

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): **July 12, 2019**

SPHERE 3D CORP.

(Exact name of registrant as specified in its charter)

Ontario, Canada
(State or other jurisdiction
of incorporation)

001-36532
(Commission File Number)

98-1220792
(IRS Employer Identification No.)

**895 Don Mills Road,
Bldg. 2, Suite 900
Toronto, Ontario**
(Address of principal executive offices)

M3C 1W3
(Zip Code)

Registrant's telephone number, including area code **(858) 571-5555**

Not Applicable

(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a -12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d - 2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e - 4(c))
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Item 1.01 Entry into a Material Definitive Agreement

Share Exchange Agreement

On July 12, 2019, following the filing of the Amendment (as defined below) to create the Series B Preferred Shares (as defined below), Sphere 3D Corp. (the “Company”) entered into a share exchange agreement (the “Share Exchange Agreement”) with FBC Holdings SÀRL (“FBC”) to exchange the 6,500,000 Series A Preferred Shares held by FBC for 6,500,000 Series B Preferred Shares.

The foregoing description of the Share Exchange Agreement is qualified in its entirety by reference to the Share Exchange Agreement, a copy of which is attached hereto as Exhibit 10.1 and incorporated into this Item 1.01 by reference.

Amendment to the Exchange and Buy-Out Agreement

On November 13, 2018, the Company entered into an Exchange and Buy-Out Agreement (the “Exchange and Buy-Out Agreement”), by and among the Company, FBC, Silicon Valley Technology Partners Inc. (“SVTP”) and MF Ventures LLC (“MFV”) which was previously disclosed on Form 8-K filed on November 14, 2018. Under the terms of the Exchange and Buy-Out Agreement, (i) the Company granted FBC the right to exchange up to 2,500,000 of Series A Preferred Shares held by FBC for up to all of the shares of SVTP (the “SVTP Shares”) held by the Company (the “Exchange Right”), and (ii) MFV and SVTP have the right to purchase up to 2,120,301 of the SVTP Series A Preferred Shares held by FBC plus up to 2,500,000 Series A Preferred Shares held by FBC (or, following exercise of the Exchange Right by FBC, the SVTP Shares held by FBC).

On July 12, 2019, in connection with the Share Exchange Agreement, the Company entered into an amendment to the Exchange and Buy-Out Agreement (the “Amendment to the Exchange and Buy-Out Agreement”) by and among the Company, FBC, SVTP and MFV such that the rights and obligations under the Exchange and Buy-Out Agreement would apply to the Series B Preferred Shares in respect of which the Series A Preferred Shares were exchanged under the Share Exchange Agreement.

The foregoing description of the Exchange and Buy-Out Agreement is qualified in its entirety by reference to the Exchange and Buy-Out Agreement, a copy of which was attached as Exhibit 10.3 to Form 8-K filed on November 14, 2018. The foregoing description of the Amendment to the Exchange and Buy-Out Agreement is qualified in its entirety by reference to the Amendment to the Exchange and Buy-Out Agreement, a copy of which is attached hereto as Exhibit 10.2 and incorporated into this Item 1.01 by reference.

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

Pursuant to the articles of incorporation of the Company, as amended, the Company is authorized to issue an unlimited number of Preferred Shares, issuable in series and the directors are authorized to fix the number of shares in each series of Preferred Shares and to determine the designation, rights, privileges, restrictions and conditions attaching to each series of Preferred Shares.

On July 8, 2019, the directors of the Company passed a resolution authorizing the filing of articles of amendment to create a second series of Preferred Shares, being, an unlimited number of series B preferred shares (the “Series B Preferred Shares”) and to provide for the rights, privileges, restrictions and conditions attaching thereto. The rights, privileges, restrictions and conditions attaching to the Series B Preferred Shares are substantially the same as the series A preferred shares (the “Series A Preferred Shares”) of the Company, save and except that the requirement for the Company to redeem all of the issued and outstanding Series A Preferred Shares on or before November 13, 2020 has been amended to provide that the Company shall only be required to redeem 1,000,000 Series B Preferred Shares on or before November 13, 2020 and any other outstanding Series B Preferred Shares may be redeemed at any time and from time to time after December 19, 2019 at the option of the Company.

On July 12, 2019, the Company filed Articles of Amendment to create the Series B Preferred Shares (the “Amendment”). The foregoing description is qualified in its entirety by reference to the Amendment, a copy of which is filed as Exhibit 3.1 hereto and is incorporated by reference into this report.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
10.1	Share Exchange Agreement between FBC Holdings SÀRL and the Company dated July 12, 2019
10.2	Amendment to the Share Exchange and Buyout Agreement by and among the Company, FBC Holdings SÀRL, Silicon Valley Technology Partners Inc. and MF Ventures LLC dated July 12, 2019.
3.1	Certificate and Articles of Amendment of the Company dated July 12, 2019.

SIGNATURES

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

Date: July 12, 2019

SPHERE 3D CORP.

