the respective Participants (unless not required pursuant to Section 5.9 of the Plan), pay cash or issue new Awards in exchange for the surrender and cancellation of any, or all, outstanding Awards.

**19. SECURITIES LAW AND OTHER REGULATORY COMPLIANCE .** An Award will not be effective unless such Award is in compliance with all applicable U.S. and foreign federal and state securities laws, rules and regulations of any governmental body, and the requirements of any stock exchange or automated quotation system upon which the Shares may then be listed or quoted, as they are in effect on the date of grant of the Award and also on the date of exercise or other issuance. Notwithstanding any other provision in this Plan, the Company will have no obligation to issue or deliver certificates for Shares under this Plan prior to: (a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and/or (b) completion of any registration or other qualification of such Shares under any state or federal or foreign law or ruling of any governmental body that the Company determines to be necessary or advisable. The Company will be under no obligation to register the Shares with the SEC or to effect compliance with the registration, qualification or listing requirements of any foreign or state securities laws, stock exchange or automated quotation system, and the Company will have no liability for any inability or failure to do so.

**20. NO OBLIGATION TO EMPLOY.** Nothing in this Plan or any Award granted under this Plan will confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Parent or Subsidiary of the Company or limit in any way the right of the Company or any Parent or Subsidiary of the Company to terminate Participant's employment or other relationship at any time.

**21. CORPORATE TRANSACTIONS.**

21.1 Assumption or Replacement of Awards by Successor. In the event of a Corporate Transaction any or all outstanding Awards may be assumed or replaced by the successor corporation, which assumption or replacement shall be binding on all Participants. In the alternative, the successor corporation may substitute equivalent Awards or provide substantially similar consideration to Participants as was provided to stockholders (after taking into account the existing provisions of the Awards). The successor corporation may also issue, in place of outstanding Shares of the Company held by the Participant, substantially similar shares or other property subject to repurchase restrictions no less favorable to the Participant. In the event such successor or acquiring corporation (if any) refuses to assume, convert, replace or substitute Awards, as provided above, pursuant to a Corporate Transaction, then notwithstanding any other provision in this Plan to the contrary, such Awards shall have their vesting accelerate as to all shares subject to such Award (and any applicable right of repurchase fully lapse) immediately prior to the Corporate Transaction unless otherwise determined by the Board and then such Awards will terminate. In addition, in the event such successor or acquiring corporation (if any) refuses to assume, convert, replace or substitute Awards, as provided above, pursuant to a Corporate Transaction, the Committee will notify the Participant in writing or electronically that such Award will be exercisable for a period of time determined by the Committee in its sole discretion, and such Award will terminate upon the expiration of such period. Awards need not be treated similarly in a Corporate Transaction.

21.2 Assumption of Awards by the Company. The Company, from time to time, also may substitute or assume outstanding awards granted by another company, whether in connection with an acquisition of such other company or otherwise, by either; (a) granting an Award under this Plan in substitution of such other company's award; or (b) assuming such award as if it had been granted under this Plan if the terms of such assumed award could be applied to an Award granted under this Plan. Such substitution or assumption will be permissible if the holder of the substituted or assumed award would have been eligible to be granted an Award under this Plan if the other company had applied the rules of this Plan to such grant. In the event the Company assumes an award granted by another company, the terms and conditions of such award will remain unchanged (except that the Purchase Price or the Exercise Price, as the case may be, and the number and nature of Shares issuable upon exercise or settlement of any such Award will be adjusted appropriately pursuant to Section 424(a) of the Code). In the event the Company elects to grant a new Option in substitution rather than assuming an existing option, such new Option may be granted with a similarly adjusted Exercise Price.

21.3 Non-Employee Directors' Awards. Notwithstanding any provision to the contrary herein, in the event of a Corporate Transaction, the vesting of all Awards granted to Non-Employee Directors shall accelerate and such Awards shall become exercisable (as applicable) in full prior to the consummation of such event at such times and on such conditions as the Committee determines.

**22. ADOPTION AND STOCKHOLDER APPROVAL**. This Plan shall be submitted for the approval of the Company's stockholders, consistent with applicable laws, within twelve (12) months before or after the date this Plan is adopted by the Board.

**23. TERM OF PLAN/GOVERNING LAW**. Unless earlier terminated as provided herein, this Plan will become effective on the Effective Date and will terminate ten (10) years from the date this Plan is adopted by the Board. This Plan and all Awards granted hereunder shall be governed by and construed in accordance with the laws of the State of Nevada.

**24. AMENDMENT OR TERMINATION OF PLAN**. The Board may at any time terminate or amend this Plan in any respect, including, without limitation, amendment of any form of Award Agreement or instrument to be executed pursuant to this Plan; provided, however, that the Board will not, without the approval of the stockholders of the Company, amend this Plan in any manner that requires such stockholder approval; provided further, that a Participant's Award shall be governed by the version of this Plan then in effect at the time such Award was granted.

**25. NON-EXCLUSIVITY OF THE PLAN**. Neither the adoption of this Plan by the Board, the submission of this Plan to the stockholders of the Company for approval, nor any provision of this Plan will be construed as creating any limitations on the power of the Board to adopt such additional compensation arrangements as it may deem desirable, including, without limitation, the granting of stock awards and bonuses otherwise than under this Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

**26. INSIDER TRADING POLICY**. Each Participant who receives an Award shall comply with any policy adopted by the Company from time to time covering transactions in the Company's securities by Employees, officers and/or directors of the Company.

**27. DEFINITIONS**. As used in this Plan, and except as elsewhere defined herein, the following terms will have the following meanings:

"**Award**" means any award under the Plan, including any Option, Restricted Stock, Stock Bonus, Stock Appreciation Right, Restricted Stock Unit or award of Performance Shares.

"**Award Agreement**" means, with respect to each Award, the written or electronic agreement between the Company and the Participant setting forth the terms and conditions of the Award, which shall be in substantially a form (which need not be the same for each Participant) that the Committee has from time to time approved, and will comply with and be subject to the terms and conditions of this Plan.

**“Award Transfer Program”** means any program instituted by the Committee which would permit Participants the opportunity to transfer any outstanding Awards to a financial institution or other person or entity approved by the Committee.

**“Board”** means the Board of Directors of the Company.

**“Cause”** means (i) Participant’s willful failure substantially to perform his or her duties and responsibilities to the Company or deliberate violation of a Company policy; (ii) Participant’s commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in material injury to the Company; (iii) unauthorized use or disclosure by Participant of any proprietary information or trade secrets of the Company or any other party to whom the Participant owes an obligation of nondisclosure as a result of his or her relationship with the Company; or (iv) Participant’s willful breach of any of his or her obligations under any written agreement or covenant with the Company. The determination as to whether a Participant is being terminated for Cause shall be made in good faith by the Company and shall be final and binding on the Participant. The foregoing definition does not in any way limit the Company’s ability to terminate a Participant’s employment or consulting relationship at any time as provided in Section 20 above, and the term “Company” will be interpreted to include any Subsidiary or Parent, as appropriate.

**“Code”** means the United States Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

**“Committee”** means the Compensation Committee of the Board or those persons to whom administration of the Plan, or part of the Plan, has been delegated as permitted by law.

**“Common Stock”** means the Common Stock of the Company.

**“Company”** means ToughBuilt Industries, Inc., or any successor corporation.

**“Consultant”** means any person, including an advisor or independent contractor, engaged by the Company or a Parent or Subsidiary to render services to such entity.

**“Corporate Transaction”** means the occurrence of any of the following events: (i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company’s then-outstanding voting securities; (ii) the consummation of the sale or disposition by the Company of all or substantially all of the Company’s assets; (iii) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation or (iv) any other transaction which qualifies as a “corporate transaction” under Section 424(a) of the Code wherein the stockholders of the Company give up all of their equity interest in the Company (except for the acquisition, sale or transfer of all or substantially all of the outstanding shares of the Company).

**“Director”** means a member of the Board.

**“Disability”** means in the case of incentive stock options, total and permanent disability as defined in Section 22(e)(3) of the Code and in the case of other Awards, that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

**“Effective Date”** means the day immediately prior to the date of the underwritten initial public offering of the Company’s Common Stock pursuant to a registration statement that is declared effective by the SEC.

**“Employee”** means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director’s fee by the Company will be sufficient to constitute “employment” by the Company.

**“Exchange Act”** means the United States Securities Exchange Act of 1934, as amended.

**“Exchange Program”** means a program pursuant to which outstanding Awards are surrendered, cancelled or exchanged for cash, the same type of Award or a different Award (or combination thereof).

**“Exercise Price”** means, with respect to an Option, the price at which a holder may purchase the Shares issuable upon exercise of an Option and with respect to a SAR, the price at which the SAR is granted to the holder thereof.

**“Fair Market Value”** means, as of any date, the value of a share of the Company’s Common Stock determined as follows:

(a) if such Common Stock is publicly traded and is then listed on a national securities exchange, the closing price on the date of determination on the principal national securities exchange on which the Common Stock is listed or admitted to trading as officially quoted in the composite tape of transactions on such exchange or such other source as the Committee deems reliable for the applicable date;

(b) if such Common Stock is publicly traded but is neither listed nor admitted to trading on a national securities exchange, the average of the closing bid and asked prices on the date of determination as reported in The Wall Street Journal or such other source as the Committee deems reliable;

(c) in the case of an Option or SAR grant made on the Effective Date, the price per share at which shares of the Company’s Common Stock are initially offered for sale to the public by the Company’s underwriters in the initial public offering of the Company’s Common Stock pursuant to a registration statement filed with the SEC under the Securities Act; or

(d) if none of the foregoing is applicable, by the Board or the Committee in good faith.

**“Insider”** means an officer or director of the Company or any other person whose transactions in the Company’s Common Stock are subject to Section 16 of the Exchange Act.

**“Non-Employee Director”** means a Director who is not an Employee of the Company or any Parent or Subsidiary.

**“Option”** means an award of an option to purchase Shares pursuant to Section 5.

**“Parent”** means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of such corporations other than the Company owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

**“Participant”** means a person who holds an Award under this Plan.

**“Performance Award”** means cash or stock granted pursuant to Section 10 or Section 12 of the Plan.

**“Performance Factors”** means any of the factors selected by the Committee and specified in an Award Agreement, from among the following objective measures, either individually, alternatively or in any combination, applied to the Company as a whole or any business unit or Subsidiary, either individually, alternatively, or in any combination, on a GAAP or non-GAAP basis, and measured, to the extent applicable on an absolute basis or relative to a pre-established target, to determine whether the performance goals established by the Committee with respect to applicable Awards have been satisfied:

- Profit Before Tax;

- Billings;
- Revenue;
- (Net revenue;
- Earnings (which may include earnings before interest and taxes, earnings before taxes, and net earnings);
- Operating income;
- Operating margin;
- Operating profit;
- Controllable operating profit, or net operating profit;
- Net Profit;
- Gross margin;
- Operating expenses or operating expenses as a percentage of revenue;
- Net income;
- Earnings per share;
- Total stockholder return;
- Market share;
- Return on assets or net assets;
- The Company's stock price;
- Growth in stockholder value relative to a pre-determined index;
- Return on equity;
- Return on invested capital;
- Cash Flow (including free cash flow or operating cash flows)
- Cash conversion cycle;
- Economic value added;
- Individual confidential business objectives;
- Contract awards or backlog;
- Overhead or other expense reduction;
- Credit rating;
- Strategic plan development and implementation;
- Succession plan development and implementation;

- Customer indicators;
- New product invention or innovation;
- Attainment of research and development milestones;
- Attainment of objective operating goals and employee metrics; and
- Any other metric that is capable of measurement as determined by the Committee.

The Committee may, in recognition of unusual or non-recurring items such as acquisition-related activities or changes in applicable accounting rules, provide for one or more equitable adjustments (based on objective standards) to the Performance Factors to preserve the Committee's original intent regarding the Performance Factors at the time of the initial award grant. It is within the sole discretion of the Committee to make or not make any such equitable adjustments.

**"Performance Period"** means the period of service determined by the Committee, during which years of service or performance is to be measured for the Award.

**"Performance Share"** means a performance share bonus granted as a Performance Award.

**"Permitted Transferee"** means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (including adoptive relationships) of the Employee, any person sharing the Employee's household (other than a tenant or employee), a trust in which these persons (or the Employee) have more than 50% of the beneficial interest, a foundation in which these persons (or the Employee) control the management of assets, and any other entity in which these persons (or the Employee) own more than 50% of the voting interests.

**"Plan"** means this ToughBuilt Industries, Inc. 2016 Equity Incentive Plan.

**"Purchase Price"** means the price to be paid for Shares acquired under the Plan, other than Shares acquired upon exercise of an Option or SAR.

**"Restricted Stock Award"** means an award of Shares pursuant to Section 6 or Section 12 of the Plan, or issued pursuant to the early exercise of an Option.

**"Restricted Stock Unit"** means an Award granted pursuant to Section 9 or Section 12 of the Plan.

**"SEC"** means the United States Securities and Exchange Commission.

**"Securities Act"** means the United States Securities Act of 1933, as amended.

**"Shares"** means shares of the Company's Common Stock and the common stock of any successor security.

**"Stock Appreciation Right"** means an Award granted pursuant to Section 8 or Section 12 of the Plan.

**"Stock Bonus"** means an Award granted pursuant to Section 7 or Section 12 of the Plan.

**"Subsidiary"** means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

**“Termination”** or **“Terminated”** means, for purposes of this Plan with respect to a Participant, that the Participant has for any reason ceased to provide services as an employee, officer, director, consultant, independent contractor or advisor to the Company or a Parent or Subsidiary of the Company. An employee will not be deemed to have ceased to provide services in the case of (i) sick leave, (ii) military leave, or (iii) any other leave of absence approved by the Committee; provided, that such leave is for a period of not more than 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute or unless provided otherwise pursuant to formal policy adopted from time to time by the Company and issued and promulgated to employees in writing. In the case of any employee on an approved leave of absence, the Committee may make such provisions respecting suspension of vesting of the Award while on leave from the employ of the Company or a Parent or Subsidiary of the Company as it may deem appropriate, except that in no event may an Award be exercised after the expiration of the term set forth in the applicable Award Agreement. In the event of military leave, if required by applicable laws, vesting shall continue for the longest period that vesting continues under any other statutory or Company approved leave of absence and, upon a Participant’s returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to Awards to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave. An employee shall have terminated employment as of the date he or she ceases to be employed (regardless of whether the termination is in breach of local laws or is later found to be invalid) and employment shall not be extended by any notice period or garden leave mandated by local law. The Committee will have sole discretion to determine whether a Participant has ceased to provide services for purposes of the Plan and the effective date on which the Participant ceased to provide services (the **“Termination Date”**).

**“Unvested Shares”** means Shares that have not yet vested or are subject to a right of repurchase in favor of the Company (or any successor thereto).

## [FORM OF PLACEMENT AGENT WARRANT]

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

## WARRANT TO PURCHASE COMMON STOCK

## TOUGHBUILT INDUSTRIES INC.

Warrant Shares: 61,450

Initial Exercise Date: October 17, 2016

THIS WARRANT TO PURCHASE COMMON STOCK (the “Warrant”) certifies that, for value received, Joseph Gunnar & Co., LLC or its assigns (the “Holder”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after October 17, 2016 (the “Initial Exercise Date”) and, in accordance with FINRA Rule 5110(f)(2) (G)(i), prior to at 5:00 p.m. (New York time) on the date that is five (5) years following the Initial Exercise Date (the “Termination Date”) but not thereafter, to subscribe for and purchase from ToughBuilt Industries Inc., a Nevada corporation (the “Company”), up to 61,450 shares of Common Stock, par value \$0.0001 per share (“Common Stock”), of the Company, as subject to adjustment hereunder (the “Warrant Shares”). The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

This Warrant is issued by the Company pursuant to that certain Placement Agency Agreement, dated October 17, 2016, between the Company and Joseph Gunnar & Co., LLC (the “Placement Agency Agreement”), as well as pursuant to Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder.

Section 1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings indicated in this Section 1:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Commission” means the United States Securities and Exchange Commission.



“Common Stock Equivalents” means any securities of the Company or any subsidiary thereof which entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Effective Date” means the date on which the registration statement on Form S-1 filed by the Company with the Commission under the Securities Act in connection with the Offering is declared effective by the Commission.

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

“Offering” means the initial public offering of Common Stock.

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

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

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

“Trading Day” means a day on which the New York Stock Exchange is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the OTCQB or OTCQX operated by the OTC Markets Group, Inc., the NYSE MKT, The NASDAQ Capital Market, The NASDAQ Global Market, The NASDAQ Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is then listed or quoted on the OTCQB or OTCQX operated by the OTC Markets Group, Inc., the volume weighted average price of a share of Common Stock for such date (or the nearest preceding date) on the OTCQB or OTCQX as applicable, (c) if Common Stock is not then listed or quoted for trading on a Trading Market or on the OTCQB or OTCQX and if prices for Common Stock are then reported in the OTC Pink Market published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported, or (d) in all other cases, the fair market value of the Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

## Section 2. Exercise.

a) Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed facsimile copy (or e-mail attachment) of the Notice of Exercise Form annexed hereto. Within three (3) Trading Days following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise Form within two (2) Business Days of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b ) Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be **\$6.00**, subject to adjustment hereunder (the "Exercise Price").

c ) Cashless Exercise. If at any time after the six-month anniversary of the Initial Exercise Date there is no effective registration statement registering, or no current prospectus available for, the resale of all of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive the number of Warrant Shares equal to the quotient obtained by dividing  $[(A-B) (X)]$  by (A), where:

(A) =the VWAP on the Trading Day immediately preceding the date on which Holder elects to exercise this Warrant by means of a "cashless exercise," as set forth in the applicable Notice of Exercise;

(B) =the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a "cashless exercise," the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the characteristics of the Warrants being exercised, and the holding period of the Warrants being exercised may be tacked on to the holding period of the Warrant Shares. The Company agrees not to take any position contrary to this Section 2(c).

Notwithstanding anything herein to the contrary, on the Termination Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d) Mechanics of Exercise.

i . Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by its transfer agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder, or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 and, in either case, the Warrant Shares have been sold by the Holder prior to the Warrant Share Delivery Date (as defined below), and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is three (3) Trading Days after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). If the Warrant Shares can be delivered via DWAC, the transfer agent shall have received from the Company any legal opinions or other documentation required by it to deliver such Warrant Shares without legend (subject to receipt by the Company of reasonable back up documentation from the Holder, including with respect to affiliate status) and, if applicable and requested by the Company prior to the Warrant Share Delivery Date, the transfer agent shall have received from the Holder a confirmation of sale of the Warrant Shares (provided the requirement of the Holder to provide a confirmation as to the sale of Warrant Shares shall not be applicable to the issuance of unlegended Warrant Shares upon a cashless exercise of this Warrant if the Warrant Shares are then eligible for resale pursuant to Rule 144(b)(1)). The Warrant Shares shall be deemed to have been issued, and Holder or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Warrant has been exercised, with payment to the Company of the Exercise Price (or by cashless exercise, if permitted) and all taxes required to be paid by the Holder, if any, pursuant to Section 2(d)(vi) prior to the issuance of such shares, having been paid. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the second Trading Day following the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the second Trading Day following such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise.

i i . Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

i i i . Rescission Rights. If the Company fails to cause its transfer agent to deliver to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise; provided, however, that the Holder shall be required to return any Warrant Shares or Common Stock subject to any such rescinded exercise notice concurrently with the return to Holder of the aggregate Exercise Price paid to the Company for such Warrant Shares and the restoration of Holder's right to acquire such Warrant Shares pursuant to this Warrant (including, issuance of a replacement warrant certificate evidencing such restored right).

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause its transfer agent to transmit to the Holder the Warrant Shares pursuant to an exercise on or before the second Trading Day following the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all transfer agent fees required for same-day processing of any Notice of Exercise.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

viii. Signature. This Section 2 and the exercise form attached hereto set forth the totality of the procedures required of the Holder in order to exercise this Purchase Warrant. Without limiting the preceding sentences, no ink-original exercise form shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any exercise form be required in order to exercise this Purchase Warrant. No additional legal opinion, other information or instructions shall be required of the Holder to exercise this Purchase Warrant. The Company shall honor exercises of this Purchase Warrant and shall deliver Warrant Shares in accordance with the terms, conditions and time periods set forth herein.

e ) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

### Section 3. Certain Adjustments.

a ) Stock Dividends and Splits If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification. For the purposes of clarification, the Exercise Price of this Warrant will not be adjusted in the event that the Company or any subsidiary thereof, as applicable, sells or grants any option to purchase, or sell or grant any right to reprice, or otherwise dispose of or issue (or announce any offer, sale, grant or any option to purchase or other disposition) any Common Stock or Common Stock Equivalents, at an effective price per share less than the Exercise Price then in effect.

b) [RESERVED]

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend (other than cash dividends) or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of shares or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation). To the extent that this Warrant has not been partially or completely exercised at the time of such Distribution, such portion of the Distribution shall be held in abeyance for the benefit of the Holder until the Holder has exercised this Warrant.

e ) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable by holders of Common Stock as a result of such Fundamental Transaction for each share of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

g) Notice to Holder.

i . Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly mail to the Holder a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

i i . Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be mailed a notice to the Holder at its last address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to provide such notice or any defect therein shall not affect the validity of the corporate action required to be specified in such notice. From and after the date on which the Company becomes subject to Regulation FD promulgated by the Commission under the Exchange Act, to the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

#### Section 4. Transfer of Warrant.

a) Transferability. Pursuant to FINRA Rule 5110(g)(1), neither this Warrant nor any Warrant Shares issued upon exercise of this Warrant shall be sold during the Offering, or sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the Effective Date or commencement of sales of the Offering (the “Lock-Up Period”), except:

- i. the transfer of any security by operation of law or by reason of reorganization of the Company;
- ii. the transfer of any security to any FINRA member firm participating in the offering and the officers or partners thereof, if all securities so transferred remain subject to the lock-up restriction in this Section 4(a) for the remainder of the time period;
- iii. the transfer of any security if the aggregate amount of securities of the Company held by the Holder or related person do not exceed 1% of the securities being offered;
- iv. the transfer of any security that is beneficially owned on a pro-rata basis by all equity owners of an investment fund, provided that no participating member manages or otherwise directs investments by the fund, and participating members in the aggregate do not own more than 10% of the equity in the fund; or



v. the exercise or conversion of any security, if all securities received remain subject to the lock-up restriction in this Section 4(a) for the remainder of the time period.

Subject to the foregoing restriction, any applicable securities laws and the conditions set forth in Section 4(d), this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b ) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c ) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “Warrant Register”), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d ) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

#### Section 5. Registration Rights.

a ) Registration under the Securities Act of 1933. As of the date hereof, neither the Warrant nor the Warrant Shares have been registered for purposes of public resale or distribution under the Securities Act.

b ) Registrable Securities. As used herein, the term “Registrable Security” means the Warrant Shares and any shares of Common Stock issued upon any stock split or stock dividend in respect of such Warrant Shares; provided, however, that with respect to any particular Registrable Security, such security shall cease to be a Registrable Security when, as of the date of determination, (i) it has been registered under the Securities Act and disposed of pursuant thereto, (ii) registration under the Securities Act is no longer required for the Holder for subsequent public distribution of such security without regard to volume restrictions under Rule 144 (including Rule 144(a)) promulgated under the Securities Act or otherwise, or (iii) it has ceased to be outstanding. The term “Registrable Securities” means any and/or all of the securities falling within the foregoing definition of a “Registrable Security.” In the event of any merger, reorganization, consolidation, recapitalization or other change in corporate structure affecting the Common Stock, such adjustment shall be made in the definition of Registrable Security as is appropriate in order to prevent any dilution or enlargement of the rights granted pursuant to this Section 5.

c) Demand Registration.

(i) The Company, upon written demand (a “Demand Notice”) of the Holder(s) of at least 51% of the Warrants and/or the Registrable Securities (“Majority Holders”), agrees to register, on one occasion, all or any portion of the Registrable Securities. On such occasion, the Company will file a registration statement with the Commission covering the Registrable Securities within sixty (60) days after receipt of a Demand Notice and use its reasonable best efforts to have the registration statement declared effective promptly thereafter, subject to compliance with review by the Commission; provided, however, that the Company shall not be required to comply with a Demand Notice if the Company has filed a registration statement with respect to which the Holder is entitled to piggyback registration rights pursuant to Section 5(d) hereof and either: (i) the Holder has elected to participate in the offering covered by such registration statement or (ii) if such registration statement relates to an underwritten primary offering of securities of the Company, until the offering covered by such registration statement has been withdrawn or until thirty (30) days after such offering is consummated. The demand for registration may be made at any time after the expiration of the Lock-Up Period and prior to the fifth (5<sup>th</sup>) anniversary of the Effective Date or commencement of sales of the Offering in accordance with FINRA Rule 5110(f)(2)(G)(iv). The Company covenants and agrees to give written notice of its receipt of any Demand Notice by any Holder(s) to all other registered Holders of the Warrants and/or the Registrable Securities within ten (10) days after the date of the receipt of any such Demand Notice.

(ii) The Company shall bear all fees and expenses attendant to the registration of the Registrable Securities pursuant to Section 5(c), but the Holders shall pay any and all underwriting commissions and the expenses of any legal counsel selected by the Holders to represent them in connection with the sale of the Registrable Securities. The Company agrees to use its reasonable best efforts to cause the filing required herein to become effective promptly and to qualify or register the Registrable Securities in such states as are reasonably requested by the Holder(s); provided, however, that in no event shall the Company be required to register the Registrable Securities in a state in which such registration would cause: (i) the Company to be obligated to register or license to do business in such State or submit to general service of process in such State, or (ii) the principal shareholders of the Company to be obligated to escrow their shares of capital stock of the Company. The Company shall cause any registration statement filed pursuant to the demand right granted under Section 5(c) to remain effective for a period of at least twelve (12) consecutive months after the date that the Holders of the Registrable Securities covered by such registration statement are first given the opportunity to sell all of such securities. The Holders shall only use the prospectuses provided by the Company to sell the shares covered by such registration statement, and will immediately cease to use any prospectus furnished by the Company if the Company advises the Holder that such prospectus may no longer be used due to a material misstatement or omission.

d) Piggyback Registration.

(i) In addition to the demand right of registration described in Section 5(c) hereof, the Holder shall have the right, for a period of no more than five (5) years from the Effective Date or commencement of sales of the Offering in accordance with FINRA Rule 5110(f)(2)(G)(v), to include the Registrable Securities as part of any other registration of securities filed by the Company (other than in connection with a transaction contemplated by Rule 145(a) promulgated under the Securities Act or pursuant to Form S-8 or any equivalent form); provided, however, that if, solely in connection with any primary underwritten public offering for the account of the Company, the managing underwriter(s) thereof shall, in its reasonable discretion, impose a limitation on the number of shares of Common Stock which may be included in the registration statement because, in such underwriter(s)’ judgment, marketing or other factors dictate such limitation is necessary to facilitate public distribution, then the Company shall be obligated to include in such registration statement only such limited portion of the Registrable Securities with respect to which the Holder requested inclusion hereunder as the underwriter shall reasonably permit. Any exclusion of Registrable Securities shall be made pro rata among the Holders seeking to include Registrable Securities in proportion to the number of Registrable Securities sought to be included by such Holders; provided, however, that the Company shall not exclude any Registrable Securities unless the Company has first excluded all outstanding securities, the holders of which are not entitled to inclusion of such securities in such registration statement or are not entitled to pro rata inclusion with the Registrable Securities.

(ii) The Company shall bear all fees and expenses attendant to registering the Registrable Securities pursuant to Section 5(d) hereof, but the Holders shall pay any and all underwriting commissions and the expenses of any legal counsel selected by the Holders to represent them in connection with the sale of the Registrable Securities. In the event of such a proposed registration, the Company shall furnish the then Holders of outstanding Registrable Securities with not less than thirty (30) days written notice prior to the proposed date of filing of such registration statement. Such notice to the Holders shall continue to be given for each registration statement filed by the Company until such time as all of the Registrable Securities have been sold by the Holder. The holders of the Registrable Securities shall exercise the “piggyback” rights provided for herein by giving written notice within ten (10) days of the receipt of the Company’s notice of its intention to file a registration statement. Except as otherwise provided in this Warrant, there shall be no limit on the number of times the Holder may request registration under this Section 5(d); provided, however, that such registration rights shall terminate on the seventh (7<sup>th</sup>) anniversary of the Effective Date or commencement of sales of the Offering in accordance with FINRA Rule 5110(f)(2)(G)(v).

e ) Additional Covenants With Respect to Registration. In connection with any registration of Registrable Securities pursuant to this Warrant, the parties agree that:

(i) The Company shall indemnify any Holder of the Registrable Securities to be sold pursuant to any registration statement and each person, if any, who controls such Holder, against all loss, claim, damage, expense or liability (including all expenses reasonably incurred in investigating, preparing or defending against any claim whatsoever) to which any of them may become subject under the Securities Act, the Exchange Act or otherwise arising from such registration statement to the same extent and with the same effect as the provisions pursuant to which the Company has agreed to indemnify Joseph Gunnar & Co., LLC, as placement agent (the “Placement Agent”), as set forth in the Placement Agency Agreement and to provide for just and equitable contribution as set forth in the Placement Agency Agreement, except to such extent that such losses, claims, damages, expenses or liabilities occur as a result of information provided to the Company by or on behalf of such Holder or as a result of such Holder’s gross negligence or willful misconduct.

