UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 20-F

☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

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

For the fiscal year ended **December 31, 2016**

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

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

Date of event requiring this shell company report . . . . . .

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
(Jurisdiction of incorporation or organization)

240 Matheson Blvd. East
Mississauga, Ontario, Canada, L4Z 1X1
(Address of principal executive offices)

Jenny C. Yeh
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125 S. Market Street, Suite 1300, San Jose, California 95113

(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

Securities registered or to be registered pursuant to section 12(b) of the Act:

Title of each class	Name of exchange on which registered
Common Shares	NASDAQ Capital Market

Securities registered or to be registered pursuant to Section 12(g) of the Act: None

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: None

_____

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report: 66,565,174 common shares as of December 31, 2016

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes ☐ No ☒

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, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP ☒ International Financial Reporting Standards as issued by the International Accounting Standards Board ☐ Other ☐

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow. Item 17 ☐ Item 18 ☐

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

SPHERE 3D CORP.
FORM 20-F ANNUAL REPORT
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GENERAL

Any reference to the "Company", "Sphere 3D", "Sphere", "we", "our", "us", or similar terms refers to Sphere 3D Corp. and its subsidiaries. The information, including any financial information, disclosed in this Annual Report is stated as at December 31, 2016 or for the year ended December 31, 2016, as applicable, unless otherwise indicated. Unless otherwise indicated, all dollar amounts are expressed in U.S. dollars and references to "$" are to the lawful currency of the United States ("U.S.").

Market data and other statistical information used in this Annual Report are based on independent industry publications, government publications, reports by market research firms, or other published independent sources. Some data is also based on good faith estimates that are derived from management's review of internal data and information, as well as independent sources, including those listed above. Although we believe these sources are reliable, we have not independently verified the information and cannot guarantee its accuracy or completeness.

FORWARD-LOOKING INFORMATION

Certain statements in this Annual Report constitute forward-looking information that involves risks and uncertainties. This forward-looking information includes, but is not limited to, statements with respect to management's expectations regarding the future growth, results of operations, performance and business prospects of Sphere 3D. This forward-looking information relates to, among other things, the Company's future business plans and business planning process, the Company's uses of cash, and may also include other statements that are predictive in nature, or that depend upon or refer to future events or conditions. Statements with the words "could", "expects", "may", "will", "anticipates", "assumes", "intends", "plans", "believes", "estimates", "guidance", and similar expressions are intended to identify statements containing forward-looking information, although not all forward-looking statements include such words. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances contain forward-looking information. Statements containing forward-looking information are not historical facts but instead represent management's expectations, estimates and projections regarding future events.

Although management believes the expectations reflected in such forward-looking statements are reasonable, forward-looking statements are based on the opinions, assumptions and estimates of management at the date the statements are made, and are subject to a variety of risks and uncertainties and other factors that could cause actual events or results to differ materially from those projected in the forward-looking statements. These factors include, but are not limited to: our ability to refinance our credit facilities and to raise additional debt or equity financing, the inability to gain compliance with the minimum bid price requirement of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital market; the limited operating history of Sphere 3D; the ability of Sphere 3D to manage growth and specifically, its recent acquisition of Unified ConneXions, Inc. ("UCX") and HVE ConneXions, LLC ("HVE"); 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; currency fluctuations; 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; risks related to the business of Overland Storage, Inc. ("Overland") and other factors described in this Annual Report under the heading "Risk Factors".

In addition, if any of the assumptions or estimates made by management prove to be incorrect, actual results and developments are likely to differ, and may differ materially, from those expressed or implied by the forward-looking information contained in this Annual Report. Accordingly, investors are cautioned not to place undue reliance on such statements.

All the forward-looking information in this Annual Report is qualified by these cautionary statements. Statements containing forward-looking information contained herein are made only as of the date of such document. The Company expressly disclaims any obligation to update or alter statements containing any forward-looking information, or the factors or assumptions underlying them, whether as a result of new information, future events or otherwise, except as required by law.

PART I

ITEM 1. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISORS

Not applicable.

ITEM 2. OFFER STATISTICS AND EXPECTED TIMETABLE

Not applicable.

ITEM 3. KEY INFORMATION

A. Selected Financial Data

The following selected financial data as of and for each of the years in the five-year period ended December 31, 2016 is derived from our audited consolidated financial statements. The selected financial data should be read in conjunction with the Company's Operating and Financial Review and Prospects in Item 5 of this Annual Report, the Consolidated Financial Statements and related notes in Item 18 of this Annual Report, and other financial information included elsewhere in this Annual Report.

	2016	2015	2014	2013	2012 (1)
	(in thousands, except per share data)				
Consolidated Statements of Operations Data					
Net revenue	$ 76,393	$ 76,165	$ 13,469	$ —	$ 410
Impairment of goodwill and acquired intangible assets	$ 34,398	$ 10,702	$ —	$ —	$ —
Operating loss	$ (63,824)	$ (44,839)	$ (12,039)	$ (3,296)	$ (2,443)
Net loss	$ (68,460)	$ (47,227)	$ (12,722)	$ (3,336)	$ (2,462)
Net loss per share					
Basic and diluted	$ (1.38)	$ (1.24)	$ (0.53)	$ (0.19)	$ (0.21)
Shares used in computing net loss per share:					
Basic and diluted	49,736	37,957	24,131	17,331	11,918
Consolidated Balance Sheets					
Total assets	$ 92,556	$ 139,111	$ 149,263	$ 8,361	$ 3,227
Net assets	$ 20,446	$ 68,140	$ 85,140	$ 7,437	$ 2,922
Debt	$ 43,995	$ 36,891	$ 24,390	$ —	$ —
Share capital	$ 157,254	$ 136,058	$ 106,117	$ 14,407	$ 5,437
Period end number of shares outstanding	66,565	45,198	34,554	21,098	16,114

(1) Amounts are presented using International Financial Reporting Standards and converted to USD using the average and ending Canadian exchange rates of 1.0004 and 1.0051, respectively.

B. Capitalization and Indebtedness

Not applicable.

C. Reasons for the Offer and Use of Proceeds

Not applicable.

D. Risk Factors

An investment in our Company involves a high degree of risk. Each of the following risk factors in evaluating our business and prospects as well as an investment in our Company should be carefully considered. The risks and uncertainties described below 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 following risks occur, our business and financial results could be harmed and the trading price of our common shares could decline.

Risks Related to our Business

Our credit facility matures on the earlier of the maturity date in the 8% Senior Secured Convertible Debenture, dated December 1, 2014, issued to FBC Holdings S.a.r.l., or June 30, 2017. If we are unable to refinance or amend our credit facility before its maturity date, we may be forced to liquidate assets and/or curtail or cease operations.

We have obtained external funding for our business through a credit agreement with Opus Bank. Pursuant to the terms of the Second Amendment, the credit facility matures on the earlier of (a) the maturity date in the Debenture, or (b) June 30, 2017 if the Maturity Extension Trigger Date occurs on or before March 31, 2017. The Maturity Extension Trigger Date occurred when we received gross cash proceeds of at least $3.0 million from the issuance of the common shares and warrants and, in addition, contributed to Overland at least $2.5 million in immediately available funds from the sale of common shares and warrants by depositing such funds into the primary operating account that Overland maintains at Opus Bank. We met the requirements of the Maturity Extension Trigger Date on March 29, 2017.

Even though we met the requirements of the Maturity Extension Trigger Date, we will need to raise additional funds and/or amend or refinance our credit facility in order to satisfy our obligations under our credit agreement with Opus Bank. In addition, upon the occurrence of certain events of default under our current credit facility, including failure to meet certain monthly revenue and EBITDA targets, to enter into a term sheet with a new lender by April 28, 2017, or to enter into a letter of intent with respect to a financing or retain a financial advisor with respect to a sale of a significant portion of the company's assets, our lender may elect to declare all amounts outstanding to be immediately due and payable and terminate all commitments to extend further credit. In addition, a default under the agreement could result in default and cross-acceleration under other indebtedness. There can be no guarantee that we will be able to raise additional funds or amend or refinance our credit facility on favorable terms or at all. If we are unable to, we may be forced to make further reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

If we are unable to generate sufficient cash from operations or raise additional financing, we may be unable to fund our operations.

We require sufficient cash from operations together with cash from debt, equity, or equity based financing to fund our operations as currently conducted. Our available cash and cash equivalents was $5.1 million and our outstanding indebtedness was $44.0 million as of December 31, 2016. Our available cash and cash equivalents was $3.5 million as of March 17, 2017. Cash forecasts and capital requirements are subject to change as a result of a variety of risks and uncertainties. Cash from operations can change as a result of a variety of factors including changes in sales levels, unexpected increases in product costs, increases in operating costs, and changes to the historical timing of collecting accounts receivable. In addition, we expect to continue to need to raise debt, equity, and equity-linked financing in the near future, but such financing may not be available on favorable terms, on a timely basis or at all. If we are unable to generate sufficient cash from operations or financing sources, we may be forced to make reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

Our cash and other sources of liquidity may not be sufficient to fund our operations beyond June 30, 2017. 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.

We have projected that cash on hand will not be sufficient to allow the Company to continue operations beyond June 30, 2017 if we are unable to amend or refinance our credit facility with Opus Bank. As a result, we expect to need to refinance the short-term portions of our existing debt and/or continue to raise additional debt, equity or equity-linked financing in the near future, but such financing may not be available on favorable terms on a timely basis or at all. Significant changes from the Company's current forecasts, including but not limited to: (i) our ability to refinance our credit facilities and to raise additional debt or equity financing; (ii) failure to comply with the financial covenants in our credit facility; (iii) shortfalls from projected sales levels; (iv) unexpected increases in product costs; (v) increases in operating costs; (vi) changes in the historical timing of collecting accounts receivable; and (vii) inability to gain compliance with the minimum bid price requirement of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital market could have a material adverse impact on our ability to access the level of funding necessary to continue our operations at current levels. If any of these events occurs or we are unable to generate sufficient cash from operations or financing sources, we may be forced to make further reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

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.

We may not be successful in raising additional capital necessary to meet expected increases in working capital needs. If we need additional funding for operations and we are unable to raise it, we may not be able to continue our business 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 will 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.

We have in the past failed to comply with financial covenants and other provisions in certain of our loan documents, which have resulted in defaults under certain of our loan documents, and we could be deemed to be in default under other indebtedness and agreements. These and similar defaults in the future could adversely affect our financial condition and our ability to meet our payment obligations on our indebtedness.

We have in the past defaulted under financial and other covenants under our Opus Bank credit agreement and under our previous loan documents, which have been waived by our lenders. In the past, these defaults generally have related to maintenance of required minimum asset coverage ratios. Upon the occurrence of certain events of default under our current credit facility, including failure to meet certain monthly revenue and EBITDA targets, to enter into a term sheet with a new lender by April 28, 2017, or to enter into a letter of intent with respect to a financing or retain a financial advisor with respect to a sale of a significant portion of the Company's assets, our lender may elect to declare all amounts outstanding to be immediately due and payable and terminate all commitments to extend further credit. While our ongoing defaults have been waived, our lender may not in the future

waive such defaults. In addition, as a result of such defaults, we could be deemed to be in default under other of our indebtedness and agreements.

In the event of the acceleration of our indebtedness or if we are unable to otherwise maintain compliance with covenants set forth in these arrangements, including our Opus Bank credit agreement, Term Loan Agreement, and Debenture or if these arrangements are otherwise terminated for any reason, management may be forced to make further reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

We face a selling cycle of variable length to secure new purchase agreements for our products and services, and design wins may not result in purchase orders or new customer relationships.

We face a selling cycle of variable lengths to secure new purchase agreements. Even if we succeed in developing a relationship with a potential new customer and/or obtaining design wins, we may not be successful in securing new sales for our products or services, or new customers. In addition, we cannot accurately predict the timing of entering into purchase agreements with new customers due to the complex purchase decision processes of some large institutional customers, such as healthcare providers or school districts, which often involve high-level management or board approvals. Consequently, we have only a limited ability to predict the timing of specific new customer relationships.

If our common shares are delisted from NASDAQ, our business, financial condition, results of operations and share price could be adversely affected, and the liquidity of our common shares and our ability to obtain financing could be impaired.

Maintaining the listing of our common shares on the NASDAQ Capital Market requires that we comply with certain listing requirements. If our common shares cease to be listed for trading on NASDAQ for any reason, it may harm our share price, increase the volatility of our share price, decrease the level of trading activity and make it more difficult for investors to buy or sell shares of our common shares. Our failure to maintain a listing on NASDAQ may constitute an event of default under our outstanding indebtedness as well as any future indebtedness, which would accelerate the maturity date of such debt or trigger other obligations. In addition, certain institutional investors that are not permitted to own securities of non-listed companies may be required to sell their shares, which would adversely affect the trading price of our common shares. If we are not listed on NASDAQ, we will be limited in our ability to raise additional capital we may need. See also "Risks Related to Our Public Company Status and Our Common Shares."

We have a limited operating history and a history of net losses. We may not achieve or maintain profitability.

Sphere 3D has only recently moved from being a development stage company to commercial operations. As such, we have a limited operating history and limited non-recurring revenues derived from operations. Significant expenditures have been focused on research and development to create the Glassware 2.0® ("Glassware") product offering. Sphere 3D's near-term focus has been in actively developing reference accounts and building sales, marketing and support capabilities. Overland, which we acquired in December 2014, also has a history of net losses since fiscal 2006. We expect to continue to incur net losses and we may not achieve or maintain profitability. We may see continued losses during 2017 and as a result of these and other factors, we may not be able to achieve, sustain or increase profitability in the near future.

Even after the Overland acquisition, Sphere 3D is subject to many risks common to early-stage enterprises, including under-capitalization, cash shortages, limitations with respect to personnel, financial, and other resources, technology, and market acceptance issues. There is no assurance that we will be successful in achieving a return on shareholders' investment and the likelihood of success must be considered considering our stage of operations.

Our plans for growth will place significant demands upon our resources. If we are unsuccessful in achieving our plan for growth, our business could be harmed.

We are actively pursuing a plan to market our products throughout Canada, the U.S. and internationally. The plan will place significant demands upon managerial, financial, and human resources. Our ability to manage future growth will depend in large part upon several factors, including our ability to rapidly:

- build or leverage, as applicable, a network of channel partners to create an expanding presence in the evolving marketplace for our products and services;
- build or leverage, as applicable, a sales team to keep end-users and channel partners informed regarding the technical features, issues and key selling points of our products and services;
- attract and retain qualified technical personnel in order to continue to develop reliable and flexible products and provide services that respond to evolving customer needs;
- develop support capacity for end-users as sales increase, so that we can provide post-sales support without diverting resources from product development efforts; and
- expand our internal management and financial controls significantly, so that we can maintain control over our operations and provide support to other functional areas as the number of personnel and size increases.

Our inability to achieve any of these objectives could harm our business, financial condition and results of operations.

Our market is intensely competitive and dynamic. New competing products and services could be introduced at any time that could result in reduced profit margins and loss of market share.

The technology industry is very dynamic, with new technology and services being introduced by a range of players, from larger established companies to start-ups, on a frequent basis. Our competitors may announce new products, services, or enhancements that better meet the needs of end-users or changing industry standards. Further, new competitors or alliances among competitors could emerge. Increased competition may cause price reductions, reduced gross margins and loss of market share, any of which could have a material adverse effect on our business, financial condition and results of operations.

Furthermore, the worldwide storage market is intensely competitive. A number of manufacturers of tape-based and disk-based storage solutions compete for a limited number of customers. Barriers to entry are relatively low in these markets, and some of our competitors in this market have substantially greater financial and other resources, larger research and development staffs, and more experience and capabilities in manufacturing, marketing and distributing products. Ongoing pricing pressure could result in significant price erosion, reduced profit margins and loss of market share, any of which could have a material adverse effect on our business, results of operations, financial position and liquidity.

Our success depends on our ability to anticipate rapid technological changes and develop new and enhanced products.

The markets for our products are characterized by rapidly changing technology, evolving industry standards and increasingly sophisticated customer requirements. The introduction of products embodying new technology and the emergence of new industry standards can negatively impact the marketability of our existing products and can exert price pressures on existing products. It is critical to our success that we are able to anticipate and react quickly to changes in technology or in industry standards and to successfully develop, introduce, manufacture and achieve market acceptance of new, enhanced and competitive products on a timely basis and cost-effective basis. We invest substantial resources towards continued innovation; however, there can be no assurance that we will successfully develop new products or enhance and improve our existing products, that new products and enhanced and improved existing products will achieve market acceptance or that the introduction of new products or enhanced existing products by others will not negatively impact us. Our inability to develop products that are competitive in technology and price and that meet end-user needs could have a material adverse effect on our business, financial condition or results of operations.

Development schedules for technology products are inherently uncertain. We may not meet our product development schedules, and development costs could exceed budgeted amounts. Our business, results of operations, financial position and liquidity may be materially and adversely affected if the products or product enhancements that we develop are delayed or not delivered due to developmental problems, quality issues or component shortage problems, or if our products or product enhancements do not achieve market acceptance or are unreliable. We or our competitors will continue to introduce products embodying new technologies, such as new sequential or random access mass storage devices. In addition, new industry standards may emerge. Such events could render our existing products obsolete or not marketable, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

Our business is dependent on the continued market acceptance and usage of tape-based systems. The impact of recent storage technology trends on our business is uncertain.

The industry in which we operate has experienced significant historical growth due to the continuing increase in the demand for storage by consumers, enterprises and government bodies around the world. While information technology spending has fluctuated periodically due to technology transitions and changing economic and business environments, overall growth in demand for storage has continued. Recent technology trends, such as the emergence of hosted storage, software as a service and mobile data access are driving significant changes in storage architectures and solution requirements. The impact of these trends on overall long-term growth patterns is uncertain. Nevertheless, if the general level of historic industry growth, or if the growth of the specific markets in which we compete, were to decline, our business and results of operations could suffer.

As a result of the acquisition of Overland, we expect to continue to derive a portion of our revenue from products that use magnetic tape drives for backup and recovery of digital data. Our tape-based storage solutions now compete directly with other storage technologies, such as hard disk drives, and may face competition in the future from other emerging technologies. The prices of hard disk drives continue to decrease as their capacity and performance increase. We expect our tape-based products to face increased competition from these alternative technologies and come under increasing pricing pressure. If our strategy to compete in disk-based markets does not succeed, it could have a material adverse effect on our business, results of operations, financial position and liquidity.

Our management team continually reviews and evaluates our product portfolio, operating structure, and markets to assess the future viability of our existing products and market positions. We may determine that the infrastructure and expenses necessary to sustain an existing product offering are greater than the potential contribution margin that we would realize. As a result, we may determine that it is in our best interest to exit or divest one or more existing product offerings, which could result in costs incurred for exit or disposal activities and/or impairments of long-lived assets. Moreover, if we do not identify other opportunities to replace discontinued products or operations, our revenues would decline, which could lead to further net losses and adversely impact the market price of our common shares.

In addition, we could incur charges for excess and obsolete inventory. The value of our inventory may be adversely affected by factors that affect our ability to sell the products in our inventory. Such factors include changes in technology, introductions of new products by us or our competitors, the current or future economic downturns, or other actions by our competitors. If we do not effectively forecast and manage our inventory, we may need to write off inventory as excess or obsolete, which adversely affects cost of sales and gross profit. Our business has previously experienced, and we may in the future experience, reductions in sales of older generation products as customers delay or defer purchases in anticipation of new products that we or our competitors may introduce. We have established reserves for slow moving or obsolete inventory. These reserves, however, may prove to be inadequate, which would result in additional charges for excess or obsolete inventory.

We have granted security interests over certain of our assets in connection with various debt arrangements.

We have granted security interests over certain of our assets in connection with our credit facility and other indebtedness, and we may grant additional security interests to secure future borrowings. If we are unable to satisfy our obligations under these arrangements, we could be forced to sell certain assets that secure these loans, which could have a material adverse effect on our ability to operate our business. In the event we are unable to maintain compliance with covenants set forth in these arrangements or if these arrangements are otherwise terminated for any reason, it could have a material adverse effect on our ability to access the level of funding necessary to continue operations at current levels. If any of these events occur, management may be forced to make reductions in spending, extend payment terms with suppliers, liquidate assets where possible, and/or suspend or curtail planned programs. Any of these actions could materially harm our business, results of operations and future prospects.

Our products may contain defects in components or design, and our warranty reserves may not adequately cover our warranty obligations for these products.

Although we employ a vigorous testing and quality assurance program, our products may contain defects or errors, particularly when first introduced or as new versions are released. We may not discover such defects or errors until after a solution has been released to a customer and used by the customer and end-users. Defects and errors in our products could materially and adversely affect our reputation, result in significant costs, delay planned release dates and impair our ability to sell our products in the future. The costs incurred in correcting any solution defects or errors may be substantial and could adversely affect our operating margins. While we plan to continually test our products for defects and errors and work with end-users through our post-sales support services to identify and correct defects and errors, defects or errors in our products may be found in the future.

We have also established reserves for the estimated liability associated with product warranties. However, we could experience unforeseen circumstances where these or future reserves may not adequately cover our warranty obligations. For example, the failure or inadequate performance of product components that we purchase could increase our warranty obligations beyond these reserves.

The failure to attract, hire, retain and motivate key personnel could have a significant adverse impact on our operations.

Our success depends on the retention and maintenance of key personnel, including members of senior management and our technical, sales and marketing teams, including personnel who joined Sphere 3D in connection with the Overland acquisition. Achieving this objective may be difficult due to many factors, including competition for such highly skilled personnel; fluctuations in global economic and industry conditions; changes in our management or leadership; competitors' hiring practices; and the effectiveness of our compensation programs. The loss of any of these key persons could have a material adverse effect on our business, financial condition or results of operations. Additionally, prior to our acquisition of Overland, Overland experienced a prolonged period of operating losses and declines in its cash position, which affected Overland's employee morale and retention and may continue to affect the morale and retention of our employees. Our success is also dependent on our continuing ability to identify, hire, train, motivate and retain highly qualified management, technical, sales and marketing personnel. Any such new hire may require a significant transition period prior to making a meaningful contribution. Competition for qualified employees is particularly intense in the technology industry, and we have in the past experienced difficulty recruiting qualified employees. Our failure to attract and to retain the necessary qualified personnel could seriously harm our operating results and financial condition. Competition for such personnel can be intense, and no assurance can be provided that we will be able to attract or retain highly qualified technical and managerial personnel in the future, which may have a material adverse effect on our future growth and profitability. We do not have key man insurance.

Our financial results may fluctuate substantially for many reasons, and past results should not be relied on as indications of future performance.

Our revenues and operating results may fluctuate from quarter to quarter and from year to year due to a combination of factors, including, but not limited to:

- varying size, timing and contractual terms of orders for our products, which may delay the recognition of revenue;
- competitive conditions in the industry, including strategic initiatives by us or our competitors, new products or services, product or service announcements and changes in pricing policy by us or our competitors;
- market acceptance of our products and services;
- our ability to maintain existing relationships and to create new relationships with channel partners;
- the discretionary nature of purchase and budget cycles of our customers and end-users;
- the length and variability of the sales cycles for our products;
- general weakening of the economy resulting in a decrease in the overall demand for our products and services or otherwise affecting the capital investment levels of businesses with respect to our products or services;
- timing of product development and new product initiatives.
- changes in customer mix;
- increases in the cost of, or limitations on, the availability of materials;
- fluctuations in average selling prices;
- changes in product mix;
- increases in costs and expenses associated with the introduction of new products; and
- currency exchange fluctuations.

Further, the markets that we serve are volatile and subject to market shifts that we may be unable to anticipate. A slowdown in the demand for workstations, mid-range computer systems, networks and servers could have a significant adverse effect on the demand for our products in any given period. In the past, we have experienced delays in the receipt of purchase orders and, on occasion, anticipated purchase orders have been rescheduled or have not materialized due to changes in customer requirements. Our customers may cancel or delay purchase orders for a variety of reasons, including, but not limited to, the rescheduling of new product introductions, changes in our customers' inventory practices or forecasted demand, general economic conditions affecting our customers' markets, changes in our pricing or the pricing of our competitors, new product announcements by us or others, quality or reliability problems related to our products, or selection of competitive products as alternate sources of supply. In particular, our ability to forecast sales to distributors, VARs and DMRs is especially limited because these customers typically provide us with relatively short order lead times or are permitted to change orders on short notice. Because a large portion of our sales is generated by our European channel, our third quarter (July through September) results of operations have been in the past and may be in the future impacted by seasonally slow European orders, reflecting the summer holiday period in Europe.

Thus, there can be no assurance that we will be able to reach profitability on a quarterly or annual basis. We believe that our revenue and operating results will continue to fluctuate, and that period-to-period comparisons are not necessarily meaningful and should not be relied on as indications of future performance. Our revenue and operating results may fail to meet the expectations of public market analysts or investors, which could have a material adverse effect on the price of our common shares. In addition, portions of our expenses are fixed and difficult to reduce if our revenues do not meet our expectations. These fixed expenses magnify the adverse effect of any revenue shortfall.

Our plans for implementing our business strategy and achieving profitability are based upon the experience, judgment and assumptions of our key management personnel, and available information concerning the communications and technology industries. If management's assumptions prove to be incorrect, it could have a material adverse effect on our business, financial condition or results of operations.

We are subject to exchange rate risk in connection with our international operations.

A substantial portion of our revenue is earned in U.S. dollars and Euros. Fluctuations in the exchange rate between the U.S. dollar and other currencies, may have a material adverse effect on our business, financial condition and operating results. Further, our sales in international markets are denominated in U.S. dollars as well as local currency. Our wholly-owned subsidiaries in Canada, Europe and Asia incur costs that are denominated in local currencies. As exchange rates vary, these results when translated into U.S. dollars may vary from expectations and adversely impact overall expected results. A weaker U.S. dollar would result in an increase to revenue and expenses upon consolidation, and a stronger U.S. dollar would result in a decrease to revenue and expenses upon consolidation. There can be no assurances that we will prove successful in our effort to manage currency risk, which may adversely impact our operating results.

We rely on indirect sales channels to market and sell our branded products. Therefore, the loss of, or deterioration in, our relationship with one or more of our distributors or resellers could negatively affect our operating results.

We have relationships with third party resellers, OEMs, system integrators and enterprise application providers that facilitate our ability to sell and implement our products. These business relationships are important to extend the geographic reach and customer penetration of our sales force and ensure that our products are compatible with customer network infrastructures and with third party products. Further, we sell all of our Overland branded products through our network of distributors, VARs, and DMRs, who in turn sell our products to end users.

We believe that our success depends, in part, on our ability to develop and maintain strategic relationships with resellers, independent software vendors, OEMs, system integrators, and enterprise application providers. Should any of these third parties go out of business, or choose not to work with us, we may be forced to increase the development of those capabilities internally, incurring significant expense and adversely affecting operating margins. Any of these third parties may develop relationships with other companies, including those that develop and sell products that compete with ours. We could lose sales opportunities if we fail to work effectively with these parties or they choose not to work with us. Most of our distributors and resellers also carry competing product lines that they may promote over our products. A distributor or reseller might not continue to purchase our products or market them effectively, and each determines the type and amount of our products that it will purchase from us and the pricing of the products that it sells to end user customers. Further, the long-term success of any of our distributors or resellers is difficult to predict, and we have no purchase commitments or long-term orders from any of them to assure us of any baseline sales through these channels.

Therefore, the loss of, or deterioration in, our relationship with one or more of our distributors or resellers could negatively affect our operating results. Our operating results could also be adversely affected by a number of factors, including, but not limited to:

- a change in competitive strategy that adversely affects a distributor's or reseller's willingness or ability to stock and distribute our products;
- the reduction, delay or cancellation of orders or the return of a significant amount of our products;
- the loss of one or more of our distributors or resellers; and
- any financial difficulties of our distributors or resellers that result in their inability to pay amounts owed to us.

If our suppliers fail to meet our manufacturing needs, it would delay our production and our product shipments to customers and this could negatively affect our operations.

Some of our products have a large number of components and subassemblies produced by outside suppliers. We depend greatly on these suppliers for items that are essential to the manufacture of our products, including tape drives and printed circuit boards. We work closely with our regional, national and international suppliers, which are carefully selected based on their ability to provide quality parts and components that meet both our technical specifications and volume requirements. For certain items, we qualify only a single source, which magnifies the risk of shortages and decreases our ability to negotiate with that supplier on the basis of price. From time to time, we have in the past been unable to obtain as many drives as have needed due to drive shortages or quality issues from certain of our suppliers. If these suppliers fail to meet our manufacturing needs, it would delay our production and our product shipments to customers and negatively affect our operations.

Our international operations are important to our business and involve unique risks related to financial, political, and economic conditions.

We expect sales to customers outside of the U.S. to continue to represent a significant portion of our total sales in the future and we may be subject to additional risks associated with doing business in foreign countries. Our future results could be materially adversely affected by a variety of political, economic or other factors relating to our operations outside the U.S., any or all of which could have a material adverse effect on our operating results and financial condition. In addition to the language barriers, different presentations of financial information, different business practices, and other cultural differences and barriers, ongoing business risks may result from the international political situation, uncertain legal systems and applications of law, prejudice against foreigners, corrupt practices, uncertain economic policies and potential political and economic instability. In doing business in foreign countries we may also be subject to such risks, including, but not limited to, the following:

- cultural and language differences;
- increased costs of doing business in countries with limited infrastructure;
- possible difficulties in collecting accounts receivable;
- corporate and personal liability for violations of local laws;
- the worldwide impact of the recent global economic downturn and related market uncertainty, including the ongoing European economic and financial turmoil related to sovereign debt issues in certain countries;
- the imposition of governmental controls mandating compliance with various foreign and U.S. export laws;
- currency exchange fluctuations;
- weak economic conditions in foreign markets;
- political or social unrest;
- economic instability or weakness in a specific country or region;
- environmental and trade protection measures and other legal and regulatory requirements;
- health or similar issues, such as pandemic or epidemic or natural disasters;
- trade restrictions, tariffs and taxes;
- expropriation;
- longer payment cycles typically associated with international sales; and
- difficulties in staffing and managing international operations.

We also may face competition from local companies which have longer operating histories, greater name recognition, and broader customer relationships and industry alliances in their local markets, and it may be difficult to operate profitably in some markets as a result of such competition.

Furthermore, we may be unable to comply with changes in foreign laws, rules and regulations applicable to us in the future, which could have a material adverse effect on our business, results of operations, financial position and liquidity.

We are subject to laws, regulations and similar requirements, changes to which may adversely affect our business and operations.

We are subject to laws, regulations and similar requirements that affect our business and operations, including, but not limited to, the areas of commerce, intellectual property, income and other taxes, labor, environmental, health and safety, and our compliance in these areas may be costly. While we have implemented policies and procedures to comply with laws and regulations, there can be no assurance that our employees, contractors, suppliers or agents will not violate such laws and regulations or our policies. Any such violation or alleged violation could materially and adversely affect our business. Any changes or potential changes to laws, regulations or similar requirements, or our ability to respond to these changes, may significantly increase our costs to maintain compliance or result in our decision to limit our business or products, which could materially harm our business, results of operations and future prospects.

The Dodd-Frank Wall Street Reform and Consumer Protection Act includes provisions regarding certain minerals and metals, known as conflict minerals, mined from the Democratic Republic of Congo and adjoining countries. These provisions require companies to undertake due diligence procedures and report on the use of conflict minerals in its products, including products manufactured by third parties. Compliance with these provisions will cause us to incur costs to certify that our supply chain is conflict free and we may face difficulties if our suppliers are unwilling or unable to verify the source of their materials. Our ability to source these minerals and metals may also be adversely impacted. In addition, our customers may require that we provide them with a certification and our inability to do so may disqualify us as a supplier.

Furthermore, future changes to U.S. tax laws could materially adversely affect Sphere 3D. Under current law, Sphere 3D is expected to be treated as a foreign corporation for U.S. federal income tax purposes. However, changes to the rules in Section 7874 of the Code or the Treasury regulations promulgated thereunder or other guidance issued by the Treasury or the Internal Revenue Service ("IRS") could adversely affect Sphere 3D's status as a foreign corporation for U.S. federal income tax purposes, and any such changes could have prospective or retroactive application. On May 20, 2014, Senator Carl Levin and Representative Sander M. Levin introduced the Stop Corporate Inversions Act of 2014 (the "Inversion Bill") in the Senate and the House of Representatives, respectively. Similar legislation was introduced by Senator Dick Durbin and Representative Sander M. Levin on January 20, 2015. In its current form, the Inversion Bill would treat Sphere 3D as a U.S. corporation if the management and control of the expanded affiliated group which includes Sphere 3D occurs, directly or indirectly, primarily within the U.S. and the expanded affiliated group has significant U.S. business activities. If enacted, the Inversion Bill would apply to taxable years ending after May 8, 2014. Because certain members of Sphere 3D's senior management team reside in the U.S., and are expected to continue to reside in the U.S., Sphere 3D could be treated as a U.S. corporation if the Inversion Bill becomes law.

We have made a number of acquisitions in the past and we may make acquisitions in the future. Our ability to identify complementary assets, products or businesses for acquisition and successfully integrate them could affect our business, financial condition and operating results.

In the future, we may continue to pursue acquisitions of assets, products or businesses that we believe are complementary to our existing business and/or to enhance our market position or expand our product portfolio. There is a risk that we will not be able to identify suitable acquisition candidates available for sale at reasonable prices, complete any acquisition, or successfully integrate any acquired product or business into our operations. We are likely to face competition for acquisition candidates from other parties including those that have substantially greater available resources. Acquisitions may involve a number of other risks, including:

- diversion of management's attention;
- disruption to our ongoing business;
- failure to retain key acquired personnel;
- difficulties in integrating acquired operations, technologies, products or personnel;
- unanticipated expenses, events or circumstances;
- assumption of disclosed and undisclosed liabilities; and
- inappropriate valuation of the acquired in-process research and development, or the entire acquired business.

If we do not successfully address these risks or any other problems encountered in connection with an acquisition, the acquisition could have a material adverse effect on our business, results of operations and financial condition. Problems with an acquired business could have a material adverse effect on our performance or our business as a whole. In addition, if we proceed with an acquisition, our available cash may be used to complete the transaction, diminishing our liquidity and capital resources, or shares may be issued which could cause significant dilution to existing shareholders.

We are implementing cost reduction efforts. We may need to implement additional cost reduction efforts, which could materially harm our business.

Since our acquisition of the Overland business, we have been implementing certain cost reduction efforts, which we intend to continue. There can be no assurance that these cost reduction efforts will be successful. As a result, we may need to implement further cost reduction efforts across our operations, such as further reductions in the cost of our workforce and/or suspending or curtailing planned programs, either of which could materially harm our business, results of operations and future prospects.

Risks Related to Intellectual Property

Our ability to compete depends in part on our ability to protect our intellectual property rights.

Our success depends in part on our ability to protect our rights in our intellectual property. We rely on various intellectual property protections, including copyright, trade-mark and trade secret laws and contractual provisions, to preserve our intellectual property rights. We have filed a number of patent applications and have historically protected our intellectual property through trade secrets and copyrights. As our technology is evolving and rapidly changing, current intellectual property rights may not adequately protect us.

Intellectual property rights may not prevent competitors from developing products that are substantially equivalent or superior to our products. Competitors may independently develop similar products, duplicate our products or, if patents are issued to us, design around these patents. To the extent that we have or obtain patents, such patents may not afford meaningful protection for our technology and products. Others may challenge our patents and, as a result, our patents could be narrowed, invalidated or declared unenforceable. The patents that are material to our business began expiring in November 2015. In addition, our current or future patent applications may not result in the issuance of patents in the U.S. or foreign countries.

Although we believe we have a proprietary platform for our technologies and products, we may in the future become subject to claims for infringement of intellectual property rights owned by others. Further, to protect our own intellectual property rights, we may in the future bring claims for infringement against others.

Our commercial success depends, in part, upon not infringing intellectual property rights owned by others. Although we believe that we have a proprietary platform for our technologies and products, we cannot determine with certainty whether any existing third party patents or the issuance of any third party patents would require us to alter our technology, obtain licenses or cease certain activities. We may become subject to claims by third parties that our technology infringes their intellectual property rights. While we provide our customers with a qualified indemnity against the infringement of third party intellectual property rights, we may become subject to these claims either directly or through indemnities against these claims that we routinely provide to our end-users and channel partners.

Further, our customers may use our products in ways that may infringe the intellectual property rights or third parties and/or require a license from third parties. Although our customers are contractually obligated to use our products only in a manner that does not infringe third party intellectual property rights, we cannot guarantee that such third parties will not seek remedies against us for providing products that may enable our customers to infringe the intellectual property rights of others.

In addition, we may receive in the future, claims from third parties asserting infringement, claims based on indemnities provided by us, and other related claims. Litigation may be necessary to determine the scope, enforceability and validity of third party proprietary or other rights, or to establish our proprietary or other rights. Furthermore, despite precautions, it may be possible for third parties to obtain and use our intellectual property without our authorization. Policing unauthorized use of intellectual property is difficult, and some foreign laws do not protect proprietary rights to the same extent as the laws of Canada or the U.S. To protect our intellectual property, we may become involved in litigation. In addition, other companies may initiate similar proceedings against us. The patent position of information technology firms is highly uncertain, involves complex legal and factual questions, and continues to be the subject of much litigation. No consistent policy has emerged from the U.S. Patent and Trademark Office or the courts regarding the breadth of claims allowed or the degree of protection afforded under information technology patents.

Some of our competitors have, or are affiliated with companies having, substantially greater resources than us and these competitors may be able to sustain the costs of complex intellectual property litigation to a greater degree and for a longer period of time than us. Regardless of their merit, any such claims could:

- divert the attention of our management, cause significant delays, materially disrupt the conduct of our business or materially adversely affect our revenue, financial condition and results of operations;
- be time consuming to evaluate and defend;
- result in costly litigation and substantial expenses;
- cause product shipment delays or stoppages;
- subject us to significant liabilities;
- require us to enter into costly royalty or licensing agreements;
- require us to modify or stop using the infringing technology; or
- result in costs or other consequences that have a material adverse effect on our business, results of operations and financial condition.

Risks Related to Our Public Company Status and Our Common Shares

If our common shares are delisted from the NASDAQ Capital Market, our business, financial condition, results of operations and share price could be adversely affected, and the liquidity of our common shares and our ability to obtain financing could be impaired.

In August 2016, we received a letter from the NASDAQ Stock Market LLC ("NASDAQ") notifying us that we were not in compliance with the requirement of NASDAQ Listing Rule 5450(a)(1) ("Listing Rule") for continued listing on the NASDAQ Global Market as a result of the closing bid price for our common shares being below $1.00 for 30 consecutive business days. This notification has had no effect on the listing of our common shares at this time. In accordance with the Listing Rule, we had 180 calendar days, or until January 30, 2017, to regain compliance with such rule. On February 1, 2017, we were granted an additional 180 calendar day period to regain compliance with the Listing Rule in connection with the transfer of the listing of our common shares to the NASDAQ Capital Market. To regain compliance, we must have a closing bid price of our common shares above $1.00 for a minimum of 10 consecutive business days. No assurance can be given that we will regain compliance during that period.

Any delisting of our common shares from the NASDAQ Capital Market could adversely affect our ability to attract new investors, decrease the liquidity of our outstanding common shares, reduce our flexibility to raise additional capital, reduce the price at which our common shares trade, and increase the transaction costs inherent in trading such shares with overall negative effects for our shareholders. In addition, delisting of our common shares could deter broker-dealers from making a market in or otherwise seeking or generating interest in our common shares, and might deter certain institutions and persons from investing in our securities at all. If our Board of Directors exercises its discretion to approve a reverse share split to seek to regain compliance with the NASDAQ listing requirements and increase the per share trading price of our common shares, the announcement of the reverse share split could adversely affect the trading price per share even if we ultimately regain compliance. For these reasons and others, delisting could adversely affect our business, financial condition, and results of operations.

Future sales of our securities under certain circumstances may trigger price-protection provisions in outstanding warrants, which would dilute your investment and could result in a decline in the trading price of our common shares.

In connection with our registered direct offering in December 2015, we issued a warrant exercisable to purchase up to 1,500,000 common shares that contains certain price protection provisions. If we, at any time while these warrants are outstanding, effect certain variable rate transactions and the issue price, conversion price or exercise price per share applicable thereto is less than the exercise price then in effect for the warrants, then the exercise price of the warrants will be reduced to equal such price. In addition, in connection with our private placement offering in March 2017, we issued warrants that contain certain price protection provisions. If at any time while the warrants are outstanding, we sell or grant options to purchase, reprice or otherwise issue any common shares or securities convertible into common shares at a price less than $0.30, then the exercise price for the warrants will be reduced to such price, provided that the exercise price will not be lower than $0.10, and the number of common shares issuable under the warrants will be increased such that, after taking into account the decrease in the exercise price, the aggregate exercise price under the warrants will remain the same. The triggering of these price protection provisions, together with the exercise of these warrants, could cause additional dilution to our shareholders.

The market price of our common shares is volatile.

The market price for common shares may be volatile and subject to wide fluctuations in response to numerous factors, many of which are beyond our control, including the following:

- price and volume fluctuations in the overall stock market from time to time;
- volatility in the market prices and trading volumes of technology stocks;
- changes in operating performance and stock market valuations of other technology companies generally, or those in our industry in particular;
- future capital raising activities;

- sales of common shares by holders thereof or by us;
- failure of securities analysts to maintain coverage of Sphere 3D, changes in financial estimates by securities analysts who follow Sphere 3D, or our failure to meet these estimates or the expectations of investors;
- the financial projections we may provide to the public, any changes in those projections or our failure to meet those projections;
- market acceptance of our products and technologies;
- announcements by us or our competitors of new products or services;
- the public's reaction to our press releases, other public announcements and filings with the SEC and the applicable Canadian securities regulatory authorities;
- rumors and market speculation involving us or other companies in our industry;
- actual or anticipated changes in our operating results or fluctuations in our operating results;
- actual or anticipated developments in our business, our competitors' businesses or the competitive landscape generally;
- litigation involving us, our industry or both, or investigations by regulators into our operations or those of our competitors;
- developments or disputes concerning our intellectual property or other proprietary rights;
- announced or completed acquisitions of businesses or technologies by us or our competitors;
- new laws or regulations or new interpretations of existing laws or regulations applicable to us and our business;
- changes in accounting standards, policies, guidelines, interpretations or principles;
- any significant change in our executive officers and other key personnel or Board of Directors;
- general economic conditions and slow or negative growth of our markets;
- release of transfer restrictions on certain outstanding common shares;
- news reports relating to trends, concerns or competitive developments, regulatory changes and other related issues in our industry or target markets.

Financial markets may experience price and volume fluctuations that affect the market prices of equity securities of companies and that are unrelated to the operating performance, underlying asset values or prospects of such companies. Accordingly, the market price of the common shares may decline even if our operating results, underlying asset values or prospects have not changed. As well, certain institutional investors may base their investment decisions on consideration of our governance and social practices and performance against such institutions' respective investment guidelines and criteria, and failure to meet such criteria may result in a limited or no investment in our common shares by those institutions, which could adversely affect the trading price of our common shares. There can be no assurance that fluctuations in price and volume will not occur due to these and other factors.

In the past, plaintiffs have often initiated securities class action litigation against a company following periods of volatility in the market price of its securities. We may in the future be a target of similar litigation. Securities litigation could result in substantial costs and liabilities and could divert management's attention from day-to-day operations and consume resources, such as cash. In addition, the resolution of those matters may require us to issue additional common shares, which could potentially result in dilution to our existing shareholders. Expenses incurred in connection with these matters (which include fees of lawyers and other professional advisors and potential obligations to indemnify officers and directors who may be parties to such actions) could adversely affect our cash position. See Item 18 "Financial Statements", Note 15 "Commitments and Contingencies".

We must comply with the financial reporting requirements of a public company, as well as other requirements associated with being listed on NASDAQ. Additional reporting requirements could apply if we lose our status as a Foreign Private Issuer or as an Emerging Growth Company.

Sphere 3D is subject to reporting and other obligations under applicable Canadian securities laws, SEC rules and the rules of the NASDAQ Capital Market. These reporting and other obligations, including National Instrument 52-102 - Continuous Disclosure Obligations and National Instrument 52-109 - Certification of Disclosure in Issuers' Annual and Interim Filings, place significant demands on our management, administrative, operational and accounting resources. Moreover, any failure to maintain effective internal controls could cause us to fail to meet our reporting obligations or result in material misstatements in our consolidated financial statements. If we cannot provide reliable financial reports or prevent fraud, our reputation and operating results could be materially harmed, which could also cause investors to lose confidence in our reported financial information, which could result in a lower trading price of our common shares.

Management does not expect that our disclosure controls and procedures and internal controls over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and implemented, can provide only reasonable, not absolute, assurance that its objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Due to the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues within a company are detected. The inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple errors or mistakes. Controls can also be circumvented by individual acts of some persons, by collusion of two or more people or by management override of the controls. Due to the inherent limitations in a cost-effective control system, misstatements due to error, or fraud may occur and not be detected.

In addition to these reporting requirements, additional reporting requirements may apply if Sphere 3D loses its status as a Foreign Private Issuer under the U.S. Securities Exchange Act of 1934. Sphere 3D is considered a "foreign private issuer" under the rules of the SEC. As a result, Sphere 3D is subject to the reporting requirements under the Exchange Act applicable to foreign private issuers. Sphere 3D is required to file its annual report on Form 20-F with the SEC within four months of its fiscal year end, or Form 40-F, if applicable, with the SEC at the time it files its annual information form with the applicable Canadian Securities Regulatory authorities. In addition, Sphere 3D must furnish reports on Form 6-K to the SEC regarding certain information required to be publicly disclosed by Sphere 3D in Canada or filed with the NASDAQ Capital Market and which was made public by the NASDAQ Capital Market, or regarding information distributed or required to be distributed by Sphere 3D to its shareholders. Moreover, Sphere 3D is not required to file periodic reports and financial statements with the SEC as frequently or as promptly as U.S. companies (or foreign companies that do not qualify as "foreign private issuers") whose securities are registered under the Exchange Act. Sphere 3D is not required to comply with Regulation FD, which addresses certain restrictions on the selective disclosure of material information. In addition, among other matters, Sphere 3D's officers, directors and principal shareholders are exempt from the reporting and "short-swing" profit recovery provisions of Section 16 of the Exchange Act and the rules under the Exchange Act with respect to their purchases and sales of Sphere 3D common shares. If Sphere 3D loses its status as a foreign private issuer, it will no longer be exempt from such rules and, among other things, will be required to file periodic reports and financial statements as if it were a company incorporated in the United States. Sphere 3D does, however, file quarterly financial information under Canadian periodic reporting requirements for public corporations, which is accessible through the Internet at www.sedar.com, and will furnish such quarterly financial information to the SEC under cover of Form 6-K, which is available at www.sec.gov. Insiders of Sphere 3D are generally required to disclose their trading in Sphere 3D shares within 5 days of the date of the trade and these trading activity reports can be accessed through the Internet at www.sedi.ca.

Sphere 3D is an "emerging growth company" as defined in the Jumpstart Our Business Startups ("JOBS") Act, enacted on April 5, 2012, and Sphere 3D will continue to qualify as an "emerging growth company" until the earliest to occur of: (a) the last day of the fiscal year during which Sphere 3D has total annual gross revenues of $1.0 billion or more; (b) the last day of the fiscal year of Sphere 3D following the fifth anniversary of the date of the first sale of common equity securities of Sphere 3D pursuant to an effective registration statement under the Securities Act; (c) the date on which Sphere 3D has, during the previous three-year period, issued more than $1.0 billion in nonconvertible debt; or (d) the date on which Sphere 3D is deemed to be a 'large accelerated filer'.

For so long as Sphere 3D continues to qualify as an emerging growth company, it will be exempt from the requirement to include an auditor attestation report relating to internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act ("SOA") in its annual reports filed under the Exchange Act, even if it does not qualify as a "smaller reporting company". In addition, section 103(a)(3) of the SOA has been amended by the JOBS Act to provide that, among other things, auditors of an emerging growth company are exempt from any rules of the Public Company Accounting Oversight Board requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the registrant (auditor discussion and analysis).

Any U.S. domestic issuer that is an emerging growth company is able to avail itself of the reduced disclosure obligations regarding executive compensation in periodic reports and proxy statements, and to not present to its shareholders a nonbinding advisory vote on executive compensation, obtain approval of any golden parachute payments not previously approved, or present the relationship between executive compensation actually paid and our financial performance. As a foreign private issuer, Sphere 3D is not subject to such requirements, and will not become subject to such requirements even if we were to cease to be an emerging growth company.

Sphere 3D is and will remain through December 31, 2017, an "emerging growth company" within the meaning under the JOBS Act, and until Sphere 3D ceases to be an emerging growth company Sphere 3D may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the SOA. Investors may find our common shares less attractive because Sphere 3D relies on these exemptions. If some investors find our common shares less attractive as a result, there may be a less active trading market for our common shares and our share price may be more volatile.

