

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2020

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: **001-36532**

**Sphere 3D Corp.**

*(Exact name of Registrant as specified in its charter)*

**Ontario, Canada**

*(State or other jurisdiction of incorporation or organization)*

**895 Don Mills Road, Bldg. 2, Suite 900**

**Toronto, Ontario, Canada, M3C 1W3**

*(Address of principal executive offices)*

**98-1220792**

*(IRS Employer Identification No.)*

**(858) 751-5555**

*(Registrant's Telephone Number, Including Area Code)*

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

**Title of Each Class**

Common Shares

**Trading Symbol(s)**

ANY

**Name of Each Exchange on Which Registered**

NASDAQ Capital Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company) Emerging growth company

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

As of November 10, 2020, there were 7,867,186 shares of the registrant's common stock outstanding.

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**PART I — FINANCIAL INFORMATION**

**Item 1. Financial Statements.**

**Sphere 3D Corp.**  
**Condensed Consolidated Statements of Operations**  
(in thousands of U.S. dollars, except share and per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
	(Unaudited)		(Unaudited)	
Revenue	\$ 890	\$ 1,368	\$ 2,791	\$ 4,461
Cost of revenue	356	883	1,352	3,036
Gross profit	534	485	1,439	1,425
Operating expenses:				
Sales and marketing	336	550	872	1,494
Research and development	264	460	947	1,673
General and administrative	1,590	801	4,406	2,814
	2,190	1,811	6,225	5,981
Loss from operations	(1,656)	(1,326)	(4,786)	(4,556)
Other income (expense):				
Interest expense, related party	(191)	(41)	(309)	(327)
Interest expense	(57)	(9)	(142)	(24)
Other income, net	715	2,261	1,002	2,283
(Loss) income before income taxes	(1,189)	885	(4,235)	(2,624)
Provision for income taxes	1	—	4	—
Net (loss) income	\$ (1,190)	\$ 885	\$ (4,239)	\$ (2,624)
Net (loss) income per share:				
Net (loss) income per share basic	\$ (0.17)	\$ 0.33	\$ (0.81)	\$ (1.09)
Net (loss) income per share diluted	\$ (0.17)	\$ 0.10	\$ (0.81)	\$ (1.09)
Shares used in computing net (loss) income per share:				
Basic	6,949,010	2,668,311	5,240,003	2,403,373
Diluted	6,949,010	8,909,761	5,240,003	2,403,373

See accompanying notes to condensed consolidated financial statements.

**Sphere 3D Corp.**  
**Condensed Consolidated Statements of Comprehensive (Loss) Income**  
(in thousands of U.S. dollars)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
	(Unaudited)		(Unaudited)	
Net (loss) income	\$ (1,190)	\$ 885	\$ (4,239)	\$ (2,624)
Other comprehensive income (loss):				
Foreign currency translation adjustment	12	(8)	(31)	34
Total other comprehensive income (loss)	12	(8)	(31)	34
Comprehensive (loss) income	<u>\$ (1,178)</u>	<u>\$ 877</u>	<u>\$ (4,270)</u>	<u>\$ (2,590)</u>

See accompanying notes to condensed consolidated financial statements.

**Sphere 3D Corp.**  
**Condensed Consolidated Balance Sheets**  
(in thousands of U.S. dollars, except shares)

	September 30, 2020	December 31, 2019
<b>Assets</b>	<b>(Unaudited)</b>	
Current assets:		
Cash and cash equivalents	\$ 2,896	\$ 149
Accounts receivable, net	259	369
Inventories	659	753
Other current assets	998	670
Total current assets	<u>4,812</u>	<u>1,941</u>
Investment in affiliate	2,100	2,100
Intangible assets, net	3,091	2,301
Goodwill	1,385	1,385
Other assets	3,636	679
Total assets	<u>\$ 15,024</u>	<u>\$ 8,406</u>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 2,360	\$ 4,113
Accrued liabilities	2,457	475
Accrued payroll and employee compensation	405	340
Deferred revenue	719	1,069
Debt	1,103	—
Debt, related party	311	—
Line of credit	489	491
Other current liabilities	153	158
Total current liabilities	<u>7,997</u>	<u>6,646</u>
Deferred revenue, long-term	283	485
Long-term debt	667	—
Other non-current liabilities	45	35
Total liabilities	<u>8,992</u>	<u>7,166</u>
Commitments and contingencies (Note 13)		
Shareholders' equity:		
Preferred shares, no par value, unlimited shares authorized, 9,355,778 and 8,443,778 shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively	11,769	8,444
Common shares, no par value; unlimited shares authorized, 7,597,186 and 3,850,105 shares issued and outstanding as of September 30, 2020 and December 31, 2019, respectively	191,898	186,161
Accumulated other comprehensive loss	(1,800)	(1,769)
Accumulated deficit	<u>(195,835)</u>	<u>(191,596)</u>
Total shareholders' equity	<u>6,032</u>	<u>1,240</u>
Total liabilities and shareholders' equity	<u>\$ 15,024</u>	<u>\$ 8,406</u>

See accompanying notes to condensed consolidated financial statements.

**Sphere 3D Corp.**  
**Condensed Consolidated Statements of Cash Flows**  
(in thousands of U.S. dollars)

	Nine Months Ended September 30,	
	2020	2019
	(Unaudited)	
<b>Operating activities:</b>		
Net loss	\$ (4,239)	\$ (2,624)
Adjustments to reconcile net loss to cash used in operating activities:		
Forgiveness of liabilities	(776)	(551)
Forgiveness of related party liabilities	—	(1,745)
Depreciation and amortization	742	773
Revaluation of subscription agreements	(79)	—
Amortization of debt issuance costs	392	—
Share-based compensation	5	478
Preferred shares interest expense-related party	—	291
Changes in operating assets and liabilities:		
Accounts receivable	110	365
Inventories	94	405
Accounts payable and accrued liabilities	3,380	454
Accrued payroll and employee compensation	66	84
Deferred revenue	(553)	70
Other assets and liabilities, net	(1,138)	564
Net cash used in operating activities	(1,996)	(1,436)
<b>Financing activities:</b>		
Proceeds from issuance of preferred shares, net	2,735	—
Proceeds from long-term debt	667	—
Proceeds from convertible debt	375	—
Proceeds from convertible debt-related party	200	—
Proceeds from exercise of warrants	120	—
Proceeds from issuance of common shares and warrants	115	480
Proceeds from exercise of stock options	76	—
Proceeds from debt - related party	500	523
Payments for debt - related party	(42)	—
(Payments for) proceeds from line of credit, net	(2)	221
Net cash provided by financing activities	4,744	1,224
Effect of exchange rate changes on cash	(1)	—
Net increase (decrease) in cash and cash equivalents	2,747	(212)
Cash and cash equivalents, beginning of period	149	341
Cash and cash equivalents, end of period	\$ 2,896	\$ 129

See accompanying notes to condensed consolidated financial statements.

**Sphere 3D Corp.**  
**Condensed Consolidated Statements of Cash Flows (continued)**  
(in thousands of U.S. dollars)

	Nine Months Ended September 30,	
	2020	2019
Supplemental disclosures of cash flow information:	(Unaudited)	
Cash paid for interest	\$ 25	\$ 32
Supplemental disclosures of non-cash financing activities:		
Issuance of common shares for settlement of liabilities	\$ 2,034	\$ 105
Issuance of common shares for acquisition of intangible asset	\$ 1,560	\$ —
Issuance of common stock for conversion of convertible debt	\$ 783	\$ —
Issuance of common stock for conversion of preferred shares	\$ 510	\$ —
Issuance of convertible debt-related party for prepaid business advisory services	\$ 150	\$ —
Issuance of common shares for settlement of related party liabilities	\$ 379	\$ 529

See accompanying notes to condensed consolidated financial statements.

**Sphere 3D Corp.**  
**Condensed Consolidated Statements of Shareholders' Equity (Deficit)**  
(in thousands of U.S. dollars, except shares)  
(unaudited)

	Preferred Shares		Common Shares		Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Shareholders' Equity
	Shares	Amount	Shares	Amount			
Balance at January 1, 2020	8,443,778	\$ 8,444	3,850,105	\$ 186,161	\$ (1,769)	\$ (191,596)	\$ 1,240
Issuance of common shares pursuant to the vesting of restricted stock units	—	—	20,420	—	—	—	—
Issuance of common shares for the settlement of liabilities	—	—	146,300	130	—	—	130
Share-based compensation	—	—	—	5	—	—	5
Other comprehensive income	—	—	—	—	(71)	—	(71)
Net loss	—	—	—	—	—	(1,103)	(1,103)
Balance at March 31, 2020	8,443,778	8,444	4,016,825	186,296	(1,840)	(192,699)	201
Issuance of preferred shares, net	1,244,000	808	—	—	—	—	808
Issuance of common shares for conversion of preferred shares	—	—	450,000	292	—	—	292
Issuance of common shares for conversion of convertible debt	—	—	580,580	377	—	—	377
Issuance of common shares for the settlement of liabilities	—	—	480,000	1,194	—	—	1,194
Issuance of stock options for the settlement of liabilities	—	—	—	54	—	—	54
Exercise of stock options	—	—	30,000	75	—	—	75
Other comprehensive income	—	—	—	—	28	—	28
Net loss	—	—	—	—	—	(1,946)	(1,946)
Balance at June 30, 2020	9,687,778	9,252	5,557,405	188,288	(1,812)	(194,645)	1,083
Issuance of preferred shares	3,000	2,735	—	—	—	—	2,735
Issuance of common shares	—	—	260,000	268	—	—	268
Issuance of common shares for conversion of preferred shares	(335,000)	(218)	335,000	218	—	—	—
Acquisition of intangible asset	—	—	480,000	1,560	—	—	1,560
Issuance of common shares for conversion of convertible debt	—	—	625,240	406	—	—	406
Issuance of common shares for the settlement of liabilities	—	—	339,541	1,157	—	—	1,157
Exercise of stock options	—	—	—	1	—	—	1
Other comprehensive loss	—	—	—	—	12	—	12
Net income	—	—	—	—	—	(1,190)	(1,190)
Balance at September 30, 2020	9,355,778	\$ 11,769	7,597,186	\$ 191,898	\$ (1,800)	\$ (195,835)	\$ 6,032

See accompanying notes to condensed consolidated financial statements.



**Sphere 3D Corp.**  
**Condensed Consolidated Statements of Shareholders' Equity (Deficit) (continued)**  
(in thousands of U.S. dollars, except shares)  
(unaudited)

	Preferred Shares		Common Shares		Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Shareholders' Deficit
	Shares	Amount	Shares	Amount			
Balance at January 1, 2019	—	\$ —	2,219,141	\$ 183,524	\$ (1,816)	\$ (187,315)	\$ (5,607)
Issuance of common shares pursuant to the vesting of restricted stock units	—	—	38,930	—	—	—	—
Issuance of restricted stock awards for the settlement of liabilities	—	—	42,000	105	—	—	105
Share-based compensation	—	—	—	124	—	—	124
Other comprehensive income	—	—	—	—	40	—	40
Net loss	—	—	—	—	—	(1,844)	(1,844)
Balance at March 31, 2019	—	—	2,300,071	183,753	(1,776)	(189,159)	(7,182)
Issuance of common shares pursuant to the vesting of restricted stock units	—	—	3,017	—	—	—	—
Share-based compensation	—	—	—	117	—	—	117
Other comprehensive loss	—	—	—	—	2	—	2
Net loss	—	—	—	—	—	(1,665)	(1,665)
Balance at June 30, 2019	—	—	2,303,088	183,870	(1,774)	(190,824)	(8,728)
Issuance of preferred shares	5,843,778	5,844	—	—	—	—	5,844
Issuance of common shares	—	—	240,000	480	—	—	480
Issuance of common shares for the settlement of related party debt	—	—	410,158	529	—	—	529
Issuance of common shares pursuant to the vesting of restricted stock units	—	—	10,545	—	—	—	—
Share-based compensation	—	—	—	238	—	—	238
Other comprehensive income	—	—	—	—	(8)	—	(8)
Net loss	—	—	—	—	—	885	885
Balance at September 30, 2019	5,843,778	\$ 5,844	2,963,791	\$ 185,117	\$ (1,782)	\$ (189,939)	\$ (760)

See accompanying notes to condensed consolidated financial statements.

**Sphere 3D Corp.**  
**Notes to Condensed Consolidated Financial Statements**  
**(Unaudited)**

**1. Organization and Business**

Sphere 3D Corp. (the “Company”) was incorporated under the *Business Corporations Act (Ontario)* on May 2, 2007 as T.B. Mining Ventures Inc. On March 24, 2015, the Company completed a short-form amalgamation with a wholly-owned subsidiary. In connection with the short-form amalgamation, the Company changed its name to “Sphere 3D Corp.” The Company delivers data management and desktop and application virtualization solutions through hybrid cloud, cloud and on premise implementations by its global reseller network. The Company achieves this through a combination of containerized applications, virtual desktops, virtual storage and physical hyper-converged platforms. The Company’s products allow organizations to deploy a combination of public, private or hybrid cloud strategies while backing them up with the latest storage solutions. The Company has a portfolio of brands including SnapCLOUD<sup>®</sup>, SnapServer<sup>®</sup>, SnapSync<sup>®</sup>, HVE, and V3<sup>®</sup>.

Management has projected that cash on hand and other sources of liquidity may not be sufficient to allow the Company to continue operations beyond December 31, 2020 if we are unable to raise additional funding for operations. We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds through equity or debt financings or other sources may depend on the financial success of our current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. No assurance can be given that we will be successful in raising the required capital at reasonable cost and at the required times, or at all. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. If we require additional capital and are unsuccessful in raising that capital, we may not be able to continue our business operations and advance our growth initiatives, which could adversely impact our business, financial condition and results of operations.