By: /s/ Kurt L. Kalbfleisch
Kurt L. Kalbfleisch
Chief Financial Officer

EXHIBIT INDEX

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5. The articles of the Corporation are amended as follow:

To amend the authorized capital of the Company as follows:

1. To increase the authorized capital of the Corporation by creating the second series of Preferred shares, being an unlimited number of Series B Preferred Shares;
2. After giving effect to the foregoing, the authorized capital of the Corporation shall consist of an unlimited number of common shares, an unlimited number of Preferred Shares, issuable in series, and an unlimited number of Series A Preferred Shares; and
3. To provide that the rights, privileges, restrictions and conditions (the “**Series B Preferred Share Provisions**”) attaching to the Series B Preferred Shares are as follows:

SERIES B PREFERRED SHARE TERMS

1. DEFINITIONS

- 1.1 In these Series B Preferred Share Provisions, the following words and phrases shall have the following meanings:
 - (a) “**Accrued and Unpaid Dividends**” means the aggregate (without duplication) of (i) all unpaid dividends on the Series B Preferred Shares for any dividend period; and (ii) the amount calculated as though dividends on each Series B Preferred Share had been accruing on a day to day basis from and including the end of the most recent fiscal quarter of the Corporation up to and including the date to which the computation of accrued dividends is to be made;
 - (b) “**Act**” means the *Business Corporations Act* (Ontario), as now enacted or as it may from time to time be amended, re-enacted or replaced (and in the case of such amendment, re-enactment or replacement, any references herein to specific provisions thereof shall be read as referring to such amended, re-enacted or replaced provisions);
 - (c) “**Aggregate Consideration**” has the meaning given thereto in Section 8(b);
 - (d) “**As Adjusted**” with respect to any share or per share amount, means subject to appropriate adjustment from the date hereof in the event of any stock dividend, stock split, consolidation, combination, conversion, exchange, reclassification, substitution or other similar recapitalization with respect to the applicable shares;
 - (e) “**Business Day**” means a day other than a Saturday, Sunday or any other statutory holiday in the City of New York, New York or in the City of Toronto, Ontario;
 - (f) “**Common Shares**” means the common shares of the Corporation;
 - (g) “**Contemplated Transaction**” has the meaning given thereto in Section 8(b);
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- (h) “**Corporation**” means Sphere 3D Corp.;
- (i) “**Deemed Liquidation**” has the meaning given thereto in Section 8;
- (j) “**Holder**” in respect of any Series B Preferred Share, means the registered holder thereof;
- (k) “**Initial Issue Date**” means the date of initial issuance of Series B Preferred Shares;
- (l) “**Redemption Amount per Series B Preferred Share**” in respect of a Series B Preferred Share, means US\$1, As Adjusted, together with all Accrued and Unpaid Dividends on such share;
- (m) “**Series B Conversion Rate**” at any time means the number of Common Shares into which one Series B Preferred Share may be converted As Adjusted from time to time pursuant to these Series B Preferred Share Provisions;
- (n) “**Series B Subscription Price**” of each Series B Preferred Share means US\$1, As Adjusted;
- (o) “**Series B Preferred Holder Approval**” means the approval of the Holders of the Series B Preferred Shares given in writing by the Holders of a majority of the outstanding Series B Preferred Shares (or such greater percentage as may be required by applicable law) or by a resolution passed by a majority of the votes cast by the Holders of Series B Preferred Shares who voted in respect of that resolution (or such greater percentage as may be required by applicable law);
- (p) “**Series B Preferred Shares**” means the Series B Preferred Shares of the Corporation; and
- (q) “**Stock Option Plan**” means (i) any performance incentive plan, stock option plan or stock purchase plan of the Corporation that either (x) has been approved by the board of directors and the shareholders of the Corporation prior to the Initial Issue Date of first issuance of a Preferred Share or (y) is approved by the board of directors and the Holders by way of Preferred Holder Approval and, in either of (x) or (y) above, as such plan or plans may be amended, replaced or substituted from time to time with approval of the board of directors and the Holders by way of Preferred Holder Approval; and (ii) the Company’s 2015 performance incentive plan, as it may be amended as described in the definitive proxy statement and information circular filed with the Securities Exchange Commission on September 27, 2018.

2. DIVIDENDS

The Holders of the Series B Preferred Shares shall be entitled to receive and the Corporation shall pay thereon, as and when declared by the directors of the Corporation out of moneys of the Corporation properly applicable to the payment of dividends, which, subject to applicable law, shall be declared by the directors, without duplication:

- (a) if the Corporation receives any cash dividends on its equity investment in Silicon Valley Technology Partners, Inc. in an amount equal to such cash dividend received, cumulative cash dividends at a rate of 8% of the Series B Subscription Price per Series B Preferred Share per annum; and
- (b) after November 13, 2020, fixed, preferential, cumulative cash dividends at the rate of 8% of the Series B Subscription Price per Series B Preferred Share per annum.