We may be treated as a Passive Foreign Investment Company.

There is also an ongoing risk that Sphere 3D may be treated as a Passive Foreign Investment Company, or PFIC, for U.S. federal income tax purposes. A non-U.S. corporation generally will be considered to be a PFIC for any taxable year in which 75% or more of its gross income is passive income, or 50% or more of the average value of its assets are considered "passive assets" (generally, assets that generate passive income). This determination is highly factual, and will depend upon, among other things, Sphere 3D's market valuation and future financial performance. Sphere 3D believes that it was classified as a PFIC during the tax year ended December 31, 2013. However, based on current business plans and financial expectations, Sphere 3D expects that it will not be a PFIC for its current tax years ending December 31, 2014, 2015 and 2016, as well as current business plans and financial expectations, Sphere 3D expects that it will not be a PFIC for its current tax year ending December 31, 2017 and for the foreseeable future. If Sphere 3D were to be classified as a PFIC for any future taxable year, holders of Sphere 3D common shares who are U.S. taxpayers would be subject to adverse U.S. federal income tax consequences.

There is a possibility that, in the future, certain of our directors, officers and management could be in a position of conflict of interest.

Certain of the directors, officers and members of management of Sphere 3D may also serve as directors and/or officers of other companies. We may contract with such directors, officers, members of management and such other companies or with affiliated parties or other companies in which such directors, officers or members of management own or control. These persons may obtain compensation and other benefits in transactions relating to Sphere 3D. Consequently, there exists the possibility for such directors, officers and members of management to be in a position of conflict. Any decision made by any of such directors, officers and members of management involving Sphere 3D are being made in accordance with their duties and obligations to deal fairly and in good faith with a view to the best interests of Sphere 3D.

Future sales of common shares by directors, officers and other shareholders could adversely affect the prevailing market price for common shares.

Subject to compliance with applicable securities laws, officers, directors and other shareholders and their respective affiliates may sell some or all of their common shares in the future. No prediction can be made as to the effect, if any, such future sales will have on the market price of the common shares prevailing from time to time. However, the future sale of a substantial number of

common shares by Sphere 3D's officers, directors and other shareholders and their respective affiliates, or the perception that such sales could occur, could adversely affect prevailing market prices for the common shares.

We may issue an unlimited number of common shares. Future sales of common shares will dilute your shares.

Sphere 3D's articles permit the issuance of an unlimited number of common shares, and shareholders will have no pre-emptive rights in connection with such further issuances. The directors of Sphere 3D have the discretion to determine the price and the terms of issue of further issuances of common shares in accordance with applicable laws.

ITEM 4. INFORMATION ON THE COMPANY

A. History and Development of the Company

Sphere 3D was incorporated on May 2, 2007 under the Business Corporations Act (Ontario) as "T.B. Mining Ventures Inc." ("T.B. Mining"). Our registered office is located at 240 Matheson Blvd. East Mississauga, Ontario L4Z 1X1. In December 2012, a subsidiary of T.B. Mining acquired 100% of the operating business of Sphere 3D Inc. and the former security holders of Sphere 3D Inc. acquired control of the Company through a reverse takeover. In connection with the reverse takeover, the Company changed its name to "Sphere 3D Corporation". As such, all discussion of the history of the Company and all financial results contained in this Annual Report relate to Sphere 3D. On December 1, 2014, the Company completed the acquisition of Overland. 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.".

We have a global presence and maintain offices in multiple locations. Executive offices and our primary operations are conducted from our San Jose and San Diego, California locations. Our main office is located at 9112 Spectrum Center Blvd., San Diego, CA 92123. Our virtualization product development is primarily done from its research and development center near Toronto, Canada. Our European headquarters are in Germany. We maintain additional offices in Singapore, Japan, and the United Kingdom.

RDX® Asset Acquisition

On August 10, 2015, we completed an acquisition of assets related to the RDX® removable disk product lines from Imation Corp. ("Imation"). We issued 1,529,126 common shares with an approximate value of $6.1 million, and a warrant exercisable for 250,000 additional common shares exercisable in connection with certain purchase price adjustments under the asset purchase agreement. In February 2016, Imation exercised the warrant and we issued 250,000 common shares at $0.01.

Acquisition of Overland

On December 1, 2014, we completed our acquisition of Overland. The acquisition was carried out pursuant to the terms and conditions contained in an Agreement and Plan of Merger dated May 15, 2014 (as amended, the "merger agreement"). Under the terms of the merger agreement, Sphere 3D issued a total of 8,556,865 common shares for all the outstanding Overland shares on the basis of one Overland share for 0.46385 common shares. In addition, we issued warrants to purchase up to 1,323,897 of its common shares, options to purchase up to 168,488 common shares and 673,776 restricted share units, calculated on the basis of the exchange ratio.

This acquisition allowed us to add a complete data management and storage portfolio to its offerings. The addition of Overland provides an integrated range of technologies and services for primary, nearline, offline, and archival data storage. Data storage, management, and backup brands include SnapServer®, SnapScale®, SnapSAN®, NEO® and RDX®. Collectively, these products are designed to allow easy and cost-effective management of different tiers of information over the entire data lifecycle.

The rationale for the purchase of Overland was multifaceted, and was in part driven by the market for converged infrastructure ("CI") that is currently transforming the modern data center, coupled with current trends for hybrid cloud deployments. The portfolio of storage products is listed in greater detail under "*Products and Service*" below. In addition to providing us with a stronger intellectual property ("IP") portfolio, the acquisition of Overland enables us to capitalize on a global footprint that has been established over more than 30 years, consisting of a service and support infrastructure that would take significant financial and human resource investments to replicate, and a dedicated team of field sales agents, an extensive number of resellers and first tier

original equipment manufacturer (*"OEM"*) partners. We have now assembled a stack of technologies that allows us, through its partners, to deliver a very competitive set of end-to-end solutions with a wide array of deployment options.

During the fourth quarter of 2015, we concluded that our lower net revenue due to timing of projected growth of products and integration of channel partner relationships from the acquisition of Overland could be indicators of impairment and, therefore, performed a third party impairment analysis. At December 31, 2015, as a result of the analysis, we recorded an impairment of $10.7 million related to developed technology, channel partner relationships, and trade names.

Purchase of VDI Technology

On March 21, 2014, we acquired from V3 Systems certain Virtual Desktop Infrastructure ("VDI") technology, including V3 Desktop Cloud Orchestrator® software, which allows administrators to manage local, cloud hosted, or hybrid virtual desktop deployments, and purpose-built, compact, efficient and easy-to-manage servers. The purchase price for the acquired technology assets of V3 Systems was $14.4 million, consisting of $4.2 million in cash and the issuance of 1,089,867 of our common shares at $5.92. We purchased certain VDI technology, associated trademarks and IP, and brand name "V3®", so that we could add CI as part of our offerings. The addition of VDI technology allowed us to expand our technology capabilities and provide the intellectual property and industry knowhow for delivering hyper-converged and converged infrastructure for VDI as well as a platform for the introduction of appliances for application virtualization that incorporate our container technologies.

VDI refers to the hosting of virtualized end user desktops on servers either on or offsite. End users then access their virtual desktops over a network using various remote display protocols. End users can access their desktop from a number of different devices and locations. Since the desktops are virtual, they can be centralized and end users can access their desktops and data from multiple locations. CI refers to the consolidation of multiple information technology components, such as storage, computing, and network interface, into a single computing package that can then be optimized for specific use cases.

The V3® platform was designed to alleviate these and other barriers to VDI adoption. The V3® hyper-converged infrastructure solution includes one of the industry's first purpose-built appliances (a type of server) for desktop virtualization. Unlike other CI solutions, V3® was designed specifically for the needs of desktop virtualization. The V3® appliance combines storage, computing, network interface, virtualization software and management software to create a single box that can be quickly and easily deployed to deliver VDI. Through the V3 Desktop Cloud Orchestrator® management software for VDI, we can offer a simple user interface that adds additional functionality while reducing the total cost of ownership for VDI implementations.

Our capital expenditures, excluding acquisitions, totaled $0.2 million, $0.4 million and $0.5 million for fiscal 2016, 2015 and 2014, respectively. Our capital expenditures were primarily related to computer equipment to support product quality and development. For further information on capital expenditures, see Note 5 to our consolidated financial statements included in Item 18 of this Annual Report.

B. Business Overview

We are a virtualization technology and data management solutions provider with a portfolio of products that address the complete data continuum. We enable the integration of virtual applications, virtual desktops, and storage into workflow, and allow organizations to deploy a combination of public, private or hybrid cloud strategies. We achieve this through the sale of solutions that are derived from our primary product groups: disk systems, virtualization, and data management and storage.

We, through the design of a proprietary virtualization software, created our own platform, Glassware 2.0™ ("Glassware"), for the delivery of applications from a server-based computing architecture. This is accomplished through a number of unique approaches to virtualization utilized by Glassware including the use of software "containers" and "microvisors." A container refers to software that takes an application and all the things required to run that application and encapsulates them with software. By doing so, users can run numerous applications from a single server and on a single copy of the operating system. A microvisor refers to the technology that allows non-Windows® based applications to run on the same servers as Windows software through the use of a lightweight emulator.

Products and Service

Disk Systems

G-Series Appliance and G-Series Cloud powered by Glassware

The G-Series appliance powered by Glassware containerization technology simplifies Windows® application migration and enables access from any device including Macintosh, Windows®, iOS, Chrome OS, and Android. The G-Series appliance is optimized for simplicity, flexibility and scalability. Through Glassware, a Microsoft Windows® based container technology, organizations looking to migrate applications to the cloud can quickly deploy a complete solution for virtualizing 16-bit, 32-bit, or 64-bit applications with their native functionality intact. For the provisioning of a 16-bit application to the G-Series appliance, users will often require the skills to package the application, or can contract professional services from the Company or one of our certified system integrators. End users can access the containerized applications from any cloud connected device (iOS, Android or Windows®), through a lightweight downloadable app or simply from a browser. The G-Series appliance eliminates the complex tasks of designing, implementing, and maintaining application hosting environments and provides application session density and scale compared to traditional hypervisor-based virtualization solutions.

G-Series Cloud, is our latest product to utilize Glassware, which eliminates the complex task of designing, implementing, and maintaining application-hosting environments, and provides application session density and scale. G-Series Cloud is pre-configured and can be deployed in just minutes. It has a user interface to allow for administrators to quickly deploy applications, integrate with existing workflow and enable a mobile workforce.

Virtual Desktop Management Software

Our Desktop Cloud Orchestrator™ ("DCO") software provides a user-friendly interface for managing virtual desktop pools on Sphere 3D's V3® Hyper-Converged Appliances for virtualized desktop infrastructures, allowing desktop administrators to quickly create, move, delete and manage desktop pools without requiring extensive knowledge of a VMWare environment. DCO presents on its centralized console, the key tasks that a desktop administrator would need from the underlying system infrastructure built with VMware® View, vCenter, and vSphere. Its key features include: (i) desktop cloud infrastructure dashboard, which provides status of key attributes of the virtual environment; (ii) optimized desktop allocation, which enables pool migration across network resources; (iii) pool management, which allows simplified pool creation and management; and (iv) diagnostics, which provide information about vital performance indicators such as BIOS, processor, memory, temperature and fan status and log file downloading capabilities.

V3® Virtual Desktop Infrastructure

In 2016, we announced the general availability of the V3® distributed Virtual Desktop Infrastructure ("VDI") appliance family. With this, we introduced an approach to architecting the fundamentals of VDI to outperform desktop centric appliances as well deliver proprietary failover capabilities. We call this approach a Distributed Desktop Hyperconvergence ("DDH") architecture, and it enables simplified virtual desktop deployment and management while optimized for distributed environments.

The V3® appliance family comes pre-provisioned with our DCO software and leverages VMware's VMware vSphere® virtualization and server management software, VMware Virtual SAN™ enterprise-class shared storage solutions, and GPU technology from NVIDIA, to take aim at making VDI accessible and applicable to business and branch offices of any size. The V3® all-flash appliances start with a single appliance for VDI or use or a 3-node configuration for a Virtual SAN cluster. The V3® appliances are designed to stand alone, or extend and simplify existing VMware customer environments, and can deliver performance and capacity advantages from a single product family with one point of support.

Our DDH architecture is designed to simplify virtual desktop deployment and management for remote office branch office ("ROBO") installations, and it also reduces the cost and necessary infrastructure to support VDI. DDH reduces VDI management overhead and complexity while creating desktop resilience and decreasing branch office infrastructure. DDH is also road-mapped to use application containerization to shift the focus from storage onto end user computing.

V3® appliances with DCO provide hardware awareness with real time alerts of the state of the hardware and the ability to migrate end users, on a case by case basis, from appliance to appliance for optimal performance and availability. Utilizing proprietary resource scheduling technology enables either user defined, or administrator defined, rights that ensure workloads have dynamic access to resources. In addition, Glassware technology for containerizing commonly used applications delivers performance at a server utilization level that can reduce server sprawl. Glassware containerized applications can be delivered based on policy to the virtual desktop through a VMware™ portal.

RDX® Removable Disk Solutions

In 2015, we completed an acquisition of assets related to RDX® removable disk product lines from Imation Corp., which complemented our existing RDX® removable disk solutions. Our RDX® portfolio can use public cloud providers, including Microsoft and Amazon, as a backup target, and our SnapScale® product can be deployed as a standalone private cloud with the use of sync and share technologies for file collaboration. The removable disk solutions can be secured with cartridge encryption for additional levels of security, and is shock resistant to accommodate accidental falls from the rack, desktop, or during transport. We offer two types of RDX® media: media with hard drives inside the cartridge and media with solid-state disks inside. Hard drive RDX® media is designed to provide easy-to-use and reliable data protection, while solid-state disk RDX® media is designed for customers who are operating in environments that need extreme speed and durability in a portable storage device. RDX® removable media are available in several different capacity points, ranging from 64 gigabytes ("GB") to two terabytes ("TB") per cartridge.

- The RDX® QuikStor is a single cartridge purpose-built backup solution that combines the portability and reliability of tape-based backup with the speed and simplicity of hard disk drives in order to deliver reliable and convenient storage for backup, archive, data interchange and disaster recovery. RDX® QuikStor utilizes either hard disk drives or SSD drives, with either SATA or USB 3.0 connectivity, and provide up to three TB of data storage.
- The RDX® QuikStation™ is a network-attached removable disk purpose-built backup system designed to provide a platform for data protection and off-site disaster recovery for small and medium enterprise ("SME") environments. The RDX® QuikStation™ can appear to a host as a tape library, a virtual RDX® drive, a stand-alone tape drive, generic disk drives or a combination of disk and tape, offering users versatility and expanded compatibility.

In 2016, we launched the RDX® QuikStation™ 8. The QuikStation™ 8 is an iSCSI network-attached removable disk appliance designed to provide a flexible platform for data protection and off-site disaster recovery for physical or virtual small and medium business ("SMB") and SME environments. QuikStation™ 8 delivers high RDX® media capacity of up to eight x 3TB RDX® slots for a maximum capacity of 24TB online and unlimited offline. Appliances allow for multiple configuration options to meet today's ever-changing backup storage requirements.

In 2015, we introduced RDX® QuikStation 4, a lower-end version of the RDX® QuikStation network attached purpose-built backup system, that fit into a slimmer one rack unit space, and includes four slots for RDX+ cartridges. The RDX® QuikStation™ 4 is compatible with the previous generation RDX® cartridges. RDX® QuikStation™ 4 includes a virtual volume feature that enables the system to represent a single logical volume representation by aggregating and virtualizing the combined capacity across all four cartridges.

SnapServer® Network Attached Storage Solutions

Our SnapServer® solutions are an ideal platform for primary or nearline storage, and deliver stability and best-in-class integration with Windows®, UNIX/Linux, and Macintosh environments. For virtual servers and database applications, the SnapServer® family supports iSCSI block-level access with Microsoft VSS and VDS integration to simplify Windows® management. For data protection, the SnapServer® family offers RAID replication, and snapshots for point-in-time data recovery. The SnapServer DX Series™ products support DynamicRAID® and traditional RAID levels 0, 1, 5, 6, and 10.

- The SnapServer® XSR40 is a 1U server that can be configured with up to four SATA II drives, and can scale to 320 TB of storage capacity by adding SnapExpansion enclosures.
- The SnapServer® XSR120 is a 2U server that can be configured with up to 12 SATA II drives, and can scale to 768 TB of storage capacity by adding up to seven SnapExpansion enclosures.

The Snap family of products, SnapCLOUD™, SnapScale® and SnapServer®, have integrated data mobility tools to enable customers to build private clouds for sharing and synchronizing data for anytime, anywhere access.

Our GuardianOS® storage software is designed for the SnapServer® family of enterprise-grade network attached storage ("NAS") systems and delivers simplified data management and consolidation throughout distributed information technology environments by combining cross-platform file sharing with block-level data access on a single system. The flexibility and scalability of GuardianOS® reduces the total cost of ownership of storage infrastructures for small and medium businesses to large Fortune 500 enterprises. In addition to a unified storage architecture, GuardianOS® offers highly differentiated data integrity and storage scalability through features such as DynamicRAID®, centralized storage management, and a comprehensive suite of data protection tools.

Our Snap Enterprise Data Replicator® ("Snap EDR") provides multi-directional, WAN-optimized replication for SnapServer® and SnapScale® systems. With Snap EDR, administrators can automatically replicate data between multiple SnapServer® systems for data distribution, data consolidation, and disaster recovery.

During 2016, we announced the enhancement of our widely deployed Snap family of on-premise and Cloud storage products with encrypted continuous replication ("ECR"). Snap ECR™ provides business continuity to SMBs and enterprises with near-zero data loss in the event of an information technology failure. Snap ECR™ is a highly secure, continuous replication solution that replicates only changed data at wire speed, thereby providing bandwidth savings, and ensuring that data is protected even during peak usage hours. Moreover, it provides secure and encrypted data transmission across the network, therefore eliminating the need for a VPN.

SnapScale® Clustered Network Attached Storage Solutions

Our SnapScale X2® and SnapScale X4™ products are clustered NAS solutions that enable organizations with rapid or unpredictable data growth to scale capacity and performance without adding management complexity. SnapScale® eliminates islands of storage, which enables scaling without having to predict capacity in advance. SnapScale® writes data across multiple nodes and drives simultaneously for instant protection and high availability. SnapScale® uses peer-set protection technology which delivers protection against multiple disk failures while enabling faster rebuild of data once the failed disks are replaced. Our SnapScale® products are designed for high performance, high scalability, and are suited for the storage of large amounts of unstructured data.

- The SnapScale X2® is a 2U rackmount, which can be configured with up to 12 Nearline SAS hard drives for a maximum capacity of 96 TB per node, and can scale out to over 512 petabytes ("PB") with two-way or three-way redundancy.
- The SnapScale X4™ is a high-density 4U rackmount, which can be configured with up to 36 Nearline SAS hard drives for a maximum capacity of 288 TB per node, and can scale out to over 512 PB with two-way or three-way redundancy.

Tape Automation Systems

NEO® Tape-Based Backup and Long-Term Archive Solutions

Our NEO Series® Tape Libraries, Tape Autoloaders, stand-alone tape drives and LTFS solutions are designed for both small and medium businesses looking for simple, cost-effective long-term data protection, as well as for complex enterprises faced with the demands of "big data" storage applications. Regardless of the size or type of environment, information technology managers continue to recognize the efficiency and value tape-based solutions provide for long-term data storage. NEO Series® tape solutions are designed to utilize the latest linear tape-open ("LTO") technologies, and can accommodate as many as 42 tape drives and up to 1,000 cartridges for maximum efficiency and data protection.

October 2016, we announced our new NEO Agility LTFS Archive Management solution. NEO Agility provides the convenience of disk-like drag and drop file access, providing users with easy, rapid access to large amounts of data. While the data appears to be stored on the disk contained in the NEO Agility appliance, it is actually stored on a NEO tape library. This provides a higher-capacity, cost-effective storage solution while still providing the ease of data access associated with disk technology. NEO Agility is currently available in three configurations; NEO Agility 48 (optimized for storing data on our NEOs T48 tape

library), NEO Agility 80 (optimized for storing data on our NEOxl80 tape library) and NEO Agility 160 (optimized for storing data on our NEO 8000e tape library). NEO Agility is also compatible with our NEOs StorageLoader and NEOs T24 tape libraries, as well as tape libraries manufactured by other vendors.

- NEO® XL-Series libraries are designed for mid-range and enterprise businesses, providing automated backup and archive that combines flexibility, density, high-performance and affordability to ensure that data is protected faster and more cost effectively. NEO ® XL-Series tape libraries provide data storage capacity that ranges from 90 TB to 8.4 PB, enabling customers to expand their storage capability as their storage requirements changes. NEO® XL-Series significantly reduces backup windows and improves efficiency with high-performance data transfer rates that range from 504 GB per hour to over 114 TB per hour. The NEOxl 80 supports up to 80 cartridges (with capacity ranging from 120 TB to 1.2 PB) and six tape drives (for data transfer rates ranging from 504 GB per hour to 8.6 TB per hour) per module. Up to six 80-cartridge per six-drive NEOxl Expansion Modules can be added to provide a total of 560 cartridges (with capacity of 8.4 PB) and 42 tape drives (for data transfer rates of 114 TB per hour).
- NEO® S-Series libraries provide affordable tape backup and archive for small and medium businesses. NEO® S-Series libraries are available in compact rack-mount configurations with either SAS or FC connectivity. The NEOs StorageLoader is a 1U, eight-cartridge, single-drive autoloader that provides up to 120 TB of storage capacity. The NEOs T24 is a 2U tape library that supports up to 24 cartridge slots and two tape drives, and delivers up to 360 TB of storage capacity. The NEOs T48 is a 4U tape library that supports up to 48 cartridge slots and four tape drives, with a maximum storage capacity of 720 TB.
- NEO® E-Series provides scalable, high capacity, enterprise-class tape automation designed for large businesses. NEO® E-Series provides enterprise-level RAS (reliability, availability and serviceability) features, such as robotic and power redundancy, partitioning and scalability, to ensure corporate data is reliably protected. The NEO® 8000e is a 42U tape library that supports up to 500 cartridge slots (up to 7.5 PB) and 12 tape drives (up to 32.4 TB per hour) in a single module. For truly enterprise-class storage requirements, the NEO® 8000e is scalable up to 1,000 cartridge slots (15 PB) and 24 tape drives (64 TB per hour).

Tape Drives and Media

In addition to our tape automation solutions, we provide stand-alone LTO tape drives and LTO media products.

- Stand-alone LTO tape drives provide low-cost, compact affordable backup and archive abilities. Available either as internal drives to be integrated into server-based bundles or as eternal drives for desktop use, stand-alone tape drives deliver storage capacities ranging from 1.5 TB to 15 TB.
- LTO media (data cartridges and cleaning cartridges) allows our customers to purchase the media for their tape drives and libraries at the same time they purchase their NEO Series® solution, providing the ability to have their NEO Series® solution fully operational upon installation. With four generations of LTO tape media (LTO 4, 5, 6, and 7) in our portfolio, native capacities range from 800 GB per cartridge to 6 TB per cartridge.

Service

Customer service and support are key elements of our strategy and critical components of our commitment to making enterprise-class support and services available to companies of all sizes. Our technical support staff is trained to assist our customers with deployment and compatibility for any combination of virtual desktop infrastructures, hardware platforms, operating systems and backup, data interchange and storage management software. Our application engineers assist with more complex customer issues. We maintain global toll-free service and support phone lines and we also provide self-service and support through our website support portal and email.

Our service offerings provide for on-site service and installation options, round-the-clock phone access to solution experts, and proof of concept and architectural design offerings. We are able to provide comprehensive technical assistance on a global scale.

Net Revenue by Category and Geographic Market

We divide our worldwide sales into three geographical regions:

- Americas, consisting of the U.S., Canada and Latin America;
- EMEA, consisting of Europe, the Middle East and Africa; and
- APAC, consisting of Asia Pacific countries.

The following table summarizes sales mix by product (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Disk systems	$ 46,795	$ 39,836	$ 8,518
Tape automation systems	10,297	12,764	1,868
Tape drives and media	10,973	12,914	1,815
Service	8,328	10,651	1,268
	$ 76,393	$ 76,165	$ 13,469

The following table summarizes net revenue by geographical region (in thousands):

	Year Ended December 31,		
	2016	2015	2014
EMEA	$ 39,719	$ 39,331	$ 7,172
Americas	23,043	25,284	4,749
APAC	13,631	11,550	1,548
	$ 76,393	$ 76,165	$ 13,469

Seasonality

Since a large portion of our sales is generated by our European channel, our third quarter (July through September) results of operations have been in the past and may continue to be impacted by seasonally slow European orders, reflecting the summer holiday period in Europe.

Production

A significant number of our components and finished products are manufactured or assembled, in whole or in part, by a limited number of third parties. For certain products, we control the design process internally and then outsource the manufacturing and assembly in order to achieve lower production costs. For certain RDX® product and SnapServer® products, we perform product assembly, integration and testing at our manufacturing facilities in Guangzhou, China.

We purchase disk drives, tape drives, chassis, printed circuit boards, integrated circuits, and other major components from outside suppliers. We carefully select suppliers based on their ability to provide quality parts and components which meet technical specifications and volume requirements. We actively monitor these suppliers but we are subject to substantial risks associated with the performance of our suppliers. For certain components, we qualify only a single source, which magnifies the risk of shortages and may decreases our ability to negotiate with that supplier. For a more detailed description of risks related to suppliers, see “Risk Factors”.

Sales and Distribution

For 2016, our solution-focused product offerings were aimed at SMEs, SMBs, as well as large distributed enterprises. We primarily sell our products through its worldwide distributor and reseller network. A significant portion of our net revenue is derived from a limited number of customers. In 2016, 2015 and 2014, the percentage of net revenue that was derived from our top five customers was 32.5%, 35.1% and 34.7%, respectively.

All of our products and services are designed and manufactured to address customers' requirements and reliability standards. The following provides additional detail on our channels:

- ***Distribution channel*** — Our primary distribution partners in North America include Promark Technology, Inc., Ingram Micro Inc., Tech Data Corporation, and Synnex Corporation. We have over 50 distribution partners throughout Europe and Asia. We sell through a two-tier distribution model where distributors sell our products to system integrators, VARs or DMRs, who in turn sell to end users. We support these distribution partners through our dedicated field sales force and field engineers. In 2016, no distribution partner accounted for more than 10% of net revenue.

- ***Reseller channel*** — Our worldwide reseller channel includes systems integrators, VARs and DMRs. Our resellers may package our products as part of complete application and desktop virtualization solutions data processing systems or with other storage devices to deliver complete enterprise information technology infrastructure solutions. Our resellers also recommend our products as replacement solutions when systems are upgraded, or bundle our products with storage management software specific to the end user's system. We support the reseller channel through its dedicated field sales representatives, field engineers and technical support organizations.

- ***Cloud Marketplace*** — In 2015, we added Microsoft Azure Cloud Marketplace as an additional channel for two of our cloud solutions to sell to end-users directly as well as to our traditional channel partners. With the pay per use model, supported through the Microsoft Azure Cloud, our customers now can accelerate their adoption of cloud based application and data delivery.

Intellectual Property

We rely on a combination of patents, trademarks, trade secret and copyright laws, as well as contractual restrictions, to protect the proprietary aspects of our products and services. Although every effort is made to protect Sphere 3D's intellectual property, these legal protections may only afford limited protection.

We may continue to file for patents regarding various aspects of our products, services and delivery method at a later date depending on the costs and timing associated with such filings. We may make investments to further strengthen our copyright protection going forward, although no assurances can be given that it will be successful in such patent and trademark protection endeavors. We seek to limit disclosure of our intellectual property by requiring employees, consultants, and partners with access to our proprietary information to execute confidentiality agreements and non-competition agreements (when applicable) and by restricting access to our proprietary information. Due to rapid technological change, we believe that establishing and maintaining an industry and technology advantage in factors such as the expertise and technological and creative skills of our personnel, as well as new services and enhancements to our existing services, are more important to our company's business and profitability than other available legal protections.

Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our services or to obtain and use information that we regard as proprietary. The laws of many countries do not protect proprietary rights to the same extent as the laws of the U.S. or Canada. Litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets, to determine the validity and scope of the proprietary rights of others or to defend against claims of infringement. Any such litigation could result in substantial costs and diversion of resources and could have a material adverse effect on our business, operating results and financial condition. There can be no assurance that our means of protecting our proprietary rights will be adequate or that our competitors will not independently develop similar services or products. Any failure by us to adequately protect our intellectual property could have a material adverse effect on our business, operating results and financial condition. See "Risks Related to Intellectual Property" under the heading "Risk Factors".

Competitive Conditions

We believe that our products are unique and innovative and afford us various advantages in the market place; however, the market for information technology is highly competitive. Competitors vary in size from small start-ups to large multi-national corporations which may have substantially greater financial, research and development, and marketing resources. Competitive factors in these markets include performance, functionality, scalability, availability, interoperability, connectivity, time to market enhancements, and total cost of ownership. Barriers to entry vary from low, such as those in traditional disk-based backup products, to high, in tape automation and virtualization software. The markets for all of our products are characterized by price competition and as such we may face price pressure for our products. For a more detailed description of competitive and other risks related to our business, see "Risk Factors."

Governmental Regulations

The Company is subject to laws and regulations enforced by various regulatory agencies such as the U.S. Consumer Product Safety Commission and the U.S. Environmental Protection Agency. For a detailed description of the material effects of government regulations on the Company's business, see "Our international operations are important to our business and involve unique risks related to financial, political, and economic conditions" and "We are subject to laws, regulations and similar requirements, changes to which may adversely affect our business and operations" in the section of the Annual Report entitled Risk Factors—Risks Related to Our Business.

C. Organizational Structure

The following sets forth the Company's direct and indirect wholly-owned subsidiaries at December 31, 2016.

Name of subsidiary	Jurisdiction of Incorporation or Organization
Sphere 3D Inc.	Ontario, Canada
V3 Systems Holdings, Inc.	Delaware, United States
Overland Storage, Inc.	California, United States
Overland Storage (Europe), Ltd.	United Kingdom
Overland Storage S.a.r.L.	France
Overland Storage GmbH	Germany
Overland Technologies Luxembourg S.a.r.L.	Luxembourg
Tandberg Data Holdings S.a.r.L.	Luxembourg
Tandberg Data SAS	France
Tandberg Data (Asia) Pte., Ltd.	Singapore
Tandberg Data (Japan), Inc.	Japan
Tandberg Data (Hong Kong), Ltd.	Hong Kong
Tandberg Data GmbH	Germany
Tandberg Data Norge AS	Norway
Guangzhou Tandberg Electronic Components Co. Ltd.	China

D. Property, Plant and Equipment

- We lease an 86,900 square foot facility in Guangzhou, China. This lease expires in July 2019. This facility houses manufacturing of the majority of our RDX product and repair services.
- We own a 25,600 square foot facility in Dortmund, Germany. This facility houses sales and marketing, repair services, technical support, and administrative functions.
- We lease a 20,515 square foot facility in a light industrial complex in San Diego, California. The lease expires in March 2020. This facility houses repair services, research and development, technical support, and administrative functions.
- We lease a 20,777 square foot facility in San Jose, California. In March 2017, the lease was amended to 10,282 square feet and expires in October 2022. The San Jose facility houses research and development, technical support, sales and marketing, and administrative functions.

We also lease additional smaller sales offices and research and development facilities throughout the U.S. and internationally.

ITEM 4A. UNRESOLVED STAFF COMMENTS

None.

ITEM 5. OPERATING AND FINANCIAL REVIEW AND PROSPECTS

A. Operating Results

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

	Year Ended December 31,		
	2016	2015	2014
Net revenue	100.0 %	100.0 %	100.0 %
Cost of revenue	70.8	70.3	60.4
Gross profit	29.2	29.7	39.6
Operating expenses:			
Sales and marketing	29.1	30.9	38.3
Research and development	11.5	13.0	4.9
General and administrative	27.1	30.6	85.9
Impairment of goodwill and acquired intangible assets	45.0	14.1	—
	112.7	88.6	129.1
Loss from operations	(83.5)	(58.9)	(89.5)
Interest expense	(6.7)	(4.1)	(3.3)
Other expense, net	1.7	(0.9)	(1.4)
Loss before income taxes	(88.5)	(63.9)	(94.2)
(Benefit from) provision for income taxes	1.1	(1.8)	0.3
Net loss	(89.6)%	(62.1)%	(94.5)%

A summary of the sales mix by product follows:

	Year Ended December 31,				
	2016	Change	2015	Change	2014
Disk systems	$ 46,795	17.5 %	$ 39,836	367.7%	$ 8,518
Tape automation systems	10,297	(19.3)%	12,764	583.3%	1,868
Tape drives and media	10,973	(15.0)%	12,914	611.5%	1,815
Service	8,328	(21.8)%	10,651	740.0%	1,268
Total	$ 76,393	0.3 %	$ 76,165	465.5%	$ 13,469

We divide our worldwide sales into three geographical regions: Americas, consisting of the U.S., Canada and Latin America; EMEA, consisting of Europe, the Middle East and Africa; and APAC, consisting of Asia Pacific countries.

The following table summarizes net revenue by geographic area (in thousands):

	Year Ended December 31,				
	2016	Change	2015	Change	2014
EMEA	$ 39,719	1.0 %	$ 39,331	448.4%	$ 7,172
Americas	23,043	(8.9)%	25,284	432.4%	4,749
APAC	13,631	18.0 %	11,550	646.1%	1,548
Total	$ 76,393	0.3 %	$ 76,165	465.5%	$ 13,469

Results of Operations – Comparison of Years Ended December 31, 2016, 2015 and 2014

In December 2014, we completed our acquisition of Overland, which added approximately 470 employees to our workforce and a wide variety of data protection products to our product mix. As such, overall increases from 2015 compared to 2014 are primarily from our Overland acquisition.

Net Revenue

We had revenue of $76.4 million during 2016 compared to $76.2 million during 2015. The slight increase in net revenue is an increase in product revenue of $2.5 million primarily due to an increase in sales units for disk systems, offset by a decrease in service revenue of $2.3 million primarily due to the decrease in tape automation product sales, which resulted in a decrease in sales of extended service contracts.

We had revenue of $76.2 million during 2015 compared to $13.5 million during 2014. The increase in net revenue is a result of our acquisition of Overland in December 2014, which contributed significant product offerings in 2015. In addition, in August 2015, we completed an acquisition of Imation's RDX® product line which accounted for 6.0% of net revenue in 2015. During 2014, we had $0.8 million of revenue that was earned from our related agreements with Overland.

Original equipment manufacturer ("OEM") net revenue accounted for 18.5%, 16.9% and 11.1% of net revenue during the years ended 2016, 2015 and 2014, respectively.

Product Revenue

Net product revenue increased to $68.1 million during 2016 from $65.5 million during 2015, an increase of $2.6 million. Revenue from disk systems increased by $7.0 million primarily related to additions of net product revenue from the RDX® product line acquired from Imation in August 2015, partially offset by a $4.4 million decrease in tape automation, and tape drives and media revenue related to lower tape sales volume.

Net product revenue increased to $65.5 million during 2015 from $12.2 million during 2014. The increase of approximately $53.3 million resulted from our product offerings from our acquisition of Overland in December 2014 and $4.5 million from our RDX® product line which we acquired in August 2015.

Service Revenue

Net service revenue decreased to $8.3 million during 2016 from $10.7 million during 2015. The decrease of approximately $2.4 million was primarily due to the decrease in tape automation product sales which resulted in a decrease in sales of extended service contracts.

Net service revenue increased to $10.7 million during 2015 from $1.3 million during 2014. The increase of approximately $9.4 million was primarily due to service revenue generated by Overland which was acquired in December 2014.

Gross Profit

	2016	Change	2015	Change	2014
Gross profit	$ 22,339	(1.2)%	$ 22,619	323.9 %	$ 5,336
Gross margin	29.2%	(0.5) pt	29.7%	(9.9) pt	39.6%
Gross profit - product	$ 17,631	5.6 %	$ 16,689	257.7 %	$ 4,665
Gross margin - product	25.9%	0.4 pt	25.5%	(12.7) pt	38.2%
Gross profit - service	$ 4,708	(20.6)%	$ 5,930	783.8 %	$ 671
Gross margin - service	56.5%	0.8 pt	55.7%	2.8 pt	52.9%

In 2016, gross profit for service revenue decreased due to lower sales of extended service contracts primarily related to decreased tape automation product sales during the year.

In 2015, gross profit increased compared to 2014 due to sales volumes related to our acquisition of Overland in December 2014 and the RDX® product line which we acquired in August 2015. Gross margin for 2015 decreased compared 2014 due to our transition to a company with worldwide operations and a significant increase in product sales as a result of our acquisition of Overland in December 2014. Gross margin on service revenue increased due to higher margin service contracts we assumed in connection with our acquisition of Overland in December 2014.

Operating Expenses

Sales and Marketing Expense

Sales and marketing expenses were $22.2 million, $23.6 million and $5.2 million for the years ended December 31, 2016, 2015 and 2014, respectively. The 2016 decrease of $1.4 million was primarily due to a decrease of $1.3 million in employee and related expenses associated with a lower average headcount and a $0.3 million decrease in share-based compensation, offset by a $0.3 million increase in outside contractor fees.

In 2015, the increase of $18.4 million was primarily due to an increase related to our acquisition of Overland in December 2014, which led to a $14.4 million increase in employee and related expenses associated with a higher average headcount, a $1.5 million increase in outside contractor fees, and a $2.0 million increase in share-based compensation.

Research and Development Expense

Research and development expenses were $8.8 million, $9.9 million and $0.7 million for the years ended December 31, 2016, 2015 and 2014, respectively. The 2016 decrease of $1.1 million was primarily due to a decrease of $1.5 million in employee and related expenses associated with a decrease in average headcount and a decrease of $0.3 million in outside contractor fees and development costs, offset by a $0.7 million increase in share-based compensation.

In 2015, the increase of $9.2 million was primarily due to an increase of $6.3 million in employee and related expenses associated with an increase in average headcount from our acquisition of Overland in December 2014, a $0.7 million increase in share-based compensation, and a $0.4 million increase in outside contractor fees and development costs. During 2015 and 2014, we capitalized $0.1 million and $1.8 million, respectively, of development costs, which were primarily made up of employee and related costs, development supplies, and share-based compensation.

General and Administrative Expense

General and administrative expenses were $20.7 million, $23.3 million and $11.6 million for the years ended December 31, 2016, 2015 and 2014, respectively. The 2016 decrease of $2.6 million was primarily due to: (i) an $0.8 million decrease in bad debt expense; (ii) a $0.7 million decrease in amortization expense related to intangible assets; (iii) a $0.7 million decrease in legal and advisory expenses primarily related to transactional matters and litigation; (iv) a $0.4 million decrease in auditor and tax professionals' fees; (v) a $0.4 million decrease in outside contractor fees; (vi) a $0.4 million decrease in employee related expenses associated with a decrease in average headcount; and (vii) a $0.3 million decrease in public reporting expenses. These decreases were offset by a $1.4 million increase in share-based compensation.

In 2015, the increase of $11.7 million was primarily due to: (i) a $3.4 million increase in employee related expenses associated with an increase in average headcount related to our acquisition of Overland in December 2014; (ii) a $1.9 million increase in outside contractor fees; (iii) a $1.6 million increase in auditor and tax professionals' fees primarily as a result of our expanded business operations caused by our acquisition of Overland in December 2014; (iv) a $1.6 million increase in bad debt expense; (v) an $0.8 million increase in amortization expense related to intangible assets; (vi) an $0.8 million increase in public reporting expenses including public relations; and (vii) a $0.7 million increase in share-based compensation, and (viii) a $0.6 million increase in legal and advisory expenses primarily related to transactional matters and litigation.

Impairment of Acquired Intangible Assets

Impairment of acquired intangible assets were $34.4 million, $10.7 million and zero for the years ended December 31, 2016, 2015 and 2014, respectively. During the third quarter of 2016, we concluded that our declining market capitalization could be an indicator of impairment and, therefore, had a third party impairment analysis performed. As a result of the analysis, we recorded an impairment of $33.2 million related to goodwill and an impairment of $1.2 million related to indefinite-lived trade names. During the fourth quarter of 2015, we concluded that our lower net revenue due to timing of projected growth of products and integration of channel partner relationships from the acquisition of Overland could be indicators of impairment and, therefore, performed a third party impairment analysis. At December 31, 2015, as a result of the analysis, we recorded an impairment of $10.7 million of which $1.7 million related to developed technology, $4.1 million related to channel partner relationships, and $4.9 million related to trade names.

Non-Operating Expenses

Interest Expense

Interest expense was $5.1 million, $3.1 million and $0.4 million for the years ended December 31, 2016, 2015 and 2014, respectively. In 2016, the increase is related to an increase in outstanding debt of $7.1 million compared to the same period in the prior year. In addition, in April 2016, the Company paid in full its prior year outstanding credit facilities and expensed the remaining $0.7 million of related capitalized debt costs. In 2015, the increase is related to interest expense for the $19.5 million convertible note with affiliates of Cyrus Capital Partners, a related party, and the $17.4 million outstanding on our credit facilities, $10.0 million of which was payable to affiliates of Cyrus Capital Partners.

Other Income (Expense), Net.

Other income (expense), net, in 2016 was $1.3 million of other income, net, compared to $0.7 million and $0.2 million in 2015 and 2014, respectively, of other expense, net. In 2016, other income, net, was primarily related to revaluation of warrants. In 2015, other expense, net, was primarily related to realized foreign currency losses of $1.7 million, offset by other income of $1.0 million which included $0.5 million for revaluation of warrants.

Income Tax

Income tax provision was $0.8 million for the year ended December 31, 2016, which primarily related to deferred foreign tax expense offset by a reduction in the deferred tax liabilities for the $1.2 million impairment on intangible assets recognized in 2016. Income tax benefit was $1.4 million for the year ended December 31, 2015, which primarily related to the deferred tax liabilities for the $10.7 million impairment on intangible assets recognized in 2015. In 2014, we had a minimal income tax provision related to foreign tax provisions.

Foreign Currency Risk

We conduct business on a global basis and a significant portion of our sales in international markets are not denominated in U.S. dollars. Our wholly-owned foreign subsidiaries incur costs that are denominated in local currencies. As exchange rates vary, these results may vary from expectations when translated into U.S. dollars, which could adversely impact overall expected results. The effect of exchange rate fluctuations on our results of operations resulted in a minimal loss in 2016, and a loss of $1.7 million and $0.2 million for the years ended December 31, 2015 and 2014, respectively.

B. Liquidity and Capital Resources

In 2016, we experienced a significant decline in the market value of our common shares, and we incurred a net loss of $68.5 million.

At December 31, 2016, we had cash of $5.1 million compared to cash of $8.7 million at December 31, 2015. Our primary source of cash flow is generated from sales of our disk and tape automation systems. Cash management and preservation continue to be a top priority. We expect to incur negative operating cash flows as we increase our sales volume, and as we work to improve operational efficiencies.

On March 24, 2017, we entered into a securities purchase agreement ("SPA") with certain investors party thereto (the "Investors"), pursuant to which we issued to the Investors, in the aggregate, 20,454,546 of our common shares for gross proceeds of $4.5 million. The purchase price for one common share was $0.22. The SPA also provided for the concurrent private placement of warrants exercisable to purchase up to 20,454,546 common shares. Each warrant has an initial exercise price of $0.30 per warrant share. The warrants are exercisable for cash immediately or on a cashless basis commencing on a date which is the earlier of (i) six months from the date of the effective date of the offering or (ii) the date on which we fail to fulfill our obligations to register the common shares underlying the warrants under the registration rights agreements and expiring on a date which is no more than five years from the date of the effective date of the offering. If at any time while the Warrants are outstanding, we sell or grant options to purchase, reprice or otherwise issue any common shares or securities convertible into common shares at a price less than $0.30, then the exercise price for the warrants will be reduced to such price, subject to certain limitations.

Between December 2016 and March 16, 2017, we completed a private placement and issued a total of 18,139,998 "Units" at a purchase price of $0.30 per Unit. Each Unit consisted of one common share and one warrant from each of two series of warrants, as described below. We received gross proceeds of $5.4 million in connection with the sale of the Units.

The first series of warrants is exercisable to purchase 18,139,998 common shares in the aggregate and has an exercise price of $0.40 per share, a one-year term, and is exercisable in whole or in part at any time prior to expiration. The second series of warrants is exercisable for 18,139,998 common shares in the aggregate and has an exercise price of $0.55 per share, a five-year term, and is exercisable in whole or in part at any time prior to expiration.

Management has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond June 30, 2017 if we are unable to amend or refinance our credit facility with Opus Bank. As a result, we expect to need to refinance the short term portions of our existing debt and/or continue to raise additional debt, equity or equity-linked financing in the near future, but such financing may not be available on favorable terms on a timely basis or at all. Significant changes from our current forecasts, including but not limited to: (i) failure to comply with the financial covenants in our credit facility; (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 gain compliance with the minimum bid price requirement of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital market could have a material adverse impact on our ability to access the level of funding necessary to continue our operations at current levels. If any of these events occurs or we are unable to generate sufficient cash from operations or financing sources, we may be forced to make further reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

As a result of our recurring losses from operations and negative cash flows, the report from our independent registered public accounting firm regarding our consolidated financial statements for the year ended December 31, 2016 includes an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern.

As of December 31, 2016, our outstanding debt balance was as follows (in thousands):

	Maturity Date	Interest Rate	Amount Outstanding
Term loan, net of unamortized debt discount of $0.9 million	3/31/2017	Prime + 2.75%	$ 9,100
Revolving loan	3/31/2017	Prime + 2.75%	$ 8,195
Term loan - related party	1/31/2018	20.0%	$ 2,500
Convertible notes - related party, net of unamortized debt discount of $0.3 million	3/31/2018	8.0%	$ 24,200

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

On March 12, 2017, the Company and Opus Bank entered into an Amendment Number Two to Credit Agreement, Amendment Number One to Amendment Number 1, Waiver and Reaffirmation (the "Second Amendment"). On March 22, 2017, the Company and Opus Bank entered into an Amendment Number Three to Credit Agreement, further amending the Second Amendment. Under the terms of the Second Amendment, as modified by the Third Amendment, (i) the maturity date for the revolving and term loan credit facilities were amended to be the earlier of (a) the maturity date in the Debenture or (b) June 30, 2017 if the Maturity Extension Trigger Date occurs on or before March 31, 2017, (ii) the Lender granted a waiver of specified defaults under the Credit Agreement relating to obligations to deliver to the Lender an executed letter of intent with respect to refinancing the credit facility, and (iii) certain other terms of the Credit Agreement were amended, including but not limited to terms related to collateral coverage, milestone deliverables, and financial covenants. We met the requirements of the Maturity Extension Trigger Date on March 29, 2017. In the event of certain specified events of default, including failure to meet certain monthly revenue and EBITDA targets, to enter into a term sheet with a new lender by April 28, 2017, or to enter into a letter of intent with respect to a financing or retain a financial advisor with respect to a sale of a significant portion of the Company's assets, all amounts under the Credit Agreement may be accelerated and become immediately payable.

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

	2016	2015	2014
Net cash used in operating activities	$ (17,473)	$ (23,157)	$ (8,545)
Net cash used in investing activities	$ (237)	$ (583)	$ (8,937)
Net cash provided by financing activities	$ 14,123	$ 28,298	$ 16,513

The use of cash during 2016 was primarily a result of our net loss of $68.5 million offset by $51.5 million in non-cash items, which included a $34.4 million impairment to goodwill and acquired intangible assets, share-based compensation, depreciation and amortization, provision for losses on accounts receivable, amortization of debt issuance costs, loss on extinguishment of debt, deferred tax provision, and fair value adjustment of warrants.

During 2016, capital expenditures totaled $0.2 million. Such expenditures were primarily associated with computer equipment to support product quality. During 2015, capital expenditures totaled $0.4 million. Such expenditures were primarily associated with computer equipment to support product quality. During 2015, we capitalized $0.1 million of development costs as intangible assets. In 2014, we loaned $5.3 million, net, to Overland, capitalized $1.5 million of development costs as intangible assets, purchased $0.5 million of fixed assets primarily associated with computer equipment to support product development, and purchased $4.0 million of intangible assets related to developed technology. These were offset by $2.3 million of cash assumed from our acquisition completed in December 2014.

During 2016, we received $8.3 million from net proceeds of debt issuance, of which $2.5 million was related to net payments to the holders of our related party debt; $2.1 million was from the issuance of common shares for equity financings; and $3.7 million was from the exercise of warrants. During 2015, we received $14.5 million net, from the issuance of common shares for equity financings, $10.0 million from draws on our related party credit facility, $2.5 million from draws on our credit facility, and $1.3 million from the exercise of warrants. During 2014, we received $8.5 million net, from the issuance of common shares, $5.0 million from a note payable with a related party, and $2.7 million from the exercise of warrants.