Significant changes from the Company’s current forecasts, including but not limited to: (i) failure to comply with the terms and financial covenants in its debt facilities; (ii) shortfalls from projected sales levels; (iii) unexpected increases in product costs; (iv) increases in operating costs; (v) changes in the historical timing of collecting accounts receivable; and (vi) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on the Company’s ability to access the level of funding necessary to continue its operations at current levels. If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or seek bankruptcy protection or be subject to an involuntary bankruptcy petition, any of, which would have a material adverse effect on the Company’s business, results of operations, financial position and liquidity.

The Company incurred losses from operations and negative cash flows from operating activities for the nine months ended September 30, 2020, and such losses may continue for the foreseeable future. Based upon the Company’s current expectations and projections for the next year, the Company believes that it may not have sufficient liquidity necessary to sustain operations beyond December 31, 2020. These factors, among others, raise substantial doubt that the Company will be able to continue as a going concern. The accompanying condensed consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business.

## **Merger Agreement**

On July 14, 2020, the Company entered into a definitive merger agreement (the “Rainmaker Merger Agreement”) pursuant to which it will acquire all of the outstanding securities of Rainmaker Worldwide Inc. (“Rainmaker”), a global Water-as-a-Service (“WaaS”) provider. Upon closing, the Company’s name will change to Rainmaker Worldwide Inc., and its business model will focus on Water-as-a-Service. Rainmaker management will assume leadership of the combined entity. Under the terms of the agreement, Rainmaker, a Nevada company, will merge with S3D Nevada Inc., a Nevada company wholly-owned by the Company, and the merged entity will be a wholly-owned subsidiary of the Company. Upon completion of the transaction the Company expects to remain listed on the NASDAQ market and will change its name to Rainmaker Worldwide Inc. After completion of the transaction, it is expected that current holders of Rainmaker will own a minority stake of the Company, on a fully diluted basis, as a result of their exchange of securities in the transaction. The transaction is subject to completion of an equity financing, or series of financings, for a minimum of \$15.0 million at a share price to be mutually agreed upon prior to closing and such other customary regulatory and shareholder approvals, including the approval of NASDAQ. Closing is expected to occur prior to December 31, 2020 and subject to extension to February 28, 2021 in certain circumstances. The intent of the transaction is to transform the Company to a Commercial WaaS provider.

On September 14, 2020, the parties to the Merger Agreement entered into Amendment No. 1 to Agreement and Plan of Merger (the “Rainmaker Amendment”). Under the Rainmaker Amendment, the ratio of the Company’s common shares to be received by Rainmaker shareholders has changed from one-third of a common share of the Company per common or preferred share of Rainmaker to 1/15 of a share.

On September 14, 2020, the Company entered into a Senior Secured Convertible Promissory Note with Rainmaker (the “Rainmaker Note”), pursuant to which the Company loaned Rainmaker the principal amount of \$3.1 million comprised of: (a) a new advance of \$1.85 million paid to Rainmaker on October 1, 2020, (b) the principal and any interest owing under existing promissory notes issued by Rainmaker to two investors on April 2, 2020 in the aggregate amount of \$1.1 million, which indebtedness was assigned to the Company on May 4, 2020 (the “Assigned Notes”), and (c) a promissory note in the principal amount of \$150,000 issued to the Company on August 4, 2020 (the “Original Note”). The Assigned Notes and the Original Note are included in the principal amount of the Rainmaker Note and therefore, the Assigned Notes and the Original Notes are deemed cancelled. The Rainmaker Note shall be secured as a registered lien under the Uniform Commercial Code and the Personal Property Security Act (Ontario) against the assets of Rainmaker and shall bear interest at the rate of 10% per annum. The principal and interest shall accrue monthly and be due and payable in full on September 14, 2023.

## **2. Significant Accounting Policies**

### **Principles of Consolidation**

The condensed consolidated financial statements of the Company have been prepared by management in accordance with accounting principles generally accepted in the United States of America (“GAAP”), applied on a basis consistent for all periods. Accordingly, they do not include all of the information and disclosures required by U.S. GAAP for a complete set of financial statements. These condensed consolidated financial statements and notes thereto should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2019, filed with the Securities and Exchange Commission on May 13, 2020. In the opinion of management, all adjustments of a normal recurring nature considered necessary for a fair presentation have been included. The results of operations of any interim period are not necessarily indicative of the results of operations to be expected for the full fiscal year. These condensed consolidated financial statements include the accounts of the Company and its subsidiaries, all of which are wholly owned. All intercompany balances and transactions have been appropriately eliminated in consolidation.

## **Use of Estimates**

The preparation of the condensed consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the condensed consolidated financial statements and reported amounts of revenues and expenses during the reporting period. Significant areas requiring the use of management estimates relate to the determination of provisions for impairment assessments of goodwill, other indefinite-lived intangible assets; revenue; allowance for doubtful receivables; inventory valuation; warranty provisions; and litigation claims. Actual results could differ from these estimates.

## **Foreign Currency Translation**

The financial statements of foreign subsidiaries, for which the functional currency is the local currency, are translated into U.S. dollars using the exchange rate at the consolidated balance sheet date for assets and liabilities and a weighted-average exchange rate during the year for revenue, expenses, gains and losses. Translation adjustments are recorded as other comprehensive income (loss) within shareholders' equity. Gains or losses from foreign currency transactions are recognized in the condensed consolidated statements of operations. Such transactions resulted in a loss of \$8,000 and \$5,000 in the three months ended September 30, 2020 and 2019, respectively, and a loss of \$9,000 and \$13,000 in the nine months ended September 30, 2020 and 2019, respectively.

## **Cash Equivalents**

Highly liquid investments with insignificant interest rate risk and original maturities of three months or less, when purchased, are classified as cash equivalents. Cash equivalents are composed of money market funds. The carrying amounts approximate fair value due to the short maturities of these instruments.

## **Accounts Receivable**

Accounts receivable is recorded at the invoiced amount and is non-interest bearing. We estimate our allowance for doubtful accounts based on an assessment of the collectability of specific accounts and the overall condition of the accounts receivable portfolio. When evaluating the adequacy of the allowance for doubtful accounts, we analyze specific trade and other receivables, historical bad debts, customer credits, customer concentrations, customer credit-worthiness, current economic trends and changes in customers' payment terms and/or patterns. We review the allowance for doubtful accounts on a quarterly basis and record adjustments as considered necessary. Customer accounts are written-off against the allowance for doubtful accounts when an account is considered uncollectable.

## **Inventories**

Inventories are stated at the lower of cost and net realizable value using the first-in-first-out method. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. We assess the value of inventories periodically based upon numerous factors including, among others, expected product or material demand, current market conditions, technological obsolescence, current cost, and net realizable value. If necessary, we write down our inventory for obsolete or unmarketable inventory by an amount equal to the difference between the cost of the inventory and the net realizable value.

## **Investment in Affiliate**

The Company holds an investment in equity securities of a nonpublic company for business and strategic purposes. The equity securities do not have a readily determinable fair value and are carried at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer. The Company reviews its investment on a regular basis to determine if the investment is impaired. For purposes of this assessment, the Company considers the investee's cash position, earnings and revenue outlook, liquidity and management ownership, among other factors, in its review. If management's assessment indicates that an impairment exists, the Company estimates the fair value of the equity investment and recognizes in current earnings an impairment loss that is equal to the difference between the fair value of the equity investment and its carrying amount.

## Goodwill and Intangible Assets

Goodwill represents the excess of consideration paid over the value assigned to the net tangible and identifiable intangible assets acquired. For intangible assets purchased in a business combination, the estimated fair values of the assets received are used to establish their recorded values. For intangible assets acquired in a non-monetary exchange, the estimated fair values of the assets transferred (or the estimated fair values of the assets received, if more clearly evident) are used to establish their recorded values. Valuation techniques consistent with the market approach, income approach and/or cost approach are used to measure fair value.

Purchased intangible assets are amortized on a straight-line basis over their economic lives of 15 years for supplier agreement, six to 25 years for channel partner relationships, three to nine years for developed technology, three to eight years for capitalized development costs, and two to 25 years for customer relationships as this method most closely reflects the pattern in which the economic benefits of the assets will be consumed.

## Impairment of Goodwill and Intangible Assets

Goodwill and intangible assets are tested for impairment on an annual basis at December 31, or more frequently if there are indicators of impairment. Triggering events for impairment reviews may be indicators such as adverse industry or economic trends, restructuring actions, lower projections of profitability, or a sustained decline in our market capitalization. Intangible assets are quantitatively assessed for impairment, if necessary, by comparing their estimated fair values to their carrying values. If the carrying value exceeds the fair value, the difference is recorded as an impairment.

## Revenue Recognition

The Company accounts for revenue pursuant to ASU 2014-09, *Revenue from Contracts with Customers* and all the related amendments (“Topic 606”). Under Topic 606, an entity is required to recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services, and contract consideration will be recognized on a “sell-in basis” or when control of the purchased goods or services transfer to the distributor.

The Company generates revenue primarily from: (i) solutions for standalone storage and integrated hyper-converged storage; (ii) professional services; and (iii) warranty and customer services. The Company recognizes revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. To determine revenue recognition for contracts with customers the Company performs the following five steps: (i) identify the promised goods or services in the contract; (ii) identify the performance obligations in the contract, including whether they are distinct in the context of the contract; (iii) determine the transaction price, including the constraint on variable consideration; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the Company satisfies the performance obligations.

Approximately 70% of the Company’s revenue is recognized when performance obligations under the terms of a contract with a customer are satisfied at a point in time. These contracts are generally comprised of a single performance obligation to transfer products. Accordingly, the Company recognizes revenue when change of control has been transferred to the customer, generally at the time of shipment of products. The Company sells its products both directly to customers and through distributors generally under agreements with payment terms typically less than 45 days. Revenue on direct product sales, excluding sales to distributors, are not entitled to any specific right of return or price protection, except for any defective product that may be returned under our standard product warranty. Product sales to distribution customers that are subject to certain rights of return, stock rotation privileges and price protections, contain a component of “variable consideration.” Revenue is measured as the amount of consideration the Company expects to receive in exchange for transferring products and is generally based upon a negotiated fixed price and is net of estimates for variable considerations.

For performance obligations related to warranty and customer services, such as extended product warranties, the Company transfers control and recognizes revenue on a time-elapsed basis. The performance obligations are satisfied as services are rendered typically on a stand-ready basis over the contract term, which is generally 12 months.

In limited circumstances where a customer is unable to accept shipment and requests products be delivered to, and stored on, the Company's premises, also known as a "bill-and-hold" arrangement, revenue is recognized when: (i) the customer has requested delayed delivery and storage of the products, (ii) the goods are segregated from the inventory, (iii) the product is complete, ready for shipment and physical transfer to the customer, and (iv) the Company does not have the ability to use the product or direct it to another customer.

The Company also enters into revenue arrangements that may consist of multiple performance obligations of its product and service offerings such as for sales of hardware devices and extended warranty services. The Company allocates contract fees to the performance obligations on a relative stand-alone selling price basis. The Company determines the stand-alone selling price based on its normal pricing and discounting practices for the specific product and/or service when sold separately. When the Company is unable to establish the individual stand-alone price for all elements in an arrangement by reference to sold separately instances, the Company may estimate the stand-alone selling price of each performance obligation using a cost plus a margin approach, by reference to third party evidence of selling price, based on the Company's actual historical selling prices of similar items, or based on a combination of the aforementioned methodologies; whichever management believes provides the most reliable estimate of stand-alone selling price.

#### **Warranty and Extended Warranty**

The Company records a provision for standard warranties provided with all products. If future actual costs to repair were to differ significantly from estimates, the impact of these unforeseen costs or cost reductions would be recorded in subsequent periods.

Separately priced extended on-site warranties and service contracts are offered for sale to customers on all product lines. The Company contracts with third party service providers to provide service relating to on-site warranties and service contracts. Extended warranty and service contract revenue and amounts paid in advance to outside service organizations are deferred and recognized as service revenue and cost of service, respectively, over the period of the service agreement. The Company will typically apply the practical expedient to agreements wherein the period between transfer of any good or service in the contract and when the customer pays for that good or service is one year or less. Advanced payments for long-term maintenance and warranty contracts do not give rise to a significant financing component. Rather, such payments are required by the Company primarily for reasons other than the provision of finance to the entity.

#### **Research and Development Costs**

Research and development expenses include payroll, employee benefits, share-based compensation expense, and other headcount-related expenses associated with product development. Research and development expenses also include third-party development and programming costs.

#### **Comprehensive Income (Loss)**

Comprehensive income (loss) and its components encompass all changes in equity other than those arising from transactions with shareholders, including net loss and foreign currency translation adjustments, and is disclosed in a separate condensed consolidated statement of comprehensive loss.

#### **Share-based Compensation**

We account for share-based awards, and similar equity instruments, granted to employees, non-employee directors, and consultants under the fair value method. Share-based compensation award types include stock options and restricted stock. We use the Black-Scholes option pricing model to estimate the fair value of option awards on the measurement date, which generally is the date of grant. The expense is recognized over the requisite service period (usually the vesting period) for the estimated number of instruments for which service is expected to be rendered. The fair value of restricted stock units ("RSUs") is estimated based on the market value of the Company's common shares on the date of grant. The fair value of options granted to non-employees is estimated at the measurement date using the Black-Scholes option pricing model.

Share-based compensation expense for options with graded vesting is recognized pursuant to an accelerated method. Share-based compensation expense for RSUs is recognized over the vesting period using the straight-line method. Share-based compensation expense for an award with performance conditions is recognized when the achievement of such performance conditions are determined to be probable. If the outcome of such performance condition is not determined to be probable or is not met, no compensation expense is recognized and any previously recognized compensation expense is reversed. Forfeitures are recognized in share-based compensation expense as they occur.

We have not recognized, and do not expect to recognize in the near future, any tax benefit related to share-based compensation cost as a result of the full valuation allowance of our net deferred tax assets and its net operating loss carryforward.