Dividends on each Series B Preferred Share shall accrue on a daily basis from and including the date of issue thereof and shall be paid on such date or dates as and when decided by the board of directors out of moneys properly applicable to the payment of such dividends. No dividends shall be paid or set apart for payment upon the Common Shares or any other shares ranking junior to the Series B Preferred Shares with respect to the payment of dividends unless all cumulative dividends on the Series B Preferred Shares up to and including the dividend accrued as of the end of the most recent fiscal quarter of the Corporation on the Series B Preferred Shares then issued and outstanding shall have been declared and paid or set apart for payment. All dividends which the board of directors may declare on the Series B Preferred Shares shall be declared and paid in equal amounts per share on all Series B Preferred Shares at the time outstanding. The Holders of the Series B Preferred Shares shall not be entitled to any dividend other than or in excess of the cumulative cash dividends herein provided for. Cheques payable in lawful money of the United States at par at any branch in Canada or the United States of any one of the Corporation's banks for the time being shall be issued in respect of the said dividends (less any tax required to be deducted or withheld therefrom) to the Holders of the Series B Preferred Shares entitled thereto and such cheques shall satisfy and discharge all liability for such dividends unless such cheques are not paid on due presentation.

3. REDEMPTION BY THE CORPORATION

Subject to the provisions of subsection 32(2) of the Act and subject to applicable law, the Corporation may, at any time and from time to time, after December 19, 2019, redeem, in whole or in part, the then outstanding Series B Preferred Shares on payment for each Series B Preferred Share to be redeemed of the Redemption Amount per Series B Preferred Share; provided that, subject to applicable law, the Corporation shall redeem 1,000,000 Series B Preferred Shares on or before November 13, 2020 at the Redemption Amount per Series B Preferred Share.

The Corporation shall, at least 20 days before the date specified for redemption of Series B Preferred Shares pursuant to the provisions of Section 3, provide notice in writing to each person who at the date of mailing is a registered Holder of shares to be redeemed of the intention of the Corporation to redeem such Series B Preferred Shares. Such notice shall be sent to each such Holder in accordance with the provisions of Section 11.1; provided, however, that accidental failure to give any such notice to one or more of such shareholders shall not affect the validity of such redemption. Such notice shall set out the Redemption Amount per Series B Preferred Share and the date on which redemption is to take place.

On the date specified for redemption of Series B Preferred Shares pursuant to Section 3, the Corporation shall pay or cause to be paid to or to the order of the registered Holders of the Series B Preferred Shares to be redeemed their respective Redemption Amount per Series B Preferred

Share on presentation and surrender of the certificates representing the Series B Preferred Shares called for redemption at the registered office of the Corporation or any other place or places designated in the notice of redemption. Subject to the provisions of Section 3, on and after the date specified for redemption in any such notice the Series B Preferred Shares called for redemption shall cease to be entitled to dividends and the Holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the Redemption Amount per Series B Preferred Share shall not be made upon presentation of certificates in accordance with the foregoing provisions, in which case the rights of the shareholders shall remain unaffected.

The Corporation shall after the mailing of notice of its intention to redeem any Series B Preferred Shares in accordance with Section 3 deposit the Redemption Amount per Series B Preferred Share so called for redemption or of such of the said Series B Preferred Shares represented by certificates as have not at the date of such deposit been surrendered by the Holders thereof in connection with such redemption to a special account in a specified chartered bank or a specified trust company in Canada or the United States, named in such notice of redemption, to be paid without interest to or to the order of the respective Holders of such shares called for redemption upon presentation and surrender to such bank or trust company of the certificates representing the same. Upon such deposit being made or upon the date specified for redemption in such notice, whichever is the later, the Series B Preferred Shares in respect whereof such deposit shall have been made shall be deemed to be redeemed and all rights of the Holders thereof after such deposit or such redemption date, as the case may be, shall be limited to receiving without interest their proportionate part of the total Redemption Amount per Series B Preferred Share so deposited, against presentation and surrender of the said certificates held by them respectively. Any interest allowed on any such deposit shall belong to the Corporation. Redemption moneys that are represented by a cheque which has not been presented to the Corporation's bank for payment or that otherwise remain unclaimed (including moneys held on deposit to a special account as provided for above) for a period of one year from the date specified for redemption shall be forfeited to the Corporation.

4. EXCHANGE AGREEMENT

The Series B Preferred Shares shall be subject to that certain Share Exchange and Buy-Out Agreement entered into as of October 19, 2018 by and among the Corporation, FBC Holdings Sàrl, MF Ventures, LLC, and Silicon Valley Technology Partners, Inc., as it may be amended from time to time, and the acquisition by the Corporation of any of the preferred shares of the Corporation pursuant thereto shall be deemed to be effected in accordance with the articles of the Corporation.

5. CANCELLATION OF SHARES

Series B Preferred Shares that are redeemed by the Corporation pursuant to any of the provisions hereof shall be cancelled on and as of the date of such redemption.

6. VOTING RIGHTS

The Holders of the Series B Preferred Shares shall be entitled to receive notice of, to attend (in a non-voting capacity) all meetings of the shareholders of the Corporation, other than at meetings of the Holders of any other class of shares meeting separately as a class. Other than with respect to

the matters contained herein which specifically provide the Holders with certain limited voting rights, no Holder shall have any right to any vote with respect to the Series B Preferred Shares.