(ii) The Holders of Registrable Securities to be sold pursuant to a registration statement, and such Holder’s successors and assigns, shall severally, and not jointly, indemnify the Company, its officers and directors and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act, against all loss, claim, damage, expense or liability (including all expenses reasonably incurred in investigating, preparing or defending against any claim whatsoever) to which any of them may become subject under the Securities Act, the Exchange Act or otherwise, arising from information furnished by or on behalf of such Holder, or such Holder’s successors or assigns, for specific inclusion in such registration statement to the same extent and with the same effect as the provisions pursuant to which the Placement Agent has agreed to indemnify the Company as set forth in the Placement Agency Agreement and to provide for just and equitable contribution as set forth in the Placement Agency Agreement.

(iii) Nothing contained in this Warrant shall be construed as requiring any Holder to exercise the Warrants held by such Holder prior to the initial filing of any registration statement or the effectiveness thereof.

(iv) If the Company shall fail to comply with the provisions of this Section 5, the Company shall, in addition to any other equitable or other relief available to the Holders of Registrable Securities, be liable for any or all consequential damages sustained by the Holders of Registrable Securities requesting registration of their Registrable Securities; provided, however, that the Holders of Registrable Securities shall not be entitled to any special or punitive damages with respect to any such failure on behalf of the Company.

Section 6. Miscellaneous.

a ) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i).

b ) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e ) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Placement Agency Agreement.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g ) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Placement Agency Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h ) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Placement Agency Agreement.

i ) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j ) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k ) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l ) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

m ) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n ) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

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*(Signature Page Follows)*

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**TOUGHBUILT INDUSTRIES INC.**

By:

\_\_\_\_\_  
Name: Michael Panosian  
Title: Chief Executive Officer

\_\_\_\_\_

**NOTICE OF EXERCISE**

TO: TOUGHBUILT INDUSTRIES INC.

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(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please register and issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

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The Warrant Shares shall be delivered to the following DWAC Account Number or by physical delivery of a certificate to:

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(4) Accredited Investor. If the Warrant is being exercised via cash exercise, the undersigned is an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, as amended

[SIGNATURE OF HOLDER]

Name of Investing Entity: \_\_\_\_\_

*Signature of Authorized Signatory of Investing Entity:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Date: \_\_\_\_\_

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## ASSIGNMENT FORM

(To assign the foregoing warrant, execute  
this form and supply required information.  
Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, [\_\_\_\_] all of or [\_\_\_\_\_] shares of the foregoing Warrant and all rights evidenced thereby  
are hereby assigned to

\_\_\_\_\_ whose address is  
\_\_\_\_\_.  
\_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

\_\_\_\_\_

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

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## SECURITY AGREEMENT

This SECURITY AGREEMENT, dated as of October 17, 2016 (this "Agreement"), is among ToughBuilt Industries, Inc., a Nevada corporation (the "Company") and including such subsidiaries, that may hereafter be formed, the "Debtors") and the holders of the Company's 8% Original Issue Discount Senior Secured Convertible Debentures due September 1, 2018, in the original aggregate principal amount of \$5,700,000 (collectively, the "Debentures") signatory hereto, their endorsees, transferees and assigns (collectively, the "Secured Parties").

## WITNESSETH:

WHEREAS, pursuant to the Purchase Agreement (as defined in the Debentures), the Secured Parties have severally agreed to extend the loans to the Company evidenced by the Debentures; and

WHEREAS, in order to induce the Secured Parties to extend the loans evidenced by the Debentures, each Debtor has agreed to execute and deliver to the Secured Parties this Agreement and to grant the Secured Parties, pari passu with each other Secured Party and through the Agent (as defined in Section 18 hereof), a security interest in certain property of such Debtor to secure the prompt payment, performance and discharge in full of all of the Company's obligations under the Debentures.

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Certain Definitions.** As used in this Agreement, the following terms shall have the meanings set forth in this Section 1. Terms used but not otherwise defined in this Agreement that are defined in Article 9 of the UCC (such as "account", "chattel paper", "commercial tort claim", "deposit account", "document", "equipment", "fixtures", "general intangibles", "goods", "instruments", "inventory", "investment property", "letter-of-credit rights", "proceeds" and "supporting obligations") shall have the respective meanings given such terms in Article 9 of the UCC.

(a) "Collateral" means the collateral in which the Secured Parties are granted a security interest by this Agreement and which shall include the following personal property of the Debtors, whether presently owned or existing or hereafter acquired or coming into existence, wherever situated, and all additions and accessions thereto and all substitutions and replacements thereof, and all proceeds, products and accounts thereof, including, without limitation, all proceeds from the sale or transfer of the Collateral and of insurance covering the same and of any tort claims in connection therewith,:

(i) All goods, including, without limitation, (A) all machinery, equipment, computers, motor vehicles, trucks, tanks, boats, ships, appliances, furniture, special and general tools, fixtures, test and quality control devices and other equipment of every kind and nature and wherever situated, together with all documents of title and documents representing the same, all additions and accessions thereto, replacements therefor, all parts therefor, and all substitutes for any of the foregoing and all other items used and useful in connection with any Debtor's businesses and all improvements thereto; and (B) all inventory;

(ii) All contract rights and other general intangibles, including, without limitation, all partnership interests, membership interests, stock or other securities, rights under any of the Organizational Documents, licenses, distribution and other agreements, computer software (whether "off-the-shelf", licensed from any third party or developed by any Debtor), computer software development rights, leases, franchises, customer lists, quality control procedures, grants and rights, goodwill, Intellectual Property and income tax refunds;

(iii) All accounts, together with all instruments, all documents of title representing any of the foregoing, all rights in any merchandising, goods, equipment, motor vehicles and trucks which any of the same may represent, and all right, title, security and guaranties with respect to each account, including any right of stoppage in transit;

(iv) All documents, letter-of-credit rights, instruments and chattel paper;

(v) All commercial tort claims;

(vi) All deposit accounts and all cash (whether or not deposited in such deposit accounts);

(vii) All investment property;

(viii) All supporting obligations; and

(ix) All files, records, books of account, business papers, and computer programs; and

(x) the products and proceeds of all of the foregoing Collateral set forth in clauses (i)-(ix) above.

Without limiting the generality of the foregoing, the "Collateral" shall include all investment property and general intangibles respecting ownership and/or other equity interests in each Guarantor, including, without limitation, the shares of capital stock and the other equity interests listed on Schedule H hereto (as the same may be modified from time to time pursuant to the terms hereof), and any other shares of capital stock and/or other equity interests of any other direct or indirect subsidiary of any Debtor obtained in the future, and, in each case, all certificates representing such shares and/or equity interests and, in each case, all rights, options, warrants, stock, other securities and/or equity interests that may hereafter be received, receivable or distributed in respect of, or exchanged for, any of the foregoing and all rights arising under or in connection with the Pledged Securities, including, but not limited to, all dividends, interest and cash.

Notwithstanding the foregoing, nothing herein shall be deemed to constitute an assignment of any asset which, in the event of an assignment, becomes void by operation of applicable law or the assignment of which is otherwise prohibited by applicable law (in each case to the extent that such applicable law is not overridden by Sections 9-406, 9-407 and/or 9-408 of the UCC or other similar applicable law); provided, however, that to the extent permitted by applicable law, this Agreement shall create a valid security interest in such asset and, to the extent permitted by applicable law, this Agreement shall create a valid security interest in the proceeds of such asset.

(b) “Intellectual Property” means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, (i) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, (ii) all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof, and all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, (iii) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade dress, service marks, logos, domain names and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common law rights related thereto, (iv) all trade secrets arising under the laws of the United States, any other country or any political subdivision thereof, (v) all rights to obtain any reissues, renewals or extensions of the foregoing, (vi) all licenses for any of the foregoing, and (vii) all causes of action for infringement of the foregoing.

(c) “Majority in Interest” means, at any time of determination, the majority in interest (based on then-outstanding principal amounts of Debentures at the time of such determination) of the Secured Parties.

(d) “Necessary Endorsement” means undated stock powers endorsed in blank or other proper instruments of assignment duly executed and such other instruments or documents as the Agent (as that term is defined below) may reasonably request.

(e) “Obligations” means all of the liabilities and obligations (primary, secondary, direct, contingent, sole, joint or several) due or to become due, or that are now or may be hereafter contracted or acquired, or owing to, of any Debtor to the Secured Parties, including, without limitation, all obligations under this Agreement, the Debentures, any future subsidiary guarantees and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith, in each case, whether now or hereafter existing, voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from any of the Secured Parties as a preference, fraudulent transfer or otherwise as such obligations may be amended, supplemented, converted, extended or modified from time to time. Without limiting the generality of the foregoing, the term “Obligations” shall include, without limitation: (i) principal of, and interest on the Debentures and the loans extended pursuant thereto; (ii) any and all other fees, indemnities, costs, obligations and liabilities of the Debtors from time to time under or in connection with this Agreement, the Debentures, future subsidiary guarantees and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith; and (iii) all amounts (including but not limited to post-petition interest) in respect of the foregoing that would be payable but for the fact that the obligations to pay such amounts are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any Debtor.

(f) “Organizational Documents” means with respect to any Debtor, the documents by which such Debtor was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Debtor (such as bylaws, a partnership agreement or an operating, limited liability or members agreement).

(g) “UCC” means the Uniform Commercial Code of the State of New York and or any other applicable law of any state or states which has jurisdiction with respect to all, or any portion of, the Collateral or this Agreement, from time to time. It is the intent of the parties that defined terms in the UCC should be construed in their broadest sense so that the term “Collateral” will be construed in its broadest sense. Accordingly if there are, from time to time, changes to defined terms in the UCC that broaden the definitions, they are incorporated herein and if existing definitions in the UCC are broader than the amended definitions, the existing ones shall be controlling.

2. **Grant of Security Interest in Collateral.** As an inducement for the Secured Parties to extend the loans as evidenced by the Debentures and to secure the complete and timely payment, performance and discharge in full, as the case may be, of all of the Obligations, each Debtor hereby unconditionally and irrevocably pledges, grants and hypothecates to the Secured Parties a security interest in and to, a lien upon and a right of set-off against all of their respective right, title and interest of whatsoever kind and nature in and to, the Collateral (a “Security Interest” and, collectively, the “Security Interests”).

3 . **Delivery of Certain Collateral.** Contemporaneously or prior to the execution of this Agreement, the Company shall deliver or cause to be delivered to the Agent any and all certificates and other instruments or documents representing any of the other Collateral, in each case, together with all Necessary Endorsements.

4 . **Representations, Warranties, Covenants and Agreements of the Debtors .** Except as set forth under the corresponding section of the disclosure schedules delivered to the Secured Parties concurrently herewith (the “Disclosure Schedules”), which Disclosure Schedules shall be deemed a part hereof, each Debtor represents and warrants to, and covenants and agrees with, the Secured Parties as follows:

(a) Each Debtor has the requisite corporate, partnership, limited liability company or other power and authority to enter into this Agreement and otherwise to carry out its obligations hereunder. The execution, delivery and performance by each Debtor of this Agreement and the filings contemplated therein have been duly authorized by all necessary action on the part of such Debtor and no further action is required by such Debtor. This Agreement has been duly executed by each Debtor. This Agreement constitutes the legal, valid and binding obligation of each Debtor, enforceable against each Debtor in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar laws of general application relating to or affecting the rights and remedies of creditors and by general principles of equity. The Company has no subsidiaries.

(b) The Debtors have no place of business or offices where their respective books of account and records are kept (other than temporarily at the offices of its attorneys or accountants) or places where Collateral is stored or located, except as set forth on Schedule A attached hereto. Except as specifically set forth on Schedule A, each Debtor is the record owner of the real property where such Collateral is located, and there exist no mortgages or other liens on any such real property except for Permitted Liens (as defined in the Debentures). Except as disclosed on Schedule A, none of such Collateral is in the possession of any consignee, bailee, warehouseman, agent or processor.

(c) Except for Permitted Liens (as defined in the Debentures) and except as set forth on Schedule B attached hereto, the Debtors are the sole owner of the Collateral (except for non-exclusive licenses granted by any Debtor in the ordinary course of business), free and clear of any liens, security interests, encumbrances, rights or claims, and are fully authorized to grant the Security Interests. Except as set forth on Schedule C attached hereto, there is not on file in any governmental or regulatory authority, agency or recording office an effective financing statement, security agreement, license or transfer or any notice of any of the foregoing (other than those that will be filed in favor of the Secured Parties pursuant to this Agreement) covering or affecting any of the Collateral. Except as set forth on Schedule C attached hereto and except pursuant to this Agreement, as long as this Agreement shall be in effect, the Debtors shall not execute and shall not knowingly permit to be on file in any such office or agency any other financing statement or other document or instrument (except to the extent filed or recorded in favor of the Secured Parties pursuant to the terms of this Agreement).

(d) No written claim has been received that any Collateral or any Debtor's use of any Collateral violates the rights of any third party. There has been no adverse decision to any Debtor's claim of ownership rights in or exclusive rights to use the Collateral in any jurisdiction or to any Debtor's right to keep and maintain such Collateral in full force and effect, and there is no proceeding involving said rights pending or, to the best knowledge of any Debtor, threatened before any court, judicial body, administrative or regulatory agency, arbitrator or other governmental authority.

(e) Each Debtor shall at all times maintain its books of account and records relating to the Collateral at its principal place of business and its Collateral at the locations set forth on Schedule A attached hereto and may not relocate such books of account and records or tangible Collateral unless it delivers to the Secured Parties at least 30 days prior to such relocation (i) written notice of such relocation and the new location thereof (which must be within the United States) and (ii) evidence that appropriate financing statements under the UCC and other necessary documents have been filed and recorded and other steps have been taken to perfect the Security Interests to create in favor of the Secured Parties a valid, perfected and continuing perfected first priority lien in the Collateral.

(f) This Agreement creates in favor of the Secured Parties a valid security interest in the Collateral, subject only to Permitted Liens (as defined in the Debentures) securing the payment and performance of the Obligations. Upon making the filings described in the immediately following paragraph, all security interests created hereunder in any Collateral which may be perfected by filing Uniform Commercial Code financing statements shall have been duly perfected. Except for the filing of the Uniform Commercial Code financing statements referred to in the immediately following paragraph, the recordation of the Intellectual Property Security Agreement (as defined in Section 4(p) hereof) with respect to copyrights and copyright applications in the United States Copyright Office referred to in paragraph (m), the execution and delivery of deposit account control agreements satisfying the requirements of Section 9-104(a)(2) of the UCC with respect to each deposit account of the Debtors, and the delivery of the certificates and other instruments provided in Section 3, no action is necessary to create, perfect or protect the security interests created hereunder. Without limiting the generality of the foregoing, except for the filing of said financing statements, the recordation of said Intellectual Property Security Agreement, and the execution and delivery of said deposit account control agreements, no consent of any third parties and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for (i) the execution, delivery and performance of this Agreement, (ii) the creation or perfection of the Security Interests created hereunder in the Collateral or (iii) the enforcement of the rights of the Agent and the Secured Parties hereunder.

(g) Each Debtor hereby authorizes the Agent to file one or more financing statements under the UCC, with respect to the Security Interests, with the proper filing and recording agencies in any jurisdiction deemed proper by it.

(h) The execution, delivery and performance of this Agreement by the Debtors does not (i) violate any of the provisions of any Organizational Documents of any Debtor or any judgment, decree, order or award of any court, governmental body or arbitrator or any applicable law, rule or regulation applicable to any Debtor or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing any Debtor's debt or otherwise) or other understanding to which any Debtor is a party or by which any property or asset of any Debtor is bound or affected. If any, all required consents (including, without limitation, from stockholders or creditors of any Debtor) necessary for any Debtor to enter into and perform its obligations hereunder have been obtained.

(i) Except for Permitted Liens (as defined in the Debentures), each Debtor shall at all times maintain the liens and Security Interests provided for hereunder as valid and perfected first priority liens and security interests in the Collateral in favor of the Secured Parties until this Agreement and the Security Interest hereunder shall be terminated pursuant to Section 14 hereof. Each Debtor hereby agrees to defend the same against the claims of any and all persons and entities. Each Debtor shall safeguard and protect all Collateral for the account of the Secured Parties. At the request of the Agent, each Debtor will sign and deliver to the Agent on behalf of the Secured Parties at any time or from time to time one or more financing statements pursuant to the UCC in form reasonably satisfactory to the Agent and will pay the cost of filing the same in all public offices wherever filing is, or is deemed by the Agent to be, necessary or desirable to effect the rights and obligations provided for herein. Without limiting the generality of the foregoing, each Debtor shall pay all fees, taxes and other amounts necessary to maintain the Collateral and the Security Interests hereunder, and each Debtor shall obtain and furnish to the Agent from time to time, upon demand, such releases and/or subordinations of claims and liens which may be required to maintain the priority of the Security Interests hereunder.

(j) No Debtor will transfer, pledge, hypothecate, encumber, license, sell or otherwise dispose of any of the Collateral (except for non-exclusive licenses granted by a Debtor in its ordinary course of business and sales of inventory by a Debtor in its ordinary course of business) without the prior written consent of a Majority in Interest.

(k) Each Debtor shall keep and preserve its equipment, inventory and other tangible Collateral in good condition, repair and order and shall not operate or locate any such Collateral (or cause to be operated or located) in any area excluded from insurance coverage.



(l) Each Debtor shall maintain with financially sound and reputable insurers, insurance with respect to the Collateral, including Collateral hereafter acquired, against loss or damage of the kinds and in the amounts customarily insured against by entities of established reputation having similar properties similarly situated and in such amounts as are customarily carried under similar circumstances by other such entities and otherwise as is prudent for entities engaged in similar businesses but in any event sufficient to cover the full replacement cost thereof. Each Debtor shall cause each insurance policy issued in connection herewith to provide, and the insurer issuing such policy to certify to the Agent, that (a) the Agent will be named as lender loss payee and additional insured under each such insurance policy; (b) if such insurance be proposed to be cancelled or materially changed for any reason whatsoever, such insurer will promptly notify the Agent and such cancellation or change shall not be effective as to the Agent for at least thirty (30) days after receipt by the Agent of such notice, unless the effect of such change is to extend or increase coverage under the policy; and (c) the Agent will have the right (but no obligation) at its election to remedy any default in the payment of premiums within thirty (30) days of notice from the insurer of such default. If no Event of Default (as defined in the Debentures) exists and if the proceeds arising out of any claim or series of related claims do not exceed \$100,000, loss payments in each instance will be applied by the applicable Debtor to the repair and/or replacement of property with respect to which the loss was incurred to the extent reasonably feasible, and any loss payments or the balance thereof remaining, to the extent not so applied, shall be payable to the applicable Debtor; provided, however, that payments received by any Debtor after an Event of Default occurs and is continuing or in excess of \$100,000 for any occurrence or series of related occurrences shall be paid to the Agent on behalf of the Secured Parties and, if received by such Debtor, shall be held in trust for the Secured Parties and immediately paid over to the Agent unless otherwise directed in writing by the Agent. Copies of such policies or the related certificates, in each case, naming the Agent as lender loss payee and additional insured shall be delivered to the Agent at least annually and at the time any new policy of insurance is issued.

(m) Each Debtor shall, within ten (10) days of obtaining knowledge thereof, advise the Secured Parties promptly, in sufficient detail, of any material adverse change in the Collateral, and of the occurrence of any event which would have a material adverse effect on the value of the Collateral or on the Secured Parties' security interest, through the Agent, therein.

(n) Each Debtor shall promptly execute and deliver to the Agent such further deeds, mortgages, assignments, security agreements, financing statements or other instruments, documents, certificates and assurances and take such further action as the Agent may from time to time request and may in its sole discretion deem necessary to perfect, protect or enforce the Secured Parties' security interest in the Collateral including, without limitation, if applicable, the execution and delivery of a separate security agreement with respect to each Debtor's Intellectual Property ("Intellectual Property Security Agreement") in which the Secured Parties have been granted a security interest hereunder, substantially in a form reasonably acceptable to the Agent, which Intellectual Property Security Agreement, other than as stated therein, shall be subject to all of the terms and conditions hereof.

(o) Each Debtor shall permit the Agent and its representatives and agents to inspect the Collateral during normal business hours and upon reasonable prior notice, and to make copies of records pertaining to the Collateral as may be reasonably requested by the Agent from time to time.

(p) Each Debtor shall take all steps reasonably necessary to diligently pursue and seek to preserve, enforce and collect any rights, claims, causes of action and accounts receivable in respect of the Collateral.

(q) Each Debtor shall promptly notify the Secured Parties in sufficient detail upon becoming aware of any attachment, garnishment, execution or other legal process levied against any Collateral and of any other information received by such Debtor that may materially affect the value of the Collateral, the Security Interest or the rights and remedies of the Secured Parties hereunder.

(r) All information heretofore, herein or hereafter supplied to the Secured Parties by or on behalf of any Debtor with respect to the Collateral is accurate and complete in all material respects as of the date furnished.

(s) The Debtors shall at all times preserve and keep in full force and effect their respective valid existence and good standing and any rights and franchises material to its business.

(t) No Debtor will change its name, type of organization, jurisdiction of organization, organizational identification number (if it has one), legal or corporate structure, or identity, or add any new fictitious name unless it provides at least 30 days prior written notice to the Secured Parties of such change and, at the time of such written notification, such Debtor provides any financing statements or fixture filings necessary to perfect and continue the perfection of the Security Interests granted and evidenced by this Agreement.

(u) Except in the ordinary course of business, no Debtor may consign any of its inventory or sell any of its inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale without the consent of the Agent which shall not be unreasonably withheld.

(v) No Debtor may relocate its chief executive office to a new location without providing 30 days prior written notification thereof to the Secured Parties and so long as, at the time of such written notification, such Debtor provides any financing statements or fixture filings necessary to perfect and continue the perfection of the Security Interests granted and evidenced by this Agreement.

(w) Each Debtor was organized and remains organized solely under the laws of the state set forth next to such Debtor's name in Schedule D attached hereto, which Schedule D sets forth each Debtor's organizational identification number or, if any Debtor does not have one, states that one does not exist.

(x) (i) The actual name of each Debtor is the name set forth in Schedule D attached hereto; (ii) no Debtor has any trade names except as set forth on Schedule E attached hereto; (iii) no Debtor has used any name other than that stated in the preamble hereto or as set forth on Schedule E for the preceding five years; and (iv) no entity has merged into any Debtor or been acquired by any Debtor within the past five years except as set forth on Schedule E.

(y) At any time and from time to time that any Collateral consists of instruments, certificated securities or other items that require or permit possession by the secured party to perfect the security interest created hereby, the applicable Debtor shall deliver such Collateral to the Agent.

(z) Each Debtor shall cause all tangible chattel paper constituting Collateral to be delivered to the Agent, or, if such delivery is not possible, then to cause such tangible chattel paper to contain a legend noting that it is subject to the security interest created by this Agreement. To the extent that any Collateral consists of electronic chattel paper, the applicable Debtor shall cause the underlying chattel paper to be "marked" within the meaning of Section 9-105 of the UCC (or successor section thereto).

(aa) If there is any investment property or deposit account included as Collateral that can be perfected by "control" through an account control agreement, the applicable Debtor shall cause such an account control agreement, in form and substance in each case satisfactory to the Agent, to be entered into and delivered to the Agent for the benefit of the Secured Parties.

(bb) To the extent that any Collateral consists of letter-of-credit rights, the applicable Debtor shall cause the issuer of each underlying letter of credit to consent to an assignment of the proceeds thereof to the Secured Parties.

(cc) To the extent that any Collateral is in the possession of any third party, the applicable Debtor shall join with the Agent in notifying such third party of the Secured Parties' security interest in such Collateral and shall use its best efforts to obtain an acknowledgement and agreement from such third party with respect to the Collateral, in form and substance reasonably satisfactory to the Agent.

(dd) If any Debtor shall at any time hold or acquire a commercial tort claim, such Debtor shall promptly notify the Secured Parties in a writing signed by such Debtor of the particulars thereof and grant to the Secured Parties in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Agent.

(ee) Each Debtor shall immediately provide written notice to the Secured Parties of any and all accounts which arise out of contracts with any governmental authority and, to the extent necessary to perfect or continue the perfected status of the Security Interests in such accounts and proceeds thereof, shall execute and deliver to the Agent an assignment of claims for such accounts and cooperate with the Agent in taking any other steps required, in its judgment, under the Federal Assignment of Claims Act or any similar federal, state or local statute or rule to perfect or continue the perfected status of the Security Interests in such accounts and proceeds thereof.

(ff) Each applicable Debtor shall cause each subsidiary of such Debtor to immediately become a party hereto (an "Additional Debtor"), by executing and delivering an Additional Debtor Joinder in substantially the form of Annex A attached hereto and comply with the provisions hereof applicable to the Debtors. Concurrent therewith, the Additional Debtor shall deliver replacement schedules for, or supplements to all other Schedules to (or referred to in) this Agreement, as applicable, which replacement schedules shall supersede, or supplements shall modify, the Schedules then in effect. The Additional Debtor shall also deliver such opinions of counsel, authorizing resolutions, good standing certificates, incumbency certificates, organizational documents, financing statements and other information and documentation as the Agent may reasonably request. Upon delivery of the foregoing to the Agent, the Additional Debtor shall be and become a party to this Agreement with the same rights and obligations as the Debtors, for all purposes hereof as fully and to the same extent as if it were an original signatory hereto and shall be deemed to have made the representations, warranties and covenants set forth herein as of the date of execution and delivery of such Additional Debtor Joinder, and all references herein to the "Debtors" shall be deemed to include each Additional Debtor.

(gg) Without limiting the generality of the other obligations of the Debtors hereunder, each Debtor shall promptly (i) cause to be registered at the United States Copyright Office all of its material copyrights, (ii) cause the security interest contemplated hereby with respect to all Intellectual Property registered at the United States Copyright Office or United States Patent and Trademark Office to be duly recorded at the applicable office, and (iii) give the Agent notice whenever it acquires (whether absolutely or by license) or creates any additional material Intellectual Property.

(hh) Each Debtor will from time to time, at the joint and several expense of the Debtors, promptly execute and deliver all such further instruments and documents, and take all such further action as may be necessary or desirable, or as the Agent may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable the Secured Parties to exercise and enforce their rights and remedies hereunder and with respect to any Collateral or to otherwise carry out the purposes of this Agreement.

( i i ) Schedule F attached hereto lists all of the patents, patent applications, trademarks, trademark applications, registered copyrights, and domain names owned by any of the Debtors as of the date hereof. Schedule F lists all material licenses in favor of any Debtor for the use of any patents, trademarks, copyrights and domain names as of the date hereof. All material patents and trademarks of the Debtors have been duly recorded at the United States Patent and Trademark Office and all material copyrights of the Debtors have been duly recorded at the United States Copyright Office.

(jj) Except as set forth on Schedule G attached hereto, none of the account debtors or other persons or entities obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or any similar federal, state or local statute or rule in respect of such Collateral.

(kk) Until the Obligations shall have been paid and performed in full, the Company covenants that it shall promptly direct any direct or indirect subsidiary of the Company formed or acquired after the date hereof to enter into a Subsidiary Guarantee in favor of the Secured Party, in the form acceptable to the Agent and such subsidiary shall become party to this Agreement as a Debtor.

5 . **Effect of Pledge on Certain Rights.** If any of the Collateral subject to this Agreement consists of nonvoting equity or ownership interests (regardless of class, designation, preference or rights) that may be converted into voting equity or ownership interests upon the occurrence of certain events (including, without limitation, upon the transfer of all or any of the other stock or assets of the issuer), it is agreed that the pledge of such equity or ownership interests pursuant to this Agreement or the enforcement of any of Agent's rights hereunder shall not be deemed to be the type of event which would trigger such conversion rights notwithstanding any provisions in the Organizational Documents or agreements to which any Debtor is subject or to which any Debtor is party.

6. **Defaults.** The following events shall be "Events of Default":

- (a) The occurrence of an Event of Default (as defined in the Debentures) under the Debentures;
- (b) Any representation or warranty of any Debtor in this Agreement shall prove to have been incorrect in any material respect when made;
- (c) The failure by any Debtor to observe or perform any of its obligations hereunder for five (5) days after delivery to such Debtor of notice of such failure by or on behalf of a Secured Party unless such default is capable of cure but cannot be cured within such time frame and such Debtor is using best efforts to cure same in a timely fashion; or
- (d) If any provision of this Agreement shall at any time for any reason be declared to be null and void, or the validity or enforceability thereof shall be contested by any Debtor, or a proceeding shall be commenced by any Debtor, or by any governmental authority having jurisdiction over any Debtor, seeking to establish the invalidity or unenforceability thereof, or any Debtor shall deny that any Debtor has any liability or obligation purported to be created under this Agreement.

**7. Duty To Hold In Trust.**

(a) Upon the occurrence of any Event of Default and at any time thereafter, each Debtor shall, upon receipt of any revenue, income, dividend, interest or other sums subject to the Security Interests, whether payable pursuant to the Debentures or otherwise, or of any check, draft, note, trade acceptance or other instrument evidencing an obligation to pay any such sum, hold the same in trust for the Secured Parties and shall forthwith endorse and transfer any such sums or instruments, or both, to the Secured Parties, pro-rata in proportion to their respective then-currently outstanding principal amount of Debentures for application to the satisfaction of the Obligations (and if any Debenture is not outstanding, pro-rata in proportion to the initial purchases of the remaining Debentures).