#### **Recently Issued Accounting Pronouncements**

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board (“FASB”) that are adopted by the Company as of the specified effective date. If not discussed, the Company believes that the impact of recently issued standards, which are not yet effective, will not have a material impact on the Company’s consolidated financial statements upon adoption.

#### **Recently Adopted Accounting Pronouncements**

In August 2018, the FASB issued Accounting Standards Update (“ASU”) No. 2018-13, *Fair Value Measurement (Topic 820)* (“ASU 2018-13”). The new guidance removes, modifies and adds to certain disclosure requirements on fair value measurements in Topic 820, Fair Value Measurement. The update is effective for annual reporting periods, including interim periods, beginning after December 15, 2019. The adoption of the new standard did not have an effect on our financial position, results of operations or cash flows.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles - Goodwill and Other (Topic 350) - Simplifying the Test for Goodwill Impairment* (“ASU 2017-04”). The update simplifies the subsequent measurement of goodwill by eliminating Step 2 from the goodwill impairment test. An entity should perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount, and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value, if applicable. The loss recognized should not exceed the total amount of goodwill allocated to the reporting unit. The same impairment test also applies to any reporting unit with a zero or negative carrying amount. An entity still has the option to perform the qualitative assessment for a reporting unit to determine if the quantitative impairment test is necessary. The update is effective for annual reporting periods, including interim periods, beginning after December 15, 2019, on a prospective basis. The adoption of the new standard did not have an effect on our financial position, results of operations or cash flows.

### 3. Certain Balance Sheet Items

The following table summarizes inventories (in thousands):

	September 30, 2020	December 31, 2019
Raw materials	\$ 120	\$ 92
Work in process	166	137
Finished goods	373	524
	<u>\$ 659</u>	<u>\$ 753</u>

The following table summarizes other current assets (in thousands):

	September 30, 2020	December 31, 2019
Prepaid services	\$ 632	\$ 23
Prepaid insurance	169	184
Transition service agreement	78	345
Deferred cost - service contracts	108	118
Other	11	—
	<u>\$ 998</u>	<u>\$ 670</u>

The following table summarizes other assets (in thousands):

	September 30, 2020	December 31, 2019
Convertible promissory note receivable long-term	\$ 3,128	\$ —
Prepaid insurance and services	418	519
Deferred cost – service contracts	75	154
Other	15	6
	<u>\$ 3,636</u>	<u>\$ 679</u>



#### 4. Intangible Assets

The following table summarizes intangible assets, net (in thousands):

	September 30, 2020	December 31, 2019
Developed technology	\$ 13,323	\$ 13,323
Supplier agreement	1,560	—
Channel partner relationships	730	730
Capitalized development costs <sup>(1)</sup>	2,959	3,047
Customer relationships	380	380
	<u>18,952</u>	<u>17,480</u>
Accumulated amortization:		
Developed technology	(13,038)	(12,682)
Supplier agreement	(17)	—
Channel partner relationships	(446)	(355)
Capitalized development costs <sup>(1)</sup>	(2,303)	(2,094)
Customer relationships	(337)	(328)
	<u>(16,141)</u>	<u>(15,459)</u>
Total finite-lived assets, net	2,811	2,021
Indefinite-lived intangible assets - trade names	280	280
Total intangible assets, net	<u>\$ 3,091</u>	<u>\$ 2,301</u>

(1) Includes the impact of foreign currency exchange rate fluctuations.

Amortization expense of intangible assets was \$258,000 and \$252,000 during the three months ended September 30, 2020 and 2019, respectively. Amortization expense of intangible assets was \$740,000 and \$771,000 during the nine months ended September 30, 2020 and 2019, respectively. Estimated amortization expense for intangible assets is expected to be approximately \$228,000 for the remainder of 2020 and \$606,000, \$459,000, \$138,000, \$116,000, and \$115,000 in fiscal 2021, 2022, 2023, 2024 and 2025, respectively.

##### *Supplier Agreement Acquisition*

On August 3, 2020, Dale Allan Peters (“Peters”), as the beneficial shareholder of 101250 Investments Ltd. (“101 Invest”), a company existing under the laws of the Turks & Caicos Islands and a water partner of Rainmaker, entered into a Share Purchase Agreement (the “101 Invest Purchase Agreement”) with the Company. As a result of the 101 Invest Purchase Agreement, 101 Invest is a wholly-owned subsidiary of the Company. Under the terms of the 101 Invest Purchase Agreement, the Company issued 480,000 common shares at \$3.25 per share to Greenfield Investments Ltd. for a purchase price of \$1,560,000. The common shares contain a legend, either statutory or contractual, which will restrict the resale of the common shares for a period of six-months and one day from the closing date. In addition, the Company held back and retained 96,000 of the common shares for a six-month period from the closing date in support of any breaches of representations and warranties by Peters under the 101 Invest Purchase Agreement. 101 Invest has exclusive rights to deliver the Rainmaker water solution to three Turks and Caicos island communities - Plantation Hills, Blue Sky and Village Estates. The Company completed this transaction to assist in the deployment and expansion of its opportunities in the WaaS segment.

## 5. Investment in Affiliate

In November 2018, in connection with the divestiture of Overland, the Company received 1,879,699 Silicon Valley Technology Partners (“SVTP”) Preferred Shares representing 19.9% of the outstanding shares of capital stock of SVTP with a fair value of \$2.1 million. The fair value of this investment was estimated using discounted cash flows and consideration of the Exchange Agreement described below. The Company concluded it does not have a significant influence over the investee. There were no known identified events or changes in circumstances that may have a significant adverse effect on the fair value of the investment at September 30, 2020.

In November 2018, the Company also entered into an Exchange and Buy-Out Agreement (the “Exchange Agreement”), between the Company, FBC Holdings, SVTP, and MF Ventures LLC (“MFV”). Under the terms of the Exchange Agreement, (i) the Company granted FBC Holdings the right to exchange up to 2,500,000 of the Company’s Series B Preferred Shares held by FBC Holdings for up to all of the SVTP Preferred Shares held by the Company (the “Exchange Right”), with such Exchange Right expiring within two years of the November 2018 closing.

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

In connection with the Exchange Agreement, the Company entered into a security and pledge agreement between the Company and FBC Holdings, pursuant to which, among other things, the Company granted a security interest to FBC Holdings in all the SVTP Preferred Shares held by the Company to secure the Company’s obligations under the Exchange Agreement.

## 6. Debt

On August 27, 2020, the Company entered into a settlement agreement with O’Melveny & Myers LLP (“OMM”) pursuant to which the Company issued to OMM a secured promissory note (the “OMM Note”) in the aggregate principal amount of \$1.1 million in satisfaction of certain accounts payable owed to OMM. The OMM Note bears interest at 1.68% per annum and matures on December 30, 2020. The Company may prepay any amounts outstanding under the OMM Note at any time. The Company’s obligations pursuant to the OMM Note are secured by substantially all of the Company’s assets. The Company recorded a gain on forgiveness of liabilities in the amount of \$600,000 which is included in other income.

On July 28, 2020, the Company entered into a Securities Purchase Agreement with Oasis Capital (“Oasis”), a related party of the Company, pursuant to which the Company received \$500,000 and issued to Oasis (i) an 8.0% original issue discount promissory note payable, with a six month term and aggregate principal amount of \$615,000, and (ii) 90,000 common shares of the Company at \$3.37 per share. Torrington, a related party, earned a fee of \$40,000 for facilitating the transaction. At September 30, 2020, the Company had \$311,000 outstanding, net of unamortized debt costs of \$271,000 on the Oasis promissory note.

On April 9, 2020, the Company received loan proceeds in the amount of \$667,400 (the “PPP Funds”) and entered into a loan agreement with Citizens National Bank of Texas pursuant to the CARES Act. The CARES Act was established in order to enable small businesses to pay employees during the economic slowdown caused by COVID-19 by providing forgivable loans to qualifying businesses for up to 2.5 times their average monthly payroll costs. The amount borrowed by the Company under the CARES Act is eligible to be forgiven provided that (a) the Company uses the PPP Funds during the eight week period after receipt thereof, and (b) the PPP Funds are only used to cover payroll costs (including benefits), rent, mortgage interest, and utility costs. The amount of loan forgiveness will be reduced if, among other reasons, the Company does not maintain staffing or payroll levels. Principal and interest payments on any unforgiven portion of the PPP Funds (the “PPP Loan”) will be deferred for six months and will accrue interest at a fixed annual rate of 1.0% and carry a two year maturity date. There is no prepayment penalty on the CARES Act Loan.

### *Convertible Debt and Warrants*

On February 13, 2020, the Company entered into a business advisory agreement with Torrington Financial Services Ltd (“Torrington”), a financial adviser to the Company. As a result of the March 23, 2020 transaction, Torrington and its entity under common control, Lallande Poydras Investment Partnership (“Lallande”), both participated in the below offering and are classified as a related party of the Company.

On March 23, 2020, the Company entered into subscription agreements by and among the Company and the investors party thereto, including Torrington and Lallande, for the purchase and sale of 725 units (collectively, the “Units” and individually, a “Unit”) for aggregate gross proceeds of \$725,000 with each Unit consisting of (a) a 6.0% convertible debenture in the principal amount of \$1,000, which is convertible at \$0.6495 per share into 1,540 common shares of the Company, and (b) a warrant to purchase 1,540 common shares of the Company exercisable at any time on or before the third year anniversary date at an exercise price of \$0.60 per share. The warrant includes a provision restricting the warrant holder from exercising it if the aggregate number of common shares held by the warrant holder equals or exceeds 5.0% of the issued and outstanding shares of the Company, calculated on a partially converted basis (i.e., assuming the conversion of all rights to receive common shares of the Company held by the warrant holder). All values are assigned to the debts and no value has been assigned to the equity component. Torrington and Lallande participated in the offering and in the aggregate purchased 200 units, as well as for compensation for Torrington’s services, the Company issued to Torrington convertible debentures equal to \$58,000 and convertible into 89,320 common shares and a warrant for the purchase of 89,320 shares, with other terms substantially the same as the investors. The Company received cash proceeds of \$575,000 from the offering, and a participant of the offering paid on the Company’s behalf \$150,000 directly to a business advisor for a prepayment of future services to the Company. The Company intends to use the remaining proceeds from the offering for general corporate and working capital purposes.

During the nine months ended September 30, 2020, the Company converted \$783,000 of convertible debt, including Torrington’s fee and issued 1,206,545 common shares of the Company, of which \$408,000 of debt converted was held by related parties, and they were issued in the aggregate 628,320 common shares.

During the nine months ended September 30, 2020, the Company issued 200,000 common shares of the Company for the exercise of the March 23, 2020 warrants and received \$120,000 in proceeds.

#### *Line of credit*

The Company has a line of credit agreement with a bank with a maximum borrowing limit, effective July 2, 2019, of \$500,000. Borrowings under this agreement bear interest at a rate of 6.5% per annum. The line of credit expires on December 31, 2020. Borrowings under the line of credit are secured by the inventory and accounts receivable balances of the Company. At September 30, 2020, the outstanding balance was \$489,000.

The line of credit agreement also contains customary insurance requirements, limits on cross collateralization and events of default, including, among other things, failure to make payments, insolvency or bankruptcy, business termination, merger or consolidation or acquisition without written consent, a material impairment in the perfection or priority of the Lender’s lien in the collateral or in the value of such collateral, or material adverse change to the business that would impair the loan.

## 7. Fair Value Measurements

The authoritative guidance for fair value measurements establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

### *Assets and Liabilities that are Measured at Fair Value on a Recurring Basis*

Our financial instruments include cash equivalents, accounts receivable, accounts payable, accrued expenses, debt, related party debt and preferred shares. Fair value estimates of these instruments are made at a specific point in time, based on relevant market information. These estimates may be subjective in nature and involve uncertainties and matters of significant judgment and therefore cannot be determined with precision. The carrying amount of cash equivalents, accounts receivable, note receivable, prepaid expenses, accounts payable and accrued expenses are generally considered to be representative of their respective fair values because of the short-term nature of those instruments. The carrying value of debt and related party debt approximates its fair value as the borrowing rates are substantially comparable to rates available for loans with similar terms. The Company estimates the fair value of the preferred shares utilizing Level 2 inputs, including market yields for similar instruments.

### *Assets and Liabilities that are Measured at Fair Value on a Nonrecurring Basis*

The Company's non-financial assets such as investment in affiliate, goodwill, intangible assets and property and equipment are recorded at fair value when an impairment is recognized or at the time acquired in a business combination.

## 8. Preferred Shares

### *Series E Preferred Shares*

On September 17, 2020, the Company filed articles of amendment to create a fifth series of preferred shares, being, an unlimited number of Series E Preferred Shares and to provide for the rights, privileges, restrictions and conditions attaching thereto. Each Series E Preferred Share shall have a stated value of \$1,000 and is convertible into the Company's common shares at a conversion price equal to the lower of (i) 80% of the average of the three lowest VWAPs of the common stock during the ten trading days immediately preceding, but not including, the conversion date and (ii) \$2.00; however, in no event shall the conversion price be lower than \$1.00 per share. The Series E Preferred Shares are non-voting and pay dividends at a rate of 8.0% per annum, payable quarterly.

The shareholder of the Series E Preferred Shares, may, at any time, convert all or any Series E Preferred Shares provided that (i) the common shares issuable upon such conversion, together with all other common shares of the Company held by the shareholder in the aggregate, would not cause such shareholder's ownership of the Company's common shares to exceed 9.99% of the total number of outstanding common shares of the Company (ii) and such conversion would not exceed the maximum number of Sphere common shares that may be issued upon conversion of all shares of Series E Preferred Stock in the aggregate of 1,500,000 common shares.