7. CONVERSION

7.1 CONVERSIONS AND ADJUSTMENTS

Upon and subject to the terms and conditions set out in this Section 7.1, FBC Holdings Sàrl or any affiliate thereof shall have the right, provided (and only if and to the extent) that prior shareholder approval of the issuance of all Common Shares issuable upon conversion of the Series B Preferred Shares has been obtained in accordance with the rules of the Nasdaq Stock Market and/or any other exchange on which the Common Shares are then traded, to convert all or any part of its Series B Preferred Shares into the number of fully paid and non-assessable Common Shares that is equal to the number of Series B Preferred Shares to be converted multiplied by the Series B Conversion Rate in effect on the date of conversion.

The Corporation (a) shall not seek, without the approval of FBC Holdings Sàrl, the shareholder approval described in the preceding paragraph and (b) notwithstanding clause (a) of this paragraph, must seek the approval described in the preceding paragraph by December 31, 2019.

Notwithstanding any other provision of this Section 7.1, the Corporation shall not effect the conversion by FBC Holdings Sàrl, any of its affiliates or any member of a Section 13(d) "group" with FBC Holdings Sàrl of any Series B Preferred Shares, and each of FBC Holdings Sàrl, its affiliates and any member of a Section 13(d) group with FBC Holdings Sàrl shall not have the right to convert any Series B Preferred Shares, to the extent that after giving effect to such conversion, FBC Holdings Sàrl, together with any of FBC Holdings Sàrl's affiliates and any other member of a Section 13(d) group with FBC Holdings Sàrl, would beneficially own in excess of 9.99% (the "Maximum Percentage") of the Common Shares outstanding immediately after giving effect to such conversion; provided, however, that FBC Holdings Sàrl may upon providing the Corporation with at least 61 days' prior written notice, increase or decrease the Maximum Percentage. For purposes of the foregoing sentence, the aggregate number of Common Shares beneficially owned by FBC Holdings Sàrl, its affiliates and any member of a Section 13(d) group with FBC Holdings Sàrl shall include the number of Common Shares issuable upon conversion of the Series B Preferred Shares with respect to which the determination of such sentence is being made, but shall exclude Common Shares which would be issuable upon (i) conversion of the remaining, unconverted Series B Preferred shares held by FBC Holdings Sàrl, its affiliates or a member of a Section 13(d) group with FBC Holdings Sàrl and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation beneficially owned by FBC Holdings Sàrl, its affiliates or members of a Section 13(d) group with FBC Holdings Sàrl (including, without limitation, any convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. For purposes of this paragraph, beneficial ownership and whether FBC Holdings Sàrl is a member of a Section 13(d) group shall be calculated and determined in accordance with Section 13(d) of the U.S. Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder. For purposes of this paragraph, in determining the number of outstanding Common Shares, FBC Holdings Sàrl may rely on the number of outstanding Common Shares as reflected in (1) the Corporation's most recent Form 10-K, Form 10-Q, Form 8-K or other public filing with the U.S.

Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the Corporation or (3) any other notice by the Corporation setting forth the number of Common Shares outstanding. For any reason at any time, upon the written or oral request of FBC Holdings Sàrl, the Corporation shall within two (2) business days confirm to FBC Holdings Sàrl the number of Common Shares then outstanding. FBC Holdings Sàrl shall disclose to the Corporation the number of Common Shares that it, its affiliates or any member of a Section 13(d) group with FBC Holdings Sàrl owns and has the right to acquire through the exercise or conversion of derivative securities and any limitations on exercise or conversion analogous to the limitation contained herein contemporaneously or immediately prior to a proposed conversion of any Series B Preferred Shares.

A third party transferee unaffiliated with FBC Holdings Sàrl or any of its affiliates may, at any time, convert all or any part of the Series B Preferred Shares held by such third party transferee into the number of fully paid and non-assessable Common Shares that is equal to the number of Series B Preferred Shares to be converted multiplied by the Series B Conversion Rate in effect on the date of conversion; provided that, (x) after such conversion, the Common Shares issuable upon such conversion, together with all Common Shares held by such third party transferee that are or would be deemed to be aggregate under the rules of the Nasdaq Stock Market, in the aggregate would not exceed 19.9% of the total number of Common Shares of the corporation then outstanding and (y) such conversion and issuance would not otherwise violate or cause the Corporation to violate the Corporation's obligations under the rules or regulations of the Nasdaq Capital Market. Unless and until adjusted in accordance with these Series B Preferred Share Provisions, the Series B Conversion Rate shall be equal to (a) the Series B Subscription Price, plus any Accrued and Unpaid Dividends, divided by (b) an amount equal to the greater of (i) (x) 0.85 multiplied by (y) the average of daily volume weighted average prices of Common Shares during the 15 trading day period ending on the trading day immediately preceding notice of conversion by the Holder to the Corporation, As Adjusted, and (ii) the lower of (x) US\$0.80, As Adjusted and (y) the par value of the Common Shares at such time, subject to any stock exchange or regulatory limitations on such Series B Conversion Rate.

7.2 AVOIDANCE OF FRACTIONAL SHARES

In any case where a fraction of a Common Share would otherwise be issuable on conversion of one or more Series B Preferred Shares, the Corporation shall adjust such fractional interest by the payment to the Holder of an amount in cash equal to the then current market value of such fractional interest, as determined by the board of directors.