(b) If any Debtor shall become entitled to receive or shall receive any securities or other property, such Debtor agrees to (i) accept the same as the agent of the Secured Parties; (ii) hold the same in trust on behalf of and for the benefit of the Secured Parties; and (iii) to deliver any and all certificates or instruments evidencing the same to Agent on or before the close of business on the fifth business day following the receipt thereof by such Debtor, in the exact form received together with the Necessary Endorsements, to be held by Agent subject to the terms of this Agreement as Collateral.

**8. Rights and Remedies upon Default.**

(a) Upon the occurrence of any Event of Default and at any time thereafter, the Secured Parties, acting through the Agent, shall have the right to exercise all of the remedies conferred hereunder and under the Debentures, and the Secured Parties shall have all the rights and remedies of a secured party under the UCC. Without limitation, the Agent, for the benefit of the Secured Parties, shall have the following rights and powers:

(i) The Agent shall, subject to applicable law, have the right to take possession of the Collateral and, for that purpose, enter, with the aid and assistance of any person, any premises where the Collateral, or any part thereof, is or may be placed and remove the same, and each Debtor shall assemble the Collateral and make it available to the Agent at places which the Agent shall reasonably select, whether at such Debtor's premises or elsewhere, and make available to the Agent, without rent, all of such Debtor's respective premises and facilities for the purpose of the Agent taking possession of, removing or putting the Collateral in saleable or disposable form.

(ii) Upon notice to the Debtors by Agent, all rights of each Debtor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise and all rights of each Debtor to receive the dividends and interest which it would otherwise be authorized to receive and retain, shall cease. Upon such notice, Agent shall have the right to receive, for the benefit of the Secured Parties, any interest, cash dividends or other payments on the Collateral and, at the option of Agent, to exercise in such Agent's discretion all voting rights pertaining thereto. Without limiting the generality of the foregoing, Agent shall have the right (but not the obligation) to exercise all rights with respect to the Collateral as it were the sole and absolute owner thereof, including, without limitation, to vote and/or to exchange, at its sole discretion, any or all of the Collateral in connection with a merger, reorganization, consolidation, recapitalization or other readjustment concerning or involving the Collateral or any Debtor or any of its direct or indirect subsidiaries.

(iii) The Agent shall, subject to applicable law, have the right to operate the business of each Debtor using the Collateral and shall have the right to assign, sell, lease or otherwise dispose of and deliver all or any part of the Collateral, at public or private sale or otherwise, either with or without special conditions or stipulations, for cash or on credit or for future delivery, in such parcel or parcels and at such time or times and at such place or places, and upon such terms and conditions as the Agent may deem commercially reasonable, all without (except as shall be required by applicable statute and cannot be waived) advertisement or demand upon or notice to any Debtor or right of redemption of a Debtor, which are hereby expressly waived. Upon each such sale, lease, assignment or other transfer of Collateral, the Agent, for the benefit of the Secured Parties, may, unless prohibited by applicable law which cannot be waived, purchase all or any part of the Collateral being sold, free from and discharged of all trusts, claims, right of redemption and equities of any Debtor, which are hereby waived and released.

(iv) The Agent shall have the right (but not the obligation) to notify any account debtors and any obligors under instruments or accounts to make payments directly to the Agent, on behalf of the Secured Parties, and to enforce the Debtors' rights against such account debtors and obligors.

(v) The Agent, for the benefit of the Secured Parties, may (but is not obligated to) direct any financial intermediary or any other person or entity holding any investment property to transfer the same to the Agent, on behalf of the Secured Parties, or its designee.

(vi) The Agent may (but is not obligated to) transfer any or all Intellectual Property registered in the name of any Debtor at the United States Patent and Trademark Office and/or Copyright Office into the name of the Secured Parties or any designee or any purchaser of any Collateral.

(b) The Agent shall comply with any applicable law in connection with a disposition of Collateral and such compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. The Agent may sell the Collateral without giving any warranties and may specifically disclaim such warranties. If the Agent sells any of the Collateral on credit, the Debtors will only be credited with payments actually made by the purchaser. In addition, each Debtor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Agent's rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights and remedies with respect thereto.

(c) For the purpose of enabling the Agent to further exercise rights and remedies under this Section 8 or elsewhere provided by agreement or applicable law, each Debtor hereby grants to the Agent, for the benefit of the Agent and the Secured Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Debtor) to use, license or sublicense following an Event of Default, any Intellectual Property now owned or hereafter acquired by such Debtor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

9 . **Applications of Proceeds.** The proceeds of any such sale, lease or other disposition of the Collateral hereunder or from payments made on account of any insurance policy insuring any portion of the Collateral shall be applied first, to the expenses of retaking, holding, storing, processing and preparing for sale, selling, and the like (including, without limitation, any taxes, fees and other costs incurred in connection therewith) of the Collateral, to the reasonable attorneys' fees and expenses incurred by the Agent in enforcing the Secured Parties' rights hereunder and in connection with collecting, storing and disposing of the Collateral, and then to satisfaction of the Obligations pro rata among the Secured Parties (based on then-outstanding principal amounts of Debentures at the time of any such determination), and to the payment of any other amounts required by applicable law, after which the Secured Parties shall pay to the applicable Debtor any surplus proceeds. If, upon the sale, license or other disposition of the Collateral, the proceeds thereof are insufficient to pay all amounts to which the Secured Parties are legally entitled, the Debtors will be liable for the deficiency, together with interest thereon, at the rate of 18% per annum or the lesser amount permitted by applicable law (the "Default Rate"), and the reasonable fees of any attorneys employed by the Secured Parties to collect such deficiency. To the extent permitted by applicable law, each Debtor waives all claims, damages and demands against the Secured Parties arising out of the repossession, removal, retention or sale of the Collateral, unless due solely to the gross negligence or willful misconduct of the Secured Parties as determined by a final judgment (not subject to further appeal) of a court of competent jurisdiction.

10. **Intentionally Omitted.**

1 1 . **Costs and Expenses.** Each Debtor agrees to pay all reasonable out-of-pocket fees, costs and expenses incurred in connection with any filing required hereunder, including without limitation, any financing statements pursuant to the UCC, continuation statements, partial releases and/or termination statements related thereto or any expenses of any searches reasonably required by the Agent. The Debtors shall also pay all other claims and charges which in the reasonable opinion of the Agent is reasonably likely to prejudice, imperil or otherwise affect the Collateral or the Security Interests therein. The Debtors will also, upon demand, pay to the Agent the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, which the Agent, for the benefit of the Secured Parties, may incur in connection with the creation, perfection, protection, satisfaction, foreclosure, collection or enforcement of the Security Interest and the preparation, administration, continuance, amendment or enforcement of this Agreement and pay to the Agent the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, which the Agent, for the benefit of the Secured Parties, and the Secured Parties may incur in connection with (i) the enforcement of this Agreement, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral, or (iii) the exercise or enforcement of any of the rights of the Secured Parties under the Debentures. Until so paid, any fees payable hereunder shall be added to the principal amount of the Debentures and shall bear interest at the Default Rate.



12.     **Responsibility for Collateral.** The Debtors assume all liabilities and responsibility in connection with all Collateral, and the Obligations shall in no way be affected or diminished by reason of the loss, destruction, damage or theft of any of the Collateral or its unavailability for any reason. Without limiting the generality of the foregoing, (a) neither the Agent nor any Secured Party (i) has any duty (either before or after an Event of Default) to collect any amounts in respect of the Collateral or to preserve any rights relating to the Collateral, or (ii) has any obligation to clean-up or otherwise prepare the Collateral for sale, and (b) each Debtor shall remain obligated and liable under each contract or agreement included in the Collateral to be observed or performed by such Debtor thereunder. Neither the Agent nor any Secured Party shall have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Agent or any Secured Party of any payment relating to any of the Collateral, nor shall the Agent or any Secured Party be obligated in any manner to perform any of the obligations of any Debtor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Agent or any Secured Party in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Agent or to which the Agent or any Secured Party may be entitled at any time or times.

13.     **Security Interests Absolute.** All rights of the Secured Parties and all obligations of the Debtors hereunder, shall be absolute and unconditional, irrespective of: (a) any lack of validity or enforceability of this Agreement, the Debentures or any agreement entered into in connection with the foregoing, or any portion hereof or thereof; (b) any change in the time, manner or place of payment or performance of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Debentures or any other agreement entered into in connection with the foregoing; (c) any exchange, release or nonperfection of any of the Collateral, or any release or amendment or waiver of or consent to departure from any other collateral for, or any guarantee, or any other security, for all or any of the Obligations; (d) any action by the Secured Parties to obtain, adjust, settle and cancel in its sole discretion any insurance claims or matters made or arising in connection with the Collateral; or (e) any other circumstance which might otherwise constitute any legal or equitable defense available to a Debtor, or a discharge of all or any part of the Security Interests granted hereby. Until the Obligations shall have been paid and performed in full, the rights of the Secured Parties shall continue even if the Obligations are barred for any reason, including, without limitation, the running of the statute of limitations or bankruptcy. Each Debtor expressly waives presentment, protest, notice of protest, demand, notice of nonpayment and demand for performance. In the event that at any time any transfer of any Collateral or any payment received by the Secured Parties hereunder shall be deemed by final order of a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under the bankruptcy or insolvency laws of the United States, or shall be deemed to be otherwise due to any party other than the Secured Parties, then, in any such event, each Debtor's obligations hereunder shall survive cancellation of this Agreement, and shall not be discharged or satisfied by any prior payment thereof and/or cancellation of this Agreement, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof. Each Debtor waives all right to require the Secured Parties to proceed against any other person or entity or to apply any Collateral which the Secured Parties may hold at any time, or to marshal assets, or to pursue any other remedy. Each Debtor waives any defense arising by reason of the application of the statute of limitations to any obligation secured hereby.

14. **Term of Agreement.** This Agreement and the Security Interests shall terminate on the date on which all payments under the Debentures have been indefeasibly paid in full and all other Obligations have been paid or discharged; provided, however, that all indemnities of the Debtors contained in this Agreement (including, without limitation, Annex B hereto) shall survive and remain operative and in full force and effect regardless of the termination of this Agreement.

15. **Power of Attorney; Further Assurances.**

(a) Each Debtor authorizes the Agent, and does hereby make, constitute and appoint the Agent and its officers, agents, successors or assigns with full power of substitution, as such Debtor's true and lawful attorney-in-fact, with power, in the name of the Agent or such Debtor, to, after the occurrence and during the continuance of an Event of Default, (i) endorse any note, checks, drafts, money orders or other instruments of payment (including payments payable under or in respect of any policy of insurance) in respect of the Collateral that may come into possession of the Agent; (ii) to sign and endorse any financing statement pursuant to the UCC or any invoice, freight or express bill, bill of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts, and other documents relating to the Collateral; (iii) to pay or discharge taxes, liens, security interests or other encumbrances at any time levied or placed on or threatened against the Collateral; (iv) to demand, collect, receipt for, compromise, settle and sue for monies due in respect of the Collateral; (v) to transfer any Intellectual Property or provide licenses respecting any Intellectual Property; and (vi) generally, at the option of the Agent, and at the expense of the Debtors, at any time, or from time to time, to execute and deliver any and all documents and instruments and to do all acts and things which the Agent deems necessary to protect, preserve and realize upon the Collateral and the Security Interests granted therein in order to effect the intent of this Agreement and the Debentures all as fully and effectually as the Debtors might or could do; and each Debtor hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable for the term of this Agreement and thereafter as long as any of the Obligations shall be outstanding. The designation set forth herein shall be deemed to amend and supersede any inconsistent provision in the Organizational Documents or other documents or agreements to which any Debtor is subject or to which any Debtor is a party. Without limiting the generality of the foregoing, after the occurrence and during the continuance of an Event of Default, each Secured Party is specifically authorized to execute and file any applications for or instruments of transfer and assignment of any patents, trademarks, copyrights or other Intellectual Property with the United States Patent and Trademark Office and the United States Copyright Office.

(b) On a continuing basis, each Debtor will make, execute, acknowledge, deliver, file and record, as the case may be, with the proper filing and recording agencies in any jurisdiction, including, without limitation, the jurisdictions indicated on Schedule C attached hereto, all such instruments, and take all such action as may reasonably be deemed necessary or advisable, or as reasonably requested by the Agent, to perfect the Security Interests granted hereunder and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to the Agent the grant or perfection of a perfected security interest in all the Collateral under the UCC.

(c) Each Debtor hereby irrevocably appoints the Agent as such Debtor's attorney-in-fact, with full authority in the place and instead of such Debtor and in the name of such Debtor, from time to time in the Agent's discretion, to take any action and to execute any instrument which the Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including the filing, in its sole discretion, of one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of such Debtor where permitted by law, which financing statements may (but need not) describe the Collateral as "all assets" or "all personal property" or words of like import, and ratifies all such actions taken by the Agent. This power of attorney is coupled with an interest and shall be irrevocable for the term of this Agreement and thereafter as long as any of the Obligations shall be outstanding.

16. **Notices.** All notices, requests, demands and other communications hereunder shall be subject to the notice provision of the Purchase Agreement (as such term is defined in the Debentures).

17. **Other Security.** To the extent that the Obligations are now or hereafter secured by property other than the Collateral or by the guarantee, endorsement or property of any other person, firm, corporation or other entity, then the Agent shall have the right, in its sole discretion, to pursue, relinquish, subordinate, modify or take any other action with respect thereto, without in any way modifying or affecting any of the Secured Parties' rights and remedies hereunder.

18. **Appointment of Agent.** The Secured Parties hereby appoint Hillair Capital Investments L.P. to act as their agent ("Hillair" or "Agent") for purposes of exercising any and all rights and remedies of the Secured Parties hereunder. Such appointment shall continue until revoked in writing by a Majority in Interest, at which time a Majority in Interest shall appoint a new Agent, provided that Hillair may not be removed as Agent unless Hillair shall then hold less than \$50,000 in principal amount of Debentures; provided, further, that such removal may occur only if each of the other Secured Parties shall then hold not less than an aggregate of \$250,000 in principal amount of Debentures. The Agent shall have the rights, responsibilities and immunities set forth in Annex B hereto.

19. **Miscellaneous.**

(a) No course of dealing between the Debtors and the Secured Parties, nor any failure to exercise, nor any delay in exercising, on the part of the Secured Parties, any right, power or privilege hereunder or under the Debentures shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) All of the rights and remedies of the Secured Parties with respect to the Collateral, whether established hereby or by the Debentures or by any other agreements, instruments or documents or by law shall be cumulative and may be exercised singly or concurrently.

(c) This Agreement, together with the exhibits and schedules hereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into this Agreement and the exhibits and schedules hereto. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Debtors and the Secured Parties holding 67% or more of the principal amount of Debentures then outstanding, or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought.

(d) If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(e) No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

(f) This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Secured Party (other than by merger). Any Secured Party may assign any or all of its rights under this Agreement to any Person (as defined in the Purchase Agreement) to whom such Secured Party assigns or transfers any Obligations, provided such transferee agrees in writing to be bound, with respect to the transferred Obligations, by the provisions of this Agreement that apply to the “Secured Parties.”

(g) Each party shall take such further action and execute and deliver such further documents as may be necessary or appropriate in order to carry out the provisions and purposes of this Agreement.

(h) Except to the extent mandatorily governed by the jurisdiction or situs where the Collateral is located, all questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Except to the extent mandatorily governed by the jurisdiction or situs where the Collateral is located, each Debtor agrees that all proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and the Debentures (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York, Borough of Manhattan. Except to the extent mandatorily governed by the jurisdiction or situs where the Collateral is located, each Debtor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such proceeding is improper. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(i) This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile signature were the original thereof.

(j) All Debtors shall jointly and severally be liable for the obligations of each Debtor to the Secured Parties hereunder.

(k) Each Debtor shall indemnify, reimburse and hold harmless the Agent and the Secured Parties and their respective partners, members, shareholders, officers, directors, employees and agents (and any other persons with other titles that have similar functions) (collectively, "Indemnitees") from and against any and all losses, claims, liabilities, damages, penalties, suits, costs and expenses, of any kind or nature, (including fees relating to the cost of investigating and defending any of the foregoing) imposed on, incurred by or asserted against such Indemnatee in any way related to or arising from or alleged to arise from this Agreement or the Collateral, except any such losses, claims, liabilities, damages, penalties, suits, costs and expenses which result from the gross negligence or willful misconduct of the Indemnatee as determined by a final, nonappealable decision of a court of competent jurisdiction. This indemnification provision is in addition to, and not in limitation of, any other indemnification provision in the Debentures, the Purchase Agreement (as such term is defined in the Debentures) or any other agreement, instrument or other document executed or delivered in connection herewith or therewith.

(l) Nothing in this Agreement shall be construed to subject Agent or any Secured Party to liability as a partner in any Debtor or any if its direct or indirect subsidiaries that is a partnership or as a member in any Debtor or any of its direct or indirect subsidiaries that is a limited liability company, nor shall Agent or any Secured Party be deemed to have assumed any obligations under any partnership agreement or limited liability company agreement, as applicable, of any such Debtor or any of its direct or indirect subsidiaries or otherwise, unless and until any such Secured Party exercises its right to be substituted for such Debtor as a partner or member, as applicable, pursuant hereto.

(m) To the extent that the grant of the security interest in the Collateral and the enforcement of the terms hereof require the consent, approval or action of any partner or member, as applicable, of any Debtor or any direct or indirect subsidiary of any Debtor or compliance with any provisions of any of the Organizational Documents, the Debtors hereby grant such consent and approval and waive any such noncompliance with the terms of said documents.

[SIGNATURE PAGES FOLLOW]

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

**TOUGHBUILT INDUSTRIES, INC.**

By: \_\_\_\_\_  
Name: Michael Panosian  
Title: Chief Executive Officer

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

[SIGNATURE PAGE OF HOLDERS TO TOUGHBUILT SA]

Name of Investing Entity: \_\_\_\_\_

*Signature of Authorized Signatory of Investing entity:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

[SIGNATURE PAGE OF HOLDERS FOLLOWS]



**SCHEDULE A**

Principal Place of Business of Debtors:

Locations Where Collateral is Located or Stored:

**SCHEDULE B**

**SCHEDULE C**

**SCHEDULE D**

Legal Names and Organizational Identification Numbers

**SCHEDULE E**

Names; Mergers and Acquisitions

**SCHEDULE F**

Intellectual Property

**SCHEDULE G**

Account Debtors

**ANNEX A**  
**to**  
**SECURITY**  
**AGREEMENT**

**FORM OF ADDITIONAL DEBTOR JOINDER**

Security Agreement dated as of October 17, 2016 made by  
ToughBuilt Industries, Inc. and its subsidiaries party thereto from time to time, as Debtors  
to and in favor of  
the Secured Parties identified therein (the "Security Agreement")

Reference is made to the Security Agreement as defined above; capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in, or by reference in, the Security Agreement.

The undersigned hereby agrees that upon delivery of this Additional Debtor Joinder to the Secured Parties referred to above, the undersigned shall (a) be an Additional Debtor under the Security Agreement, (b) have all the rights and obligations of the Debtors under the Security Agreement as fully and to the same extent as if the undersigned was an original signatory thereto and (c) be deemed to have made the representations and warranties set forth therein as of the date of execution and delivery of this Additional Debtor Joinder. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE UNDERSIGNED SPECIFICALLY GRANTS TO THE SECURED PARTIES A SECURITY INTEREST IN THE COLLATERAL AS MORE FULLY SET FORTH IN THE SECURITY AGREEMENT AND ACKNOWLEDGES AND AGREES TO THE WAIVER OF JURY TRIAL PROVISIONS SET FORTH THEREIN.

Attached hereto are supplemental and/or replacement Schedules to the Security Agreement, as applicable.

An executed copy of this Joinder shall be delivered to the Secured Parties, and the Secured Parties may rely on the matters set forth herein on or after the date hereof. This Joinder shall not be modified, amended or terminated without the prior written consent of the Secured Parties.

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IN WITNESS WHEREOF, the undersigned has caused this Joinder to be executed in the name and on behalf of the undersigned.

[Name of Additional Debtor]

By:

Name:

Title:

Address:

Dated:

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**ANNEX B**  
**to**  
**SECURITY**  
**AGREEMENT**  
  
**THE AGENT**

1. **Appointment.** The Secured Parties (all capitalized terms used herein and not otherwise defined shall have the respective meanings provided in the Security Agreement to which this Annex B is attached (the "Agreement")), by their acceptance of the benefits of the Agreement, hereby designate Hillair Capital Investments L.P. ("Hillair" or "Agent") as the Agent to act as specified herein and in the Agreement. Each Secured Party shall be deemed irrevocably to authorize the Agent to take such action on its behalf under the provisions of the Agreement and any other Transaction Document (as such term is defined in the Purchase Agreement) and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of the Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto. The Agent may perform any of its duties hereunder by or through its agents or employees.

2. **Nature of Duties.** The Agent shall have no duties or responsibilities except those expressly set forth in the Agreement. Neither the Agent nor any of its partners, members, shareholders, officers, directors, employees or agents shall be liable for any action taken or omitted by it as such under the Agreement or hereunder or in connection herewith or therewith, be responsible for the consequence of any oversight or error of judgment or answerable for any loss, unless caused solely by its or their gross negligence or willful misconduct as determined by a final judgment (not subject to further appeal) of a court of competent jurisdiction. The duties of the Agent shall be mechanical and administrative in nature; the Agent shall not have by reason of the Agreement or any other Transaction Document a fiduciary relationship in respect of any Debtor or any Secured Party; and nothing in the Agreement or any other Transaction Document, expressed or implied, is intended to or shall be so construed as to impose upon the Agent any obligations in respect of the Agreement or any other Transaction Document except as expressly set forth herein and therein.

3. **Lack of Reliance on the Agent.** Independently and without reliance upon the Agent, each Secured Party, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of the Company and its subsidiaries in connection with such Secured Party's investment in the Debtors, the creation and continuance of the Obligations, the transactions contemplated by the Transaction Documents, and the taking or not taking of any action in connection therewith, and (ii) its own appraisal of the creditworthiness of the Company and its subsidiaries, and of the value of the Collateral from time to time, and the Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Secured Party with any credit, market or other information with respect thereto, whether coming into its possession before any Obligations are incurred or at any time or times thereafter. The Agent shall not be responsible to the Debtors or any Secured Party for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith, or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectibility, priority or sufficiency of the Agreement or any other Transaction Document, or for the financial condition of the Debtors or the value of any of the Collateral, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of the Agreement or any other Transaction Document, or the financial condition of the Debtors, or the value of any of the Collateral, or the existence or possible existence of any default or Event of Default under the Agreement, the Debentures or any of the other Transaction Documents.

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4. **Certain Rights of the Agent.** The Agent shall have the right to take any action with respect to the Collateral, on behalf of all of the Secured Parties. To the extent practical, the Agent shall request instructions from the Secured Parties with respect to any material act or action (including failure to act) in connection with the Agreement or any other Transaction Document, and shall be entitled to act or refrain from acting in accordance with the instructions of a Majority in Interest; if such instructions are not provided despite the Agent's request therefor, the Agent shall be entitled to refrain from such act or taking such action, and if such action is taken, shall be entitled to appropriate indemnification from the Secured Parties in respect of actions to be taken by the Agent; and the Agent shall not incur liability to any person or entity by reason of so refraining. Without limiting the foregoing, (a) no Secured Party shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting hereunder in accordance with the terms of the Agreement or any other Transaction Document, and the Debtors shall have no right to question or challenge the authority of, or the instructions given to, the Agent pursuant to the foregoing and (b) the Agent shall not be required to take any action which the Agent believes (i) could reasonably be expected to expose it to personal liability or (ii) is contrary to this Agreement, the Transaction Documents or applicable law.

5. **Reliance.** The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, statement, certificate, telex, teletype or telecopier message, cablegram, radiogram, order or other document or telephone message signed, sent or made by the proper person or entity, and, with respect to all legal matters pertaining to the Agreement and the other Transaction Documents and its duties thereunder, upon advice of counsel selected by it and upon all other matters pertaining to this Agreement and the other Transaction Documents and its duties thereunder, upon advice of other experts selected by it. Anything to the contrary notwithstanding, the Agent shall have no obligation whatsoever to any Secured Party to assure that the Collateral exists or is owned by the Debtors or is cared for, protected or insured or that the liens granted pursuant to the Agreement have been properly or sufficiently or lawfully created, perfected, or enforced or are entitled to any particular priority.

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**6. Indemnification.** To the extent that the Agent is not reimbursed and indemnified by the Debtors, the Secured Parties will jointly and severally reimburse and indemnify the Agent, in proportion to their initially purchased respective principal amounts of Debentures, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Agent in performing its duties hereunder or under the Agreement or any other Transaction Document, or in any way relating to or arising out of the Agreement or any other Transaction Document except for those determined by a final judgment (not subject to further appeal) of a court of competent jurisdiction to have resulted solely from the Agent's own gross negligence or willful misconduct. Prior to taking any action hereunder as Agent, the Agent may require each Secured Party to deposit with it sufficient sums as it determines in good faith is necessary to protect the Agent for costs and expenses associated with taking such action.

**7. Resignation by the Agent.**

(a) The Agent may resign from the performance of all its functions and duties under the Agreement and the other Transaction Documents at any time by giving 30 days' prior written notice (as provided in the Agreement) to the Debtors and the Secured Parties. Such resignation shall take effect upon the appointment of a successor Agent pursuant to clauses (b) and (c) below.

(b) Upon any such notice of resignation, the Secured Parties, acting by a Majority in Interest, shall appoint a successor Agent hereunder.

(c) If a successor Agent shall not have been so appointed within said 30-day period, the Agent shall then appoint a successor Agent who shall serve as Agent until such time, if any, as the Secured Parties appoint a successor Agent as provided above. If a successor Agent has not been appointed within such 30-day period, the Agent may petition any court of competent jurisdiction or may interplead the Debtors and the Secured Parties in a proceeding for the appointment of a successor Agent, and all fees, including, but not limited to, extraordinary fees associated with the filing of interpleader and expenses associated therewith, shall be payable by the Debtors on demand.

**8. Rights with respect to Collateral.** Each Secured Party agrees with all other Secured Parties and the Agent (i) that it shall not, and shall not attempt to, exercise any rights with respect to its security interest in the Collateral, whether pursuant to any other agreement or otherwise (other than pursuant to this Agreement), or take or institute any action against the Agent or any of the other Secured Parties in respect of the Collateral or its rights hereunder (other than any such action arising from the breach of this Agreement) and (ii) that such Secured Party has no other rights with respect to the Collateral other than as set forth in this Agreement and the other Transaction Documents. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations under the Agreement. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of the Agreement including this Annex B shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent.

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**EMPLOYMENT AGREEMENT**

This Employment Agreement (this "Agreement"), dated as of January 3, 2017, but effective as of January 1, 2017, is entered into between ToughBuilt Industries, Inc., a Nevada corporation (the "Company"), and Michael Panosian ("Executive").

**WHEREAS**, Executive is the President and Chief Executive Officer of the Company;

**WHEREAS**, the Company desires to employ and retain the services of Executive, and Executive wishes to be employed by the Company, on the terms set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants set forth in this Agreement, the undersigned agree as follows:

1 . **Term of Employment.** Subject to the termination provisions hereinafter set forth, the Company will employ Executive, and Executive accepts employment with the Company as its President and Chief Executive Officer, for a period of five years from the date of this Agreement (the "Initial Term"). The Initial Term shall be automatically renewed for successive one year periods ("Successive Terms") unless either party gives ninety (90) calendar days written notice of nonrenewal prior to the expiration of the then-current term (the Initial Term and any Successive Term are jointly referred to herein as the "Term"). Notwithstanding the above, or anything else provided herein, Executive shall be an at-will employee serving at the pleasure and direction of the Board of Directors (as defined below). Accordingly, either party may terminate the employment relationship at any time for any reason, subject, however, to the notice and any payment requirements set forth herein.

2 . **Duties.** During the Term, Executive will serve as President and Chief Executive Officer of the Company, reporting to the Company's Board of Directors (the "Board of Directors"). Executive will discharge such duties and responsibilities as are customary for such position or are prescribed from time to time by the Company. Executive will devote his full time and attention to the affairs of the Company and will not enter the employ of or serve as a consultant to, or in any way perform any services for, with or without compensation, any other person, business or organization without the prior approval of the Board of Directors. In no event may any such service be inconsistent with, or prevent Executive from carrying out, his duties under this Agreement, as determined at the sole discretion of the Board of Directors. During the Term, Executive shall serve as a member and the Chairman of the Board of Directors of the Company, subject to the conditions and requirements set forth in the Company's bylaws, as applicable, including but not limited to shareholder approval.

3 . **Maintaining Confidential Information/Property Rights.** Executive agrees to sign and abide by all of the Company's policies regarding confidential information and ethics including, but not limited to the Employee Non-Disclosure, Non-Solicitation and Intellectual Property Assignment Agreement, as attached hereto as Exhibit A.

4. **Non-Competition; Non-Solicitation.** During the Term the Executive shall not, directly or indirectly:

(a) whether as an officer, director, employee, stockholder, partner, proprietor, associate, representative, consultant, contractor, or in any other capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever that competes with the Company or its Affiliates, anywhere in the United States, Europe, South America and Asia, in any line of business engaged in (or planned to be engaged in) by the Company or its Affiliates, however, that such restriction shall not apply to Executive's ownership of any passive investment representing an interest of less than five percent (5%) of an outstanding class of publicly traded securities; or

(b) recruit, encourage or solicit any person who is an Executive or contractor of the Company or any entity affiliated with the Company (each, an "Affiliated Entity") to leave the Company's or Affiliated Entity's employ or service for any reason, or interfere in any material manner with employment or service relationships at the time existing between the Company or Affiliated Entity and the subject Executive or contractor (except as may be required in any bona fide termination decision during the Term regarding any Company or Affiliated Entity Executive) in order to induce such Executive or contractor of the Company or any Affiliated Entity to accept other employment or a consulting agreement with any other person or entity.