On September 14, 2020, the Company entered into a Securities Purchase Agreement with an investor relating to the issuance and sale to the investor of 3,000 shares of the Company's subsequently established Series E Convertible Preferred Shares in a private placement transaction for net proceeds of \$2.7 million. On September 23, 2020, the Company entered into an amendment to the Securities Purchase Agreement. Under the amendment, the investor and the Company agreed that to the extent the investor converts any Series E Preferred Shares into common shares, such common shares shall be prohibited from being voted with respect to any proposal related to the transactions contemplated by the Securities Purchase Agreement, including any proposal seeking to obtain shareholder approval of the transactions contemplated by the Securities Purchase Agreement in accordance with Nasdaq rules. The Company paid a related party, Torrington, a business advisory fee of \$240,000 related to this transaction.

### *Series D Preferred Shares*

On May 6, 2020, the Company filed articles of amendment to create a fourth series of preferred shares, being, an unlimited number of Series D Preferred Shares and to provide for the rights, privileges, restrictions and conditions attaching thereto. The Series D Preferred Shares are convertible into our common shares, at a conversion price equal to \$0.65, subject to certain anti-dilution adjustments. Each shareholder of the Series D Preferred Shares, may, at any time, convert all or any part of the Series D Preferred Shares provided that after such conversion the common shares issuable, together with all the common shares held by the shareholder in the aggregate would not exceed 9.9% of the total number of outstanding common shares of the Company or in the aggregate no more than the exchange cap of 800,000 common shares by all holders of Series D Preferred Shares.

On April 30, 2020, the Company entered into a Securities Purchase Agreement with two investors (the “Purchasers”) relating to the issuance and sale, in the aggregate, of 1,694,000 shares (the “Shares”) of the Company's subsequently established Series D Convertible Preferred Shares, no par value and warrants to purchase up to 1,694,000 common shares of the Company in a private placement transaction, in exchange for the assignment to the Company by the investors of certain convertible promissory notes receivable held by the investors in an aggregate amount of \$1.1 million. Subject to certain limitations, the warrants will be exercisable commencing on the six month anniversary at an exercise price equal to \$0.92 per common share, subject to adjustments as provided under the terms of the warrants, and are exercisable for a five year period. The warrants include a provision restricting the warrant holder from exercising it if the aggregate number of common shares held by the warrant holder equals or exceeds 5.0% of the issued and outstanding shares of the Company, calculated on a partially converted basis (i.e., assuming the conversion of all rights to receive common shares of the Company held by the warrant holder). The Series D Preferred Shares are convertible at the option of the holder, subject to certain conditions.

During the nine months ended September 30, 2020, the Company converted 785,000 shares of the Series D Preferred Shares and issued 785,000 common shares of the Company. As a result of the conversion, one of the Purchasers, Gora Consulting Corp. (“Gora”) is classified as a related party of the Company. Gora participated in the Securities Purchase Agreement by acquiring 847,000 Shares and warrants to purchase 847,000 common shares, in exchange for the assignment to the Company certain promissory notes receivable held by Gora in an aggregate amount of \$550,000. During the nine months ended September 30, 2020, Gora converted 485,000 Series D Preferred Shares and was issued 485,000 common shares of the Company. In addition, on April 21, 2020, the sole owner of Gora entered into a share purchase agreement with an employee of the Company and acquired 211,745 common shares of the Company.

### *Series C Preferred Shares*

On October 30, 2019, the directors of the Company passed a resolution authorizing the filing of articles of amendment to create a third series of preferred shares, being, an unlimited number of Series C Preferred Shares and to provide for the rights, privileges, restrictions and conditions attaching thereto. On November 6, 2019, the Company filed the Articles of Amendment to create the Series C Preferred Shares. Pursuant to the articles of amendment governing the rights and preferences of outstanding shares of Series C Preferred Shares, each preferred share, subject to prior shareholder approval, are convertible into our common shares, at a conversion rate in effect on the date of conversion. Overland, a related party and the sole shareholder of the Series C Preferred Shares, agreed that it would not exercise its conversion right with respect to its Series C Preferred Shares until the earlier of (i) October 31, 2020 and (ii) such time that we file for bankruptcy or an involuntary petition for bankruptcy is filed against us (unless such petition is dismissed or discharged within 30 days) provided that after such conversion the common shares issuable, together with the aggregate common shares held by Overland would not exceed 19.9% of the total number of outstanding common shares of the Company. At September 30, 2020, the Company has issued and outstanding 1,600,000 Series C Preferred Shares of the Company valued at \$1.00 per share.

### *Series B Preferred Shares*

In July 2019, the Company filed articles of amendment to create a second series of preferred shares, being, an unlimited number of Series B Preferred Shares and to provide for the rights, privileges, restrictions and conditions attaching thereto. In July 2019, following the filing of the Articles of Amendment to create the Series B Preferred Shares, the Company entered into a share exchange agreement (the "Share Exchange Agreement") with FBC Holdings to exchange 6,500,000 Series A Preferred Shares held by FBC Holdings for 6,500,000 Series B Preferred Shares. On July 14, 2020, the Company entered into a lock-up agreement (the "Lock-up Agreement") with FBC Holdings with respect to the 6,500,000 Series B Preferred Shares of the Company owned by FBC. Pursuant to the terms of the Lock-up Agreement, FBC has agreed that for the period of time between (a) July 14, 2020 and (b) the earlier to occur of (i) April 30, 2021 and (ii) the date that is 180 days after a Change of Control (as defined in the Lock-up Agreement), it will not without the prior written consent of the Company convert any of the Series B Preferred Shares into common shares of the Company.

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

In August 2019, the Company issued 343,778 Series B Preferred Shares with a fair value of \$343,778 to FBC Holdings in satisfaction of accrued dividends at such date.

For the three and nine months ended September 30, 2020, there was no related party interest expense related to preferred shares dividends. For the three and nine months ended September 30, 2019, there was related party interest expense of \$30,000 and \$291,000, respectively, related to preferred shares dividends.

The Series B Preferred Shares (i) are convertible into the Company's common shares, subject to prior shareholder approval, at a conversion rate equal to \$1.00 per share, plus accrued and unpaid dividends, divided by an amount equal to 0.85 multiplied by a 15-day volume weighted average price per common share prior to the date the conversion notice is provided (the "Conversion Rate"), subject to a conversion price floor of \$0.80, (ii) if the Company receives any cash dividends on its equity investment in Silicon Valley Technology Partners, Inc., in an amount equal to such cash dividend received, cumulative cash dividends at a rate of 8.0% of the Series B Preferred Shares, (iii) after November 13, 2020, fixed, preferential, cumulative cash dividends at the rate of 8.0% of the Series B Preferred Shares subscription price per year, and (iv) carry a liquidation preference equal to the subscription price per Series B Preferred Share plus any accrued and unpaid dividends.

The common shares issuable upon the conversion of the Series B Preferred Shares may constitute more than 20% of the common shares of the Company currently outstanding and may result in a change of control of the Company, and therefore the Company will seek shareholder approval for the issuance of all common shares issuable upon conversion of the Series B Preferred Shares. In the event shareholder approval is not obtained, FBC Holdings and its affiliates will not be entitled to convert such Series B Preferred Shares into common shares, but any unaffiliated transferee may convert all or any part of the Series B Preferred Shares held by such transferee into the number of fully paid and non-assessable common shares that is equal to the number of Series B Preferred Shares to be converted multiplied by the 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 aggregated 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 Company then outstanding and (y) such conversion and issuance would not otherwise violate or cause the Company to violate the Company's obligations under the rules or regulations of the Nasdaq Stock Market.

Management has determined that the conversion terms of the Series B Preferred Shares, Series C Preferred Shares, Series D Preferred Shares and Series E Preferred Shares do not cause the preferred shares to be treated as liability instruments, and accordingly such preferred shares are presented as equity instruments.

## 9. Share Capital

On June 1, 2020, the Company entered into a consulting agreement with GROUPE PARAMÉUS CORP (“GROUPE P”) to provide consulting services for one year to the Company in the area of corporate finance, investor communications and financial and investor public relations. As compensation for GROUPE P’s services to be provided pursuant to the consulting agreement, in addition to a prepayment of \$150,000 in cash, the Company granted 100,000 restricted stock awards, 100,000 common shares of the Company pursuant to the terms of Regulation D under the Securities Act of 1933, and a non-qualified stock option for the purchase of 50,000 common shares at an exercise price of \$2.52 per share with a vest period over six months. On June 16, 2020, the Company issued 200,000 common shares to GROUPE P with a fair value of \$504,000.

On April 24, 2020, the Company entered into a consulting agreement with ROK Consulting Inc. (“ROK”) to provide consulting services to the Company in the area of corporate finance, investor communications and financial and investor public relations (the “ROK Consulting Agreement”). As compensation for ROK’s services to be provided pursuant to the ROK Consulting Agreement, in addition to cash compensation, the Company agreed to issue to ROK 375,000 common shares of the Company. On June 19, 2020, the Company issued 150,000 common shares of the Company with a fair value of \$360,000 to ROK per the terms of the ROK Consulting Agreement. On August 4, 2020, the Company issued 225,000 common shares of the Company with a fair value of \$725,000 to ROK per the terms of the ROK Consulting Agreement.

In May 2020, the Company entered into an equity purchase agreement and registration rights agreement with Oasis Capital, LLC (“Oasis Capital”), to purchase from the Company up to \$11.0 million worth of common shares of the Company. Under the purchase agreement, the Company has the right to sell up to \$11.0 million of its common shares to Oasis Capital over a 36-month period, upon satisfaction of the conditions in the purchase agreement, including the effectiveness of a resale registration statement filed on Form S-1. The Company will control the timing and amount of any sales to Oasis Capital, and Oasis Capital is obligated to make purchases in accordance with the purchase agreement, upon certain terms and conditions being met. The purchase agreement, which contains a floor price of \$1.58 per common share, allows the Company to fund its needs in a more expedient and cost-effective manner, on the pricing terms set forth in the purchase agreement. The equity line is designed to provide capital to the company as it is required. During the nine months ended September 30, 2020, the Company issued 60,000 common shares to Oasis Capital for gross proceeds of \$140,000 under the terms and conditions of the equity purchase agreement. In October 2020, the Company issued 140,000 common shares to Oasis Capital for gross proceeds of \$249,000 under the terms and conditions of the Oasis Capital equity purchase agreement.

In October 2019, the Company entered into a share purchase agreement and issued 149,500 common shares of the Company at \$1.19 per share to a supplier in exchange for the satisfaction of certain accounts payable. The aggregate amount of the obligations shall be reduced by the cash proceeds actually received by the supplier from the sale of the common shares. On May 26, 2020, the Company received notification of the sale of common shares had been settled and the Company received a reduction to its outstanding accounts payable of \$299,000.

In October 2019, the Company entered into a share purchase agreement with a related party supplier of the Company and issued 330,000 common shares of the Company at \$1.07 per share to the supplier in exchange for the satisfaction of certain accounts payable. The aggregate amount of the obligations shall be reduced by the cash proceeds actually received by the supplier from the sale of the common shares. On April 21, 2020, the Company received notification of the sale of common shares had been settled and the Company received a reduction to its outstanding accounts payable of \$153,000.

In August 2019, the Company entered into a purchase agreement for a private placement to issue 251,823 common shares of the Company, of which 175,765 common shares have been issued at a purchase price of \$1.29 per share for gross proceeds of \$325,000. The remaining 76,058 common shares are pending issuance due to the Company not receiving the information necessary to issue the common shares. The Company used the proceeds from the offering for general corporate and working capital purposes.

## Warrants

At September 30, 2020, the Company had the following outstanding warrants to purchase common shares:

<u>Date issued</u>	<u>Contractual life (years)</u>	<u>Exercise price</u>	<u>Number outstanding</u>	<u>Expiration</u>
October 2015	5	\$466.00	2,010	October 14, 2020
December 2015	5	\$500.00	5,138	December 15, 2020
December 2015	5	\$216.00	7,500	December 4, 2020
March 2016	5	\$500.00	150	March 4, 2021
August 2017	5	\$42.00	37,500	August 11, 2022
August 2017	5	\$42.00	11,876	August 16, 2022
August 2017	5	\$42.00	25,625	August 22, 2022
April 2018	5	\$5.60	111,563	April 17, 2023
March 2020	3	\$0.60	1,005,820	March 23, 2023
April 2020	5	\$0.92	1,694,000	April 30, 2025
			<u>2,901,182</u> <sup>(1)</sup>	

(1) Includes warrants to purchase up to 2,002,000 common shares, in the aggregate, outstanding to related parties at September 30, 2020.

## 10. Equity Incentive Plans

During the nine months ended September 30, 2020 and 2019, the Company granted awards of restricted stock units of none and 100,000, respectively, of which the 100,000 granted in 2019 were outside of the 2015 Performance Incentive Plan. The restricted stock units were recorded at fair value on the date of grant. Restricted stock units typically vest over a period of approximately three years. The restricted stock units granted outside of the 2015 Performance Incentive Plan are fully vested. During the nine months ended September 30, 2020, the Company entered into various consulting agreements for business advisory services and granted to the same business advisors, in the aggregate, non-qualified stock options for the purchase of 130,000 common shares with an exercise price of \$2.52 per share in lieu of cash payment for services performed of which 30,000 of such non-qualified options were granted to, and exercised by, a related party.

### Restricted Stock Awards

During the nine months ended September 30, 2020 and 2019, the Company granted restricted stock awards (“RSA”) in lieu of cash payment for services performed. The estimated fair value of the RSAs was based on the market value of the Company’s common shares on the date of grant. During the nine months ended September 30, 2020 and 2019, the Company granted RSAs of 400,841 and 42,000, respectively, with a fair value of \$771,000 and \$105,000, respectively.



## Share-Based Compensation Expense

The Company recorded the following compensation expense related to its share-based compensation awards:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Cost of sales	\$ —	\$ —	\$ —	\$ 205
Sales and marketing	—	192,446	2,014	271,763
Research and development	—	15,705	2,532	52,326
General and administrative	—	29,607	—	153,663
Total share-based compensation expense	\$ —	\$ 237,758	\$ 4,546	\$ 477,957

As of September 30, 2020, there was no unrecognized compensation expense related to equity-based compensation awards.