C. Research and Development, Patents and Licenses, etc.

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, localization costs incurred to translate software for international markets, and the amortization of purchased software code and services content. Such costs related to software development are included in research and development expense until the point that technological feasibility is reached, which for our software products, is generally shortly before the products are released to manufacturing. Once technological feasibility is reached, such costs are capitalized and amortized to cost of revenue over the estimated lives of the products.

D. Trend Information

The Company has experienced relatively stable demand but increasing price pressures in tape automation systems and tape drives. Tape media continues fluctuates based upon the timing of opportunities and cost of the product. The Company continues to see growth in volume in disk systems, which includes RDX®, SnapServer®, SnapScale® along with the virtualization offerings. Production has increased with sales of disk based products and associated inventory levels have remained relatively stable.

For additional discussion of the trends that affect the Company's business and financial condition and results of operations, see "History and Development of the Company," "Operating Results," "Risk Factors" and "Liquidity and Capital Resources."

E. Off-Balance Sheet Information

During the ordinary course of business, we provide standby letters of credit to third parties as required for certain transactions initiated by us. As of December 31, 2016, we had $0.4 million in standby letters of credit that were not recorded on our consolidated balance sheets.

F. Tabular Disclosure of Contractual Obligations

The following schedule summarizes our contractual obligations to make future payments at December 31, 2016 (in thousands):

Contractual Obligations	Total	Less than 1 year	1-3 years	3-5 years	After 5 years
Long-term debt — related party, including interest[1]	$ 29,738	$ 4,559	$ 25,179	$ —	$ —
Credit facility and term note, including interest[1]	18,491	18,491	—	—	—
Operating lease obligations[2]	3,272	1,331	1,718	223	—
Purchase obligations[3]	2,208	2,208	—	—	—
Total contractual obligations	$ 53,709	$ 26,589	$ 26,897	$ 223	$ —
Other commercial commitments:					
Letters of credit	$ 400	$ 400	$ —	$ —	$ —

(1) Interest payments have been calculated using the amortization profile of the debt outstanding at December 31, 2016, taking into account the fixed rate paid at year end.

(2) Represents contractual lease obligations under non-cancelable operating leases.

(3) Represents purchase orders for inventory and non-inventory items entered into prior to December 31, 2016, with purchase dates extending beyond January 1, 2017. Some of these purchase obligations may be canceled.

G. Safe Harbor

See "*Forward-Looking Information*".

ITEM 6. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

A. Directors and Senior Management

The following table sets forth information with respect to each of the directors and officers of the Company.

Name	Age	Director Since		Position with Sphere 3D
Peter Ashkin[1][2][3][4]	65	January 16, 2012	(6)	Director
Mario Biasini[7]	56	October 21, 2009	(6)	Director
Daniel Bordessa[8]	43	December 1, 2014		Director
Glenn M. Bowman[1][2][3][4]	59	January 16, 2012	(6)	Director
Eric L. Kelly	58	July 15, 2013		Chief Executive Officer, Chairman and Director
Vivekanand Mahadevan[1][3][4][5]	63	December 1, 2014		Director
Peter Tassiopoulos	48	March 7, 2014		President, Vice Chairman and Director
Kurt L. Kalbfleisch	51	N/A		Senior Vice President and Chief Financial Officer
Randall T. Gast	55	N/A		Senior Vice President and Chief Operating Officer
Jenny C. Yeh	42	N/A		Vice President, Legal and General Counsel

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(1) Independent director. See “Audit Committee - Audit Committee Composition”.

(2) Member of Audit Committee.

(3) Member of Compensation Committee.

(4) Member of the Nominating and Governance Committee.

(5) Mr. Mahadevan was appointed to the Audit Committee effective December 20, 2016.

(6) Includes period as Director of the predecessor company, Sphere 3D Inc.

(7) Mr. Biasini resigned as a Director of the Company on May 11, 2016.

(8) Mr. Bordessa resigned as a Director of the Company on December 22, 2016.

Peter Ashkin, Director

Mr. Ashkin member of the Board and also serves as the Chairman of its Compensation Committee. Mr. Ashkin has been a Managing Partner of Baker, Cook and Constable LLC, a venture capital firm that focuses on investing in, and operating high-tech start-up companies since March 2012 and President of Peter Ashkin Consulting, a consulting agency that focuses on high-tech start-up companies since 2006. Previously, Mr. Ashkin served as President of the Technology Group for CanWest Mediaworks (2004 - 2006), at that time, Canada’s largest media company, with multiple locations across Canada consisting of newspapers, broadcast television and cable. Prior to CanWest, Mr. Ashkin served as President of Product Strategy for AOL (America Online) (2001 - 2004), at that time, the world’s largest internet provider. Mr. Ashkin also served as Senior Vice President and Chief Technology Officer of Gateway Computer (1998 - 2001) and prior thereto a number of senior and executive management positions at both Toshiba Corporation and Apple.

Glenn M. Bowman, Director

Mr. Bowman is a current member of the Board and serves as the Chairman of the Audit Committee. Mr. Bowman, FCPA, FCA, is Managing Director with CCC Investment Banking ("CCC"). Mr. Bowman was Managing Partner with Capital Canada Limited from 2003 to 2014; a provider of investment banking services to predominantly mid-market companies, since 2003. Mr. Bowman is a Chartered Accountant and a Fellow of the Institute of Chartered Professional Accountants of Ontario. Mr. Bowman's responsibilities at CCC include investment banking, financial advisory work (including fairness opinions and business and securities valuations), and financial restructuring services. Mr. Bowman has extensive experience in a wide range of topics including mergers and acquisitions, private placements of debt and equity and preparation and assessment of financial forecasts. Mr. Bowman previously served on the board of directors of Rockcliff Resources Inc., a Canadian resource exploration company, and was a member of its audit committee (2010-2015) the board of directors of WireIE Holdings International Inc. (privately held), a global provider of IP based broadband wireless network solutions, and served as Chairman of Alliance Financing Group Inc. (renamed Stream Ventures Inc.)

Eric L. Kelly, Chief Executive Officer, Chairman and Director

Mr. Kelly is a current member of the Board, has served as its Chairman since July 2013, and also serves as its Chief Executive Officer since December 1, 2014. Mr. Kelly formerly served as Chief Executive Officer of Overland since January 2009, President and Chief Executive Officer of Overland since January 2010 and has been a member of Overland's board of directors since November 2007. Prior to joining Overland, Mr. Kelly was President of Silicon Valley Management Partners Inc., a management consulting and merger and acquisition advisory firm which he co-founded in 2007. Mr. Kelly is serving a second term on the U.S. Department of Commerce's Manufacturing Council, where he offers advice and counsel to the Obama Administration on strategies and policy recommendations on ways to promote and advance U.S. manufacturing globally, and from 2013 to 2014 he was appointed to President Obama's Advanced Manufacturing Steering Committee. He is a member of the Global Leadership Council for San Jose State University's Lucas College and Graduate School of Business. Mr. Kelly has spent over 30 years in computer technology developing distinct operational, marketing and sales expertise. His previous corporate affiliations include Adaptec Inc., Maxtor Corp., Dell Computer Corp., Diamond Multimedia, Conner Peripherals and IBM. Mr. Kelly earned an M.B.A. from San Francisco State University and a B.S. in Business Management from San Jose State University.

Vivekanand Mahadevan, Director

Mr. Mahadevan has been the Chief Executive Officer of Dev Solutions, Inc., a consulting firm that helps technology startups build next-generation market leaders in data analytics, security, storage and cloud markets since March 2012. Mr. Mahadevan was the Chief Strategy Officer for NetApp, Inc., a supplier of enterprise storage and data management software and hardware products and services, from November 2010 until February 2012. Prior to that time served as Vice President of Marketing for LSI Corporation, an electronics company that designs semiconductors and software that accelerate storage and networking, from January 2009 to September 2010. Prior to LSI Corporation, he was Chief Executive Officer for Deeya Energy, Inc., and has also held senior management positions with leading storage and systems management companies including BMC Software, Compaq, Ivita, and Maxxan Systems. Mr. Mahadevan is also a current board member of Violin Memory, Inc. Mr. Mahadevan holds an M.B.A. in Marketing and MS in Engineering from the University of Iowa as well a degree in Mechanical Engineering from the Indian Institute of Technology.

Peter Tassiopoulos, President, Vice Chairman and Director

Mr. Tassiopoulos is a current member of the Board and has served as President of the Company since December 1, 2014. Mr. Tassiopoulos served as the Chief Executive Officer of the Company from March 2013 until December 1, 2014. Mr. Tassiopoulos has extensive experience in information technology business development and global sales as well as a successful track record leading early-stage technology companies. He has been actively involved as a business consultant over the past 10 years, including acting as Chief Operating Officer and then Chief Executive Officer of BioSign Technologies Inc. from September 2009 to April 2011 and Chief Executive Officer of IgeaCare Systems Inc. from February 2003 to December 2008. Mr. Tassiopoulos is also a current board member of Northern Sphere Mining Corp., formerly Argentium Resources Inc.

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

Mr. Kalbfleisch has served as Senior Vice President and Chief Financial Officer of the Company since December 1, 2014. Mr. Kalbfleisch had 20 years of service with Overland and served as Overland's Senior Vice President since June 2012, Chief Financial Officer since February 2008, and Secretary since October 2009. Prior to that, he served as Overland's Vice President of Finance from July 2007 to June 2012.

Randall T. Gast, Senior Vice President and Chief Operating Officer

Mr. Gast has served as Senior Vice President and Chief Operating Officer of the Company since December 1, 2014. Mr. Gast served as Overland's Chief Operating Officer from January 2014 until December 1, 2014, as its Senior Vice President of Worldwide Operations and Service from August 2013 through December 1, 2014, and as its Senior Vice President of Strategic Alliances and Client Services from August 2012 until December 1, 2014. Prior to joining Overland, Mr. Gast was Vice President, Corporate Operations, of 3PAR, Inc. from May 2006 until October 2010 when 3PAR, Inc. was acquired by Hewlett Packard. Mr. Gast served as Vice President of ESSN Supply Chain & Logistics at Hewlett Packard from October 2010 to June 2012.

Jenny C. Yeh, Vice President, Legal and General Counsel

Ms. Yeh has served as Vice President, Legal and General Counsel of the Company since October 5, 2015. Prior to joining the Company, Ms. Yeh served as Executive Counsel, Transactions and Finance, at General Electric Company where she was a senior legal advisor to GE Corporate's business development group, supporting global corporate strategy and transactions across all GE industrial businesses worldwide. From 2007 to 2011, Ms. Yeh was a corporate partner at Baker & McKenzie LLP, where she advised clients in general corporate and securities matters, with a specialization in complex cross-border transactions. Ms. Yeh holds a Juris Doctorate from Georgetown University Law Center, and Bachelor of Arts degrees from the University of California at Berkeley.

B. Compensation

The following discussion and analysis describes the compensation provided to the Company's Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO") for fiscal 2016 as well as each of the three other most highly compensated executive officers of the Company. For purposes of this Statement of Executive Compensation, the Company's named executive officers (the "NEOs") are determined under rules prescribed by the U.S. Securities and Exchange Commission and generally include: (1) each individual who, at any time during the year, served as the Company's chief executive officer or chief financial officer, (2) up to three other individuals serving as executive officers on the last day of the year, and (3) up to two other individuals who served as executive officers during the year and are not serving as executive officers on the last day of the year.

Executive Officer Compensation

Our executive compensation programs are determined by the Compensation Committee, within the scope of the authority delegated to it by our Board of Directors and subject to applicable law. The goals of our program are to attract and retain highly qualified and experienced executives and to provide compensation opportunities that are linked to corporate and individual performance. Decisions by the Compensation Committee on our executive compensation programs are subjective and the result of its business judgment, which is informed by the experiences of its members. The NEOs do not have any role in determining their own compensation, although the Compensation Committee does consider the recommendations of the Chief Executive Officer in setting compensation levels for the NEOs other than himself.

The Compensation Committee is authorized under its charter to retain an independent compensation consultant to assist in its decision-making process. The Compensation Committee may also review external compensation data from time to time as a reference point for its decisions. Given the straightforward nature of the compensation provided to our NEOs for fiscal 2016, the Compensation Committee determined that it was not necessary to retain a compensation consultant or to review any compensation surveys or other external compensation data as to its NEO compensation decisions for fiscal 2016.

The primary components of our executive compensation program are base salary, performance bonuses and long-term equity incentive awards. We also provide certain executives with severance benefits pursuant to their employment agreements. Each of these components is discussed in more detail below.

Employment Agreements. In connection with our acquisition of Overland Storage, Inc. ("Overland") on December 1, 2014, we assumed the employment and severance agreements previously entered into by Overland with Messrs. Kelly and Kalbfleisch, and the obligations set forth under Mr. Gast's offer of employment letter in effect at the time of the acquisition. The material terms of these agreements are described below under "Employment Agreements." No other employment agreements were in effect in fiscal 2016.

Base Salaries. Base salaries are primarily intended to attract and retain highly qualified executives by providing them with fixed, predictable levels of compensation. The NEOs' salary levels are specified in their employment agreements (other than for Mr. Tassiopoulos who is not a party to an employment agreement with the Company) and are subject to periodic review and adjustment by the Compensation Committee. Mr. Tassiopoulos and Mr. Gast received an increase in annual base salary during 2016. Mr. Tassiopoulos' annual base salary was increased in May 2016 to $310,000 CAD from $240,000 CAD. Mr. Gast's annual base salary was increased in March 2016 to $300,000 from $240,000.

Performance Bonuses. In March 2016, the Compensation Committee approved a bonus plan for fiscal 2016. The bonus plan was divided into two bonus periods, with the first period consisting of the first two quarters of 2016 and the second period consisting of the last two quarters of fiscal 2016. The bonus amounts were determined based on our revenue and operating expenses for each bonus period against performance targets established by the Compensation Committee for that period. The Compensation Committee also approved the following target bonuses for the NEOs participating in the plan (in each case expressed as a percentage of the executive's annual base salary: Mr. Kelly - 100%; Mr. Tassiopoulos - 100%; Mr. Kalbfleisch - 60%; Mr. Gast - 50% and Ms. Yeh - 20%. No bonuses have been awarded to date for the 2016 bonus periods.

Long-Term Equity Incentive Awards. Long-term equity incentives are intended to align the NEOs' interests with those of our shareholders as the ultimate value of these awards depends on the value of the Company's shares. The Company has historically granted equity awards in the form of stock options with an exercise price that is equal to the per-share closing price of our common shares on the grant date. In recent years, restricted stock units have also been granted as provided for under the Company's 2015 Plan. The Compensation Committee believes that stock options are an effective vehicle for aligning the interests of our executives with those of our shareholders as the executive will only realize value on their options if the share price increases during the period between the grant date and the date the stock option is exercised. The stock options and restricted stock units function as a retention incentive for the NEOs as they typically vest over a multi-year period following the date of grant. Restricted stock units, which are payable in our common shares, also link the interests of the award recipient with those of our shareholders as the potential value of the award is directly linked to the value of our common shares. Restricted stock units were included as part of the equity award mix granted in fiscal 2016 because they serve as a heightened retention incentive (as the awards generally have some value regardless of our stock price performance) and to help manage the potential dilutive impact of our equity awards (as one restricted stock unit generally has a greater grant date fair value than one stock option, so fewer restricted stock units generally have to be granted than if an award of equivalent grant date fair value was granted in the form of stock options).

In 2016, the Compensation Committee recommended and the Board of Directors approved a grant of restricted stock units to Ms. Yeh. This grant is subject to a multi-year vesting schedule and set by the Compensation Committee at levels it deemed in its judgment to be appropriate to provide a retention incentive.

Other Benefits. We do not provide any material perquisites to the NEOs. As described below under "Employment Agreements," we enter into agreements with our executive officers from time to time that provide for severance benefits if their employment terminates under certain defined circumstances. The Compensation Committee believes these severance protections are appropriate and help us to attract and retain qualified executives.

Summary Compensation Table

The following table sets forth the compensation for services rendered by the NEOs for the fiscal year ended December 31, 2016.

Name and Principal Position	Year	Salary ($)	Share- based Awards ($)	Non-equity Incentive Plan Compensation(1) ($)	All Other Compensation(2) ($)	Total Compensation ($)
Eric L. Kelly Chief Executive Officer	2016	400,000	—	—	17,674	417,674
Peter Tassiopoulos[3] President	2016	214,480	—	—	3,417	217,897
Kurt L. Kalbfleisch Senior Vice President and Chief Financial Officer	2016	300,000	—	—	23,593	323,593
Randall T. Gast Senior Vice President and Chief Operations Officer	2016	285,000	—	—	9,609	294,609
Jenny C, Yeh Vice President, Legal and General Counsel	2016	300,000	173,100 (4)	—	6,308	479,408

(1) The amounts shown in the "Non-equity Incentive Plan Compensation" column represent bonuses awarded to the NEO for the applicable year under our bonus program in effect for that year.

(2) The amounts shown in the "All Other Compensation" column reflect amounts we paid on the NEOs' behalf for health insurance and life insurance premiums and certain out-of-pocket medical expenses. For the amounts reported in this column for Mr. Tassiopoulos, see the applicable footnote below.

(3) The dollar amounts reported for Mr. Tassiopoulos in the table above are presented after conversion from Canadian dollars to U.S. dollars based on an exchange rate of 1.3275 U.S. dollars to one Canadian dollar, which is the average conversion rate in effect for 2016.

(4) This award is a restricted stock unit which was granted on August 9, 2016 and was valued at $0.87 per share on the grant date (the closing market price for a share of our common stock on that date).

Employment Agreements

Eric L. Kelly. In connection with our acquisition of Overland, we assumed the employment agreement then in effect between Overland and Mr. Kelly (the "Kelly Agreement"), who had been serving as Overland's President and Chief Executive Officer and was appointed our Chairman and Chief Executive Officer, effective December 1, 2014. The Kelly Agreement provides for Mr. Kelly to earn a base salary of $400,000 and to be eligible to receive an annual bonus based upon the achievement of financial and management objectives reasonably established by our Board of Directors or an authorized committee of our Board of Directors. His annual bonus target is 100% of the greater of $400,000 or his base salary as of the end of the applicable fiscal quarter or year in which the bonus is earned, and he has the opportunity to earn an annual bonus of up to 150% of the target bonus. If we terminate Mr. Kelly's employment without cause or he resigns for good reason, or if he dies or becomes disabled, before the end of a fiscal quarter or year, he will be eligible to receive a prorated amount of the target bonus for the fiscal quarter or year in which his employment terminates. For purposes of the Kelly Agreement, the terms "cause" and "good reason" are defined in the agreement, and a termination of employment by us without cause includes a termination by us at the end of the term then in effect. To the extent that any travel, lodging or auto expense reimbursements are taxable to Mr. Kelly, we will provide him with a tax restoration payment so that he will be put in the same after-tax position as if such reimbursements had not been subject to tax. The Kelly

Agreement automatically renews each year for an additional one-year term. We may unilaterally modify Mr. Kelly's cash compensation at any time, subject to Mr. Kelly's right to terminate his employment for good reason.

The Kelly Agreement also provides that if we terminate Mr. Kelly's employment without cause or if Mr. Kelly resigns from employment for good reason, then we will be obligated to pay him an aggregate severance payment equal to the sum of (i) 150% of the greater of his base salary then in effect or his original base salary, (ii) a portion of his target bonus prorated based on the number of days he was employed during the period on which the target bonus is based, (iii) an amount equal to the premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 18 months following the date of his termination, and (iv) an amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 18 months following his termination (reduced by the amount of any reimbursement for COBRA premiums as described in clause (iii) above). The severance payment will be made in equal monthly installments over 18 months in accordance with our regular payroll practices. In addition, Mr. Kelly will be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards that would otherwise have vested during the 12-month period following his termination. In the case of vested stock options, he will be permitted to exercise such options in whole or in part at any time within one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the applicable options under the applicable plan or upon a change in control. The severance benefits described above are contingent upon Mr. Kelly providing us with a general release of all claims.

In addition, we assumed a retention agreement between Overland and Mr. Kelly, which provides that he will receive a lump sum severance payment if, within 60 days before or two years following a change of control of Overland, his employment is terminated by Overland without cause or he resigns for good reason (as such terms are defined in the agreement). The severance payment will equal 150% of the sum of Mr. Kelly's base salary at the time of the consummation of the change of control or termination date or $400,000, whichever is higher, plus any annual target bonus. The retention agreement provides that (i) if Mr. Kelly elects to continue insurance coverage as provided by COBRA, we will reimburse him for an amount equal to the premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 18 months following the date of his termination, and (ii) we will reimburse him for an amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 18 months following his termination (reduced by the amount of any reimbursements for COBRA premiums as described in clause (i) above). We are required to reimburse Mr. Kelly for the estimated costs of these benefits in one lump sum payment on his termination date. In addition, Mr. Kelly will be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards granted by Overland. In the case of vested stock options, he will be permitted to exercise such options in whole or in part at any time within one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the applicable options under the applicable plan or upon a change of control. If any portion of any payment under the retention agreement would constitute an "excess parachute payment" within the meaning of Section 280G of the U.S. Internal Revenue Code, then that payment will be reduced to an amount that is one dollar less than the threshold for triggering the tax imposed by Section 4999 of the U.S. Internal Revenue Code if such reduction would result in a greater benefit for Mr. Kelly on an after-tax basis. The consideration payable to Mr. Kelly under the retention agreement is contingent upon him providing us a general release of claims.

Kurt L. Kalbfleisch. In connection with our acquisition of Overland, we assumed the employment agreement then in effect between Overland and Mr. Kalbfleisch (the "Kalbfleisch Agreement"), who had been serving as Overland's Senior Vice President and Chief Financial Officer and was appointed our Senior Vice President and Chief Financial Officer, effective December 1, 2014. The Kalbfleisch Agreement provides for Mr. Kalbfleisch to earn a base salary of $266,000. In November 2013, Mr. Kalbfleisch's base salary was increased to $300,000. If we terminate Mr. Kalbfleisch's employment without cause or he resigns his employment for good reason before the end of a fiscal quarter or year, he will be eligible to receive a prorated amount of the target bonus for the fiscal quarter or year in which his employment terminates. For purposes of the Kalbfleisch Agreement, the terms "cause" and "good reason" are defined in the agreement, and a termination of employment by us without cause includes a termination by us at the end of the term then in effect. The Kalbfleisch Agreement automatically renews each year for additional one-year terms. We

may unilaterally modify Mr. Kalbfleisch's cash compensation at any time, subject to Mr. Kalbfleisch's right to terminate his employment for good reason.

The Kalbfleisch Agreement provides that if we terminate Mr. Kalbfleisch's employment without cause or if Mr. Kalbfleisch resigns from employment for good reason, we will be obligated to pay him an aggregate severance payment equal to the sum of (i) the greater of his annual base salary then in effect or his original base salary of $266,000, (ii) a portion of any target bonus prorated based on the number of days he was employed during the period on which the target bonus is based, (iii) an amount equal to the premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 12 months following the date of his termination, and (iv) an amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 12 months following his termination (reduced by the amount of any reimbursement for COBRA premiums as described in clause (iii) above). The severance payment will be made in equal monthly installments over the 12 months following termination of employment. In addition, Mr. Kalbfleisch will be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards that would otherwise have vested during the 12-month period following his termination. In the case of vested stock options, he will be permitted to exercise such options in whole or in part at any time within one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the applicable options under the applicable plan or upon a change in control. If such a termination of employment occurs within two years following a change in control of our Company, then the severance benefits will generally be the same as described above except that the cash severance will be paid in a single lump sum on the sixtieth day after termination of employment and Mr. Kalbfleisch will be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards. If any payment under the Kalbfleisch Agreement would constitute an "excess parachute payment" within the meaning of Section 280G of the U.S. Internal Revenue Code, then that payment will be reduced to an amount that is one dollar less than the threshold for triggering the tax imposed by Section 4999 of the U.S. Internal Revenue Code if such reduction would result in a greater benefit for Mr. Kalbfleisch on an after-tax basis. The severance benefits described above are contingent upon Mr. Kalbfleisch providing us with a general release of all claims.

Peter Tassiopoulos. Upon Mr. Tassiopoulos' transition from consultant to employee status in June 2014, the Company and Mr. Tassiopoulos agreed that the bonus and severance arrangements provided in his consulting agreement with the Company would continue in effect. Under these arrangements, Mr. Tassiopoulos is eligible for performance bonuses, at the sole discretion of the Board of Directors, of up to 100% of his annual base salary. In the event of a transaction resulting in the sale of all or substantially all of the shares or assets of the Company, Mr. Tassiopoulos would be entitled to receive on a sliding scale of 1% to 5% of the transaction value, net of certain amounts. If Mr. Tassiopoulos' employment is terminated without cause, he would be entitled to a lump sum payment equal to six months of his base salary, plus two additional months of base salary for each additional completed year of his service with the Company after March 1, 2014. Mr. Tassiopoulos' current annual base salary is $310,000 CAD as increased from $240,000 CAD in May 2016.

Randall T. Gast. As our Senior Vice President Chief Operations Officer, Mr. Gast is an at-will employee and his employment may be terminated by us for any reason, with or without notice. Mr. Gast currently earns an annual salary of $300,000 as increased from $240,000 in March 2016. In connection with our acquisition of Overland, we assumed the obligations set forth in Mr. Gast's offer of employment letter which provides that if Mr. Gast's employment is terminated by us without cause he is eligible to receive severance benefits consisting of (i) six months base salary based upon the greater of his annual base salary then in effect or his original base salary of $240,000, (ii) a portion of any target bonus prorated based on the number of days he was employed during the period on which the target bonus is based, and (iii) an amount equal to the premiums he would be required to pay to continue health insurance coverage under our insurance plans under COBRA for 12 months following the date of his termination, should he timely elect and remains eligible for COBRA coverage. The base salary and bonus shall be paid in accordance with standard payroll procedures over the six-month period following his termination date and an amount based upon the cost of COBRA premiums shall be paid in accordance with standard payroll procedures over 12 months following his termination. If within two years of the consummation of a change of control of our company, his employment is terminated without cause or he resigns with good reason, Mr. Gast will be entitled to a severance payment equal to a lump sum payment of (i) 12 months base salary based

upon the greater of his annual base salary then in effect or his original base salary of $240,000, (ii) a portion of any target bonus prorated based on the number of days he was employed during the period on which the target bonus is based, and (iii) an amount equal to the premiums he would be required to pay to continue health insurance coverage under our insurance plans under COBRA for 12 months following the date of his termination, should he timely elect and remains eligible for COBRA coverage. In addition, Mr. Gast will be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards.

Jenny C. Yeh. As our Vice President, Legal and General Counsel, Ms. Yeh is an at-will employee and her employment may be terminated by us for any reason, with or without notice. Ms. Yeh currently earns an annual salary of $300,000. If her employment is terminated by her for good reason or by us without cause during the two-year period following a change of control, then any unvested portion of equity-based awards granted to her by the Company shall vest in full as of the date of such termination.

2015 Performance Incentive Plan

Employees, officers, directors and consultants that provide services to us or one of our subsidiaries may be selected to receive awards under the 2015 Plan. Our Board of Directors has broad authority to administer the 2015 Plan, including the authority to select participants and determine the types of awards that they are to receive, determine the grants levels, vesting and other terms and conditions of awards, and construe and interpret the terms of the 2015 Plan and any agreements relating to the plan.

A total of 10,090,315 shares of our common stock are authorized for issuance with respect to awards granted under the 2015 Plan (not including shares subject to terminated awards under our Second Amended and Restated Stock Option Plan that become available for issuance under the 2015 Plan). Awards under the 2015 Plan may be in the form of incentive or nonqualified stock options, stock appreciation rights, stock bonuses, restricted stock, stock units and other forms of awards including cash awards. Awards under the plan generally will not be transferable other than by will or the laws of descent and distribution, except that the plan administrator may authorize certain transfers.

The number and type of shares available under the 2015 Plan and any outstanding awards, as well as the exercise or purchase prices of awards, are subject to customary adjustments in the event of stock splits, stock dividends and certain other corporate transactions. Generally, and subject to limited exceptions set forth in the 2015 Plan, if we dissolve or undergo certain corporate transactions such as a merger, business combination or other reorganization, or a sale of all or substantially all of our assets, all awards then-outstanding under the 2015 Plan will become fully vested or paid, as applicable, and will terminate or be terminated in such circumstances, unless the Board of Directors provides for the assumption, substitution or other continuation of the award. The Board of Directors also has the discretion to establish other change in control provisions with respect to awards granted under the 2015 Plan.

The Board of Directors may amend or terminate the 2015 Plan at any time, but no such action will affect any outstanding award in any manner materially adverse to a participant without the consent of the participant. Plan amendments will be submitted to stockholders for their approval as required by applicable law or deemed advisable by the Board of Directors. If not earlier terminated by the Board of Directors, the 2015 Plan will terminate on May 14, 2025. The 2015 Plan is not exclusive - the Board of Directors may grant stock and performance incentives or other compensation, in stock or cash, under other plans or authority.

Outstanding Equity Awards at 2016 Fiscal Year-End

The following table provides information about the current holdings of stock and option awards by our NEO's at December 31, 2016.

		Option-based Awards				Stock Awards	
Name	Grant Date	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Option exercise price(1) ($)	Option expiration date	Number of units of stock that have not vested (#)	Market value of unites of stock that have not vested(2) ($)
Eric L. Kelly	7/9/2013	850,000	—	0.49	7/8/2023	—	—
	9/16/2013	25,000	—	2.02	9/15/2023	—	—
	8/26/2015	93,332	46,668 (3)	2.71	8/26/2021	—	—
	8/26/2015	—	—	—	—	280,000 (3)	84,000
Peter Tassiopoulos	3/4/2013	100,000	—	0.64	3/3/2018	—	—
	9/16/2013	100,000	—	2.02	9/15/2023	—	—
Kurt L. Kalbfleisch	8/26/2015	66,666	33,334 (3)	2.71	8/26/2021	—	—
	8/26/2015	—	—	—	—	200,000 (3)	60,000
Randall T. Gast	8/23/2012	4,638	—	20.48	8/23/2018	—	—
	8/26/2015	66,666	33,334 (3)	2.71	8/26/2021	—	—
	8/26/2015	—	—	—	—	207,407 (5)	62,222
Jenny C. Yeh	11/10/2015	—	—	—	—	133,332 (6)	40,000
	8/9/2016	—	—	—	—	200,000 (7)	60,000

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(1) The exercise prices reported for the options expiring in 2023 for Mr. Kelly, and for each of the options expiring in 2018 and 2023 for Mr. Tassiopoulos, in the table above are presented after conversion from Canadian dollars to U.S. dollars based on an exchange rate of 1.3275 U.S. dollars to one Canadian dollar, which is the average conversion rate in effect for 2016.

(2) Computed by multiplying the number of unvested shares by $0.30, the closing market price of our common shares on December 30, 2016 (the last trading day of December).

(3) These options are scheduled to vest in monthly installments beginning in January 2017 and ending in August 2018.

(4) This stock award is scheduled to vest in quarterly installments beginning in January 2017 and ending in February 2018.

(5) This stock award is scheduled to vest in monthly installments beginning in January 2017 and ending in February 2018. Subject to the vesting requirements, the entire award for 400,000 shares will be in paid in one installment on or promptly following February 19, 2018.

(6) This stock award is scheduled to vest in semi-annual installments beginning in January 2017 and ending in October 2018.

(7) This stock award is scheduled to vest in semi-annual installments beginning in January 2017 and ending in August 2019.

Incentive Awards - Value Vested During the Year

The following table sets forth information regarding stock awards that vested during the fiscal year ended December 31, 2016. No options were exercised by our NEOs during fiscal year 2016.

Name	Number of Shares Acquired on Vesting	Valued Realized on Vesting(1) ($)
Eric L. Kelly	224,000	203,343
Kurt L. Kalbfleisch	160,000	145,245
Randall T. Gast	177,778	163,839
Jenny C. Yeh	66,668	36,667

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(1) The value realized on vesting is determined by multiplying (x) the number of shares that vested during 2016, times (y) the closing price of our common shares on NASDAQ on the applicable vesting date.

The following table sets forth summary information regarding compensation of our NEOs subject to deferred payment arrangements during fiscal 2016.

Name	Executive Contributions in Last Fiscal Year(1) ($)	Registrant Contributions in Last Fiscal Year ($)	Aggregate Earnings in Last Fiscal Year(2) ($)	Aggregate Withdrawals/ Distributions(3) ($)	Aggregate Balance at Last Fiscal Year End ($)
Randall T. Gast	163,839	—	(110,507)	—	53,332

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(1) These entries reflect the aggregate market value of certain stock units that vested during 2016 (based on the stock price on their vest), but which had not been paid as of December 31, 2016. These stock units were awarded by the Company to Mr. Gast in August 2015.

(2) This entry reflects changes in the market value of the stock units between the applicable vest dates and the last day of fiscal 2016.

Compensation of Directors

The following table sets forth compensation information for the year ended December 31, 2016 for the members of our Board of Directors during 2016 who were not employed by us or any of our subsidiaries ("non-employee directors"). Eric Kelly and Peter Tassiopoulos are each NEOs who also served on the Board of Directors during 2016. The 2016 compensation information for each of these individuals is presented in the Summary Compensation Table above and they were not entitled to any additional compensation for their service on the Board during fiscal 2016.

Name	Fees Earned ($)	Share-based Awards(1) ($)	All Other Compensation ($)		Total ($)
Peter Ashkin	40,000	78,754	—		118,754
Mario Biasini[3]	10,000	—	84,773	(2)	94,773
Daniel Bordessa[4]	40,000	—	—		40,000
Glenn Bowman	40,000	78,754	—		118,754
Vivekanand Mahadevan	50,000	87,643	—		137,643

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(1) On February 26, 2016, Messrs. Ashkin, Bowman, and Mahadevan were each awarded a restricted stock unit ("RSU") for 26,666 Shares for their service on a Special Committee of the Board. The RSUs were valued at $1.62 per share on the grant date (the closing market price on NASDAQ for one of our common shares on that date) and vested in full on the grant date. On November 8, 2016, Messrs. Ashkin and Bowman, were each awarded a restricted stock unit ("RSU") for 63,492 Shares for their service on the Board. On the same date, Mr. Mahadevan was awarded a RSU for 79,365 shares for his service on the Board as Lead Board member. All of the RSUs awarded on November 8, 2016 were valued at $0.56 per share on the grant date (the closing market price on NASDAQ for one of our common shares on that date) and vest in full on September 13, 2017.

(2) All other compensation for Mr. Biasini includes consulting fees paid to Mr. Biasini and health insurance premiums paid on his behalf. Mr. Biasini's consulting agreement with the Company was terminated effective April 30, 2016. In exchange for a general release agreement, he is being paid a monthly severance of CAD$9,750 and medical coverage through April 30, 2017. The amount reported is presented after conversion from Canadian dollars to U.S. dollars based on an exchange rate of 1.3275 U.S. dollars to one Canadian dollar, which was the average conversion rate in effect for 2016.

(3) Mr. Biasini resigned as a Director of the Company on May 10, 2016.

(4) Mr. Bordessa resigned as a Director of the Company on December 20, 2016.

Director Compensation

The non-employee board members are paid $10,000 per quarter for their service on the Board and the Lead Board member is paid $12,500 per quarter for his service on the Board. During 2016, the Board also granted restricted stock units to certain non-employee directors as described in the notes to the table above. The Board retains complete discretion to adopt or modify our programs for providing cash and/or equity-based compensation to our non-employee directors as it deems appropriate from time to time.

C. Board Practices

The term of office of each director expires at the next annual general meeting of the Shareholders.

Board Committees

The Board has established an Audit Committee, a Compensation Committee and a Nominating and Governance Committee.

Audit Committee

The Audit Committee assists the Board in fulfilling its oversight responsibilities by overseeing the accounting, treasury, financial reporting and risk management processes, and the reviews and audits of the financial statements of the Company. The Audit Committee meets at least four times per year and at least once every fiscal quarter, with authority to convene additional meetings, as circumstances require. All Audit Committee members are expected to attend each meeting, in person or via telephone conference. The Audit Committee will invite members of management, auditors or others to attend meetings and provide pertinent information, as necessary. It will hold private meetings with auditors and executive sessions. The Audit Committee may meet privately with any single member of management or any combination of members of management, as it deems appropriate.

The members of the Company's Audit Committee are:

Glenn M. Bowman (Chair)	Independent[1]	Financially Literate[2]
Peter Ashkin	Independent[1]	Financially Literate[2]
Vivekanand Mahadevan[3]	Independent[1]	Financially Literate[2]

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(1) A member of an audit committee is independent if the member has no direct or indirect material relationship with the Company, which could, in the view of the board of directors, reasonably interfere with the exercise of a member's independent judgment.

(2) An individual is financially literate if he or she has the ability to read and understand a set of financial statements that present a breadth of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the Company's financial statements.

(3) Mr. Mahadevan was appointed to the Audit Committee effective December 21, 2016.

Compensation Committee

The Compensation Committee acts on behalf of the Board in matters pertaining to the appointment, compensation, benefits and termination of members of the senior management team. The Compensation Committee reviews the goals and objectives relevant to the compensation of the senior management team, as well as the annual salary, bonus, pension, severance and termination arrangements and other benefits, direct and indirect, of the senior management team, and makes recommendations to the Board and/or management, as appropriate. The members of the Compensation Committee are Peter Ashkin (Chair), Glenn M. Bowman, and Vivekanand Mahadevan.

Nominating and Governance Committee

The Corporate Governance and Nominating Committee assists the Board in carrying out its responsibilities by reviewing corporate governance and nomination issues and making recommendations to the Board as appropriate. The Nominating and Governance Committee is responsible for identifying individuals qualified to become directors, recommending to the Board proposed nominees for election to the Board, and overseeing the Board's overall approach to governance, Board processes and leadership. In identifying potential Board members, the Nominating and Governance Committee considers, among other things, the competencies and skills the Board as a whole should possess, criteria for candidates after considering the competencies and skills of existing directors, and the competencies and skills of each potential new nominee. The members of the Nominating and Governance Committee are Peter Ashkin, Glenn M. Bowman, and Vivekanand Mahadevan (Chair).

D. Employees

The Company had 387 employees at December 31, 2016. The Company's employees in Germany and China are covered by labor unions, and the Company believes its relationships with the unions representing these employees are good. The following table sets forth information concerning our employees by geographic location.

	Year Ended December 31,		
	2016	2015	2014
Canada	15	17	25
United States	102	130	129
EMEA	62	62	93
APAC	208	220	257
	387	429	504

The following table sets forth information concerning our employees by category of activity.

	Year Ended December 31,		
	2016	2015	2014
Cost of sales	224	240	272
Sales and marketing	92	104	136
Research and development	29	40	46
General and administrative	42	45	50
	387	429	504

E. Share Ownership

The following table sets forth certain information concerning the direct and beneficial ownership of common shares at March 29, 2017 by each director, each NEO, and all directors and officers of the Company as a group. Each common share entitles its holder to one vote. There are no arrangements involving employee ownership of capital of the Company besides the grant of options or other awards under the Company's Inducement or 2015 Plan. Common shares outstanding on March 29, 2017 were 102,608,418.

Name	Number of Common Shares		Beneficial Ownership
Eric L. Kelly	2,302,041	(1)	2.2%
Peter Tassiopoulos	300,000	(2)	0.3%
Kurt L. Kalbfleisch	359,656	(3)	0.3%
Randall T. Gast	422,441	(4)	0.4%
Jenny C. Yeh	104,051	(5)	0.1%
Peter Ashkin	67,777		0.1%
Glenn M. Bowman	87,777		0.1%
Vivekanand Mahadevan	51,763	(6)	0.1%
All officers and directors as a group	3,695,506	(7)	3.5%

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(1) These shares include the right to acquire shares upon exercise of 983,888 stock options and the payment of 112,000 restricted stock units.

(2) These shares include the right to acquire shares upon exercise of 200,000 stock options.

(3) These shares include the right to acquire shares upon exercise of 77,777 stock options and the payment of 80,000 restricted stock units.

(4) These shares include the right to acquire shares upon exercise of 82,415 stock options and the payment of 266,667 restricted stock units.

(5) These shares include the right to acquire shares upon the payment of 66,667 restricted stock units.

(6) These shares include the right to acquire shares upon exercise of 2,783 stock options.

(7) These shares include the right to acquire shares upon exercise of 1,346,863 stock options and the payment of 525,334 restricted stock beneficially owned by our directors and NEOs.

ITEM 7. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

A. Major Shareholders

The following table sets forth information with respect to the beneficial ownership of our common shares as of March 29, 2017 by each person known to us to beneficially own, directly or indirectly, or exercise control or discretion over, voting securities carrying more than 5% of voting rights attached to the common shares. We have experienced significant changes in the percentage ownership held by major shareholders as a result of the related party transactions as described in Item 7.B. "Related Party Transactions".

Name	Type of Ownership (direct, indirect)	Number of Common Shares(1)		Beneficial Ownership(2)
MF Ventures, LLC	Direct	41,966,969	(3)	32.8%
Cyrus Capital Partners, L.P. managed funds and affiliates	Direct	20,289,192	(4)	18.1%
Lynn Factor	Direct	11,044,500	(5)	10.0%
Sheldon Inwentash	Direct	8,440,100	(6)	7.8%

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(1) These amounts include common shares, which could be acquired upon exercise of outstanding convertible securities within 60 days.

(2) Based on 102,608,418 shares outstanding on March 29, 2017.

(3) Information was obtained from MF Ventures, LLC pursuant to Schedule 13D/A filed March 21, 2017 and Company records. These shares include the right to acquire 25,380,087 shares upon exercise of certain convertible securities. MF Ventures, LLC is a limited liability company formed to make one or more investments in business ventures or activities deemed appropriate by Victor B. MacFarlane, as Manager of MF Ventures, LLC. Mr. MacFarlane as Manager of MF Ventures, LLC and Thaderine D. MacFarlane as a controlling member of MF Ventures, LLC share voting power over the shares of common stock held by MF Ventures, LLC.

(4) Information was obtained from Cyrus Capital Partners, L.P. pursuant to Schedule 13D/A filed February 13, 2017. Certain funds and affiliates managed by Cyrus, directly and indirectly own these shares. These shares include 9,466,667 Shares upon exercise of certain convertible securities. shares (the "Cyrus Group"). These shares include 9,466,667 Shares upon exercise of certain convertible securities. The Cyrus Group is comprised of Cyrus Capital Partners, L.P., a Delaware limited partnership, ("Cyrus"), Crescent 1, L.P., a Delaware limited partnership ("Crescent"), CRS Master Fund, L.P., a Cayman Islands exempted limited partnership, ("CRS"), Cyrus Opportunities Master Fund II, Ltd., a Cayman Islands exempted limited company, ("Cyrus Opportunities)", Cyrus Select Opportunities Master Fund, Ltd., a Cayman Islands exempted limited company, ("Cyrus Select"), Cyrus Capital Partners GP, L.L.C., a Delaware limited partnership, ("Cyrus GP"), Cyrus Capital Advisors, L.L.C., a Delaware limited liability company, ("Cyrus Advisors"), and Mr. Stephen C. Freidheim. Each of Crescent, CRS, Cyrus Opportunities and Cyrus Select, or collectively the Cyrus Funds, are private investment funds engaged in the business of acquiring, holding and disposing of investments in various companies. Cyrus is the investment manager of each of the Cyrus Funds. Cyrus GP is the general partner of Cyrus. Cyrus Advisors is the general partner of Crescent and CRS. Mr. Freidheim is the managing member of Cyrus GP and Cyrus Advisors and is the Chief Investment Officer of Cyrus. Crescent, CRS, Cyrus Opportunities, Cyrus Select and Mr. Freidheim have entered into an investment management agreement with Cyrus giving Cyrus full voting and disposition power over the shares of common stock held by the Cyrus Group.

(5) Information was obtained from Lynn Factor pursuant to a Schedule 13D filed February 23, 2017. Ms. Factor has sole rights to vote and dispose of the shares of common stock held in her name. These shares include the right to acquire 7,719,500 shares upon exercise of certain convertible securities. Excluded are 8,440,100 shares beneficially owned by Sheldon Inwentash. By virtue of Ms. Factor's marriage to Mr. Inwentash, Ms. Factor may be deemed to have shared power to vote or dispose of the common shares owned by Mr. Inwentash and the common shares issuable upon exercise of the convertible securities owned by Mr. Inwentash (collectively, the "Inwentash Shares"). However, Ms. Factor does not have such power and therefore disclaims beneficial ownership of the Inwentash Shares.

(6) This information was obtained from Sheldon Inwentash pursuant to a Schedule 13D filed February 23, 2017. These shares include the right to acquire 4,328,100 shares upon exercise of certain convertible securities and 700,000 common shares owned by ThreeD Capital Inc. ("3D") and the right to acquire 1,400,000 shares upon the exercise of certain convertible securities held by 3D. Mr. Inwentash is the Chief Executive Officer of 3D and has shared rights to vote and dispose of the shares held by 3D. Mr. Inwentash does not share rights to vote and dispose of the shares held in his name. Excluded are 11,044,500 shares beneficially owned by Lynn Factor. By virtue of Mr. Inwentash's marriage to Ms. Factor, Mr. Inwentash may be deemed to have shared power to vote or dispose of the common shares owned by Ms. Factor and the common shares issuable upon exercise of the convertible securities owned by Ms. Factor (collectively, the "Factor Shares"). However, Mr. Inwentash does not have such power and therefore disclaims beneficial ownership of the Factor Shares.

There are no limitations on the rights to own Sphere 3D's securities, including the rights of non-resident or foreign shareholders to hold or exercise voting rights on Sphere 3D's common shares imposed by Canadian law or by the charter or other constituent document of the company. As of March 29, 2017, approximately 58% of the common shares were held by residents of the U.S. and there were 17 holders of record in the U.S. The actual number of holders is greater than these numbers of record holders, and includes beneficial owners whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include holders whose shares may be held in trust by other entities. Additionally, within the past five years, more than 10% of our capital stock was paid for with assets other than cash.

B. Related Party Transactions

Related parties of the Company include the Company's directors, key management personnel and persons that beneficially own, control or direct, directly or indirectly, more than 10% of the voting securities of the Company. Key management personnel are those persons having authority and responsibility for planning, directing, and controlling the activities of the Company, directly or indirectly. There were no transactions between the Company and such related parties for the period from the beginning of the Company's last full fiscal year up to March 30, 2017 that were material to the Company or such related party, except for the following:

Registered Direct Offering and Concurrent Private Placement. On March 24, 2017, the Company entered into a securities purchase agreement with certain investors party thereto, pursuant to which the Company issued to the investors, in the aggregate, 20,454,546 of the Company's common shares for gross proceeds of $4.5 million. The purchase price for one common share was $0.22. The security purchase agreement also provided for the concurrent private placement of warrants exercisable to purchase up to 20,454,546 common shares.

MF Ventures, LLC, which beneficially owns, directly or indirectly, securities of the Company carrying more than 10% of the voting rights attached to the outstanding voting securities of the Company (on a partially-diluted basis), participated in the offering by acquiring 4,545,454 common shares and warrants to purchase 4,545,454 common shares, for an aggregate purchase price of $1.0 million.

Private Placement. Between December 2016 and March 16, 2017, the Company completed a private placement and issued a total of 18,139,998 "Units" at a purchase price of $0.30 per Unit. Each Unit consisted of one common share and one warrant from each of two series of warrants. The Company received gross proceeds of $5.4 million in connection with the sale of the Units. The first series of warrants is exercisable to purchase 18,139,998 common shares in the aggregate and has an exercise price of $0.40 per share, a one-year term, and is exercisable in whole or in part at any time prior to expiration. The second series of warrants is exercisable for 18,139,998 common shares in the aggregate and has an exercise price of $0.55 per share, a five-year term, and is exercisable in whole or in part at any time prior to expiration.

MF Ventures, LLC, participated in the private placements by acquiring 8,333,333 common shares and warrants to purchase 16,666,666 shares.

Lynn Factor and Sheldon Inwentash, a married couple who beneficially owns, directly or indirectly, securities of the Company carrying more than 10% of the voting rights attached to the outstanding voting securities of the Company (on a partially-diluted basis), participated in the private placements by acquiring 5,325,000 common shares and warrants to purchase 10,650,000 shares. An additional 700,000 common shares and warrants to purchase 1,400,000 shares were acquired by ThreeD Capital Inc. Mr. Inwentash is the Chief Executive Officer of ThreeD Capital Inc.

Related Party Term Loan. In September 2016, the Company entered into a $2.5 million term loan agreement with FBC Holdings (an affiliate of Cyrus Capital Partners, a related party). The term loan has a maturity date of January 31, 2018 and bears interest at a 20.0% simple annual interest rate, payable monthly in arrears. Monthly payments of principal on the term loan begin on January 31, 2017, in 13 equal installments. The Company has the option to pre-pay the outstanding balance of the term loan, plus any accrued interest, at any time.