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Executive acknowledges that the services that he shall provide to the Company under this Agreement are unique and that irreparable harm shall be suffered by the Company in the event of the breach by Executive of any of his obligations under this Section 4, and that the Company shall be entitled, in addition to its other rights and remedies, whether legal or equitable, to enforce such obligations by an injunction or decree of specific performance. If any restriction set forth in this non-competition section is found by a court to be unreasonable, then Executive agrees, and hereby submits, to the reduction and limitation of such prohibition to such area or period as shall be deemed reasonable by such court. In addition, if Executive breaches this Section 4 at any time after the Term, the Company's obligation to continue to make payments to Executive pursuant to Sections 8(a) or (b) shall cease immediately.

5. **Salary and Incentives.**

( a ) **Sign-On-Bonus.** You will receive a sign on bonus of \$50,000, to be paid within 30 days from the commencement of your employment. Please note all applicable taxes and withholdings will apply to this bonus start payment. If you voluntarily terminate employment with the Company within twelve (12) months of your start date, you will be obligated to repay the Company the full amount of the sign on bonus.

( b ) **Salary.** During the Term, the Company will pay Executive an annual salary of \$350,000 (the "Base Salary"), subject to applicable tax withholding and payable in accordance with the Company's normal payroll practices; provided that Executive's Base Salary may be reduced to the extent that Executive elects to defer any portion thereof under the terms of any deferred compensation or savings plan maintained by the Company. During the Term, the Board of Directors shall review Executive's Base Salary on an annual basis and, in its discretion, may award merit increases of Executive's Base Salary in accordance with the Company's policy. In addition to the eligibility for consideration of merit-based increases in the discretion of the Board of Directors, Executive's Base Salary will be increased effective January 1, of each year during the Term (commencing January 1, 2018) by ten percent (10%).

( c ) **Incentive Payments.** Executive will be eligible to receive incentive bonus payments from time to time in accordance with any incentive bonus program of the Company that may then be in effect and will be eligible to receive an annual cash incentive bonus under any such program upon the achievement of targets and other objectives for each fiscal year as may be approved annually on behalf of the Company by the Board of Directors (the "Annual Bonus"). Such a program will be administered on the Company's fiscal year basis. In the event that an incentive payment is earned by Executive under such a program for any fiscal year, such payment shall be made to Executive in a lump sum all-cash amount within sixty (60) days following the date the Company determines the amount (if any) of the Annual Bonus, provided that Executive has remained continuously employed in the Company's service through the date the Company determines the amount of the Annual Bonus.

(d) **Stock Options.** On or following commencement of Executive's employment and subject to approval of the Board, the Company will grant Executive an option under the Company's 2016 Equity Incentive Plan (the "Plan") to purchase Two Hundred Fifty Thousand (250,000) of the Company's Common Stock (the "Option"). The Option will have an exercise price that is no less than \$5.00 per share and will vest over Four (4) years, with 25% of the total number of shares subject to the Option vesting on the One (1) year anniversary of the date of grant and, the remainder vesting in equal installments on the last day of each of the Thirty-Six (36) full calendar months thereafter (the "Vesting Schedule"). Vesting will depend on Executive's Continued Service as an Employee (as such terms are defined in the Plan) with the Company and will be subject to the terms and conditions of the Plan and the written Stock Option Agreement governing the Option.

( e ) **Expenses.** The Company will reimburse Executive for all reasonable travel, entertainment and miscellaneous expenses actually and necessarily incurred in connection with the performance of his duties under this Agreement, provided that Executive's expenses are in accordance with the Company's current practices and that Executive properly accounts for such expenses. Any amounts payable under this Section 5(c) shall be made in accordance with Treasury Regulation Section 1.409A-3(i)(1)(iv) and shall be paid on or before the last day of Executive's taxable year following the taxable year in which Executive incurred the expenses. The amounts provided under this Section 5(c) during any taxable year of Executive's will not affect such amounts provided in any other taxable year of Executive's, and Executive's right to reimbursement for such amounts shall not be subject to liquidation or exchange for any other benefit.

( f ) **Vehicle Allowance.** During Executive's employment under this Agreement, the Company shall pay Executive a monthly automobile allowance in the amount of \$1,000, and shall pay for or reimburse Executive for expenses regarding the operation, insurance and routine maintenance of such vehicle, including deductibles, fuel, parking, tolls and car washes.

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(g) Vacation. The Executive shall be entitled to four (4) weeks paid vacation per annum; provided, that the Executive shall be paid annually in cash for vacation days not taken by him; provided that no more than four (4) weeks of vacation may be accrued each year for purposes of such cash payments; and provided further that any such payment shall be paid to the Executive not later than March 15 of the year following the calendar year in which the unused vacation days accrued.

6. Benefits. Executive will be entitled during the Term to participate in any vacation, health, pension, insurance or other benefit plan that is maintained by the Company for its (or its subsidiaries') Executives and/or executives to the extent and in the manner prescribed by the applicable plan documents.

7. Long-term Incentives. Executive will be eligible to receive annual long-term equity incentive awards from time to time in accordance with the terms and conditions of long-term equity incentive compensation plans and programs as in effect from time to time as approved by the Board of Directors. The Board of Directors shall have discretion to determine both the target levels and the actual grants made, and shall have discretion to change from an annual grant program to a multi-year grant program. Any long-term incentive grants shall be subject to the terms and conditions, including any vesting conditions, as determined by the Board of Directors in its sole discretion.

8. Termination.

(a) Termination by the Company without Cause. The Company may terminate Executive's employment under this Agreement without Cause at any time with ninety (90) calendar days' prior written notice. However, in the event of Executive's Separation from Service (as defined in Section 9(a) below) as a result of Executive's termination by the Company without Cause at any time during the Term, then, subject to the provisions of Section 9 below, the Company agrees that it will provide Executive with all accrued compensation, wages and benefits through the effective date of termination and pay and/or provide to Executive the following:

(i) (A) if such termination occurs during the Initial Term, an amount equal to two (2) times Executive's then-prevailing Base Salary, and (B) if such termination occurs after the Initial Term, an amount equal to one (1) times Executive's then-prevailing Base Salary; plus

(ii) (A) if such termination occurs during the Initial Term, twenty-four months of COBRA premiums for Executive, and (B) if such termination occurs after the Initial Term, twelve (12) months of COBRA premiums for Executive, in each case paid for by the Company (with any such payments to be treated as taxable compensation to the extent necessary to comply with Section 105(h) of the Internal Revenue Code) pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), provided that Executive is eligible for COBRA benefits and timely completes all documentation necessary to receive COBRA benefits; plus

(iii) if Executive holds any outstanding long-term incentive awards (including, without limitation, stock options, stock appreciation rights, phantom shares, restricted stock or similar awards with respect to the securities of the Company) that are not fully vested and, if applicable, exercisable with respect to all the shares subject thereto effective immediately prior to the date of termination, then the Company shall cause all such outstanding and unvested long-term incentive awards to become fully vested and, if applicable, exercisable effective immediately prior to the date of termination, and Executive shall have one hundred and twenty (120) days to exercise any stock options that vest pursuant to this Section. In all other respects, such awards will continue to be subject to the terms and conditions of the plans, if any, under which they were granted and any applicable agreements between The Company and Executive.

The amounts described in paragraph (i) shall be paid in two equal lump sum installments, subject to applicable tax withholding, with the first installment to be made within sixty (60) days following the date of Executive's Separation from Service and the second installment to be made on the first anniversary of Executive's Separation from Service. For purposes of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), Executive's right to receive the foregoing installment payments shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment shall at all times be considered a separate and distinct payment. Notwithstanding any provision to the contrary in this Agreement, no amount shall be paid pursuant to this Section 8(a) unless, on or prior to the fifty-fifth (55th) day following the date of Executive's Separation from Service, Executive has executed an effective waiver and release of claims agreement (the "Release") in form and substance acceptable to the Company and any applicable revocation period has expired.

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( b )     Termination by Executive for Good Reason. Executive may voluntarily elect to resign his employment with the Company prior to the end of the Initial Term or any Successive Term for Good Reason (as hereinafter defined). In the event of Executive's Separation from Service for Good Reason at any time during the Initial Term or any Successive Term, then, subject to the provisions of Section 9 below, Executive shall be entitled to receive the payments or benefits set forth in Section 8(a) as if such Separation from Service was as a result of Executive's termination by the Company without Cause during the Initial Term or thereafter (as applicable). "Good Reason" shall mean any of the following that are undertaken without Executive's express written consent: (i) the assignment to Executive of principal duties or responsibilities, or the substantial reduction of Executive's duties and responsibilities, either of which is materially inconsistent with Executive's position as President and Chief Executive Officer of the Company; (ii) a material reduction by the Company in Executive's annual Base Salary, except to the extent the salaries of other executive employees of the Company and any other controlled subsidiary of the Company are similarly reduced; (iii) Executive's principal place of business is, without his consent, relocated by a distance of more than thirty (40) miles from the center of Glendale, California; or (iv) any material breach by the Company of any provision of this Agreement. For avoidance of doubt, any notice of non-renewal provided by the Company to Executive pursuant to Section 1 of this Agreement shall not constitute or give rise to Good Reason under this Section 8(b).

Executive must provide written notice to the Company of the occurrence of any of the foregoing events or conditions without Executive's written consent within ninety (90) days of the occurrence of such event. The Company or any surviving entity shall have a period of thirty (30) days to cure such event or condition after receipt of written notice of such event from Executive. Any Separation from Service by reason of Executive's resignation for Good Reason following such thirty (30) day cure period must occur no later than the date that is six (6) months following the initial occurrence of one of the foregoing events or conditions without Executive's written consent. Executive's Separation from Service by reason of his resignation for Good Reason shall be treated as involuntary. For avoidance of doubt, in the event Executive provides the foregoing notice to the Company prior to the expiration of the Initial Term but the ensuing cure period of the Company expires following the end of the Initial Term and during any Successive Term and (the applicable event or condition constituting or giving rise to Good Reason having not been cured by the Company during the applicable cure period) Executive subsequently resigns for Good Reason pursuant to this Section 8(b), such resignation shall be treated for all purposes of this Section 8(b) as having occurred during the Initial Term.

( c )     Termination by the Company for Cause. Subject to the thirty (30) day cure period, if applicable, set forth below in this Section 8(c), the Company may immediately terminate Executive's employment at any time for Cause by giving written notice to Executive specifying in reasonable detail the reason for such termination. Upon any such termination for Cause, Executive shall be entitled to payment of all accrued and unpaid compensation and wages, but Executive shall have no right to compensation or benefits for any period subsequent the effective date of termination. For the purposes of this Agreement, "Cause" shall mean: Executive willfully engages in an act or omission which is in bad faith and to the detriment of the Company, engages in gross misconduct, gross negligence, or willful malfeasance, in each case that causes material harm to the Company, breaches this Agreement in any material respect, habitually neglects or materially fails to perform his duties (other than any such failure resulting solely from Executive's physical or mental disability or incapacity) after a written demand for substantial performance is delivered to Executive which identifies the manner in which the Company believes that Executive has not performed Executive's duties, commits or is convicted of a felony or any crime involving moral turpitude, uses drugs or alcohol in a way that either interferes with the performance of his duties or compromises the integrity or reputation of the Company, or engages in any act of dishonesty involving the Company, disclosure of Company's confidential information not required by applicable law, commercial bribery, or perpetration of fraud; provided, however, that Executive shall have at least forty-five (45) calendar days to cure, if curable, any of the events which could lead to Executive's termination for Cause.

( d )     Termination by Death or Disability. In the event that Executive dies or becomes completely disabled from performing his duties during the Initial Term or any Successive Term, the Company shall be relieved of all obligations under this Agreement, except for payment to Executive or Executive's heirs as if the Executive had been terminated without Cause in accordance with Section 8(a) herein during the Initial Term or thereafter (as applicable). For clarification purposes, the parties agree that the Company may satisfy its obligations pursuant to this Section 8(d) through life and/or disability insurance coverage with respect to Executive.

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(e) Termination by Executive without Good Reason. Executive may terminate his employment under this Agreement without Good Reason at any time by giving written notice to the Company. Such termination will become effective upon the date specified in such notice, provided that such date is at least ninety (90) calendar days after the date of delivery of the notice. Upon any such termination, the Company shall be relieved of all of its obligations under this Agreement, except for payment of all accrued compensation and wages and the provision of benefits through the effective date of termination, and the Company may, in its sole discretion, cause the termination to become effective sooner than such ninety (90) day notice period.

(f) Involuntary Termination other than for Cause, Death or Disability or Voluntary Termination for Good Reason Following A Change of Control. If, within twenty-four (24) months following a Change of Control, the Executive's employment is terminated involuntarily by the Company other than for Cause, death, or Disability or by the Executive pursuant to a Voluntary Termination for Good Reason, and the Executive executes and does not revoke a general release of claims against the Company and its affiliates in a form acceptable to the Company, then the Company shall provide the Executive with the benefits as set forth below:

(i) Cash Award. A lump sum payment in the amount equal to four (4) times Executive's then prevailing Base Salary plus the Executive's target for the annual short term incentive portion of the corporate bonus program for such year as in effect immediately prior to such termination, in addition to any other earned but unpaid base salary or vacation pay due through the date of such termination, as well as a pro rata portion of the Executive's annual short term incentive portion of the corporate bonus program for such year (if any) and a pro rata portion of the Executive's long term incentive portion of the corporate bonus program (if any) (based on the number of days elapsed during such year through the date of termination) as in effect immediately prior to such termination. This lump sum payment is to be paid as soon as practicable after the effective date of the termination for Cause or Voluntary Termination for Good Reason following a Change of Control but in any case, by no later than March 14 of the calendar year following the calendar year in which such termination occurs.

(ii) Acceleration of Equity Awards. All outstanding and unvested options to purchase the common stock of the Company or any affiliate of the Company granted under any equity plan of the Company or affiliate of the Company, restricted stock then held by the Executive and other equity and equity equivalent awards then held by the Executive shall be accelerated in full, and thereafter all such options, restricted stock and other equity awards shall be immediately vested, and exercisable for such period of time following termination as provided for by the specific agreements governing each such award.

(iii) Benefits Continuation. For the period beginning on the date of such involuntary termination by the Company other than for Cause, death or Disability or the Executive's Voluntary Termination for Good Reason occurs and ending on the earlier of the date which is eighteen (18) months following the date of such termination or the date upon which the Executive commences receiving generally comparable medical benefits through employment elsewhere, the Company shall pay directly or reimburse the Executive, at its option, for premium costs incurred by the Executive and the Executive's dependents for medical and dental benefits continuation coverage pursuant to Section 4980B of the Internal Revenue Code of 1986, as amended (the "Code"), Sections 601-608 of the Executive Retirement Income Security Act of 1974, as amended, and under any other applicable law, to the extent required by such laws, as if the Executive had terminated employment with the Company on the date such benefits coverage terminates.

(iv) All of the foregoing benefits shall replace and be in lieu of any other severance benefit(s) to which Executive would otherwise be entitled following a Change of Control.

(g) Change of Control. "Change of Control" means the occurrence of any of the following events:

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

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

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

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

(h) Notice of Non-Renewal. For the avoidance of doubt, any notice of nonrenewal of a Successive Term provided by the Company pursuant to Section 1 of this Agreement shall constitute termination of Executive by the Company without Cause during a Successive Term.

9. **Limitations on Payment.**

(a) Payment Delay. Notwithstanding anything herein to the contrary, to the extent any payments to Executive pursuant to Section 8 are treated as non-qualified deferred compensation subject to Section 409A of the Code, then (i) no amount shall be payable pursuant to such section unless Executive's termination of employment constitutes a "separation from service" with the Company (as such term is defined in Treasury Regulation Section 1.409A-1(h) and any successor provision thereto) (a "Separation from Service"), (ii) if any of the amounts described in Sections 8(a)(i)-(ii) above constitute non-qualified deferred compensation subject to Section 409A of the Code then any such amounts that become payable hereunder shall in all cases be paid in two installment payments pursuant to the terms described in the last paragraph of Section 8(a), provided that the first lump-sum payment shall be paid on the 60th day following Executive's Separation from Service subject to clause (iii) of this Section 9(a) and (iii) if Executive, at the time of his Separation from Service, is determined by the Company to be a "specified Executive" for purposes of Section 409A(a)(2)(B)(i) of the Code and the Company determines that delayed commencement of any portion of the termination benefits payable to Executive pursuant to this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(1) of the Code (any such delayed commencement, a "Payment Delay"), then such portion of Executive's termination benefits described in Section 8 shall not be provided to Executive prior to the earlier of (A) the expiration of the six-month period measured from the date of Executive's Separation from Service, (B) the date of Executive's death or (C) such earlier date as is permitted under Section 409A. Upon the expiration of the applicable Code Section 409A(a)(2)(B)(i) deferral period, all payments deferred pursuant to a Payment Delay shall be paid in a lump sum to Executive within thirty (30) days following such expiration, and any remaining payments due under the Agreement shall be paid as otherwise provided herein. The determination of whether Executive is a "specified Executive" for purposes of Section 409A(a)(2)(B)(i) of the Code as of the time of his Separation from Service shall be made by the Company in accordance with the terms of Section 409A of the Code and applicable guidance thereunder (including without limitation Treasury Regulation Section 1.409A-1(i) and any successor provision thereto).

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( b ) Exceptions to Payment Delay. Notwithstanding Section 9(a), to the maximum extent permitted by applicable law, amounts payable to Executive pursuant to Section 8 shall be made in reliance upon Treasury Regulation Section 1.409A-1(b)(9) (with respect to separation pay plans) or Treasury Regulation Section 1.409A-1(b)(4) (with respect to short-term deferrals). Accordingly, the severance payments provided for in Section 8 may not be intended to provide for any deferral of compensation subject to Section 409A of the Code to the extent (i) the severance payments payable pursuant to Section 8, by their terms and determined as of the date of Executive's Separation from Service, may not be made later than the fifteenth (15th) day of the third calendar month following the later of (A) the end of the Company's fiscal year in which Executive's Separation from Service occurs or (B) the end of the calendar year in which Executive's Separation from Service occurs, or (ii) (A) such severance payments do not exceed an amount equal to two times the lesser of (1) the amount of Executive's annualized compensation based upon Executive's annual rate of pay for the calendar year immediately preceding the calendar year in which Executive's Separation from Service occurs (adjusted for any increase during the calendar year in which such Separation from Service occurs that would be expected to continue indefinitely had Executive remained employed with the Company) or (2) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) for the calendar year in which Executive's Separation from Service occurs, and (B) such severance payments shall be completed no later than December 31 of the second calendar year following the calendar year in which Executive's Separation from Service occurs. Moreover, the COBRA premium payments contemplated under Section 8 are intended to be exempt from Section 409A of the Code pursuant to Treasury Regulation Section 1.409A-1(b)(9)(v) as direct service recipient payments for medical benefits.

( c ) Interpretation. To the extent the payments and benefits under this Agreement are subject to Section 409A of the Code, this Agreement shall be interpreted, construed and administered in a manner that satisfies the requirements of Sections 409A(a)(2), (3) and (4) of the Code and the Treasury Regulations thereunder (and any applicable transition relief under Section 409A of the Code).

( d ) Parachute Payments. Notwithstanding anything contained in this Agreement to the contrary, to the extent that payments and benefits provided under this Agreement or otherwise (including the acceleration of vesting of equity awards) to Executive (such payments or benefits are collectively referred to as the "Payments") would be subject to the excise tax (the "Excise Tax") imposed under Section 4999 of the Code, the Payments shall be reduced (but not below zero) to the extent necessary so that no Payment to be made or benefit to be provided to Executive shall be subject to the Excise Tax, but only if, by reason of such reduction, the net after-tax benefit received by Executive shall exceed the net after-tax benefit received by him if no such reduction was made. For purposes of this Section 9(d), "net after-tax benefit" shall mean (i) the Payments which Executive receives or is then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income taxes payable with respect to the foregoing calculated at the maximum marginal income tax rate for each year in which the foregoing shall be paid to Executive (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of excise taxes imposed with respect to the payments and benefits described in (i) above by Section 4999 of the Code. The foregoing determination will be made by a nationally recognized accounting firm (the "Accounting Firm") selected by Executive and reasonably acceptable to the Company (which may be, but will not be required to be, the Company's independent auditors). The Company will direct the Accounting Firm to submit its determination and detailed supporting calculations to both the affected Executive and the Company within fifteen (15) calendar days after Executive's date of Separation from Service. If the Accounting Firm determines that such reduction is required by this Section 9(d) and no Payment constitutes non-qualified deferred compensation that is subject to Section 409A of the Code, Executive, in Executive's sole and absolute discretion, may determine which Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code, and the Company shall pay such reduced amount to him. If the Accounting Firm determines that a reduction is required by this Section 9(d), and any Payment constitutes a "deferral of compensation" within the meaning of Section 409A of the Code, then the Payments shall be reduced in the following order; (a) reduction in the cash severance payments described herein (with such reduction being applied to the payments in the reverse order in which they would otherwise be made, that is, later payments shall be reduced before earlier payments); (b) reduction in any other cash payments payable to Executive (with such reduction being applied to the payments in the reverse order in which they would otherwise be made, that is, later payments shall be reduced before earlier payments); (c) cancellation of acceleration of vesting on any equity awards for which the exercise price exceeds the then fair market value of the underlying equity; and (d) cancellation of acceleration of vesting of equity awards not covered under (c) above; provided, however that in the event that acceleration of vesting of equity awards is to be cancelled, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of such equity awards, that is, later equity awards shall be canceled before earlier equity awards.

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10. **Arbitration.** Executive and the Company agree to submit any and all disputes, controversies, or claims between them based upon, relating to, or arising from Executive's employment by the Company or the terms of this Agreement (other than workers' compensation claims) to final and binding arbitration before a single neutral arbitrator in Los Angeles, California. Subject to the terms of this paragraph, the arbitration proceedings shall be initiated in accordance with, and governed by, the National Rules for the Resolution of Employment Disputes ("Rules") of the American Arbitration Association ("AAA"). The arbitrator shall be appointed by agreement of the parties hereto or, if no agreement can be reached, by the AAA pursuant to its Rules. Notwithstanding the Rules, the parties may take discovery in accordance with Sections 1283.05(a)-(d) of the California Code of Civil Procedure (but not subject to the restrictions of Section 1283.05(e)), and prior to the arbitration hearing the parties may file, and the arbitrator shall rule on, pre-trial motions such as demurrers and motions for summary judgment (applying the procedural standard embodied in Rule 56 of the Federal Rules of Civil Procedure). The time for filing such motions shall be determined by the arbitrator. The arbitrator will rule on all pre-trial motions at least ten (10) business days prior to the scheduled hearing date. Arbitration may be compelled, the arbitration award shall be enforced, and judgment thereon shall be entered, pursuant to the California Arbitration Act (Code of Civil Procedure §§ 1280 et seq.). The prevailing party in any such arbitration shall be entitled to recover from the other, and the arbitrator is instructed to award to the prevailing party, an amount equal to the reasonable attorneys' fees and costs (including expert witness fees) incurred in connection with the arbitration, except that the Company shall bear AAA's administrative fees and the arbitrator's fees and costs. If any party is required to compel arbitration of a dispute governed by this paragraph, the party prevailing in that proceeding shall be entitled to recover from the other party its reasonable costs and attorneys' fees and expenses incurred to compel arbitration; provided, however, that the prevailing party shall be reimbursed for such fees, costs and expenses within forty-five (45) days following any such award, but in no event later than the last day of Executive's taxable year following the taxable year in which the fees, costs and expenses were incurred; provided, further, that the parties' obligations pursuant to this sentence shall terminate on the tenth (10th) anniversary of the date of Executive's termination of employment. This paragraph is intended to be the exclusive method for resolving any and all claims by the parties against each other for payment of damages under this Agreement or relating to Executive's employment; provided, however, that neither this Agreement nor the submission to arbitration shall limit the parties' right to seek provisional relief, including without limitation injunctive relief, in any court of competent jurisdiction. Executive and the Company expressly waive their right to a jury trial. This paragraph shall survive the expiration or termination of this Agreement. If any part of this paragraph is found to be void as a matter of law or public policy, the remainder of the paragraph will continue to be in full force and effect.

11. **Miscellaneous.**

( a ) **Assignment.** The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon their respective successors and assigns. Executive agrees that the Company may assign its rights and obligations under this Agreement to any successor-in-interest. Executive may assign his rights and obligations hereunder only with the express written consent of the Company, except that the rights under this Agreement shall inure to the benefit of Executive's heirs or assigns in the event of his death. Except as expressly provided in this paragraph, no party may assign its/his rights and obligations hereunder; and any attempt to do so will be void.

(b) **Severability.** If any provision of this Agreement otherwise is deemed to be invalid or unenforceable or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision, such provision shall be replaced by a provision that is valid and enforceable and that as closely as possible reflects the parties' intent with respect to such provision and such provision shall be inoperative in such state or jurisdiction and shall not be part of the consideration moving from any of the parties to any other. The remaining provisions of this Agreement shall be valid and binding and of like effect as though such provision was not included.

( c ) **Notice.** Notices given pursuant to the provisions of this Agreement shall be delivered personally or sent by certified mail, postage pre-paid, or by overnight courier, or by fax, if to the Company, to the Company's then-current business address or, in the event the notice is to Executive, to the address that Executive has represented to the Company as current.

(d) **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to the conflict of laws rules thereof.

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(e) Waiver, Amendment. The waiver by any party to this Agreement of a breach of any provision hereof by any other party shall not be construed as a waiver of any subsequent breach. No provision of this Agreement may be terminated, amended, supplemented, waived or modified other than by an instrument in writing, signed by the party against whom the enforcement of the termination, amendment, supplement, waiver or modification is sought. If Executive and the Company determine that any payments or benefits payable under this Agreement intended to comply with Sections 409A(a)(2), (3) and (4) of the Code do not comply with Section 409A of the Code, the parties agree to amend this Agreement, or take such other actions as the parties deem reasonably necessary or appropriate, to comply with the requirements of Section 409A of the Code, the Treasury Regulations thereunder (and any applicable transition relief) while preserving the economic agreement of the parties. If any provision of the Agreement would cause such payments or benefits to fail to so comply, such provision shall not be effective and shall be null and void with respect to such payments or benefits, and such provision shall otherwise remain in full force and effect.

( f ) Entire Agreement. This Agreement represents the entire agreement among the parties with respect to the subject matter of this Agreement and supersedes any previous agreement or understanding.

(g) Execution in Counterparts. This Agreement may be executed in counterparts with the same force and effectiveness as though executed as a single document.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first written above.

**TOUGHBUILT INDUSTRIES, INC.**

By: \_\_\_\_\_  
Name: Zareh Khachatourian  
Title: Chief Operating Officer/Secretary

**EXECUTIVE**

\_\_\_\_\_  
Michael Panosian

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**EXHIBIT A**  
**EMPLOYEE NON-DISCLOSURE, NON-SOLICITATION AND INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT**  
[ATTACHED]

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**EMPLOYMENT AGREEMENT**

This Employment Agreement (this "Agreement"), dated as of January 3, 2017, but effective as of January 1, 2017, is entered into between ToughBuilt Industries, Inc., a Nevada corporation (the "Company"), and Zareh Khachatoorian ("Executive").

**WHEREAS**, Executive is the Chief Operating Officer and Secretary of the Company, and

**WHEREAS**, the Company desires to employ and retain the services of Executive, and Executive wishes to be employed by the Company, on the terms set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants set forth in this Agreement, the undersigned agree as follows:

1. **Term of Employment.** Subject to the termination provisions hereinafter set forth, the Company will employ Executive, and Executive accepts employment with the Company, for a period of three years from the date of this Agreement (the "Initial Term"). The Initial Term shall be automatically renewed for successive one year periods ("Successive Terms") unless either party gives ninety (90) calendar days written notice of nonrenewal prior to the expiration of the then-current term (the Initial Term and any Successive Term are jointly referred to herein as the "Term"). Notwithstanding the above, or anything else provided herein, Executive shall be an at-will Executive, serving at the pleasure and direction of the Board of Directors (as defined below). Accordingly, either party may terminate the employment relationship at any time for any reason, subject, however, to the notice and any payment requirements set forth herein.

2. **Duties.** During the Term, Executive will serve as Chief Operating Officer and Secretary of the Company, reporting to the Company's Chief Executive Officer (the "CEO"). Executive will discharge such duties and responsibilities as are customary for such position or are prescribed from time to time by the CEO. Executive will devote his full time and attention to the affairs of the Company and will not enter the employ of or serve as a consultant to, or in any way perform any services for, with or without compensation, any other person, business or organization without the prior approval of the CEO. In no event may any such service be inconsistent with, or prevent Executive from carrying out, his duties under this Agreement, as determined at the sole discretion of the CEO. During the Term, Executive shall serve as a member of the Board of Directors of the Company, subject to the conditions and requirements set forth in the Company's bylaws, as applicable, including but not limited to shareholder approval.