7.3 RESERVATION OF COMMON SHARES

So long as any of the Series B Preferred Shares are outstanding and entitled to the right of conversion herein provided, the Corporation shall at all times reserve a sufficient number of unissued Common Shares to enable all of the Series B Preferred Shares outstanding to be converted upon the basis and upon the terms and conditions herein provided in this Section 7.

8. LIQUIDATION, DISSOLUTION OR WINDING-UP

- (a) In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the Series B Preferred Shares shall entitle each of the Holders thereof to receive an amount equal to the Series B Subscription Price per Series B Preferred Share plus the amount of the Accrued and Unpaid Dividends, the whole to be paid before any amount is paid or any assets of the Corporation are distributed to the holders of Common Shares or any other shares ranking junior to the Series B Preferred Shares on any such liquidation, dissolution, winding-up or distribution. Upon payment of the amounts so payable to them, the Holders of Series B Preferred Shares shall not be entitled to share in any further distribution of assets of the Corporation.
- (b) For the purposes of Section 8(a) above, a liquidation, dissolution, or winding up of the Corporation shall be deemed to occur (each a “**Deemed Liquidation**”) upon: (i) a sale, conveyance, exclusive license or other disposition of all or substantially all of the undertaking, property or assets (including, without limitation, the material intellectual property) of the Corporation, where the shareholders of the Corporation immediately prior to the transaction do not collectively own, directly or indirectly, a majority interest in any purchasing or acquiring entity following the transaction; provided however that the transactions contemplated by that certain Share Purchase Agreement by and among Silicon Valley Technology Partners, Inc. (formerly, Silicon Valley Technology Partners LLC), Overland Storage and the Corporation dated as of February 20, 2018 (as it may be amended from time to time) (the “**Contemplated Transaction**”) shall not be deemed to constitute a “Deemed Liquidation”) and the assets disposed of, transferred or exclusively licensed in the Contemplated Transaction shall be disregarded for purposes of determining whether a separate sale, conveyance, exclusive license or other disposition of assets constitutes a “Deemed Liquidation”; (ii) a merger or amalgamation of the Corporation with or into, or consolidation of the Corporation with, any other corporation in which the shareholders of the Corporation immediately prior to the transaction do not collectively own, directly or indirectly, a majority of the voting power of the surviving corporation following the transaction; or (iii) the sale, exchange or other disposition of the outstanding Common Shares of the Corporation or any reorganization or other transaction in which the shareholders of the Corporation immediately prior to the transaction do not own, directly or indirectly, a majority of the voting power of the surviving corporation following the transaction. In the event of a Deemed Liquidation where the nature of the transaction is such that the consideration (whether in the form of cash, securities or other property) in connection with such Deemed Liquidation would be receivable by the shareholders of the Corporation, then the Holders of the Series B Preferred Shares shall be entitled to receive at the closing of such Deemed Liquidation such portion of the aggregate consideration (whether in the form of cash, securities or other property) receivable by the shareholders of the Corporation in connection with such Deemed Liquidation (the “**Aggregate Consideration**”) as is required by applying Section 8(a) to the distribution and payment of the Aggregate
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Consideration in the same manner as the assets of the Corporation are required to be distributed among its shareholders in the event of a liquidation, dissolution or winding up in accordance with such section.

The Corporation shall provide the Holders with at least ten (10) Business Days' prior written notice of the consummation of any Deemed Liquidation.

9. ADDITIONAL RESTRICTIONS

The Common Shares shall rank junior to the Series B Preferred Shares and shall be subject in all respects to the rights, privileges, restrictions and conditions attaching to the Series B Preferred Shares.

So long as any of the Series B Preferred Shares are outstanding, except as specifically contemplated in the Series B Preferred Share Provisions, the Corporation shall not, without the approval of a majority of the Holders (with each such share having one vote):

- (a) redeem or call for redemption, purchase or otherwise pay off, retire or make any return of capital in respect of any shares of the Corporation ranking as to capital junior to the Series B Preferred Shares (other than with respect to Common Shares issued pursuant to a Stock Option Plan in connection with the cessation of service of the holder of such shares);
- (b) redeem or call for redemption, purchase or otherwise pay off, retire or make any return of capital in respect of any shares, ranking as to the payment of dividends or return of capital on a parity with the Series B Preferred Shares; or
- (c) issue any additional Series B Preferred Shares in excess of the number of Series B Preferred Shares authorized for issuance as of the Initial Issue Date, or securities convertible or exchangeable for Series B Preferred Shares, or any shares or securities convertible or exchangeable therefor ranking as to the payment of dividends or the return of capital prior to or on a parity with the Series B Preferred Shares.

10. MODIFICATION

Subject to the provisions of the Act, the rights, privileges, restrictions and conditions attaching to the Series B Preferred Shares may be deleted, varied, modified, amended or amplified with prior Series B Preferred Holder Approval.

11. MISCELLANEOUS

11.1 NOTICES

Any notice required or permitted to be given to any Holder shall be delivered by courier to such Holder at its address as it appears on the records of the Corporation or in the event of the address of any such Holder not so appearing, then to the last address of such Holder known to the Corporation.