Related Party Warrant Exchange Agreement. The Company entered into a warrant exchange agreement (the "Warrant Exchange Agreement"), dated March 25, 2016, with MF Ventures, LLC (the "Holder") pursuant to which the Company agreed to issue a warrant (the "New Warrant") for the purchase of up to 7,199,216 common shares (the "Warrant Shares"), no par value, in a privately negotiated exchange under Section 3(a)(9) of the Securities Act of 1933, as amended, in exchange for the surrender and cancellation of previously outstanding warrants for the purchase of up to, in aggregate, 3,031,249 common shares (the "Previously Outstanding Warrants"). The Previously Outstanding Warrants were issued pursuant to: (i) that certain Purchase Agreement, dated as of May 13, 2015, by and between the Company and the Holder (the "May Purchase Agreement"); (ii) that certain Purchase Agreement, dated as of August 10, 2015, by and between the Company and the Holder (the "August Purchase Agreement"); and (iii) that certain Subscription Agreement, dated as of September 22, 2015, by and between the Company and the Holder (the "2015 Subscription Agreement"). The terms of the New Warrant are substantially similar to the Previously Outstanding Warrants except: (i) in the case of the Previously Outstanding Warrants issued pursuant to the May Purchase Agreement, the exercise price changed from $4.00 per common share to $1.22 per common share; (ii) in the case of the Previously Outstanding Warrants issued pursuant to the August Purchase Agreement and the 2015 Subscription Agreement, the exercise price changed from $2.33 per common share to $1.22 per common share; and (iii) the expiry date changed from various dates between May 18, 2020 and September 22, 2020 to April 14, 2016. However, if the holder exercises the New Warrant for the purchase of at least 3,031,249 common shares before April 14, 2016, then the expiry date for the balance of any unexercised portion of the New Warrant shall become March 25, 2021. On March 25, 2016, the Holder exercised 3,031,249 of the Warrant Shares for 3,031,249 common shares pursuant to which the Company received $3.7 million in proceeds. The expiration date for the remaining balance of the New Warrant is March 25, 2021.

The Company also entered into a Registration Rights Agreement (the "Registration Rights Agreement"), dated as of March 25, 2016, with the Holder. Pursuant to the Registration Rights Agreement, the Company filed a registration statement with the SEC to register the resale of the Warrant Shares.

Related Party Convertible Notes. On December 1, 2014, in connection with the acquisition of Overland, the existing debt of Overland and the remaining debt of the Company were amended and restated into a $19.5 million convertible note with FBC Holdings. In April 2016, the Company modified its convertible note with FBC Holdings, pursuant to which the holder made an additional advance of $5.0 million to the Company. The convertible note is scheduled to mature March 31, 2018 and bears interest at an 8.0% simple annual interest rate, payable semi-annually. The obligations under the convertible note are secured by substantially all assets of the Company. At December 31, 2016, the Company had $24.2 million, net of unamortized debt costs of $0.3 million, outstanding on the convertible note.

In February 2016, in connection with the November 2015 modification and certain specified terms, we issued to the holder of the convertible note a warrant to purchase 500,000 of common shares of the Company at a price of $1.62.

In 2016, we issued 4,214,849 common shares for the payment of interest expense on our convertible note.

Terminated Related Party Credit Facility. In December 2014, the Company entered into a revolving credit agreement with FBC Holdings for a revolving credit facility of $5.0 million. In July 2015, the credit facility was amended to extend the scheduled maturity date to May 2016 with an automatic extension to November 2016, and the aggregate borrowing amount was increased from $5.0 million to $10.0 million. In April 2016, the credit facility was terminated upon repayment of the outstanding balance.

For the year ended December 31, 2016, interest expense for the credit facility was $0.9 million, which included $0.7 million of amortization of issuance costs.

C. Interest of Experts and Counsel

Not applicable.

ITEM 8. FINANCIAL INFORMATION

A. Consolidated Statements and Other Financial Information

See Item 18. Financial Statements.

The Company has not declared or paid any dividends on its common shares to date. The Company's current intention is to retain any future earnings to support the development of the business of Sphere 3D and does not anticipate paying cash dividends in the foreseeable future. Payment of any future dividends will be at the discretion of the Board of Directors of Sphere 3D after taking into account various factors, including but not limited to the financial condition, operating results, cash needs, growth plans and the terms of any credit agreements that Sphere 3D may be a party to at the time. Accordingly, investors must rely on sales of their Sphere 3D common shares after price appreciation, which may never occur, as the only way to realize a return on their investment.

B. Significant Changes

Registered Direct Offering and Concurrent Private Placement. On March 24, 2017, the Company entered into a securities purchase agreement ("SPA") with certain investors party thereto (the "Investors"), pursuant to which the Company issued to the Investors, in the aggregate, 20,454,546 of the Company's common shares for gross proceeds of $4.5 million. The purchase price for one common share was $0.22. The SPA also provided for the concurrent private placement of warrants exercisable to purchase up to 20,454,546 common shares. Each warrant has an initial exercise price of $0.30 per warrant share. The warrants are exercisable for cash immediately or on a cashless basis commencing on a date which is the earlier of (i) six months from the date of the effective date of the offering or (ii) the date on which we fail to fulfill our obligations to register the common shares underlying the warrants under the registration rights agreements and expiring on a date which is no more than five years from the date of the effective date of the offering. If at any time while the Warrants are outstanding, the Company sells or grants options to purchase, reprice or otherwise issue any common shares or securities convertible into common shares at a price less than $0.30, then the exercise price for the warrants will be reduced to such price, subject to certain limitations. In addition, upon the occurrence of certain fundamental transactions, including certain mergers, sales of substantially all of our assets or those of our significant subsidiaries, and other significant corporate events, the warrant holders will have certain rights, including for the exchange of the warrants for warrants

to purchase common shares of the successor entity and the right to have the company purchase the warrants for their Black Scholes value.

Pursuant to the terms of the securities purchase agreement, purchasers of at least $0.5 million of common shares and warrants will, in the aggregate, have the right to participate in future offerings of our common shares or securities convertible into common shares, in an amount equaling up to 50% of such subsequent financings, which right expires 15 months from the closing of this offering.

Debt Refinance. On March 12, 2017, the Company and Opus Bank entered into an Amendment Number Two to Credit Agreement, Amendment Number One to Amendment Number 1, Waiver and Reaffirmation (the "Second Amendment"). On March 22, 2017, the Company and Opus Bank entered into an Amendment Number Three to Credit Agreement, further amending the Second Amendment. Under the terms of the Second Amendment, as modified by the Third Amendment, (i) the maturity date for the revolving and term loan credit facilities were amended to be the earlier of (a) the maturity date in the Debenture or (b) June 30, 2017 if the Maturity Extension Trigger Date occurs on or before March 31, 2017, (ii) the Lender granted a waiver of specified defaults under the Credit Agreement relating to obligations to deliver to the Lender an executed letter of intent with respect to refinancing the credit facility, and (iii) certain other terms of the Credit Agreement were amended, including but not limited to terms related to collateral coverage, milestone deliverables, and financial covenants. We met the requirements of the Maturity Extension Trigger Date on March 29, 2017. In the event of certain specified events of default, including failure to meet certain monthly revenue and EBITDA targets, to enter into a term sheet with a new lender by April 28, 2017, or to enter into a letter of intent with respect to a financing or retain a financial advisor with respect to a sale of a significant portion of the Company's assets, all amounts under the Credit Agreement may be accelerated and become immediately.

Further, as a condition of the entry into the Second Amendment, the Company issued to Opus Bank (i) a warrant, exercisable in the event that we have not repaid all outstanding amounts due under the Credit Agreement on or prior to April 17, 2017, for the purchase of the number of common shares equivalent to $75,000 at an exercise price of $0.01 per common share and (ii) a warrant, exercisable in the event that we have not repaid all outstanding amounts due under the Credit Agreement on or prior to May 31, 2017, for the purchase of the number of common shares equivalent to $100,000 at an exercise price of $0.01 per common share.

Private Placement. Between December 2016 and March 16, 2017, the Company completed a private placement and issued a total of 18,139,998 "Units" at a purchase price of $0.30 per Unit. Each Unit consisted of one common share and one warrant from each of two series of warrants, as described below. The Company received gross proceeds of $5.4 million in connection with the sale of the Units. In December 2016, 6,933,333 common shares were issued and the remaining common shares and warrants were issued in 2017.

The first series of warrants is exercisable to purchase 18,139,998 common shares in the aggregate and has an exercise price of $0.40 per share, a one-year term, and is exercisable in whole or in part at any time prior to expiration. The second series of warrants is exercisable for 18,139,998 common shares in the aggregate and has an exercise price of $0.55 per share, a five-year term, and is exercisable in whole or in part at any time prior to expiration.

Business Acquisition. On January 27, 2017, the Company acquired 80.1% of the outstanding equity securities and membership interests of UCX and HVE, respectively, for $1.1 million in cash and issued 2,205,883 common shares for an approximate value of $0.8 million, such that after such acquisition, the Company owned 100% of the outstanding equity securities of each such entity. UCX and HVE provide information technology consulting services and hardware solutions around cloud computing, data storage and server virtualization to corporate, government, and educational institutions primarily in the southern central United States. By adding UCX's products, technologies, professional services and engineering talent, and HVE's engineering and virtualization expertise, the Company intends to expand its virtualization practice as well as enhance its ability to accelerate the delivery of hybrid cloud solutions to customers. The Company is preparing the fair value estimates for the assets acquired and liabilities assumed.

Nasdaq Listing. In January 2017, the Company received a letter from the Listing Qualifications Staff of the Nasdaq Stock Market ("Nasdaq") granting the Company an extension until July 31, 2017 to regain compliance with the minimum bid price requirement under Nasdaq Listing Rule 5550(a)(2) (the "Rule"). If at any time before July 31, 2017, the bid price of the Company's common shares closes at $1.00 per share or more for a minimum of 10 consecutive business days, the Company will regain compliance with the Rule, and the matter will be closed. If the Company does not regain compliance with the Rule by July 31, 2017 the Company may be subject to delisting from NASDAQ. In connection with the grant of the extension to regain compliance with the Rule, the listing of the Company's common shares was transferred, at the Company's request, to the NASDAQ Capital Market under the existing ticker symbol (ANY) at the opening of business on February 1, 2017.

ITEM 9. THE OFFERING LISTING

A. Offer and Listing Details

On December 28, 2012, our common shares commenced trading on the TSX Venture Exchange under the symbol "ANY". On July 8, 2014, our common shares commenced trading on the NASDAQ Global Market under the symbol "ANY". On December 10, 2014, we voluntarily delisted our common shares from the TSXV. On February 1, 2017, our common shares commenced trading on the NASDAQ Capital Market in connection with our application to transfer our shares from the NASDAQ Global Market.

	TSXV (CAD$)	
Annual Highs and Lows	**High**	**Low**
Fiscal 2012 (from December 28, 2012)	0.95	0.74
Fiscal 2013	6.80	0.41
Fiscal 2014 (through December 10, 2014)	11.20	5.35

	NASDAQ (USD$)	
Annual Highs and Lows	**High**	**Low**
Fiscal 2014 (from July 8, 2014)	11.00	4.87
Fiscal 2015	7.49	1.30
Fiscal 2016	2.00	0.18

	NASDAQ (USD$)	
Quarterly Highs and Lows for Fiscal 2015 and 2016	**High**	**Low**
First Quarter Fiscal 2015	7.49	3.35
Second Quarter Fiscal 2015	5.46	2.98
Third Quarter Fiscal 2015	5.73	1.66
Fourth Quarter Fiscal 2015	3.80	1.30
First Quarter Fiscal 2016	2.00	1.02
Second Quarter Fiscal 2016	1.38	0.66
Third Quarter Fiscal 2016	0.95	0.40
Fourth Quarter Fiscal 2016	0.92	0.18

	NASDAQ (USD$)	
Monthly Highs and Lows	**High**	**Low**
September 2016	0.84	0.40
October 2016	0.68	0.45
November 2016	0.92	0.42
December 2016	0.85	0.18
January 2017	0.56	0.26
February 2017	0.36	0.26
March 2017 (through March 27, 2017)	0.34	0.20

B. Plan of Distribution

Not applicable.

C. Markets

The common shares of the Company are traded on the NASDAQ Capital Market under the symbol "ANY".

D. Selling Shareholders

Not applicable.

E. Dilution

Not applicable.

F. Expenses of the Issue

Not applicable.

ITEM 10. ADDITIONAL INFORMATION

A. Share Capital

Not applicable.

B. Memorandum and Articles of Association

The following is a summary of the material provisions of our Articles of Amalgamation ("Articles") and by-laws (as amended, "By-laws") and certain related sections of the Business Corporations Act (Ontario) ("BCA"). This summary is qualified in its entirety by reference to the Articles and By-laws, which are included as Exhibits 1.1-1.2 to this Annual Report, and the BCA.

Stated Objects or Purposes. Our Articles do not contain stated objects or purposes and do not place any limitations on the business that we may carry on.

Directors' Power to Vote on Matters in which a Director is Materially Interested. Our Articles issued pursuant to the BCA contain no restrictions on the power of directors:

(1) to vote on a proposal arrangement or contract in which the director is materially interested;

(2) in the absence of an independent quorum, to vote compensation to themselves or any member of their body; or

(3) with respect to borrowing powers exercisable by the directors or how such borrowing powers may be varied.

The restrictions on the ability of a director to vote and the requirement to disclose his or her interest are governed by applicable corporate legislation.

Directors' Power to Determine the Compensation of Directors. The remuneration of our directors, if any, may be determined by our directors. Such remuneration may be in addition to any salary or other remuneration paid to any of our officers or employees who are also directors.

Retirement or Non-Retirement of Directors Under an Age Limit Requirement. Our Articles do not impose any mandatory age-related retirement or non-retirement requirement for our directors.

Number of Shares Required to be Owned by a Director. Our Articles do not require that a director hold any shares as a qualification for his or her office.

Rights, Preferences and Restrictions of Shares. The rights, preferences and restrictions attaching to the common shares are as set forth in the Articles.

Action Necessary to Change the Rights of Holders of Shares. Under the BCA, certain types of amendments to our Articles, including amendments to change the rights, privileges, restrictions or conditions attached to our shares, are subject to approval by special resolution of the Shareholders.

Shareholder Meetings. The board, the chairman of the board, the managing director, the president or the holders of not less than 5% of the issued Shares of the Company that carry the right to vote at a meeting sought, shall have power to call a special meeting of Shareholders at any time. For the purposes of determining Shareholders entitled to receive notice of a meeting, the directors may fix an advance date as the record date for such determination. Any record date shall not precede by more than 60 days or by less than 30 days the date on which the meeting is to be held.

The only persons entitled to be present at a meeting of the Shareholders shall be those entitled to vote the directors and auditor of the Company and others who, although not entitled to vote, are entitled or required under any provision of the BCA, the Articles or the by-laws to be present at the meeting A quorum for the transaction of business at any meeting of shareholders shall be at least two shareholders entitled to vote at such meeting, whether present in person or represented by proxy.

Limitations on the Right to Own Securities. Our Articles do not provide for any limitations on the rights to own our securities.

Change of Control. Our Articles and Bylaws do not contain any change of control limitations with respect to a merger, acquisition or corporate restructuring that involves us.

Shareholder Ownership Disclosure. Although U.S. and Canadian securities laws regarding share ownership by certain persons require certain disclosure, our Articles do not provide for any ownership threshold above which Share ownership must be disclosed.

C. Material Contracts

The following are material contracts, other than contracts in the ordinary course of business, which have been entered into by Sphere 3D and/or its subsidiaries for the two years immediately preceding the publication of this Annual Report and are in effect:

1. Subscription Agreement dated May 13, 2015 between the Company and Lynn Factor for the purchase of up to 500,000 common shares and warrants exercisable for the purchase of up to 500,000 common shares, for an aggregate purchase price of $1.6 million. The warrant has an exercise price of $4.00 and an expiration date of May 21, 2020.
2. Subscription Agreement dated October 6, 2015 between the Company and Lynn Factor for the purchase of up to 300,000 common shares and warrants exercisable for the purchase of up to 75,000 common shares, for an aggregate purchase price of $699,000. The warrant has an exercise price of $2.33 and an expiration date of October 14, 2020.
3. Subscription Agreement dated November 30, 2015 between the Company and Lynn Factor for the purchase of up to 220,000 common shares and warrants exercisable for the purchase of up to 220,500 common shares, for an aggregate purchase price of $440,000. The warrant has an exercise price of $2.50 and an expiration date of December 15, 2020.
4. Subscription Agreement dated November 30, 2015 between the Company and Sheldon Inwentash for the purchase of up to 220,000 common shares and warrants exercisable for the purchase of up to 220,500 common shares, for an aggregate purchase price of $440,000. The warrant has an exercise price of $2.50 and an expiration date of December 15, 2020.
5. Warrant to purchase 274,000 common shares for an exercise price of $2.33 per common share dated December 18, 2015 and expiring on October 14, 2020 issued by the Company to Lynn Factor issued pursuant to the price protection provisions of the Subscription Agreement described in 10C(2) above.
6. Asset Purchase Agreement dated August 10, 2015 between Imation Corp., Overland Storage, Inc. and Sphere 3D Corp. (see Note 3, Business Combinations, RDX Asset Acquisition in our Notes to Consolidated Financial Statements)
7. Lock-Up Agreement dated August 10, 2015 between Imation Corp. and Sphere 3D Corp. (see Note 3, Business Combinations, RDX Asset Acquisition in our Notes to Consolidated Financial Statements)
8. First Amendment to 8% Senior Secured Convertible Debenture dated November 30, 2015 between the Company and FBC Holdings S.A.R.L. (see ITEM 7.B. Related Party Transactions)

9. Warrant Exchange Agreement dated March 25, 2016 between Sphere 3D Corp. and MF Ventures, LLC (formerly MacFarlane Family Ventures, LLC) for the issuance of warrants to purchase up to 7,199,216 common shares of the Company at an exercise price of $1.22, in exchange for the surrender of previously issued warrants, in the aggregate, of 3,031,249. (see ITEM 7.B. Related Party Transactions)
10. Credit Agreement dated April 6, 2016 between the Company and Opus Bank for a term loan in the amount of $10.0 million and a credit facility in the amount of up to $10.0 million. (see Note 7, Debt, Opus Bank Credit Agreement in our Notes to Consolidated Financial Statements)
11. Second Amendment to 8% Senior Secured Convertible Debenture dated April 6, 2016 between the Company and FBC Holdings S.A.R.L.
12. Term Loan Agreement dated September 16, 2016 between Sphere 3D Corp. and FBC Holdings S.A.R.L. (see Note 7, Debt, Opus Bank Credit Agreement in our Notes to Consolidated Financial Statements)
13. Consent, Waiver, Reaffirmation and Amendment Number One to Credit Agreement dated December 30, 2016 between the Company and Opus Bank. (see Note 7, Debt, Opus Bank Credit Agreement in our Notes to Consolidated Financial Statements)
14. Warrant to Purchase 862,068 common shares for an exercise price of $0.01 per common share dated December 30, 2016 and expiring on December 30, 2022 issued by the Company to Opus Bank. (see Note 7, Debt, Opus Bank Credit Agreement in our Notes to Consolidated Financial Statements)
15. Purchase Agreement dated December 30, 2016 between the Company and MF Ventures, LLC for the purchase of up to 8,333,333 common shares and warrants exercisable for the purchase of up to 16,666,666 common shares, for an aggregate purchase price of $2.5 million. (see ITEM 7.B. Related Party Transactions)
16. Purchase Agreement dated December 30, 2016 between the Company and Lynn Factor for the purchase of up to 3,325,000 common shares and warrants exercisable for the purchase of up to 6,650,000 common shares, for an aggregate purchase price of $997,500. (see ITEM 7.B. Related Party Transactions)
17. Purchase Agreement dated December 29, 2016 between the Company and Sheldon Inwentash for the purchase of up to 2,000,000 common shares and warrants exercisable for the purchase of up to 4,000,000 common shares, for an aggregate purchase price of $600,000. (see ITEM 7.B. Related Party Transactions)
18. Purchase Agreement dated December 29, 2016 between the Company and ThreeD Capital Inc. for the purchase of up to 700,000 common shares and warrants exercisable for the purchase of up to 1,400,000 common shares, for an aggregate purchase price of $210,000. (see Item 7 (B) Related Party Transactions)
19. Amendment Number Two to Credit Agreement, Amendment Number One to Amendment Number 1, Waiver and Reaffirmation dated March 12, 2017 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank. (see Note 7, Debt, Opus Bank Credit Agreement in our Notes to Consolidated Financial Statements)
20. Third Amendment to Credit Agreement dated March 21, 2017 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank. (see Note 7, Debt, Opus Bank Credit Agreement in our Notes to Consolidated Financial Statements)
21. Securities Purchase Agreement dated March 24, 2017 between the Company and MF Ventures, LLC for the purchase of up to 4,545,454 common shares and warrants exercisable for the purchase of up to 4,545,454 common shares, for an aggregate purchase price of $1.0 million. (see ITEM 7.B. Related Party Transactions)
22. Securities Purchase Agreement dated March 24, 2017 between the Company and various investors for the purchase of up to 15,909,092 common shares and warrants exercisable for the purchase of up to 15,909,092 common shares, for an aggregate purchase price of $3.5 million.
23. Registration Rights Agreement between the Company and various investors, including MF Ventures, LLC., dated March 24, 2017 for the registration of up to 20,454,546 common shares issuable upon the exercise of warrants.

D. Exchange Controls

The Company is not aware of any Canadian federal or provincial laws, decrees, or regulations that restrict the export or import of capital, including foreign exchange controls, or that affect the remittance of dividends, interest or other payments to non-Canadian holders of the common shares. There are no limitations under the laws of Canada or by the charter or other constituent documents of the Company, except the *Investment Canada Act* which may require review and approval by the Minister of Industry (Canada) of certain acquisition of control of the Company by non-Canadians. The threshold for acquisitions of control is generally defined as being one third or more of Sphere 3D's voting shares. If the investment is potentially injurious to national security it may be subject to review under the *Investment Canada Act* notwithstanding the percentage interest acquired or amount of the investment. "Non-Canadian" generally means an individual who is not Canadian citizen, or a corporation partnership, trust or joint venture that is ultimately controlled by non-Canadians.

E. Taxation

Material Canadian Federal Income Tax Considerations

The following summarizes the material Canadian federal income tax considerations generally applicable to the holding and disposition of common shares of Sphere 3D by holders who, at all relevant times, (i) are residents of the U.S. for the purposes of the Canada-United States Tax Convention (1980), as amended (the "Convention"), (ii) are not resident in Canada or deemed to be resident in Canada for purposes of the Income Tax Act (Canada), as amended to the date hereof (the "Canadian Tax Act"), (iii) deal at arm's length with and are not affiliated with the Company for the purposes of the Canadian Tax Act, and (iv) do not use or hold and are not deemed to use or hold such common shares in the course of carrying on or being deemed to be carrying on business in Canada ("U.S. Resident Holders"). Special rules, which are not discussed in this summary, may apply to a U.S. Resident Holder that is an insurer carrying on business in Canada or elsewhere or an "authorized foreign bank" (all as defined in the Canadian Tax Act).

This summary is based upon the current provisions of the Canadian Tax Act, the regulations thereunder, all specific proposals to amend the Canadian Tax Act and regulations thereunder publicly announced by or on behalf of the Minister of Finance of Canada prior to the date hereof (the "Proposals"), the provisions of the Convention as in effect on the date hereof, and an understanding, based on publicly available published materials, of the current administrative policies and assessing practices of the Canada Revenue Agency in force as of the date hereof. Other than the Proposals, this summary does not take into account or anticipate any changes in law or in the administrative policies or assessing practices of the Canada Revenue Agency, whether by legislative, governmental or judicial action, nor does it take into account tax laws of any province or territory of Canada or of any jurisdiction outside Canada which may differ significantly from those discussed herein. The summary assumes that the Proposals will be enacted substantially as proposed, but there can be no assurance that the Proposals will be enacted as proposed or at all.

This summary is of a general nature only and is not intended to be, nor should it be construed to be, legal or tax advice to any particular U.S. Resident Holder, and no representation with respect to the tax consequences to any particular U.S. Resident Holder is made. The tax liability of a U.S. Resident Holder will depend on the holder's particular circumstances. Accordingly, U.S. Resident Holders should consult with their own tax advisors for advice with respect to their own particular circumstances.

All amounts relevant in computing a U.S. Resident Holder's liability under the Canadian Tax Act are generally required to be computed in Canadian dollars.

Dividends. Dividends paid or credited or deemed under the Canadian Tax Act to be paid or credited to a U.S. Resident Holder on the common shares of Sphere 3D are subject to Canadian withholding tax equal to 25% of the gross amount of such dividends. Under the Convention and subject to the provisions thereof, the rate of Canadian withholding tax which would apply to dividends paid on the common shares to a U.S. Resident Holder that beneficially owns such dividends and is fully entitled to the benefits under the Convention is generally 15%, unless the beneficial owner is a company which owns at least 10% of the voting shares of Sphere 3D at that time, in which case the rate of Canadian withholding tax is reduced to 5%.

Dispositions. For purposes of the following discussion, we have assumed that the common shares of Sphere 3D will remain listed on the NASDAQ. A U.S. Resident Holder is not subject to tax under the Canadian Tax Act in respect of a capital gain realized on the disposition of the common shares of Sphere 3D in the open market unless the shares are "taxable Canadian property" to the holder thereof and the U.S. Resident Holder is not entitled to relief under the Convention. The common shares of Sphere 3D will be taxable Canadian property to a U.S. Resident Holder if, at any time during the 60-month period preceding the disposition: (i) the U.S. Resident Holder, alone or together with persons with whom the U.S. Resident Holder did not deal at arm's length (for purposes of the Canadian Tax Act), owned 25% or more of the issued shares of Sphere 3D of any class or series, and (ii) more than 50% of the fair market value of the common shares was derived, directly or indirectly, from one or any combination of real property situated in Canada, timber resource properties, Canadian resource properties, or an option in respect of, or an interest in, or for civil law a right in, any of the foregoing.

Notwithstanding the foregoing, the common shares of Sphere 3D may otherwise be deemed to be taxable Canadian property to a U.S. Resident Holder for purposes of the Canadian Tax Act in particular circumstances. U.S. Resident Holders to whom common shares constitute taxable Canadian property should consult with their own tax advisors as to the Canadian income tax consequences of a disposition of the common shares.

F. Dividends and Paying Agents

Not applicable.

G. Statement By Experts

Not applicable.

H. Documents on Display

We are subject to the informational requirements of the Exchange Act. In accordance with these requirements, we file reports and other information as a foreign private issuer with the SEC. You may inspect and copy our public filings without charge at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. The SEC maintains a website (www.sec.gov) that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC.

You may also inspect reports and other information about the Company electronically on SEDAR at www.sedar.com and on its website at www.sphere3d.com.

I. Subsidiary Information

Not applicable.

ITEM 11. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of loss that may impact our financial position, results of operations, or cash flows due to adverse changes in financial and commodity market prices and rates. We are exposed to market risk from changes in foreign currency exchange rates as measured against the U.S. dollar. These exposures are directly related to our normal operating and funding activities. Historically, we have not used derivative instruments or engaged in hedging activities.

Foreign Currency Risk. We conduct business on a global basis and a significant portion of our sales in international markets are not denominated in U.S. dollars. Export sales represent a significant portion of our sales and are expected to continue to represent a significant portion of sales. Purchase contracts are typically in U.S. dollars. In addition, our wholly-owned foreign subsidiaries incur costs that are denominated in local currencies. As exchange rates vary, these results may vary from expectations when translated into U.S. dollars, which could adversely impact overall expected results.

We have noticed only a slight depreciation, less than 1%, in the average value of the Euro compared to the U.S. dollar, in 2016 compared to 2015. Our 2016 revenues would have been impacted with a 10% change in the average value of the Euro compared to the U.S. dollar by approximately $3.7 million, or 4.9% of total revenue, primarily as a result of revenue denominated in Euros.

Credit Risk. Credit risk is the risk that the counterparty to a financial instrument fails to meet its contractual obligations, resulting in a financial loss to us. We sell to a diverse customer base over a global geographic area. We evaluate collectability of specific customer receivables based on a variety of factors including currency risk, geopolitical risk, payment history, customer stability and other economic factors. Collectability of receivables is reviewed on an ongoing basis by management and the allowance for doubtful receivables is adjusted as required. Account balances are charged against the allowance for doubtful receivables when we determine that it is probable that the receivable will not be recovered. We believe that the geographic diversity of the customer base, combined with our established credit approval practices and ongoing monitoring of customer balances, mitigates this counterparty risk.

Liquidity Risk. Liquidity risk is the risk that we will not be able to meet our financial obligations as they come due. We continually monitor our actual and projected cash flows and believe that our internally generated cash flows will provide us with sufficient funding to meet all working capital and financing needs for at least the next 12 months.

ITEM 12. DESCRIPTION OF SECURITIES OTHER THAN EQUITY SECURITIES

A. Debt Securities

Not applicable.

B. Warrants and Rights

Not applicable.

C. Other Securities

Not applicable.

D. American Depository Shares

Not applicable.

PART II

ITEM 13. DEFAULTS, DIVIDEND ARREARAGES AND DELINQUENCIES

Not applicable.

ITEM 14. MATERIAL MODIFICATIONS TO THE RIGHTS OF SECURITY HOLDERS AND USE OF PROCEEDS

Not applicable.

ITEM 15. 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) and 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 annual report.

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over our financial reporting. In order to evaluate the effectiveness of internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act, management has conducted an assessment, including testing, using the criteria in Internal Control-Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Our system of internal control over financial reporting is designed 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.

Based on our evaluation under the framework in Internal Control-Integrated Framework, our Chief Executive Officer and Chief Financial Officer concluded that our internal control over financial reporting was effective as of December 31, 2016. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions and that the degree of compliance with the policies or procedures may deteriorate.

This annual report does not include an attestation report of our independent registered public accounting firm regarding internal control over financial reporting. Management's report on internal control over financial reporting was not subject to attestation by our independent registered public accounting firm pursuant to rules of the SEC that permit us to provide only management's report in this annual report.

This report on internal control over financial reporting shall not be deemed to be filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, and is not incorporated by reference into any of our filings, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the year ended December 31, 2016 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 16A. AUDIT COMMITTEE FINANCIAL EXPERT

The Company's Board of Directors has determined that Glenn M. Bowman qualifies as an "audit committee financial expert of the Company's Audit Committee is independent as that term is defined by the rules and regulations of the NASDAQ Stock Market, Inc. and qualifies as an "audit committee financial expert" and is an independent director as defined in Item 407(d)(5) of Regulation S-K under the U.S. Securities Exchange Act of 1934, as amended.

ITEM 16B. CODE OF ETHICS

We have adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Such code is posted on the Company's website and is available at www.sphere3d.com.

ITEM 16C. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The aggregate fees incurred by the Company's current external auditor, Moss Adams, in each of the last two years for audit and other fees are as follows (in thousands):

	2016	2015
Audit fees[1]	$ 514	$ 553
Audit related fees[2]	10	61
Tax fees[3]	9	51
All other fees[4]	—	—
	$ 533	$ 665

(1) Audit fees consist of fees billed for professional services rendered in connection with the audit of our annual consolidated financial statements, which were provided in connection with statutory and regulatory filings or engagements.

(2) Audit-related fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of our consolidated financial statements, and are not reported under audit fees.

(3) Tax fees consist of fees billed for professional services rendered for IRS Section 302 net operating loss limitation study.

(4) All other fees consist of fees for products and services other than the services reported above. There were no such services rendered to us.

Pre-Approval Policies and Procedures

The Audit Committee has the authority to pre-approve all non-audit services to be provided to the Company by its independent auditor. All services provided by Moss Adams during the years 2016 and 2015 were pre-approved by the Audit Committee.

ITEM 16D. EXEMPTIONS FROM THE LISTING STANDARDS FOR AUDIT COMMITTEES

At no time since the commencement of the Company's most recently completed financial year has the Company relied on the exemptions in NI 52-110 (de minimis non-audit services), or an exemption from NI 52-110, in whole or in part, granted under Part 8 of NI 52-110.

ITEM 16E. PURCHASES OF EQUITY SECURITIES BY THE ISSUER AND AFFILIATED PURCHASERS

Not applicable.

ITEM 16F. CHANGES IN REGISTRANTS CERTIFYING ACCOUNTANT

Not applicable.

ITEM 16G. CORPORATE GOVERNANCE

NASDAQ Listing Rule 5635 generally provides that shareholder approval is required of U.S. domestic companies listed on the NASDAQ Capital Market prior to issuance (or potential issuance) of securities equaling 20% or more of the Company's common shares or voting power for less than the greater of market, or book value or in transactions which will result in a "change of control" of the Company. Notwithstanding this general requirement, NASDAQ Listing Rule 5615(a)(3)(A) permits foreign private issuers like Sphere 3D to follow their home country practice rather than this shareholder approval requirement. Since the Company is not required under Canadian securities laws to obtain shareholder approval prior to entering into a transaction with the potential to issue securities as described above, Sphere 3D relied upon this exemption in connection with the integrated offerings of common shares and warrants to purchase common shares consummated in September, October, and December 2015; in connection with the warrant exchange in March 2016; and the integrated offerings of common shares and warrants to purchase common shares consummated in the period between December 2016 and March 16, 2017.

ITEM 16H. MINE SAFETY DISCLOSURE

Not applicable.

PART III

ITEM 17. FINANCIAL STATEMENTS

Not applicable.

ITEM 18. FINANCIAL STATEMENTS

The consolidated financial statements of Sphere 3D are included at the end of this Annual Report.

ITEM 19. EXHIBITS

The exhibits listed in the accompanying "Exhibit Index" are incorporated herein by reference.

SIGNATURE

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned Annual Report on its behalf.

Sphere 3D Corp.

/s/ Eric L. Kelly

Eric L. Kelly
Chief Executive Officer
Date: March 30, 2017

SPHERE 3D CORP.

For the Years Ended December 31, 2016, 2015 and 2014

Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders

Sphere 3D Corp.

We have audited the accompanying consolidated balance sheets of Sphere 3D Corp. (the "Company") as of December 31, 2016 and 2015, and the related consolidated statements of operations, comprehensive loss, cash flows, and shareholders' equity for each of the three years in the period ended December 31, 2016. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

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

In our opinion, such consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Sphere 3D Corp. as of December 31, 2016 and 2015, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2016, in conformity with accounting principles generally accepted in the United States of America.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company's recurring losses and negative operating cash flows raise substantial doubt about the Company's ability to continue as a going concern. Management's plans concerning these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ Moss Adams LLP

San Diego, California

March 30, 2017

Sphere 3D Corp.
Consolidated Balance Sheets
(in thousands of U.S. dollars)

	December 31, 2016	December 31, 2015
Assets		
Current assets:		
Cash and cash equivalents	$ 5,056	$ 8,661
Accounts receivable, net of allowance for doubtful accounts of $1,648 and $1,567, respectively	11,591	13,401
Inventories	10,002	11,326
Investment	1,500	—
Other current assets	2,121	3,155
Total current assets	30,270	36,543
Property and equipment, net	3,058	3,972
Intangible assets, net	47,728	54,019
Goodwill	11,068	44,132
Other assets	432	445
Total assets	$ 92,556	$ 139,111
Liabilities and Shareholders' Equity		
Current liabilities:		
Accounts payable	$ 10,561	$ 10,855
Accrued liabilities	3,619	4,326
Accrued payroll and employee compensation	2,227	2,625
Deferred revenue	5,338	6,150
Debt - related party	2,294	10,000
Debt	17,300	7,391
Other current liabilities	1,515	5,050
Total current liabilities	42,854	46,397
Deferred revenue, long-term	1,051	1,675
Long-term debt - related party	24,401	19,500
Long-term deferred tax liabilities	3,100	2,755
Other long-term liabilities	704	644
Total liabilities	72,110	70,971
Commitments and contingencies (Note 15)		
Shareholders' equity:		
Common shares, no par value; 66,565 and 45,198 shares issued and outstanding as of December 31, 2016 and 2015, respectively	157,254	136,058
Accumulated other comprehensive loss	(1,565)	(1,135)
Accumulated deficit	(135,243)	(66,783)
Total shareholders' equity	20,446	68,140
Total liabilities and shareholders' equity	$ 92,556	$ 139,111

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Operations
(in thousands of U.S. dollars, except per share amounts)

	Year Ended December 31,		
	2016	**2015**	**2014**
Net revenue:			
Product revenue	$ 68,065	$ 65,514	$ 12,201
Service revenue	8,328	10,651	1,268
	76,393	76,165	13,469
Cost of product revenue	50,434	48,825	7,536
Cost of service revenue	3,620	4,721	597
Gross profit	22,339	22,619	5,336
Operating expenses:			
Sales and marketing	22,243	23,569	5,153
Research and development	8,794	9,916	655
General and administrative	20,728	23,271	11,567
Impairment of goodwill and acquired intangible assets	34,398	10,702	—
	86,163	67,458	17,375
Loss from operations	(63,824)	(44,839)	(12,039)
Other income (expense):			
Interest expense - related party	(3,106)	(2,710)	(207)
Interest expense	(1,981)	(355)	(240)
Other income (expense), net	1,276	(689)	(194)
Loss before income taxes	(67,635)	(48,593)	(12,680)
Provision for (benefit from) income taxes	825	(1,366)	42
Net loss	$ (68,460)	$ (47,227)	$ (12,722)
Net loss per share:			
Basic and diluted	$ (1.38)	$ (1.24)	$ (0.53)
Shares used in computing net loss per share:			
Basic and diluted	49,736	37,957	24,131

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Comprehensive Loss
(in thousands of U.S. dollars)

	Year Ended December 31,		
	2016	**2015**	**2014**
Net loss	$ (68,460)	$ (47,227)	$ (12,722)
Other comprehensive (loss) income:			
Foreign currency translation adjustment	(430)	286	(1,285)
Total other comprehensive (loss) income	(430)	286	(1,285)
Comprehensive loss	$ (68,890)	$ (46,941)	$ (14,007)

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Shareholders' Equity
(in thousands of U.S. dollars)

	Common Shares		Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Shareholders' Equity
	Shares	Amount			
Balance at January 1, 2014	21,098	$ 14,407	$ (136)	$ (6,834)	$ 7,437
Issuance of common shares for acquisition	8,557	68,627	—	—	68,627
Issuance of common shares for cash	3,423	11,901	—	—	11,901
Issuance of common shares for technology	1,090	6,454	—	—	6,454
Issuance of common shares for conversion of convertible notes	333	2,500	—	—	2,500
Shares returned for related party loan payment	(194)	(1,513)	—	—	(1,513)
Issuance of common shares pursuant to the exercise of stock options	247	148	—	—	148
Share-based compensation	—	3,593	—	—	3,593
Other comprehensive loss	—	—	(1,285)	—	(1,285)
Net loss	—	—	—	(12,722)	(12,722)
Balance at December 31, 2014	34,554	106,117	(1,421)	(19,556)	85,140
Issuance of common shares for cash, net	6,916	13,697	—	—	13,697
Issuance of common shares for acquisition	1,529	6,147	—	—	6,147
Issuance of common shares for settlement of related party interest expense	668	1,560	—	—	1,560
Issuance of common shares pursuant to the exercise of stock options and vesting of restricted stock units, net	1,531	(6)	—	—	(6)
Issuance of warrants in relation to related party debt	—	1,380	—	—	1,380
Share-based compensation	—	7,163	—	—	7,163
Other comprehensive income	—	—	286	—	286
Net loss	—	—	—	(47,227)	(47,227)
Balance at December 31, 2015	45,198	136,058	(1,135)	(66,783)	68,140
Issuance of common shares for cash	10,472	5,707	—	—	5,707
Issuance of common shares for investment purchase	3,947	1,500	—	—	1,500
Issuance of common shares for settlement of related party interest expense	4,215	1,859	—	—	1,859
Issuance of warrants	—	1,994	—	—	1,994
Issuance of warrants in relation to related party debt	—	485	—	—	485
Issuance of common shares pursuant to the vesting of restricted stock units	2,032	(11)	—	—	(11)
Issuance of restricted stock awards	701	531	—	—	531
Share-based compensation	—	9,131	—	—	9,131
Other comprehensive loss	—	—	(430)	—	(430)
Net loss	—	—	—	(68,460)	(68,460)
Balance at December 31, 2016	66,565	$ 157,254	$ (1,565)	$ (135,243)	$ 20,446

See accompanying notes to consolidated financial statements.

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

	Year Ended December 31,		
	2016	**2015**	**2014**
Operating activities:			
Net loss	$ (68,460)	$ (47,227)	$ (12,722)
Adjustments to reconcile net loss to cash used in operating activities:			
Impairment of goodwill and acquired intangible assets	34,398	10,702	—
Depreciation and amortization	6,187	7,450	3,453
Share-based compensation	9,131	7,154	3,253
Provision for losses on accounts receivable	715	1,567	—
Deferred tax provision (benefit)	349	(1,632)	(3)
Amortization of debt issuance costs	1,453	727	3
Loss on extinguishment of debt	502	—	—
Fair value adjustment of warrants	(1,248)	(478)	—
Changes in operating assets and liabilities (net of effects of acquisitions):			
Accounts receivable	(1,185)	(1,499)	(4,827)
Inventories	1,282	6	(424)
Accounts payable and accrued liabilities	1,066	1,984	3,311
Accrued payroll and employee compensation	(377)	(1,187)	951
Deferred revenue	(1,344)	(1,901)	57
Other assets and liabilities, net	58	1,177	(1,597)
Net cash used in operating activities	(17,473)	(23,157)	(8,545)
Investing activities:			
Purchase of fixed assets	(237)	(415)	(487)
Development costs capitalized as intangible assets	—	(108)	(1,499)
Purchase of intangible assets	—	(60)	(4,013)
Loan to related party	—	—	(7,750)
Proceeds received from related party loan	—	—	2,500
Cash received from acquisition	—	—	2,312
Net cash used in investing activities	(237)	(583)	(8,937)
Financing activities:			
Proceeds from debt	18,195	—	—
Payments on debt	(7,391)	—	—
Proceeds from issuance of common shares and warrants	5,831	16,812	12,092
Payment for issuance costs	—	(1,009)	(868)
Proceeds from debt - related party	2,500	10,000	5,000
Payments on debt - related party	(5,000)	—	—
Proceeds from credit facility, net	—	2,501	141
Proceeds from exercise of stock options	—	225	148
Payment for restricted stock units tax liability on net settlement	(12)	(231)	—
Net cash provided by financing activities	14,123	28,298	16,513
Effect of exchange rate changes on cash	(18)	(155)	10
Net (decrease) increase in cash and cash equivalents	(3,605)	4,403	(959)
Cash and cash equivalents, beginning of period	8,661	4,258	5,217
Cash and cash equivalents, end of period	$ 5,056	$ 8,661	$ 4,258

Sphere 3D Corp.

Consolidated Statements of Cash Flows (continued)
(in thousands of U.S. dollars)

	Year Ended December 31,		
	2016	**2015**	**2014**
Supplemental disclosures of cash flow information:			
Cash paid for income taxes	$ 228	$ 54	$ 30
Cash paid for interest	$ 946	$ 647	$ 23
Supplemental disclosures of non-cash investing and financing activities:			
Issuance of common shares for cost-method investment	$ 1,500	$ —	$ —
Issuance of common shares for acquisition	$ —	$ 6,147	$ 68,627
Issuance of common shares for related party interest expense	$ 1,859	$ 1,560	$ —
Issuance of warrants in relation to related party credit facility	$ 485	$ 1,380	$ —
Issuance of warrants	$ 1,995	$ (1,925)	$ —
Contingent liability for the acquisition of intangible assets	$ —	$ (2,500)	$ 2,500
Issuance of common shares for technology	$ —	$ —	$ 6,454
Issuance of common shares for conversion of convertible notes	$ —	$ —	$ 2,500
Issuance of common shares for settlement of liabilities	$ 531	$ —	$ 677
Common shares received for settlement of related party debt	$ —	$ —	$ (1,513)

See accompanying notes to consolidated financial statements.

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 via hybrid Cloud, Cloud and on-premise implementations through 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 Glassware 2.0™, NEO®, RDX®, SnapCLOUD™, SnapServer®, SnapSync™ and V3®.

These consolidated statements include the financial statements of the Company, its wholly-owned subsidiaries, including Overland Storage, Inc. ("Overland"), V3 Systems Holdings, Inc., and Sphere 3D Inc.

The Company has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond June 30, 2017 if the Company is unable to amend or refinance our credit facility with Opus Bank. As a result, the Company expects to need to refinance the short term portions of its existing debt and/or continue to raise additional debt, equity or equity-linked financing in the near future, but such financing may not be available on favorable terms on a timely basis or at all. Significant changes from the Company's current forecasts, including but not limited to: (i) failure to comply with the financial covenants in our credit facility; (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 gain compliance with the minimum bid price requirement 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 make further reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, 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 12 months ended December 31, 2016, and such losses might continue for a period of time. 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 June 30, 2017 due to the maturity dates of the existing debt facilities. These factors, among others, raise doubt that the Company will be able to continue as a going concern.

The Company's recurring losses and negative cash flows from operations raise substantial doubt about its ability to continue as a going concern. The accompanying 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.

2. Significant Accounting Policies

Principles of Consolidation

The 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. These 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.

Reclassifications

Certain reclassifications have been made to prior periods' amounts to conform to the current period's presentation.

Use of Estimates

The preparation of the 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 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 litigation claims; deferred revenue; allowance for doubtful receivables; inventory valuation; warranty provisions; deferred income taxes; and impairment assessments of goodwill, other indefinite-lived intangible assets and long-lived assets. 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 consolidated statements of operations. Such transactions resulted in a minimal loss in 2016, and a loss of $1.7 million and $0.2 million for the years ended December 31, 2015 and 2014, 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. At both December 31, 2016 and 2015, allowance for doubtful accounts of $1.6 million was recorded.

Inventories

Inventories are stated at the lower of cost or market using the first-in-first-out method. 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 its inventory for obsolete or unmarketable inventory by an amount equal to the difference between the cost of the inventory and the estimated market value.

Property and Equipment

Property and equipment are recorded at cost. Depreciation expense is computed using the straight-line method. Leasehold improvements are depreciated over the shorter of the remaining estimated useful life of the asset or the term of the lease.

Expenditures for normal maintenance and repair are charged to expense as incurred, and improvements are capitalized. Upon the sale or retirement of property or equipment, the asset cost and related accumulated depreciation are removed from the respective accounts and any gain or loss is included in the results of operations.

Estimated useful lives are typically as follows:

Building	40 years
Machinery and equipment	3-5 years
Furniture and fixtures	5 years
Computer equipment and software	1-5 years

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 25 years for channel partner relationships, four to nine years for developed technology, eight years for capitalized development costs, and five 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, Other Indefinite-Lived Intangible Assets and Long-Lived Assets

Goodwill and other indefinite-lived 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. Other indefinite-lived 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. See Note 6 - Intangible Assets and Goodwill for further information on impairment.

Long-lived assets, such as property and equipment and intangible assets subject to amortization, are reviewed for recoverability whenever events or changes in circumstances indicate the carrying value may not be recoverable. Our consideration includes, but is not limited to: (i) significant under-performance relative to historical or projected future operating results; (ii) significant changes in the manner of use of the assets or the strategy for the Company's overall business; (iii) significant decrease in the market value of the assets; and (iv) significant negative industry or economic trends. When the carrying value is not considered recoverable, an impairment loss for the amount by which the carrying value of a long-lived asset exceeds its fair value is recognized, with an offsetting reduction in the carrying value of the related asset. See Note 6 - Intangible Assets and Goodwill for further information on impairment.

Revenue Recognition

Revenue from sales of products is recognized when persuasive evidence of an arrangement exists, the price is fixed or determinable, collectability is reasonably assured and delivery has occurred. Under this policy, revenue on direct product sales, excluding sales to distributors, is recognized upon shipment of products to customers. These customers 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. Revenue from services, such as extended product warranties, are deferred and recognized over the period of the service agreement.

Title and risk of loss transfer to the customer when the product leaves the Company's dock, except for one subsidiary where title and risk of loss transfer to the customer when the product arrives at the customer's location. Product sales to distribution customers are subject to certain rights of return, stock rotation privileges and price protection. Because we are unable to estimate its exposure for returned product or price adjustments, revenue from shipments to these customers is not recognized until the related products are in turn shipped to the ultimate customer by the distributor. For products for which software is more than an incidental component, we recognize revenue in accordance with current authoritative guidance for software revenue recognition.

