
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 6-K

**REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULE 13a-16 OR 15d-16
UNDER THE SECURITIES EXCHANGE ACT OF 1934**

For the month of October 2021

Commission File Number: 001-36532

SPHERE 3D CORP.

895 Don Mills Road, Bldg. 2, Suite 900

Toronto, Ontario, M3C1W3, Canada

(Address of principal executive offices)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F:

Form 20-F

Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

The information contained in this Form 6-K is incorporated by reference into, or as additional exhibits to, as applicable, the registrant's outstanding registration statements.

INFORMATION CONTAINED IN THIS FORM 6-K REPORT

Amendment to Promissory Note

On July 6, 2021, Sphere 3D Corp. (the "Company") entered into a Promissory Note (the "Note") and Security Agreement with Gryphon Digital Mining, Inc. ("Gryphon"), pursuant to which the Company loaned Gryphon \$2.7 million in exchange for the Note bearing interest at 9.5% per annum. On August 30, 2021, the Company entered into Amendment No. 1 to Promissory Note and Security Agreement pursuant to which the Company loaned Gryphon an additional \$3,650,000. On September 29, 2021, the Company entered into Amendment No. 2 to Promissory Note and Security Agreement pursuant to which the Company loaned Gryphon an additional \$3,650,000 and amended the repayment schedule whereby the principal and accrued interest shall be due and payable commencing on January 1, 2022 continuing until and including December 1, 2024 (the "Note Amendment").

The foregoing summary of the terms of the Note Amendment are subject to, and qualified in its entirety by reference to the full text of the Note Amendment filed hereto as Exhibit 99.1, to this Current Report on Form 6-K.

Amendment to Share Purchase Agreement

On September 14, 2020, the Company entered into a securities purchase agreement, as amended (the "Westworld SPA") with Westworld Financial Capital, LLC ("Westworld") relating to the issuance and sale to Westworld of 3,000 shares of the Company's Series E Convertible Preferred Shares, no par value (the "Series E Preferred Shares") in a private placement transaction, for gross proceeds of \$3.0 million. Under the Westworld SPA, the Company agreed to obtain the consent of Westworld for any additional financings by the Company. The Company has filed a Form F-3 with the Securities and Exchange Commission as part of an additional financing. In consideration for Westworld waiving its rights to consent to any and all past, present and future additional financings by the Company, the parties entered into a second amendment to the Westworld SPA on October 1, 2021 (the "Second Amendment") under which the Company agreed to issue to Westworld, 850,000 warrants to purchase common shares of the Company, which such warrants have a term of three years, and an exercise price of \$6.00 per share (the "Warrant").

The foregoing summary of the terms of the Second Amendment and Warrant are subject to, and qualified in its entirety by reference to the full text of the Second Amendment and form of Warrant filed hereto as Exhibit 99.2, to this Current Report on Form 6-K.

Articles of Amendment

On October 1, 2021, the Company filed Articles of Amendment to create the Series H Preferred Shares (the "Amendment").

The foregoing description of the Amendment is qualified in its entirety by reference to the full text of the Amendment filed hereto as Exhibit 99.3, to this Current Report on Form 6-K.

Cautionary Note Regarding Forward-Looking Statements

The information contained in this Form 6-K and the exhibits attached hereto contain "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995. The words "intend," "may," "should," "would," "expect," "plan," "anticipate," "believe," "estimate," "predict," "potential" or "continue" or the negative of these terms or other comparable terminology are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. As noted above, the closing of the Offering is subject to the satisfaction of customary closing conditions and there is no assurance that the Company will satisfy those conditions. While the Company believes its plans, intentions and expectations reflected in those forward-looking statements are reasonable, these plans, intentions or expectations may not be achieved. The Company's actual results, performance or achievements could differ materially from those contemplated, expressed or implied by the forward-looking statements. For information about the factors that could cause such differences, please refer to the Company's filings with the SEC. Given these uncertainties, you should not place undue reliance on these forward-looking statements. The Company assumes no obligation to update any forward-looking statement.

SUBMITTED HEREWITH

Exhibits

- | | |
|----------------------|--|
| 99.1 | Amendment No. 2 to Promissory Note and Security Agreement dated September 29, 2021 |
| 99.2 | Second Amendment to Purchase Agreement dated October 1, 2021 and Form of Warrant |
| 99.3 | Articles of Amendment dated October 1, 2021 |

SIGNATURE

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

SPHERE 3D CORP.

Date: October 4, 2021

/s/ Peter Tassiopoulos

Name: Peter Tassiopoulos

Title: Chief Executive Officer

**AMENDMENT NO. 2
TO PROMISSORY NOTE and SECURITY AGREEMENT**

This AMENDMENT TO PROMISSORY NOTE and SECURITY AGREEMENT (this "Amendment") is made and entered into as of September 29, 2021, by and among Sphere 3D Corp., an Ontario corporation ("Lender"), and Gryphon Digital Mining, Inc., a Delaware corporation ("Borrower").