3. **Maintaining Confidential Information/Property Rights.** Executive agrees to sign and abide by all Company's policies regarding confidential information and ethics including, but not limited to the Employee Non-Disclosure, Non-Solicitation and Intellectual Property Assignment Agreement, as attached hereto as Exhibit A.

4. **Non-Competition; Non-Solicitation.** During the Term the Executive shall not, directly or indirectly:

(a) whether as an officer, director, employee, stockholder, partner, proprietor, associate, representative, consultant, contractor, or in any other capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever that competes with the Company or its Affiliates, anywhere in the United States, Europe, South America and Asia, in any line of business engaged in (or planned to be engaged in) by the Company or its Affiliates, however, that such restriction shall not apply to Executive's ownership of any passive investment representing an interest of less than five percent (5%) of an outstanding class of publicly traded securities; or

(b) recruit, encourage or solicit any person who is an Executive or contractor of the Company or any entity affiliated with the Company (each, an "Affiliated Entity") to leave the Company's or Affiliated Entity's employ or service for any reason, or interfere in any material manner with employment or service relationships at the time existing between the Company or Affiliated Entity and the subject Executive or contractor (except as may be required in any bona fide termination decision during the Term regarding any Company or Affiliated Entity Executive) in order to induce such Executive or contractor of the Company or any Affiliated Entity to accept other employment or a consulting agreement with any other person or entity.

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Executive acknowledges that the services that he shall provide to the Company under this Agreement are unique and that irreparable harm shall be suffered by the Company in the event of the breach by Executive of any of his obligations under this Section 4, and that the Company shall be entitled, in addition to its other rights and remedies, whether legal or equitable, to enforce such obligations by an injunction or decree of specific performance. If any restriction set forth in this non-competition section is found by a court to be unreasonable, then Executive agrees, and hereby submits, to the reduction and limitation of such prohibition to such area or period as shall be deemed reasonable by such court. In addition, if Executive breaches this Section 4 at any time after the Term, the Company's obligation to continue to make payments to Executive pursuant to Sections 8(a) or (b) shall cease immediately.

5. **Salary and Incentives.**

( a ) **Salary.** During the Term, the Company will pay Executive an annual salary of \$180,000 (the "Base Salary"), subject to applicable tax withholding and payable in accordance with the Company's normal payroll practices; provided that Executive's Base Salary may be reduced to the extent that Executive elects to defer any portion thereof under the terms of any deferred compensation or savings plan maintained by the Company. During the Term, the Board of Directors shall review Executive's Base Salary on an annual basis and, in its discretion, may award merit increases of Executive's Base Salary in accordance with the Company's policy. In addition to the eligibility for consideration of merit-based increases in the discretion of the Board of Directors, Executive's Base-Salary will be increased effective January 1, of each year during the Term (commencing January 1, 2018) by ten percent (10%) to reflect anticipated increases in cost of living.

( b ) **Incentive Payments.** Executive will be eligible to receive incentive bonus payments from time to time in accordance with any incentive bonus program of the Company that may then be in effect and will be eligible to receive an annual cash incentive bonus under any such program upon the achievement of targets and other objectives for each fiscal year as may be approved annually on behalf of the Company by the Board of Directors (the "Annual Bonus"). Such a program will be administered on the Company's fiscal year basis. In the event that an incentive payment is earned by Executive under such a program for any fiscal year, such payment shall be made to Executive in a lump sum all-cash amount within sixty (60) days following the date the Company determines the amount (if any) of the Annual Bonus, provided that Executive has remained continuously employed in the Company's service through the date the Company determines the amount of the Annual Bonus.

( c ) **Expenses.** The Company will reimburse Executive for all reasonable travel, entertainment and miscellaneous expenses actually and necessarily incurred in connection with the performance of his duties under this Agreement, provided that Executive's expenses are in accordance with the Company's current practices and that Executive properly accounts for such expenses. Any amounts payable under this Section 5(c) shall be made in accordance with Treasury Regulation Section 1.409A-3(i)(1)(iv) and shall be paid on or before the last day of Executive's taxable year following the taxable year in which Executive incurred the expenses. The amounts provided under this Section 5(c) during any taxable year of Executive's will not affect such amounts provided in any other taxable year of Executive's, and Executive's right to reimbursement for such amounts shall not be subject to liquidation or exchange for any other benefit.

( d ) **Vacation.** The Executive shall be entitled to two (2) weeks paid vacation per annum; provided, that the Executive shall be paid annually in cash for vacation days not taken by him; provided that no more than four (4) weeks of vacation may be accrued each year for purposes of such cash payments; and provided further that any such payment shall be paid to the Executive not later than March 15 of the year following the calendar year in which the unused vacation days accrued.

6 . **Benefits.** Executive will be entitled during the Term to participate in any vacation, health, pension, insurance or other benefit plan that is maintained by the Company for its (or its subsidiaries') Executives and/or executives to the extent and in the manner prescribed by the applicable plan documents.

7 . **Long-term Incentives.** Executive will be eligible to receive annual long-term equity incentive awards from time to time in accordance with the terms and conditions of long-term equity incentive compensation plans and programs as in effect from time to time as approved by the Board of Directors. The Board of Directors shall have discretion to determine both the target levels and the actual grants made, and shall have discretion to change from an annual grant program to a multi-year grant program. Any long-term incentive grants shall be subject to the terms and conditions, including any vesting conditions, as determined by the Board of Directors in its sole discretion.

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8. **Termination.**

(a) **Termination without Cause; Resignation for Good Reason.** If, at any time, the Company terminates Executive's employment without Cause (as defined herein), or Executive resigns with Good Reason (as defined herein), and Executive executes and delivers to the Company a general release in favor of, and in a form satisfactory to, the Company (the "Separation Date Release"), and does not revoke the Separation Date Release during any applicable revocation period prescribed by law and the Separation Date Release becomes effective within sixty (60) days following Executive's termination date, then the Company will provide Executive with the following severance benefits:

(i) **Cash Severance.** The Company agrees that it will provide Executive with all accrued compensation, wages and benefits through the effective date of termination and in addition pay to Executive a single cash payment equal to one month's salary, less all applicable federal, state and local withholdings and payable on the date the Separation Date Release becomes effective.

(ii) **Continued Health Insurance Coverage.** To the extent provided by the federal COBRA law or, if applicable, state insurance laws, and by the Company's then-current group health insurance policies, Executive may be eligible to continue Executive's then-current group health insurance benefits after termination of Employment. If eligible and if Executive timely elects continued health insurance coverage, then the Company shall pay the Company's portion of any premiums necessary to provide coverage for a period of two (2) months after the termination date; provided, however, that no such premium payments shall be made following the effective date of Executive's coverage by a medical, dental or vision insurance plan of a subsequent employer. Executive shall notify the Company immediately if he becomes covered by a medical, dental or vision insurance plan of a subsequent employer.

(iii) **Stock Options/Equity Awards.** Executive's rights with respect to any stock options and/or other equity awards granted to the Executive by the Company shall be governed by the terms and provisions of the Plans and Plan rules, provided that the Executive shall have ninety (90) days from the Termination Date to exercise vested options, and award agreements pursuant to which such stock options and equity awards were awarded, as in effect at the Termination Date.

The amounts described in paragraph (i) shall be paid in two equal lump sum installments, subject to applicable tax withholding, with the first installment to be made within sixty (60) days following the date of Executive's Separation from Service and the second installment to be made on the first anniversary of Executive's Separation from Service. For purposes of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), Executive's right to receive the foregoing installment payments shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment shall at all times be considered a separate and distinct payment. Notwithstanding any provision to the contrary in this Agreement, no amount shall be paid pursuant to this Section 8(a) unless, on or prior to the fifty-fifth (55th) day following the date of Executive's Separation from Service, Executive has executed an effective waiver and release of claims agreement (the "Release") in form and substance acceptable to the Company and any applicable revocation period has expired.

(b) **Termination by Executive for Good Reason.** Executive may voluntarily elect to resign his employment with the Company prior to the end of the Initial Term or any Successive Term for Good Reason (as hereinafter defined). In the event of Executive's Separation from Service for Good Reason at any time during the Initial Term or any Successive Term, then, subject to the provisions of Section 9 below, Executive shall be entitled to receive the payments or benefits set forth in Section 8(a) as if such Separation from Service was as a result of Executive's termination by the Company without Cause during the Initial Term or thereafter (as applicable). "Good Reason" shall mean any of the following that are undertaken without Executive's express written consent: (i) the assignment to Executive of principal duties or responsibilities, or the substantial reduction of Executive's duties and responsibilities, either of which is materially inconsistent with Executive's position as Chief Operating Officer of the Company; (ii) a material reduction by the Company in Executive's annual Base Salary, except to the extent the salaries of other executive employees of the Company and any other controlled subsidiary of the Company are similarly reduced; (iii) Executive's principal place of business is, without his consent, relocated by a distance of more than thirty (30) miles from the center of Glendale, California; or (iv) any material breach by the Company of any provision of this Agreement. For avoidance of doubt, any notice of non-renewal provided by the Company to Executive pursuant to Section 1 of this Agreement shall not constitute or give rise to Good Reason under this Section 8(b).

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Executive must provide written notice to the Company of the occurrence of any of the foregoing events or conditions without Executive's written consent within ninety (90) days of the occurrence of such event. The Company or any surviving entity shall have a period of thirty (30) days to cure such event or condition after receipt of written notice of such event from Executive. Any Separation from Service by reason of Executive's resignation for Good Reason following such thirty (30) day cure period must occur no later than the date that is six (6) months following the initial occurrence of one of the foregoing events or conditions without Executive's written consent. Executive's Separation from Service by reason of his resignation for Good Reason shall be treated as involuntary. For avoidance of doubt, in the event Executive provides the foregoing notice to the Company prior to the expiration of the Initial Term but the ensuing cure period of the Company expires following the end of the Initial Term and during any Successive Term and (the applicable event or condition constituting or giving rise to Good Reason having not been cured by the Company during the applicable cure period) Executive subsequently resigns for Good Reason pursuant to this Section 8(b), such resignation shall be treated for all purposes of this Section 8(b) as having occurred during the Initial Term.

( c ) Termination by the Company for Cause. Subject to the thirty (30) day cure period, if applicable, set forth below in this Section 8(c), the Company may immediately terminate Executive's employment at any time for Cause by giving written notice to Executive specifying in reasonable detail the reason for such termination. Upon any such termination for Cause, Executive shall be entitled to payment of all accrued and unpaid compensation and wages, but Executive shall have no right to compensation or benefits for any period subsequent the effective date of termination. For the purposes of this Agreement, "Cause" shall mean: Executive willfully engages in an act or omission which is in bad faith and to the detriment of the Company, engages in gross misconduct, gross negligence, or willful malfeasance, in each case that causes material harm to the Company, breaches this Agreement in any material respect, habitually neglects or materially fails to perform his duties (other than any such failure resulting solely from Executive's physical or mental disability or incapacity) after a written demand for substantial performance is delivered to Executive which identifies the manner in which the Company believes that Executive has not performed Executive's duties, commits or is convicted of a felony or any crime involving moral turpitude, uses drugs or alcohol in a way that either interferes with the performance of his duties or compromises the integrity or reputation of the Company, or engages in any act of dishonesty involving the Company, disclosure of Company's confidential information not required by applicable, commercial bribery, or perpetration of fraud; provided, however, that Executive shall have at least forty-five (45) calendar days to cure, if curable, any of the events which could lead to Executive's termination for Cause.

( d ) Termination by Death or Disability. In the event that Executive dies or becomes completely disabled from performing his duties during the Initial Term or any Successive Term, the Company shall be relieved of all obligations under this Agreement, except for payment to Executive or Executive's heirs as if the Executive had been terminated without Cause in accordance with Section 8(a) herein during the Initial Term or thereafter (as applicable). For clarification purposes, the parties agree that the Company may satisfy its obligations pursuant to this Section 8(d) through life and/or disability insurance coverage with respect to Executive.

( e ) Termination by Executive without Good Reason. Executive may terminate his employment under this Agreement without Good Reason at any time by giving written notice to the Company. Such termination will become effective upon the date specified in such notice, provided that such date is at least ninety (90) calendar days after the date of delivery of the notice. Upon any such termination, the Company shall be relieved of all of its obligations under this Agreement, except for payment of all accrued compensation and wages and the provision of benefits through the effective date of termination, and the Company may, in its sole discretion, cause the termination to become effective sooner than such ninety (90) day notice period.

( f ) Notice of Non-Renewal. For the avoidance of doubt, any notice of nonrenewal of a Successive Term provided by the Company pursuant to Section 1 of this Agreement shall constitute termination of Executive by the Company without Cause during a Successive Term.

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9. **Limitations on Payment.**

( a ) **Payment Delay.** Notwithstanding anything herein to the contrary, to the extent any payments to Executive pursuant to Section 8 are treated as non-qualified deferred compensation subject to Section 409A of the Code, then (i) no amount shall be payable pursuant to such section unless Executive's termination of employment constitutes a "separation from service" with the Company (as such term is defined in Treasury Regulation Section 1.409A-1(h) and any successor provision thereto) (a "Separation from Service"), (ii) if any of the amounts described in Sections 8(a)(i)-(ii) above constitute non-qualified deferred compensation subject to Section 409A of the Code then any such amounts that become payable hereunder shall in all cases be paid in two installment payments pursuant to the terms described in the last paragraph of Section 8(a), provided that the first lump-sum payment shall be paid on the 60th day following Executive's Separation from Service subject to clause (iii) of this Section 9(a) and (iii) if Executive, at the time of his Separation from Service, is determined by the Company to be a "specified Executive" for purposes of Section 409A(a)(2)(B)(i) of the Code and the Company determines that delayed commencement of any portion of the termination benefits payable to Executive pursuant to this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(1) of the Code (any such delayed commencement, a "Payment Delay"), then such portion of Executive's termination benefits described in Section 8 shall not be provided to Executive prior to the earlier of (A) the expiration of the six-month period measured from the date of Executive's Separation from Service, (B) the date of Executive's death or (C) such earlier date as is permitted under Section 409A. Upon the expiration of the applicable Code Section 409A(a)(2)(B)(i) deferral period, all payments deferred pursuant to a Payment Delay shall be paid in a lump sum to Executive within thirty (30) days following such expiration, and any remaining payments due under the Agreement shall be paid as otherwise provided herein. The determination of whether Executive is a "specified Executive" for purposes of Section 409A(a)(2)(B)(i) of the Code as of the time of his Separation from Service shall be made by the Company in accordance with the terms of Section 409A of the Code and applicable guidance thereunder (including without limitation Treasury Regulation Section 1.409A-1(i) and any successor provision thereto).

( b ) **Exceptions to Payment Delay.** Notwithstanding Section 9(a), to the maximum extent permitted by applicable law, amounts payable to Executive pursuant to Section 8 shall be made in reliance upon Treasury Regulation Section 1.409A-1(b)(9) (with respect to separation pay plans) or Treasury Regulation Section 1.409A-1(b)(4) (with respect to short-term deferrals). Accordingly, the severance payments provided for in Section 8 may not be intended to provide for any deferral of compensation subject to Section 409A of the Code to the extent (i) the severance payments payable pursuant to Section 8, by their terms and determined as of the date of Executive's Separation from Service, may not be made later than the fifteenth (15th) day of the third calendar month following the later of (A) the end of the Company's fiscal year in which Executive's Separation from Service occurs or (B) the end of the calendar year in which Executive's Separation from Service occurs, or (ii) (A) such severance payments do not exceed an amount equal to two times the lesser of (1) the amount of Executive's annualized compensation based upon Executive's annual rate of pay for the calendar year immediately preceding the calendar year in which Executive's Separation from Service occurs (adjusted for any increase during the calendar year in which such Separation from Service occurs that would be expected to continue indefinitely had Executive remained employed with the Company) or (2) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) for the calendar year in which Executive's Separation from Service occurs, and (B) such severance payments shall be completed no later than December 31 of the second calendar year following the calendar year in which Executive's Separation from Service occurs. Moreover, the COBRA premium payments contemplated under Section 8 are intended to be exempt from Section 409A of the Code pursuant to Treasury Regulation Section 1.409A-1(b)(9)(v) as direct service recipient payments for medical benefits.

( c ) **Interpretation.** To the extent the payments and benefits under this Agreement are subject to Section 409A of the Code, this Agreement shall be interpreted, construed and administered in a manner that satisfies the requirements of Sections 409A(a)(2), (3) and (4) of the Code and the Treasury Regulations thereunder (and any applicable transition relief under Section 409A of the Code).

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(d) Parachute Payments. Notwithstanding anything contained in this Agreement to the contrary, to the extent that payments and benefits provided under this Agreement or otherwise (including the acceleration of vesting of equity awards) to Executive (such payments or benefits are collectively referred to as the "Payments") would be subject to the excise tax (the "Excise Tax") imposed under Section 4999 of the Code, the Payments shall be reduced (but not below zero) to the extent necessary so that no Payment to be made or benefit to be provided to Executive shall be subject to the Excise Tax, but only if, by reason of such reduction, the net after-tax benefit received by Executive shall exceed the net after-tax benefit received by him if no such reduction was made. For purposes of this Section 9(d), "net after-tax benefit" shall mean (i) the Payments which Executive receives or is then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income taxes payable with respect to the foregoing calculated at the maximum marginal income tax rate for each year in which the foregoing shall be paid to Executive (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of excise taxes imposed with respect to the payments and benefits described in (i) above by Section 4999 of the Code. The foregoing determination will be made by a nationally recognized accounting firm (the "Accounting Firm") selected by Executive and reasonably acceptable to the Company (which may be, but will not be required to be, the Company's independent auditors). The Company will direct the Accounting Firm to submit its determination and detailed supporting calculations to both the affected Executive and the Company within fifteen (15) calendar days after Executive's date of Separation from Service. If the Accounting Firm determines that such reduction is required by this Section 9(d) and no Payment constitutes non-qualified deferred compensation that is subject to Section 409A of the Code, Executive, in Executive's sole and absolute discretion, may determine which Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code, and the Company shall pay such reduced amount to him. If the Accounting Firm determines that a reduction is required by this Section 9(d), and any Payment constitutes a "deferral of compensation" within the meaning of Section 409A of the Code, then the Payments shall be reduced in the following order; (a) reduction in the cash severance payments described herein (with such reduction being applied to the payments in the reverse order in which they would otherwise be made, that is, later payments shall be reduced before earlier payments); (b) reduction in any other cash payments payable to Executive (with such reduction being applied to the payments in the reverse order in which they would otherwise be made, that is, later payments shall be reduced before earlier payments); (c) cancellation of acceleration of vesting on any equity awards for which the exercise price exceeds the then fair market value of the underlying equity; and (d) cancellation of acceleration of vesting of equity awards not covered under (c) above; provided, however that in the event that acceleration of vesting of equity awards is to be cancelled, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of such equity awards, that is, later equity awards shall be canceled before earlier equity awards.

10. Arbitration. Executive and the Company agree to submit any and all disputes, controversies, or claims between them based upon, relating to, or arising from Executive's employment by the Company or the terms of this Agreement (other than workers' compensation claims) to final and binding arbitration before a single neutral arbitrator in Los Angeles, California. Subject to the terms of this paragraph, the arbitration proceedings shall be initiated in accordance with, and governed by, the National Rules for the Resolution of Employment Disputes ("Rules") of the American Arbitration Association ("AAA"). The arbitrator shall be appointed by agreement of the parties hereto or, if no agreement can be reached, by the AAA pursuant to its Rules. Notwithstanding the Rules, the parties may take discovery in accordance with Sections 1283.05(a)-(d) of the California Code of Civil Procedure (but not subject to the restrictions of Section 1283.05(e)), and prior to the arbitration hearing the parties may file, and the arbitrator shall rule on, pre-trial motions such as demurrers and motions for summary judgment (applying the procedural standard embodied in Rule 56 of the Federal Rules of Civil Procedure). The time for filing such motions shall be determined by the arbitrator. The arbitrator will rule on all pre-trial motions at least ten (10) business days prior to the scheduled hearing date. Arbitration may be compelled, the arbitration award shall be enforced, and judgment thereon shall be entered, pursuant to the California Arbitration Act (Code of Civil Procedure §§ 1280 et seq.). The prevailing party in any such arbitration shall be entitled to recover from the other, and the arbitrator is instructed to award to the prevailing party, an amount equal to the reasonable attorneys' fees and costs (including expert witness fees) incurred in connection with the arbitration, except that the Company shall bear AAA's administrative fees and the arbitrator's fees and costs. If any party is required to compel arbitration of a dispute governed by this paragraph, the party prevailing in that proceeding shall be entitled to recover from the other party its reasonable costs and attorneys' fees and expenses incurred to compel arbitration; provided, however, that the prevailing party shall be reimbursed for such fees, costs and expenses within forty-five (45) days following any such award, but in no event later than the last day of Executive's taxable year following the taxable year in which the fees, costs and expenses were incurred; provided, further, that the parties' obligations pursuant to this sentence shall terminate on the tenth (10th) anniversary of the date of Executive's termination of employment. This paragraph is intended to be the exclusive method for resolving any and all claims by the parties against each other for payment of damages under this Agreement or relating to Executive's employment; provided, however, that neither this Agreement nor the submission to arbitration shall limit the parties' right to seek provisional relief, including without limitation injunctive relief, in any court of competent jurisdiction. Executive and the Company expressly waive their right to a jury trial. This paragraph shall survive the expiration or termination of this Agreement. If any part of this paragraph is found to be void as a matter of law or public policy, the remainder of the paragraph will continue to be in full force and effect.

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11. **Miscellaneous.**

(a) **Assignment.** The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon their respective successors and assigns. Executive agrees that the Company may assign its rights and obligations under this Agreement to any successor-in-interest. Executive may assign his rights and obligations hereunder only with the express written consent of the Company, except that the rights under this Agreement shall inure to the benefit of Executive's heirs or assigns in the event of his death. Except as expressly provided in this paragraph, no party may assign its/his rights and obligations hereunder; and any attempt to do so will be void.

(b) **Severability.** If any provision of this Agreement otherwise is deemed to be invalid or unenforceable or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision, such provision shall be replaced by a provision that is valid and enforceable and that as closely as possible reflects the parties' intent with respect to such provision and such provision shall be inoperative in such state or jurisdiction and shall not be part of the consideration moving from any of the parties to any other. The remaining provisions of this Agreement shall be valid and binding and of like effect as though such provision was not included.

(c) **Notice.** Notices given pursuant to the provisions of this Agreement shall be delivered personally or sent by certified mail, postage pre-paid, or by overnight courier, or by fax, if to the Company, to the Company's then-current business address or, in the event the notice is to Executive, to the address that Executive has represented to the Company as current.

(d) **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to the conflict of laws rules thereof.

(e) **Waiver, Amendment.** The waiver by any party to this Agreement of a breach of any provision hereof by any other party shall not be construed as a waiver of any subsequent breach. No provision of this Agreement may be terminated, amended, supplemented, waived or modified other than by an instrument in writing, signed by the party against whom the enforcement of the termination, amendment, supplement, waiver or modification is sought. If Executive and the Company determine that any payments or benefits payable under this Agreement intended to comply with Sections 409A(a)(2), (3) and (4) of the Code do not comply with Section 409A of the Code, the parties agree to amend this Agreement, or take such other actions as the parties deem reasonably necessary or appropriate, to comply with the requirements of Section 409A of the Code, the Treasury Regulations thereunder (and any applicable transition relief) while preserving the economic agreement of the parties. If any provision of the Agreement would cause such payments or benefits to fail to so comply, such provision shall not be effective and shall be null and void with respect to such payments or benefits, and such provision shall otherwise remain in full force and effect.

(f) **Entire Agreement.** This Agreement represents the entire agreement among the parties with respect to the subject matter of this Agreement and supersedes any previous agreement or understanding.

(g) **Execution in Counterparts.** This Agreement may be executed in counterparts with the same force and effectiveness as though executed as a single document.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first written above.

**TOUGHBUILT INDUSTRIES, INC.**

By: \_\_\_\_\_

Name: Michael Panosian

Title: CFO & President

**EXECUTIVE**

\_\_\_\_\_  
Zareh Khachatoorian

**EXHIBIT A**  
**EMPLOYEE NON-DISCLOSURE, NON-SOLICITATION AND INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT**  
[ATTACHED]

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**EMPLOYMENT AGREEMENT**

This Employment Agreement (this "Agreement"), dated as of January 3, 2017, but effective as of January 1, 2017, is entered into between ToughBuilt Industries, Inc., a Nevada corporation (the "Company"), and Manu Ohri ("Executive").

**WHEREAS**, Executive is the Chief Financial Officer of the Company, and

**WHEREAS**, the Company desires to employ and retain the services of Executive, and Executive wishes to be employed by the Company, on the terms set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants set forth in this Agreement, the undersigned agree as follows:

1. **Term of Employment**. Subject to the termination provisions hereinafter set forth, the Company will employ Executive, and Executive accepts employment with the Company, for a period of three years from the date of this Agreement (the "Initial Term"). The Initial Term shall be automatically renewed for successive one year periods ("Successive Terms") unless either party gives ninety (90) calendar days written notice of nonrenewal prior to the expiration of the then-current term (the Initial Term and any Successive Term are jointly referred to herein as the "Term"). Notwithstanding the above, or anything else provided herein, Executive shall be an at-will Executive, serving at the pleasure and direction of the Board of Directors (as defined below). Accordingly, either party may terminate the employment relationship at any time for any reason, subject, however, to the notice and any payment requirements set forth herein.

2. **Duties**. During the Term, Executive will serve as Chief Financial Officer of the Company, reporting to the Company's Chief Executive Officer. Executive will discharge such duties and responsibilities as are customary for such position or are prescribed from time to time by the Company. Executive will devote his full time and attention to the affairs of the Company and will not enter the employ of or serve as a consultant to, or in any way perform any services for, with or without compensation, any other person, business or organization without the prior approval of the CEO, which will not unreasonably be withheld. In no event may any such service be inconsistent with, or prevent Executive from carrying out, his duties under this Agreement, as determined at the sole discretion of the CEO. During the Term, Executive shall serve as a member of the Board of Directors of the Company, subject to the conditions and requirements set forth in the Company's bylaws, as applicable, including but not limited to shareholder approval.

3. **Maintaining Confidential Information/Property Rights**. Executive agrees to sign and abide by all Company's policies regarding confidential information and ethics including, but not limited to the Employee Non-Disclosure, Non-Solicitation and Intellectual Property Assignment Agreement, as attached hereto as Exhibit A.

4. **Non-Competition; Non-Solicitation**. During the Term the Executive shall not, directly or indirectly:

(a) whether as an officer, director, employee, stockholder, partner, proprietor, associate, representative, consultant, contractor, or in any other capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever that competes with the Company or its Affiliates, anywhere in the United States, Europe, South America and Asia, in any line of business engaged in (or planned to be engaged in) by the Company or its Affiliates, however, that such restriction shall not apply to Executive's ownership of any passive investment representing an interest of less than five percent (5%) of an outstanding class of publicly traded securities; or

(b) recruit, encourage or solicit any person who is an Executive or contractor of the Company or any entity affiliated with the Company (each, an "Affiliated Entity") to leave the Company's or Affiliated Entity's employ or service for any reason, or interfere in any material manner with employment or service relationships at the time existing between the Company or Affiliated Entity and the subject Executive or contractor (except as may be required in any bona fide termination decision during the Term regarding any Company or Affiliated Entity Executive) in order to induce such Executive or contractor of the Company or any Affiliated Entity to accept other employment or a consulting agreement with any other person or entity.

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Executive acknowledges that the services that he shall provide to the Company under this Agreement are unique and that irreparable harm shall be suffered by the Company in the event of the breach by Executive of any of his obligations under this Section 4, and that the Company shall be entitled, in addition to its other rights and remedies, whether legal or equitable, to enforce such obligations by an injunction or decree of specific performance. If any restriction set forth in this non-competition section is found by a court to be unreasonable, then Executive agrees, and hereby submits, to the reduction and limitation of such prohibition to such area or period as shall be deemed reasonable by such court. In addition, if Executive breaches this Section 4 at any time after the Term, the Company's obligation to continue to make payments to Executive pursuant to Sections 8(a) or (b) shall cease immediately.

5. **Salary and Incentives.**

( a ) **Salary.** During the Term, the Company will pay Executive an annual salary of \$250,000 (the "Base Salary"), subject to applicable tax withholding and payable in accordance with the Company's normal payroll practices; provided that Executive's Base Salary may be reduced to the extent that Executive elects to defer any portion thereof under the terms of any deferred compensation or savings plan maintained by the Company. During the Term, the Board of Directors shall review Executive's Base Salary on an annual basis and, in its discretion, may award merit increases of Executive's Base Salary in accordance with the Company's policy. In addition to the eligibility for consideration of merit-based increases in the discretion of the Board of Directors, Executive's Base-Salary will be increased effective January 1, of each year during the Term (commencing January 1, 2018) by ten percent (10%).

( b ) **Incentive Payments.** Executive will be eligible to receive incentive bonus payments from time to time in accordance with any incentive bonus program of the Company that may then be in effect and will be eligible to receive an annual cash incentive bonus under any such program upon the achievement of targets and other objectives for each fiscal year as may be approved annually on behalf of the Company by the Board of Directors (the "Annual Bonus"). Such a program will be administered on the Company's fiscal year basis. In the event that an incentive payment is earned by Executive under such a program for any fiscal year, such payment shall be made to Executive in a lump sum all-cash amount within sixty (60) days following the date the Company determines the amount (if any) of the Annual Bonus, provided that Executive has remained continuously employed in the Company's service through the date the Company determines the amount of the Annual Bonus.