The Company enters into revenue arrangements that may consist of multiple deliverables of its product and service offerings, such as for sales of hardware devices and extended warranty services. The Company allocates revenue to deliverables in multiple element arrangements based on relative selling prices. The Company determines its vendor-specific objective evidence ("VSOE") based on its normal pricing and discounting practices for the specific product or service when sold separately. When the Company is not able to establish VSOE for all deliverables in an arrangement with multiple elements, the Company attempts to determine the selling price of each element based on third party evidence of selling price, or based on the Company's actual historical selling prices of similar items, whichever management believes provides the most reliable estimate of expected selling prices.

Warranty and Extended Warranty

We record 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. We contract 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.

Shipping and Handling

Amounts billed to customers for shipping and handling are included in product revenue, and costs incurred related to shipping and handling are included in cost of product revenue.

Advertising Costs

Advertising costs are expensed as incurred. Advertising expenses were $2.5 million, $1.6 million and $0.7 million for the years ended December 31, 2016, 2015 and 2014, respectively.

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, localization costs incurred to translate software for international markets, and the amortization of purchased software code and services content. Such costs related to software development are included in research and development expense until the point that technological feasibility is reached, which for our software products, is generally shortly before the products are released to manufacturing. Once technological feasibility is reached, such costs are capitalized and amortized to cost of revenue over the estimated lives of the products. During 2016, no development costs were capitalized. During 2015 and 2014, the Company capitalized $0.1 million and $1.8 million, respectively, of development costs.

Segment Information

We report segment data based on the management approach. The management approach designates the internal reporting that is used by management for making operating and investment decisions and evaluating performance as the source of our reportable segments. We use one measurement of profitability and do not disaggregate our business for internal reporting. We operate in one segment providing data management, and desktop and application virtualization solutions for small and medium businesses and distributed enterprises. We disclose information about products and services, geographic areas, and major customers.

Income Taxes

We provide for income taxes utilizing the asset and liability approach of accounting for income taxes. Under this approach, deferred taxes represent the future tax consequences expected to occur when the reported amounts of assets and liabilities are recovered or paid. The provision for income taxes generally represents income taxes paid or payable for the current year plus the change in deferred taxes during the year. Deferred taxes result from differences between the financial and tax basis of our assets and liabilities and are adjusted for changes in tax rates and tax laws when changes are enacted. Valuation allowances are recorded to reduce deferred tax assets when a judgment is made that it is considered more likely than not that a tax benefit will not be

realized. A decision to record a valuation allowance results in an increase in income tax expense or a decrease in income tax benefit. If the valuation allowance is released in a future period, income tax expense will be reduced accordingly.

The calculation of tax liabilities involves evaluating uncertainties in the application of complex global tax regulations. The impact of an uncertain income tax position is recognized at the largest amount that is "more likely than not" to be sustained upon audit by the relevant taxing authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. If the estimate of tax liabilities proves to be less than the ultimate assessment, a further charge to expense would result.

Comprehensive Loss

Comprehensive loss and its components encompasses 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 consolidated statement of comprehensive loss.

Concentration of Credit Risks

Financial instruments that potentially subject us to concentrations of credit risk consist primarily of trade accounts receivable, which are generally not collateralized. To reduce credit risk, we perform ongoing credit evaluations of its customers and maintain allowances for potential credit losses for estimated bad debt losses.

At December 31, 2016 and 2015, there was one customer that made up 13.0% and 17.5%, respectively, of accounts receivable. There were no customers for the years ended December 31, 2016, 2015 and 2014 that made up 10% or more of net revenue.

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 and the unvested options remeasured at each reporting date, with changes in fair value recognized in expense in the consolidated statement of operations.

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.

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.

In January 2017, the FASB issued Accounting Standards Update ("ASU") No. 2017-04, *Intangibles - Goodwill and Other (Topic 350) - Simplifying the Test for Goodwill Impairment* ("ASU 2017-04"). ASU 2017-04 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. ASU 2017-04 is effective for annual reporting periods, including interim periods, beginning after December 15, 2019, on a prospective basis. Early adoption is permitted for interim or annual goodwill impairment tests performed after January 1, 2017. We do not expect the adoption of ASU 2017-04 to have a material effect on our financial position, results of operations or cash flows.

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments* ("ASU 2016-15"). ASU 2016-15 addresses eight cash flow classification issues and how they should be reported in the statement of cash flows. ASU 2016-15 is effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. Early adoption is permitted for all companies in any interim or annual period. We are currently evaluating the effect that the updated standard will have on our consolidated financial position, results of operations or cash flows.

In April 2016, the FASB issued ASU No. 2016-10, *Revenue From Contracts With Customers (Topic 606): Identifying Performance Obligations and Licensing* ("ASU 2016-10"). ASU 2016-10 clarifies the following two aspects of Topic 606: identifying performance obligations and the licensing implementation guidance, while retaining the related principles for those areas. The effective date of ASU 2016-10 will coincide with ASU 2014-09 and, as described below, ASU 2014-09 will be effective for annual reporting periods beginning after December 15, 2017. The impact on our consolidated financial position, results of operations or cash flows as a result of the adoption of ASU 2016-10 has not yet been determined.

In March 2016, the FASB issued ASU No. 2016-08, *Revenue From Contracts With Customers (Topic 606): Principal Versus Agent Considerations (Reporting Revenue Gross Versus Net)* ("ASU 2016-08"). ASU 2016-08 amends the principal-versus-agent implementation guidance in ASU 2014-09. ASU 2016-08 clarifies the principal-versus-agent guidance in Topic 606 and requires an entity to determine whether the nature of its promise to provide goods or services to a customer is performed in a principal or agent capacity and to recognize revenue in a gross or net manner based on its principal/agent designation. The effective date of ASU 2016-08 will coincide with ASU 2014-09 and, as described below, ASU 2014-09 will be effective for annual reporting periods beginning after December 15, 2017. The impact on our consolidated financial position, results of operations or cash flows as a result of the adoption of ASU 2016-08 has not yet been determined.

In February 2016, the FASB issued ASU 2016-09, *Compensation - Stock Compensation (Topic 718)* ("ASU 2016-09"). ASU 2016-09 simplifies the accounting for several aspects of the accounting for share-based payment transactions including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. ASU 2016-09 is effective for annual reporting periods beginning after December 15, 2016, including interim periods within that reporting period. Early adoption is permitted for any entity in any interim or annual period. If an entity early adopts the amendments in an interim period, any adjustments should be reflected as of the beginning of the fiscal year that includes that interim period. An entity that elects early adoption must adopt all of the amendments in the same period. We have not yet selected a transition method and we are still evaluating any potential impact of the adoption of ASU 2016-09 may have on our consolidated financial position, results of operations or cash flows.

In February 2016, the FASB issued ASU 2016-02 *Leases (Topic 842)* ("ASU 2016-02"). ASU 2016-02 increases transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and requires disclosing key information about leasing arrangements. ASU 2016-02 is effective for reporting periods beginning after December 15, 2018, with early adoption permitted. An entity will be required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. We are still evaluating any potential impact of the adoption of ASU 2016-02 may have on our consolidated financial position, results of operations or cash flows.

In July 2015, the FASB issued ASU 2015-11, *Inventory (Topic 330): Simplifying the Measurement of Inventory*. ASU 2015-11 requires that for entities that measure inventory using the first-in, first-out method, inventory should be measured at the lower of cost and net realizable value. *Topic 330, Inventory*, currently requires an entity to measure inventory at the lower of cost or market. Market could be replacement cost, net realizable value, or net realizable value less an approximately normal profit

margin. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. ASU 2015-11 is effective for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years. The amendments should be applied prospectively with earlier application permitted as of the beginning of an interim or annual reporting period. The impact on our consolidated financial position, results of operations or cash flows as a result of the adoption of ASU 2015-11 has not yet been determined.

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers.* ASU 2014-09 outlines a single comprehensive model for accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance. ASU 2014-09 requires an entity 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. ASU 2014-09 as amended is effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. Entities can transition to the standard either retrospectively or as a cumulative-effect adjustment as of the date of adoption. We have not yet selected a transition method and the impact on our consolidated financial position, results of operations or cash flows as a result of the adoption of ASU 2014-09 has not yet been determined.

Recently Adopted Accounting Pronouncements

In November 2015, the FASB issued ASU 2015-17, *Balance Sheet Classification of Deferred Taxes* ("ASU 2015-17"). ASU 2015-17 requires companies to classify all deferred tax assets and liabilities as non-current on the balance sheet instead of separating deferred taxes into current and non-current amounts. For public business entities, the guidance is effective for financial statements issued for annual periods beginning after December 15, 2016, and interim periods within those annual periods. Early adoption is permitted for all companies in any interim or annual period. The guidance may be adopted on either a prospective or retrospective basis. We have adopted this guidance prospectively as of December 31, 2016. Therefore, prior periods have not been adjusted to reflect this adoption. This change in accounting principle does not change our consolidated financial position, results of operations or cash flows.

In September 2015, the FASB issued ASU No. 2015-16, *Business Combinations (Topic 805).* ASU No. 2015-16 requires that an acquirer recognizes adjustments to provisional amounts that are identified during the measurement period in the reporting period in which the adjustment amounts are determined. This guidance requires that the acquirer record, in the same period's financial statements, the effect on earnings of changes in depreciation, amortization, or other income effects, if any, as a result of the change in provisional amounts, calculated as if the accounting had been completed at the acquisition date. This guidance requires an entity to present separately on the face of the income statement or disclose in the notes the portion of the amount recorded in current-period earnings by line item that would have been recorded in previous reporting periods if the adjustment to the provisional amounts had been recognized as of the acquisition date. ASU No. 2015-16 is effective beginning fiscal years beginning after December 15, 2015, including interim periods within those fiscal years. The impact on our consolidated financial position, results of operations or cash flows as a result of the adoption of ASU 2015-16 was not material.

In April 2015, the FASB issued ASU 2015-03, *Interest - Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs.* ASU 2015-03 requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from that debt liability, consistent with the presentation of a debt discount. The recognition and measurement guidance for debt issuance costs is not affected by ASU 2015-03. ASU 2015-03 is effective fiscal years beginning after December 15, 2015, and interim periods within those fiscal years. Early application is permitted. The impact on our consolidated financial position, results of operations or cash flows as a result of the adoption of ASU 2015-03 was not material.

In August 2014, the FASB issued ASU 2014-15, *Presentation of Financial Statements - Going Concern.* ASU 2014-15 provides that in connection with preparing financial statements for each annual and interim reporting period, an entity's management should evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued (or within one year after the date that the financial statements are available to be issued when applicable). ASU 2014-15 will be effective for the annual reporting periods ending after December 15, 2016, and for annual and interim periods thereafter. Early application is permitted. The impact on our consolidated financial disclosures as a result of the adoption of ASU 2014-15 was not material.

3. Business Combinations

RDX® Asset Acquisition

In August 2015, the Company completed an acquisition of assets related to the RDX® removable disk product lines and related inventory from Imation Corp. ("Imation"). The Company issued 1,529,126 common shares with an approximate value of $6.1 million, and a warrant exercisable for 250,000 additional common shares in connection with certain purchase price adjustments under the asset purchase agreement. In February 2016, Imation exercised the warrant and the Company issued 250,000 common shares at $0.01.

In addition, the Company and Imation entered into that certain Lock-Up Agreement, dated as of August 10, 2015, which imposed limitations on the transfer and sale of the common shares issued to Imation at closing and requires that Imation vote its shares in accordance with any recommendation of the Company's board of directors for a designated period of time.

The asset purchase agreement also terminated an existing license agreement and settled all disputes between the parties. We incurred acquisition related expenses of $0.2 million which consisted primarily of due diligence, legal and other one-time charges and are included in general and administrative expense in the consolidated statements of operations.

A summary of the estimated fair values of the assets acquired and liabilities assumed is as follows (in thousands):

Inventory	$	1,673
Other current assets		100
Property and equipment		789
Identifiable intangible assets		670
Total identifiable assets acquired		3,232
Contingent liability		(2,376)
Other liabilities		(20)
Net identifiable assets acquired		836
Goodwill		5,311
Net assets acquired	$	6,147

Goodwill is comprised of realization of expanded market share which provides greater control over the backup appliance components that form a key part of Sphere 3D's strategy to deliver comprehensive virtualization, storage and data management for on premise, cloud and hybrid infrastructures. In December 2015, goodwill increased by $2.4 million, related to contingent consideration to Imation. The above table reflects such adjustment.

The fair value estimates for the assets acquired and liabilities assumed for the acquisition were based on estimates and analysis, including work performed by third party valuation specialists. The goodwill recognized upon acquisition is deductible for tax purposes.

The results of operations related to this acquisition have been included in our consolidated statements of operations from the acquisition date. Pro forma results of operations have not been presented because at this time it is impracticable to provide as the information is not available at the level of detail required.

The identified intangible assets as of the date of acquisition consisted of the following (in thousands):

	Estimated Fair Value	Weighted-Average Useful Life (years)
Developed technology	$ 190	0.5
Customer relationships	480	21.3
Total identified intangible assets	$ 670	15.4

Overland Acquisition

On December 1, 2014, the Company completed its acquisition of Overland for a purchase price of $69.7 million. Included in this amount are 8.6 million common shares valued as of December 1, 2014 at $7.71 per share, $3.2 million of equity awards for which vesting accelerated upon consummation of the acquisition, as well as other consideration of $0.5 million. The acquisition was carried out pursuant to the terms and conditions contained in an Agreement and Plan of Merger dated May 15, 2014 (as amended, the "merger agreement"). The integration of Overland and Sphere 3D positions the Company to address the rapidly growing cloud, virtualization, and data storage markets.

As per the terms of the merger agreement, Overland became a wholly-owned subsidiary of Sphere 3D, and Overland's common stock ceased to be traded on the NASDAQ Capital Market. Under the terms of the merger agreement, Sphere 3D issued a total of 8,556,865 common shares for all of the outstanding Overland shares on the basis of one Overland share for 0.46385 common shares. In addition, the Company issued warrants to purchase up to 1,323,897 of our common shares, options to purchase up to 168,488 common shares and 673,776 restricted share units, calculated on the basis of the exchange ratio.

A summary of the estimated fair values of the assets acquired and liabilities assumed as of the closing date is as follows (in thousands):

Cash and cash equivalents	$ 2,312
Accounts receivable	10,558
Inventories	9,387
Property and equipment	4,117
Identifiable intangible assets	60,376
Other assets	2,364
Total identifiable assets acquired	89,114
Current liabilities	(28,133)
Debt - current	(4,749)
Debt - long term	(17,000)
Other liabilities	(3,990)
Deferred tax liabilities	(4,412)
Total identifiable liabilities assumed	(58,284)
Net identifiable net assets acquired	30,830
Goodwill	38,821
Net assets acquired	$ 69,651

Goodwill is comprised of expected synergies from combining Overland's operations with that of the Company, including: (i) the creation of a larger and more diverse combined company to gain the scale, infrastructure and resources required to become a global virtualization company and to strengthen the Company's ability to service and support partners and customers globally; (ii) the ability to better leverage Overland's existing global distribution network of reseller, integrators and Tier One OEM's, along with Overland's global manufacturing, delivery and support networks; and (iii) the complementary nature of the respective products brings together next generation technologies for virtualization and cloud computing coupled with end-to-end scalable storage offerings enabling the combined company to address the larger and growing virtualization and cloud markets.

The fair value estimates for the assets acquired and liabilities assumed for the acquisition were based on estimates and analysis, including work performed by third party valuation specialists. None of the goodwill recognized upon acquisition is deductible for tax purposes.

The identified intangible assets as of the date of acquisition consisted of the following (in thousands):

	Estimated Fair Value	Weighted-Average Useful Life (years)
Channel partner relationships	$ 17,000	25.0
Developed technology	15,590	7.9
Customer relationships	816	9.0
Total finite lived intangible assets	33,406	16.6
Indefinite live intangible assets - trade names	26,970	n/a
Total identified intangible assets	$ 60,376	

The following unaudited pro forma combined financial information gives effect to the acquisition as if it were consummated on January 1, 2014 (the beginning of the earliest fiscal period presented). The unaudited pro forma combined financial information is presented for informational purposes only, is not intended to represent or be indicative of the results of operations of us that would have been reported had the acquisition occurred on January 1, 2014, and should not be taken as representative of future consolidated results of operations of the combined company (in thousands):

	Year Ended December 31, 2014
Net revenue	$ 93,591
Net loss	$ (35,709)
Net loss per share	$ (1.12)

In 2014, we incurred acquisition related expenses of $2.2 million, which consisted primarily of due diligence, legal and other one-time charges, and are included in general and administrative expense in the consolidated statements of operations.

4. Investment

On December 30, 2016, the Company acquired 19.9% of the outstanding equity securities and membership interests of Unified ConneXions, Inc. ("UCX") and HVE ConneXions, LLC ("HVE"), respectively, for the purchase price of $1.5 million. The Company issued 3,947,368 shares of its common shares in satisfaction of payment.

The investment is accounted for using the cost-method of accounting. There are no known identified events or changes in circumstances that may have a significant adverse effect on the fair value of the investment at December 31, 2016.

5. Certain Balance Sheet Items

The following table summarizes inventories (in thousands):

	December 31,	
	2016	2015
Raw materials	$ 1,697	$ 1,734
Work in process	2,673	2,483
Finished goods	5,632	7,109
	$ 10,002	$ 11,326

The following table summarizes property and equipment (in thousands):

	December 31,	
	2016	2015
Building	$ 1,646	$ 1,667
Computer equipment	1,864	1,636
Machinery and equipment	1,062	1,116
Leasehold improvements	1,100	1,126
Furniture and fixtures	83	89
	5,755	5,634
Accumulated depreciation and amortization	(2,697)	(1,662)
	$ 3,058	$ 3,972

Depreciation and amortization expense for property and equipment was $1.1 million, $1.3 million and $0.3 million for the years ended December 31, 2016, 2015 and 2014, respectively.

6. Intangible Assets and Goodwill

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

	December 31,	
	2016	2015
Developed technology	$ 23,685	$ 23,684
Channel partner relationships(1)	11,989	12,039
Capitalized development costs(1)	2,937	2,856
Customer relationships(1)	1,171	1,194
	39,782	39,773
Accumulated amortization:		
Developed technology	(11,234)	(7,078)
Channel partner relationships(1)	(565)	(68)
Capitalized development costs(1)	(958)	(589)
Customer relationships(1)	(207)	(99)
	(12,964)	(7,834)
Total finite-lived assets, net	26,818	31,939
Indefinite lived intangible assets - trade names	20,910	22,080
Total intangible assets, net	$ 47,728	$ 54,019

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

Amortization expense of intangible assets was $5.1 million, $6.1 million and $3.1 million for the years ended December 31, 2016, 2015 and 2014, respectively. Estimated amortization expense for intangible assets is approximately $5.1 million, $3.4 million, $2.4 million, $2.4 million and $2.0 million in fiscal 2017, 2018, 2019, 2020 and 2021, respectively.

The Company tests the carrying amount of other indefinite-lived assets for impairment on an annual basis at December 31 of each year and during an interim period if an event occurs or circumstances change that would warrant impairment testing. During the third quarter of 2016, as a result of the Company's declining market capitalization it was determined the carrying value exceeded its estimated fair value. In measuring fair value, the Company used income and market approaches. The Company compared the indicated fair value to the carrying value of its indefinite-lived assets, and as a result of the analysis, an impairment charge of $1.2 million was recorded to indefinite-lived trade names for the year ended December 31, 2016.

During the fourth quarter of 2015, the Company concluded that its lower net revenue due to timing of projected growth of products and integration of channel partner relationships from the acquisition of Overland could be indicators of impairment and, therefore, had a third party impairment analysis performed. At December 31, 2015, as a result of the analysis, the Company recorded an impairment of $10.7 million of which $1.7 million related to developed technology, $4.1 million related to channel partner relationships, and $4.9 million related to trade names.

On March 21, 2014, the Company acquired from V3 Systems certain Virtual Desktop Implementation ("VDI") technology, including V3 Desktop Cloud Orchestrator® software, which allows administrators to manage local, cloud hosted, or hybrid virtual desktop deployments, and purpose-built, compact, efficient and easy-to-manage servers. On closing, the purchase price for the acquired assets was $14.4 million, which was paid with a combination of $4.2 million in cash and the issuance of 1,089,867 common shares at $5.92 per share. The identified intangible assets as of the date of the purchase agreement consisted of $14.4 million of developed technology with a useful life of four years. In addition, the Company was subject to an earn-out, based on the achievement of certain milestones in revenue and gross margin related to the VDI technology, of up to an additional $5.0

million. The estimated earn-out liability was $2.5 million as of December 31, 2014, and was included in other current liabilities. The earn-out period expired on June 21, 2015 and the estimated earn-out liability of $2.5 million was reversed with an offsetting reduction to developed technology.

Goodwill

The changes in the carrying amount of goodwill were as follows (in thousands):

Balance as of January 1, 2015	$	38,821
Goodwill acquired		5,311
Balance as of December 31, 2015		44,132
Goodwill acquired		164
Impairment loss		(33,228)
Balance as of December 31, 2016	$	11,068

The Company tests the carrying amount of goodwill for impairment on an annual basis at December 31 of each year and during an interim period if an event occurs or circumstances change that would warrant impairment testing. During the third quarter of 2016, as a result of the Company's declining market capitalization it was determined the carrying value of the reporting unit exceeded its estimated fair value. In measuring fair value, the Company used income and market approaches. The Company compared the implied fair value of the goodwill to the carrying value of the goodwill, and as a result of the analysis, an impairment charge of $33.2 million was recorded for the year ended December 31, 2016.

7. Debt

Convertible Notes - Related Party

In December 2014, in connection with the acquisition of Overland, the existing debt of Overland and the remaining debt of the Company were amended and restated into a $19.5 million convertible note held by FBC Holdings (an affiliate of Cyrus Capital Partners, a related party). In April 2016, the Company modified its convertible note with FBC Holdings, pursuant to which the holder made an additional advance and principal amount under the convertible note amount was increased to $24.5 million. The convertible note is scheduled to mature March 31, 2018 and bears interest at an 8.0% simple annual interest rate, payable semi-annually. The obligations under the convertible note are secured by substantially all assets of the Company. At December 31, 2016, the Company had $24.2 million, net of unamortized debt costs of $0.3 million, outstanding on the convertible note.

The Company has the option to pay accrued and outstanding interest either entirely in cash or common shares. If the Company choses to pay the interest in common shares, the calculation is based upon the number of common shares that may be issued as payment of interest on the convertible note and will be determined by dividing the amount of interest due by current market price as defined in the convertible note agreement.

The convertible note was originally convertible into common shares at a price equal to $7.50 per share in the case of $10 million of the convertible note and $8.50 per share in the case of $9.5 million of the convertible note. In November 2015, the convertible note was modified and the conversion prices of $7.50 per share and $8.50 per share were adjusted to $3.00 per share. In February 2016, in connection with the November 2015 modification and certain specified terms, the Company issued to the holder of the convertible note a warrant to purchase 500,000 common shares of the Company at a price of $1.62.

At the option of the Company, the convertible note is convertible into common shares at the conversion price at any time that the weighted average trading price for the common shares exceeds 150% of the conversion price (i.e. exceeds $4.50 per share), for 10 consecutive trading days on its principal stock exchange that the common shares trade.

The convertible note contains customary covenants, including covenants that limit or restrict the Company's ability to incur liens, incur indebtedness, or make certain restricted payments. Upon the occurrence of an event of default under the convertible note, the Holder may declare all amounts outstanding to be immediately due and payable. The convertible note specifies a number of events of default (some of which are subject to applicable grace or cure periods), including, among other things, non-payment

defaults, covenant defaults, cross-defaults to other materials indebtedness, bankruptcy and insolvency defaults, and material judgment defaults. As of December 31, 2016, the Company was in compliance with all covenants of the convertible note.

For the years ended December 31, 2016, 2015 and 2014, interest expense, including amortization of debt costs, on the convertible note was $2.1 million, $1.6 million and $0.4 million, respectively.

Term Loan - Related Party

In September 2016, the Company entered into a $2.5 million term loan agreement with FBC Holdings. The term loan has a maturity date of January 31, 2018 and bears interest at a 20.0% simple annual interest rate, payable monthly in arrears. Monthly payments of principal on the term loan began on January 31, 2017, in 13 equal installments. The Company has the option to pre-pay the outstanding balance of the term loan, plus any accrued interest, at any time.

The obligations of the Company and certain of its subsidiaries (collectively, the "Loan Parties") under the term loan agreement and related documents will be secured by substantially all assets of the Loan Parties.

For the year ended December 31, 2016, interest expense, including amortization of debt costs, on the term loan was $0.1 million.

Opus Bank Credit Agreement

In April 2016, the Company entered into a Credit Agreement with Opus Bank for a term loan in the amount of $10.0 million and a credit facility in the amount of up to $10.0 million. A portion of the proceeds were used to pay off the Company's then outstanding credit facilities with FBC Holdings and Silicon Valley Bank. The remainder of the proceeds were used for working capital and general business requirements. At December 31, 2016, the outstanding balance of the term loan was $9.1 million, net of unamortized debt costs of $0.9 million, and the outstanding balance of the credit facility was $8.2 million.

The term loan and credit facility contain customary covenants, including covenants that limit or restrict the Company's ability to incur liens, incur indebtedness, or make certain restricted payments. Upon the occurrence of an event of default under the term loan, the holder may declare all amounts outstanding to be immediately due and payable. The term loan and credit facility specify a number of events of default (some of which are subject to applicable grace or cure periods), including, among other things, non-payment defaults, covenant defaults, cross-defaults to other materials indebtedness, bankruptcy and insolvency defaults, and material judgment defaults. As of December 31, 2016, the Company was in compliance with all covenants of the term loan and credit facility.

On December 30, 2016, the term loan and credit facility maturity dates were accelerated, in accordance with the terms of the agreement, to March 31, 2017, and the credit facility was reduced to $8.2 million. The obligations under the term loan and credit facility are secured by substantially all assets of the Company other than the stock of its subsidiaries organized outside of the U.S. and Canada that are pledged to secure the Company's obligations under the Company's convertible note. At December 31, 2016, the interest rate on the term loan and credit facility was 6.5%.

In December 2016, as a condition of the extension of credit to the Company under the Credit Agreement, the Company issued to Opus Bank a warrant for the purchase of up to 862,068 common shares of the Company at an exercise price of $0.01 per common share. The warrant is immediately exercisable and has a six-year term. The December 2016 warrant replaced the warrant that was previously issued in April 2016.

For the year ended December 31, 2016, interest expense, including amortization of debt costs, on the Opus facilities was $1.8 million.

On March 12, 2017, the Company and Opus Bank entered into an Amendment Number Two to Credit Agreement, Amendment Number One to Amendment Number 1, Waiver and Reaffirmation (the "Second Amendment"). On March 22, 2017, the Company and Opus Bank entered into an Amendment Number Three to Credit Agreement, further amending the Second Amendment. Under the terms of the Second Amendment, as modified by the Third Amendment, (i) the maturity date for the revolving and term loan credit facilities were amended to be the earlier of (a) the maturity date in the Debenture or (b) June 30, 2017 if the Maturity Extension Trigger Date occurs on or before March 31, 2017, (ii) the Lender granted a waiver of specified defaults under the Credit Agreement relating to obligations to deliver to the Lender an executed letter of intent with respect to refinancing the credit facility, and (iii) certain other terms of the Credit Agreement were amended, including but not limited to terms related to collateral coverage, milestone deliverables, and financial covenants. We met the requirements of the Maturity Extension Trigger Date on March 29, 2017. In the event of certain specified events of default, including failure to meet certain monthly revenue and EBITDA targets, to enter into a term sheet with a new lender by April 28, 2017, or to enter into a letter of intent with respect to a financing or retain a financial advisor with respect to a sale of a significant portion of the Company's assets, all amounts under the Credit Agreement may be accelerated and become immediately payable.

Further, as a condition of the entry into the Second Amendment, the Company issued to Opus Bank (i) a warrant, exercisable in the event that we have not repaid all outstanding amounts due under the Credit Agreement on or prior to April 17, 2017, for the purchase of the number of common shares equivalent to $75,000 at an exercise price of $0.01 per common share and (ii) a warrant, exercisable in the event that we have not repaid all outstanding amounts due under the Credit Agreement on or prior to May 31, 2017, for the purchase of the number of common shares equivalent to $100,000 at an exercise price of $0.01 per common share.

Terminated Credit Facility

In December 2014, in connection with the acquisition of Overland, the Company assumed the existing credit facility of Overland. The credit facility was originally entered into in August 2011, as amended, and allowed for revolving cash borrowings up to $8.0 million, which included a $3.75 million sublimit for advances to one of the Company's subsidiaries. In April 2016, the credit facility was terminated upon repayment of the outstanding balance.

For the years ended December 31, 2016 and 2015, interest expense, including amortization of issuance costs, for the credit facility was $0.1 million and $0.3 million, respectively.

Terminated Related Party Credit Facility

In December 2014, the Company entered into a revolving credit agreement with FBC Holdings for a revolving credit facility of $5.0 million. In July 2015, the credit facility was amended to extend the scheduled maturity date to May 2016 with an automatic extension to November 2016, and the aggregate borrowing amount was increased to $10.0 million. In April 2016, the credit facility was terminated upon repayment of the outstanding balance.

For the years ended December 31, 2016 and 2015, interest expense for the credit facility was $0.9 million and $1.2 million, respectively, which included $0.7 million of amortization of issuance costs in both of the years ended 2016 and 2015. At December 31, 2016 and 2015, there was zero and $0.1 million, respectively, in accrued liabilities related to interest expense and fees.

8. 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, investment, accounts receivable, prepaid expenses, accounts payable, accrued expenses, credit facilities, and related party long-term debt. 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, investment, accounts 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 amount of the credit facilities borrowings approximate their fair value as the interest rate of the credit facilities are substantially comparable to rates offered for similar debt instruments. The carrying value of long-term debt approximates its fair value as the borrowing rates are substantially comparable to rates available for loans with similar terms.

The following table provides information by level for liabilities that are measured at fair value using significant unobservable inputs (Level 3) (in thousands):

Warrant liability as of January 1, 2015	$	—
Additions to warrant liability		1,925
Change in fair value of warrants		(478)
Warrant liability as of December 31, 2015		1,447
Change in fair value of warrants		(1,248)
Reclassification to equity		1
Warrant liability as of December 31, 2016	$	200

The Company determined the estimated fair value of the warrant liability using a Black-Scholes model using similar assumptions as disclosed in Note 10 - Equity Incentive Plan.

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

The Company's non-financial assets such as 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. As discussed in Note 3 - Business Combinations, the Company acquired assets related to the RDX® removable disk product lines during 2015 and recorded the acquired assets and liabilities, including goodwill, intangible assets and property and equipment at their estimated fair value. The determination of the estimated fair value of such assets required the use of significant unobservable inputs which would be considered Level 3 fair value measurements. As discussed in Note 6 - Intangible Assets and Goodwill, at December 31, 2016, the Company recorded impairment charges associated with goodwill and acquired intangible assets, and reduced the carrying amount of such assets subject to the impairment to their estimated fair value. At December 31, 2015, the Company recorded impairment charges associated with intangible assets and reduced the carrying amount of such assets subject to the impairment to their estimated fair value.

9. Share Capital

The Company has unlimited authorized shares of common shares at no par value. The share capital activity was as follows (in thousands):

	Number of Shares	Amount
Shares issued during the year ended December 31, 2014:		
Common shares issued	11,108	$ 85,257
Common shares issued for warrants exercised	2,101	$ 2,712
Shares issued under equity incentive plan	247	$ 148
Shares issued during the year ended December 31, 2015:		
Common shares issued	8,764	$ 20,139
Common shares issued for warrants exercised	349	$ 1,265
Shares issued under equity incentive plan	1,531	$ (6)
Shares issued during the year ended December 31, 2016:		
Common shares issued	15,126	$ 5,414
Common shares issued for warrants exercised	3,508	$ 3,652
Shares issued under equity incentive plan	2,733	$ 520

At December 31, 2016, the Company had the following outstanding warrants to purchase common shares (in thousands):

Date issued	Contractual life (years)	Exercise price		Number outstanding		Expiration
February 2015	3	$4.50		100		February 20, 2018
March 2015	3	$7.21		100		March 6, 2018
March 2015	3	$5.02		100		March 20, 2018
May 2015	5	$4.00		840		May 31, 2020
October 2015	5	$2.33		402		October 14, 2020
December 2015	3	$1.54		500		December 21, 2018
December 2015	5	$2.50		1,028		December 15, 2020
December 2015	5	$1.08	(1)	1,500	(2)	December 4, 2020
February 2016	3	$1.62		500		February 26, 2019
March 2016	5	$2.50		30		March 4, 2021
March 2016	5	$1.22		4,168		March 25, 2021
November 2016	3	$2.00		25		November 8, 2019
January 2016	3	$2.06		88		November 30, 2018
December 2016	6	$0.01		862		December 30, 2022
				10,243	(3)	

(1) These warrants to purchase common shares include a one-time adjustment provision, as defined in the agreement, which provided that the exercise price will be automatically adjusted, if the adjustment price as calculated on May 28, 2016, is less than $2.50. On May 28, 2016, the exercise price was adjusted to $1.08 for the one-time adjustment provision.

(2) If the Company or any subsidiary thereof, at any time while this warrant is outstanding, enters into a Variable Rate Transaction ("VRT") (as defined in the purchase agreement) and the issue price, conversion price or exercise price per share applicable thereto is less than the warrant exercise price then in effect, the exercise price shall be reduced to equal the VRT price.

(3) Includes 6.8 million of warrants to purchase common shares, in the aggregate, issued to related parties.

Related Party Warrant Exchange Agreement

In March 2016, the Company entered into a warrant exchange agreement with MF Ventures, LLC ("MF Ventures"), a related party, pursuant to which the Company agreed to issue a warrant (the "New Warrant") for the purchase of up to 7,199,216 common shares (the "Warrant Shares") in exchange for the surrender and cancellation of previously outstanding warrants for the purchase of up to, in aggregate, 3,031,249 common shares (the "Previously Outstanding Warrants"). The terms of the New Warrant are substantially similar to the Previously Outstanding Warrants except the exercise price has changed to $1.22 per common share. On March 25, 2016, MF Ventures exercised 3,031,249 of the Warrant Shares for 3,031,249 common shares pursuant to which the Company received $3.7 million in proceeds. The expiration date for the remaining balance of the New Warrant is March 25, 2021.

Private Placement

Between December 2016 and March 16, 2017, the Company completed a private placement and issued a total of 18,139,998 "Units" at a purchase price of $0.30 per Unit. Each Unit consisted of one common share and one warrant from each of two series of warrants, as described below. The Company received gross proceeds of $5.4 million in connection with the sale of the Units.

The first series of warrants is exercisable to purchase 18,139,998 common shares in the aggregate and has an exercise price of $0.40 per share, a one-year term, and is exercisable in whole or in part at any time prior to expiration. The second series of warrants is exercisable for 18,139,998 common shares in the aggregate and has an exercise price of $0.55 per share, a five-year term, and is exercisable in whole or in part at any time prior to expiration.

MF Ventures, a related party, participated in the private placement and acquired 8,333,333 common shares and warrants to purchase 16,666,666 shares.

Lynn Factor and Sheldon Inwentash, a married couple and related party, participated in the private placement by acquiring 5,325,000 common shares and warrants to purchase 10,650,000 shares. An additional 700,000 common shares and warrants to purchase 1,400,000 shares were acquired by ThreeD Capital Inc. Mr. Inwentash is the Chief Executive Officer of ThreeD Capital Inc.

10. Equity Incentive Plans

In June 2015, the shareholders approved the adoption of our 2015 Performance Incentive Plan ("2015 Plan"). The 2015 Plan, as amended, authorizes the board of directors to grant stock and options awards of up to 10.1 million common shares to directors, employees and consultants. As of December 31, 2016, the Company had 3.0 million share-based awards available for future grant.

In June 2015, the shareholders approved the adoption of our Employee Stock Purchase Plan ("ESPP"), authorizing the purchase of up to 2.0 million common shares by employees under the plan. As of December 31, 2016, there were no offering periods available to employees.

Stock Options

The fair value of each option is estimated on the date of grant using the Black-Scholes option pricing model, which uses the weighted-average assumptions noted in the following table:

	Year Ended December 31,		
	2016	2015	2014
Expected volatility	93.0%	93.0%	97.0%
Risk-free interest rate	1.5%	1.5%	1.7%
Dividend yield	—	—	—
Expected term (in years)	4.7	4.7	3.0

The expected volatility was based on the Company's historical share price. The Company applies a forfeiture rate based on historical pre-vesting option cancellations. The risk-free interest rate is determined based upon a constant maturity U.S. Treasury security with a contractual life approximating the expected term of the option. The expected term of options granted is estimated based on a number of factors, including but not limited to the vesting term of the award, historical employee exercise behavior, the expected volatility of the Company's common shares and an employee's average length of service.

Options typically vest over a three year period from the original grant date. The exercise price of each award is based on the market price of the Company's common shares at the date of grant. Option awards can be granted for a maximum term of up to 10 years. Option activity is summarized below (shares and aggregate intrinsic value in thousands):

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Options outstanding at January 1, 2014	2,810	$ 1.11		
Granted	735	$ 7.08		
Options assumed from acquisition	168	$ 17.19		
Exercised	(246)	$ 0.58		
Forfeited	(74)	$ 4.51		
Options outstanding at December 31, 2014	3,393	$ 3.08		
Granted	770	$ 2.71		
Exercised	(293)	$ 0.77		
Forfeited	(156)	$ 13.26		
Options outstanding at December 31, 2015	3,714	$ 2.43		
Granted	12	$ 1.39		
Exercised	—	$ —		
Forfeited	(471)	$ 4.52		
Options outstanding at December 31, 2016	3,255	$ 2.17	5.9	$ —
Vested and expected to vest at December 31, 2016	3,225	$ 2.16	5.9	$ —
Exercisable at December 31, 2016	2,711	$ 2.05	5.8	$ —

The following table summarizes information about the Company's stock options (in thousands, except per share amounts):

	Year Ended December 31,		
	2016	2015	2014
Weighted-average grant date fair value per share	$ 0.97	$ 1.89	$ 5.51
Intrinsic value of options exercised	$ —	$ 1,053	$ 1,641
Cash received upon exercise of options	$ —	$ 225	$ 148

Restricted Stock Units

In December 2014, in connection with the acquisition of Overland, the Company assumed 673,776 RSUs, of which 359,482 units became vested at the close of the acquisition and were included in the purchase price. These 359,482 units were released in 2015.

The following table summarizes information about RSU activity (in thousands, except per share amounts):

	Number of Shares	Weighted Average Grant Date Fair Value
Outstanding — January 1, 2014	—	$ —
Awards assumed from acquisition	674	7.71
Forfeited	(1)	7.71
Outstanding — December 31, 2014	673	7.71
Granted	6,391	3.56
Vested and released	(1,308)	5.27
Forfeited	(138)	4.71
Outstanding — December 31, 2015	5,618	3.66
Granted	1,638	0.82
Vested and released	(2,038)	3.32
Forfeited	(1,454)	3.39
Outstanding — December 31, 2016	3,764	$ 2.58

The estimated fair value of RSUs was based on the market value of the Company's common shares on the date of grant. RSUs typically vest over a three year period from the original date of grant. The fair value of RSUs vested during the years ended December 31, 2016, 2015 and 2014 was approximately $1.7 million, $2.3 million and $1.6 million, respectively. The total intrinsic value of RSUs vested during the years ended December 31, 2016, 2015 and 2014 was approximately zero, $14,000 and zero, respectively.

Outside of 2015 Equity Incentive Plan

In January 2017, the Company granted 5,156,030 RSUs to certain employees. The RSUs have an estimated fair value of $0.35 per unit and vest over one to three years.

Restricted Stock Awards

During 2016, the Company granted restricted stock awards ("RSA") to certain consultants in lieu of cash payment for services performed. There were no such awards in prior years. The estimated fair value of the RSAs was based on the market value of the Company's common shares on the date of grant. The RSAs were fully vested on the date of grant. The fair value of the RSAs vested during the year ended December 31, 2016 was approximately $0.5 million.

The following table summarizes information about RSA activity (in thousands, except per share amounts):

	Number of Shares	Weighted Average Grant Date Fair Value
Outstanding — January 1, 2016	—	$ —
Granted	701	0.76
Vested	(701)	0.76
Outstanding — December 31, 2016	—	$ —

Share-Based Compensation Expense

The Company recorded the following compensation expense related to its share-based compensation awards (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Cost of sales	$ 366	$ 183	$ —
Sales and marketing	2,773	3,090	1,072
Research and development	1,779	1,050	22
General and administrative	4,213	2,831	2,159
Total share-based compensation expense	$ 9,131	$ 7,154	$ 3,253

There was zero, $9,000 and $347,000 of share-based compensation capitalized as development costs for the years ended December 31, 2016, 2015 and 2014, respectively. As of December 31, 2016, there was a total of $7.3 million of unrecognized compensation expense related to unvested equity-based compensation awards. The expense associated with non-vested restricted stock units and options awards granted as of December 31, 2016 is expected to be recognized over a weighted-average period of 1.1 years.

11. Net Loss per Share

Basic net loss per share is computed by dividing net loss applicable to common shareholders by the weighted-average number of common shares outstanding during the period. For all periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding due to the Company's net loss position.

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

	December 31,		
	2016	2015	2014
Common share purchase warrants	10,243	9,078	2,419
Convertible notes	8,167	6,500	2,451
Convertible notes interest	8,144	2,316	657
Restricted stock not yet vested or released	3,764	5,618	673
Options outstanding	3,255	3,714	3,393
VDI earn-out liability	—	—	1,051

12. Income Taxes

The Company recognizes the impact of an uncertain income tax position on its income tax return at the largest amount that is "more likely than not" to be sustained upon audit by the relevant taxing authority. An uncertain tax position will not be recognized if it has less than a 50% likelihood of being sustained.

The following is a summary of the changes in the amount of unrecognized tax benefits (in thousands):

	December 31,	
	2016	2015
Unrecognized tax benefits at the beginning of the period	$ 673	$ 673
Decrease related to prior periods	(267)	—
Unrecognized tax benefits	$ 406	$ 673

At December 31, 2016, there was $0.4 million of unrecognized tax benefits presented as a reduction of the related deferred tax asset for which there is full valuation allowance, and the entire amount of the unrecognized tax benefits at December 31, 2016 will affect the effective tax rate if recognized. However, the portion that would be recognized as an increase to deferred tax assets may result in a corresponding increase in the valuation allowance at the time of recognition resulting in no net effect to the effective tax rate, depending upon the Company's assessment of the likelihood of realization of the tax benefits at the time they are recognized.

The Company believes it is reasonably possible that, within the next 12 months, the amount of unrecognized tax benefits may remain unchanged. The Company recognizes interest and penalties related to unrecognized tax benefits in its provision for income taxes. The Company had no material accrual for interest and penalties on its consolidated balance sheets at December 31, 2016 and 2015, and recognized no interest and/or penalties in the consolidated statements of operations for the years ended December 31, 2016, 2015 and 2014.

The Company is subject to taxation in Canada and also in certain foreign tax jurisdictions. The Company's tax returns for calendar year 2011 and forward are subject to examination by the Canadian tax authorities. The Company's tax returns for fiscal year 2005 and forward are subject to examination by the U.S. federal and state tax authorities.

The components of loss before income taxes were as follows (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Domestic	$ (8,937)	$ (8,549)	$ (11,038)
Foreign	(58,698)	(40,044)	(1,642)
Total	$ (67,635)	$ (48,593)	$ (12,680)

The provision for income taxes includes the following (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Current:			
Federal	$ —	$ —	$ —
State	—	—	—
Foreign	476	266	45
Total current	476	266	45
Deferred:			
Federal	—	—	—
Foreign	349	(1,632)	(3)
Total deferred	349	(1,632)	(3)
Provision for income taxes	$ 825	$ (1,366)	$ 42

A reconciliation of income taxes computed by applying the federal statutory income tax rate of 26.5% to loss before income taxes to the total income tax (benefit) provision reported in the accompanying consolidated statements of operations is as follows (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Income tax at statutory rate	$ (17,923)	$ (12,877)	$ (3,360)
Foreign rate differential	(1,652)	(2,038)	(354)
Change in valuation allowance	(34,477)	12,689	2,952
Share-based compensation expense	2,130	1,567	812
Goodwill impairment	8,699	—	—
Section 382 limitation	41,044	—	—
Other differences	3,004	(707)	(8)
Provision for (benefit from) income taxes	$ 825	$ (1,366)	$ 42

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities are shown below. A valuation allowance has been recorded, as realization of such assets is uncertain. Deferred income taxes are comprised as follows (in thousands):

	December 31,	
	2016	2015
Deferred tax assets:		
Net operating loss carryforward	$ 48,138	$ 82,636
Intangible assets	2,791	2,535
Tax credits	2,133	3,380
Inventory	1,906	2,344
Share-based compensation	920	852
Warranty and extended warranty	550	1,198
Other	2,708	1,325
Deferred tax asset, gross	59,146	94,270
Valuation allowance for deferred tax assets	(59,039)	(93,516)
Deferred tax asset, net of valuation allowance	107	754
Deferred tax liabilities:		
Intangible assets	(3,063)	(3,366)
Property and equipment	(144)	(143)
Deferred tax liabilities	(3,207)	(3,509)
Net deferred tax asset (liabilities)	$ (3,100)	$ (2,755)

At December 31, 2016, the Company had Canadian net operating loss carryforwards of $18.5 million. These carryforwards will begin expiring in 2030, unless previously utilized.

At December 31, 2016, the Company had U.S. federal and state net operating loss carryforwards of $108.9 million and $79.6 million, respectively. These amounts include share-based compensation deductions of $1.0 million that will be recorded to contributed capital when realized. The remaining federal net operating loss will begin expiring in 2023, unless previously utilized. State net operating loss carryforwards generally begin expiring in 2017, unless previously utilized.

The Company's ability to use its U.S. federal and state net operating loss and research and development credit carryforwards may be substantially limited due to ownership change limitations that may have occurred or that could occur in the future, as required by Section 382 of the Internal Revenue Code of 1986, as amended, as well as similar state provisions. The Company has completed a study through December 31, 2014, to assess whether an ownership change has occurred or whether there have been multiple ownership changes since the Company became a "loss corporation" under the definition of Section 382. Due to the existence of the valuation allowance, it is not expected that any possible limitation will have an impact on the results of operations or financial position of the Company.

At December 31, 2016, the Company had California research and development tax credit carryforwards totaling $3.4 million. The California research credit may be carried forward indefinitely. The Company has federal alternative minimum tax credit carryforwards totaling $0.2 million which can be carried forward indefinitely.

13. Related Party Transactions

In July 2013, the Company entered into a supply agreement, and a technology license agreement, with Overland. As payments under the supply agreement, and prior to the acquisition of Overland in December 2014, Sphere 3D issued common shares with a value as of the date of issuance equal to $0.5 million to Overland during the year ended December 31, 2014. The Company made purchases of $1.4 million from Overland related to the supply agreement prior to the acquisition of Overland on December 1, 2014.

In September 2014, the Company entered into a commercial relationship with a third party customer to sell a license to its Glassware product. The customer required that the Glassware product be provided through one of its preapproved distribution partners. The Company did not have a relationship with such distribution partner and in order to facilitate such transaction on a timely basis, the Company and Overland agreed that Overland would purchase the Glassware product from the Company and resell it to the distribution partner, with whom Overland had a preexisting relationship. The Company recognized no revenue related to these agreements during the years ended December 31, 2016 and 2015, and $0.8 million in revenue during the year ended December 31, 2014.

Prior to the acquisition of Overland in December 2014, the Company recognized $0.2 million in interest income from a promissory note due from Overland during the year ended December 31, 2014.

Professional services of $1.0 million, $0.5 million and $0.1 million were provided by affiliates of the Company during the years ended December 31, 2016, 2015 and 2014, respectively. As of December 31, 2016 and 2015, accounts payable and accrued liabilities included $17,000 and $163,000, respectively, due to related parties.

14. 401K Plan

The Company maintains an employee savings and retirement plan (the "401(k) Plan") covering all of the Company's employees. The 401(k) Plan permits but does not require matching contributions by the Company on behalf of participants. The Company does not make matching contributions.

15. Commitments and Contingencies

Leases

The Company leases various office space, production facilities, and vehicles under non-cancelable operating leases that expire in various years through 2021. Future minimum lease payments as of December 31, 2016 under these arrangements are as follows (in thousands):

	Minimum Lease Payments
2017	$ 1,331
2018	943
2019	774
2020	197
2021	26
Thereafter	—
Total	$ 3,271

Rent expense under non-cancelable operating leases is recognized on a straight-line basis over the respective lease terms and was $1.8 million, $2.1 million and $0.3 million for the years ended December 31, 2016, 2015 and 2014, respectively.

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 December 31, 2016, the Company's had standby letters of credit of $0.4 million that were not recorded on the Company's consolidated balance sheets.