## 11. Net (Loss) Income per Share

Basic net income (loss) per share is computed by dividing net income (loss) applicable to common shareholders by the weighted-average number of common shares outstanding during the period. Preferred shares, outstanding common share purchase warrants, restricted stock not yet vested or released and outstanding options are considered common stock equivalents and are only included in the calculation of diluted earnings per common share when net income is reported and their effect is dilutive.

A reconciliation of the numerators and denominators is as follows (in thousands, except share and per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
<b>Numerator:</b>				
Net (loss) income	\$ (1,190)	\$ 885	\$ (4,239)	\$ (2,624)
<b>Denominator:</b>				
Weighted average common shares outstanding for basic (loss) income per share	6,949,010	2,668,311	5,240,003	2,403,373
Net effect of dilutive common share equivalents	—	6,241,450	—	—
Weighted average common shares outstanding for diluted net (loss) income per share	6,949,010	8,909,761	5,240,003	2,403,373
<b>Net (loss) income per share:</b>				
Basic	\$ (0.17)	\$ 0.33	\$ (0.81)	\$ (1.09)
Diluted	\$ (0.17)	\$ 0.10	\$ (0.81)	\$ (1.09)

Anti-dilutive common share equivalents excluded from the computation of diluted net (loss) income per share were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Preferred shares issued and outstanding	9,355,778	—	9,355,778	5,843,778
Common share purchase warrants	2,901,182	205,687	2,901,182	205,687
Options outstanding	101,175	6,837	101,175	6,837

## 12. Related Party Transactions

In February 2020, the Company entered into a business advisory agreement (the “Torrington Advisory Agreement”) with Torrington. Under the Torrington Advisory Agreement, Torrington is to receive certain consideration in the event the Company enters into a business combination. In September 2020, the Company and Torrington entered into Amendment No. 1 to the Business Advisory Agreement (the “Torrington Amendment”). Under the Torrington Amendment, the parties agreed that if the Company closes on its merger with Rainmaker pursuant to the Agreement and Plan of Merger, dated July 14, 2020, as amended at a ratio of at least 10 Rainmaker shares for one share of the Company, Torrington shall receive 1,800,000 common shares of the Company as compensation under the Torrington Advisory Agreement, subject to regulatory and NASDAQ approvals.

1542082 Ontario Limited (“1542082 Ontario”), an investor participating in the March 23, 2020 offering, held enough common shares of the Company to be classified as a related party. 1542082 Ontario acquired 120,000 common shares of the Company in the March 23, 2020 offering. In March 2020, 1542082 Ontario, paid on the Company’s behalf \$150,000 directly to a business advisor for a prepayment of future services to the Company. As of September 30, 2020, 1542082 Ontario did not hold enough common shares of the Company to be classified as a related party.

In October 2019, the Company entered into a conversion agreement by and among the Company, HVE and Overland under which Overland agreed to convert the following debt, accrued payables and prepayment of future goods and services into 1,600,000 Series C Preferred Shares of the Company valued at \$1.00 per share: (i) principal and accrued interest of \$520,000 under the Secured Promissory Note dated November 13, 2018 by and among the Company, HVE and Overland; (ii) accrued fees of \$632,000 under the Transition Service Agreement (“TSA”) dated November 13, 2018 and as modified, by and among the Company and Overland; and (iii) prepayment of \$448,000 for future goods and services under the TSA. As of September 30, 2020 and December 31, 2019, other current assets included \$78,000 and \$345,000, respectively, for prepayment of services under the TSA.

In August 2019, the Company entered into agreements with certain executives of the Company and the Company’s Board of Directors to extinguish certain accrued liabilities. The Company wrote off \$1.7 million of outstanding liabilities and recorded a gain on forgiveness of liabilities, which is included in other income (expense), net.

In November 2018, the Company entered into a TSA to facilitate an orderly transition process for the divestiture of Overland. The TSA has terms ranging from up to 24 months depending on the service. Net expense incurred by the Company related to such agreement was approximately \$74,000 and \$261,000 during the three and nine months ended September 30, 2020, respectively, and \$191,000 and \$356,000 during the three and nine months ended September 30, 2019, respectively.

As of September 30, 2020 and December 31, 2019, prepaid services included \$49,000 and none, respectively, for business advisory services. As of September 30, 2020 and December 31, 2019, accrued liabilities included \$40,000 and none, respectively, for business advisory service fees.

### 13. Commitments and Contingencies

#### Letters of credit

During the ordinary course of business, the Company provides standby letters of credit to third parties as required for certain transactions initiated by the Company. As of September 30, 2020, the Company had no outstanding standby letters of credit.

#### Warranty and Extended Warranty

The Company had \$183,000 and \$272,000 in deferred costs included in other current and non-current assets related to deferred service revenue at September 30, 2020 and December 31, 2019, respectively. Changes in the liability for product warranty and deferred revenue associated with extended warranties and service contracts were as follows (in thousands):

	<b>Deferred Revenue</b>
Liability at January 1, 2020	\$ 1,109
Settlements made during the period	(689)
Change in liability for warranties issued during the period	371
Change in liability for pre-existing warranties	—
Liability at September 30, 2020	<u>\$ 791</u>
Current liability	508
Non-current liability	283
Liability at September 30, 2020	<u>\$ 791</u>

#### Litigation

The Company is, from time to time, subject to claims and suits arising in the ordinary course of business. In the opinion of management, the ultimate resolution of such pending proceedings will not have a material effect on the Company's results of operations, financial position or cash flows.

In January 2018, Mr. Vito Lupis filed a statement of claim in the Ontario Court of Justice alleging, among other things, breach of contracts, deceit and negligence against Mr. Giovanni J. Morelli, a former officer of the Company, and vicarious liability against the Company, in connection with stock purchase agreements and other related agreements that would have been entered into between Mr. Lupis and the Company in 2012. In March 2019, the Company and Mr. Lupis entered into a settlement agreement pursuant to which the Company has agreed to pay Mr. Lupis certain consideration, which is included in general and administrative expense, in exchange for a dismissal of the action. Currently, the Company has a judgment against it for the outstanding balance of the settlement.

In April 2015, we filed a proof of claim in connection with bankruptcy proceedings of V3 Systems, Inc. ("V3") based on breaches by V3 of the Asset Purchase Agreement entered into between V3 and the Company dated February 11, 2014 (the "APA"). On October 6, 2015, UD Dissolution Liquidating Trust ("UD Trust"), post-confirmation liquidating trust established by V3's plan of liquidation, filed a complaint against us and certain of our current and former directors in the U.S. Bankruptcy Court for the District of Utah Central Division objecting to our proof of claim and asserting claims for affirmative relief against us and our directors. This complaint alleges, among other things, that Sphere 3D breached the APA and engaged in certain other actions and/or omissions that caused V3 to be unable to timely sell the Sphere 3D common shares received by V3 pursuant to the APA. The UD Trust seeks, among other things, monetary damages for the loss of the potential earn-out consideration, the value of the common shares held back by us pursuant to the APA and costs and fees.

In March 2018, UD Trust filed a complaint in U.S. District Court for the Northern District of California (“California Complaint”) asserting that two transactions involving the Company constitute fraudulent transfers under federal and state law. First, UD Trust alleges that the consolidation of the Company’s and its subsidiaries’ indebtedness to the Cyrus Group into a debenture between FBC Holdings and the Company in December 2014 constitutes a fraudulent transfer. Second, UD Trust alleges that the Share Purchase Agreement constitutes a fraudulent transfer, and seeks to require that the proceeds of the transaction be placed in escrow until the V3 litigation is resolved. The California Complaint also asserts a claim against the Company’s former CEO for breach of fiduciary duty, and a claim against the Cyrus Group for aiding and abetting breach of fiduciary duty. On July 25, 2018, we filed a motion seeking to dismiss all of the claims asserted against the Company and its former CEO. On the same day, the Cyrus Group filed a motion seeking to dismiss all claims asserted against the Cyrus Group. The UD Trust voluntarily dismissed this case without prejudice on February 5, 2020.

On October 22, 2019, UD Trust filed an amended complaint in the Delaware Bankruptcy Court. The amended complaint includes all of the claims and parties in the original complaint first filed in October 2015 in the Utah Bankruptcy Court as well as the claims and additional parties in the California Complaint. We continue to believe this lawsuit to be without merit and intend to vigorously defend against the action. On February 10, 2020, we filed a renewed motion seeking to dismiss the majority of the claims asserted by the UD Trust in the amended complaint. On that same day, we also filed a counterclaim against the UD Trust in which we allege that V3 breached numerous provisions of the APA. The Company’s current and former officers and directors that were named as defendants in the amended complaint as well as the Cyrus Group all filed motions seeking to dismiss all claims that the UD Trust alleged against them. The parties have completed briefing of these matters, have requested oral argument, and are waiting for the court to schedule argument, or decide the motion.

#### **14. Subsequent Events**

On October 5, 2020, the Company submitted the PPP loan forgiveness application, which is pending approval by the Lender. In accordance with the terms and conditions of the Flexibility Act, the Lender has 60 days from receipt of the completed application to issue a decision to the Small Business Administration (“SBA”). If the Lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the Lender must request payment from the SBA at the time the Lender issues its decision to the SBA. The SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the Lender, plus any interest accrued through the date of payment, not later than 90 days after the Lender issues its decision to the SBA. Although the Company believes it is probable that the PPP Loan will be forgiven, the Company cannot currently provide any objective assurance that it will obtain forgiveness in whole or in part.

Between October 15, 2020 and November 3, 2020, the Company issued 100,000 common shares of the Company for the exercise of the March 23, 2020 warrants and received \$60,000 in proceeds.

On October 26, 2020, the Company issued 30,000 unregistered common shares of the Company to Oasis Capital in exchange for a waiver from Oasis Capital of its prepayment right under the Oasis promissory note as a result of the Series E Preferred Shares transaction.

On October 31, 2020, the Company received notification requesting conversion of the Series C Preferred Shares held by Overland. The transaction is pending and the total common shares to be issued is currently being evaluated.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following quarterly management's discussion and analysis ("MD&A") should be read in conjunction with our unaudited condensed consolidated financial statements and the accompanying notes of Sphere 3D Corp. (the "Company") for the three and nine months ended September 30, 2020. The condensed consolidated financial statements have been presented in United States ("U.S.") dollars and have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). Unless the context otherwise requires, any reference to the "Company," "Sphere 3D," "we," "our," "us" or similar terms refers to Sphere 3D Corp. and its subsidiaries. Unless otherwise indicated, all references to "\$" and "dollars" in this discussion and analysis mean U.S. dollars.

This MD&A includes forward-looking statements that involve risks, uncertainties and assumptions that are difficult to predict. Words and expressions reflecting optimism, satisfaction or disappointment with current prospects, as well as words such as "believes," "hopes," "intends," "estimates," "expects," "projects," "plans," "anticipates" and variations thereof, or the use of future tense, identify forward-looking statements, but their absence does not mean that a statement is not forward-looking. Forward-looking statements are based on information currently available to us and on estimates and assumptions made by us regarding, among other things, general economic conditions, in light of our experience and perception of historical trends, current conditions and expected future developments, as well as other factors that we believe are appropriate and reasonable in the circumstances, but there can be no assurance that such estimates and assumptions will prove to be correct. Many factors could cause actual results, performance or achievements or future events or developments to differ materially from those expressed or implied by the forward-looking statements, including, but not limited to: the inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market; the limited operating history of Sphere 3D; the impact of competition; the investment in technological innovation; any defects in components or design of Sphere 3D's products; the retention or maintenance of key personnel; the possibility of significant fluctuations in operating results; the ability of Sphere 3D to maintain business relationships; financial, political or economic conditions; financing risks; future acquisitions; the ability of Sphere 3D to protect its intellectual property; third party intellectual property rights; volatility in the market price for the common shares of the Company; compliance by Sphere 3D with financial reporting and other requirements as a public company; conflicts of interests; future sales of common shares by Sphere 3D's directors, officers and other shareholders; dilution and future sales of common shares. For more information on these risks, you should refer to the Company's filings with the securities regulatory authorities, including the Company's most recently filed Annual Report on Form 10-K, which is available on SEDAR at [www.sedar.com](http://www.sedar.com) and EDGAR at [www.sec.gov](http://www.sec.gov). In evaluating such statements, we urge you to specifically consider various factors identified in this report, any of which could cause actual results to differ materially from those indicated by such forward-looking statements. Forward-looking statements speak only as of the date of this report and we undertake no obligation to publicly update any forward-looking statements to reflect new information, events or circumstances after the date of this report. Actual events or results may differ materially from such statements.

### Overview

Sphere 3D was incorporated under the *Business Corporations Act (Ontario)* on May 2, 2007 as T.B. Mining Ventures Inc. On March 24, 2015, the Company completed a short-form amalgamation with a wholly-owned subsidiary. In connection with the short-form amalgamation, the Company changed its name to "Sphere 3D Corp." Sphere 3D provides solutions for stand-alone storage and technologies that converge the traditional silos of compute, storage and network into one integrated hyper-converged or converged solution. We provide enterprise storage management solutions, and the ability to connect to public cloud services such as Microsoft Azure for additional delivery options and hybrid cloud capabilities. Our integrated solutions include a patented portfolio for operating systems for storage, proprietary virtual desktop orchestration software, and proprietary application container software. Our software, combined with commodity x86 servers, or purpose-built appliances, deliver solutions designed to provide application mobility, security, data integrity and simplified management. These solutions can be deployed through a public, private or hybrid cloud and are delivered through a global reseller network and professional services organization. We have a portfolio of brands including SnapServer<sup>®</sup>, HVE ConneXions ("HVE") and UCX ConneXions ("UCX"), dedicated to helping customers achieve their IT goals.