( c ) **Expenses.** The Company will reimburse Executive for all reasonable travel, entertainment and miscellaneous expenses actually and necessarily incurred in connection with the performance of his duties under this Agreement, provided that Executive's expenses are in accordance with the Company's current practices and that Executive properly accounts for such expenses. Any amounts payable under this Section 5(c) shall be made in accordance with Treasury Regulation Section 1.409A-3(i)(1)(iv) and shall be paid on or before the last day of Executive's taxable year following the taxable year in which Executive incurred the expenses. The amounts provided under this Section 5(c) during any taxable year of Executive's will not affect such amounts provided in any other taxable year of Executive's, and Executive's right to reimbursement for such amounts shall not be subject to liquidation or exchange for any other benefit.

( d ) **Vacation.** The Executive shall be entitled to three (3) weeks paid vacation per annum; provided, that the Executive shall be paid annually in cash for vacation days not taken by him; provided that no more than four (4) weeks of vacation may be accrued each year for purposes of such cash payments; and provided further that any such payment shall be paid to the Executive not later than March 15 of the year following the calendar year in which the unused vacation days accrued.

6 . **Benefits.** Executive will be entitled during the Term to participate in any vacation, health, pension, insurance or other benefit plan that is maintained by the Company for its (or its subsidiaries') Executives and/or executives to the extent and in the manner prescribed by the applicable plan documents.

7. **Long-term Incentives.** Executive will be eligible to receive annual long-term equity incentive awards from time to time in accordance with the terms and conditions of long-term equity incentive compensation plans and programs as in effect from time to time as approved by the Board of Directors. The Board of Directors shall have discretion to determine both the target levels and the actual grants made, and shall have discretion to change from an annual grant program to a multi-year grant program. Any long-term incentive grants shall be subject to the terms and conditions, including any vesting conditions, as determined by the Board of Directors in its sole discretion.

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8. **Termination.**

(a) **Termination without Cause; Resignation for Good Reason.** If, at any time, the Company terminates Executive's employment without Cause (as defined herein), or Executive resigns with Good Reason (as defined herein), and Executive executes and delivers to the Company a general release in favor of, and in a form satisfactory to, the Company (the "Separation Date Release"), and does not revoke the Separation Date Release during any applicable revocation period prescribed by law and the Separation Date Release becomes effective within sixty (60) days following Executive's termination date, then the Company will provide Executive with the following severance benefits:

(i) **Cash Severance.** The Company agrees that it will provide Executive with all accrued compensation, wages and benefits through the effective date of termination and in addition pay to Executive a single cash payment equal to one month's salary, less all applicable federal, state and local withholdings and payable on the date the Separation Date Release becomes effective.

(ii) **Continued Health Insurance Coverage.** To the extent provided by the federal COBRA law or, if applicable, state insurance laws, and by the Company's then-current group health insurance policies, Executive may be eligible to continue Executive's then-current group health insurance benefits after termination of Employment. If eligible and if Executive timely elects continued health insurance coverage, then the Company shall pay the Company's portion of any premiums necessary to provide coverage for a period of two (2) months after the termination date; provided, however, that no such premium payments shall be made following the effective date of Executive's coverage by a medical, dental or vision insurance plan of a subsequent employer. Executive shall notify the Company immediately if he becomes covered by a medical, dental or vision insurance plan of a subsequent employer.

(iii) **Stock Options/Equity Awards.** Executive's rights with respect to any stock options and/or other equity awards granted to the Executive by the Company shall be governed by the terms and provisions of the Plans and Plan rules, provided that the Executive shall have ninety (90) days from the Termination Date to exercise vested options, and award agreements pursuant to which such stock options and equity awards were awarded, as in effect at the Termination Date.

The amounts described in paragraph (i) shall be paid in two equal lump sum installments, subject to applicable tax withholding, with the first installment to be made within sixty (60) days following the date of Executive's Separation from Service and the second installment to be made on the first anniversary of Executive's Separation from Service. For purposes of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), Executive's right to receive the foregoing installment payments shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment shall at all times be considered a separate and distinct payment. Notwithstanding any provision to the contrary in this Agreement, no amount shall be paid pursuant to this Section 8(a) unless, on or prior to the fifty-fifth (55th) day following the date of Executive's Separation from Service, Executive has executed an effective waiver and release of claims agreement (the "Release") in form and substance acceptable to the Company and any applicable revocation period has expired.

(b) **Termination by Executive for Good Reason.** Executive may voluntarily elect to resign his employment with the Company prior to the end of the Initial Term or any Successive Term for Good Reason (as hereinafter defined). In the event of Executive's Separation from Service for Good Reason at any time during the Initial Term or any Successive Term, then, subject to the provisions of Section 9 below, Executive shall be entitled to receive the payments or benefits set forth in Section 8(a) as if such Separation from Service was as a result of Executive's termination by the Company without Cause during the Initial Term or thereafter (as applicable). "Good Reason" shall mean any of the following that are undertaken without Executive's express written consent: (i) the assignment to Executive of principal duties or responsibilities, or the substantial reduction of Executive's duties and responsibilities, either of which is materially inconsistent with Executive's position as Chief Financial Officer of the Company; (ii) a material reduction by the Company in Executive's annual Base Salary, except to the extent the salaries of other executive employees of the Company and any other controlled subsidiary of the Company are similarly reduced; (iii) Executive's principal place of business is, without his consent, relocated by a distance of more than thirty (30) miles from the center of Glendale, California; or (iv) any material breach by the Company of any provision of this Agreement. For avoidance of doubt, any notice of non-renewal provided by the Company to Executive pursuant to Section 1 of this Agreement shall not constitute or give rise to Good Reason under this Section 8(b).

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Executive must provide written notice to the Company of the occurrence of any of the foregoing events or conditions without Executive's written consent within ninety (90) days of the occurrence of such event. The Company or any surviving entity shall have a period of thirty (30) days to cure such event or condition after receipt of written notice of such event from Executive. Any Separation from Service by reason of Executive's resignation for Good Reason following such thirty (30) day cure period must occur no later than the date that is six (6) months following the initial occurrence of one of the foregoing events or conditions without Executive's written consent. Executive's Separation from Service by reason of his resignation for Good Reason shall be treated as involuntary. For avoidance of doubt, in the event Executive provides the foregoing notice to the Company prior to the expiration of the Initial Term but the ensuing cure period of the Company expires following the end of the Initial Term and during any Successive Term and (the applicable event or condition constituting or giving rise to Good Reason having not been cured by the Company during the applicable cure period) Executive subsequently resigns for Good Reason pursuant to this Section 8(b), such resignation shall be treated for all purposes of this Section 8(b) as having occurred during the Initial Term.

(c) Termination by the Company for Cause. Subject to the thirty (30) day cure period, if applicable, set forth below in this Section 8(c), the Company may immediately terminate Executive's employment at any time for Cause by giving written notice to Executive specifying in reasonable detail the reason for such termination. Upon any such termination for Cause, Executive shall be entitled to payment of all accrued and unpaid compensation and wages, but Executive shall have no right to compensation or benefits for any period subsequent the effective date of termination. For the purposes of this Agreement, "Cause" shall mean: Executive willfully engages in an act or omission which is in bad faith and to the detriment of the Company, engages in gross misconduct, gross negligence, or willful malfeasance, in each case that causes material harm to the Company, breaches this Agreement in any material respect, habitually neglects or materially fails to perform his duties (other than any such failure resulting solely from Executive's physical or mental disability or incapacity) after a written demand for substantial performance is delivered to Executive which identifies the manner in which the Company believes that Executive has not performed Executive's duties, commits or is convicted of a felony or any crime involving moral turpitude, uses drugs or alcohol in a way that either interferes with the performance of his duties or compromises the integrity or reputation of the Company, or engages in any act of dishonesty involving the Company, disclosure of Company's confidential information not required by applicable, commercial bribery, or perpetration of fraud; provided, however, that Executive shall have at least forty-five (45) calendar days to cure, if curable, any of the events which could lead to Executive's termination for Cause.

( d ) Termination by Death or Disability. In the event that Executive dies or becomes completely disabled from performing his duties during the Initial Term or any Successive Term, the Company shall be relieved of all obligations under this Agreement, except for payment to Executive or Executive's heirs as if the Executive had been terminated without Cause in accordance with Section 8(a) herein during the Initial Term or thereafter (as applicable). For clarification purposes, the parties agree that the Company may satisfy its obligations pursuant to this Section 8(d) through life and/or disability insurance coverage with respect to Executive.

( e ) Termination by Executive without Good Reason. Executive may terminate his employment under this Agreement without Good Reason at any time by giving written notice to the Company. Such termination will become effective upon the date specified in such notice, provided that such date is at least ninety (90) calendar days after the date of delivery of the notice. Upon any such termination, the Company shall be relieved of all of its obligations under this Agreement, except for payment of all accrued compensation and wages and the provision of benefits through the effective date of termination, and the Company may, in its sole discretion, cause the termination to become effective sooner than such ninety (90) day notice period.

(f) Notice of Non-Renewal. For the avoidance of doubt, any notice of nonrenewal of a Successive Term provided by the Company pursuant to Section 1 of this Agreement shall constitute termination of Executive by the Company without Cause during a Successive Term.

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9. **Limitations on Payment.**

( a ) **Payment Delay.** Notwithstanding anything herein to the contrary, to the extent any payments to Executive pursuant to Section 8 are treated as non-qualified deferred compensation subject to Section 409A of the Code, then (i) no amount shall be payable pursuant to such section unless Executive's termination of employment constitutes a "separation from service" with the Company (as such term is defined in Treasury Regulation Section 1.409A-1(h) and any successor provision thereto) (a "Separation from Service"), (ii) if any of the amounts described in Sections 8(a)(i)-(ii) above constitute non-qualified deferred compensation subject to Section 409A of the Code then any such amounts that become payable hereunder shall in all cases be paid in two installment payments pursuant to the terms described in the last paragraph of Section 8(a), provided that the first lump-sum payment shall be paid on the 60th day following Executive's Separation from Service subject to clause (iii) of this Section 9(a) and (iii) if Executive, at the time of his Separation from Service, is determined by the Company to be a "specified Executive" for purposes of Section 409A(a)(2)(B)(i) of the Code and the Company determines that delayed commencement of any portion of the termination benefits payable to Executive pursuant to this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(1) of the Code (any such delayed commencement, a "Payment Delay"), then such portion of Executive's termination benefits described in Section 8 shall not be provided to Executive prior to the earlier of (A) the expiration of the six-month period measured from the date of Executive's Separation from Service, (B) the date of Executive's death or (C) such earlier date as is permitted under Section 409A. Upon the expiration of the applicable Code Section 409A(a)(2)(B)(i) deferral period, all payments deferred pursuant to a Payment Delay shall be paid in a lump sum to Executive within thirty (30) days following such expiration, and any remaining payments due under the Agreement shall be paid as otherwise provided herein. The determination of whether Executive is a "specified Executive" for purposes of Section 409A(a)(2)(B)(i) of the Code as of the time of his Separation from Service shall be made by the Company in accordance with the terms of Section 409A of the Code and applicable guidance thereunder (including without limitation Treasury Regulation Section 1.409A-1(i) and any successor provision thereto).

( b ) **Exceptions to Payment Delay.** Notwithstanding Section 9(a), to the maximum extent permitted by applicable law, amounts payable to Executive pursuant to Section 8 shall be made in reliance upon Treasury Regulation Section 1.409A-1(b)(9) (with respect to separation pay plans) or Treasury Regulation Section 1.409A-1(b)(4) (with respect to short-term deferrals). Accordingly, the severance payments provided for in Section 8 may not be intended to provide for any deferral of compensation subject to Section 409A of the Code to the extent (i) the severance payments payable pursuant to Section 8, by their terms and determined as of the date of Executive's Separation from Service, may not be made later than the fifteenth (15th) day of the third calendar month following the later of (A) the end of the Company's fiscal year in which Executive's Separation from Service occurs or (B) the end of the calendar year in which Executive's Separation from Service occurs, or (ii) (A) such severance payments do not exceed an amount equal to two times the lesser of (1) the amount of Executive's annualized compensation based upon Executive's annual rate of pay for the calendar year immediately preceding the calendar year in which Executive's Separation from Service occurs (adjusted for any increase during the calendar year in which such Separation from Service occurs that would be expected to continue indefinitely had Executive remained employed with the Company) or (2) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) for the calendar year in which Executive's Separation from Service occurs, and (B) such severance payments shall be completed no later than December 31 of the second calendar year following the calendar year in which Executive's Separation from Service occurs. Moreover, the COBRA premium payments contemplated under Section 8 are intended to be exempt from Section 409A of the Code pursuant to Treasury Regulation Section 1.409A-1(b)(9)(v) as direct service recipient payments for medical benefits.

( c ) **Interpretation.** To the extent the payments and benefits under this Agreement are subject to Section 409A of the Code, this Agreement shall be interpreted, construed and administered in a manner that satisfies the requirements of Sections 409A(a)(2), (3) and (4) of the Code and the Treasury Regulations thereunder (and any applicable transition relief under Section 409A of the Code).

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(d) Parachute Payments. Notwithstanding anything contained in this Agreement to the contrary, to the extent that payments and benefits provided under this Agreement or otherwise (including the acceleration of vesting of equity awards) to Executive (such payments or benefits are collectively referred to as the "Payments") would be subject to the excise tax (the "Excise Tax") imposed under Section 4999 of the Code, the Payments shall be reduced (but not below zero) to the extent necessary so that no Payment to be made or benefit to be provided to Executive shall be subject to the Excise Tax, but only if, by reason of such reduction, the net after-tax benefit received by Executive shall exceed the net after-tax benefit received by him if no such reduction was made. For purposes of this Section 9(d), "net after-tax benefit" shall mean (i) the Payments which Executive receives or is then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income taxes payable with respect to the foregoing calculated at the maximum marginal income tax rate for each year in which the foregoing shall be paid to Executive (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of excise taxes imposed with respect to the payments and benefits described in (i) above by Section 4999 of the Code. The foregoing determination will be made by a nationally recognized accounting firm (the "Accounting Firm") selected by Executive and reasonably acceptable to the Company (which may be, but will not be required to be, the Company's independent auditors). The Company will direct the Accounting Firm to submit its determination and detailed supporting calculations to both the affected Executive and the Company within fifteen (15) calendar days after Executive's date of Separation from Service. If the Accounting Firm determines that such reduction is required by this Section 9(d) and no Payment constitutes non-qualified deferred compensation that is subject to Section 409A of the Code, Executive, in Executive's sole and absolute discretion, may determine which Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code, and the Company shall pay such reduced amount to him. If the Accounting Firm determines that a reduction is required by this Section 9(d), and any Payment constitutes a "deferral of compensation" within the meaning of Section 409A of the Code, then the Payments shall be reduced in the following order; (a) reduction in the cash severance payments described herein (with such reduction being applied to the payments in the reverse order in which they would otherwise be made, that is, later payments shall be reduced before earlier payments); (b) reduction in any other cash payments payable to Executive (with such reduction being applied to the payments in the reverse order in which they would otherwise be made, that is, later payments shall be reduced before earlier payments); (c) cancellation of acceleration of vesting on any equity awards for which the exercise price exceeds the then fair market value of the underlying equity; and (d) cancellation of acceleration of vesting of equity awards not covered under (c) above; provided, however that in the event that acceleration of vesting of equity awards is to be cancelled, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of such equity awards, that is, later equity awards shall be canceled before earlier equity awards.

10. Arbitration. Executive and the Company agree to submit any and all disputes, controversies, or claims between them based upon, relating to, or arising from Executive's employment by the Company or the terms of this Agreement (other than workers' compensation claims) to final and binding arbitration before a single neutral arbitrator in Los Angeles, California. Subject to the terms of this paragraph, the arbitration proceedings shall be initiated in accordance with, and governed by, the National Rules for the Resolution of Employment Disputes ("Rules") of the American Arbitration Association ("AAA"). The arbitrator shall be appointed by agreement of the parties hereto or, if no agreement can be reached, by the AAA pursuant to its Rules. Notwithstanding the Rules, the parties may take discovery in accordance with Sections 1283.05(a)-(d) of the California Code of Civil Procedure (but not subject to the restrictions of Section 1283.05(e)), and prior to the arbitration hearing the parties may file, and the arbitrator shall rule on, pre-trial motions such as demurrers and motions for summary judgment (applying the procedural standard embodied in Rule 56 of the Federal Rules of Civil Procedure). The time for filing such motions shall be determined by the arbitrator. The arbitrator will rule on all pre-trial motions at least ten (10) business days prior to the scheduled hearing date. Arbitration may be compelled, the arbitration award shall be enforced, and judgment thereon shall be entered, pursuant to the California Arbitration Act (Code of Civil Procedure §§ 1280 et seq.). The prevailing party in any such arbitration shall be entitled to recover from the other, and the arbitrator is instructed to award to the prevailing party, an amount equal to the reasonable attorneys' fees and costs (including expert witness fees) incurred in connection with the arbitration, except that the Company shall bear AAA's administrative fees and the arbitrator's fees and costs. If any party is required to compel arbitration of a dispute governed by this paragraph, the party prevailing in that proceeding shall be entitled to recover from the other party its reasonable costs and attorneys' fees and expenses incurred to compel arbitration; provided, however, that the prevailing party shall be reimbursed for such fees, costs and expenses within forty-five (45) days following any such award, but in no event later than the last day of Executive's taxable year following the taxable year in which the fees, costs and expenses were incurred; provided, further, that the parties' obligations pursuant to this sentence shall terminate on the tenth (10th) anniversary of the date of Executive's termination of employment. This paragraph is intended to be the exclusive method for resolving any and all claims by the parties against each other for payment of damages under this Agreement or relating to Executive's employment; provided, however, that neither this Agreement nor the submission to arbitration shall limit the parties' right to seek provisional relief, including without limitation injunctive relief, in any court of competent jurisdiction. Executive and the Company expressly waive their right to a jury trial. This paragraph shall survive the expiration or termination of this Agreement. If any part of this paragraph is found to be void as a matter of law or public policy, the remainder of the paragraph will continue to be in full force and effect.

11. Miscellaneous.

(a) Assignment. The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon their respective successors and assigns. Executive agrees that the Company may assign its rights and obligations under this Agreement to any successor-in-interest. Executive may assign his rights and obligations hereunder only with the express written consent of the Company, except that the rights under this Agreement shall inure to the benefit of Executive's heirs or assigns in the event of his death. Except as expressly provided in this paragraph, no party may assign its/his rights and obligations hereunder; and any attempt to do so will be void.

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( b )      Severability. If any provision of this Agreement otherwise is deemed to be invalid or unenforceable or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision, such provision shall be replaced by a provision that is valid and enforceable and that as closely as possible reflects the parties' intent with respect to such provision and such provision shall be inoperative in such state or jurisdiction and shall not be part of the consideration moving from any of the parties to any other. The remaining provisions of this Agreement shall be valid and binding and of like effect as though such provision was not included.

( c )      Notice. Notices given pursuant to the provisions of this Agreement shall be delivered personally or sent by certified mail, postage pre-paid, or by overnight courier, or by fax, if to the Company, to the Company's then-current business address or, in the event the notice is to Executive, to the address that Executive has represented to the Company as current.

(d)      Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to the conflict of laws rules thereof.

( e )      Waiver, Amendment. The waiver by any party to this Agreement of a breach of any provision hereof by any other party shall not be construed as a waiver of any subsequent breach. No provision of this Agreement may be terminated, amended, supplemented, waived or modified other than by an instrument in writing, signed by the party against whom the enforcement of the termination, amendment, supplement, waiver or modification is sought. If Executive and the Company determine that any payments or benefits payable under this Agreement intended to comply with Sections 409A(a)(2), (3) and (4) of the Code do not comply with Section 409A of the Code, the parties agree to amend this Agreement, or take such other actions as the parties deem reasonably necessary or appropriate, to comply with the requirements of Section 409A of the Code, the Treasury Regulations thereunder (and any applicable transition relief) while preserving the economic agreement of the parties. If any provision of the Agreement would cause such payments or benefits to fail to so comply, such provision shall not be effective and shall be null and void with respect to such payments or benefits, and such provision shall otherwise remain in full force and effect.

(f)      Entire Agreement. This Agreement represents the entire agreement among the parties with respect to the subject matter of this Agreement and supersedes any previous agreement or understanding.

( g )      Execution in Counterparts. This Agreement may be executed in counterparts with the same force and effectiveness as though executed as a single document.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the day and year first written above.

**TOUGHBUILT INDUSTRIES, INC.**

By: \_\_\_\_\_  
Name: Michael Panosian  
Title: CEO & President

**EXECUTIVE**

\_\_\_\_\_  
Manu Ohri

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**EXHIBIT A**  
**EMPLOYEE NON-DISCLOSURE, NON-SOLICITATION AND INTELLECTUAL PROPERTY**  
**ASSIGNMENT AGREEMENT**

[ATTACHED]

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**EMPLOYMENT AGREEMENT**

This Employment Agreement (this “Agreement”), dated as of January 3, 2017, but effective as of January 1, 2017, is entered into between ToughBuilt Industries, Inc., a Nevada corporation (the “Company”), and Josh Keeler (“Executive”).

**WHEREAS**, Executive is the Director of Research and Development and Co-Founder of the Company;

**WHEREAS**, the Company desires to employ and retain the services of Executive, and Executive wishes to be employed by the Company, on the terms set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants set forth in this Agreement, the undersigned agree as follows:

1. **Term of Employment.** Subject to the termination provisions hereinafter set forth, the Company will employ Executive, and Executive accepts employment with the Company as, its Director of Research and Development, for a period of five years from the date of this Agreement (the “Initial Term”). The Initial Term shall be automatically renewed for successive one year periods (“Successive Terms”) unless either party gives ninety (90) calendar days written notice of nonrenewal prior to the expiration of the then-current term (the Initial Term and any Successive Term are jointly referred to herein as the “Term”). Notwithstanding the above, or anything else provided herein, Executive shall be an at-will employee serving at the pleasure and direction of the Board of Directors (as defined below). Accordingly, either party may terminate the employment relationship at any time for any reason, subject, however, to the notice and any payment requirements set forth herein.

2. **Duties.** During the Term, Executive will serve as Director of Research and Development of the Company, reporting to the Company’s Board of Directors (the “Board of Directors”). Executive will discharge such duties and responsibilities as are customary for such position or are prescribed from time to time by the Company. Executive will devote his full time and attention to the affairs of the Company and will not enter the employ of or serve as a consultant to, or in any way perform any services for, with or without compensation, any other person, business or organization without the prior approval of the Board of Directors. In no event may any such service be inconsistent with, or prevent Executive from carrying out, his duties under this Agreement, as determined at the sole discretion of the Board of Directors.

3. **Maintaining Confidential Information/Property Rights.** Executive agrees to sign and abide by all of the Company’s policies regarding confidential information and ethics including, but not limited to the Employee Non-Disclosure, Non-Solicitation and Intellectual Property Assignment Agreement, as attached hereto as Exhibit A.

4. **Non-Competition; Non-Solicitation.** During the Term the Executive shall not, directly or indirectly:

(a) whether as an officer, director, employee, stockholder, partner, proprietor, associate, representative, consultant, contractor, or in any other capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever that competes with the Company or its Affiliates, anywhere in the United States, Europe, South America and Asia, in any line of business engaged in (or planned to be engaged in) by the Company or its Affiliates, however, that such restriction shall not apply to Executive's ownership of any passive investment representing an interest of less than five percent (5%) of an outstanding class of publicly traded securities; or

(b) recruit, encourage or solicit any person who is an Executive or contractor of the Company or any entity affiliated with the Company (each, an “Affiliated Entity”) to leave the Company's or Affiliated Entity's employ or service for any reason, or interfere in any material manner with employment or service relationships at the time existing between the Company or Affiliated Entity and the subject Executive or contractor (except as may be required in any bona fide termination decision during the Term regarding any Company or Affiliated Entity Executive) in order to induce such Executive or contractor of the Company or any Affiliated Entity to accept other employment or a consulting agreement with any other person or entity.

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Executive acknowledges that the services that he shall provide to the Company under this Agreement are unique and that irreparable harm shall be suffered by the Company in the event of the breach by Executive of any of his obligations under this Section 4, and that the Company shall be entitled, in addition to its other rights and remedies, whether legal or equitable, to enforce such obligations by an injunction or decree of specific performance. If any restriction set forth in this non-competition section is found by a court to be unreasonable, then Executive agrees, and hereby submits, to the reduction and limitation of such prohibition to such area or period as shall be deemed reasonable by such court. In addition, if Executive breaches this Section 4 at any time after the Term, the Company's obligation to continue to make payments to Executive pursuant to Sections 8(a) or (b) shall cease immediately.

5. **Salary and Incentives.**

( a ) **Sign-On-Bonus.** You will receive a sign on bonus of \$35,000, to be paid within 30 days from the commencement of your employment. Please note all applicable taxes and withholdings will apply to this bonus start payment. If you voluntarily terminate employment with the Company within twelve (12) months of your start date, you will be obligated to repay the Company the full amount of the sign on bonus.

(b) **Salary.** During the Term, the Company will pay Executive an annual salary of \$250,000 (the "Base Salary"), subject to applicable tax withholding and payable in accordance with the Company's normal payroll practices; provided that Executive's Base Salary may be reduced to the extent that Executive elects to defer any portion thereof under the terms of any deferred compensation or savings plan maintained by the Company. During the Term, the Board of Directors shall review Executive's Base Salary on an annual basis and, in its discretion, may award merit increases of Executive's Base Salary in accordance with the Company's policy. In addition to the eligibility for consideration of merit-based increases in the discretion of the Board of Directors, Executive's Base Salary will be increased effective January 1, of each year during the Term (commencing January 1, 2018) by ten percent (10%).

( c ) **Incentive Payments.** Executive will be eligible to receive incentive bonus payments from time to time in accordance with any incentive bonus program of the Company that may then be in effect and will be eligible to receive an annual cash incentive bonus under any such program upon the achievement of targets and other objectives for each fiscal year as may be approved annually on behalf of the Company by the Board of Directors (the "Annual Bonus"). Such a program will be administered on the Company's fiscal year basis. In the event that an incentive payment is earned by Executive under such a program for any fiscal year, such payment shall be made to Executive in a lump sum all-cash amount within sixty (60) days following the date the Company determines the amount (if any) of the Annual Bonus, provided that Executive has remained continuously employed in the Company's service through the date the Company determines the amount of the Annual Bonus.

(d) **Expenses.** The Company will reimburse Executive for all reasonable travel, entertainment and miscellaneous expenses actually and necessarily incurred in connection with the performance of his duties under this Agreement, provided that Executive's expenses are in accordance with the Company's current practices and that Executive properly accounts for such expenses. Any amounts payable under this Section 5(c) shall be made in accordance with Treasury Regulation Section 1.409A-3(i)(1)(iv) and shall be paid on or before the last day of Executive's taxable year following the taxable year in which Executive incurred the expenses. The amounts provided under this Section 5(c) during any taxable year of Executive's will not affect such amounts provided in any other taxable year of Executive's, and Executive's right to reimbursement for such amounts shall not be subject to liquidation or exchange for any other benefit.

(e) **Vehicle Allowance.** During Executive's employment under this Agreement, the Company shall pay Executive a monthly automobile allowance in the amount of \$750, and shall pay for or reimburse Executive for expenses regarding the operation, insurance and routine maintenance of such vehicle, including deductibles, fuel, parking, tolls and car washes.

( f ) **Vacation.** The Executive shall be entitled to four (4) weeks paid vacation per annum; provided, that the Executive shall be paid annually in cash for vacation days not taken by him; provided that no more than four (4) weeks of vacation may be accrued each year for purposes of such cash payments; and provided further that any such payment shall be paid to the Executive not later than March 15 of the year following the calendar year in which the unused vacation days accrued.

6 . **Benefits.** Executive will be entitled during the Term to participate in any vacation, health, pension, insurance or other benefit plan that is maintained by the Company for its (or its subsidiaries') Executives and/or executives to the extent and in the manner prescribed by the applicable plan documents.

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7. **Long-term Incentives.** Executive will be eligible to receive annual long-term equity incentive awards from time to time in accordance with the terms and conditions of long-term equity incentive compensation plans and programs as in effect from time to time as approved by the Board of Directors. The Board of Directors shall have discretion to determine both the target levels and the actual grants made, and shall have discretion to change from an annual grant program to a multi-year grant program. Any long-term incentive grants shall be subject to the terms and conditions, including any vesting conditions, as determined by the Board of Directors in its sole discretion.

8. **Termination.**

(a) **Termination by the Company without Cause.** The Company may terminate Executive's employment under this Agreement without Cause at any time with ninety (90) calendar days' prior written notice. However, in the event of Executive's Separation from Service (as defined in Section 9(a) below) as a result of Executive's termination by the Company without Cause at any time during the Term, then, subject to the provisions of Section 9 below, the Company agrees that it will provide Executive with all accrued compensation, wages and benefits through the effective date of termination and pay and/or provide to Executive the following:

(i) (A) if such termination occurs during the Initial Term, an amount equal to two (2) times Executive's then-prevailing Base Salary, and (B) if such termination occurs after the Initial Term, an amount equal to one (1) times Executive's then-prevailing Base Salary; plus

(ii) (A) if such termination occurs during the Initial Term, twenty-four months of COBRA premiums for Executive, and (B) if such termination occurs after the Initial Term, twelve (12) months of COBRA premiums for Executive, in each case paid for by the Company (with any such payments to be treated as taxable compensation to the extent necessary to comply with Section 105(h) of the Internal Revenue Code) pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), provided that Executive is eligible for COBRA benefits and timely completes all documentation necessary to receive COBRA benefits; plus

(iii) if Executive holds any outstanding long-term incentive awards (including, without limitation, stock options, stock appreciation rights, phantom shares, restricted stock or similar awards with respect to the securities of the Company) that are not fully vested and, if applicable, exercisable with respect to all the shares subject thereto effective immediately prior to the date of termination, then the Company shall cause all such outstanding and unvested long-term incentive awards to become fully vested and, if applicable, exercisable effective immediately prior to the date of termination, and Executive shall have one hundred and twenty (120) days to exercise any stock options that vest pursuant to this Section. In all other respects, such awards will continue to be subject to the terms and conditions of the plans, if any, under which they were granted and any applicable agreements between The Company and Executive.