Warranty and Extended Warranty

The Company had $0.5 million and $0.6 million in deferred costs included in other current and non-current assets related to deferred service revenue at December 31, 2016 and 2015, respectively. Changes in the liability for product warranty and deferred revenue associated with extended warranties and service contracts were as follows (in thousands):

	Product Warranty	Deferred Revenue
Liability at January 1, 2015	$ 1,437	$ 8,948
Liabilities assumed from acquisition	20	—
Settlements made during the period	(224)	(8,952)
Change in liability for warranties issued during the period	398	7,047
Change in liability for pre-existing warranties	(602)	—
Liability at December 31, 2015	1,029	7,043
Settlements made during the period	(54)	(7,040)
Change in liability for warranties issued during the period	634	5,429
Change in liability for pre-existing warranties	(558)	—
Liability at December 31, 2016	$ 1,051	$ 5,432
Current liability	$ 812	$ 4,414
Non-current liability	239	1,018
Liability at December 31, 2016	$ 1,051	$ 5,432

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.

Patent Litigation Funding Agreement

In December 2010, Overland entered into a litigation funding agreement (the "Funding Agreement") with Special Situations Fund III QP, L.P., Special Situations Private Equity Fund, L.P., Special Situations Technology Fund, L.P., and Special Situations Technology Fund II, L.P. (collectively, the "Special Situations Funds") pursuant to which the Special Situations Funds agreed to fund certain patent litigation brought by Overland. In May 2014, the Special Situations Funds filed a complaint against Overland in the Supreme Court for New York County, alleging breach of the Funding Agreement. The Special Situations Funds allege that Overland's January 2014 acquisition of Tandberg Data entitled the Special Situation Funds to a $6.0 million payment under the Funding Agreement, and therefore Overland's refusal to make the payment constitutes a breach of the Funding Agreement by Overland. In November 2014, the Special Situations Funds amended their complaint to allege that Overland breached the Funding Agreement's implied covenant of good faith and fair dealing by settling the patent litigation with BDT in bad faith to avoid a payment obligation under the Funding Agreement. The Special Situations Funds are seeking $6.0 million in contractual damages as well as costs and fees. We believe the lawsuit to be without merit and intend to vigorously defend against the action. The parties have briefed cross- motions for summary judgment and are awaiting a decision from the Court.

Patent Infringement

In May 2013, Safe Storage LLC ("Safe Storage"), a Delaware limited liability company, filed a complaint against Overland in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent No. 6,978,346 by our products. In February 2017, Overland and Safe Storage entered into a settlement agreement, pursuant to which the claim was dismissed.

Other

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"), the apparent successor to V3, 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 breached the APA and engaged in certain other actions and/or omissions that caused V3 to be unable to timely sell the Sphere common shares received by V3 pursuant to the APA. The plaintiff 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. We believe the lawsuit to be without merit and intend to vigorously defend against the action.

On December 23, 2015, we filed a motion seeking to dismiss the majority of the claims asserted by the UD Trust. On January 13, 2016, we filed a counterclaim against the UD Trust in which we allege that V3 breached numerous provisions of the APA. On July 22, 2016, we filed a motion seeking to transfer venue of this action to the United States District Court for the District of Delaware. The Bankruptcy Court granted our motion to transfer venue on August 30, 2016, and the case was formally transferred to the Delaware Court on October 11, 2016. There is currently no hearing set on our motion to dismiss.

16. Segment Disclosure

The Company reports segment information as a single reportable business segment based upon the manner in which related information is organized, reviewed, and managed. The Company operates in one segment providing data storage and desktop virtualization solutions for small and medium businesses and distributed enterprises. The Company conducts business globally, and its sales and support activities are managed on a geographic basis. Our management reviews financial information presented on a consolidated basis, accompanied by disaggregated information it receives from its internal management system about revenues by geographic region, based on the location from which the customer relationship is managed, for purposes of allocating resources and evaluating financial performance.

Information about Products and Services

The following table summarizes net revenue (in thousands):

	Year Ended December 31,		
	2016	**2015**	**2014**
Disk systems	$ 46,795	$ 39,836	$ 8,518
Tape automation systems	10,297	12,764	1,868
Tape drives and media	10,973	12,914	1,815
Service	8,328	10,651	1,268
	$ 76,393	$ 76,165	$ 13,469

Information about Geographic Areas

The Company markets its products domestically and internationally, with its principal international market being Europe. Revenue is attributed to the location to which the product was shipped. The Company divides its worldwide sales into three geographical regions: Americas, consisting of U.S., Canada and Latin America; EMEA, consisting of Europe, the Middle East and Africa; and APAC, consisting of Asia Pacific countries.

The following table summarizes net revenue by geographic area (in thousands):

	Year Ended December 31,		
	2016	2015	2014
EMEA	$ 39,719	$ 39,331	$ 7,172
Americas	23,043	25,284	4,749
APAC	13,631	11,550	1,548
Total	$ 76,393	$ 76,165	$ 13,469

During 2016, 2015 and 2014, there were two geographic areas with specific concentrations of net revenue greater than 10%. Revenues from customers in the U.S. comprised $20.1 million, $19.1 million and $3.8 million of Americas net revenue during the year ended December 31, 2016, 2015 and 2014, respectively. Revenue from customers in Germany accounted for $19.6 million, $17.2 million and $1.9 million of EMEA's net revenue during the year ended December 31, 2016, 2015 and 2014, respectively.

The following table presents property and equipment information for geographic areas based on the physical location of the assets (in thousands):

	Year Ended December 31,		
	2016	2015	2014
EMEA	$ 1,703	$ 1,779	$ 2,038
Americas	937	1,584	1,340
APAC	418	609	1,049
Total	$ 3,058	$ 3,972	$ 4,427

17. Subsequent Events

On January 27, 2017, the Company acquired 80.1% of the outstanding equity securities and membership interests of UCX and HVE, respectively, for $1.1 million in cash and issued 2,205,883 common shares for an approximate value of $0.8 million. UCX and HVE provide information technology consulting services and hardware solutions around cloud computing, data storage and server virtualization to corporate, government, and educational institutions primarily in the southern central United States. By adding UCX's products, technologies, professional services and engineering talent, and HVE's engineering and virtualization expertise, the Company intends to expand its virtualization practice as well as enhance its ability to accelerate the delivery of hybrid cloud solutions to customers. The Company is preparing the fair value estimates for the assets acquired and liabilities assumed.

On March 24, 2017, the Company entered into a securities purchase agreement with certain investors party thereto, pursuant to which the Company issued to the investors, in the aggregate, 20,454,546 of the Company's common shares for gross proceeds of $4.5 million. The securities purchase agreement also provided for the concurrent private placement of warrants exercisable to purchase up to 20,454,546 common shares. Each warrant has an initial exercise price of $0.30 per warrant share. The warrants are exercisable for cash immediately or on a cashless basis commencing on a date which is the earlier of (i) six months from the date of the effective date of the offering or (ii) the date on which we fail to fulfill our obligations to register the common shares underlying the warrants under the registration rights agreements and expiring on a date which is no more than five years from the date of the effective date of the offering. If at any time while the Warrants are outstanding, the Company sells or grants options to purchase,

reprice or otherwise issue any common shares or securities convertible into common shares at a price less than the initial exercise price of $0.30, then the exercise price for the warrants will be reduced to such price, subject to certain limitations.

MF Ventures, LLC, a related party, participated in the offering by acquiring 4,545,454 common shares and warrants to purchase 4,545,454 shares.

EXHIBIT LIST

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
1.1	Certificate and Articles of Amalgamation		6-K	001-36532	3/25/2015
1.2	By-Law Certificate		6-K	001-36532	3/25/2015
2.1	Specimen certificate evidencing Common Shares		F-3	333-210735	4/13/2016
4.1	Voting Agreements each dated July 15, 2013 between Eric L. Kelly and various shareholders of the Company		40-F	000-55232	6/27/2014
4.2	Board Nomination Rights Agreement dated July 15, 2013 between Eric L. Kelly and the Company		40-F	000-55232	6/27/2014
4.3	8% Senior Secured Convertible Debenture dated December 1, 2014 between the Company and FBC Holdings S.A.R.L. for $19.5 million		6-K	001-36532	12/16/2014
4.4	First Amendment to 8% Senior Secured Convertible Debenture dated November 30, 2015 between the Company and FBC Holdings S.A.R.L.		6-K	001-36532	12/2/2015
4.5	Second Amendment to 8% Senior Secured Convertible Debenture dated April 6, 2016 between the Company and FBC Holdings S.A.R.L.		6-K	001-36532	4/7/2016
4.6	Escrow Agreement dated December 1, 2014 between the Company and Continental Stock Transfer and Trust Company		6-K	001-36532	4/1/2015
4.7	Revolving Credit Agreement dated December 30, 2014 between the Company, Overland Storage, Inc. and FBC Holdings S.A.R.L. for $5.0 million		6-K	001-36532	1/22/2015
4.8	First Amendment to Revolving Credit Agreement dated July 10, 2015 between the Company, Overland Storage, Inc. and FBC Holdings S.A.R.L.		6-K	001-36532	7/31/2015
4.9	Form of Purchase Agreement		6-K	001-36532	6/2/2015
4.10	Form of Warrant		6-K	001-36532	6/2/2016
4.11	Asset Purchase Agreement dated August 10, 2015 between Imation Corp., Overland Storage, Inc. and Sphere 3D Corp.		6-K	001-36532	8/14/2015
4.12	Form of Subscription Agreement		6-K	001-36532	10/7/2015
4.13	Form of Warrant		6-K	001-36532	10/7/2015
4.14	Form of Subscription Agreement		6-K	001-36532	12/2/2015
4.15	Form of Canadian Warrant		6-K	001-36532	12/2/2015
4.16	Form of Securities Purchase Agreement		6-K	001-36532	12/2/2015
4.17	Form of Fund Warrant		6-K	001-36532	12/2/2015

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
4.18	Warrant Exchange Agreement, dated March 25, 2016, by and between the Company and MF Ventures, LLC		40-F	001-36532	3/30/2016
4.19	Warrant for the purchase of up to 7,199,216 common shares, dated March 25, 2016, issued to MF Ventures, LLC		40-F	001-36532	3/30/2016
4.20*	Credit Agreement dated April 6, 2016 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K	001-36532	4/21/2016
4.21*	Consent, Waiver, Reaffirmation and Amendment Number One to Credit Agreement dated December 30, 2016 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K	001-36532	3/24/2017
4.22*	Amendment Number Two to Credit Agreement, Amendment Number One to Amendment Number 1, Waiver and Reaffirmation dated March 12, 2017 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K	001-36532	3/24/2017
4.23*	Third Amendment to Credit Agreement dated March 21, 2017 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K	001-36532	3/24/2017
4.24	Term Loan Agreement dated September 16, 2016 between Sphere 3D Corp. and FBC Holdings S.A.R.L.		6-K	001-36532	3/24/2017
4.25	Warrant to Purchase up to 862,068 common shares dated December 30, 2016 issued by the Company to Opus Bank		6-K	001-36532	3/24/2017
4.26	First Additional Warrant to Purchase common shares dated March 12, 2017 issued by the Company to Opus Bank		6-K	001-36532	3/24/2017
4.27	Second Additional Warrant to Purchase common shares dated March 12, 2017 issued by the Company to Opus Bank		6-K	001-36532	3/24/2017
4.28	Form of Securities Purchase Agreement dated March 24, 2017		6-K	001-36532	3/24/2017
4.29	Form of Warrant		6-K	001-36532	3/24/2017
4.30	Form of Leak-Out Agreement		6-K	001-36532	3/24/2017
4.31	Form of Registration Rights Agreement		6-K	001-36532	3/24/2017
4.32	Placement Agency Agreement dated March 24, 2017 between the Company and Roth Capital Partners, LLC		6-K	001-36532	3/24/2017
4.33	Form of Lock-Up Agreement		6-K	001-36532	3/24/2017
4.34	Sphere 3D Second Amended and Restated Stock Option Plan		F-4	333-197569	7/23/2014
4.35	Overland Storage, Inc. 2009 Equity Incentive Plan		S-8	333-203149	3/31/2015
4.36	Overland Storage, Inc. Form of Stock Option Agreement Under 2009 Plan		S-8	333-203149	3/31/2015
4.37	Overland Storage, Inc. Form of Inducement Stock Option Agreement		S-8	333-203149	3/31/2015
4.38	Sphere 3D Corp. 2015 Performance Incentive Plan		S-8	333-214605	11/15/2016

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
4.39	Form of Inducement Restricted Stock Unit Agreement.		S-8	333-209251	2/1/2016
4.40	Form of Executive Inducement Restricted Stock Unit Agreement		S-8	333-209251	2/1/2016
4.41	Sphere 3D Corp. Employee Stock Purchase Plan		S-8	333-205236	6/25/2016
4.42	Retention Agreement between Overland Storage, Inc. and Eric Kelly dated June 24, 2009		10-Q	000-22071	2/10/2010
4.43	Employment Agreement between Overland Storage, Inc. and Eric Kelly dated August 3, 2011		8-K	000-22071	8/4/2011
4.44	Employment Agreement between Overland Storage, Inc. and Eric Kelly dated August 3, 2011		8-K	000-22071	8/4/2011
4.45	San Diego, California Headquarters Facility Lease dated October 12, 2000 between the Company and LBA-VIF One, LLC		10-Q	000-22071	2/14/2001
4.46	First Amendment to Lease dated January 18, 2001 between Overland Storage, Inc. and LBA Overland, LLC, (as successor-in-interest to LBA-VIF One, LLC)		10-K	000-22071	9/28/2001
4.47	Second Amendment to Lease dated July 1, 2010 between Overland Storage, Inc. between the Company and LBA Overland, LLC (as successor-in-interest to LBA-VIF One, LLC)		10-K	000-22071	9/28/2001
4.48	Third Amendment to Lease dated July 1, 2010 between the Company and Overtape (CA) QRS 15-14, Inc. (successor-in-interest to LBA Overland, LLC, the successor-in-interest to LBA-VIF One, LLC		10-K	000-22071	9/24/2010
4.49	Fourth Amendment to Lease dated October 15, 2013 between the Company and Overtape (CA) QRS 15-14, Inc. (successor-in-interest to LBA Overland, LLC, the successor-in-interest to LBA-VIF One, LLC		10-Q	000-22071	2/13/2014
4.50	Fifth Amendment to Lease dated December 8, 2015 between the Company and Overtape (CA) QRS 15-14, Inc. (successor-in-interest to LBA Overland, LLC, the successor-in-interest to LBA-VIF One, LLC	X			
4.51	San Jose, California Headquarters Office Lease dated February 9, 2010 between Overland Storage, Inc. and Park Center Plaza Investors, L.P.	X			
4.52	First Amendment to San Jose, California Headquarters Office Lease dated March 22, 2017 between Sphere 3D Corp. and Park Center Plaza Investors, L.P.	X			
4.53	Lease Contract dated May 19, 2016 between Guangzhou Tandberg Electronic Components Co., Ltd. And Guangzhu Shi Panyu Tongxing Paper Products Co., Ltd.	X			
4.54	Form of Stock Purchase Agreement	X			
4.55	Form of One-Year Warrant Agreement	X			

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
4.56	Form of Five-Year Warrant Agreement	X			
8.1	Subsidiaries of Registrant	X			
11.1	Code of Business Conduct and Ethics Policy		6-K	001-36532	4/1/2015
12.1	Certification of CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
12.2	Certification of CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
13.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			
13.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			
15.1	Consent of Independent Registered Public Accounting Firm	X			
101.INS	XBRL Instance Document	X			
101.SCH	XBRL Taxonomy Extension Schema	X			
101.CAL	XBRL Taxonomy Extension Calculation Linkbase	X			
101.DEF	XBRL Taxonomy Extension Definition Linkbase	X			
101.LAB	XBRL Taxonomy Extension Label Linkbase	X			
101.PRE	XBRL Taxonomy Presentation Linkbase	X			

* Portions of this exhibit have been omitted pursuant to a request for confidential treatment.

Exhibit 4.50

FIFTH AMENDMENT TO LEASE AGREEMENT

THIS FIFTH AMENDMENT TO LEASE AGREEMENT (this "Amendment"), is entered into as of December 8, 2015, by and between OVERTAPE (CA) QRS 15-14, INC., a Delaware corporation (successor-in-interest to LBA OVERLAND, LLC, a California limited liability company, the successor-in-interest to LBA-VIF ONE, LLC, a California limited liability company) ("Landlord") and OVERLAND STORAGE, INC., a California corporation, formerly known as OVERLAND DATA, INC. ("Tenant").

W I T NE S S E T H:

WHEREAS, Landlord and Tenant are parties to that certain Build-To-Suit Single-Tenant Lease (Triple Net) dated as of October 12, 2000, as amended by that certain First Amendment to Lease dated January 18, 2001, as further amended by that certain Second Amendment to Lease dated as of March 8, 2001, as further amended by that certain Third Amendment to Lease Agreement dated as of July 1, 2010, and as further amended by that certain Fourth Amendment to Lease Agreement dated as of October 15, 2013 (the "Fourth Amendment") (collectively, the "Existing Lease") with respect to certain premises located in the City of San Diego, County of San Diego, California as more particularly described in the Lease (the "Property");

WHEREAS, the Property contains approximately 98,250 rentable square feet in the R&D Building,

WHEREAS, pursuant to the notice sent to Landlord on January 28, 2015, Tenant exercised its partial early termination option to terminate and surrender the First Floor Space (as defined in the Fourth Amendment) effective as of November 1, 2015 whereby the Premises was automatically reduced to, and Tenant currently leases, approximately 20,515 rentable square feet in the R&D Building, as shown on Exhibit "A" attached hereto (the "Existing Premises");

WHEREAS, effective as of the date that the Demising Work (hereinafter defined) is substantially completed (the "Fifth Amendment Effective Date"), Tenant desires to amend the Existing Lease to surrender a portion of the Premises (the "Surrendered Premises") and lease an additional portion of the Premises, in total leasing approximately 20,553 rentable square feet, as depicted on Exhibit "B" attached hereto (the "New Overland Premises"); and

WHEREAS, Landlord and Tenant desire to accordingly modify the Existing Lease as provided in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby covenant and agree as follows:

1. Effective Date. Unless otherwise specified in this Amendment, this Amendment and all the modifications to the Lease set forth herein shall be effective as of the Fifth Amendment Effective Date.

2. Definitions. All capitalized terms contained in this Amendment shall, for the purposes hereof, have the same meanings ascribed to them in the Existing Lease unless otherwise defined herein. From and after the Fifth Amendment Effective Date, for a period expiring on the Lease Expiration Date unless sooner terminated as provided in the Lease, as used herein, the term "Lease" shall mean the Existing Lease, as amended by this Amendment and as hereafter amended.

3. Premises. From and after the Fifth Amendment Effective Date, for a period expiring on the Lease Expiration Date unless sooner terminated as provided in the Lease, as used herein, all references in the Lease to the "Premises", "Overland Premises" or the "Remaining Premises" shall mean the "New Overland Premises" as shown on Exhibit "B" attached hereto and which contains approximately 20,553 rentable square feet in the R&D Building

4. Landlord's Demising Work. Landlord shall perform the work necessary to separately demise the Overland Premises from the balance of the R&D Building substantially in accordance with the plans and scope of work attached hereto as Exhibit "C" (the "Demising Work"). Except for the Demising Work and as otherwise set forth in the Lease, Landlord shall have no obligation to perform any work or make any alteration, installations or additions or otherwise prepare the Overland Premises for Tenant's continued occupancy, and Tenant agrees to accept same in its "as-is" condition with all faults. Tenant agrees that it shall cooperate, as reasonably requested by Landlord, with the construction obligations of the Demising Work, including, but not limited to providing access and security clearance at all reasonable times to the Overland Premises and the R&D Building to Landlord's agents for the Demising Work.

5. Common Area and R&D Building Expenses. From and after the Fifth Amendment Effective Date, for a period expiring on the Lease Expiration Date unless sooner terminated as provided in the Lease, the following definitions in Section 4 of the Existing Lease (as amended by the Fourth Amendment) shall be deleted in their entirety and the following shall be inserted in lieu thereof:

"**Tenant's Pro Rata Share**" means 20.92%.

"**Tenants Share of Common Expenses**" means 12.96%.

"**Tenant's Share of R&D Building Expenses**" means 20.92% of the R&D Building Expenses.

6. Surviving Obligations. Notwithstanding anything to the contrary contained herein, Tenant remains liable to Landlord with respect to any obligation that survives the termination of the Lease including, but not limited to any obligation under the Lease with respect to the First Floor Space and Surrendered Premises.

7. Termination as to Surrendered Premises. Landlord and Tenant agree that (i) as of November 1, 2015, the Lease terminated as to the First Floor Space and (ii) as of the Fifth Amendment Effective Date, the Lease shall terminate as to the Surrendered Premises, and on such applicable date, Landlord and Tenant has no or shall have no further obligation to each other with respect to either space except as expressly set forth in any other provision of the Lease; provided however, Tenant shall vacate the Surrendered Premises and all sections of the First Floor Space and deliver the same to

Landlord pursuant to Section 9.1 of the Lease, free and clear of any subtenants or other occupants. Landlord and Tenant acknowledge and agree that the Rent obligations (as amended by the Fourth Amendment) shall remain unmodified and there shall be no prorations or refunds of Rent paid as of the Fifth Amendment Effective Date.

8. Tenant Default. Notwithstanding anything to the contrary contained herein, Landlord and Tenant's execution and delivery of this Amendment shall not be deemed a waiver of any default by Tenant under the Lease including, but not limited to, any default with respect to the the First Floor Space or Surrendered Premises that remains uncured after the date hereof and Landlord maintains its right to exercise any and all remedies under the Lease in connection with such default.

9. Recitals. Landlord and Tenant agree that the recitals to this Amendment are a part of this Amendment and Landlord and Tenant expressly agree to the provisions thereof.

10. Modification. Except as expressly set forth herein, nothing herein is intended to or shall be deemed to modify or amend any of the other terms or provisions of the Lease and all of the terms, covenants and conditions of the Lease are hereby ratified and confirmed and shall continue to be and remain in full force and effect.

11. Counterparts. This Amendment may be executed in any number of counterparts and by the different parties thereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all counterparts shall constitute but one and the same instrument.

12. Entire Agreement. This Amendment and the Lease together contain the entire understanding between the parties hereto and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof or thereof. Any promises, representations, warranties or guarantees not herein or therein contained and hereinafter made shall have no force and effect unless in writing, and executed by the party or parties making such representations, warranties or guarantees. Neither this Amendment nor the Lease nor any portion or provisions hereof or thereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged.

13. Binding Agreement. This Amendment shall not be binding upon Landlord and Tenant until executed and delivered by both Landlord and Tenant.

14. Broker. Landlord and Tenant represent that they have dealt with no broker(s) in connection with this Amendment, each of Landlord and Tenant agrees to indemnify, defend, hold and save the other harmless from and against any and all liabilities, damages and expenses arising from or relating to any breach or inaccuracy of the foregoing representation, warranty and agreement, which shall survive expiration, cancellation or other termination of the Lease.

15. Enforceability. If any provision of this Amendment or its application to any person or circumstances is invalid or unenforceable to any extent, the remainder of this Amendment, or the applicability of such provision to other persons or circumstances, shall be valid and enforceable to

the fullest extent permitted by law and shall be deemed to be separate from such invalid or unenforceable provisions and shall continue in full force and effect.

16. Authority of Tenant. Tenant warrants and represents unto Landlord that (i) Tenant is duly organized and existing legal entity, in good standing in the State of California and (ii) Tenant has full right and authority to execute, deliver and perform this Fifth Amendment.

(i)

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be duly executed as of the date first above written.

LANDLORD

OVERTAPE (CA) QRS 15-14, INC., a Delaware corporation

By:/s/ Tripp Bailey
Name: Tripp Bailey
Title: Second Vice President

TENANT:

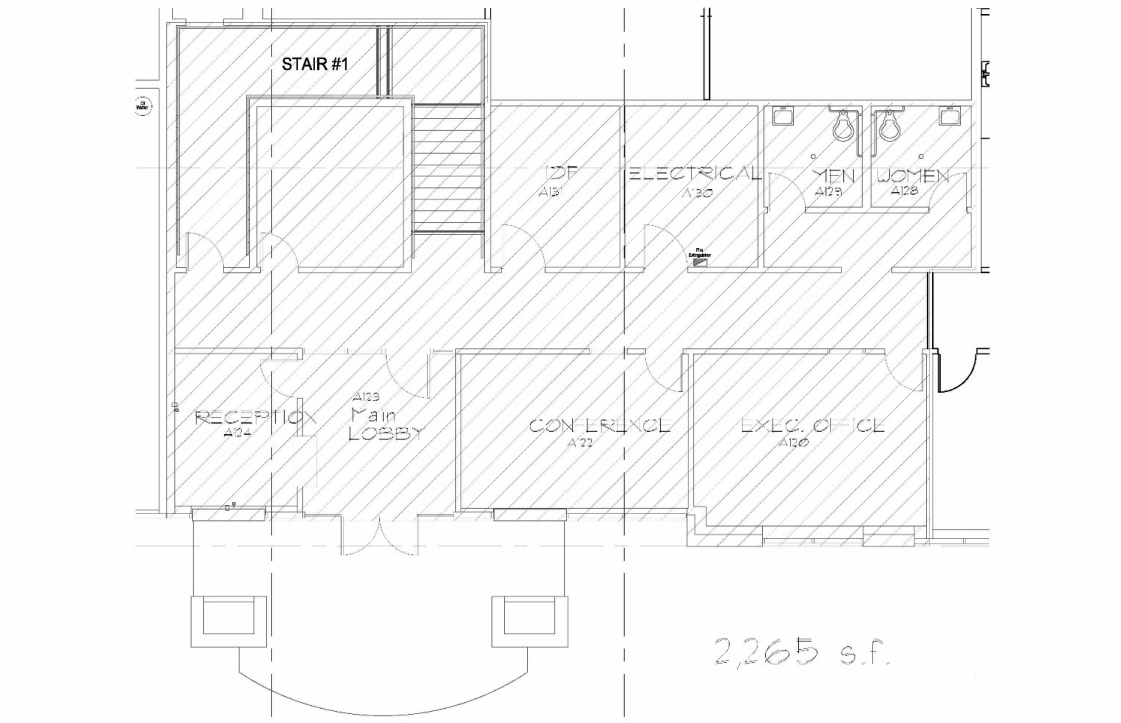
OVERLAND STORAGE, INC., a California corporation

By:/s/ Kurt Kalbfleisch
Name: Kurt Kalbfleisch
Title: SVP and CFO

EXHIBIT A

EXISTING PREMISES

[see attached]



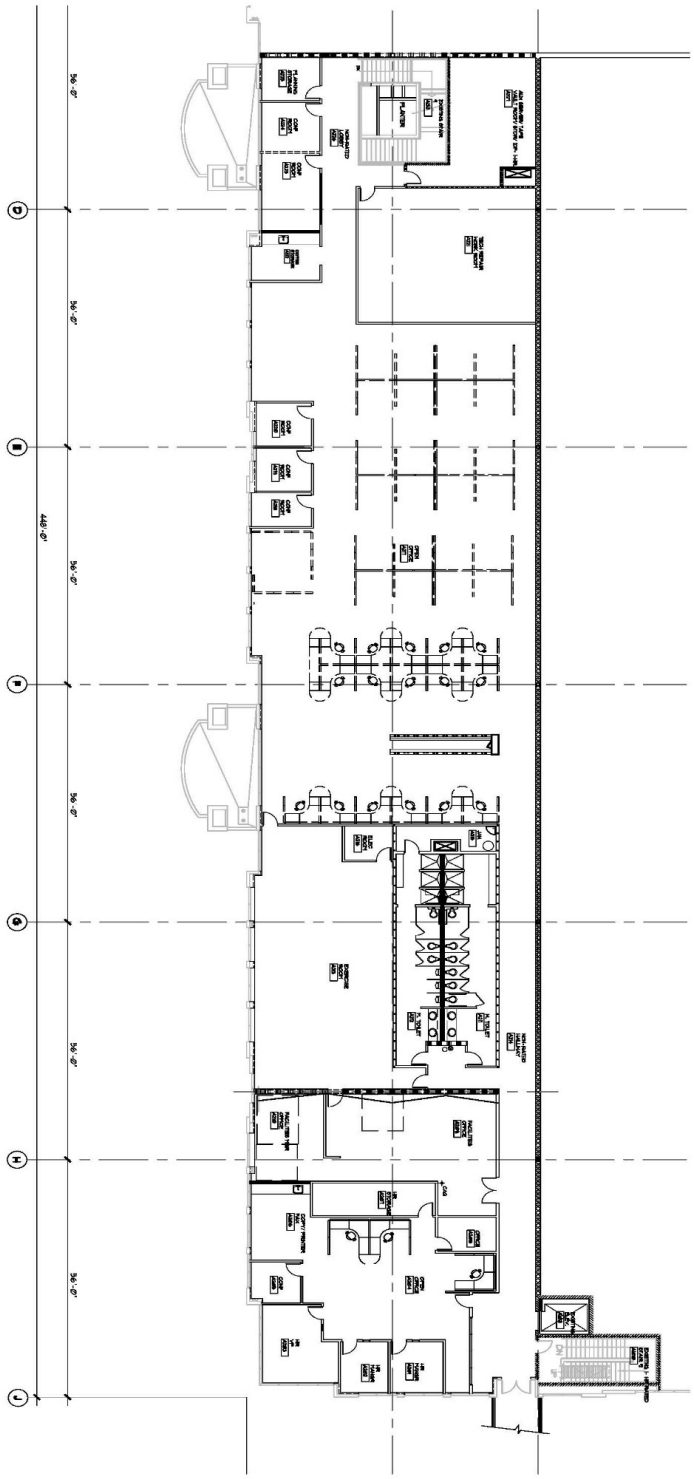
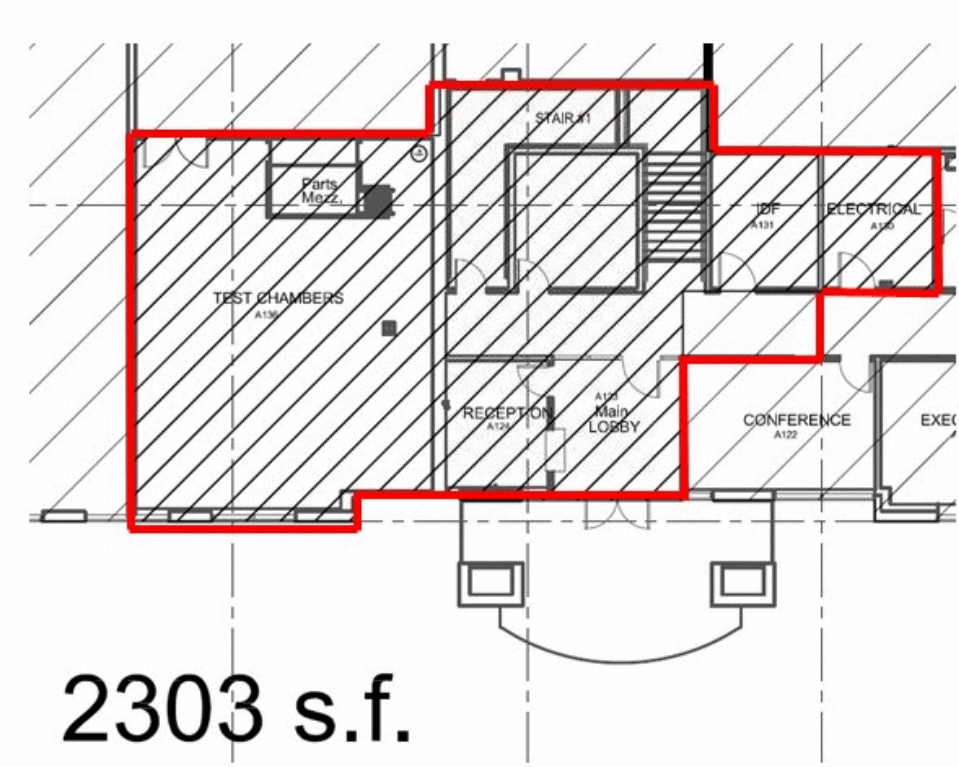
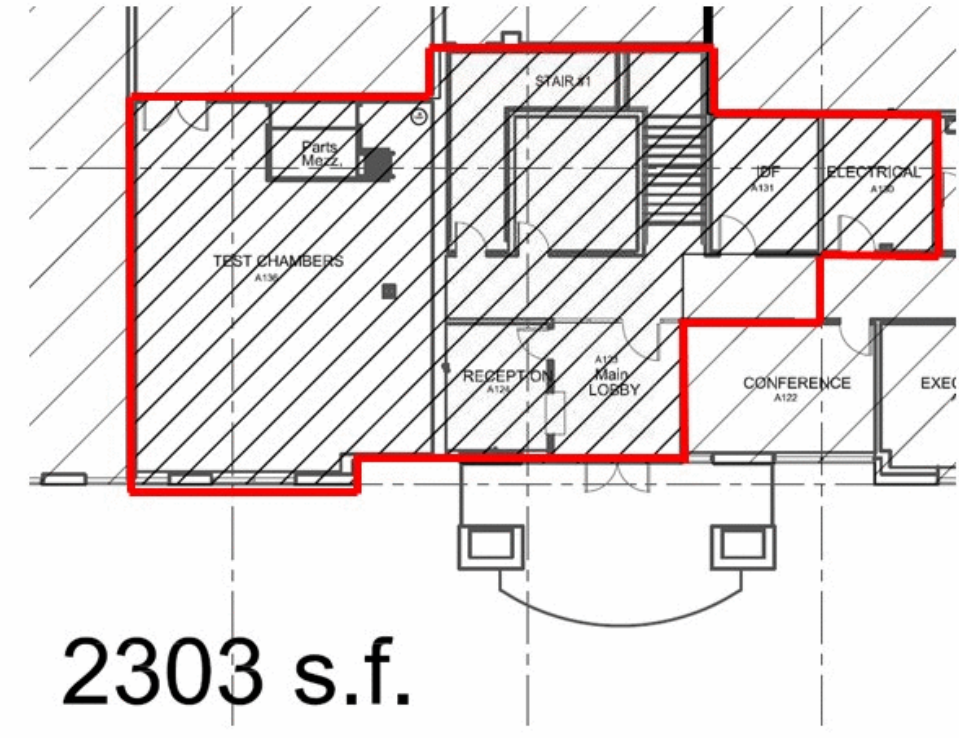


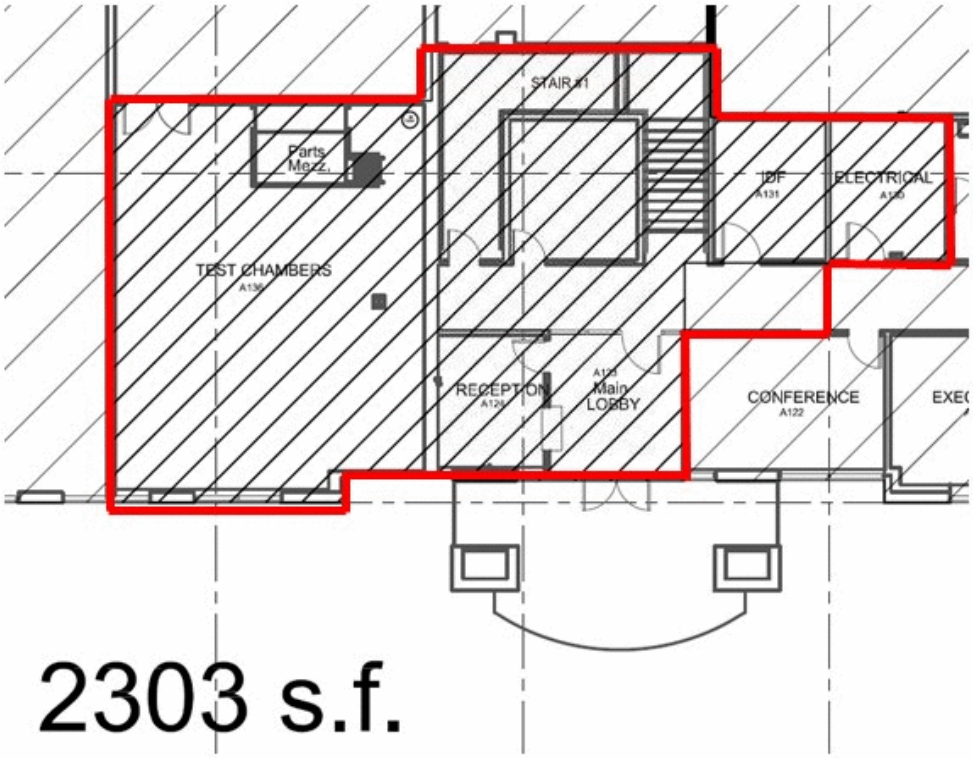
EXHIBIT B

NEW OVERLAND PREMISES



*Tenant shall have access to the Electrical Room within the New Overland Premises via a key or electronic card provided by Landlord.




STAIR 01
Parts Mezz.
IDF
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ELECTRICAL
A130
TEST CHAMBERS
A136
RECEPTION
A124
A123
Main LOBBY
CONFERENCE
A122
2303 s.f.

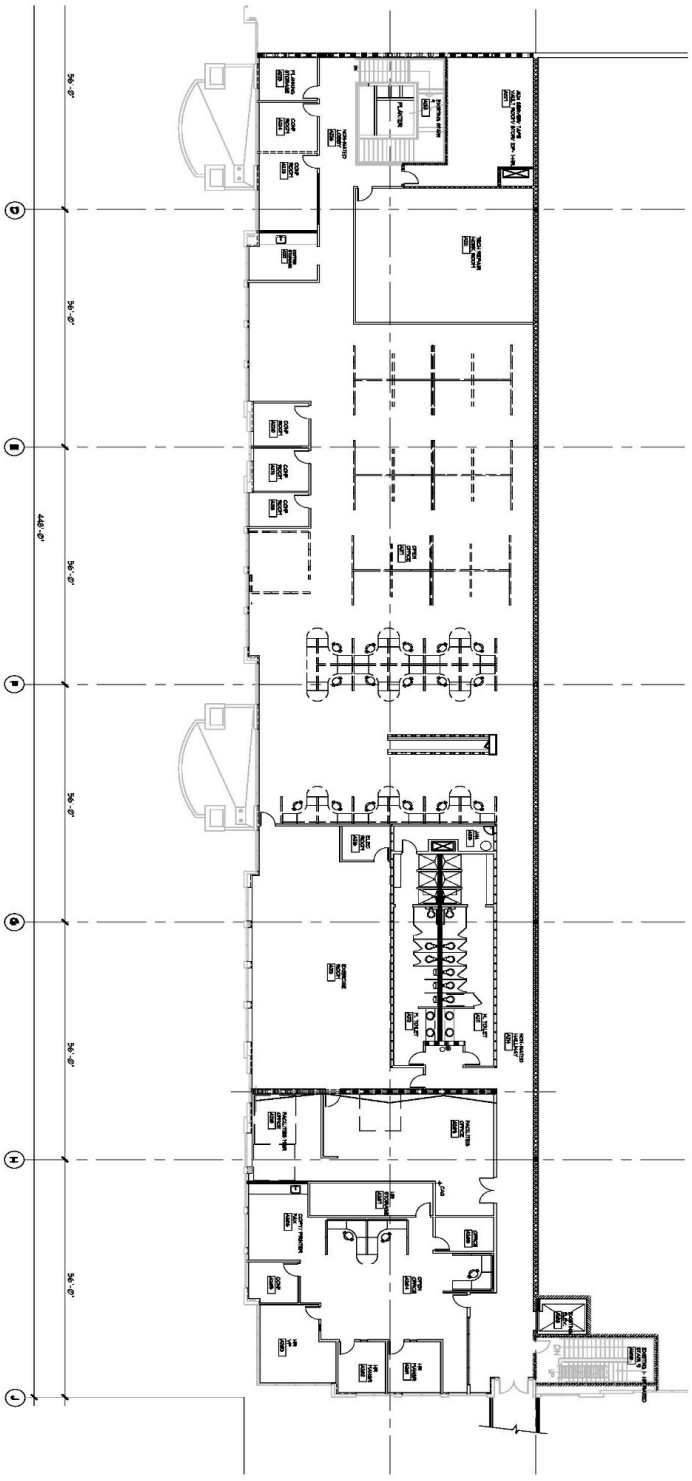

EXHIBIT C

DEMISING WORK - SCOPE OF WORK

1. Relocate existing door in the Test Chambers room to the wall between the Test Chambers room and the lobby corridor.

2. Install card access door and demising wall in lobby corridor between the IDF room and the Electrical room.

3. Landlord will remove building infrastructure including electrical, plumbing, process piping, etc. from wall between the Test Chamber room to the lobby corridor, as necessary to accommodate the new door.

Exhibit 4.51

OFFICE LEASE

BY AND BETWEEN

PARK CENTER PLAZA INVESTORS, L.P.,
a Delaware limited partnership,
as Landlord

and

OVERLAND STORAGE, INC.,
a California corporation,
as Tenant

For Premises at 125 South Market Street, San Jose, CA

TABLE OF CONTENTS

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OFFICE LEASE

THIS OFFICE LEASE ("**Lease**") is entered and dated for reference purposes only as February 9, 2010 (the "**Lease Reference Date**"), by and between "Landlord" and "Tenant" (as such terms are defined below).

ARTICLE 1 SALIENT LEASE TERMS

In addition to the terms defined throughout this Lease, the following salient terms shall have the following meanings when referred to in this Lease:

1.1 Rent Payment PARK CENTER PLAZA INVESTORS, L.P.
Address: 100 West San Fernando, Suite 350
San Jose, California 95113

1.2 "**Landlord**": PARK CENTER PLAZA INVESTORS, L.P.,
a Delaware limited partnership
and
Notice
Address: 100 West San Fernando, Suite 350
San Jose, California 95113
Attn.: Property Manager

1.3 "**Tenant**": OVERLAND STORAGE, INC., a California corporation

and
Notice
Address: Prior to the Commencement Date:

Overland Storage
125 S. Market Street, Suite 750
San Jose, CA 95113
Attn: CFO

From and after the Commencement Date:

125 South Market Street, Suite 200
San Jose, California 95113
Attn.: CFO

1.4 "**Premises**": Approximately **20,777** square feet of Rentable Area, comprised of (i) Suite 200 at the Building, which consists of 10,879 square feet of Rentable Area ("**Suite 200**"), and (ii) Suite 1300 at the Building, which consists of 9,898 square feet of Rentable Area ("**Suite 1300**").

1.5 **"Building"**: That building located at 125 South Market Street, San Jose, California, containing approximately 159,216 square feet of Rentable Area, which shall be deemed the actual square footage of Rentable Area in the Building.

1.6 "**Complex**": Cityview Plaza, consisting of the Building and those certain office buildings located at Cityview Plaza, San Jose, California, and the Common Areas

(hereinafter defined) together with the parcel or parcels in common ownership therewith and/or contiguous thereto, as outlined in Exhibit A attached hereto.

1.7 "**Estimated Commencement Date**": June 1, 2010

1.8 "**Term**": Eighty-four (84) months following the Commencement Date, plus any partial month for the month in which the Commencement Date occurs if the Commencement Date occurs on other than the first day of a calendar month. If the Commencement Date is other than the first day of a calendar month, the first month shall include the remainder of the calendar month in which the Commencement Date occurs plus the first full calendar month thereafter, and Minimum Monthly Rent for such first month shall include the full Minimum Monthly Rent for the first full calendar month plus Minimum Monthly Rent for the partial month in which the Commencement Date occurs prorated on a daily basis at the Minimum Monthly Rent per square foot rate provided for the first calendar month of the Term of this Lease.

1.9 "**Minimum Monthly Rent**":

Minimum Monthly Rent for Suite 200:

Time Period	Monthly Rate per Square Foot	Minimum Monthly Rent
Months 1 – 12	$1.00	$10,879.00
Months 13 – 24	$2.00	$21,758.00
Months 25 – 36	$2.05	$22,301.95
Months 37 – 48	$2.10	$22,845.90
Months 49 – 60	$2.30	$25,021.70
Months 61 – 84	$2.35	$25,565.65

Minimum Monthly Rent for Suite 1300:

Time Period	Monthly Rate per Square Foot	Minimum Monthly Rent
Months 1 – 12	$0.00	$0.00
Months 13 – 24	$2.20	$21,775.60
Months 25 – 36	$2.25	$22,270.50
Months 37 – 48	$2.30	$22,765.40
Months 49 – 60	$2.50	$24,745.00
Months 61 – 72	$2.60	$25,734.80
Months 73 – 84	$2.70	$26,724.60

1.10 "**Base Year Costs**": The actual costs in calendar year 2010 for Base Operating Costs, Base Taxes and Base Insurance.

1.11 "**Security Deposit**": A Letter of Credit (as defined in Section 33 below), in the amount of $86,000.00, subject to reduction as set forth in Section 33.

1.12 "**Permitted Use**": The Premises shall be used solely for general office use, and for no other use.

1.13 "**Proportionate Share**": Tenant's initial Proportionate Share is 13.05% based on the ratio that the Rentable Area of the Premises (i.e., 20,777 square feet) bears to the Rentable Area of the Building (i.e., 159,216 square feet).

1.14 "**Declaration of Restrictions**": That certain Ninth Amended Park Center Redevelopment Plan adopted June 25, 1996, City Council Ordinance No. 25112.

1.15 "**Broker**": Colliers International, for both Landlord and Tenant

1.16 "**Reciprocal Easement Agreement**": That certain Grant of Reciprocal Easements and Agreement for Maintenance dated as of September 22, 1970 and recorded in Book 9072 at Page 22 of the Official Records of Santa Clara County, California, as amended.

1.17 **Contents:** Included as part of this Lease are the following Exhibits and addenda which are attached hereto and incorporated herein by this reference:

Exhibits:
A - Plan of the Complex
B - Floor Plan of the Premises
C - Work Letter for Construction Obligations
D - Acknowledgment of Commencement Date
E - Rules & Regulations
F - Form of Letter of Credit
G - Temporary Space
Addendum No. 1

ARTICLE 2 ADDITIONAL DEFINITIONS

The terms defined in this Article 2 shall, for all purposes of this Lease and all agreements supplemental hereto, have the meanings herein specified, unless expressly stated otherwise.

"**Base Operating Costs**" means the Operating Costs for the calendar year set forth in Section 1.10 hereof. In addition, if any classes or types of expenses included in Base Operating Costs do not regularly recur in any subsequent Lease Year, such classes or types of expenses shall be removed from the Base Operating Costs for purposes of calculating the additional Rent due hereunder for such Lease Year; provided, however, to the extent such an expense recurs in a particular Lease Year, such expense shall be included in the Base Operating Costs for purposes of calculating the additional Rent due hereunder for such Lease Year.

"**Base Insurance**" means the Insurance Costs for the calendar year set forth in Section 1.10 hereof.

"**Base Taxes**" means the Taxes for the calendar year set forth in Section 1.10 hereof.

"**Commencement Date**" shall mean the date by which the Tenant Improvements to be constructed by Landlord pursuant to Exhibit C, if any, have been "**Substantially Completed**", subject to "**Tenant Delays**" and "**Force Majeure Delays**" (as such terms are defined below), and provided Tenant has had early access to the Premises for at least fifteen (15) days prior to commencement of the Lease to prepare the Premises for occupancy in accordance with Section 4.3. The Commencement Date is estimated to be June 1, 2010 (the "Estimated Commencement Date"). However, if there is any delay in the Tenant Improvements being Substantially Completed due to any Tenant Delay, then such delay shall thereupon effect a postponement of the date by which Landlord is obligated to Substantially Complete the Tenant Improvements; however, the Commencement Date shall be deemed the date the Tenant Improvements would have been completed but for the Tenant Delays. Thus, the date for commencement of Rent and all additional rent shall not be delayed by Tenant Delay.

"**Force Majeure**" is described as whenever a period of time is prescribed for the taking of an action by Landlord or Tenant, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, civil disturbances and other causes beyond the reasonable control of the performing party.

"**Common Areas**" shall mean all areas and facilities outside the Premises within the exterior boundaries of the parcel of land containing the Building of which the Premises form a part, together with the exterior plaza and access areas within the Complex, all as provided and designated by Landlord from time to time for the general use and convenience of Tenant and of other tenants of Landlord having the common use of such areas, and their respective authorized representatives and invitees. As of the date of this Lease, Common Areas include, without limitation, corridors, stairways, elevator shafts, janitor rooms in the Building, the Cityview Plaza parking garage, the driveways and landscaped areas in the Complex as generally outlined on Exhibit A attached hereto. Exhibit A is tentative and Landlord reserves the right to make alterations thereto from time to time.