## Merger Agreement

On July 14, 2020, the Company entered into a definitive merger agreement (the “Rainmaker Merger Agreement”) pursuant to which it will acquire all of the outstanding securities of Rainmaker Worldwide Inc. (“Rainmaker”), a global Water-as-a-Service (“WaaS”) provider. Upon closing, the Company’s name will change to Rainmaker Worldwide Inc., and its business model will focus on Water-as-a-Service. Rainmaker management will assume leadership of the combined entity. Under the terms of the agreement, Rainmaker, a Nevada company, will merge with S3D Nevada Inc., a Nevada company wholly-owned by the Company, and the merged entity will be a wholly-owned subsidiary of the Company. Upon completion of the transaction the Company expects to remain listed on the NASDAQ market and will change its name to Rainmaker Worldwide Inc. After completion of the transaction, it is expected that current holders of Rainmaker will own a minority stake of the Company, on a fully diluted basis, as a result of their exchange of securities in the transaction. The transaction is subject to completion of an equity financing, or series of financings, for a minimum of \$15.0 million at a share price to be mutually agreed upon prior to closing and such other customary regulatory and shareholder approvals, including the approval of NASDAQ. Closing is expected to occur in the fall of 2020, but in any event prior to December 31, 2020 and subject to extension to February 28, 2021 in certain circumstances. The intent of the transaction is to transform the Company to a Commercial WaaS provider.

On September 14, 2020, the parties to the Merger Agreement entered into Amendment No. 1 to Agreement and Plan of Merger (the “Rainmaker Amendment”). Under the Rainmaker Amendment, the ratio of the Company’s common shares to be received by Rainmaker shareholders has changed from one-third of a common share of the Company per common or preferred share of Rainmaker to 1/15 of a share.

On September 14, 2020, the Company entered into a Senior Secured Convertible Promissory Note with Rainmaker (the “Rainmaker Note”), pursuant to which the Company loaned Rainmaker the principal amount of \$3.1 million comprised of: (a) a new advance of \$1.85 million paid to Rainmaker on October 1, 2020, (b) the principal and any interest owing under existing promissory notes issued by Rainmaker to two investors on April 2, 2020 in the aggregate amount of \$1.1 million, which indebtedness was assigned to the Company on May 4, 2020 (the “Assigned Notes”), and (c) a promissory note in the principal amount of \$150,000 issued to the Company on August 4, 2020 (the “Original Note”). The Assigned Notes and the Original Note are included in the principal amount of the Rainmaker Note and therefore, the Assigned Notes and the Original Notes are deemed cancelled. The Rainmaker Note shall be secured as a registered lien under the Uniform Commercial Code and the Personal Property Security Act (Ontario) against the assets of Rainmaker and shall bear interest at the rate of 10% per annum. The principal and interest shall accrue monthly and be due and payable in full on September 14, 2023.

### Third Quarter of 2020 and Recent Key Events Include:

- In September 2020, the Company and Torrington entered into Amendment No. 1 to the Business Advisory Agreement (the “Torrington Amendment”). Under the Torrington Amendment, the parties agreed that if the Company closes on its merger with Rainmaker pursuant to the Agreement and Plan of Merger, dated July 14, 2020, as amended at a ratio of at least 10 Rainmaker shares for one share of the Company, Torrington shall receive 1,800,000 common shares of the Company as compensation under the Torrington Advisory Agreement, subject to regulatory and NASDAQ approvals.
- On September 17, 2020, the Company filed articles of amendment to create a fifth series of preferred shares, being, an unlimited number of Series E Preferred Shares and to provide for the rights, privileges, restrictions and conditions attaching thereto. Each Series E Preferred Share shall have a stated value of \$1,000 and is convertible into the Company’s common shares at a conversion price equal to the lower of (i) 80% of the average of the three lowest VWAPs of the common stock during the ten trading days immediately preceding, but not including, the conversion date and (ii) \$2.00; however, in no event shall the conversion price be lower than \$1.00 per share. The Series E Preferred Shares are non-voting and pay dividends at a rate of 8.0% per annum, payable quarterly.

- On September 14, 2020, the Company entered into a Securities Purchase Agreement with an investor relating to the issuance and sale to the investor of 3,000 shares of the Company’s subsequently established Series E Preferred Shares in a private placement transaction, for proceeds of \$3.0 million. On September 23, 2020, the Company entered into an amendment to the Securities Purchase Agreement. Under the amendment, the investor and the Company agreed that to the extent the investor converts any Series E Preferred Shares into common shares, such common shares shall be prohibited from being voted with respect to any proposal related to the transactions contemplated by the Securities Purchase Agreement, including any proposal seeking to obtain shareholder approval of the transactions contemplated by the Securities Purchase Agreement in accordance with Nasdaq rules. The Company paid a related party, Torrington, a business advisory fee of \$240,000 related to this transaction.
- On August 27, 2020, the Company entered into a settlement agreement with O’Melveny & Myers LLP (“OMM”) pursuant to which the Company issued to OMM a secured promissory note (the “OMM Note”) in the aggregate principal amount of \$1.1 million in satisfaction of certain accounts payable owed to OMM. The OMM Note bears interest at 1.68% per annum and matures on December 30, 2020. The Company may prepay any amounts outstanding under the OMM Note at any time. The Company’s obligations pursuant to the OMM Note are secured by substantially all of the Company’s assets. The Company recorded a gain on forgiveness of liabilities in the amount of \$0.6 million and is included in other income.
- On August 10, 2020 and July 13, 2020, the Company converted 110,000 and 225,000, respectively, shares of the Series D Preferred Shares and issued in the aggregate 335,000 common shares of the Company, which 260,000 common shares were issued to Gora, a related party of the Company.
- On August 4, 2020, the Company issued 225,000 common shares of the Company with a fair value of \$725,000 to ROK per the terms of the ROK Consulting Agreement.
- On August 3, 2020, Dale Allan Peters (“Peters”), as the beneficial shareholder of 101250 Investments Ltd. (“101 Invest”), a company existing under the laws of the Turks & Caicos Islands and a water partner of Rainmaker, entered into a Share Purchase Agreement (the “101 Invest Purchase Agreement”) with the Company. As a result of the 101 Invest Purchase Agreement, 101 Invest is a wholly-owned subsidiary of the Company. Under the terms of the 101 Invest Purchase Agreement, the Company issued 480,000 common shares at \$3.25 per share, to Greenfield Investments Ltd. for a purchase price of \$1,560,000. The common shares contain a legend, either statutory or contractual, which will restrict the resale of the common shares for a period of six-months and one day from the closing date. In addition, the Company held back and retained 96,000 of the common shares for a six-month period from the closing date in support of any breaches of representations and warranties by Peters under the 101 Invest Purchase Agreement. 101 Invest has exclusive rights to deliver the Rainmaker water solution to three Turks and Caicos island communities - Plantation Hills, Blue Sky and Village Estates. The Company completed this transaction to assist in the deployment and expansion of its opportunities in the WaaS segment.
- On July 28, 2020, the Company entered into a Securities Purchase Agreement with Oasis Capital, LLC (“Oasis Capital”) pursuant to which the Company received \$500,000 and issued to Oasis Capital (i) an 8.0% original issue discount promissory note, with a six month term and aggregate principal amount of \$615,000, and (ii) 90,000 common shares of the Company at \$3.37 per share. Torrington earned a fee of \$40,000 for facilitating the transaction.

## Results of Operations

The following table sets forth certain financial data as a percentage of revenue:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenue	100.0 %	100.0 %	100.0 %	100.0 %
Cost of revenue	40.0	64.5	48.4	68.1
Gross profit	60.0	35.5	51.6	31.9
Operating expenses:				
Sales and marketing	37.8	40.2	31.2	33.5
Research and development	29.7	33.6	33.9	37.5
General and administrative	178.7	58.6	157.9	63.1
	246.2	132.4	223.0	134.1
Loss from operations	(186.2)	(96.9)	(171.4)	(102.2)
Interest expense	(27.9)	(3.7)	(16.2)	(7.8)
Other income, net	80.3	165.3	35.9	51.2
Loss before income taxes	(133.8)	64.7	(151.7)	(58.8)
Provision for income taxes	0.1	—	0.1	—
Net loss	(133.9)%	64.7 %	(151.8)%	(58.8)%

### *The Third Quarter of 2020 Compared with the Third Quarter of 2019*

#### **Revenue**

We had revenue of \$0.9 million during the third quarter of 2020 compared to \$1.4 million during the third quarter of 2019. The decrease of \$0.5 million is primarily a result of a decrease of sales units for disk systems from all product lines. The decrease in revenue is primarily due to the inability to acquire, on a timely basis, adequate supply of product to meet customer demand within the third quarter of 2020.

#### **Gross Profit**

Gross profit and margin were as follows (in thousands, unless otherwise noted):

	Three Months Ended September 30,		Change
	2020	2019	
Gross profit	\$ 534	\$ 485	10.1 %
Gross margin	60.0 %	35.5 %	69.0 %

In the third quarter of 2020, gross margin increased primarily due to a higher percentage of revenue related to service revenue compared to product revenue.



## **Operating Expenses**

### *Sales and Marketing Expense*

Sales and marketing expenses were \$0.3 million and \$0.6 million for the third quarter of 2020 and 2019, respectively. The decrease of \$0.3 million was primarily due to a decrease of \$0.2 million in share-based compensation expense, and a \$0.1 million decrease in employee and related expenses associated with a lower average headcount.

### *Research and Development Expense*

Research and development expenses were \$0.3 million and \$0.5 million for the third quarter of 2020 and 2019, respectively. The decrease of \$0.2 million was primarily due to a decrease of \$0.2 million in employee and related expenses associated with a lower average headcount.

### *General and Administrative Expense*

General and administrative expenses were \$1.6 million and \$0.8 million for the third quarter of 2020 and 2019, respectively. The increase of \$0.8 million was due to outside contractor fees related to business advisory services.

## **The First Nine Months of 2020 Compared with the First Nine Months of 2019**

### **Revenue**

We had revenue of \$2.8 million during the first nine months of 2020 compared to \$4.5 million during the first nine months of 2019. The \$1.7 million decrease in revenue is primarily a result of a decrease of sales units for disk systems from all product lines. The decrease in revenue is primarily due to the inability to acquire, on a timely basis, adequate supply of product to meet customer demand within the first nine months of 2020.

### **Gross Profit**

Gross profit and margin were as follows (in thousands, unless otherwise noted):

	Nine Months Ended September 30,		Change
	2020	2019	
Gross profit	\$ 1,439	\$ 1,425	1.0 %
Gross margin	51.6 %	31.9 %	61.8 %

In the first nine months of 2020, gross margin increased primarily due to a higher percentage of revenue related to service revenue compared to product revenue.

## **Operating Expenses**

### *Sales and Marketing Expense*

Sales and marketing expenses were \$0.9 million and \$1.5 million for the first nine months of 2020 and 2019, respectively. The decrease of \$0.6 million was primarily due to a decrease of \$0.4 million in employee and related expenses associated with a lower average headcount, and a \$0.2 million decrease in share-based compensation expense.

### *Research and Development Expense*

Research and development expenses were \$0.9 million and \$1.7 million for the first nine months of 2020 and 2019, respectively. The decrease of \$0.8 million was primarily due to a decrease of \$0.6 million in employee and related expenses associated with a lower average headcount, and a \$0.1 million decrease in outside contractor fees.

### *General and Administrative Expense*

General and administrative expenses were \$4.4 million and \$2.8 million for the first nine months of 2020 and 2019, respectively. The increase of \$1.6 million was primarily due to an increase of \$1.8 million in outside contractor fees related to business advisory services, offset by a decrease of \$0.2 million in employee and related expense including share-based compensation expense.

### **Liquidity and Capital Resources**

We have recurring losses from operations and a net working capital deficiency. Our primary source of cash flow is generated from sales of our disk automation systems and service revenue. We have financed our operations through gross proceeds from private sales of equity securities and with borrowings under debt agreements. At September 30, 2020, we had cash of \$2.9 million compared to cash of \$149,000 at December 31, 2019. As of September 30, 2020, we had a working capital deficit of \$3.2 million compared to \$4.7 million at December 31, 2019, reflecting an increase of \$2.9 million in current assets and an increase in current liabilities of \$1.4 million. Cash management and preservation continue to be a top priority. We expect to incur negative operating cash flows as we work to maintain and increase our sales volume, and maintain operational efficiencies.

On September 14, 2020, the Company entered into a Securities Purchase Agreement with an investor relating to the issuance and sale to the investor of 3,000 shares of the Company's subsequently established Series E Preferred Shares in a private placement transaction, for proceeds of \$3.0 million. On September 23, 2020, the Company entered into an amendment to the Securities Purchase Agreement. Under the amendment, the investor and the Company agreed that to the extent the investor converts any Series E Preferred Shares into common shares, such common shares shall be prohibited from being voted with respect to any proposal related to the transactions contemplated by the Securities Purchase Agreement, including any proposal seeking to obtain shareholder approval of the transactions contemplated by the Securities Purchase Agreement in accordance with Nasdaq rules. The Company paid a related party, Torrington, a business advisory fee of \$240,000 related to this transaction.

On September 14, 2020, the Company entered into the "Rainmaker Note, pursuant to which the Company loaned Rainmaker the principal amount of \$3.1 million comprised of: (a) a new advance of \$1.85 million paid to Rainmaker on October 1, 2020, (b) the principal and any interest owing under existing promissory notes issued by Rainmaker to two investors on April 2, 2020 in the aggregate amount of \$1.1 million, the Assigned Notes, and (c) the Original Note of \$150,000 issued to the Company on August 4, 2020. The Assigned Notes and the Original Note are included in the principal amount of the Rainmaker Note and therefore, the Assigned Notes and the Original Notes are deemed cancelled. The Rainmaker Note shall be secured as a registered lien under the Uniform Commercial Code and the Personal Property Security Act (Ontario) against the assets of Rainmaker and shall bear interest at the rate of 10% per annum. The principal and interest shall accrue monthly and be due and payable in full on September 14, 2023.