11.2 GENDER, ETC.

Words importing only the singular number include the plural and vice versa and words importing any gender include all genders.

11.3 CURRENCY

All monetary amounts referred to herein shall be in lawful money of the United States unless otherwise indicated.

11.4 HEADINGS

The division of these Series B Preferred Share Provisions into sections, paragraphs or other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

11.5 BUSINESS DAY

In the event that any date upon which any dividends on the Series B Preferred Shares are payable by the Corporation, or upon or by which any other action is required to be taken by the Corporation or any Holder hereunder, is not on a Business Day or during a Business Day, then such dividend shall be payable or such other action shall be required to be taken on or by the next succeeding day which is a Business Day.

6. The amendment has been duly authorized as required by sections 168 and 170 (as applicable) of the *Business Corporations Act*.
La modification a été dûment autorisée conformément aux articles 168 et 170 (selon le cas) de la *Loi sur les sociétés par actions*.
7. The resolution authorizing the amendment was approved by the shareholders/directors (as applicable) of the corporation on
Les actionnaires ou les administrateurs (selon le cas) de la société ont approuvé la résolution autorisant la modification le

2019/07/08

(Year, Month, Day)
(année, mois, jour)

These articles are signed in duplicate.
Les présents statuts sont signés en double exemplaire.

SPHERE 3D CORP.

(Print name of corporation from Article 1 on page 1)
(Veuillez écrire le nom de la société de l'article un à la page une).

By/
Par :

(Signature)
(Signature)

Director

(Description of Office)
(Fonction)

SHARE EXCHANGE AGREEMENT

THIS AGREEMENT made as of the 12th day of July, 2019 between **FBC HOLDINGS SÀRL**, a *société à responsabilité limitée* incorporated under the laws of Luxembourg with R.C.S. number B.142.133 (“**FBC**”) and **SPHERE 3D CORP.**, a corporation incorporated under the laws of the Province of Ontario (the “**Company**”)

RECITALS:

- A. FBC is the registered and beneficial owner of 6,500,000 Series A Preferred Shares (the “**Series A Shares**”) in the capital of the Company.
- B. FBC and the Company desire, and deem it in the best interests of the Company to, exchange the Series A Shares for 6,500,000 Series B Preferred Shares of the Company (the “**Series B Shares**”), upon the terms and conditions hereinafter set forth (such transaction, the “**Exchange**”).

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants hereinafter set forth, the parties hereby covenant and agree as follows:

ARTICLE I EXCHANGE OF SHARES

1.1 Exchange

FBC and the Company hereby agree, subject to the terms and conditions set forth herein, to conduct the Exchange. At the closing of the Exchange (the “**Closing**”), the (i) FBC shall deliver to the Company the Series A Shares for cancellation and (ii) the Company shall deliver to FBC the Series B Shares.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of FBC

FBC hereby represents and warrants to the Company that as of the date hereof and as of the Closing date:

- (a) FBC is a corporation duly incorporated and organized and is a validly existing entity in good standing under the laws of the jurisdiction of its incorporation or organization with the corporate power and authority to execute, deliver and perform the terms of this Agreement and to consummate the transactions contemplated hereunder;
 - (b) this Agreement is a valid and binding obligation of FBC, enforceable against FBC in accordance with its terms. FBC has the full legal right to execute, deliver and perform this Agreement and the execution, delivery and performance of this Agreement by FBC is not subject to the consent or approval of any other person or entity;
-

- (c) FBC beneficially owns the Series A Shares free and clear of any claim, lien, charge or encumbrance whatsoever;
- (d) there is not, to FBC's knowledge, now any agreement or other instrument binding upon FBC that will be violated by the execution and delivery of this agreement or will prevent the performance or satisfaction by FBC of any of the terms and conditions herein contained;
- (e) FBC is not insolvent, has not committed an act of bankruptcy, proposed a compromise or arrangement to its creditors generally, has not had any petition or a receiving order in bankruptcy filed against it, taken any proceeding with respect to a compromise or arrangement, taken any proceeding to have itself declared bankrupt, has not taken any proceeding to have a receiver appointed of any part of its assets, has not had any encumbrancer take possession of any of its property, and has not had any execution or distress become enforceable or become levied upon any of its property;
- (f) no suits, actions or legal proceedings of any sort are pending or are, to FBC's knowledge, threatened which would restrain or otherwise prevent, in any manner, FBC from effectually and legally transferring the Series A Shares to the Company free and clear of any and all claims, liens, security interests and encumbrances pursuant to this Agreement, nor are there any suits, actions or other legal proceedings pending or, to FBC's knowledge, threatened, the effect of which would be to make FBC liable for damages, to divest title to the Series A Shares, or to cause a lien to attach to the Series A Shares, and FBC has no knowledge of any claims which could give rise to such a suit, action or legal proceeding; and
- (g) FBC is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

2.2 Representations and Warranties of the Company

The Company hereby represents and warrants to FBC as of the date hereof and as of the Closing date that:

- (a) the Company is a corporation duly incorporated and organized and is a validly existing entity in good standing under the laws of the jurisdiction of its incorporation or organization with the corporate power and authority to execute, deliver and perform the terms of this Agreement and to consummate the transactions contemplated hereunder;
 - (b) this Agreement is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms. The Company has the full legal right to execute, deliver and perform this Agreement and the execution, delivery and performance of this Agreement by the Company is not subject to the consent or approval of any other person or entity, except for the NASDAQ Capital Market, which consent has been obtained as of the date hereof;
-

- (c) the authorized capital of the Company consists, immediately prior to the Closing, of an unlimited number of Common Shares, an unlimited number of Preferred Shares, issuable in series, an unlimited number of Series A Preferred Shares and an unlimited number of Series B Preferred Shares, of which 2,300,000 Common Shares and 6,500,000 Series A Preferred Shares are issued and outstanding immediately prior to the Closing. All of such issued shares have been duly authorized, are fully paid and non-assessable and were issued in compliance with all applicable securities laws;
- (d) the rights, privileges and preferences of the Series B Shares are as stated in the Company's articles of amendment filed on •, 2019 with the Ministry of Government and Consumer Services (Ontario);
- (e) all of the outstanding shares of Series B Shares, when issued, will be (i) duly authorized, fully paid and non-assessable, (ii) free from all preemptive or similar rights, taxes, liens, charges and other encumbrances with respect to the issue thereof, (iii) issued without any restrictive legend, (iv) freely resold by FBC without any restrictions, and (v) issued in compliance with all applicable securities laws; and
- (f) subject to the accuracy of representations and warranties made by FBC herein, and in reliance upon such representations and warranties, the Company represents to FBC on the date of this Agreement and on the Closing Date that the Exchange will not contravene any applicable state, federal or provincial securities laws in the United States or Canada. In addition, the Company represents that the Exchange is being made in reliance upon the exemption from registration provided by Section 3(a)(9) of the *Securities Act of 1933*, as amended, and the rules and regulations promulgated thereunder (the "**Securities Act**") and agrees not to take any position contrary to this Section 2.2(f). For the purposes of Rule 144 of the Securities Act, the Company acknowledges that the holding period of the Series A Shares may be tacked onto the holding period of the Series B Shares and the Company agrees not to take a position contrary to this Section 2.2(f). The Company agrees to issue the Series B Shares without any restrictions on transfer and without any restrictive legend.

2.3 Survival

The representations and warranties contained in Article II shall survive the Closing of the transactions.

**ARTICLE III
MISCELLANEOUS**

3.1 Enurement

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

3.2 Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.

3.3 Notice

Notice, requests, demands, and other communications relating to this Agreement and the transactions contemplated herein shall be in writing and shall be deemed to have been duly given if and when: (a) delivered personally, on the date of such delivery; (b) delivered by electronic transmission, on the date of such delivery; or (c) mailed by registered or certified mail, postage prepaid, return receipt requested, on the third day after the posting thereof, to the address set forth in the signature pages to this Agreement (as such address may be updated by written notices to the other Parties to this Agreement) .

3.4 Amendments and Waivers

Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of all parties.

3.5 Severability

If any provision of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement

3.6 Entire Agreement

This Agreement and the documents referred to herein, constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersede any and all prior understandings and agreements, whether oral or written, between or among the parties hereto with respect to the specific subject matter hereof

3.7 Execution by Facsimile or Electronic Transmission

The signature of any of the parties hereto may be evidenced by a facsimile, scanned e-mail or internet transmission copy of this Agreement bearing such signature.

3.8 Counterparts

This Agreement may be signed in one or more counterparts, each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. Notwithstanding the date of execution or transmission of any counterpart, each counterpart shall be deemed to have the effective date first written above.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above mentioned.

FBC HOLDINGS SÀRL

Per: /s/ Trustmoore Luxembourg S.A.
Trustmoore Luxembourg S.A.
Manager A

Per: /s/ Cyrus Capital Partners, LP
Cyrus Capital Partners, LP
Manager B

SPHERE 3D CORP.

Per: /s/ Peter Tassiopoulos
Peter Tassiopoulos
Chief Executive Officer

**FIRST AMENDMENT TO
SHARE EXCHANGE AND BUY OUT AGREEMENT**

This **FIRST AMENDMENT TO SHARE EXCHANGE AND BUYOUT AGREEMENT** (this “**Amendment**”) is made and entered into as of July 12, 2019 by and among **SPHERE 3D CORP.**, a corporation incorporated under the laws of the Province of Ontario (“**Sphere**”), **FBC HOLDINGS SARL**, a *société à responsabilité limitée* incorporated under the laws of Luxembourg with R.C.S. number B.142.133 (“**FBC**” or a “**Stockholder**”), **MF VENTURES, LLC**, a limited liability company incorporated under the laws of Delaware (“**MF**”) and Silicon Valley Technology Partners, Inc., a Delaware corporation (“**SVTP**”)

RECITALS

WHEREAS, the Parties are parties to that certain Share Exchange and Buyout Agreement (the “**Original Agreement**”) made as of October 19, 2018 pursuant to which (a) Sphere agreed to transfer 1,879,699 shares of Series A Preferred Stock, par value \$0.0001 (the “**SVTP Series A Preferred Stock**”) of SVTP in consideration for the Stockholder surrendering 2,500,000 Preferred Shares of Sphere; and (b) FBC has agreed to grant SVTP and MF the right to buy-out 2,500,000 Preferred Shares of Sphere and 2,120,301 of the SVTP Series A Preferred Stock held by FBC;