"**Insurance Costs**" shall mean all premiums and costs and expenses for all policies of insurance which may be obtained by Landlord in its reasonable discretion for (a) the Premises, Building and the Common Areas of the Complex, or any blanket policies which include the Building or Complex, covering damage thereto and loss of rents caused by fire and other perils Landlord elects to cover, including, without limitation, coverage for earthquakes and floods, (b) commercial general liability insurance for the benefit of Landlord and its designees and (c) such other coverage Landlord reasonably elects to obtain for the Premises, Building or Common Areas of the Complex, including, without limitation, coverage for environmental liability and losses. Notwithstanding anything to the contrary, Landlord reserves the right to reasonably adjust the Base Insurance Costs if such Base Insurance costs include coverages for perils not required or elected to be insured by Landlord in the future.

"**Lease Year**" means any fiscal year (as determined by Landlord), or portion thereof, following the commencement hereof, the whole or any part of which period is included within the Term. As of the date of this Lease, a Lease Year commences January 1 and ends December 31.

"**Tenant Improvements**" shall mean the tenant improvements, if any, to be constructed by Landlord pursuant to Exhibit C attached hereto.

"**Operating Costs**" means the total reasonable amounts paid or payable, whether by Landlord or others on behalf of Landlord, in connection with the ownership, maintenance, repair, replacement and operations of the Building and the Common Areas of the Complex in accordance with Landlord's standard operating and accounting procedures. If the Complex consists of multiple buildings, certain Operating Costs may pertain to a particular building(s) and other Operating Costs to the Complex as a whole (such as Operating Costs for the Common Areas of the Complex). Operating Costs applicable to any particular building within the Complex shall be charged to the building in question whose tenants shall be responsible for payment of their respective proportionate shares in the pertinent building and other Operating Costs applicable to the Complex (such as the Common Areas of the Complex) shall be charged to each building in the Complex (including the Building) with the tenants in each such building being responsible for paying their respective proportionate shares in such

building of such costs to the extent required under the applicable leases. Landlord shall in good faith attempt to allocate such Operating Costs to the buildings (including the Building). Operating Costs shall include, but not be limited to, the aggregate of the amount paid for:

(1) all fuel used in heating and air conditioning of the Building and Common Areas of the Complex;

(2) the amount paid or payable for all electricity furnished by Landlord to the Common Areas of the Complex (other than electricity furnished to and paid for by other tenants by reason of their extraordinary consumption of electricity and that furnished to the other building in the Complex for which the tenants of such other building are responsible for such electrical costs);

(3) the cost of periodic relamping and reballasting of lighting fixtures;

(4) the amount paid or payable for all hot and cold water (other than that chargeable to Tenants by reason of their extraordinary consumption of water and that furnished to other buildings in the Complex for which the tenants of such other building are responsible for such water costs) and sewer costs;

(5) the reasonable amount paid or payable for all labor and/or wages and other reasonable payments including cost to Landlord of workers' compensation and disability insurance, payroll taxes, welfare and fringe benefits made to janitors, caretakers, and other employees, contractors and subcontractors of Landlord (including wages of the Building manager) involved in the management, operation, maintenance and repair of the Complex;

(6) painting for exterior walls of the Building and the Common Areas of the Complex; managerial and administrative expenses; the reasonable total charges of any independent contractors employed in the repair, care, operation, maintenance, and cleaning of the Building and Common Areas of the Complex;

(7) the amount paid or payable for all supplies occasioned by everyday wear and tear;

(8) the costs of climate control, window and exterior wall cleaning, telephone and utility costs of the Building and Common Areas of the Complex;

(9) the cost of accounting services necessary to compute the rents and charges payable by Tenants and keep the books of the Building and Common Areas of the Complex;

(10) reasonable fees for management, including, without limitation, office rent, supplies, equipment, salaries, wages, bonuses and other compensation (including fringe benefits, vacation, holidays and other paid absence benefits) relating to employees of Landlord or its agents engaged in the management, operation, repair, or maintenance of the Building and/or Common Areas of the Complex;

(11) reasonable fees for legal, accounting (including, without limitation, any outside audit as Landlord may elect in its sole and absolute discretion), inspection and consulting services;

(12) the cost of operating, repairing and maintaining the Building elevators;

(13) the cost of porters, guards, alarm and other protection services;

(14) the cost of establishing and maintaining the Building's directory board;

(15) payments for general maintenance and repairs to the plant and equipment supplying climate control to the Building and Common Areas of the Complex;

(16) the cost of supplying all services pursuant to Article 11 hereof to the extent such services are not paid by individual tenants;

(17) amortization of the costs, including repair and replacement, of all maintenance and cleaning equipment and master utility meters and of the costs incurred for repairing or replacing all other fixtures, equipment and facilities serving or comprising the Building and Common Areas of the Complex (including any equipment leasing costs associated therewith if applicable) which by their nature require periodic or substantial repair or replacement, and which are not charged fully in the year in which they are incurred, at rates on the various items determined from time to time by Landlord in accordance with sound accounting principles;

(18) community association dues, assessments and charges and property owners' association dues, assessments and charges which may be imposed upon Landlord by virtue of any recorded instrument affecting title to the Building and the cost of any licenses, permits and inspection fees;

(19) all costs to upgrade, improve or change the utility, efficiency or capacity of any utility or telecommunication system serving the Building and the Common Areas of the Complex;

(20) the repair and replacement, resurfacing and/or repaving of any paved areas, curbs or gutters within the Building or Common Areas of the Complex;

(21) the repair and replacement of any equipment or facilities serving or located within the Complex;

(22) any fees, costs and expenses relating to operating, managing, owning, repairing and maintaining any fitness center(s), conference center(s), concierge services, or other amenities (if any) in the Complex, so long as Tenant has reasonable access to such amenities; and

(23) the cost of any capital repairs, improvements and replacements made by the Landlord to the Building or Common Areas of the Complex ("**Capital Costs**"). However, certain Capital Costs shall be includable in Operating Costs each year only to the extent of that fraction allocable to the year in question calculated by amortizing such Capital Cost over the reasonably useful life of the improvement resulting therefrom, as determined by Landlord in its good faith discretion, with interest on the unamortized balance at the higher of (i) eight percent (8%) per annum; or (ii) the interest rate as may have been paid by Landlord for the funds borrowed for the purpose of performing the work for which the Capital Costs have been expended, but in no event to exceed the highest rate permissible by law. Tenant will not be responsible for the unamortized portion of Capital Costs for the useful life period after the end of the Term of this Lease, as the same may be extended. The Capital Costs subject to such amortization procedure are restricted to the following two categories: (a) those costs for capital improvements to the Building or Common Areas of the Complex of a type which do not normally recur more frequently than every five (5) years in the normal course of operation and maintenance of such facilities (specifically excluding painting of all or a portion of the Complex); and (b) costs incurred for the purpose of reducing other operating expenses or utility costs, from which Tenant can expect a reasonable benefit, or that are required by governmental law, ordinance, regulation or mandate, not applicable to the Complex at the time of the original construction.

Operating Costs shall not include any of the following for purposes of calculating Tenant's Proportionate Share of increases in Operating Costs over Base Operating Costs:

a. Legal or accounting expenses incurred expressly for negotiating a lease with a particular tenant, or as a result of a default of a specific tenant;

b. Depreciation or amortization of the Building or its contents or components, except to the extent of amortization of Capital Costs as provided above;

c. Expenses for the construction of tenant improvements in premises leased or to be offered for lease to another tenant;

d. Expenses incurred in leasing or obtaining new tenants or retaining existing tenants, including leasing commissions, legal expenses, advertising or promotion;

e. Legal expenses incurred in enforcing the terms of any lease;

f. Interest, amortization or other costs, including legal fees, associated with any mortgage, loan or refinancing of the Building, or the Common Areas or the parcel containing the Building and Common Areas;

g. The cost of any item or service for which Tenant or any other tenant of the Complex separately reimburses Landlord (other than as part of its applicable Proportionate Share of Operating Costs) or pays to third parties, or that Landlord provides selectively to one or more tenants of the Building and which is not offered or made available to Tenant, whether or not Landlord is reimbursed by such other tenant(s);

h. Charitable contributions and political donations;

i. All bad debt loss, rent loss, or reserve for bad debt or rent loss; and

j. Any cost or expense related to testing, surveying, removal, cleaning, abatement or remediation of Hazardous Materials existing as of the date of this Lease in or about the Building or Complex except to the extent such removal, cleaning, abatement or remediation is related to the general repair and maintenance of the Building; provided, however, notwithstanding the foregoing, Operating Costs shall include the cost of Landlord's annual environmental audit.

"**Proportionate Share**" or "**Pro Rata Percent**" shall be that fraction (converted to a percentage) the numerator of which is the Rentable Area (hereinafter defined) of the Premises and the denominator of which is the Rentable Area of the Building. Tenant's Proportionate Share as of the commencement of the Term hereof is specified in Section 1.13. Said Proportionate Share shall be recalculated by Landlord as may be required effective as at the commencement of any period to which the calculation is applicable in this Lease. Notwithstanding the preceding provisions of this Section, Tenant's Proportionate Share as to certain expenses may be calculated differently to yield a higher percentage share for Tenant as to certain expenses in the event Landlord permits other tenants in the Building to directly incur such expenses rather than have Landlord incur the expense in common for the Building (such as, by way of illustration, wherein a tenant performs its own janitorial services). In such case Tenant's Proportionate Share of the applicable expense shall be calculated as having as its denominator the Rentable Area of all floors rentable to tenants in the Building less the Rentable Area of tenants who have incurred such expense directly. In any case in which Tenant, with Landlord's consent, incurs such expenses directly, Tenant's Proportionate Share will be calculated specially so that expenses of the same character which are incurred by Landlord for the benefit of other tenants in the Building shall not be prorated to Tenant. Nothing herein shall imply that Landlord will permit Tenant or any other tenant of the Building to incur any Operating Costs. Any such permission shall be in the sole discretion of the Landlord, which Landlord may grant or withhold in its arbitrary judgment.

"**Real Estate Taxes**" or "**Taxes**" shall mean and include all general and special taxes, assessments, fees of every kind and nature, duties and levies, charged and levied upon or assessed by any governmental authority against the parcel containing the Building and all other improvements on such parcel, including the various estates in such parcel and the Building and improvements thereon, any leasehold improvements, fixtures, installations,

additions and equipment, whether owned by Landlord or Tenant or any other tenant; except that it shall exclude any taxes of the kind covered by Section 6.1 hereof to the extent Landlord is reimbursed therefor by any tenant in

the Building. Real Estate Taxes shall also include the reasonable cost to Landlord of contesting the amount, validity, or the applicability of any Taxes mentioned in this Section but only to the extent of the savings. Further included in the definition of Taxes herein shall be general and special assessments, license fees, commercial rental tax, levy, or tax (other than inheritance or estate taxes) imposed by any authority having the direct or indirect power to tax, as against any legal or equitable interest of Landlord in the Premises, Building, parcel or in the Complex or on the act of entering into this Lease or, as against Landlord's right to rent or other income therefrom, or as against Landlord's business of leasing the Premises, Building, parcel or the Complex, any tax, fee, or charge with respect to the possession, leasing, transfer of interest, operation, management, maintenance, alteration, repair, use, or occupancy by Tenant, of the Premises, Building, parcel or any portion thereof or the Complex, or any tax imposed in substitution, partially or totally, for any tax previously included within the definition of Taxes herein, or any additional tax, the nature of which may or may not have been previously included within the definition of Taxes. Further, if at any time during the term of this Lease the method of taxation or assessment of real estate or the income therefrom prevailing at the time of execution hereof shall be, or has been altered so as to cause the whole or any part of the Taxes now or hereafter levied, assessed or imposed on real estate to be levied, assessed or imposed upon Landlord, wholly or partially, as a capital levy, business tax, fee, permit or other charge, or on or measured by the Rents received therefrom, then such new or altered taxes, regardless of their nature, which are attributable to the land, the Building or to other improvements on the land shall be deemed to be included within the term "Real Estate Taxes" for purposes of this Section, whether in substitution for, or in addition to any other Real Estate Taxes, save and except that such shall not be deemed to include any enhancement of said tax attributable to other income of Landlord. With respect to any general or special assessments which may be levied upon or against the Premises, Building, Complex, or the underlying realty, or which may be evidenced by improvement or other bonds, and may be paid in annual or semi-annual installments, only the amount of such installment, prorated for any partial year, and statutory interest shall be included within the computation of Taxes for which Tenant is responsible hereunder.

The parcel containing the Building is a separate tax parcel that may also contain other buildings on such parcel. In such event and if the Building and the buildings and improvements are currently included in the same tax bill and contain different size and types of improvements, Landlord shall have the right to allocate the Taxes to each such building in accordance with Landlord's reasonable accounting and management principles.

Notwithstanding anything to the contrary contained in the foregoing definition of Real Estate Taxes, Tenant shall not be responsible or liable for the payment of any state or federal income taxes assessed against Landlord, or any estate, succession or inheritance taxes of Landlord, or corporation franchise taxes imposed upon the corporate owner of the fee of the Building.

"**Rent**" "**rent**" or "**rental**" means Minimum Monthly Rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease.

"**Rentable Area**" as used in this Lease shall be determined as follows:

(a) Single Tenant Floor. As to each floor of the Building on which the entire space rentable to tenants is or will be leased to one tenant, Rentable Area shall be the entire area bounded by the inside surface of the exterior glass walls on such floor, including all areas used for elevator lobbies, corridors, special stairways, special elevators, restrooms, mechanical rooms, electrical rooms and telephone closets, without deduction for columns and other structural portions of the Building or vertical penetrations that are included for the special use of Tenant, but excluding the area contained within the interior walls of the Building stairs, fire towers, vertical ducts, elevator shafts, flues, vents, stacks, pipe shafts, and the rentable square footage described in Paragraph (c) below.

(b) Multi-Tenant Floor. As to each floor of the Building on which space is or will be leased to more than one tenant, Rentable Area attributable to each such lease shall be the total of (i) the entire area

included within the Premises covered by such lease, being the area bounded by the inside surface of any exterior glass walls, the exterior of all walls separating such Premises from any public corridors or other public areas on such floor, and the centerline of all walls separating such Premises from other areas leased or to be leased to other tenants on such floors, (ii) a pro rata portion of the area within the elevator lobbies, corridors, restrooms, mechanical rooms, electrical rooms, telephone closets and their enclosing walls situated on such floor, and (iii) the rentable square footage described in Paragraph (c) below.

(c) Building Load. In any event, Rentable Area shall also include Tenant's Proportionate Share of the lobbies of the Building and Tenant's Proportionate Share of the area of the emergency equipment, fire pump equipment, electrical switching gear, telephone equipment and mail delivery facilities serving the Building.

(d) Deemed Square Footage. The Rentable Area of the Premises is deemed to be the square footage set forth in Section 1.4 of this Lease as of the date hereof, and Rentable Area of the Building is deemed to be the square footage set forth in Section 1.5 hereof. From time to time at Landlord's option, Landlord may re-measure the Rentable Area of the Premises and the Building and any other building on the parcel containing the Building and any other building, which determination shall be conclusive and thereon Tenant's Proportionate Share shall be adjusted accordingly.

"**Structural**" as herein used shall mean any portion of the Premises, Building or Common Areas of the Complex which provides bearing support to any other integral member of the Premises, Building or Common Areas of the Complex such as, by limitation, the roof structure (trusses, joists, beams), posts, load bearing walls, foundations, girders, floor joists, footings, and other load bearing members constructed by Landlord.

"**Substantially Completed**" means that all Tenant Improvements have been performed, other than any details of construction, mechanical adjustment or any other similar matter, the noncompletion of which does not materially interfere with Tenant's use of the Premises.

"**Tenant Delay**" means any act or omission of Tenant or any Tenant's Parties (defined in Section 10.3(c)) that delays the Tenant Improvements being Substantially Completed, including, without limitation: (1) Tenant's failure to furnish information or approvals within any time period specified in this Lease, including the failure to prepare or approve preliminary or final plans by any applicable due date; (2) Tenant's selection of equipment or materials that have long lead times after first being informed by Landlord that the selection may result in a delay; (3) changes requested or made by Tenant to previously approved plans and specifications; (4) performance of work in the Premises by Tenant or Tenant's contractor(s) during the performance of the Tenant Improvements; or (5) if the performance of any portion of the Tenant Improvements depends on the prior or simultaneous performance of work by Tenant, a delay by Tenant or Tenant's contractor(s) in the completion of such work.

ARTICLE 3 PREMISES AND COMMON AREAS

3.1 Demising Clause. Landlord hereby leases to Tenant, and Tenant hires from Landlord the Premises, consisting of the approximate square footage listed in Section 1.4 of the Salient Lease Terms, which the parties agree shall be deemed the actual square footage, subject to change by Landlord in connection with changes in the Rentable Area of the floor on which the Premises are located.

3.2 Reservation. Landlord reserves the area beneath and above the Building as well as the exterior thereof together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires, and structural elements leading through the Premises serving other parts of the Building and Common Areas of the Complex, so long as such items are concealed by walls, flooring or ceilings. Such reservation in no way affects the maintenance obligations imposed herein. Landlord may change the shape, size, location, number and extent of the improvements to any portion of the Building or Common Areas of the Complex and/or the address or name of the Building without the consent of Tenant, so long as the existing quality of the Building is substantially maintained.

3.3 Covenants, Conditions and Restrictions. The parties agree that this Lease is subject to the effect of (a) any covenants, conditions, restrictions, easements, mortgages or deeds of trust, ground leases, rights of way of record, and any other matters or documents of record, including, without limitation, the Declaration of Restrictions referred to in the Salient Lease Terms; (b) any zoning laws of the city, county and state where the Complex is situated; and (c) general and special taxes not delinquent. Tenant agrees that as to its leasehold estate, Tenant and all persons in possession or holding under Tenant will conform to and will not violate the terms of any covenants, conditions or restrictions of record which may now or hereafter encumber the Building or the Complex of which Tenant has been given notice, including, without limitation, the Declaration of Restrictions referred to in the Salient Lease Terms (hereinafter the "**restrictions**"). This Lease is subordinate to the restrictions and any amendments or modifications thereto.

3.4 Common Areas. Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Building or the Complex. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

(a) Common Areas Changes. Landlord shall have the right, in Landlord's sole discretion, from time to time so long as such changes do not materially interfere with the operation of Tenant's business:

(1) To make changes and reductions to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas and walkways, so long as such changes do not result in reducing the number of Tenant's parking spaces;

(2) Upon reasonable prior notice, to close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(3) To designate other land outside the boundaries of the Building to be a part of the Common Areas;

(4) To add additional improvements to the Common Areas;

(5) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Building or Complex, or any portion thereof;

(6) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas, Building and Complex as Landlord may, in the exercise of sound business judgment, deem to be appropriate and as are consistent with substantially maintaining the quality of the Common Areas, Building and Complex as they currently exist.

(b) Common Area Maintenance. Landlord shall, in Landlord's sole discretion, maintain the Common Areas (subject to reimbursement pursuant to this Lease), establish and enforce reasonable rules and regulations concerning such areas, close any of the Common Areas to whatever extent required in the opinion of Landlord's counsel to prevent a dedication of any of the Common Areas or the accrual of any rights of any person

or of the public to the Common Areas, close temporarily any of the Common Areas for maintenance purposes, and make changes to the Common Areas including, without limitation, changes in the location of driveways,

corridors, entrances, exits, the designation of areas for the exclusive use of others, the direction of the flow of traffic or construction of additional buildings thereupon. Landlord may provide security for the Common Areas, but is not obligated to do so. Under no circumstances shall Landlord be liable or responsible for any acts or omissions of any party providing any services to the Common Areas, Building or other improvements, including, without limitation, any security service, notwithstanding anything to the contrary contained in this Lease, except to the extent caused by the gross negligence or willful misconduct of Landlord.

ARTICLE 4 TERM AND POSSESSION

4.1 Commencement Date. The Term of this Lease shall commence on the Commencement Date and shall be for the term specified in Section 1.8 hereof (which includes as set forth in Section 1.8 any partial month at the commencement of the Term if the Term commences other than on the first day of the calendar month).

4.2 Acknowledgment of Commencement. After delivery of the Premises to Tenant, Tenant shall execute a written acknowledgment of the Commencement Date in the form attached hereto as Exhibit D, and by this reference it shall be incorporated herein.

4.3 Pre-Term Possession. Landlord agrees that Tenant and the agents, employees or contractors of Tenant may enter, use and occupy the Premises commencing approximately fifteen (15) days prior to the Commencement Date. Such pre-term possession for Tenant's entry, use or occupancy shall be subject to all the provisions of this Lease other than the payment of Minimum Monthly Rent, including, without limitation, Tenant's compliance with the insurance and indemnity requirements of this Lease. Said early possession shall not advance the termination date of this Lease. Tenant agrees that such early occupancy shall not materially interfere with the progress of Landlord's work (if any) by such entry. Should such entry prove an impediment to the progress of Landlord's work, in Landlord's reasonable judgment, Landlord may demand that Tenant forthwith vacate the Premises until such time as Landlord's work is complete, and Tenant shall immediately comply with this demand; provided, however, that Tenant shall in all events be provided with at least fifteen (15) days access to the Premises prior to the Commencement Date to prepare the Premises for Tenant's occupancy.

4.4 Delay. If Landlord, for any reason whatsoever, cannot deliver possession of the Premises to Tenant with the Tenant Improvements Substantially Completed at the Estimated Commencement Date, this Lease shall not be void or voidable; however, the Landlord will be pay Tenant's current landlord an amount equal to the Tenant's base monthly lease payments at Tenant's current premises in Milpitas for the period from July 1, 2010 through the actual date of delivery of possession to Tenant with the Tenant Improvements Substantially Completed, absent any Tenant Delay. If Landlord does not deliver the Premises to Tenant by the Estimated Commencement Date, Tenant shall have the right to continue to occupy the Temporary Space (as defined in Section 36.1 of this Lease) in accordance with Article 36 of this Lease through the actual date of delivery of possession to Tenant with the Tenant Improvements Substantially Completed. If Landlord does not deliver the Premises to Tenant within three (3) months beyond the Estimated Commencement Date, then Landlord or Tenant may elect to terminate this Lease by written notice to the other within ten (10) business days following the expiration of such period of three (3) months.

4.5 Acceptance of Work. Within thirty (30) days following the date Tenant takes possession of the Premises, Tenant may provide Landlord with a punch list which sets forth any corrective work to be performed by Landlord with respect to work performed by Landlord; provided, however, that Tenant's obligation to pay Rent and other sums under this Lease shall not be affected thereby. Landlord will use commercially reasonable efforts to resolve all punch list items within 30 days of Tenant's delivery of the list. If Tenant fails to submit a punch list to Landlord within such thirty (30) day period, Tenant agrees that by taking possession of the Premises it will conclusively be deemed to have inspected the Premises and found the Premises in satisfactory condition, with all work required of Landlord completed. Tenant acknowledges that neither Landlord, nor any agent, employee or servant of Landlord, has made any representation or warranty, expressed or implied, with respect to the Premises, Building or Common Areas of the Complex, or with respect to the suitability of them to the conduct of Tenant's

business, nor has Landlord agreed to undertake any modifications, alterations, or improvements of the Premises, Building or Common Areas of the Complex, except as specifically provided in this Lease.

Landlord agrees that the Tenant Improvements will be constructed in a good and workmanlike manner, with materials consistent with the class of the Building (except as provided to the contrary in the final Plans, as such term is defined in Exhibit C), in compliance with all local, state and federal regulations, laws, ordinances and orders (including but not limited to the Americans with Disabilities Act and Environmental Laws as defined in Article 10), as such regulations, laws, ordinances and orders apply and are interpreted as of the date of delivery of possession to Tenant with the Tenant Improvements Substantially Completed, and based on the Tenant Improvements to be installed by Landlord. Landlord agrees, at its sole cost and expense, to promptly repair or replace any defective item in the Tenant Improvements occasioned by poor workmanship and/or materials during a one year period following the date of delivery of possession to Tenant with the Tenant Improvements Substantially Completed (the "Warranty Period"). The foregoing warranty shall be subject to, and limited by, the following:

a. Tenant shall provide prompt written notice to Landlord of a defective condition. Once Landlord is notified in writing of any breach of the above-described warranty, Landlord shall commence the cure of such breach as soon as is reasonably possible and complete such cure with diligence at soon as is reasonably possible at Landlord's sole cost and expense.

b. Landlord's liability pursuant to such warranty shall be limited to the cost of correcting the defect or other matter in question. In no event shall Landlord be liable to Tenant for any damages or liability incurred by Tenant as a result of such defect or other matter including, without limitation, damages resulting from any loss of business by Tenant or other consequential damages, except to the extent Tenant's damages result from Landlord's gross negligence or willful misconduct.

c. Notwithstanding anything contained herein, Landlord shall not be liable for any defect in design, construction, or equipment furnished which is discovered and of which Landlord receives written notice from Tenant after the Warranty Period.

d. With respect to defects for which Landlord is not responsible pursuant to subparagraph (c) above, Tenant shall have the benefit of any construction or equipment warranties existing in favor of Landlord that would assist Tenant in correcting such defect and in discharging its obligations regarding the repair and maintenance of the Premises. Upon request by Tenant Landlord shall inform Tenant of all written construction and equipment warranties existing in favor of Landlord which affect the Tenant Improvements. At no cost to Landlord, Landlord shall cooperate with Tenant in enforcing such warranties, so long as Tenant pays all costs in connection therewith.

4.6 Failure to Take Possession. Tenant’s inability or failure to take possession of the Premises when delivery is tendered by Landlord shall not delay the Commencement Date of this Lease or Tenant’s obligation to pay Rent. Tenant acknowledges that Landlord shall incur significant expenses upon the execution of this Lease, even if Tenant never takes possession of the Premises, including, without limitation, brokerage commissions and fees, legal or other professional fees, the costs of space planning and the costs of construction of Tenant Improvements in the Premises. Tenant acknowledges that all of said reasonable expenses, in addition to all other reasonable and customary expenses incurred and damages suffered by Landlord, shall be included in measuring Landlord’s damages should Tenant breach the terms of this Lease, except to the extent Landlord could have mitigated its damages and is required under applicable law to mitigate, including, without limitation, reusing the Tenant Improvements in the Premises in any re-letting of the Premises to the extent such Tenant Improvements meet another tenant’s occupancy requirements.

ARTICLE 5 MINIMUM MONTHLY RENT

5.1 Payment. Tenant shall pay to Landlord at the address specified in Section 1.1, or at such other place as Landlord may otherwise designate, as "Minimum Monthly Rent" for the Premises the amount specified in Section 1.9 hereof, payable in advance on the first day of each month during the Term of this Lease. If the Term commences on other than the first day of a calendar month, the rent for the first partial month shall be prorated accordingly. All payments of Minimum Monthly Rent (including sums defined as rent in Section 2 shall be in lawful money of the United States, and payable without deduction, offset, counterclaim, prior notice or demand.

5.2 Late Payment. If during any twelve (12) month period, Tenant fails to pay Rent within five (5) days after receipt of notice that payment is past due on more than three occasions, then Landlord may, by giving written notice to Tenant, require that Tenant pay the Minimum Monthly Rent and other Rent to Landlord quarterly in advance.

ARTICLE 6 ADDITIONAL RENT

6.1 Personal Property, Gross Receipts, Leasing Taxes. This section is intended to deal with impositions or taxes directly attributed to Tenant or this transaction, as distinct from taxes attributable to the Building or Common Areas of the Complex which are to be allocated among various tenants and others. Tenant shall pay before delinquency any and all taxes, assessments, license fees and public charges levied, assessed or imposed against Tenant or Tenant's estate in this Lease or the property of Tenant situated within the Premises which become due during the Term. On ten (10) days' prior written request by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments. If such taxes are included in the bill for the Real Estate Taxes for the Building or Complex, then Tenant shall pay to Landlord as additional rent the amount of such taxes by the later of ten (10) business days after demand from Landlord or with the next Rent payment.

6.2 Operating Costs, Taxes and Insurance.

(a) Base Year Increases. If the Operating Costs, Taxes and/or Insurance Costs for any Lease Year following December 31, 2011, calculated on the basis of the greater of (i) actual Operating Costs, Taxes and Insurance Costs; or (ii) as if the Building were at least one hundred percent (100%) occupied and operational for the whole of such Lease Year, are more than the applicable Base Year Costs for Base Operating Costs, Base Taxes and Base Insurance as set forth in section 1.10 (which Base Year Costs shall be calculated separately for each such category of Base Year Costs), Tenant shall pay to Landlord its Proportionate Share of any such increase in Operating Costs, Taxes and/or Insurance Costs, as the case may be, as additional Rent as hereinafter provided, but subject to the provisions of 6.2(c) below.

(b) Partial Year. If any Lease Year of less than twelve (12) months is included within the Term, the amount payable by Tenant for such period shall be prorated on a per diem basis (utilizing a thirty (30) day month, three hundred sixty (360) day year).

(c) Controllable Expense Cap. Notwithstanding the foregoing, for purposes of computing Tenant's Proportionate Share of Operating Costs, the Controllable Expenses (hereinafter defined) shall not increase by more than five percent (5%) per calendar year on a compounding and cumulative basis over the course of the Term but with no such limit on the amount of Controllable Expenses included in the Operating Costs incurred during the Base Year. In other words, Controllable Expenses for the any Lease Year of the Term shall not exceed one hundred five percent (105%) of the Controllable Expenses for the prior Lease Year. By way of illustration, if Controllable Expenses were $10.00 per rentable square foot for the second Lease Year of the Term, then Controllable Expenses for the third Lease Year shall not exceed $10.50 per rentable square foot, and Controllable Expenses for the fourth Lease Year shall not exceed $11.03 per rentable square foot (whether or not actual Controllable Expenses were less than, equaled or exceeded the limit on Controllable Expenses the prior

year). "**Controllable Expenses**" shall mean all Operating Costs exclusive of the cost of insurance, utilities, taxes, and the cost of refuse removal (as opposed to the cost of providing janitorial services to the Building or Complex).

6.3 Method of Payment. Any additional Rent payable by Tenant under Sections 6.1 and 6.2 hereof shall be paid as follows, unless otherwise provided:

(a) Estimated Monthly. During the Term, Tenant shall pay to Landlord monthly in advance with its payment of Minimum Monthly Rent, one-twelfth (l/12th) of the amount of such additional Rent as estimated by Landlord in advance, in good faith, to be due from Tenant. If at any time during the course of the Lease Year, Landlord determines that Operating Costs, Insurance Costs and/or Taxes are projected to vary from the then estimated costs for such items by more than ten percent (10%), Landlord may, by thirty (30) days' prior written notice to Tenant, revise the estimated Operating Costs, Insurance Costs and/or Taxes for the balance of such Lease Year, and Tenant's monthly installments for the remainder of such year shall be adjusted so that by the end of such Lease Year Tenant will have paid to Landlord Tenant's Proportionate Share of the such revised expenses for such year.

(b) Annual Reconciliation. Within one hundred eighty (180) days after the end of each Lease Year, or as soon as is reasonably possible after the expiration of each Lease Year, Landlord shall prepare in good faith and deliver to Tenant a comparative statement, setting forth (1) the Operating Costs, Taxes and Insurance Costs for such Lease Year, and (2) the amount of additional Rent as determined in accordance with the provisions of this Article 6.

(c) Adjustment. If the aggregate amount of such estimated additional Rent payments made by Tenant in any Lease Year should be less than the additional Rent due for such year, then Tenant shall pay to Landlord as additional Rent the amount of such deficiency within thirty (30) days from the Landlord's written notification. If the aggregate amount of such additional Rent payments made by Tenant in any Lease Year of the Term should be greater than the additional Rent due for such year, then should Tenant not be otherwise in default hereunder, the amount of such excess will be applied by Landlord to the next succeeding installments of such additional Rent due hereunder; and if there is any such excess for the last year of the Term, the amount thereof will be refunded by Landlord to Tenant within thirty (30) days of the last day of the Term, to the extent Tenant is not otherwise in default under the terms of this Lease.

6.4 Inspection. Tenant shall have the right at its own expense to inspect the books and records of Landlord pertaining to Operating Costs, Insurance Costs and Taxes once in any Lease Year by any employee of Tenant or by a certified public accountant selected by Tenant (provided such certified public accountant charges for its services on an hourly basis and not based on a percentage of any recovery or similar incentive method) at reasonable times, and upon reasonable written notice to Landlord as hereinafter provided. Within one hundred twenty (120) days after receipt of Landlord's annual reconciliation, Tenant shall have the right, after at least thirty (30) days' prior written notice to Landlord, to inspect, at the offices of Landlord or its property manager, the books and records of Landlord pertaining solely to the Operating Costs, Insurance Costs and Taxes for the immediately preceding Lease Year covered in such annual reconciliation statement. All expenses of the inspection shall be borne by Tenant and must be completed within thirty (30) days after commencement of such inspection. If Tenant's inspection reveals a discrepancy in the comparative annual reconciliation statement, Tenant shall deliver a copy of the inspection report and supporting calculations to Landlord within thirty (30) days after completion of the inspection. If Tenant and Landlord are unable to resolve the discrepancy within thirty (30) days after Landlord's receipt of the inspection report, either party may upon written notice to the other have the matter decided by an inspection by an independent certified public accounting firm approved by Tenant and Landlord (the "CPA Firm"), which approval shall not be unreasonably withheld or delayed. If the inspection by the CPA Firm shows that the actual amount of Operating Costs, Insurance Costs or Taxes payable by Tenant is greater than the amount previously paid by Tenant for such Lease Year, Tenant shall pay Landlord the difference within the later of ten (10) business days or the next installment of any Rent. If the inspection by the CPA Firm

shows that the actual applicable amount is less than the amount paid by Tenant, then the difference shall be credited toward Tenant's next estimated monthly installments of Operating Costs, Insurance Costs and/or Taxes, or in the event such accounting occurs following the expiration of the Term hereof, such difference shall be refunded to Tenant within ten (10) business days by Landlord. Tenant shall pay for the cost of the inspection by the CPA Firm, unless such inspection shows that Landlord overstated Operating Costs, Insurance Costs and Taxes by more than five percent (5%), in which case Landlord shall play for the reasonable cost of the inspection by the CPA Firm and reimburse Tenant for any reasonable third-party costs incurred by Tenant in Tenant's initial inspection pursuant to this Section.

ARTICLE 7 ACCORD AND SATISFACTION

7.1 Acceptance of Payment. No payment by Tenant or receipt by Landlord of a lesser amount of Minimum Monthly Rent or any other sum due hereunder, shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or payment or pursue any other remedy available in this Lease, at law or in equity. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice required to be given pursuant to California Code of Civil Procedure Section 1161, et seq., or of any successor statute thereto.

ARTICLE 8 SECURITY DEPOSIT

8.1 Payment on Lease Execution. Tenant shall deposit with Landlord upon execution hereof an irrevocable standby Letter of Credit described more fully in Article 33 hereof and the attached Exhibit F, in the amount specified in the Salient Lease Terms as a Security Deposit. This sum is designated as a Security Deposit and shall remain the sole and separate property of Landlord until actually returned to Tenant (or at Landlord's option the last assignee, if any, of Tenant's interest hereunder), said return not being earned by Tenant until all conditions precedent for its return to Tenant have been fulfilled. As this Letter of Credit and the proceeds thereof both in equity and at law are Landlord's separate property, Landlord shall not be required to (1) keep said Letter of Credit or proceeds separate from Landlord's general accounts, or (2) pay interest, or other increment for its use. If Tenant fails to pay rent or other charges when due hereunder, or otherwise defaults with respect to any provision of this Lease, including and not limited to Tenant's obligation to restore or clean the Premises following vacation thereof, Tenant, at Landlord's election, shall be deemed not to have earned the right to return of the Letter of Credit or the proceeds thereof, or those portions thereof used or applied by Landlord for the payment of any rent or other charges in default, or for the payment of any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. Landlord may retain such portion of the proceeds of the Letter of Credit as it reasonably deems necessary to restore or clean the Premises following vacation by Tenant. The Security Deposit or proceeds of the Letter of Credit are not to be characterized as rent until and unless so applied in respect of a default by Tenant. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, and all other provisions of law, now or hereafter in force, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any officer, employee, agent or invitee of Tenant, subject to Landlord's obligation to mitigate its damages to the extent required under applicable law.

8.2 Restoration of Deposit. If Landlord elects to use or apply all or any portion of the Security Deposit or proceeds of the Letter of Credit as provided in Section 8.1 and Article 33 of this Lease, Tenant shall within ten (10) business days after written demand therefor pay to Landlord in cash an amount equal to that portion of the Security Deposit or proceeds of the Letter of Credit used or applied by Landlord, and Tenant's

failure to so do shall be a material breach of this Lease. The ten (10) business day notice specified in the preceding sentence shall, insofar as not prohibited by law, constitute full satisfaction of notice of default provisions required by law or ordinance, so long as the notice so provides. Provided Tenant has performed all of its obligations under this Lease, any remaining balance of the proceeds of the Letter of Credit, or the Letter of Credit then outstanding, shall be returned by Landlord to Tenant in accordance with the provisions of Section 33.5 below.

ARTICLE 9 USE

9.1 Permitted Use. The Premises may be used and occupied only for the purposes specified in Section 1.12 hereof, and for no other purpose or purposes. Tenant shall promptly comply with all laws, ordinances, orders and regulations affecting the Premises, their cleanliness, safety, occupation and use. Tenant shall not use, or permit to be used, the Premises in any manner that will unreasonably disturb any other tenant in the Building or Complex, or obstruct or interfere with the rights of other tenant or occupants of the Building or Complex, or injure or annoy them or create any unreasonable smells, noise or vibrations (taking into account the nature and tenant-mix of the Building). Tenant shall not do, permit or suffer in, on, or about the Premises the sale of any alcoholic liquor without the written consent of Landlord first obtained. Tenant shall not allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose.

9.2 Safes, Heavy Equipment. Tenant shall not place a load upon any floor of the Premises which exceeds the lesser of fifty (50) pounds per square foot live load or such other amount specified in writing by Landlord from time to time. Landlord reserves the right to prescribe the weight and position of all safes and heavy installations which Tenant wishes to place in the Premises so as properly to distribute the weight thereof, or to require plans prepared by a qualified structural engineer at Tenant's sole cost and expense for such heavy objects. Notwithstanding the foregoing, Landlord shall have no liability for any damage caused by the installation of such heavy equipment or safes.

9.3 Machinery. Business machines and mechanical equipment belonging to Tenant which cause noise and/or vibration that may be transmitted to the structure of the Building or to any other leased space to such a degree as to be objectionable to Landlord or to any tenants in the Complex shall be placed and maintained by the party possessing the machines or equipment, at such party's expense, in settings of cork, rubber or spring type noise and/or vibration eliminators, and Tenant shall take such other measures as needed to eliminate vibration and/or noise. If the noise or vibrations cannot be eliminated, Tenant must remove such equipment within ten (10) days following written notice from Landlord.

9.4 Waste or Nuisance. Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Complex in which the Premises are located.

9.5 Abandonment. If Tenant shall abandon, vacate or surrender the Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and remaining on the Premises after such event shall, at the option of Landlord, be deemed abandoned, subject to the rights of any lender pursuant to Section 17.2 of this Lease.

9.6 Safety and Health. Tenant shall maintain all working areas, machinery, and electrical facilities that exclusively service the Premises in accordance with the laws of the state in which the Building is located and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector, or other proper officials of the governmental agencies having jurisdiction, and Tenant shall comply with all requirements of law, ordinances and otherwise, affecting the Premises and are applicable to Tenant's use or occupancy of the Premises or the manner in which it conducts its business therein, subject to Landlord's obligations pursuant to Article 10 of this Lease.

ARTICLE 10 COMPLIANCE WITH LAWS AND REGULATIONS

10.1 Compliance Obligations.

10.1.1 Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use or occupancy of the Premises all municipal ordinances and state and federal statutes, laws and regulations now or hereafter in force, including, without limitation, the "Environmental Laws" (as hereinafter defined), and the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (and any rules, regulations, restrictions, guidelines, requirements or publications promulgated or published pursuant thereto) (collectively, the "ADA"), whether or not any of the foregoing were foreseeable or unforeseeable at the time of the execution of this Lease. Tenant's obligation to comply with and observe such requirements, ordinances, statutes and regulations shall apply regardless of whether such requirements, ordinances, statutes and regulations regulate or relate to Tenant's particular use of the Premises or regulate or relate to the use of premises in general, and regardless of the cost thereof. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that any such requirement, ordinance, statute or regulation pertaining to the Premises has been violated, shall be conclusive of that fact as between Landlord and Tenant.

10.1.2 Notwithstanding the foregoing, Landlord, at Landlord's cost, shall ensure that the Premises, and the Building of which they are a part, are in compliance with the ADA as of the date of delivery of possession of the Premises to Tenant with the Tenant Improvements Substantially Completed. Notwithstanding the foregoing, if such noncompliance is caused by Tenant Improvements, Tenant's alterations (as defined in Article 12 herein) or reconfiguration of the Premises, or triggered by Tenant's actions, including without limitation Tenant's arrangement of furniture within the Premises, then all costs of remedying such noncompliance shall be borne by Tenant.

10.2 Condition of Premises. Subject to Landlord's work, if any, as referred to in Exhibit C to this Lease, Tenant hereby accepts the Premises in the condition existing as of the date of occupancy, subject to all applicable zoning, municipal, county and state laws, ordinances, rules, regulations, orders, restrictions of record, and requirements in effect during the Term or any part of the Term hereof regulating the Premises, and without representation, warranty or covenant by Landlord, express or implied, except as specifically set forth in this Lease, as to the condition, habitability or safety of the Premises, the suitability or fitness thereof for their intended purposes, or any other matter.

10.3 Hazardous Materials.

(a) Hazardous Materials. As used herein, the term "**Hazardous Materials**" shall mean any wastes, materials or substances (whether in the form of liquids, solids or gases, and whether or not air-borne), which are or are deemed to be (i) pollutants or contaminants, or which are or are deemed to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or which present a risk to public health or to the environment, or which are or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions, guidelines or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto, including, without limitation, any such items or substances which are or may become regulated by any of the Environmental Laws (as hereinafter defined); (ii) listed as a chemical known to the State of California to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code, Division 20, Chapter 6.6 (Safe Drinking Water and Toxic Enforcement Act of 1986); or (iii) a pesticide, petroleum, including crude oil or any fraction thereof, asbestos or an asbestos-containing material, a polychlorinated biphenyl, radioactive material, or urea formaldehyde.

(b) Environmental Laws. In addition to the laws referred to in section 10.3(a) above, the term "**Environmental Laws**" shall be deemed to include, without limitation, 33 U.S.C. Section 1251 et seq., 42

U.S.C. Section 6901 et seq., 42 U.S.C. Section 7401 et seq., 42 U.S.C. Section 9601 et seq., and California Health and Safety Code Section 25100 et seq., and 25300 et seq., California Water Code, Section 13020 et seq., or any successor(s) thereto, all local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other governmental restrictions, guidelines and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to, air or water quality, air emissions, soil or ground conditions or other environmental matters of any kind.

(c) Use of Hazardous Materials. Tenant agrees that during the Term of this Lease, there shall be no use, presence, disposal, storage, generation, leakage, treatment, manufacture, import, handling, processing, release, or threatened release of Hazardous Materials on, from or under the Premises (individually and collectively, "**Hazardous Use**") except to the extent that, and in accordance with such conditions as, Landlord may have previously approved in writing in its sole and absolute discretion. However, without the necessity of obtaining such prior written consent, Tenant shall be entitled to use and store only those Hazardous Materials which are (i) typically used in the ordinary course of business in an office for use in the manner for which they were designed and in such limited amounts as may be normal, customary and necessary for Tenant's business in the Premises, and (ii) in full compliance with Environmental Laws, and all judicial and administrative decisions pertaining thereto. For the purposes of this Section 10.3(c), the term Hazardous Use shall include Hazardous Use(s) on, from or under the Premises by Tenant or any of its directors, officers, employees, shareholders, partners, invitees, agents, contractors or occupants (collectively, "**Tenant's Parties**"), whether known or unknown to Tenant, and whether occurring and/or existing during or prior to the commencement of the Term of this Lease.

(d) Compliance. Tenant agrees that during the Term of this Lease Tenant shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the Premises including, but not limited to, the Environmental Laws.

(e) Inspection and Testing by Landlord. Landlord shall have the right at all times during the term of this Lease to (i) inspect the Premises and to (ii) conduct tests and investigations to determine whether Tenant is in compliance with the provisions of this Section. Except in case of emergency, Landlord shall give at least two (2) business days' notice to Tenant before conducting any inspections, tests, or investigations. The cost of all such inspections, tests and investigations shall be borne by Landlord, unless Tenant is in breach of Section 10.3 of this Lease, in which case the cost of same shall be borne by Tenant. Neither any action nor inaction on the part of Landlord pursuant to this Section 10.3(e) shall be deemed in any way to release Tenant from, or in any way modify or alter, Tenant's responsibilities, obligations, and/or liabilities incurred pursuant to Section 10.3 hereof.

10.4 Indemnity. Tenant shall indemnify, hold harmless, and, at Landlord's option (with such attorneys as Landlord may approve in advance and in writing), defend Landlord and Landlord's officers, directors, shareholders, partners, members, managers, employees, contractors, property managers, agents and mortgagees and other lien holders, from and against any and all "Losses" (hereinafter defined) arising from or related to: (a) any violation or alleged violation by Tenant or any of Tenant's Parties of any of the requirements, ordinances, statutes, regulations or other laws referred to in this Article 10, including, without limitation, the Environmental Laws; (b) any breach of the provisions of this Article 10 by Tenant or any of Tenant's Parties; or (c) any Hazardous Use on, about or from the Premises of any Hazardous Material whether or not approved by Landlord under this Lease. The term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages (whether consequential, direct or indirect, known or unknown, foreseen or unforeseen), penalties, fines, liabilities, losses of every kind and nature (including, without limitation, property damage, diminution in value of Landlord's interest in the Premises or the Complex, damages for the loss or restriction on use of any space or amenity within the Building or the Complex, damages arising from any adverse impact on marketing space in the Complex, sums paid in settlement of claims and any costs and expenses associated with injury, illness or death to or of any person), suits, administrative proceedings, costs and fees, including, but not limited to, attorneys' and consultants' fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing indemnity. Notwithstanding the foregoing to the contrary, and subject to the terms of this Lease, Tenant shall not be liable for any cost or expense related to removal, cleaning, abatement or

remediation of Hazardous Materials existing in the Premises prior to the date Landlord initially granted access to the Premises to Tenant, or Hazardous Materials in the ground water or soil or that migrates onto the Premises from outside the Premises, except to the extent that any of the foregoing results directly or indirectly from any act or negligent omission by Tenant, Tenant's employees, agents and/or contractors and/or any of Tenant's Parties. Tenant shall not make a claim hereunder that any Hazardous Material is preexisting at the Premises or has migrated onto the Premises (as described above) unless and until Tenant has undergone reasonable due diligence and as a result of such investigation Tenant has a reasonable good faith belief (and provides to Landlord reasonable evidence of the basis of such belief) that such Hazardous Material is in fact preexisting at or has migrated onto the Premises. Tenant shall provide notice to Landlord prior to commencing any such investigation (and shall comply with the terms of this Lease related thereto) and shall obtain Landlord's consent prior to commencing any invasive testing. Landlord, at its discretion, may elect to be present during any such investigation. If the parties hereto determine that the subject Hazardous Materials are preexisting and/or have migrated onto the Premises and Tenant is not otherwise liable for the same hereunder, then Landlord shall bear the cost of such investigation; provided, however, if it is determined that Tenant is liable for such Hazardous Materials, Tenant shall bear the cost of such investigation which amount shall be payable hereunder as additional rent. Any consultant or vendor engaged in connection with any such investigation shall be subject to review and approval by Landlord which may be withheld in Landlord's sole discretion. Tenant and any such vendor or consultant, at Landlord's request and prior to conducting any such investigation, shall enter into Landlord's then-standard (but commercially reasonable) confidentiality agreement respecting any information or data discovered in connection with such investigation.

10.5 Landlord's Representation. Landlord represents and warrants to its actual knowledge without independent investigation or the imputation of knowledge from any other party that as of the date of this Lease (i) the Premises and the Building are not contaminated by any Hazardous Materials in violation of any Environmental Laws, and (ii) Landlord has not received any notification from any governmental agency, authority or entity related to any Hazardous Materials in the Premises or the Building in violation of any Environmental Laws.