RECITALS

A. On July 6, 2021, the Parties entered into a Promissory Note and Security Agreement related to a loan in the sum of \$2,700,000 ("the Loan Documents"). On August 27, 2021, the Parties entered into Amendment No. 1 to Promissory Note and Security Agreement related to an additional loan in the sum of \$3,650,000 ("the Loan Documents").

B. The parties hereto desire to amend the Loan Documents as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the respective covenants, agreements, representations and warranties contained herein and in the Loan Documents, the Parties, intending to be legally bound, agree to amend and supplement the Loan Documents as follows:

1. Definitions. All capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Documents unless otherwise defined herein.
 2. Amendments.
 - a. The Lender agrees to provide the Borrower with additional funds ("New Loan") as follows:
 - \$3,650,000 on September 29, 2021The New Loan will increase the total capital loaned by the Borrower to the Lender to \$10,000,000;
 - b. The sum of "Obligation to Pay" in Section 1 of the Security Agreement shall be revised to \$10,000,000 upon the Borrower's receipt of the New Loans;
 - c. The sum of "Collateral" in Section 2 of the Security Agreement shall be revised to \$10,000,000 upon the Borrower's receipt of the New Loans;
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- d. The principal sum in "Obligation to Pay" in Section 1 of the Promissory Note shall be revised to \$10,000,000 upon the Borrower's receipt of the New Loans;
 - e. The principal sum in "Interest Rate and Revenue Share" in Section 2 of the Promissory Note shall be revised to \$10,000,000 upon the Borrower's receipt of the New Loans; and
 - f. The repayment schedule shall be revised as outlined in the attached Schedule 1.
2. Effect of Amendment. Except as amended by this Amendment, the Loan Documents shall remain in full force and effect. No party shall be deemed to have waived the performance of any covenants in the Loan Documents except as expressly amended by this Amendment. In addition, if there are any inconsistencies between the Loan Documents and this Amendment, the terms of this Amendment shall prevail and control for all purposes.
 3. Governing Law. This Amendment shall be construed in accordance with and governed by the Laws of the State of Delaware without giving effect to the principles of conflict of laws.
 4. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All such counterparts together shall constitute one and the same instrument.

[Signature page follows]

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

SPHERE 3D CORP.

By: /s/ Peter Tassiopoulos

Name: Peter Tassiopoulos

Title: Chief Executive Officer

GRYPHON DIGITAL MINING, INC.

By: /s/ Robby Chang

Name: Robby Chang

Title: Chief Executive Officer

Schedule 1
Payment Schedule

Month	Payment Date		Opening Principal Balance	Total Monthly Payment	Principal Payment	Interest Payment	End of Month Principal & Interest
1	Jul	2021	2,700,000	-	-		2,718,525.00
2	Aug	2021	6,350,000	-	-		6,391,575.69
3	Sep	2021	10,000,000	-	-	-	10,093,772.92
4	Oct	2021	10,000,000	-	-	-	10,175,578.47
5	Nov	2021	10,000,000	-	-	-	10,254,745.14
6	Dec	2021	10,000,000	-	-	-	10,336,550.69
7	1-Jan	2022	10,000,000	336,550.69	(0.00)	336,550.69	10,081,805.56
8	1-Feb	2022	10,000,000	328,791.11	246,985.55	81,805.56	9,825,078.39
9	1-Mar	2022	9,753,014	328,791.11	256,727.17	72,063.94	9,573,972.19
10	1-Apr	2022	9,496,287	328,791.11	251,106.20	77,684.91	9,318,372.09
11	1-May	2022	9,245,181	328,791.11	255,600.09	73,191.02	9,063,120.75
12	1-Jun	2022	8,989,581	328,791.11	255,251.34	73,539.77	8,803,476.42
13	1-Jul	2022	8,734,330	328,791.11	259,644.33	69,146.78	8,544,012.94
14	1-Aug	2022	8,474,685	328,791.11	259,463.48	69,327.63	8,282,426.91
15	1-Sep	2022	8,215,222	328,791.11	261,586.03	67,205.08	8,016,602.08
16	1-Oct	2022	7,953,636	328,791.11	265,824.83	62,966.28	7,750,701.54
17	1-Nov	2022	7,687,811	328,791.11	265,900.55	62,890.56	7,480,667.22
18	1-Dec	2022	7,421,910	328,791.11	270,034.32	58,756.79	7,210,382.43
19	1-Jan	2023	7,151,876	328,791.11	270,284.79	58,506.32	6,937,886.56
20	1-Feb	2023	6,881,591	328,791.11	272,495.87	56,295.24	6,657,929.32
21	1-Mar	2023	6,609,095	328,791.11	279,957.24	48,833.87	6,380,914.08
22	1-Apr	2023	6,329,138	328,791.11	277,015.24	51,775.87	6,100,035.61
23	1-May	2023	6,052,123	328,791.11	280,878.47	47,912.64	5,818,456.48
24	1-Jun	2023	5,771,244	328,791.11	281,579.12	47,211.99	5,533,125.22
25	1-Jul	2023	5,489,665	328,791.11	285,331.26	43,459.85	5,246,908.46
26	1-Aug	2023	5,204,334	328,791.11	286,216.77	42,574.34	4,958,350.28
27	1-Sep	2023	4,918,117	328,791.11	288,558.18	40,232.93	4,666,209.85
28	1-Oct	2023	4,629,559	328,791.11	292,140.43	36,650.68	4,372,901.23
29	1-Nov	2023	4,337,419	328,791.11	293,308.62	35,482.49	4,076,125.99
30	1-Dec	2023	4,044,110	328,791.11	296,775.24	32,015.87	3,777,990.16
31	1-Jan	2024	3,747,335	328,791.11	298,135.83	30,655.28	3,477,415.42
32	1-Feb	2024	3,449,199	328,791.11	300,574.75	28,216.36	3,171,889.14
33	1-Mar	2024	3,148,624	328,791.11	305,526.27	23,264.84	2,866,356.16
34	1-Apr	2024	2,843,098	328,791.11	305,532.99	23,258.12	2,557,654.10
35	1-May	2024	2,537,565	328,791.11	308,702.05	20,089.06	2,247,096.33
36	1-Jun	2024	2,228,863	328,791.11	310,557.77	18,233.34	1,933,491.80
37	1-Jul	2024	1,918,305	328,791.11	313,604.53	15,186.58	1,617,828.04
38	1-Aug	2024	1,604,701	328,791.11	315,663.77	13,127.34	1,299,581.96
39	1-Sep	2024	1,289,037	328,791.11	318,246.07	10,545.04	978,476.28
40	1-Oct	2024	970,791	328,791.11	321,105.68	7,685.43	654,999.96
41	1-Nov	2024	649,685	328,791.11	323,476.32	5,314.79	328,791.33
42	1-Dec	2024	326,209	328,791.33	326,208.84	2,582.49	0.00