The amounts described in paragraph (i) shall be paid in two equal lump sum installments, subject to applicable tax withholding, with the first installment to be made within sixty (60) days following the date of Executive's Separation from Service and the second installment to be made on the first anniversary of Executive's Separation from Service. For purposes of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), Executive's right to receive the foregoing installment payments shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment shall at all times be considered a separate and distinct payment. Notwithstanding any provision to the contrary in this Agreement, no amount shall be paid pursuant to this Section 8(a) unless, on or prior to the fifty-fifth (55th) day following the date of Executive's Separation from Service, Executive has executed an effective waiver and release of claims agreement (the "Release") in form and substance acceptable to the Company and any applicable revocation period has expired.

(b) **Termination by Executive for Good Reason.** Executive may voluntarily elect to resign his employment with the Company prior to the end of the Initial Term or any Successive Term for Good Reason (as hereinafter defined). In the event of Executive's Separation from Service for Good Reason at any time during the Initial Term or any Successive Term, then, subject to the provisions of Section 9 below, Executive shall be entitled to receive the payments or benefits set forth in Section 8(a) as if such Separation from Service was as a result of Executive's termination by the Company without Cause during the Initial Term or thereafter (as applicable). "Good Reason" shall mean any of the following that are undertaken without Executive's express written consent: (i) the assignment to Executive of principal duties or responsibilities, or the substantial reduction of Executive's duties and responsibilities, either of which is materially inconsistent with Executive's position as Director of Research and Development of the Company; (ii) a material reduction by the Company in Executive's annual Base Salary, except to the extent the salaries of other executive employees of the Company and any other controlled subsidiary of the Company are similarly reduced; (iii) Executive's principal place of business is, without his consent, relocated by a distance of more than thirty (40) miles from the center of Glendale, California; or (iv) any material breach by the Company of any provision of this Agreement. For avoidance of doubt, any notice of non-renewal provided by the Company to Executive pursuant to Section 1 of this Agreement shall not constitute or give rise to Good Reason under this Section 8(b).

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Executive must provide written notice to the Company of the occurrence of any of the foregoing events or conditions without Executive's written consent within ninety (90) days of the occurrence of such event. The Company or any surviving entity shall have a period of thirty (30) days to cure such event or condition after receipt of written notice of such event from Executive. Any Separation from Service by reason of Executive's resignation for Good Reason following such thirty (30) day cure period must occur no later than the date that is six (6) months following the initial occurrence of one of the foregoing events or conditions without Executive's written consent. Executive's Separation from Service by reason of his resignation for Good Reason shall be treated as involuntary. For avoidance of doubt, in the event Executive provides the foregoing notice to the Company prior to the expiration of the Initial Term but the ensuing cure period of the Company expires following the end of the Initial Term and during any Successive Term and (the applicable event or condition constituting or giving rise to Good Reason having not been cured by the Company during the applicable cure period) Executive subsequently resigns for Good Reason pursuant to this Section 8(b), such resignation shall be treated for all purposes of this Section 8(b) as having occurred during the Initial Term.

( c ) Termination by the Company for Cause. Subject to the thirty (30) day cure period, if applicable, set forth below in this Section 8(c), the Company may immediately terminate Executive's employment at any time for Cause by giving written notice to Executive specifying in reasonable detail the reason for such termination. Upon any such termination for Cause, Executive shall be entitled to payment of all accrued and unpaid compensation and wages, but Executive shall have no right to compensation or benefits for any period subsequent the effective date of termination. For the purposes of this Agreement, "Cause" shall mean: Executive willfully engages in an act or omission which is in bad faith and to the detriment of the Company, engages in gross misconduct, gross negligence, or willful malfeasance, in each case that causes material harm to the Company, breaches this Agreement in any material respect, habitually neglects or materially fails to perform his duties (other than any such failure resulting solely from Executive's physical or mental disability or incapacity) after a written demand for substantial performance is delivered to Executive which identifies the manner in which the Company believes that Executive has not performed Executive's duties, commits or is convicted of a felony or any crime involving moral turpitude, uses drugs or alcohol in a way that either interferes with the performance of his duties or compromises the integrity or reputation of the Company, or engages in any act of dishonesty involving the Company, disclosure of Company's confidential information not required by applicable law, commercial bribery, or perpetration of fraud; provided, however, that Executive shall have at least forty-five (45) calendar days to cure, if curable, any of the events which could lead to Executive's termination for Cause.

( d ) Termination by Death or Disability. In the event that Executive dies or becomes completely disabled from performing his duties during the Initial Term or any Successive Term, the Company shall be relieved of all obligations under this Agreement, except for payment to Executive or Executive's heirs as if the Executive had been terminated without Cause in accordance with Section 8(a) herein during the Initial Term or thereafter (as applicable). For clarification purposes, the parties agree that the Company may satisfy its obligations pursuant to this Section 8(d) through life and/or disability insurance coverage with respect to Executive.

( e ) Termination by Executive without Good Reason. Executive may terminate his employment under this Agreement without Good Reason at any time by giving written notice to the Company. Such termination will become effective upon the date specified in such notice, provided that such date is at least ninety (90) calendar days after the date of delivery of the notice. Upon any such termination, the Company shall be relieved of all of its obligations under this Agreement, except for payment of all accrued compensation and wages and the provision of benefits through the effective date of termination, and the Company may, in its sole discretion, cause the termination to become effective sooner than such ninety (90) day notice period.

( f ) Involuntary Termination other than for Cause, Death or Disability or Voluntary Termination for Good Reason Following A Change of Control. If, within twenty-four (24) months following a Change of Control, the Executive's employment is terminated involuntarily by the Company other than for Cause, death, or Disability or by the Executive pursuant to a Voluntary Termination for Good Reason, and the Executive executes and does not revoke a general release of claims against the Company and its affiliates in a form acceptable to the Company, then the Company shall provide the Executive with the benefits as set forth below:

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(i) Cash Award. A lump sum payment in the amount equal to three (3) times Executive's then prevailing Base Salary plus the Executive's target for the annual short term incentive portion of the corporate bonus program for such year as in effect immediately prior to such termination, in addition to any other earned but unpaid base salary or vacation pay due through the date of such termination, as well as a pro rata portion of the Executive's annual short term incentive portion of the corporate bonus program for such year (if any) and a pro rata portion of the Executive's long term incentive portion of the corporate bonus program (if any) (based on the number of days elapsed during such year through the date of termination) as in effect immediately prior to such termination. This lump sum payment is to be paid as soon as practicable after the effective date of the termination for Cause or Voluntary Termination for Good Reason following a Change of Control but in any case, by no later than March 14 of the calendar year following the calendar year in which such termination occurs.

(ii) Acceleration of Equity Awards. All outstanding and unvested options to purchase the common stock of the Company or any affiliate of the Company granted under any equity plan of the Company or affiliate of the Company, restricted stock then held by the Executive and other equity and equity equivalent awards then held by the Executive shall be accelerated in full, and thereafter all such options, restricted stock and other equity awards shall be immediately vested, and exercisable for such period of time following termination as provided for by the specific agreements governing each such award.

(iii) Benefits Continuation. For the period beginning on the date of such involuntary termination by the Company other than for Cause, death or Disability or the Executive's Voluntary Termination for Good Reason occurs and ending on the earlier of the date which is eighteen (18) months following the date of such termination or the date upon which the Executive commences receiving generally comparable medical benefits through employment elsewhere, the Company shall pay directly or reimburse the Executive, at its option, for premium costs incurred by the Executive and the Executive's dependents for medical and dental benefits continuation coverage pursuant to Section 4980B of the Internal Revenue Code of 1986, as amended (the "Code"), Sections 601-608 of the Executive Retirement Income Security Act of 1974, as amended, and under any other applicable law, to the extent required by such laws, as if the Executive had terminated employment with the Company on the date such benefits coverage terminates.

(iv) All of the foregoing benefits shall replace and be in lieu of any other severance benefit(s) to which Executive would otherwise be entitled following a Change of Control.

(g) Change of Control. "Change of Control" means the occurrence of any of the following events:

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

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

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

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

( h ) Notice of Non-Renewal. For the avoidance of doubt, any notice of nonrenewal of a Successive Term provided by the Company pursuant to Section 1 of this Agreement shall constitute termination of Executive by the Company without Cause during a Successive Term.

9. Limitations on Payment.

( a ) Payment Delay. Notwithstanding anything herein to the contrary, to the extent any payments to Executive pursuant to Section 8 are treated as non-qualified deferred compensation subject to Section 409A of the Code, then (i) no amount shall be payable pursuant to such section unless Executive's termination of employment constitutes a "separation from service" with the Company (as such term is defined in Treasury Regulation Section 1.409A-1(h) and any successor provision thereto) (a "Separation from Service"), (ii) if any of the amounts described in Sections 8(a)(i)-(ii) above constitute non-qualified deferred compensation subject to Section 409A of the Code then any such amounts that become payable hereunder shall in all cases be paid in two installment payments pursuant to the terms described in the last paragraph of Section 8(a), provided that the first lump-sum payment shall be paid on the 60th day following Executive's Separation from Service subject to clause (iii) of this Section 9(a) and (iii) if Executive, at the time of his Separation from Service, is determined by the Company to be a "specified Executive" for purposes of Section 409A(a)(2)(B)(i) of the Code and the Company determines that delayed commencement of any portion of the termination benefits payable to Executive pursuant to this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(1) of the Code (any such delayed commencement, a "Payment Delay"), then such portion of Executive's termination benefits described in Section 8 shall not be provided to Executive prior to the earlier of (A) the expiration of the six-month period measured from the date of Executive's Separation from Service, (B) the date of Executive's death or (C) such earlier date as is permitted under Section 409A. Upon the expiration of the applicable Code Section 409A(a)(2)(B)(i) deferral period, all payments deferred pursuant to a Payment Delay shall be paid in a lump sum to Executive within thirty (30) days following such expiration, and any remaining payments due under the Agreement shall be paid as otherwise provided herein. The determination of whether Executive is a "specified Executive" for purposes of Section 409A(a)(2)(B)(i) of the Code as of the time of his Separation from Service shall be made by the Company in accordance with the terms of Section 409A of the Code and applicable guidance thereunder (including without limitation Treasury Regulation Section 1.409A-1(i) and any successor provision thereto).

( b ) Exceptions to Payment Delay. Notwithstanding Section 9(a), to the maximum extent permitted by applicable law, amounts payable to Executive pursuant to Section 8 shall be made in reliance upon Treasury Regulation Section 1.409A-1(b)(9) (with respect to separation pay plans) or Treasury Regulation Section 1.409A-1(b)(4) (with respect to short-term deferrals). Accordingly, the severance payments provided for in Section 8 may not be intended to provide for any deferral of compensation subject to Section 409A of the Code to the extent (i) the severance payments payable pursuant to Section 8, by their terms and determined as of the date of Executive's Separation from Service, may not be made later than the fifteenth (15th) day of the third calendar month following the later of (A) the end of the Company's fiscal year in which Executive's Separation from Service occurs or (B) the end of the calendar year in which Executive's Separation from Service occurs, or (ii) (A) such severance payments do not exceed an amount equal to two times the lesser of (1) the amount of Executive's annualized compensation based upon Executive's annual rate of pay for the calendar year immediately preceding the calendar year in which Executive's Separation from Service occurs (adjusted for any increase during the calendar year in which such Separation from Service occurs that would be expected to continue indefinitely had Executive remained employed with the Company) or (2) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) for the calendar year in which Executive's Separation from Service occurs, and (B) such severance payments shall be completed no later than December 31 of the second calendar year following the calendar year in which Executive's Separation from Service occurs. Moreover, the COBRA premium payments contemplated under Section 8 are intended to be exempt from Section 409A of the Code pursuant to Treasury Regulation Section 1.409A-1(b)(9)(v) as direct service recipient payments for medical benefits.

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(c) Interpretation. To the extent the payments and benefits under this Agreement are subject to Section 409A of the Code, this Agreement shall be interpreted, construed and administered in a manner that satisfies the requirements of Sections 409A(a) (2), (3) and (4) of the Code and the Treasury Regulations thereunder (and any applicable transition relief under Section 409A of the Code).

(d) Parachute Payments. Notwithstanding anything contained in this Agreement to the contrary, to the extent that payments and benefits provided under this Agreement or otherwise (including the acceleration of vesting of equity awards) to Executive (such payments or benefits are collectively referred to as the "Payments") would be subject to the excise tax (the "Excise Tax") imposed under Section 4999 of the Code, the Payments shall be reduced (but not below zero) to the extent necessary so that no Payment to be made or benefit to be provided to Executive shall be subject to the Excise Tax, but only if, by reason of such reduction, the net after-tax benefit received by Executive shall exceed the net after-tax benefit received by him if no such reduction was made. For purposes of this Section 9(d), "net after-tax benefit" shall mean (i) the Payments which Executive receives or is then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income taxes payable with respect to the foregoing calculated at the maximum marginal income tax rate for each year in which the foregoing shall be paid to Executive (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of excise taxes imposed with respect to the payments and benefits described in (i) above by Section 4999 of the Code. The foregoing determination will be made by a nationally recognized accounting firm (the "Accounting Firm") selected by Executive and reasonably acceptable to the Company (which may be, but will not be required to be, the Company's independent auditors). The Company will direct the Accounting Firm to submit its determination and detailed supporting calculations to both the affected Executive and the Company within fifteen (15) calendar days after Executive's date of Separation from Service. If the Accounting Firm determines that such reduction is required by this Section 9(d) and no Payment constitutes non-qualified deferred compensation that is subject to Section 409A of the Code, Executive, in Executive's sole and absolute discretion, may determine which Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code, and the Company shall pay such reduced amount to him. If the Accounting Firm determines that a reduction is required by this Section 9(d), and any Payment constitutes a "deferral of compensation" within the meaning of Section 409A of the Code, then the Payments shall be reduced in the following order; (a) reduction in the cash severance payments described herein (with such reduction being applied to the payments in the reverse order in which they would otherwise be made, that is, later payments shall be reduced before earlier payments); (b) reduction in any other cash payments payable to Executive (with such reduction being applied to the payments in the reverse order in which they would otherwise be made, that is, later payments shall be reduced before earlier payments); (c) cancellation of acceleration of vesting on any equity awards for which the exercise price exceeds the then fair market value of the underlying equity; and (d) cancellation of acceleration of vesting of equity awards not covered under (c) above; provided, however that in the event that acceleration of vesting of equity awards is to be cancelled, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of such equity awards, that is, later equity awards shall be canceled before earlier equity awards.

10. Arbitration. Executive and the Company agree to submit any and all disputes, controversies, or claims between them based upon, relating to, or arising from Executive's employment by the Company or the terms of this Agreement (other than workers' compensation claims) to final and binding arbitration before a single neutral arbitrator in Los Angeles, California. Subject to the terms of this paragraph, the arbitration proceedings shall be initiated in accordance with, and governed by, the National Rules for the Resolution of Employment Disputes ("Rules") of the American Arbitration Association ("AAA"). The arbitrator shall be appointed by agreement of the parties hereto or, if no agreement can be reached, by the AAA pursuant to its Rules. Notwithstanding the Rules, the parties may take discovery in accordance with Sections 1283.05(a)-(d) of the California Code of Civil Procedure (but not subject to the restrictions of Section 1283.05(e)), and prior to the arbitration hearing the parties may file, and the arbitrator shall rule on, pre-trial motions such as demurrers and motions for summary judgment (applying the procedural standard embodied in Rule 56 of the Federal Rules of Civil Procedure). The time for filing such motions shall be determined by the arbitrator. The arbitrator will rule on all pre-trial motions at least ten (10) business days prior to the scheduled hearing date. Arbitration may be compelled, the arbitration award shall be enforced, and judgment thereon shall be entered, pursuant to the California Arbitration Act (Code of Civil Procedure §§ 1280 et seq.). The prevailing party in any such arbitration shall be entitled to recover from the other, and the arbitrator is instructed to award to the prevailing party, an amount equal to the reasonable attorneys' fees and costs (including expert witness fees) incurred in connection with the arbitration, except that the Company shall bear AAA's administrative fees and the arbitrator's fees and costs. If any party is required to compel arbitration of a dispute governed by this paragraph, the party prevailing in that proceeding shall be entitled to recover from the other party its reasonable costs and attorneys' fees and expenses incurred to compel arbitration; provided, however, that the prevailing party shall be reimbursed for such fees, costs and expenses within forty-five (45) days following any such award, but in no event later than the last day of Executive's taxable year following the taxable year in which the fees, costs and expenses were incurred; provided, further, that the parties' obligations pursuant to this sentence shall terminate on the tenth (10th) anniversary of the date of Executive's termination of employment. This paragraph is intended to be the exclusive method for resolving any and all claims by the parties against each other for payment of damages under this Agreement or relating to Executive's employment; provided, however, that neither this Agreement nor the submission to arbitration shall limit the parties' right to seek provisional relief, including without limitation injunctive relief, in any court of competent jurisdiction. Executive and the Company expressly waive their right to a jury trial. This paragraph shall survive the expiration or termination of this Agreement. If any part of this paragraph is found to be void as a matter of law or public policy, the remainder of the paragraph will continue to be in full force and effect.

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11. **Miscellaneous.**

(a) **Assignment.** The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon their respective successors and assigns. Executive agrees that the Company may assign its rights and obligations under this Agreement to any successor-in-interest. Executive may assign his rights and obligations hereunder only with the express written consent of the Company, except that the rights under this Agreement shall inure to the benefit of Executive's heirs or assigns in the event of his death. Except as expressly provided in this paragraph, no party may assign its/his rights and obligations hereunder; and any attempt to do so will be void.

( b ) **Severability.** If any provision of this Agreement otherwise is deemed to be invalid or unenforceable or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision, such provision shall be replaced by a provision that is valid and enforceable and that as closely as possible reflects the parties' intent with respect to such provision and such provision shall be inoperative in such state or jurisdiction and shall not be part of the consideration moving from any of the parties to any other. The remaining provisions of this Agreement shall be valid and binding and of like effect as though such provision was not included.

( c ) **Notice.** Notices given pursuant to the provisions of this Agreement shall be delivered personally or sent by certified mail, postage pre-paid, or by overnight courier, or by fax, if to the Company, to the Company's then-current business address or, in the event the notice is to Executive, to the address that Executive has represented to the Company as current.

(d) **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to the conflict of laws rules thereof.

( e ) **Waiver, Amendment.** The waiver by any party to this Agreement of a breach of any provision hereof by any other party shall not be construed as a waiver of any subsequent breach. No provision of this Agreement may be terminated, amended, supplemented, waived or modified other than by an instrument in writing, signed by the party against whom the enforcement of the termination, amendment, supplement, waiver or modification is sought. If Executive and the Company determine that any payments or benefits payable under this Agreement intended to comply with Sections 409A(a)(2), (3) and (4) of the Code do not comply with Section 409A of the Code, the parties agree to amend this Agreement, or take such other actions as the parties deem reasonably necessary or appropriate, to comply with the requirements of Section 409A of the Code, the Treasury Regulations thereunder (and any applicable transition relief) while preserving the economic agreement of the parties. If any provision of the Agreement would cause such payments or benefits to fail to so comply, such provision shall not be effective and shall be null and void with respect to such payments or benefits, and such provision shall otherwise remain in full force and effect.

( f ) **Entire Agreement.** This Agreement represents the entire agreement among the parties with respect to the subject matter of this Agreement and supersedes any previous agreement or understanding.

( g ) **Execution in Counterparts.** This Agreement may be executed in counterparts with the same force and effectiveness as though executed as a single document.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first written above.

**TOUGHBUILT INDUSTRIES, INC.**

By: /s/ Michael Panosian  
Name: Michael Panosian  
Title: CEO & President

**EXECUTIVE**

/s/ Josh Keeler  
Josh Keeler

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**EXHIBIT A**  
**EMPLOYEE NON-DISCLOSURE, NON-SOLICITATION AND INTELLECTUAL PROPERTY**  
**ASSIGNMENT AGREEMENT**

[ATTACHED]

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[\*\*\*] INDICATES CONFIDENTIAL PORTION HAS BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND HAS BEEN FILED SEPARATELY WITH THE COMMISSION

FOXCONN CONFIDENTIAL

## Project Statement of Work

This Project Statement of Work (this “SOW”) is effective as of the 18th day of October, 2016 (“*Effective Date*”) entered into by and between **Hon Hai Precision Ind. Co., Ltd.** (“*Foxconn*”), a corporation organized and existing under the law of Taiwan, with its registered address at 5F-1, 5Hsin-An Road, Hsinchu City 300, Taiwan, and **ToughBuilt Industries Inc. formally known as Phalanx Inc.** (“*Purchaser*”), a corporation organized and existing under the law of the state of Nevada with its registered address at 6671 S. Las Vegas Blvd Building D, Las Vegas, NV, 89119, USA. Foxconn and Purchaser herein will be referred to individually as the “*Party*” or collectively as the “*Parties*”.

### BACKGROUND

WHEREAS, Foxconn, either itself or through its affiliates, is in the business of designing, manufacturing and supplying electronic products and devices;

WHEREAS, Purchaser is in the business of selling and supporting the electronic devices; and

WHEREAS, Purchaser is willing to engage Foxconn to develop the Project (as defined below), and Foxconn is willing to supply the development service in accordance with this SOW.

### AGREEMENT

NOW, THEREFORE, the Parties hereto agree as follows:

#### 1. DEFINITION.

“*Deliverable*” shall mean the development result or deliverables of the Project as set out in Section 4.3 hereof.

“*Kickoff*” shall mean the commencement of the Project, as mutually confirmed by the Parties.

“*Milestone*” shall mean the timelines of the completion of the Deliverables as set out in Section 4.2 hereof.

“*NRE Fee*” shall mean the amount to be paid by Purchaser to Foxconn for its development of the Project under this SOW.

“*Project*” shall mean the development of the Product.

“*Product*” shall mean certain rugged phone which will be with the logo “**ToughBuilt**” of Purchaser or its representative.

“*Prototype*” shall mean a pre-production or pilot unit of a Product, including without limitations to, an engineering sample, design sample, or production verification sample.

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“R&R” shall mean each Party’s role and responsibilities of the Project as set out in Section 4.1 hereof.

“Specification” shall mean the technical specification of the Product as described in Section 3 hereof.

2. **PURPOSE OF SOW.**

This SOW outlines the activities to be performed by Parties regarding the development of the Project and other details thereof, including without limitations to, Specification, R&R, Deliverables, Milestones and NRE Cost.

With respect to the mass production and supply of the Product, the Parties will in good faith discuss and determine the terms and conditions thereof and enter into a separate Supply Agreement.

3. **SPECIFICATION.**

The Specification of the Product is as the following. In addition, Foxconn and Purchaser may in good faith review and update the Specification. Upon completion and confirmation of any updated Specification by the Parties (as evidenced by written agreement or emails by the authorized person for each of Foxconn and Purchaser), such updated Specification will become part of this SOW. The authorized person(s) for Foxconn and Purchaser are as follows.

For Purchaser: Michael Panosian

For Foxconn: Vincent Chen

**Chipset** \*\*\*

**Memory** \*\*\*

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**Display** \*\*\*

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**Camera** \*\*\*

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<b>Operating system</b>	***

4. **R&R, DELIVERABLES AND MILESTONES.**

For purposes of the development of the Project, each Party will be responsible to fulfill its development obligation in accordance with the following R&R, the Deliverables and the Milestones. Subject to Purchaser's fulfilling its payment obligation as set out in Section 6 hereof, Foxconn shall in no event discontinue its development services as described herein.

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4.1 R&R. The R&R of the Project is as agreed as below:

<b>Task</b>	<b>Purchaser</b>	<b>Foxconn</b>
<b>Product Specification</b>	Purchaser will create specifications compliance sheet.	Foxconn will review specifications compliance sheet and get approval of any modification from Purchaser
<b>Program Management</b>	Purchaser will involve in project oversight.	<ol style="list-style-type: none"> <li>1. Foxconn will create project schedule including milestone schedule</li> <li>2. Foxconn will identify risks and create risk mitigation plans</li> <li>3. Foxconn will facilitate weekly project meetings and publish weekly open action item</li> <li>4. Foxconn will be responsible for resource management</li> <li>5. Foxconn will provide solution of known issues and bugs with the product.</li> <li>6. Foxconn will provide written notification of any schedule delays.</li> <li>7. Foxconn will procure all required materials to build product according to specifications and ensure material availability and shortage reports for all builds.</li> <li>8. Foxconn will load and track any issues/bugs in Mantis database. Purchaser can also load and track any issues via Mantis.</li> </ol>
<b>Industrial Design</b>	<ol style="list-style-type: none"> <li>1. Purchaser to provide conceptual product dimensional layout.</li> <li>2. Purchaser will provide CMF (Color Material and Finish) to Foxconn.</li> </ol>	<ol style="list-style-type: none"> <li>1. Foxconn will work with the ID provided by Purchaser. Any deviation from the initial concept must be approved by Purchaser.</li> <li>2. Foxconn will provide final 3D.</li> </ol>
<b>Mechanical Engineering</b>	<ol style="list-style-type: none"> <li>1. Purchaser to purchase of mechanical production parts tooling and additional tooling modifications, which are required by Purchaser.</li> <li>2. Purchaser will assist and monitor ruggedized product design.</li> <li>3. Purchaser will provide packaging design, artwork of package, label and logo related items.</li> <li>4. Purchaser will sign off on final packaging.</li> <li>5. Purchaser will sign off on final housing and accessories</li> </ol>	<ol style="list-style-type: none"> <li>1. Foxconn will be responsible for all mechanical design CAD files and tooling of parts.</li> <li>2. Foxconn will test Mechanical Design for specification compliance to reliability requirements &amp; provide report.</li> <li>3. Foxconn will engineer and create CAD for packaging design.</li> </ol>

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<b>Hardware Engineering</b>	<ol style="list-style-type: none"> <li>Purchaser will define band configurations.</li> <li>Purchaser will assist and monitor where required.</li> </ol>	<ol style="list-style-type: none"> <li>Foxconn will be responsible for all circuit board layout and assembly, including schematic and documentation.</li> <li>Foxconn will test hardware designs for compliance of Specification &amp; report.</li> </ol>
<b>Software Engineering</b>	<ol style="list-style-type: none"> <li>Purchaser will be responsible for developing Purchaser customized application and provide to Foxconn to integrate.</li> <li>Purchaser will provide the UI related materials including but not limited to boot animation, ringtone, wallpaper.</li> <li>Purchaser will assist and monitor where required.</li> </ol>	<ol style="list-style-type: none"> <li>Foxconn will design &amp; develop BSP/driver software (no source code provided).</li> <li>Foxconn will provide default Android N SW without any customized applications (no source code provided).</li> <li>Foxconn will design &amp; develop manufacturing SW (no source code provided).</li> <li>Foxconn will design &amp; develop service &amp; repair tool software (no source code provided).</li> </ol>
<b>Manufacturing Engineering</b>	Purchaser will assist and monitor where required.	Foxconn will have full manufacturing engineering responsibility.
<b>Supply Chain Management</b>	Purchaser will assist and monitor where required.	Foxconn will be responsible for managing the supplier relationship, product price and supplier contract.
<b>New Products Purchasing</b>	Purchaser will be responsible for providing forecasts and purchase orders.	Foxconn will manage subcontractors and suppliers. Responsible for long lead time component lists.
<b>Test Engineering</b>	Purchaser will oversee the test design, development, and implementation.	Foxconn will create and execute test plan for product development phase to demonstrate that product specifications can be met.
<b>Certification</b>	Purchaser will be responsible for applying and obtaining the Required Certifications in Section 4.5 hereof.	<ol style="list-style-type: none"> <li>Foxconn will pass Google certification as required in Section 6.1 hereof.</li> <li>Foxconn will be responsible for debugging for any certification failures as requires in Section 4.5 hereof.</li> </ol>

4.2 Milestones. The Milestones of the Project are as agreed as below:

Item number	Milestone name	Target date (dd/mm/yyyy)
1	***	01/04/2016
2	***	01/11/2016
3	***	30/11/2016
4	***	27/12/2016
5	***	21/02/2017
6	***	12/04/2017
7	***	28/04/2017
8	***	28/06/2017

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In the event that Foxconn shall delay the target date of mass production of the Product for any reason caused by and attributed to Foxconn for more than three (3) months, the Parties shall in good faith discuss and determine the compensation of the costs and expenses incurred to Purchaser arising therefrom; provided that the total amounts of such compensation shall not exceed 100% of the paid human resources fee.