WHEREAS, pursuant to a Share Exchange Agreement (the “**Exchange Agreement**”) dated as of the date hereof between FBC and Sphere, FBC exchanged the 6,500,000 Series A Preferred Shares of Sphere registered in its name for 6,500,000 Series B Preferred Shares of Sphere;

WHEREAS, the Parties wish to amend the Original Agreement so that the right, terms and conditions applying to the Series A Preferred Shares of Sphere apply to the Series B Preferred Shares of Sphere and to dis-apply certain provisions of Section 7.4 of the Exchange Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and adequacy of which the parties acknowledge, the parties hereby agree as follows:

1. Capitalized terms used in this Amendment not otherwise defined herein shall have the meanings given to them in the Original Agreement
2. The Original Agreement is hereby amended by deleting the words “Preferred Shares, no par value, of Sphere” in the second recital of the Original Agreement to “Series B Preferred Shares of Sphere”.
3. The Original Agreement is hereby amended by deleting Section 7.4 in its entirety and replacing it with the following:

7.4 Assignment. Neither Sphere, SVTP or MF may assign its rights or obligations under this Agreement without the prior written consent of each of the other parties hereto. Neither the Sphere Shares nor the SVTP Shares may be sold, transferred, conveyed, assigned or otherwise disposed of by FBC (an “**FBC Transfer**”) unless the transferee or assignee of such Sphere Shares and/or SVTP Shares agrees in writing to be bound by the terms of this Agreement with respect to all of the Sphere Shares and/or SVTP Shares subject to the FBC Transfer, as if such transferee or assignee were FBC hereunder (and, for the avoidance of doubt, FBC shall remain a party to this Agreement with respect to any Sphere Shares and SVTP Shares that are not a part of the FBC Transfer).

4. Except as amended hereby, the Original Agreement shall continue in full force and effect, unamended, in accordance with its terms, provisions and conditions as modified by the applicable terms, provisions and conditions of this Amendment.

5. Subject to the restrictions on assignment contained in the Original Agreement, this Amendment will be binding upon and inure to the benefit of the Parties and their respective successors, assigns, heirs, executors, administrators and legal representatives; provided that such party consents in writing to be bound by the terms, conditions and obligations under the Original Agreement, as amended by this Amendment (the “**Agreement**”).

6. This Amendment will be governed by and construed in accordance with the laws of the State of Delaware, without reference to without reference to principles of conflict of laws or choice of laws.

7. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement. Delivery of copies of original signed counterparts by facsimile or electronic transmission (including e-mail) shall be deemed as valid as physical delivery of original signed counterparts.

8. The Agreement and the documents referred to therein, together with all the Schedules and Exhibits thereto, constitute the entire agreement and understanding of the Parties with respect to the subject matter of the Agreement, and supersede any and all prior understandings and agreements, whether oral or written, between or among the parties hereto with respect to the specific subject matter hereof.

9. The Parties will perform and cause to be performed such further and other acts and things and execute and deliver or cause to be executed and delivered such further and other documents as the reasonably considered necessary or desirable to carry out the terms and intent of this Amendment.

[Signatures on following pages]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first written above.

SPHERE 3D CORP.

By: /s/ Peter Tassiopoulos

Name: Peter Tassiopoulos

Title: CEO

Address: 895 Don Mills Road
Bldg. 2, Suite 900
Toronto, ON M3C 1W3

Email: peter.tassiopoulos@sphere3d.com

Attn: Peter Tassiopoulos

STOCKHOLDER:

FBC HOLDINGS SARL

By: /s/ Trustmore Luxembourg S.A.
Name: Trustmore Luxembourg S.A.
Title: Manager A

By: /s/ Cyrus Capital Partners, LP
Name: Cyrus Capital Partners, LP
Title: Manager B

c/o Cyrus Capital Partners, LP
65 East 55th Street
New York
NY 10022
United States
Email: dbordessa@cyruscapital.com and
ops@cyruscapital.com

With a copy (which shall not constitute notice)
To

Morgan, Lewis & Bockius UK LLP
Condor House, 5-10 St. Paul's Churchyard
London EC4M 8AL
United Kingdom
Attention: Georgia Quenby/Victoria Thompson

Email: Georgia.quenby@morganlewis.com and
Victoria.thompson@morganlewis.com

MF VENTURES LLC

By: /s/ Victor MacFarlane _____

Name: Victor MacFarlane

Title: CEO

Address: 201 Spear Street, 10th Floor
San Francisco CA 94105

Email: victor@macfarlanepartners.com

Attn: Victor MacFarlane

SVTP:

**SILICON VALLEY TECHNOLOGY
PARTNERS, INC**

By: /s/ Eric Kelly_____

Name: Eric Kelly

Title: CEO

Address: 6111 Bollinger Canyon road, Suite 560
San Ramon, CA 94583

Email: ekelly@overlandtandberg.com

Attn: Eric Kel