**SECOND AMENDMENT TO PURCHASE
AGREEMENT**

This Second Amendment to the Purchase Agreement (this "**Second Amendment**") is made as of October 1, 2021 (the "**Second Amendment Effective Date**"), and with reference to that certain Purchase Agreement dated as of September 14, 2020, which closed on September 24th, 2020 (the "**Purchase Agreement**"), and the First Amendment to the Purchase Agreement, dated as of March 9, 2021 (the "**First Amendment**"), and together with the Purchase Agreement, the "**Amended Purchase Agreement**"), in each case among Sphere 3D Corp, an Ontario corporation (the "**Company**"), and Westworld Financial Capital, LLC (the "**Investor**"). Unless otherwise indicated herein, capitalized terms used in this Second Amendment without definition shall have the respective meanings specified in the Amended Purchase Agreement. The Amended Purchase Agreement, as further amended by this Second Amendment, is referred to herein as the "**Agreement**".

WHEREAS, under the terms of the Purchase Agreement, Investor purchased 3,000 shares of convertible Preferred Stock of the Company for an aggregate purchase price of US\$3,000,000.00 (the "**Transaction**");

WHEREAS, as part of the Transaction, the Company agreed (i) on or prior to the fourteenth day after the Closing, to prepare and file with the SEC a registration statement covering the resale of the Preferred Shares underlying the Preferred Stock (the "**Registrable Securities**"), and (ii) to have the registration statement declared effective by the 90th day following the Closing;

WHEREAS, the Company did not file a registration statement within 14 days of the Closing and a registration statement registering the resale of the Registrable Securities by the Investor was not declared effective by the 90th day following the Closing;

WHEREAS, in consideration for not having timely filed the registration statement with respect to the Registrable Securities, the Company agreed in the First Amendment to issue, register, and deliver to Investor 250,000 Common Shares of the Company (the "**Additional Shares**");

WHEREAS, the Company further agreed to file a Registration Statement covering the Additional Shares within thirty (30) days of the Amendment Effective Date for their registration and listing on Nasdaq;

WHEREAS, the Company failed to file the Registration Statement for the Additional Shares, which has triggered a Late Fee;

WHEREAS, under the terms of the Amended Purchase Agreement, for so long as Investors in the aggregate hold 10% or more of the Preferred Stock, 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 without the prior written consent of a majority-in-interest of the then outstanding Preferred Stock;

WHEREAS, the Company has completed an additional financing, which required the consent of the Investor; and

WHEREAS, the Company and Investor now desire to release each other of any obligations, except for those specified in Section 2 of this Amendment, contained within the Purchase Agreement or First Amendment, for the consideration described in this Second Amendment.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, hereby further amend the Amended Purchase Agreement as follows:

SECTION 1. Additional Financing; Waiver; Warrants.