On July 28, 2020, the Company entered into a Securities Purchase Agreement with Oasis Capital pursuant to which the Company received \$500,000 and issued to Oasis (i) an 8.0% original issue discount promissory note payable, with a six month term and aggregate principal amount of \$615,000, and (ii) 90,000 common shares of the Company at \$3.37 per share. Torrington earned a fee of \$40,000 for facilitating the transaction.

On May 15, 2020, the Company entered into an equity purchase agreement and registration rights agreement with Oasis Capital, to purchase from the Company up to \$11.0 million common shares of the Company. Under the purchase agreement, the Company has the right to sell up to \$11.0 million of its common shares to Oasis Capital over a 36-month period, upon satisfaction of the conditions in the Agreement, including the effectiveness of a resale registration statement filed on Form S-1. The Company will control the timing and amount of any sales to Oasis Capital, and Oasis Capital is obligated to make purchases in accordance with the purchase agreement, upon certain terms and conditions being met. The purchase agreement, which contains a floor price of \$1.58 per common share, allows the Company to fund its needs in a more expedient and cost-effective manner, on the pricing terms set forth in the purchase agreement. The equity line is designed to provide capital to the company as it is required. During the three and nine months ended September 30, 2020, the Company issued 60,000 common shares to Oasis Capital for gross proceeds of \$140,000 under the terms and conditions of the equity purchase agreement.

Management has projected that cash on hand and use of equity purchase agreement may not be sufficient to allow the Company to continue operations beyond December 31, 2020 if we are unable to raise additional funding for operations. We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds through equity or debt financings or other sources may depend on the financial success of our current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. No assurance can be given that we will be successful in raising the required capital at reasonable cost and at the required times, or at all. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. If we require additional capital and are unsuccessful in raising that capital, we may not be able to continue our business operations and advance our growth initiatives, which could adversely impact our business, financial condition and results of operations.

Significant changes from the Company's current forecasts, including but not limited to: (i) failure to comply with the terms and financial covenants in its debt facilities; (ii) shortfalls from projected sales levels; (iii) unexpected increases in product costs; (iv) increases in operating costs; (v) changes in the historical timing of collecting accounts receivable; and (vi) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on the Company's ability to access the level of funding necessary to continue its operations at current levels. If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or seek bankruptcy protection or be subject to an involuntary bankruptcy petition, any of, which would have a material adverse effect on the Company's business, results of operations, financial position and liquidity.

As of September 30, 2020, our outstanding debt balance, including accrued interest, was as follows (in thousands):

	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Amount Outstanding</u>
Secured promissory note payable	12/30/2020	1.68%	\$ 1,117
Paycheck Protection Program (PPP) Small Business Administration Loan	4/9/2022	1.0%	\$ 671
Note payable related party, net	1/28/2021	8.0%	\$ 311
Line of credit	12/31/2020	6.5%	\$ 489

All debt and credit facilities are denominated in U.S. dollars. Our line of credit facility contains standard borrowing conditions and can be recalled by the lenders if certain conditions are not met.

On October 5, 2020, the Company submitted the PPP loan forgiveness application, which is pending approval by the Lender. In accordance with the terms and conditions of the Flexibility Act, the Lender has 60 days from receipt of the completed application to issue a decision to the SBA. If the Lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the Lender must request payment from the SBA at the time the Lender issues its decision to the SBA. The SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the Lender, plus any interest accrued through the date of payment, not later than 90 days after the Lender issues its decision to the SBA. Although the Company believes it is probable that the PPP Loan will be forgiven, the Company cannot currently provide any objective assurance that it will obtain forgiveness in whole or in part.

The following table shows a summary of our cash flows (used in) provided by operating activities, investing activities and financing activities (in thousands):

	Nine Months Ended September 30,	
	2020	2019
Net cash used in operating activities	\$ (1,996)	\$ (1,436)
Net cash used in investing activities	\$ —	\$ —
Net cash provided by financing activities	\$ 4,744	\$ 1,224

The use of cash during the first nine months of 2020 was primarily a result of our net loss of \$4.2 million, offset by \$0.3 million in non-cash items, which included forgiveness of liabilities, revaluation of subscription agreements, amortization of debt issuance cost, share-based compensation, depreciation and amortization.

During the first nine months of 2020, we received \$2.9 million, net, from the issuance of preferred and common shares, \$1.1 million in net proceeds from debt, which \$0.5 million was from a related party, \$0.6 million in net proceeds from convertible debentures, which \$0.2 million was from a related party, and \$0.1 million from exercise of stock options. During the first nine months of 2019, we received \$0.7 million in proceeds from related party debt and our line of credit and \$0.5 million in proceeds for the issuance of common shares.

#### Off-Balance Sheet Information

During the ordinary course of business, we may provide standby letters of credit to third parties as required for certain transactions initiated by us. As of September 30, 2020, we had no standby letters of credit outstanding.

#### Critical Accounting Policies and Estimates

The discussion and analysis of our financial position and results of operations is based on our unaudited consolidated interim financial statements included elsewhere in this Form 10-Q, which have been prepared in accordance with accounting principles generally accepted in the United States. We believe certain of our accounting policies are critical to understanding our financial position and results of operations. There have been no significant changes to our critical accounting judgments, policies and estimates as described in our Annual Report on Form 10-K for the year ended December 31, 2019.

#### Recent Accounting Pronouncements

See *Note 2 - Significant Accounting Policies* to our condensed consolidated financial statements for information about recent accounting pronouncements.

#### Item 3. Quantitative and Qualitative Disclosures About Market Risk

As a “smaller reporting company”, we are not required to provide the information required by this Item.

#### **Item 4. Controls and Procedures**

##### **Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rules 13a-15(e) or 15d-15(e) under the Exchange Act. Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective to give reasonable assurance that information required to be publicly disclosed is recorded, processed, summarized and reported on a timely basis as of the end of the period covered by this report.

##### **Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting during the three months ended September 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II — OTHER INFORMATION

### Item 1. Legal Proceedings.

The Company is, from time to time, subject to claims and suits arising in the ordinary course of business. In the opinion of management, the ultimate resolution of such pending proceedings will not have a material effect on the Company's results of operations, financial position or cash flows.

In January 2018, Mr. Vito Lupis filed a statement of claim in the Ontario Court of Justice alleging, among other things, breach of contracts, deceit and negligence against Mr. Giovanni J. Morelli, a former officer of the Company, and vicarious liability against the Company, in connection with stock purchase agreements and other related agreements that would have been entered into between Mr. Lupis and the Company in 2012. In March 2019, the Company and Mr. Lupis entered into a settlement agreement pursuant to which the Company has agreed to pay Mr. Lupis certain consideration, which is included in general and administrative expense, in exchange for a dismissal of the action. Currently, the Company has a judgment against it for the outstanding balance of the settlement.

In April 2015, we filed a proof of claim in connection with bankruptcy proceedings of V3 Systems, Inc. ("V3") based on breaches by V3 of the Asset Purchase Agreement entered into between V3 and the Company dated February 11, 2014 (the "APA"). On October 6, 2015, UD Dissolution Liquidating Trust ("UD Trust"), post-confirmation liquidating trust established by V3's plan of liquidation, filed a complaint against us and certain of our current and former directors in the U.S. Bankruptcy Court for the District of Utah Central Division objecting to our proof of claim and asserting claims for affirmative relief against us and our directors. This complaint alleges, among other things, that Sphere 3D breached the APA and engaged in certain other actions and/or omissions that caused V3 to be unable to timely sell the Sphere 3D common shares received by V3 pursuant to the APA. The UD Trust seeks, among other things, monetary damages for the loss of the potential earn-out consideration, the value of the common shares held back by us pursuant to the APA and costs and fees.

In March 2018, UD Trust filed a complaint in U.S. District Court for the Northern District of California ("California Complaint") asserting that two transactions involving the Company constitute fraudulent transfers under federal and state law. First, UD Trust alleges that the consolidation of the Company's and its subsidiaries' indebtedness to the Cyrus Group into a debenture between FBC Holdings and the Company in December 2014 constitutes a fraudulent transfer. Second, UD Trust alleges that the Share Purchase Agreement constitutes a fraudulent transfer, and seeks to require that the proceeds of the transaction be placed in escrow until the V3 litigation is resolved. The California Complaint also asserts a claim against the Company's former CEO for breach of fiduciary duty, and a claim against the Cyrus Group for aiding and abetting breach of fiduciary duty. On July 25, 2018, we filed a motion seeking to dismiss all of the claims asserted against the Company and its former CEO. On the same day, the Cyrus Group filed a motion seeking to dismiss all claims asserted against the Cyrus Group. The UD Trust voluntarily dismissed this case without prejudice on February 5, 2020.

On October 22, 2019, UD Trust filed an amended complaint in the Delaware Bankruptcy Court. The amended complaint includes all of the claims and parties in the original complaint first filed in October 2015 in the Utah Bankruptcy Court as well as the claims and additional parties in the California Complaint. We continue to believe this lawsuit to be without merit and intend to vigorously defend against the action. On February 10, 2020, we filed a renewed motion seeking to dismiss the majority of the claims asserted by the UD Trust in the amended complaint. On that same day, we also filed a counterclaim against the UD Trust in which we allege that V3 breached numerous provisions of the APA. The Company's current and former officers and directors that were named as defendants in the amended complaint as well as the Cyrus Group all filed motions seeking to dismiss all claims that the UD Trust alleged against them. The parties have completed briefing of these matters, have requested oral argument, and are waiting for the court to schedule argument, or decide the motions.

## **Item 1A. Risk Factors.**

An investment in our Company involves a high degree of risk. In addition to the risk factors and other information included or incorporated by reference to this report, you should carefully consider each of the risk factors described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, which is available on SEDAR at [www.sedar.com](http://www.sedar.com) and EDGAR at [www.sec.gov](http://www.sec.gov). These risks and uncertainties are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently consider immaterial may also impair our business operations. If any of the risks actually occur, our business and financial results could be harmed and the trading price of our common shares could decline.

### **Risks Relating To Our Business**

**We may be unable to successfully integrate our recent and future acquisitions, which could adversely affect our business, financial condition, results of operations and prospects.**

We recently acquired 101 Invest, and have entered into a definitive merger agreement with Rainmaker Worldwide Inc. (“Rainmaker”). The operation and management of recent acquisitions, or any of our future acquisitions, may adversely affect our existing income and operations or we may not be able to effectively manage any growth resulting from these transactions. 101 Invest and Rainmaker operated independently of one another. Until we establish centralized financial, management information and other administrative systems, we will rely on the separate systems of these companies, including their financial reporting systems.

Our success will depend, in part, on the extent to which we are able to merge these functions, eliminate the unnecessary duplication of other functions and otherwise integrate these companies (and any additional businesses with which we may combine in the future) into a cohesive, efficient enterprise. This integration process may entail significant costs and delays. Our failure to integrate the operations of these companies successfully could adversely affect our business, financial condition, results of operations and prospects. To the extent that any acquisition results in additional goodwill, it will reduce our tangible net worth, which might adversely affect our business, financial condition, results of operations and prospects, as well as our credit capacity.

### **Risks Related to our Debt and Credit Facilities and our Liquidity**

**Our cash and other sources of liquidity may not be sufficient to fund our operations beyond December 31, 2020. If we raise additional funding through sales of equity or equity-based securities, your shares will be diluted. If we need additional funding for operations and we are unable to raise it, we may be forced to liquidate assets and/or curtail or cease operations or seek bankruptcy protection or be subject to an involuntary bankruptcy petition.**

Management has projected that cash on hand and use of the equity purchase agreement may not be sufficient to allow the Company to continue operations beyond December 31, 2020 if we are unable to raise additional funding for operations. We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds through equity or debt financings or other sources may depend on the financial success of our current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. No assurance can be given that we will be successful in raising the required capital at reasonable cost and at the required times, or at all. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. If we require additional capital and are unsuccessful in raising that capital, we may not be able to continue our business operations and advance our growth initiatives, which could adversely impact our business, financial condition and results of operations.

If we raise additional funds by selling additional shares of our capital stock, or securities convertible into shares of our capital stock, the ownership interest of our existing shareholders will be diluted. The amount of dilution could be increased by the issuance of warrants or securities with other dilutive characteristics, such as anti-dilution clauses or price resets.

We urge you to review the additional information about our liquidity and capital resources in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of this report. If our business ceases to continue as a going concern due to lack of available capital or otherwise, it could have a material adverse effect on our business, results of operations, financial position, and liquidity.

### **Risks Related to Our Public Company Status and Our Common Shares**

**Sales of common shares issuable upon exercise of outstanding warrants, the conversion of outstanding preferred shares, or the effectiveness of our registration statement may cause the market price of our common shares to decline. Currently outstanding preferred shares could adversely affect the rights of the holders of common shares.**

As of September 30, 2020, we have in the aggregate 9,355,778 Preferred Shares outstanding. The conversion of the outstanding Preferred Shares will result in substantial dilution to our common shareholders. Pursuant to our articles of amalgamation, our Board of Directors has the authority to fix and determine the voting rights, rights of redemption and other rights and preferences of preferred stock.

Pursuant to the articles of amendment governing the rights and preferences of outstanding shares of Series B Preferred Shares, each preferred share (i) subject to prior shareholder approval, are convertible into our common shares, at a conversion rate equal to \$1.00 per share, plus accrued and unpaid dividends, divided by an amount equal to 0.85 multiplied by a 15-day volume weighted average price per share of common stock prior to the date the conversion notice is provided, subject to a conversion price floor of \$0.80, (ii) if we receive any cash dividends on our equity investment in Silicon Valley Technology Partners, Inc., in an amount equal to such cash dividend received, cumulative cash dividends at a rate of 8% of the Series B Preferred Shares, (iii) after November 13, 2020, fixed, preferential, cumulative cash dividends at the rate of 8% of the Series B Preferred Shares subscription price per year, and (iv) carry a liquidation preference equal to the subscription price per Series B Preferred Share plus any accrued and unpaid dividends.