4 . 3 Deliverables. The Deliverables herein will include the key Deliverables as listed below and other related information and documentation:

	<u>Purchaser</u>	<u>Foxconn</u>
<b>Kickoff</b>	<ol style="list-style-type: none"><li>1. Product Specification and Requirements.</li><li>2. Final Industrial design Requirements based on Foxconn's Mechanical concepts.</li><li>3. Program schedule.</li><li>4 . Accessories list including but not limited to user manual, headphone, wall charger.</li></ol>	<ol style="list-style-type: none"><li>1. Project plan and milestone.</li><li>2. Mechanical concept drawing.</li><li>3. Program cost including unit cost in development/production stages, sample cost, NRE cost, Purchaser service cost.</li><li>4. Product design specification and test plan.</li><li>5. CNC sample 3pcs</li></ol>
<b>Pre-xVT</b>	<ol style="list-style-type: none"><li>1 . Participation in conference calls to discuss Program Status.</li><li>2. Issue purchase orders:<ol style="list-style-type: none"><li>a) Build of units for Product Development, and</li><li>b) Production phases.</li></ol></li><li>3. Purchaser service strategy:<ol style="list-style-type: none"><li>a) Work with Foxconn to determine how product will be serviced and identify repair parts if needed.</li><li>b) Provide the quantity of functional test fixtures and test software (if any) that Purchaser service will need.</li></ol></li><li>4. Release document including Quick Start Guide.</li></ol>	<ol style="list-style-type: none"><li>1. Participation in weekly conference calls to discuss Program Status.</li><li>2. Weekly meeting and meeting minute.</li><li>3. Response to Purchaser service strategy:<ol style="list-style-type: none"><li>a) Work with Purchaser service to create a list of parts that can be used to repair this product.</li><li>b) Provide functional test equipment for Purchaser service.</li><li>c) Spare parts plan for providing replacement parts &amp; assemblies designated by Purchaser service.</li></ol></li><li>4. Manufacturing summary report.</li><li>5. Certification pre-test report for BT, Wi-Fi, NFC, IEEE, EMI, EMC, FCC, IC, UL, PTCRB/GCF.</li><li>6. Label printing plan for Prototypes, Pilot and Production.</li></ol>



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<b>EVT</b>	Shipment information.	1. EDVT report. 2. Prototype 50pcs (5pcs for use by Purchaser/45pcs for development by Foxconn), subject to Section 4.4 hereof.
<b>DVT1</b>	1. Graphics and artwork for package and labeling in an acceptable electronic format. 2. Android Application APK. 3. Shipment information.	1. SW test report. 2. EDVT report. 3. MDVT report. 4. Prototype 175pcs (45pcs for use by Purchaser/130pcs for development by Foxconn), subject to Section 4.4 hereof.
<b>DVT2</b>	1. Graphics and artwork for package and labeling in an acceptable electronic format. 2. Android Application APK. 3. Shipment information.	1. SW test report. 2. EDVT report (if required). 3. MDVT report (if required). 4. Prototype 285pcs (100pcs for use by Purchaser/185pcs for development by Foxconn), subject to Section 4.4 hereof.
<b>PVT</b>	1. Graphics and artwork for package and labeling in an acceptable electronic format. 2. Android Application APK. 3. Shipment information. 4. Purchase order by actual quantity	5. Design, built and test package proposal to Purchaser. 1. SW Test report. 2. Yield rate report 3. Prototype 1000pcs (165pcs for use by Purchaser/835pcs for development by Foxconn), subject to Section 4.4 hereof. The quantity of 1000pcs here is for reference only, and it It will be subject to further change of the actual quantity of the PVT Prototype to be further discussed by the Parties.

4.4 Prototype.

(a) Ordering Prototypes.

Purchaser may order Prototypes in connection with each build as defined in Section 4.3 hereof from Foxconn by submitting a purchase order in accordance with the price of Prototypes as set forth in Section 6.1 hereof or otherwise as mutually agreed, and Foxconn will manufacture and deliver each Prototype that Purchaser orders.

(b) Payment term for Prototypes.

Purchaser hereby agrees the payment of the Prototype will be paid in accordance with Section 6.2(g) hereof.

4.5 Required Certifications. Except as otherwise agreed by the Parties, upon the completion of DVT2 as described in Section 4.3 hereof, Purchaser will, at its own costs and expenses, apply and obtain the certifications required for the Product as set forth below (collectively, “*Required Certifications*”).

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- FCC
- GCF/PTCRB
- Wi-Fi
- NFC
- Bluetooth
- CE (EU Optional)

4.6 All of the designs, including without limitations to industrial design, mechanical design, and tooling design, as customized for the Product and fully paid by Purchaser under this SOW will be used solely for the benefit of Purchaser and will not be used for any purpose other than Foxconn's performance of its obligations in providing the design and manufacturing services for the Product.

5. **PRODUCT RELEASE.**

Upon obtaining all Required Certifications and Purchaser's acceptance of the Product based on the mutually agreed test plans, Purchaser will send to Foxconn a mass production release notice of the Product.

6. **NRE FEE.**

6.1 NRE Fee. In consideration of Foxconn's development services as set out in Section 4 of this SOW, Purchaser shall be obliged to pay the following NRE Fee to Foxconn. The Parties hereby acknowledge and agree that (a) NRE Fee herein will not include any costs and expenses of Required Certification, as described in Section 4.5 hereof, and (b) the quantity and costs of Prototype in the following table will be subject to further change of additional demand from Purchaser. In the event that any Required Certification, additional Prototype or any additional service is confirmed or requested from Foxconn or any change of the Project, the Parties will in good faith discuss the additional fees, expenses and costs thereof.

6.2

<u>NRE Fee Category</u>	<u>USD</u>	<u>Description</u>
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***

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6.2 Payment term of NRE Fee. Purchaser hereby agrees to pay the NRE Fee in accordance with the following:

(a) Human Resource Fee:

- I. 50% of the human resources fee will be due upon Kickoff; and
- II. The remaining 50% of the human resources fee will be amortized over and added to the unit price of the first 200,000 units of the Product sold to Purchaser; provided, however in the event that Purchaser fails to purchase the said 200,000 units of Product within twelve (12) months from the mass production of the Product, Foxconn will have the right to invoice Purchaser the remaining unpaid human resources fee upon the expiration of said twelve (12) months.

(b) Google certification fee will be 100% paid upon Kickoff.

(c) Fixture fee:

- I. 50% of fixtures will be paid upon Kickoff; and
- II. The remaining 50% of fixtures will be paid upon the completion of the applicable fixture.

(d) Lab-pretest fee:

- I. 50% of Lab-pretest will be paid on Kickoff; and
- II. The remaining 50% of Lab-pretest fee will be paid upon the completion of the applicable Lab-pretest.

(e) Tooling fee:

- I. 50% of tooling will be paid prior to the commencement of the tooling manufacturing; and
- II. The remaining 50% of tooling fee will be paid upon the completion of the applicable tooling.

(f) Certification fee of the Required Certification: The payment term of such certification fee will be separately discussed and determined by the Parties in good faith.

(g) Prototype cost: except for PVT, the payment term of the Prototype cost is as follows:

- I. 50% of the Prototype cost will be prepaid no later than the Prototype lead time prior to the estimated delivery thereof for each respective build, and the Prototype lead time herein includes the longest component lead time, the production lead time and the delivery lead time for each applicable Prototype ; and

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- II. The remaining 50% of the Prototype cost will be amortized over and added to the unit price of the first 200,000 units of the Product sold to Purchaser; provided, however in the event that Purchaser fails to purchase the said 200,000 units of Product within twelve (12) months from the mass production of the Product, Foxconn will have the right to invoice Purchaser all of the remaining unpaid Prototype cost upon the expiration of said twelve (12) months.

- 6.3 Resubmission of Required Certification or CTS. In the event that Foxconn shall fail to obtain the Required Certification or CTS for any reason caused by and attributed to Foxconn, Foxconn shall, at its own expenses, fix and correct the errors in the sample Product and resubmit the corrected sample Product to obtain Required Certification or CTS, as applicable.

7. **T&C OF SUPPLYING THE PRODUCT.**

For the purposes of manufacturing and supplying the Products upon mass production of the Product, the following terms and conditions shall apply.

- 7.1 Delivery Term. The delivery term will be FOB Hong Kong on the basis of Incoterms 2010.

- 7.2 Payment Term & Standby LC.

(a) Payment Term. The payment term of any payment due and payable to Foxconn by Purchaser under purchase orders of the Product is net thirty (30) days after invoice date, provided that Purchaser shall provide an irrevocable Standby LC as described in Section 7.2 (b) hereof. Foxconn shall have the right to invoice Purchaser upon the delivery in accordance with Section 7.1 hereof, and in the event that Purchaser fails to pay the invoices in accordance with this Section 7.2(b), Purchaser further agrees that Foxconn may make a payment demand and have the right to draw down an amount under the LC in respect of any payment not made.

- (b) Standby LC.

No later than the issuance of the respective purchase order of the Product, Purchaser shall cause to be issued (or amended, as applicable), irrevocable, standby documentary letters of credit at least equal to the total value of the respective issued purchase order, other open purchase orders, and other outstanding payments due to Foxconn for the Product purchases ("*Standby LC*"). All costs incurred in connection with the issuing of LC shall be borne by Purchaser. Standby LC shall (i) be in favor of Foxconn, as beneficiary, (ii) be issued by a bank mutually agreed upon by the Parties and confirmed by Foxconn's bank, and (iii) include the description that in the event that Purchaser shall fail to make the due payments to Foxconn under a purchase order or the terms and conditions of this SOW, Foxconn will have the right to draw down an amount under Standby LC in respect of any due payment not made to Foxconn in accordance with Section 7.2(a) hereof.

- 7.3 Product Warranty.

- (a) In-Warranty Product.

For a period of three (3) months from Purchaser's sales of the Product, or six (6) months upon the delivery of the Product in accordance with Section 7.1 hereof, whichever is earlier ("*Warranty Period*"), Foxconn warrants that the Product shall be free from defects in Foxconn's design, components, and workmanship.

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If any Product does not conform to any warranty under this Section 7.3(a) hereof during the Warranty Period (“*Defective Product*”), Purchaser shall deliver to Foxconn a notice to such defect. Upon the receipt of such notice by Foxconn, Foxconn shall deliver to Purchaser an authorization to return the Defective Product to Foxconn.

Promptly after the receipt of such authorization, Purchaser shall (i) send the request of Return Material Authorization (“*RMA*”) as well as the descriptions of the defects, the quantity to be returned to Foxconn, and the packaging status, and (ii) upon and to the extent of Purchaser's receipt of the RMA number issued by Foxconn which shall not be unreasonably withheld, Purchaser shall, at Purchaser's expense, return the Defective Product to Foxconn designated location in Hong Kong in accordance with Foxconn's instructions and Foxconn shall assume all risk of loss to the Defective Product upon Foxconn's receipt thereof in Foxconn designated locations in Hong Kong. Upon receipts of the Defective Product, Foxconn shall comply with the following.

- A. look for the cause of any defect, imperfection or inadequacy in the Product when requested to do so by Purchaser;
- B. at Foxconn's decision, repair or replace the Defective Product; and
- C. return the repaired or replaced Product to Purchaser's designated Hong Kong site at Foxconn's own costs.

(b) Warranty Exclusion.

Notwithstanding the foregoing, Foxconn shall have no warranty obligation under Section 7.3 (a) with respect to any Product to the extent any defect in the Product was caused by:

- A. an incorrect or improper use, maintenance or installation of the Product;
- B. accident or natural causes;
- C. modifications or repairs carried out by any party other than Foxconn or its affiliates;
- D. modification, deletion or illegibility of the model or serial number, except that Purchaser provides the written evidence proving the defective Product shall be within the Warranty Period ;
- E. breakdown attributable to the use of accessories or devices not authorized by Foxconn;
- F. any defect in the components consigned, designated or sold by Purchaser, if any; or
- G. any defect in the Purchaser provided design or technology used or incorporated into the Product, if any.

(c) Out-of-Warranty Product.

This out-of-warranty provision applies to (i) the Product that is damaged, defected or caused to malfunction that are not attributable to Foxconn in accordance with Sections 7.3 (a) and 7.3 (b) above, or (ii) the Product that shall be found defective after the Warranty Period as set forth in Section 7.3 (a). Both Parties hereby agree that out-of-warranty Product returned for repair or replacement by Purchaser shall be billed based on the Foxconn's repair quotation as discussed by both Parties.

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7.4 MPA.

In addition to Sections 7.1 through 7.3 hereof, the Parties shall discuss and negotiate other terms and conditions for manufacturing and supplying the Product to Purchaser by entering into a Master Supply Agreement.

8. CONFIDENTIALITY.

During the term of this SOW, the Parties will comply with the terms and conditions of Confidentiality and Non-disclosure Agreement dated as of January 5<sup>th</sup>, 2016 (“NDA”). The Parties shall keep the terms of this SOW and any non-public information relating to the performance of this SOW identified confidential in accordance with the terms of the NDA. Notwithstanding anything to the contrary in the NDA, the term of the NDA shall continue as long as this SOW is in force.

9. BINDING EFFECT.

This SOW sets forth the understanding of the Parties and supersedes any and all prior or contemporaneous agreements, discussions, communications and representations, whether written, oral or otherwise, of the Parties with respect to the subject(s) of this SOW. This document shall have legal binding effect on the Parties.

10. TERMINATION.

This SOW shall be effective from the Effective Date as set first above until earlier termination determined by both Parties in writing. In the event that the Project or this SOW shall be terminated by Purchaser, Purchaser’s payment obligation for the NRE Fee will be limited to the portions of development work completed by Foxconn.

11. NON-ASSIGNMENT.

Neither Party shall assign any of its rights, or delegate any of its obligations, under this SOW or purchase order, to a third party in any form whatsoever without the prior written consent of the other Party, which shall not be unreasonably withheld.

12. GOVERNING LAW.

This SOW shall be governed by and construed and enforced in accordance with the laws of the State of California, County of Los Angeles, without regard to principles of conflicts of law. The Parties explicitly agree that the provisions of the United Nations Convention on Contracts for International Sale of Goods (CISG) shall not apply to this SOW.

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13. **PUBLICITY.**

Neither Party may publicize or release any information in relation to this SOW except with the other Party's prior written consent.

14. **GENERAL PROVISIONS.**

14.1 Relationship of the Parties. Foxconn shall perform its obligations under this SOW as an independent contractor of Purchaser. Nothing contained in this SOW is intended or shall be construed to create any partnership, joint venture or agency relationship between the Parties. Nothing contained in this SOW is intended or shall be construed to confer upon or give any person or entity other than the Parties any rights under or by reason of this SOW.

14.2 Entire Agreement. This SOW constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any previous oral or written agreements with respect to the subject matter hereof, including without limitation any nondisclosure agreements, memorandums of understanding or letters of intent between the Parties with respect to the subject matter hereof.

14.3 Counterparts and Signatures. The Parties may execute any number of counterparts to this SOW, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement. A copy or facsimile of the signature on this SOW of any authorized representative of either Party shall have the same force and effect as an original thereof.

IN WITNESS WHEREOF, this SOW has been executed by:

**Hon Hai Precision Industry Co., Ltd.**

**ToughBuilt Industries Inc.**

/s/ Michael Panosian

Name:  
Title:  
Date:

Name: Michael Panosian  
Title: CEO  
Date: 10-18-2016

**Corporate Governance  
Code of Ethics and Business Conduct**

**Statement of General Policy**

This Code of Ethics and Business Conduct (the “**Code**”) has been adopted to provide guiding principles to all officers and employees of ToughBuilt Industries, Inc., a Nevada corporation (the “**Company**”) in the performance of their duties. It also applies in many respects to the directors of the Company. The Code should be read in conjunction with the Company’s other policies that govern employee conduct.

The basic principle which governs all of our officers, directors and employees (the “**Insiders**”) is that the Company’s business should be carried on with loyalty to the interest of our shareholders, customers, suppliers, fellow employees, strategic partners and other business associates. In furtherance of the foregoing, no Insider shall: (a) employ any device, scheme or artifice to defraud the Company or any Business Associate; (b) engage in any act, practice or course of conduct which operates or would operate as a fraud or deceit upon the Company or any Business Associate.

The Company is committed to a high standard of business conduct. This means conducting business in accordance with the spirit and letter of applicable laws and regulations and in accordance with ethical business practices. This Code, which applies to all Insiders and their Family Members, helps in this endeavor by providing a statement of the fundamental principles that govern the conduct of the Company’s business. In addition, all Insiders and their family members are responsible for complying with all laws and regulations applicable to the Company.

**1. Definition of Terms Used**

(a) “**Business Associate**” means any supplier of services or materials, customer, consultant, professional advisor, lessor of space or goods, tenant, licensor, licensee or partner of the Company.

(b) “**Company**” includes ToughBuilt Industries, Inc. and each of its subsidiaries and affiliated business entities.

(c) “**Insider**” means any officer, director or employee of the Company.

(d) “**Family Members**” means as to a specific Insider, his or her Immediate Family Members and any company, partnership, limited liability company, trust or other entity that is directly or indirectly controlled by that Insider or by any Immediate Family Member of that Insider.

(e) “**Immediate Family Member**” includes the spouse (or life partner) and children of an Insider and any relative (by blood or marriage) of that Insider or spouse (or life partner) residing in the same household as such Insider.

(f) “**Compliance Officer**” shall mean the Chief Executive Officer of the Company.

**2. Transactions with the Business Associates**

(a) In adhering to the foregoing basic principles, our Insiders and their Family Members must not profit, directly or indirectly, due to their position in the Company to the detriment, or at the expense, of the Company or any Business Associate. No Insider shall take for his or her own advantage any corporate opportunity for profit, which he or she learns about in his or her position with the Company.

(b) Insiders and their Family Members are encouraged to patronize our Business Associates. However, no Insider or Family Member shall sell to, or purchase from, a Business Associate any goods or services except in the ordinary course of the Business Associate’s business. No Insider or Family Member shall borrow money or other property from a person known by the Insider to be a Business Associate, unless that Business Associate is regularly engaged in the business of lending money or such other property, and the loan and the terms thereof are in the ordinary course of the Business Associate’s business.

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### **3. Non-Disclosure of Information**

(a) No Insider or Family Member shall discuss with, or inform others about, any actual or contemplated business transaction by a Business Associate or the Company except in the performance of the Insider's employment duties or in an official capacity and then only for the benefit of the Business Associate or the Company, as appropriate, and in no event for personal gain or for the benefit of any other third party.

(b) No Insider or Family Member shall give any information to any third party about any business transaction of the Company or its Business Associates that are proposed or in process unless expressly authorized to do so by the Compliance Officer.

(c) No Insider or Family Member other than the Company's Chief Executive Officer or the Chief Financial Officer may discuss with any member of the press or media the Company or its Business Associates except with the prior authorization of the Compliance Officer. Insiders and Family Members shall refer all press inquiries to the Chief Executive Officer.

### **4. Preferential Treatment and Gifts**

No Insider shall seek or accept for his or her self or for any Family Member any favors, preferential treatment, special benefits, special documents, gifts or other consideration as a result of such Insider's association with a Business Associate or the Company, except those usual and normal benefits directly provided by a Business Associate or the Company. The foregoing, however, does not prohibit receipt of gifts of nominal value.

### **5. Conflicts of Interest**

(a) An Insider shall maintain a high degree of integrity in the conduct of the Company's business and maintain independent judgment. Each Insider must avoid any activity or personal interest that creates, or appears to create, a conflict between his/her interests and the interests of the Company. A conflict of interest arises any time such a person has a duty or interest that may conflict with the proper and impartial fulfillment of such person's duties, responsibilities or obligations to the Company. Conflicts of interest include, by way of example, a person:

(i) making an investment that may affect his/her business decisions;

(ii) owning a meaningful financial interest in, or being employed by, an organization that competes with the Company;

(iii) owning a meaningful financial interest in, or being employed by, an organization that does, or seeks to do, business with the Company;

(iv) making a material decision on a matter where such person's self-interests may reasonably call the appropriateness of the decision into question;

(v) being employed by or accepting compensation from any other person as a result of business activity or prospective business activity affecting the Company.

(b) An officer or employee that becomes aware of a personal interest which is, or may be viewed as, in conflict with that of the Company or a Business Associate should promptly present the situation and the nature of the possible conflict to the Compliance Officer for appropriate consideration. A director of the Company that becomes aware of a conflict of interest should bring the matter to the attention of the Audit Committee of the Board of Directors of the Company. The Insider shall refrain from further action until the situation has been consented to in writing by the Compliance Officer or the Audit Committee, as the case may be.

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(c) No Insider or Family Member shall personally benefit, directly or indirectly from any Company purchase or sale, or derive any other personal gain from any other Company activity, except when the transaction has been fully disclosed to and approved in writing as provided in this Code.

(d) No Insider or Family Member shall have any meaningful personal business or financial interest in any Business Associate or competitor of the Company, without proper consent. For these purposes, holding 5% or less of the shares of a Business Associate or competitor whose shares are publicly traded shall not be deemed “meaningful.”

(e) No Insider shall hold any position with (including as a member of the board of directors or other governing body) or perform services for a Business Associate or a competitor of the Company, without proper consent.

(f) No Insider shall provide any services to other business enterprises which reasonably could be deemed to adversely affect the proper performance of his or her work for the Company or which might jeopardize the interests of the Company, including serving as a director, officer, consultant or advisor of another business, without proper consent.

(g) No Insider shall direct, or seek to direct, any Company business with any business enterprise in which the Insider or his or her Family Member has a meaningful ownership position or serves in a leadership capacity, without proper consent.

## **6. Inside Information**

Securities laws and regulations prohibit the misuse of material non-public (“**inside**”) information when purchasing, selling or recommending securities.

Inside information obtained by any Insider from any source must be kept strictly confidential. All inside information should be kept secure and access to files and computer files containing such information should be restricted. Insiders shall not use, act upon, or disclose to any third party including, without limitation, any Family Member, any material inside information, except as may be necessary for the Company’s legitimate business purposes to the extent approved, in advance, by the Compliance Officer. Questions and requests for assistance regarding inside information should be promptly directed to the Compliance Officer.

Information is generally considered “material” if (a) there is a substantial likelihood that a reasonable investor would find the information important in determining whether to trade in a security, or (b) the information, if made public, would likely affect the market price of a company’s securities. Inside information typically includes, but is not limited to, knowledge of pending Company business transactions, corporate finance activity, mergers or acquisitions, unannounced earnings and financial results and other significant developments affecting the Company.

Insiders and Family Members are prohibited from insider trading (buying or selling securities when in possession of material, nonpublic information) or tipping (passing such information on to someone who may buy or sell securities).

This prohibition on insider trading applies to Company securities and also to the securities of Business Associates if such person learns material, nonpublic information about them as a result of his or her position with the Company.

Information is generally considered “nonpublic” unless it has been adequately disclosed to the public, which means that the information must be publicly disclosed and adequate time must have passed for the securities markets to absorb the information. A delay of two business days is usually considered a sufficient period for routine information to be absorbed by the market. A longer period may be necessary for particularly significant or complex matters.

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If an Insider leaves the Company, he or she must maintain the confidentiality of all inside information until it has been adequately disclosed to the public. If there is any question as to whether information regarding the Company or any Business Associate is material or has been adequately disclosed to the public, the Compliance Officer must be contacted.

## **7. Guarding Corporate Assets**

Insiders have a duty to safeguard Company assets, including its physical premises and equipment, records, customer information and Company trademarks, trade secrets and other intellectual property. Company assets shall be used for Company business only. Without specific authorization, no Insider or Family Member may take, loan, sell, damage or dispose of Company property or use, or allow others to use, Company property for any non-Company purposes.

## **8. Corporate Books and Records**

(a) Insiders must ensure that all Company documents are completed accurately, truthfully, in a timely manner and properly authorized.

(b) Financial activities and transactions must be recorded in compliance with all applicable laws and accounting practices and in accordance with the generally accepted accounting principles designated by the Company. The making of false or misleading entries, records or documentation is strictly prohibited.

(c) Insiders may never create a false or misleading report under the Company's name. In addition, no payments or established accounts shall be used for any purpose other than as described by their supporting documentation. No undisclosed funds or assets may be established.

(d) No Insider may take any action to defraud, influence, coerce, manipulate or mislead any other employee, officer or director, or any outside auditor or lawyer for the Company for the purpose of rendering the books, records or financial statements of the Company incorrect or misleading.

(e) Errors, or possible errors or misstatements in the Company's books and records must be brought to the attention of the Compliance Officer promptly upon discovery thereof. The Compliance Officer shall promptly inform the Chief Financial Officer of any such error or misstatement.

(f) All employees and officers are expected to cooperate fully with the Company's internal auditors and outside auditors. No employee or officer shall impede or interfere with the financial statement audit process.

## **9. Document Retention**

(a) The Company seeks to comply fully with all laws and regulations relating to the retention and preservation of records. All Insiders shall comply fully with the Company's policies regarding the retention and preservation of records. Under no circumstances may Company records be destroyed selectively or maintained outside Company premises or designated storage facilities.

(b) If the existence of a subpoena or impending government investigation becomes known to an Insider, he or she must immediately contact the Compliance Officer. Insiders must retain all records and documents that may be responsive to a subpoena or pertain to an investigation. Any questions regarding whether a record or document pertains to an investigation or may be responsive to a subpoena should be directed to the Compliance Officer before the record or document is disposed of. Insiders shall strictly adhere to the directions of the Compliance Officer in handling such records or documents.

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## 10. Compliance with Internal Controls and Disclosure Controls

(a) The Company has adopted a system of internal controls that must be strictly adhered to by all Insiders in providing financial and business transaction information to and within the Company. The internal controls are the backbone of the integrity of the Company's financial records and financial statements.

Each Insider shall promptly report to the Compliance Officer any actual or suspected breaches or violations of the Company's internal controls that come to the attention of the Insider.

Each Insider shall promptly report to the Compliance Officer any actual or suspect fraudulent or questionable transactions or occurrences that come to the attention of the Insider. Potentially fraudulent transactions include, without limitation, embezzlement, forgery or alteration of checks and other documents, theft, misappropriation or conversion to personal use of Company assets, and falsification of records.

Each Insider is encouraged to bring to the attention of the Compliance Officer any changes that the Insider believes may improve the Company's system of internal controls.

(b) The Company has adopted a system of disclosure controls to assure that all important information regarding the business and prospects of the Company is brought to the attention of the Chief Executive Officer and Chief Financial Officer of the Company. The accuracy and timeliness of compliance with those disclosure controls is critical to this system of disclosure controls is critical to enabling those officers to provide the financial statement and periodic report certifications required by Federal law.

Each Insider shall strictly adhere to the system of disclosure controls, including the internal reporting responsibilities assigned to him or her by the Company.

Each Insider shall promptly report in accordance with Company policy any significant event or occurrence (whether positive or negative) that arises in the course of the Insider's duties and responsibilities. Events or occurrences include those that affect or may affect the Company or its Business Associates, competitors or industry. General economic conditions need not be reported.

(c) Each Insider shall be candid in discussing matters concerning internal controls and business disclosures with the Company's management, internal auditors, outside auditors, outside counsel and directors. Factual information is important. Opinions and observations are strongly encouraged.

## 11. Implementation of the Code of Ethics

While each Insider is individually responsible for compliance with the Code, he or she does not do so in a vacuum. The Company has the resources, people and processes in place to answer questions and guide Insiders through difficult decisions.

(a) Compliance Officer Responsibility. The Chief Executive Officer has been designated the "Compliance Officer." The Compliance Officer is responsible for overseeing, interpreting and monitoring compliance with the Code. The Compliance Officer reports periodically to the Company's Board of Directors regarding all aspects of administering and enforcing of the Code.

(b) Reporting Violations. If an Insider knows of or suspects a violation of applicable law or regulations, this Code or any of the Company's other policies, he or she must immediately report that information to the Compliance Officer or to the Board of Directors. No Insider who reports an actual or suspected violation in good faith will be subject to retaliation.

(c) Investigations of Violations. Reported violations will be promptly investigated and treated confidentially to the extent possible. It is imperative that the person reporting the violation not conduct a preliminary investigation of his or her own. Investigations of alleged violations may involve complex legal issues. Persons who act on their own may compromise the integrity of an investigation and adversely affect both themselves and the Company.

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## 12. Enforcement

The Compliance Officer will take such action he or she deems appropriate with respect to any Insider who violates, or whose Family Member violates, any provision of this Code, and will inform the Board of Directors of the Company of all material violations. Any alleged violation by the Compliance Officer will be presented promptly to the Board of Directors for its consideration and such action as the Board of Directors, in its sole judgment, shall deem warranted.

The Compliance Officer will keep records of all reports created under this Code and of all action taken under this Code. All such records will be maintained in such manner and for such periods as are required under applicable Federal and state law.

## 13. Condition of Employment or Service

All Insiders shall conduct themselves at all times in the best interests of the Company. Compliance with this Code shall be a condition of employment and of continued employment with the Company, and conduct not in accordance with this Code shall constitute grounds for disciplinary action, including termination of employment.

This Code is not an employment contract nor is it intended to be an all exclusive policy statement on the part of the Company. The Company reserves the right to provide the final interpretation of the policies it contains and to revise those policies as deemed necessary or appropriate.

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### Confirmation Certificate

I have been provided with a copy of the Code of Business Conduct and Ethics of ToughBuilt Industries, Inc. I acknowledge that I have read the Code and understand my responsibilities under it. I further acknowledge that I should follow the compliance procedures described in the Code if I have any questions or concerns.

Employee Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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**Subsidiaries**

None

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