(a) The Company has filed a Form F-3 with the SEC (as the Company is currently a foreign private issuer for purposes of SEC filings) as part of an additional financing (the "**Additional Financing**"). In consideration for Investor waiving its rights to consent under Section 7.8 of the Amended Purchase Agreement to any and all past, present and future Additional Financings by the Company, the Company hereby agrees to issue to Investor (i) on the Second Amendment Effective Date, Warrants substantially in the form of Exhibit A hereto (the "**Warrants**") in the amount and on the terms and conditions set forth in the Warrants. In addition to waiving its consent rights with respect to Additional Financings, the Investor hereby covenants and agrees that following the issuance of the Warrants, Investor waives the Company's prior breach of their obligations to file a registration statement covering the resale of the Preferred Shares underlying the Preferred Stock.

(b) The Company has paid the dividends owing to date, and shall pay the next dividend on September 30, 2021, on the convertible Preferred Stock of the Company to the Investor.

(c) the Company shall no longer be required to make any Late Fee payments as described in either the Purchase Agreement or the First Amendment.

(d) The Company further agrees that if requested by Investor, it will permit resales by Investor of the Warrants and the Common Shares issuable upon exercise of the Warrants pursuant to Rule 144 under the Securities Act of 1933, as amended (to the extent not previously registered) ("**Rule 144**") or any other available securities law exemption, [and the Company agrees to pay the reasonable legal fees and expenses of Investor in connection with such resales].

(e) If, at any time there is not an effective registration statement covering all of the shares issuable upon exercise of the Warrants (the "**Warrant Shares**") and the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans, then the Company shall deliver to the Investor a written notice of such determination and, if within five (5) days after the date of the delivery of such notice, Investor shall so request in writing, the Company shall include in such registration statement all or any part of such Warrant Shares the Investor requests to be registered; **provided, however**, that the Company shall not be required to register any Warrant Shares pursuant to this Section 1(e) that are eligible for resale pursuant to Rule 144 promulgated by the Commission pursuant to the Securities Act or that are the subject of a then effective registration statement.

(a) The Company hereby makes, as of the Second Amendment Effective Date, all of the representations and warranties made by the Company in in Section 3 of the First Amendment and Section 4 of the Amended Purchase Agreement, along with the representations and warranties set forth in this Section 3 and elsewhere in this Second Amendment. All of such representations and warranties shall be true and correct at all times prior to and on the Second Amendment Effective Date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date as so qualified, and, the representations and warranties made by the Company in Section 3 of the First Amendment and Section 4 of the Purchase Agreement, along with the representations and warranties set forth in this Section 3 and elsewhere in this Second Amendment, not qualified as to materiality shall be true and correct in all material respects at all times prior to and on the Second Amendment Effective Date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date. The Company shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the Second Amendment Effective Date.

(i) The Company has obtained or shall obtain, to the best of its ability, any and all consents, permits, approvals, registrations and waivers necessary or appropriate for consummation of the purchase and sale of the Warrants and the consummation of the other transactions contemplated by this Second Amendment within the time allotted herein, all of which shall be in full force and effect, subject to those approvals.

(ii) The Company shall issue the Warrants as of the Second Amendment Effective Date.

(iii) No judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any governmental authority, shall have been issued, and no action or proceeding shall have been instituted by any governmental authority, enjoining or preventing the consummation of the transactions contemplated hereby.

(iv) No stop order or suspension of trading shall have been imposed by Nasdaq, the SEC or any other governmental or regulatory body with respect to public trading in the Common Shares of the Company.

(b) The Company hereby represents, warrants, and covenants that the conditions to the Second Amendment Effective Date listed in Section 3(a)(i) through (iv) are all true and correct in all material respects and all actions required to be taken to make sure such statement are true and correct, have been taken by the Company.

(c) Additionally, if applicable, the Company shall file with NASDAQ a "Notification Form: Listing of Additional Shares" for the listing of the Common Shares issuable upon exercise of the Warrants within 10 days of the Second Amendment Effective Date.

(d) Investment Representations of the Investor. Investor hereby represents and warrants that its Investment Representations made by the Investor in Section 5 of the Amended Purchase Agreement that are applicable to the issuance and sale of the Warrants are true and correct in all material respects on the Second Amendment Effective Date and are made with the same force and effect as if they had been made on and as of said date

SECTION 4. Miscellaneous

(a) Governing Law. This Second Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements made and to be performed entirely within the State of New York. Each of the Company and the Investor hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Second Amendment and the transactions contemplated hereby.

(b) Effects of Amendment. Except as specifically amended by this Second Amendment, each term, provision and condition of the Amended Purchase Agreement survives, remains and shall continue in full force and effect. To the extent that any provision of the Amended Purchase Agreement is inconsistent with the provisions contained herein, this Second Amendment shall govern.