Pursuant to the articles of amendment governing the rights and preferences of outstanding shares of Series C Preferred Shares, each preferred share, subject to prior shareholder approval, are convertible into our common shares, at a conversion rate in effect on the date of conversion. Overland, the sole holder of the Series C Preferred Shares, may, at any time, convert all or any part of the Series C Preferred Shares provided that after such conversion the common shares issuable, together with all the common shares held by Overland in the aggregate would not exceed 19.9% of the total number of our outstanding common shares. On October 31, 2019, Overland agreed that it would not exercise its conversion right with respect to its Series C Preferred Shares until the earlier of (i) October 31, 2020 and (ii) such time that we file for bankruptcy or an involuntary petition for bankruptcy is filed against us (unless such petition is dismissed or discharged within thirty (30) days).

Pursuant to the articles of amendment governing the rights and preferences of outstanding shares of Series D Preferred Shares, each preferred share is convertible at the option of the holder thereof, into that number of shares of our common stock determined by dividing the Stated Value of such share of Series D Preferred Stock (which is \$0.65) by the conversion price. The initial conversion price, which is also \$0.65, shall be adjusted in the event that we (i) pay a stock dividend or otherwise make a distribution or distributions payable in shares of our common stock, (ii) subdivide outstanding shares of our common stock into a larger number of shares, (iii) combine (including by way of a reverse stock split) outstanding shares of our common stock into a small number of shares, or (iv) issue, in the event of a reclassification of shares of our common stock, any shares of our capital stock.

Pursuant to the articles of amendment governing the rights and preferences of outstanding shares of Series E Preferred Shares, each preferred share shall have a stated value of \$1,000 and is convertible into the Company’s common shares at a conversion price equal to the lower of (i) 80% of the average of the three lowest VWAPs of the Company’s common shares during the ten trading days immediately preceding, but not including, the conversion date and (ii) \$2.00, subject to adjustment, however, in no event shall the conversion price be lower than \$1.00 per share, subject to adjustment. The shareholder of the Series E Preferred Shares, may, at any time, convert all or any Series E Preferred Shares provided that (i) the common shares issuable upon such conversion, together with all other Sphere common shares held by the shareholder in the aggregate, would not cause such shareholder’s ownership of Sphere common shares to exceed 9.99% of the total number of outstanding common



shares of Sphere (ii) and such conversion would not exceed that shareholder's pro rata share of the Series E Exchange Cap. The maximum number of shares of Sphere common stock that may be issued upon conversion of all shares of Series E Preferred Stock in the aggregate is 1,500,000 (the "Series E Exchange Cap"). No holder of Series E Preferred shall be issued, in the aggregate, upon conversion of Series E Preferred Shares, Sphere common shares in an amount greater than the product of the Series E Exchange Cap multiplied by such holder's pro rata share of issued Series E Preferred Shares.

Additionally, as of September 30, 2020 we have warrants outstanding for the purchase of up to 2,901,182 common shares having a weighted-average exercise price of \$3.84 per share. The sale of our common shares upon exercise of our outstanding warrants, the conversion of the preferred shares into common shares, or the sale of a significant amount of the common shares issued or issuable upon exercise of the warrants in the open market, or the perception that these sales may occur, could cause the market price of our common shares to decline or become highly volatile.

**The sale of our common stock to Oasis Capital may cause substantial dilution to our existing stockholders and the sale of the shares of common stock acquired by Oasis Capital could cause the price of our common stock to decline.**

We have registered for sale 6,962,026 shares of common stock that we may sell to Oasis Capital, LLC ("Oasis Capital") under the Equity Purchase Agreement. It is anticipated that these shares will be sold over a period of up to approximately 36 months. The number of shares ultimately offered for sale by Oasis Capital is dependent upon the number of shares we elect to sell to Oasis Capital under the Equity Purchase Agreement. Sales by Oasis Capital of shares acquired pursuant to the Equity Purchase Agreement may result in dilution to the interests of other holders of our common stock.

The sale of a substantial number of shares of our common stock by Oasis Capital, or anticipation of such sales, could cause the trading price of our common stock to decline or make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise desire. Following the issuance of shares of common stock under the Equity Line, Oasis Capital may offer and resell the shares at a price and time determined by them. This may cause the market price of our common stock to decline, and the timing of sales and the price at which the shares are sold by Oasis Capital could have an adverse effect upon the public market for our common stock.

There is an increased potential for short sales of our common stock due to the sale of shares pursuant to the Equity Purchase Agreement, which could materially affect the market price of our common stock.

Downward pressure on the market price of our common stock that likely will result from resales of the common stock issued pursuant to the Equity Purchase Agreement could encourage short sales of common stock by market participants other than the selling stockholder. Generally, short selling means selling a security not owned by the seller. The seller is committed to eventually purchase the security previously sold. Short sales are used to capitalize on an expected decline in the security's price - typically, investors who sell short believe that the price of the stock will fall, and anticipate selling at a price higher than the price at which they will buy the stock. Significant amounts of such short selling could place further downward pressure on the market price of our common stock.

**We may not be able to access sufficient funds under the Equity Purchase Agreement with Oasis Capital when needed.**

Our ability to sell shares to Oasis Capital and obtain funds under the Equity Purchase Agreement is limited by the terms and conditions in the Equity Purchase Agreement, including restrictions on when we may sell shares to Oasis Capital, restrictions on the amounts we may sell to Oasis Capital at any one time, and a limitation on our ability to sell shares to Oasis Capital to the extent that it would cause Oasis Capital to beneficially own more than 9.99% of our outstanding common stock. In addition, any amounts we sell under the Equity Purchase Agreement may not satisfy all of our funding needs, even if we are able and choose to sell all \$11.0 million under the Equity Purchase Agreement.

The extent we rely on Oasis Capital as a source of funding will depend on a number of factors including, the prevailing market price and trading volume of our common shares and the extent to which we are able to secure working capital from other sources. If obtaining sufficient funding from Oasis Capital were to prove unavailable or prohibitively dilutive, we will need to secure another source of funding in order to satisfy our working capital needs. Even if we sell all 6,962,026 Purchase

Shares to Oasis Capital, we may still need additional capital to fully implement our business, operating and development plans. Should the financing we require to sustain our working capital needs be unavailable or prohibitively expensive when we require it, the consequences could be a material adverse effect on our business, operating results, financial condition and prospects.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

On October 26, 2020, the Company issued 30,000 unregistered common shares of the Company to Oasis Capital in exchange for a waiver from Oasis Capital of its prepayment right under the Oasis promissory note as a result of the Series E Preferred Shares transaction. The issuance of the shares was made in reliance upon the exemption from the registration requirements of the Securities Act of 1933, as amended (the "Act"), pursuant to Section 4(a)(2) of the Act.

**Item 3. Defaults Upon Senior Securities.**

None.

**Item 4. Mine Safety Disclosures.**

Not applicable.

**Item 5. Other Information.**

None.

**Item 6. Exhibits.**

Exhibit Number	Description	Filed	Incorporated by Reference		
		Herewith	Form	File No.	Date Filed
3.1	<a href="#">Certificate and Articles of Amalgamation of the Company</a>		6-K	001-36532	3/25/2015
3.2	<a href="#">Certificate of Amendment to the Articles of Amalgamation of the Company</a>		6-K	001-36532	7/17/2017
3.3	<a href="#">Certificate of Amendment to the Articles of Amalgamation of the Company</a>		8-K	001-36532	10/2/2018
3.4	<a href="#">Certificate of Amendment to the Articles of Amalgamation of the Company</a>		8-K	001-36532	11/5/2018
3.5	<a href="#">Certificate of Amendment to the Articles of Amalgamation of the Company</a>		8-K	001-36532	11/14/2018
3.6	<a href="#">Certificate of Amendment to the Articles of Amalgamation of the Company</a>		8-K	001-36532	7/12/2019
3.7	<a href="#">Certificate of Amendment to the Articles of Amalgamation of the Company</a>		8-K	001-36532	11/8/2019
3.8	<a href="#">Certificate of Amendment to the Articles of Amalgamation of the Company</a>		8-K	001-36532	5/8/2020
3.9	<a href="#">Certificate of Amendment to the Articles of Amalgamation of the Company</a>		8-K	001-36532	9/29/2020
3.10	<a href="#">By-Law No. 1, as Amended</a>		6-K	001-36532	7/17/2017
3.11	<a href="#">By-Law No. 2</a>		6-K	001-36532	5/12/2017
4.1	<a href="#">Promissory Note, dated July 28, 2020, between the Company and Oasis Capital, LLC</a>		8-K	001-36532	7/31/2020
4.2	<a href="#">Promissory Note, dated August 4, 2020, between the Company and Rainmaker Worldwide Inc.</a>		8-K	001-36532	8/10/2020
4.3	<a href="#">Promissory Note, dated August 27, 2020, between the Company and O'Melveny &amp; Myers LLP</a>		8-K	001-36532	9/2/2020
4.4	<a href="#">Senior Secured Convertible Promissory Note, dated September 14, 2020, between the Company and Rainmaker Worldwide Inc.</a>		8-K	001-36532	9/18/2020
10.1	<a href="#">Agreement and Plan of Merger, dated as of July 14, 2020, by and among the Company, Rainmaker Worldwide Inc. and S3D Nevada Inc.*</a>		8-K	001-36532	7/17/2020
10.2	<a href="#">Lock-Up Letter between the Company and FBC Holdings Sàrl dated July 14, 2020</a>		8-K	001-36532	7/17/2020
10.3	<a href="#">Securities Purchase Agreement, dated July 28, 2020, between the Company and Oasis Capital, LLC</a>		8-K	001-36532	7/31/2020
10.4	<a href="#">Share Purchase Agreement, dated August 3, 2020, between the Company and Dale Allan Peters*</a>		8-K	001-36532	8/10/2020
10.5	<a href="#">Amendment to Transition Service Agreement between the Company and Overland Storage, Inc. dated June 30, 2020</a>		10-Q	001-36532	8/14/2020

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
10.6	<a href="#">Form of Purchase Agreement dated September 14, 2020</a>		8-K	001-36532	9/18/2020
10.7	<a href="#">Amendment No. 1 to Agreement and Plan of Merger, dated September 14, 2020, by and among the Company, Rainmaker Worldwide Inc. and S3D Nevada Inc.</a>		8-K	001-36532	9/18/2020
10.8	<a href="#">Amendment to Purchase Agreement dated September 23, 2020</a>		8-K	001-36532	9/29/2020
10.9	<a href="#">Amendment No. 1 to Business Advisory Agreement, dated September 25, 2020, between the Company and Torrington Financial Services Limited</a>		8-K	001-36532	9/29/2020
10.10	<a href="#">Extension Letter dated October 30, 2020 between HVE Inc., a subsidiary of Sphere 3D Corp., and Citizens National Bank of Texas</a>	X			
31.1	<a href="#">Certification of CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>	X			
31.2	<a href="#">Certification of CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>	X			
32	<a href="#">Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>	X			
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document	X			
101.SCH	Inline XBRL Taxonomy Extension Schema	X			
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase	X			
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase	X			
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase	X			
101.PRE	Inline XBRL Taxonomy Presentation Linkbase	X			
104	Cover Page Interactive Data File (formatted as inline XBRL as contained in Exhibit 101)	X			

\* The Company has omitted schedules and other similar attachments to such agreement pursuant to Item 601(b) of Regulation S-K. The Company will furnish a copy of such omitted document to the Securities and Exchange Commission upon request.

**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: November 16, 2020

By: \_\_\_\_\_ /s/ Peter Tassiopoulos  
**Peter Tassiopoulos**  
**Chief Executive Officer**  
(Principal Executive Officer)



October 30, 2020

HVE, Inc.  
100 Executive Ct. Suite 3  
Waxahachie, Texas 75165

To Whom It May Concern:

Please be advised that HVE, Inc. currently has a line of credit with Citizens National Bank of Texas in the amount of \$500,000. The current maturity date of this line of credit is December 31, 2020. This line will not be renewed and is expected full pay off by maturity date.

Please feel free to contact me if you have any questions in regard to this letter by e-mail at [aj.woodall@cnbwax.com](mailto:aj.woodall@cnbwax.com) or directly at 972-351-5192.

Thanks,

*Aaron J. Woodall*

A.J. Woodall  
Vice President  
Citizens National Bank of Texas.



**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Peter Tassiopoulos, Chief Executive Officer of Sphere 3D Corp. certify that:

- 1 I have reviewed this quarterly report on Form 10-Q of Sphere 3D Corp.;
- 2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in this report;
- 4 The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the issuer's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting; and
- 5 The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the issuer's auditors and the audit committee of the issuer's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting.

Date: November 16, 2020

/s/ Peter Tassiopoulos

Peter Tassiopoulos  
Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kurt L. Kalbfleisch, Chief Financial Officer of Sphere 3D Corp. certify that:

- 1 I have reviewed this quarterly report on Form 10-Q of Sphere 3D Corp.;
- 2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in this report;
- 4 The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the issuer's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting; and
- 5 The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the issuer's auditors and the audit committee of the issuer's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting.

Date: November 16, 2020

/s/ Kurt L. Kalbfleisch

Kurt L. Kalbfleisch  
Senior Vice-President and  
Chief Financial Officer



**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION. 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Sphere 3D Corp. (the “Registrant”) on Form 10-Q for the quarterly period ended September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Peter Tassiopoulos, Chief Executive Officer of the Registrant, certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- The Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: November 16, 2020

/s/ Peter Tassiopoulos  
\_\_\_\_\_  
Peter Tassiopoulos  
Chief Executive Officer

In connection with the Quarterly Report of Sphere 3D Corp. (the “Registrant”) on Form 10-Q for the quarterly period ended September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Kurt L. Kalbfleisch, Senior Vice-President and Chief Financial Officer of the Registrant, certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- The Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 16, 2020

/s/ Kurt L. Kalbfleisch  
\_\_\_\_\_  
Kurt L. Kalbfleisch  
Senior Vice-President and  
Chief Financial Officer