(c) Legal Fees and Expenses. The Company has agreed to pay up to \$8,000 of Investor's reasonable, documented, out-of-pocket legal fees and expenses associated with the transactions contemplated by this Second Amendment. Investor's counsel, Diamond Law, Professional Corporation ("**Diamond Law**") shall deliver an invoice, with payment instructions, to the Company, by email to Peter.Tassiopoulos@sphere3d.com, on the Second Amendment Effective Date. The Company agrees to pay Diamond Law on the Second Amendment Effective Date. Additionally, in the event that any party attempts to enforce its rights under the Agreement, the other party agrees to pay the reasonable, documented, out-of-pocket legal fees and expenses required for such other party to do so.

(d) Counterparts. This Second Amendment may be executed in two or more counterparts by manual, electronic or facsimile signature, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Amended and Restated First Amendment or caused their duly authorized officers to execute this Amended and Restated First Amendment as of the date first above written.

SPHERE 3D CORP.

By: /s/ Peter Tassiopoulos
Name: Peter Tassiopoulos
Title: CEO

The Investor:

WESTWORLD FINANCIAL CAPITAL, LLC

By: /s/ Christian Girodet
Name: Christian Girodet
Title: Directors

Address for Notice:

Rooney Nimmo
Attn: Joan Hon
800 Third Avenue
New York, NY 10022
Fax: +646.417.7000
Email: joan.hon@rooneynimmo.com

EXHIBIT A

NEITHER THIS WARRANT NOR ANY SHARES OF COMMON STOCK ISSUABLE UPON THE EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER (THE "SECURITIES ACT").

COMMON STOCK PURCHASE WARRANT

SPHERE 3D CORP.

Warrant Shares: 850,000

Issue Date: October 1, 2021

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, Westworld Financial Capital, LLC or its assignees (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 the Issue Date (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on the third anniversary of the Initial Exercise Date (the "Termination Date") but not thereafter, to subscribe for and purchase from Sphere 3D Corp., an Ontario, Canada corporation (the "Company"), up to 850,000 shares (as subject to adjustment hereunder, the "Warrant Shares") of the Company's common stock (the "Common Stock"). 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).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain in the original Agreement,

Section 2. Exercise.

a) Exercise of Warrant. 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 Issue Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise"). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise (the "Aggregate Exercise Price") 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. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. 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 on which 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 within one (1) Trading Day 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 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 Issue Date, there is no effective registration statement registering, or the prospectus contained therein is not available for the resale 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 a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. ("Bloomberg") as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(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 Warrant Shares being issued may be tacked on to the holding period of this Warrant. The Company agrees not to take any position contrary to this Section 2(c).

"Bid Price" 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 bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading 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 OTCQB or OTCQX is not 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 on The Pink Open Market (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.

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 (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 not 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 Open Market (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.

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the 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 the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 (assuming cashless exercise of the Warrants), 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, (x) so long as the Holder delivers the Aggregate Exercise Price on or prior to the first (1st) Trading Day following the date on which the Notice of Exercise has been delivered to the Company, then on or prior to the second (2nd) Trading Day following the date on which the Notice of Exercise has been delivered to the Company, or, (y) if the Holder does not deliver the Aggregate Exercise Price on or prior to the first (1st) Trading Day following the date on which the Notice of Exercise has been delivered to the Company, then on or prior to the first (1st) Trading Day following the date on which the Aggregate Exercise Price is delivered (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, 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 of delivery of the Warrant Shares, provided that payment of the Aggregate Exercise Price (other than in the case of a cashless exercise) is received by the Warrant Share Delivery Date provided that the Aggregate Exercise Price is received within two (2) Trading Days following delivery of the Notice of Exercise. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by 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 such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. 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.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit 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.

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 the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before 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 and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

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.

e) Holder's Exercise Limitations. Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any portion of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, pursuant to the terms and conditions of this Warrant and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such 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 (such Persons, "Attribution Parties") collectively would beneficially own in excess of 4.99% (the "Beneficial Ownership Limitation") of the number of shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 2(e). For purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act").

For purposes of this Warrant, in determining the number of outstanding shares of Common Stock the Holder may acquire upon the exercise of this Warrant without exceeding the Beneficial Ownership Limitation, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, and Current Reports on Form 8-K or other public filing with the Securities and Exchange Commission (the "SEC"), as the case may be, (y) a more recent public announcement by the Company or (3) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the "Reported Outstanding Share Number"). If the Company receives an Notice of Exercise from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Notice of Exercise would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 1(f), to exceed the Beneficial Ownership Limitation, the Holder must notify the Company of a reduced number of Warrant Shares to be purchased pursuant to such Notice of Exercise (the number of shares by which such purchase is reduced, the "Reduction Shares") and (ii) as soon as reasonably practicable, the Company shall return to the Holder any exercise price paid by the Holder for the Reduction Shares. 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 or by electronic mail 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 and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported.

In the event that the issuance of shares of Common Stock to the Holder upon exercise of this Warrant results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Beneficial Ownership Limitation of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Beneficial Ownership Limitation (the "Excess Shares") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the exercise price paid by the Holder for the Excess Shares.

Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Beneficial Ownership Limitation to any other percentage not in excess of 9.99% as specified in such notice; provided, however, that (i) any such increase in the Beneficial Ownership Limitation will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of warrants that is not an Attribution Party of the Holder.

For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Beneficial Ownership Limitation shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to exercise this Warrant pursuant to this section shall have any effect of the applicability of the provisions of this section with respect to any subsequent determination of exercisability. 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 the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 2(e) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Warrant. The Holder acknowledges that the Company may rely on the information set forth in the Notice of Exercise, and shall not be required to independently verify whether or not an exercise would trigger the provisions of this section.

f) Subject to the provisions of Section 2(e) and this Section 2(f), if, after the six month anniversary of the Issue Date, (i) the VWAP for each of 20 consecutive Trading Days (the "Measurement Period," which 20 consecutive Trading Day period shall not have commenced until after the earlier of (i) the six month anniversary of the Issue Date or (ii) the Effective Date) exceeds \$11.00 (subject to adjustment for forward and reverse stock splits, recapitalizations, stock dividends and the like after the Initial Exercise Date), (ii) the average daily dollar volume for such Measurement Period exceeds \$1,000,000 per Trading Day and (iii) the Holder is not in possession of any information that constitutes, or might constitute, material non-public information which was provided by the Company, any of its Subsidiaries, or any of their officers, directors, employees, agents or Affiliates, then the Company may, within 1 Trading Day of the end of such Measurement Period, call for cancellation of all or any portion of this Warrant for which a Notice of Exercise has not yet been delivered (such right, a "Call") for consideration equal to \$.001 per Warrant Share. To exercise this right, the Company must deliver to the Holder an irrevocable written notice (a "Call Notice"), indicating therein the portion of unexercised portion of this Warrant to which such notice applies. Any portion of this Warrant subject to such Call Notice for which a Notice of Exercise shall not have been received by the Call Date will be cancelled at 6:30 p.m. (New York City time) on the tenth Trading Day after the date the Call Notice is received by the Holder (such date and time, the "Call Date"). Any unexercised portion of this Warrant to which the Call Notice does not pertain will be unaffected by such Call Notice. In furtherance thereof, the Company covenants and agrees that it will honor all Notices of Exercise with respect to Warrant Shares subject to a Call Notice that are tendered through 6:30 p.m. (New York City time) on the Call Date. The parties agree that any Notice of Exercise delivered following a Call Notice which calls less than all of the Warrants shall first reduce to zero the number of Warrant Shares subject to such Call Notice prior to reducing the remaining Warrant Shares available for purchase under this Warrant. For example, if (A) this Warrant then permits the Holder to acquire 100 Warrant Shares, (B) a Call Notice pertains to 75 Warrant Shares, and (C) prior to 6:30 p.m. (New York City time) on the Call Date the Holder tenders a Notice of Exercise in respect of 50 Warrant Shares, then (x) on the Call Date the right under this Warrant to acquire 25 Warrant Shares will be automatically cancelled, (y) the Company, in the time and manner required under this Warrant, will have issued and delivered to the Holder 50 Warrant Shares in respect of the exercises following receipt of the Call Notice, and (z) the Holder may, until the Termination Date, exercise this Warrant for 25 Warrant Shares (subject to adjustment as herein provided and subject to subsequent Call Notices). Subject again to the provisions of this Section 2(f), the Company may deliver subsequent Call Notices for any portion of this Warrant for which the Holder shall not have delivered a Notice of Exercise. Notwithstanding anything to the contrary set forth in this Warrant, the Company may not deliver a Call Notice or require the cancellation of this Warrant (and any such Call Notice shall be void), unless, from the beginning of the Measurement Period through the Call Date, (1) the Company shall have honored in accordance with the terms of this Warrant all Notices of Exercise delivered by 6:30 p.m. (New York City time) on the Call Date, and (2) the Common Stock shall be listed or quoted for trading on the Trading Market, and (3) there is a sufficient number of authorized shares of Common Stock for issuance of all Securities under the Transaction Documents, and (4) the issuance of all Warrant Shares subject to a Call Notice shall not cause a breach of any provision of Section 2(e) herein. The Company's right to call the Warrants under this Section 2(f) shall be exercised ratably among the Holders based on each Holder's initial purchase of Warrants.

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 a class or series of shares of its 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 at the close of business on the effective date of the transaction.

b) 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 options, warrants or other securities convertible into Common Stock or rights to purchase stock, warrants, securities or other property pro rata to all 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, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) 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.

c) Pro Rata Distributions. During such time as this Warrant 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 (not including shares of Common Stock of the Company) 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 or restrictions on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as on which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation, then the Holder shall only be entitled to participate in such Distribution to the extent of the Beneficial Ownership Limitation (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation, at which time the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

d) Fundamental Transaction. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any 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 Corporate Event but prior to the Expiration Date, in lieu of shares of Common Stock (or other securities, cash, assets or other property) purchasable upon the exercise of this Warrant prior to such Corporate Event, 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 such Corporate Event had this Warrant been exercised immediately prior to such Corporate Event. The provisions of this Section 3(d) shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied without regard to any limitations on the exercise of this Warrant.

"Fundamental Transaction" means (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).

e) 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.

f) 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 deliver to the Holder by facsimile or email 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.

ii. 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 delivered by facsimile or email to the Holder at its last facsimile number or email 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, 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 in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the 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. Subject to compliance with any applicable securities laws and the conditions set forth in the Purchase Agreement, 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. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. 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 Issue 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) Transfer Restrictions. 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 either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, comply with the provisions of the Purchase Agreement.

e) 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. Miscellaneous.

a) No Rights as Stockholder Until Exercise; No Settlement in Cash. 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), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event will the Company be required to net cash settle a Warrant exercise.

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 stock 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 issuing 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 Purchase Agreement.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver. 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, notwithstanding the fact that the right to exercise this Warrant terminates on the Termination Date.

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 Purchase 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 record Holders of Warrants issued under the Purchase Agreement covering a majority of the number of Warrant Shares into which the Warrants are then exercisable; provided that amendments to the Exercise Price, Expiration Date, or number of Warrant Shares into which the Warrants are then exercisable, would require the consent of the Holder of the Warrants that are being so amended.

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.

o) Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile, which shall be deemed an original.

(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.

SPHERE 3D CORP.

By: _____
Name: Peter Tassiopoulos
Title: Chief Executive Officer

NOTICE OF EXERCISE

TO: SPHERE 3D CORP.

(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. Payment shall take the form of lawful money of the United States.

(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).

The Warrant Shares shall be delivered to the following DWAC Account Number:

(3) The time of day this Notice of Exercise is being executed is:

[SIGNATURE OF HOLDER]

Name of Investing Entity:

Signature of Authorized Signatory of Investing Entity:

Name of Authorized Signatory:

Title of Authorized Signatory:

Date:

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to exercise the Warrant to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

For Ministry Use Only
À l'usage exclusif du ministère



Ministry of Government
and Consumer Services

Ministère des Services
gouvernementaux et des
Services aux consommateurs

CERTIFICATE
This is to certify that these
articles are effective on

CERTIFICAT
Ceci certifie que les présents
statuts entrent en vigueur le

Ontario Corporation Number
Numéro de la société en Ontario

1933033

OCTOBER 01 OCTOBRE, 2021

Sarah Auckett

(17)

Director / Directrice
Business Corporations Act / Loi sur les sociétés par actions

Form 3
Business
Corporations
Act

Formule 3
Loi sur les
sociétés par
actions

**ARTICLES OF AMENDMENT
STATUTS DE MODIFICATION**

1. The name of the corporation is: (Set out in BLOCK CAPITAL LETTERS)
Dénomination sociale actuelle de la société (écrire en LETTRES MAJUSCULES SEULEMENT) :

S	P	H	E	R	E																																			

2. The name of the corporation is changed to (if applicable) : (Set out in BLOCK CAPITAL LETTERS)
Nouvelle dénomination sociale de la société (s'il y a lieu) (écrire en LETTRES MAJUSCULES SEULEMENT) :

3. Date of incorporation/amalgamation:
Date de la constitution ou de la fusion :
2015/03/24

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

4. Complete only if there is a change in the number of directors or the minimum / maximum number of directors.
Il faut remplir cette partie seulement si le nombre d'administrateurs ou si le nombre minimal ou maximal d'administrateurs a changé.

Number of directors is/are: minimum and maximum number of directors is/are:
Nombre d'administrateurs : nombres minimum et maximum d'administrateurs :

Number minimum and maximum
Nombre minimum et maximum

or

5. The articles of the corporation are amended as follows:
Les statuts de la société sont modifiés de la façon suivante :

To increase the authorized capital of the Corporation by creating the eighth series of Preferred Stock, being an unlimited number of Series H Preferred Stock, having the rights, privileges, restrictions and conditions set forth on pages 1A to 1G attached hereto.

5. The Articles of the Corporation are amended as follows:

- (i) to increase the authorized capital of SPHERE 3D Corp., an Ontario, Canada corporation (the “**Corporation**”) by creating the eighth series of Preferred Stock, being an unlimited number of Series H Preferred Stock;
- (ii) after giving effect to the foregoing, the authorized capital of the Corporation shall consist of an unlimited number of Common Stock, an unlimited number of Preferred Stock, issuable in series, and an unlimited number of Series A Preferred Stock, an unlimited number of Series B Preferred Stock, an unlimited number of Series C Preferred Stock, an unlimited number of Series D Preferred Stock, an unlimited number of Series E Preferred Stock, an unlimited number of Series F Preferred Stock, an unlimited number of Series G Preferred Stock and an unlimited number of Series H Preferred Stock; and
- (iii) to provide that the rights, privileges, restrictions and conditions attaching to the Series H Preferred Stock are as follows (the “**Series II Preferred Share Provisions**”):

TERMS OF SERIES H PREFERRED STOCK

1. DEFINITIONS

- 1.1 In these Series H 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 H Preferred Shares for any dividend period; and (ii) the amount calculated as though dividends on each Series H 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 6(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) “**Corporation**” means Sphere 3D Corp.;
- (h) “**Deemed Liquidation**” has the meaning given thereto in Section 6;
- (i) “**Holder**” in respect of any Series H Preferred Share, means the registered holder thereof;
- (j) “**Initial Issue Date**” means the date of initial issuance of Series H Preferred Shares;
- (k) “**Series H Conversion Rate**” at any time means the number of Common Shares into which one Series H Preferred Share may be converted, as may be equitably adjusted from time to time pursuant to these Series H Preferred Share Provisions for stock splits, dividends and similar combinations or subdivisions applicable to all Common Shares;
- (l) “**Series H Subscription Price**” of each Series H Preferred Share means US\$1,000, as adjusted;
- (m) “**Series H Preferred Holder Approval**” means the approval of the Holders of the Series H Preferred Shares given in writing by the Holders of a majority of the outstanding Series H 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 H Preferred Shares who voted in respect of that resolution (or such greater percentage as may be required by applicable law);
- (n) “**Series H Preferred Shares**” means the Series H Preferred Shares of the Corporation; and
- (o) “**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 H Preferred Shares shall not be entitled to receive a dividend.

3. CANCELLATION OF SHARES

Series H 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.

4. VOTING RIGHTS

The Holders of the Series H 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 H Preferred Shares.

5. CONVERSION

5.1 CONVERSIONS AND ADJUSTMENTS

Upon and subject to the terms and conditions set out in this Section 5.1, the Holder 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 H 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 H Preferred Shares into the number of fully paid and non-assessable Common Shares that is equal to the number of Series H Preferred Shares to be converted multiplied by the Series H Conversion Rate in effect on the date of conversion. Unless and until adjusted in accordance with these Series H Preferred Share Provisions, the Series H Conversion Rate shall be equal to 1:1,000, meaning, for the avoidance of doubt, that each Series H Preferred Share shall be convertible into 1,000 Common Shares.

Notwithstanding any other provision of this Section 5.1, the Corporation shall not effect the conversion by the Holder, any of its affiliates or any member of a Section 13(d) "group" with the Holder of any Series H Preferred Shares, and each of the Holder, its affiliates and any member of a Section 13(d) group with the Holder shall not have the right to convert any Series H Preferred Shares, to the extent that after giving effect to such conversion, the Holder, together with any of the Holder's affiliates and any other member of a Section 13(d) group with the Holder, 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 the Holder 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 the Holder, its affiliates and any member of a Section 13(d) group with the Holder shall include the number of Common Shares issuable upon conversion of the Series H 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 H Preferred Shares held by the Holder, its affiliates or a member of a Section 13(d) group with the Holder and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation beneficially owned by the Holder, its affiliates or members of a Section 13(d) group with the Holder (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 the Holder 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, the Holder 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 the Holder, the Corporation shall within two (2) business days confirm to the Holder the number of Common Shares then outstanding. The Holder shall disclose to the Corporation the number of Common Shares that it, its affiliates or any member of a Section 13(d) group with the Holder 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 H Preferred Shares.

A third party transferee unaffiliated with the Holder or any of its affiliates may, at any time, convert all or any part of the Series H 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 H Preferred Shares to be converted multiplied by the Series H 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.

5.2 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 H 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.

5.3 RESERVATION OF COMMON SHARES

So long as any of the Series H 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 H Preferred Shares outstanding to be converted upon the basis and upon the terms and conditions herein provided in this Section 5.

6. 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 H Preferred Shares shall entitle each of the Holders thereof to receive an amount equal to the Series H Subscription Price per Series H 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
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Common Shares or any other shares ranking junior to the Series H Preferred Shares on any such liquidation, dissolution, winding-up or distribution. Upon payment of the amounts so payable to them, the Holders of Series H Preferred Shares shall not be entitled to share in any further distribution of assets of the Corporation.

- (b) For the purposes of Section 6(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;
 - (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 H 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 6(a) to the distribution and payment of the Aggregate 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.

7. ADDITIONAL RESTRICTIONS

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

So long as any of the Series H Preferred Shares are outstanding, except as specifically contemplated in the Series H 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 H 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 H Preferred Shares; or
- (c) issue any additional Series H Preferred Shares in excess of the number of Series H Preferred Shares authorized for issuance as of the Initial Issue Date, or securities convertible or exchangeable for Series H 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 H Preferred Shares.

8. MODIFICATION

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

9. MISCELLANEOUS

9.1 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.

9.2 GENDER, ETC.

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

9.3 CURRENCY

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

9.4 HEADINGS

The division of these Series H 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.

9.5 BUSINESS DAY

In the event that any date upon which any dividends on the Series H 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

2021/07/30

(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)

Chief Executive Officer

(Description of Office)
(Fonction)