ARTICLE 11 SERVICE AND EQUIPMENT

11.1 Climate Control. So long as Tenant is not in default under any of the covenants of this Lease, Landlord shall provide climate control to the Premises from 7:00 a.m. to 7:00 p.m. (the "**Climate Control Hours**") on weekdays and 9:00 a.m. to 1:00 p.m. Saturdays (Sundays and holidays excepted) to maintain a temperature adequate for comfortable occupancy, provided that Landlord shall have no responsibility or liability for failure to supply climate control service when making repairs, alterations or improvements or when prevented from so doing by strikes or any cause beyond Landlord's reasonable control. Any climate control furnished for periods not within the Climate Control Hours pursuant to Tenant's request shall be at Tenant's sole cost and expense in accordance with rate schedules promulgated by Landlord from time to time. Upon request, Landlord shall advise Tenant of the then current rate schedule and the basis for its calculation. The current rate as of the date of this Lease for after-hour usage of the HVAC is $65.00 per hour or portion thereof. Tenant acknowledges that Landlord has installed in the Building a system for the purpose of climate control. Any use of the Premises not in accordance with the design standards or any arrangement of partitioning which interferes with the normal operation of such system may require changes or alterations in the system or ducts through which the climate control system operates. Any changes or alterations so occasioned, if such changes can be accommodated by Landlord's equipment, shall be made by Tenant at its cost and expense but only with the written consent of Landlord first had and obtained, and in accordance with drawings and specifications and by a contractor first approved in writing by Landlord. If installation of partitions, equipment or fixtures by Tenant necessitates the re-balancing of the climate control equipment in the Premises, the same will be performed by Landlord at Tenant's expense. Tenant acknowledges that up to one (1) year may be required after Tenant has fully occupied the Premises in order to adjust and balance the climate control systems. Any charges to be paid by Tenant hereunder shall be due within ten (10) business days of receipt of an invoice from Landlord, which invoice may precede Landlord's expenditure for the benefit of Tenant.

11.2 Elevator Service. Landlord shall provide elevator service (which may be with or without operator at Landlord's option) provided that Tenant, its employees, and all other persons using such services shall do so at their own risk.

11.3 Cleaning Public Areas. Landlord shall maintain and keep clean the street level lobbies, sidewalks, truck dock, public corridors and other public portions of the Building.

11.4 Refuse Disposal. Tenant shall pay Landlord, within ten (10) business days of being billed therefor, for the removal from the Premises and the Building of such refuse and rubbish of Tenant as shall exceed that ordinarily accumulated daily in the routine of a reasonable office.

11.5 Janitorial Service. Landlord shall provide cleaning and janitorial service in and about the Complex and Premises five (5) days a week (which is currently scheduled for Sunday through Thursday, holidays excepted, subject to change by Landlord) in accordance with commercially reasonable standards for an office building in the city in which the Building is located.

11.6 Special Cleaning Service. To the extent that Tenant shall require special or more frequent cleaning and/or janitorial service (hereinafter referred to as "**Special Cleaning Service**") Landlord may, upon reasonable advance notice from Tenant, elect to furnish such Special Cleaning Service and Tenant agrees to pay Landlord, within ten (10) days of being billed therefor, Landlord's charge for providing such additional service. Special Cleaning Service shall include but shall not be limited to the following to the extent such services are beyond those typically provided pursuant to Section 11.5 above:

(a) The cleaning and maintenance of Tenant eating facilities other than the normal and ordinary cleaning and removal of garbage, which special cleaning service shall include, without limitation, the removal of dishes, utensils and excess garbage; it being acknowledged that normal and ordinary cleaning service does not involve placing dishes, glasses and utensils in the dishwasher, cleaning any coffee pot or other cooking mechanism or cleaning the refrigerator or any appliances;

(b) The cleaning and maintenance of Tenant computer centers, including peripheral areas other than the normal and ordinary cleaning and removal of garbage if Tenant so desires;

(c) The cleaning and maintenance of special equipment areas, locker rooms, and medical centers;

(d) The cleaning and maintenance in areas of special security; and

(e) The provision of consumable supplies for private toilet rooms.

11.7 Electrical. During the Term of this Lease, there shall be available to the Premises electrical facilities comparable to those supplied in other comparable office buildings in the vicinity of the Building to provide sufficient power for normal lighting and office machines of similar low electrical consumption, and one personal computer for each desk station, but not for any additional computers or extraordinary data processing equipment, special lighting and any other item of electrical equipment which requires a voltage other than one hundred ten (110) volts single phase, as determined by Landlord in its sole and absolute discretion; and provided, however, that if the installation of such electrical equipment requires additional air conditioning capacity above that normally provided to tenants of the Building or above standard usage of existing capacity as determined by Landlord in its sole and absolute discretion, then the additional air conditioning installation and/or operating costs attributable thereto shall be paid by Tenant. Tenant agrees not to use any apparatus or device in, upon or about the Premises which may in any way increase the amount of such electricity usually furnished or supplied to the Premises, and Tenant further agrees not to connect any apparatus or device to the wires, conduits or pipes or other means by which such electricity is supplied, for the purpose of using additional or unusual amounts of electricity, without the prior written consent of Landlord. At all times, Tenant's use of electric current shall never exceed

Tenant's share of the capacity of the feeders to the Building or the risers or wiring installation. Tenant shall not install or use or permit the installation or use in the Premises of any computer or electronic data processing or ancillary equipment or any other electrical apparatus designed to operate on electrical current in excess of 110 volts and 16 amps per machine, without the prior written consent of Landlord, which may be exercised in Landlord's sole and absolute discretion. If Tenant shall require electrical current in excess of that usually furnished or supplied for use of the Premises as general office space, Tenant shall first procure the written consent of Landlord (which may be exercised in Landlord's sole and absolute discretion) to the use thereof and Landlord or Tenant may (i) cause a meter to be installed in or for the Premises, or (ii) if Tenant elects not to install said meter, Landlord may reasonably estimate such excess electrical current. The cost of any meters (including, without limitation, the cost of any installation) or surveys to estimate such excess electrical current shall be paid by Tenant. Landlord's approval of any space plan, floor plan, construction plans, specifications, or other drawings or materials regarding the construction of the Tenant Improvements or any alterations shall not be deemed or construed as consent by Landlord under this paragraph to Tenant's use of such excess electrical current as provided above, except to the extent detailed in the Plans approved pursuant to Exhibit C of this Lease; provided, however, that excess electrical current that will be consumed by the Tenant Improvements shown in Exhibit C of the Lease shall be at the sole cost and expense of Tenant. Tenant agrees to pay to Landlord, promptly upon demand therefor, all costs of such electrical current consumed as well as an additional use charge calculated by said meters (at the rates charged for such services to the Building by the municipality or the local public utility) or the amount specified in said estimate, as the case may be, plus any additional expense incurred in keeping account of the electrical current so consumed, which additional expense Landlord shall advise Tenant within a reasonable time after request by Tenant.

11.8 Water. During the Term of this Lease, if water is made available to the Premises, then water shall be used for drinking, lavatory and office kitchen purposes only as applicable. If Tenant requires, uses or consumes water for any purpose in addition to ordinary drinking, lavatory, and office kitchen purposes (as determined by Landlord in its sole and absolute discretion), as applicable, Landlord may reasonably estimate such excess and Tenant shall pay for same. At Tenant's sole cost and expense, Landlord may also install a water meter and thereby measure Tenant's water consumption for all purposes, and Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown in said meter, as and when bill are rendered.

11.9 Interruptions. It is understood that Landlord does not warrant that any of the services referred to above or any other services which Landlord may supply will be free from interruption. Tenant acknowledges that any one or more such services may be suspended or reduced by reason of repairs, alterations or improvements necessary to be made, by strikes or accidents, by any cause beyond the reasonable control of Landlord, or by orders or regulations of any federal, state, county or municipal authority. Any such interruption or suspension of services shall not be deemed an eviction (constructive or otherwise) or disturbance of Tenant's use and possession of the Premises or any part thereof, nor render Landlord liable to Tenant for damages by abatement of Rent or otherwise, nor relieve Tenant of performance of Tenant's obligations under this Lease. However, notwithstanding the foregoing, if the Premises, or a material portion of the Premises, are made untenantable for a period in excess of five (5) consecutive business days solely as a result of an interruption, diminishment or termination of services due to Landlord's gross negligence or willful misconduct and such interruption, diminishment or termination of services is otherwise reasonably within the control of Landlord to correct (a "Service Failure"), then Tenant, as its sole remedy, shall be entitled to receive an abatement of the Monthly Minimum Rent and Tenant's Proportionate Share of Operating Costs, Taxes and/or Insurance Costs payable hereunder during the period beginning on the sixth (6th) consecutive business day of the Service Failure and ending on the day the interrupted service has been restored. If the entire Premises have not been rendered untenantable by the Service Failure, the amount of abatement shall be equitably prorated.

11.10 Conservation. Tenant agrees to comply with the conservation, use and recycling policies and practices from time to time established by Landlord for the use of utilities and services supplied by Landlord, and the utility charges payable by Tenant hereunder may include such excess usage penalties or surcharges as may

from time to time be established by Landlord for the Building. Landlord may reduce the utilities supplied to the Premises and the Common Areas as required by any mandatory water, energy or other conservation statute, regulation, order or allocation or other program.

ARTICLE 12 ALTERATIONS

12.1 Consent of Landlord; Ownership. Tenant shall not make, or suffer to be made, any alterations, additions or improvements, including, without limitation, any alterations, additions or improvements that result in increased telecommunication demands or require the addition of new communication or computer wires, cables and related devises or expand the number of telephone or communication lines dedicated to the Premises by the Building's telecommunication design (individually, an "**alteration**" and collectively, "**alterations**") to the Premises, or any part thereof, without the written consent of Landlord first had and obtained. Subject to Section 12.4 below, any alterations, except trade fixtures, shall upon expiration or termination of this Lease become a part of the realty and belong to Landlord. Except as otherwise provided in this Lease, Tenant shall have the right (but not the obligation, except as provided in Section 12.4 below) to remove its trade fixtures placed upon the Premises provided that Tenant restores the Premises as indicated below. Notwithstanding the foregoing, Landlord's consent shall not be required for any alteration to the interior of the Premises that complies with the following requirements: (a) is cosmetic in nature such as painting, (b) does not affect the roof or any area outside of the Premises or required work inside the walls or above the ceiling of the Premises; (c) does not affect the structural parts of the Building or electrical, plumbing, HVAC or mechanical systems in the Building or servicing the Premises, or the sprinkler or other life safety system; and (d) costs less than $25,000.00 on any one floor in the Premises or $50,000 in the aggregate for all of such alterations for any one project (herein referred to as "**Minor Alteration**"). Tenant shall provide Landlord with prior written notice of any Minor Alteration that requires a building permit. Notwithstanding anything to the contrary contained herein, so long as Tenant's written request for consent for a proposed alteration contains the following statement in large, bold and capped font: "PURSUANT TO SECTION 6 OF THE LEASE, IF LANDLORD CONSENTS TO THE SUBJECT ALTERATION, LANDLORD SHALL NOTIFY TENANT IN WRITING WHETHER OR NOT LANDLORD WILL REQUIRE SUCH ALTERATION TO BE REMOVED AT THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE.", then at the time Landlord gives its consent for any alterations, if it so does, Tenant shall also be notified whether or not Landlord will require that such alterations be removed upon the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary contained in this Lease, at the expiration or earlier termination of this Lease and otherwise in accordance with Section 12.4 hereof, Tenant shall be required to remove all alterations made to the Premises except for any such alterations which Landlord expressly indicates or is deemed to have indicated shall not be required to be removed from the Premises by Tenant. If Tenant's written notice strictly complies with the foregoing and if Landlord fails to so notify Tenant whether Tenant shall be required to remove the subject alterations at the expiration or earlier termination of this Lease, it shall be assumed that Landlord shall require the removal of the subject alterations.

12.2 Requirements. Any alteration performed by Tenant shall be subject to strict conformity with the following requirements:

(a) All alterations shall be at the sole cost and expense of Tenant;

(b) Prior to commencement of any work of alteration other than a Minor Alteration, Tenant shall submit detailed plans and specifications, including working drawings (hereinafter referred to as "**Plans**"), of the proposed alteration, which shall be subject to the consent of Landlord in accordance with the terms of Section 12.1 above, which approval shall not be unreasonably withheld and which Landlord shall approve or disapprove within ten (10) business days after submission;

(c) Following approval of the Plans by Landlord, Tenant shall give Landlord at least ten (10) days' prior written notice of any commencement of work in the Premises so that Landlord may post notices of non-responsibility in or upon the Premises as provided by law;

(d) No alteration shall be commenced without Tenant having previously obtained all appropriate permits and approvals required by and of governmental agencies;

(e) All alterations shall be performed in a skillful and workmanlike manner, consistent with the best practices and standards of the construction industry, and pursued with diligence in accordance with said Plans previously approved by Landlord and in full accord with all applicable laws and ordinances. All material, equipment, and articles incorporated in the alterations are to be new and of recent manufacture and of the most suitable grade for the purpose intended;

(f) Tenant must obtain the prior written approval from Landlord for Tenant's contractors before the commencement of any work, which approval shall not be unreasonably withheld and which Landlord shall approve or disapprove within ten (10) business days after Tenant's request. Tenant's contractor for any work shall maintain all of the insurance reasonably required by Landlord, including, without limitation, commercial general liability and workers' compensation.

(g) As a condition of approval of an alteration other than a Minor Alteration, Landlord may require performance and labor and materialmen's payment bonds issued by a surety approved by Landlord, in a sum equal to the cost of the alterations guarantying the completion of the alteration free and clear of all liens and other charges in accordance with the Plans. Such bonds shall name Landlord as beneficiary;

(h) The alteration must be performed in a manner such that they will not unreasonably interfere with the quiet enjoyment of the other tenants in the Complex.

12.3 Liens. Tenant shall keep the Premises and the Complex in which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event a mechanic's or other lien is filed against the Premises, Building or the Complex as a result of a claim arising through Tenant, except for the Tenant Improvements described in Exhibit C to be performed by Landlord, Landlord may demand that Tenant furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to at least one hundred fifty percent (150%) of the amount of the contested lien claim or demand, indemnifying Landlord against liability for the same and holding the Premises free from the effect of such lien or claim. Such bond must be posted within ten (10) days following notice from Landlord. In addition, Landlord may require Tenant to pay Landlord's reasonable attorneys' fees and costs in participating in any action to foreclose such lien if Landlord shall decide it is to its best interest to do so. If Tenant fails to post such bond within said time period, Landlord, after five (5) days prior written notice to Tenant, may pay the claim prior to the enforcement thereof, in which event Tenant shall reimburse Landlord in full, including attorneys' fees, for any such expense, as additional rent, with the next due rental.

12.4 Restoration. Tenant shall return the Premises to Landlord at the expiration or earlier termination of this Lease in good and sanitary order, condition and repair, free of rubble and debris, broom clean, reasonable wear and tear excepted. However, Tenant shall ascertain from Landlord the time the Landlord gives its consent to Tenant to make alterations or if, Tenant fails to comply with Section 6.4 in requesting consent for the Alterations, at least thirty (30) days prior to the termination of this Lease, whether Landlord desires the Premises, or any part thereof, restored to its condition prior to the making of any alterations, installations and improvements (whether or not permitted hereunder), and if Landlord shall so desire, then Tenant shall forthwith restore said Premises or the designated portions thereof as the case may be, to its original condition, entirely at its own expense, excepting normal wear and tear. All damage to the Premises caused by the removal of such trade fixtures and other personal property that Tenant is permitted to remove under the terms of this Lease and/or such restoration shall be repaired by Tenant at its sole cost and expense prior to termination. Notwithstanding anything to the contrary in this Lease, Tenant will not have to remove the initial Tenant Improvements being installed by Landlord in the Premises, except that Tenant shall remove at its expense all telephone, network, computer, communication and other lines, cables and wires (collectively, the "**Wires**") in the Premises or anywhere in the Building outside the

Premises, including, without limitation, the plenums or risers of the Building, and restore the Premises or the Building, as the case may be, to their condition existing prior to the installation of the Wires, unless Tenant shows to the reasonable satisfaction of Landlord that Tenant has received approval from the appropriate governmental agency to leave the Wires in place, in which event Tenant may elect to leave such Wires.

ARTICLE 13 PROPERTY INSURANCE

13.1 Use of Premises. No use shall be made or permitted to be made on the Premises, nor acts done, which will increase the existing rate of insurance upon the Building or upon any other building in the Complex or cause the cancellation of any insurance policy covering the Building, or any part thereof, nor shall Tenant sell, or permit to be kept, used or sold, in or about the Premises, any article which may be prohibited by the standard form of "All Risk" or "Special Form" fire insurance policies. Tenant shall, at its sole cost and expense, comply with any and all requirements pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable property damage and commercial general liability insurance, covering the Premises, the Building, or the Complex.

13.2 Increase in Premiums. Tenant agrees to pay Landlord, as additional Rent, within ten (10) days after receipt by Tenant of Landlord's billing therefor, any increase in premiums for insurance policies which may be carried by Landlord on the Premises, Building or Complex resulting from any negligent or intentional act or omission of Tenant or any of its contractors, partners, officers, employees or agents. Landlord agrees to provide Tenant prior written notice of any such increase and provide Tenant the reasonable opportunity to correct the event or action resulting in the increased premium, if possible, or contest the adjustment; provided, however, that during any contest, Tenant must pay for the increase in the Premium as provided above.

13.3 Personal Property Insurance. Tenant shall maintain in full force and effect on alterations, additions, improvements, carpeting, floor coverings, panelings, decorations, fixtures, inventory and other business personal property situated in or about the Premises a policy or policies providing protection against any peril included within the classification "All Risk" or "Special Form" to the extent of one hundred percent (100%) of their replacement cost, or that percentage of the replacement cost required to negate the effect of a co-insurance provision, whichever is greater. No such policy shall have a deductible in a greater amount than FIVE THOUSAND DOLLARS ($5,000.00). Tenant shall also insure in the same manner the physical value of all its tenant improvements and alterations in the Premises. During the term of this Lease, the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of the fixtures, equipment, and tenant improvements so insured. Landlord shall have no interest in said insurance (except as a loss payee with respect to any alterations or other tenant improvements made to the Premises), and will sign all documents necessary or proper in connection with the settlement of any claim or loss by Tenant. Tenant shall also maintain business interruption insurance and insurance for all plate glass upon the Premises. All insurance specified in this Section 13.3 to be maintained by Tenant shall be maintained by Tenant at its sole cost.

ARTICLE 14 INDEMNIFICATION, WAIVER OF CLAIMS AND SUBROGATION

14.1 Intent and Purpose. This Article 14 is written and agreed to in respect of the intent of the parties to assign the risk of loss, whether resulting from negligence of the parties or otherwise, to the party who is obligated hereunder to cover the risk of such loss with insurance. Thus, the indemnity and waiver of claims provisions of this Lease have as their object, so long as such object is not in violation of public policy, the assignment of risk for a particular casualty to the party carrying the insurance for such risk, without respect to the causation thereof.

14.2 Waiver of Subrogation. So long as their respective insurers so permit, Tenant and Landlord hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage, "All Risk" or "Special Form" or other insurance now or hereafter existing for the benefit of the

respective party but only to the extent of the net insurance proceeds payable under such policies. Each party shall obtain any special endorsements required by their insurer to evidence compliance with the aforementioned waiver.

14.3 Indemnity. Tenant shall protect, indemnify and hold Landlord, Landlord's investment manager, and the trustees, boards of directors, officers, general partners, beneficiaries, stockholders, employees and agents of each of them (the "**Landlord Entities**") harmless from and against any and all loss, claims, liability or costs (including court costs and reasonable attorney's fees) incurred by reason of (a) any damage to any property (including but not limited to property of any Landlord Entity) or any injury (including but not limited to death) to any person occurring in, on or about the Premises, Building and or Complex to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault, or omission by or of Tenant or any of Tenant's agents, contractors, employees, licensees or invitees (collectively, the "**Tenant Entities**") to meet any standards imposed by any duty with respect to the injury or damage; (b) the conduct or management of any work or thing whatsoever done by the Tenant in or about the Premises or from transactions of the Tenant concerning the Premises; (c) Tenant's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Premises or its occupancy; or (d) any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to this Lease. Landlord shall protect, indemnify and hold Tenant, and the trustees, boards of directors, officers, general partners, beneficiaries, stockholders, employees and agents of Tenant, harmless from and against any and all loss, claims, liability or costs (including court costs and reasonable attorney's fees) incurred by reason of any damage to any property or any injury to any person occurring in, on or about the Premises, Building and or Complex to the extent that such injury or damage shall be caused by or arise from any gross negligence or willful misconduct by or of Landlord or any of Landlord's officers, employees or agents in connection with the construction of the Tenant Improvements or any latent condition therein and in the repair and maintenance of the Building and the Common Areas to the extent Landlord has a duty under this Lease to maintain such areas. The provisions of this Article shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.

14.4 Defense of Claims. In the event any action, suit or proceeding is brought against Landlord by reason of any such occurrence, Tenant, upon Landlord's request, will at Tenant's expense resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated either by Tenant or by the insurer whose policy covers the occurrence and in either case approved by Landlord. The obligations of Tenant under this Section arising by reason of any occurrence taking place during this Lease term shall survive any termination of this Lease.

14.5 Waiver of Claims. Tenant, as a material part of the consideration to be rendered to Landlord, hereby waives all claims against Landlord for damages to goods, wares, merchandise and loss of business in, upon or about the Premises and injury to Tenant, its agents, employees, invitees or third persons, in, upon or about the Premises, Building or Complex, from any cause arising at any time, including Landlord's failure to police or provide security for the Complex, breach of other provisions of this Lease or the negligence of the parties hereto, except to the extent such damages or injury are caused by the gross negligence or willful actions of Landlord, its agents, officers and employees.

14.6 References. Wherever in this Article the term Landlord or Tenant is used and such party is to receive the benefit of a provision contained in this Article, such term shall refer not only to that party but also to its shareholders, officers, directors, employees, partners, members, managers, mortgagees and agents.

ARTICLE 15 LIABILITY AND OTHER INSURANCE

15.1 Tenant's Insurance. Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease, a commercial general liability insurance policy insuring Tenant and protecting Landlord and the Landlord Entities against any liability to the public or to any invitee of Tenant or a Landlord Entity against the risks of, bodily injury and property damage, personal injury, contractual liability, completed operations, products

liability, host liquor liability, owned and non-owned automobile liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be a combined single limit policy in an amount not less than TWO MILLION DOLLARS ($2,000,000.00) per occurrence with a FIVE MILLION DOLLAR ($5,000,000.00) annual aggregate. Landlord, the Landlord Entities and any lender and any other party in interest designated by Landlord shall be named as additional insured(s). The policy shall contain cross liability endorsements with coverage for Landlord for the negligence of Tenant even though Landlord is named as an additional insured; shall insure performance by Tenant of the indemnity provisions of this Lease; shall be primary, not contributing with, and not in excess of coverage which Landlord may carry; shall provide for severability of interest; shall provide that an act or omission of one of the insured or additional insureds which would void or otherwise reduce coverage shall not void or reduce coverages as to the other insured or additional insureds; and shall afford coverage after the term of this Lease (by separate policy or extension if necessary) for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the term of this Lease. The limits of said insurance shall not limit any liability of Tenant hereunder. Not more frequently than every year, if, in the reasonable opinion of Landlord, the amount of liability insurance required hereunder is not adequate, Tenant shall promptly increase said insurance coverage as required by Landlord.

15.2 Workers' Compensation Insurance. Tenant shall carry Workers' Compensation insurance as required by law, including an employers' liability endorsement.

15.3 Other Insurance. Tenant shall keep in force throughout the Term: (a) Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than $1,000,000 per accident; (b) Employers Liability with limits of $1,000,000 each accident, $1,000,000 disease policy limit, $1,000,000 disease--each employee; (c) Business Interruption Insurance for 100% of the 12 months actual loss sustained, and (d) Excess Liability in the amount of $5,000,000. In addition, whenever Tenant shall undertake any alterations, additions or improvements in, to or about the Premises ("**Work**") the aforesaid insurance protection must extend to and include injuries to persons and damage to property arising in connection with such Work, without limitation including liability under any applicable structural work act, and such other insurance as Landlord shall require; and the policies of or certificates evidencing such insurance must be delivered to Landlord prior to the commencement of any such Work.

ARTICLE 16 INSURANCE POLICY REQUIREMENTS & INSURANCE DEFAULTS

16.1 General Requirements. All insurance policies required to be carried by Tenant (except Tenant's business personal property insurance) hereunder shall be provided at Tenant's expense and shall conform to the following requirements:

(a) The insurer in each case shall carry a designation in "Best's Insurance Reports" as issued from time to time throughout the term as follows: Policyholders' rating of A; financial rating of not less than VII;

(b) The insurer shall be qualified to do business in the state in which the Premises are located;

(c) The policy shall be in a form and include such endorsements as are acceptable to Landlord;

(d) A certificate of Liability insurance on ACORD Form 25 and a certificate of Property insurance on ACORD Form 28 shall be delivered to Landlord by Tenant upon the date of delivery of possession of the Premises to Tenant and at least thirty (30) days prior to the expiration of each policy;

(e) Name the Landlord Entities as additional insureds (General Liability) and loss payee (Property—Special Form);

(f) Each policy shall require that Landlord be notified in writing by the insurer at least thirty (30) days (ten days for non-payment of premium) prior to any cancellation or expiration of such policy, or any reduction in the amounts of insurance carried.

16.2 Tenant's Insurance Defaults. If Tenant fails to obtain any insurance required of it under the terms of this Lease, Landlord may, at its option, but is not obligated to, obtain such insurance on behalf of Tenant after ten (10) business days' prior written notice thereof (provided that Landlord may obtain such insurance on behalf of Tenant immediately and without prior notice in the event of a lapse of coverage) and bill Tenant, as additional rent, for the cost thereof. Payment shall be due within ten (10) business days of receipt of the billing therefor by Tenant.

ARTICLE 17 FORFEITURE OF PROPERTY AND LANDLORD'S LIEN

17.1 Removal of Personal Property. Tenant agrees that as at the date of termination of this Lease or repossession of the Premises by Landlord, by way of default or otherwise, it shall remove all personal property to which it has the right to ownership pursuant to the terms of this Lease. Any and all such property of Tenant not removed by such date shall, at the option of Landlord, irrevocably become the sole property of Landlord. Tenant waives all rights to notice and all common law and statutory claims and causes of action which it may have against Landlord subsequent to such date as regards the storage, destruction, damage, loss of use and ownership of the personal property affected by the terms of this Article. Tenant acknowledges Landlord's need to relet the Premises upon termination of this Lease or repossession of the Premises and understands that the forfeitures and waivers provided herein are necessary to aid said reletting, and to prevent Landlord incurring a loss for inability to deliver the Premises to a prospective Tenant.

17.2 Landlord's Lien. Tenant hereby grants to Landlord a lien upon and security interest in all fixtures, chattels and personal property of every kind now or hereafter to be placed or installed in or on the Premises and agrees that in the event of any default on the part of Tenant, Landlord shall have all the rights and remedies afforded the secured party by the chapter on "Default" of Division 9 of the Uniform Commercial Code of the state in which the Premises are located and may, in connection therewith, also (a) enter on the Premises to assemble and take possession of the collateral, (b) require Tenant to assemble the collateral and make its possession available to Landlord at the Premises, and (c) enter the Premises, render the collateral, if equipment, unusable and dispose of it in a manner provided by the Uniform Commercial Code of the state in which the Premises are located. Tenant shall have the right, so long as Tenant is not in default under this Lease, to encumber the furniture, trade fixtures and equipment located in or on the Premises that are installed and paid for by Tenant. Upon Tenant's request, so long as Tenant is not in default under this Lease, Landlord agrees to subordinate its interest in such personal property under this Section to Tenant's third-party lender by executing a subordination to such financing and consent to the removal of such furniture, trade fixtures and equipment, provided such form of subordination and consent is reasonably acceptable to Landlord and provides, among other things, (i) that at least five (5) business days prior notice to Landlord before entry and removal of such personal property by any lender or equipment lessor, (ii) that such lender or equipment lessor shall indemnify Landlord and its agents for any injury to persons or damage to property, including, without limitation, the Premises, Building or Complex, and (iii) that no auction or sale of such personal property shall occur from the Premises, Building or Complex, and is otherwise acceptable to Landlord in Landlord's reasonable discretion.

ARTICLE 18 MAINTENANCE AND REPAIRS

18.1 Landlord's Obligations. Subject to the other provisions of this Lease imposing obligations in this respect upon Tenant, Landlord shall repair, replace and maintain the external and Structural parts of the Building and Common Areas of the Complex which do not comprise a part of the Premises and are not leased to others, janitor and equipment closets and shafts within the Premises designated by Landlord for use by it in connection with the operation and maintenance of the Complex, and all Common Areas. Landlord shall also repair and maintain the exterior walls, roof, exterior windows, utility lines serving the Premises that are in the Building but

outside the Premises (other than Tenant's telephone, networking, cabling and telecommunication lines and cables), the Building's HVAC system (but not any supplemental systems for any special equipment of Tenant), the Building's base electrical system, lights and ballasts, the Building's pipes, ducts, plumbing and sewer, and conduits, wires, and structural elements leading through the Premises serving other parts of the Building and Common Areas of the Complex, the Building's sprinkler and other automatic fire extinguishing systems including fire alarm and smoke detection systems and equipment (except as installed by Tenant). Landlord shall perform such repairs, replacements and maintenance with reasonable dispatch, in a good and workmanlike manner; but Landlord shall not be liable for any damages, direct, indirect or consequential, or for damages for personal discomfort, illness or inconvenience of Tenant by reason of failure of such equipment, facilities or systems or reasonable delays in the performance of such repairs, replacements and maintenance, unless caused by the gross negligence or deliberate act or omission of Landlord. The cost for such repairs, maintenance and replacement shall be included in Operating Costs.

18.2 Negligence of Tenant. If the Building, the elevators, boilers, engines, pipes or apparatus used for the purpose of climate control of the Building or operating the elevators, or if the water pipes, drainage pipes, electric lighting or other equipment of the Building, or the roof or the outside walls of the Building, fall into a state of disrepair or become damaged or destroyed through the negligence or intentional act of Tenant, its agents, officers, partners, employees or servants, the cost of the necessary repairs, replacements or alterations shall be borne by Tenant who shall pay the same to Landlord as additional charges forthwith on demand, except to the extent provided in section 14.2 (the waiver of subrogation) hereof.

18.3 Tenant’s Obligations. Tenant shall repair the Premises, including without limiting the generality of the foregoing, all interior partitions and interior walls, fixtures, Tenant Improvements and alterations in the Premises, fixtures and shelving, and special mechanical and electrical equipment which equipment is not a normal part of the Premises installed by or for Tenant, reasonable wear and tear, damage with respect to which Landlord has an obligation to repair as provided in Section 18.1 and Section 19 hereof only excepted. Landlord may enter and view the state of repair and Tenant will repair in a good and workmanlike manner according to notice in writing.

18.4 Cleaning. Tenant agrees at the end of each business day to leave the Premises in a reasonably clean condition for the purpose of the performance of Landlord’s cleaning services referred to herein.

18.5 Waiver. Tenant waives all rights it may have under law to make repairs at Landlord’s expense. However, in the event of a default by Landlord of its repair and maintenance obligations under the Lease, (a) Tenant shall use reasonable efforts to mitigate its damages and losses arising from any such default and Tenant may pursue any and all remedies available to it at law or in equity, provided, however, in no event shall Tenant claim a constructive or actual eviction or that the Premises have become unsuitable or uninhabitable prior to a default and failure to cure by Landlord and its mortgagee under this Lease, and further provided that in no event shall Tenant be entitled to receive more than its actual direct damages, it being agreed that Tenant hereby waives any claim it otherwise may have for special or consequential damages; and (b) in an emergency (an emergency being defined as a situation presenting an imminent threat of material harm or injury to persons or property), Tenant shall give advance notice by telephone to the individual from time to time designated by Landlord as an emergency contact of Tenant's intention to exercise its rights under this Section, and if Landlord shall have failed to remove such imminent threat of material harm or injury within ten (10) business days after receipt of notice from Tenant of the emergency, Tenant shall have the right, but not the obligation, to perform the nonstructural repair or maintenance obligation to the Premises that Landlord has failed to perform and which failure has produced the emergency situation, in accordance with all government laws, ordinances, rules and regulations, using Building standard materials where applicable, and with insurance in place as Landlord may reasonably require. The reasonable cost and expense so incurred by Tenant shall be paid by Landlord to Tenant, within thirty (30) days after demand therefor, such demand to be accompanied by appropriate lien waivers and invoices.

18.6 Acceptance. Except as to the obligations of Landlord, if any, stated in this Lease, Tenant shall accept the Premises in "as is" condition as of the date of execution of this Lease by Tenant, and subject to the punch list items and warranty referenced in Section 4.5, Tenant acknowledges that the Premises in such condition are in good and sanitary order, condition and repair. Notwithstanding the foregoing, Landlord agrees to deliver the Premises to Tenant with all Building systems serving the Premises in good operating order and repair, including mechanical, electrical and plumbing systems. Without limiting Landlord's obligations related to the warranty set forth in Section 4.5, Tenant shall have thirty (30) days from the date Landlord delivers possession of the Premises to Tenant in which to discover and to notify Landlord, in writing, which, if any, of the above stated Building systems are not in good working order and satisfactory condition and repair and Landlord shall at its cost promptly effectuate the repair and correction thereof.

ARTICLE 19 DESTRUCTION

19.1 Rights of Termination. In the event the Premises suffers (a) an "uninsured property loss" (as hereinafter defined) or (b) a property loss which cannot be repaired within one hundred twenty (120) days from the date of destruction under the laws and regulations of state, federal, county or municipal authorities, or other authorities with jurisdiction, Landlord may terminate this Lease as of the date of the damage within twenty (20) days of written notice from Landlord to Tenant that the damage from the casualty was an uninsured property loss or that time to restore will exceed such one hundred twenty (120) day period. In the event of a property loss to the Premises which cannot be repaired within one hundred eighty (180) days of the occurrence thereof, Tenant shall also have the right to terminate this Lease by written notice to Landlord within twenty (20) days following notice from Landlord that the time for restoration will exceed such time period. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not have the right to terminate this Lease if the casualty or other loss or damage was caused by the negligence or intentional misconduct of Tenant or any Tenant Entity or a party related to Tenant. For purposes of this Lease, the term "**uninsured property loss**" shall mean any loss arising from a peril not covered by the standard form of "All Risk" or "Special Form" property insurance policy.

19.2 Repairs. In the event of a property loss which may be repaired within one hundred twenty (120) days from the date of the damage, or, in the alternative, in the event the parties do not elect to terminate this Lease under the terms of Section 19.1 above, then this Lease shall continue in full force and effect and Landlord shall forthwith undertake to make such repairs to reconstitute the Premises to as near the condition as existed prior to the property loss as practicable. Landlord shall not be required to repair or replace any damage or loss by or from fire or other cause to any panelings, decorations, partitions, additions, railings, ceilings, floor coverings, office fixtures or any other property or improvements installed on the Premises by, or belonging to, Tenant. Such partial destruction shall in no way annul or void this Lease except that Tenant shall be entitled to a proportionate reduction of Minimum Monthly Rent following the property loss and until the time the Premises are restored. Such reduction shall be based on the ratio that the square footage of the damaged portion of the Premises bears to the total square footage of the Premises. So long as Tenant conducts its business in the Premises, there shall be no abatement until the parties agree on the amount thereof. If the parties cannot agree within forty-five (45) days of the property loss, the matter shall be submitted to arbitration under the rules of the American Arbitration Association. Upon the resolution of the dispute, the settlement shall be retroactive and Landlord shall within ten (10) days thereafter refund to Tenant any sums due in respect of the reduced rental from the date of the property loss. Landlord's obligations to restore shall in no way include any construction originally performed by Tenant or subsequently undertaken by Tenant, but shall include solely that property constructed by Landlord prior to commencement of the Term hereof. Notwithstanding anything to the contrary contained in this Lease, in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises, Building and/or Complex requires that any insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made by any such holder, whereupon this Lease shall end on the date of such damage as if the date of such damage were the date originally fixed in this Lease for the expiration of the Term.

19.3 Repair Costs. The cost of any repairs to be made by Landlord, pursuant to Section 19.2 of this Lease, shall be paid by Landlord utilizing available insurance proceeds. Tenant shall reimburse Landlord upon completion of the repairs for any deductible for which no insurance proceeds will be obtained under Landlord's insurance policy, or if other premises are also repaired, a pro rata share based on total costs of repair equitably apportioned to the Premises. Tenant shall, however, not be responsible to pay any deductible or its share of any deductible to the extent Tenant's payment would be in excess of $10,000.00 if Tenant's consent has not been received by Landlord, unless such denial of consent by Tenant is unreasonable.

19.4 Waiver. Tenant hereby waives all statutory or common law rights of termination in respect to any partial destruction or property loss which Landlord is obligated to repair or may elect to repair under the terms of this Article, but such waiver does not waive Tenant's rights of termination under this Article 19.

19.5 Landlord's Election. In the event that the Building is destroyed to the extent of not less than thirty-three and one-third percent (33-1/3%) of the replacement cost thereof, Landlord may elect to terminate this Lease, whether the Premises be injured or not, in the same manner as in Section 19.1 above. In all events, a total destruction of the Complex or Building shall terminate this Lease.

19.6 Damage near End of Term. If at any time during the last twelve (12) months of the term of this Lease there is, in Landlord's sole opinion, substantial damage to the Premises or the Building, whether or not such casualty is covered in whole or in part by insurance, Landlord may at Landlord's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of Landlord's election to do so within thirty (30) days after the date of occurrence of such damage and Landlord shall have no further liability hereunder, except to the extent such terms survive termination of this Lease. Substantial damage shall be defined as damage that will cost over $50,000.00 to repair.

ARTICLE 20 CONDEMNATION

20.1 Definitions.

(a) "**Condemnation**" means (i) the exercise of any governmental power, whether by legal proceedings or otherwise, by a condemnor and/or (ii) a voluntary sale or transfer by Landlord to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

(b) "**Date of taking**" means the date the condemnor has the right to possession of the property being condemned.

(c) "**Award**" means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

(d) "**Condemnor**" means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

20.2 Total Taking. If the Premises are totally taken by condemnation, this Lease shall terminate on the date of taking.

20.3 Partial Taking; Common Areas.

(a) If any portion of the Premises is taken by condemnation, this Lease shall remain in effect, except that Tenant can elect to terminate this Lease if 33-1/3% or more of the total number of square feet in the Premises is taken.

(b) If any part of the Common Areas of the Complex is taken by condemnation, this Lease shall remain in full force and effect so long as there is no material interference with the access to the Premises,

except that if thirty percent (30%) or more of the Common Areas is taken by condemnation, Landlord or Tenant shall have the election to terminate this Lease pursuant to this Section.

(c) If fifty percent (50%) or more of the Building in which the Premises are located is taken, Landlord shall have the election to terminate this Lease in the manner prescribed herein.

20.4 Termination or Abatement. If either party elects to terminate this Lease under the provisions of Section 20.3 (such party is hereinafter referred to as the "**Terminating Party**"), it must terminate by giving notice to the other party (the "**Nonterminating Party**") within thirty (30) days after the nature and extent of the taking have been finally determined (the "**Decision Period**"). The Terminating Party shall notify the Nonterminating Party of the date of termination, which date shall not be earlier than one hundred twenty (120) days after the Terminating Party has notified the Nonterminating Party of its election to terminate nor later than the date of taking. If Notice of Termination is not given within the Decision Period, this Lease shall continue in full force and effect except that Minimum Monthly Rent shall be reduced by subtracting therefrom an amount calculated by multiplying the Minimum Monthly Rent in effect prior to the taking by a fraction the numerator of which is the number of square feet taken from the Premises and the denominator of which is the number of square feet in the Premises prior to the taking.

20.5 Restoration. If there is a partial taking of the Premises and this Lease remains in full force and effect pursuant to this Article, Landlord, at its cost, shall accomplish all necessary restoration so that the Premises is returned as near as practical to its condition immediately prior to the date of the taking, but in no event shall Landlord be obligated to expend more for such restoration than the extent of funds actually paid to Landlord by the condemnor.

20.6 Award. Any award arising from the condemnation or the settlement thereof shall belong to and be paid to Landlord except that Tenant shall receive from the award compensation for the following if specified in the award by the condemning authority, so long as it does not reduce Landlord's award in respect of the real property: Tenant's trade fixtures, tangible personal property, goodwill, loss of business and relocation expenses. At all events, Landlord shall be solely entitled to all award in respect of the real property, including the bonus value of the leasehold. Tenant shall not be entitled to any award until Landlord has received the above sum in full.

ARTICLE 21 ASSIGNMENT AND SUBLETTING

21.1 Lease is Personal. The purpose of this Lease is to transfer possession of the Premises to Tenant for Tenant's personal use in return for certain benefits, including rent, to be transferred to the Landlord. Tenant acknowledges and agrees that it has entered into this Lease in order to occupy the Premises for its own personal use and not for the purpose of obtaining the right to assign or sublet the leasehold to others.

21.2 "Transfer of the Premises" Defined. Except for transfer described in Section 21.5 hereof, the terms "**Transfer of the Premises**" or "**Transfer**" as used herein shall include any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise:

(a) An assignment of all or any part this Lease or subletting of all or any part the Premises or transfer of possession, or right of possession or contingent right of possession of all or any portion of the Premises including, without limitation, concession, mortgage, deed of trust, devise, hypothecation, agency, license, franchise or management agreement, or the occupancy or use by any other person (the agents and servants of Tenant excepted) of any portion of the Premises.

(b) If Tenant is a partnership, limited liability company or other entity other than a corporation described in Section 21.1(c) below:

(1) A change in ownership effected voluntarily, involuntarily, or by operation of law within a twelve-month (12-month) period, of twenty-five percent (25%) or more of the partners or members or twenty-five percent (25%) or more of the partnership or membership interests; or

(2) The sale, mortgage, hypothecation, pledge or other encumbrance within a twelve-month (12-month) period of more than an aggregate of twenty-five percent (25%) of the value of Tenant's assets; or

(3) The dissolution of the partnership or limited liability company without its immediate reconstitution.

(c) If Tenant is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

(1) The sale or other transfer within a twelve-month (12-month) period of more than an aggregate of twenty-five percent (25%) of the voting shares of Tenant;

(2) The sale, mortgage, hypothecation, pledge or other encumbrance within a twelve-month (12-month) period of more than an aggregate of twenty-five percent (25%) of the value of Tenant's assets; or

(3) The dissolution, merger, consolidation, or other reorganization of Tenant.

21.3 No Transfer without Consent. Except for a Transfer described in Section 21.5 hereof, Tenant shall not suffer a Transfer of the Premises or any interest therein, or any part thereof, or any right or privilege appurtenant thereto without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, subject to Section 21.4 below, and a consent to one Transfer of the Premises shall not be deemed to be a consent to any subsequent Transfer of the Premises. Any Transfer of the Premises without such consent shall be void, and shall, at the option of Landlord, terminate this Lease. Any Transfer of the Premises without such consent shall (i) be voidable, and (ii) terminate this Lease, in either case, at the option of Landlord. The consent by Landlord to any Transfer shall not include consent to the assignment or transferring of any lease renewal option rights or space option rights of the Premises, special privileges or extra services granted to Tenant by this Lease, or addendum or amendment thereto or letter of agreement (and such options, rights, privileges or services shall terminate upon such assignment), unless Landlord specifically grants in writing such options, rights, privileges or services to such assignee or subtenant.

21.4 When Consent Granted. The consent of Landlord to a Transfer may not be unreasonably withheld, provided that it is agreed to be reasonable for Landlord to consider any of the following reasons, which list is not exclusive, in electing to deny consent:

(a) The financial strength of the proposed transferee at the time of the proposed Transfer is not at least equal to that of Tenant at the time of execution of this Lease;

(b) A proposed transferee whose occupation of the Premises would cause a diminution in the reputation of the Complex or the other businesses located therein;

(c) A proposed transferee whose impact or affect on the common facilities or the utility, efficiency or effectiveness of any utility or telecommunication system serving the Building or the Complex or the other occupants of the Complex would be adverse, disadvantageous or require improvements or changes in any utility or telecommunication capacity currently serving the Building or the Complex, except as the assignee is willing to assume the cost for any such improvements or changes;

(d) A proposed transferee whose occupancy will require a variation in the terms of this Lease (including, without limitation, a variation in the use clause) or which otherwise materially adversely affects any interest of Landlord;

(e) The existence of any uncured default by Tenant under any provision of this Lease;

(f) A proposed transferee who is or is likely to be, or whose business is or is likely to be, subject to compliance with additional laws or other governmental requirements beyond those to which Tenant or Tenant's business is subject and which would thereby materially adversely affect the interests of the Landlord;

(g) Either the proposed transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed transferee or an affiliate of the proposed transferee, (i) occupies space in the Building at the time of the request for consent, or (ii) is negotiating with Landlord to lease space in the Building or in the Complex at such time;

(h) the proposed Transferee is a governmental agency or unit, a non-profit or charitable entity or organization or an existing tenant in the Complex;

(i) Landlord otherwise determines that the proposed Transfer would have the effect of decreasing the value of the Building or the Complex, or increasing the expenses associated with operating, maintaining and repairing the Building or the Complex;

(j) the rent proposed to be charged by Tenant to the proposed transferee during the term of such Transfer, calculated using a present value analysis, is less than ninety-five percent (95%) of the rent then being quoted by Landlord, at the proposed time of such Transfer, for comparable space in the Building or any other building in the Complex for a comparable term, calculated using a present value system, or

(k) the proposed Transferee will use, store or handle Hazardous Materials in or about the Premises of a type, nature or quantity not then acceptable to Landlord.

21.5 Affiliated Transfer. Notwithstanding the foregoing, Landlord's consent is not required for any Transfer to an Affiliated Transferee, as defined below, as long as the following conditions are met:

(a) At least ten (10) business days before the Transfer, Landlord receives written notice of the Transfer (as well as any documents or information reasonably requested by Landlord regarding the Transfer or Affiliated Transferee);

(b) The Transfer is not a subterfuge by Tenant to avoid its obligations under this Lease;

(c) If the Transfer is an assignment, the Affiliated Transferee assumes in writing all of Tenant's obligations under this Lease relating to the Premises; and

(d) The Affiliated Transferee has a tangible net worth, as evidenced by financial statements delivered to Landlord and certified by an independent certified public accountant in accordance with generally accepted accounting principles that are consistently applied ("**Net Worth**"), at least equal to Tenant's Net Worth either immediately before the Transfer or as of the date of this Lease, whichever is greater.

For purposes hereof, the term "**Affiliated Transferee**" means a company or other entity organized or to be organized by Tenant, provided that Tenant owns or beneficially controls all of the issued and outstanding shares of stock or interests of the company or other entity; further provided, however, that in the event that at any time following such assignment to an Affiliated Transferee, Tenant or such Affiliated Transferee wishes to sell, mortgage, devise, hypothecate or in any other manner whatsoever transfer more than 50% of the ownership or beneficial control of the issued and outstanding shares in the stock or interests of such Affiliated

Transferee, then such transfer shall constitute a Transfer under this Lease and subject to all provisions with respect thereto.

In addition to the foregoing rights under this Section 21.5, Tenant may sell its shares for the initial issuance or transfer of shares in Tenant in connection with its public offering on a national stock exchange or a regularly traded over-the-counter market and quoted on NASDAQ or shares that may be traded publicly subsequent thereto in the regular course of trading and not as a result of any merger, take over or sale of assets; or Transfer shares of stock in Tenant to another party in connection with any merger, consolidation, or sale of Tenant as a going concern, provided that if there is such transfer of shares of stock to a successor corporation or entity, then such successor corporation or entity must have a tangible net worth equal to the greater of the tangible net worth of Tenant as of the date of this Lease or just prior to such Transfer.

21.6 Procedure for Obtaining Consent. In the event Tenant desires to sublet, or permit such occupancy of, the Premises, or any portion thereof, or assign this Lease, Tenant shall give written notice thereof to Landlord at least thirty (30) days but no more than one hundred twenty (120) days prior to the proposed commencement date of such subletting or assignment, which notice shall set forth the name of the proposed subtenant or assignee, the relevant terms of any sublease or assignment and copies of financial reports and other relevant financial information of the proposed subtenant or assignee. With respect to a Transfer requiring Landlord's consent, Landlord need not commence its review of any proposed Transfer, or respond to any request by Tenant with respect to such, unless and until it has received from Tenant adequate descriptive information concerning the business to be conducted by the proposed transferee, the transferee's financial capacity, and such other information as may reasonably be required in order to form a prudent judgment as to the acceptability of the proposed Transfer, including, without limitation, the following:

(a) The past two years' Federal Income Tax returns of the proposed transferee (or in the alternative the past two years' audited annual Balance Sheets and Profit and Loss statements, certified correct by a Certified Public Accountant);

(b) Banking references of the proposed transferee;

(c) A resume of the business background and experience of the proposed transferee;

(d) At least five (5) business references for the proposed transferee; and

(e) An executed copy of the instrument by which Tenant proposes to effectuate the Transfer.

Landlord will use commercially reasonable efforts to notify Tenant whether Landlord will consent to any request for a Transfer within thirty (30) days after Landlord receipt of Tenant's request for a Transfer, together with the information required under this Article 21.

21.7 Recapture. By written notice to Tenant (the "**Termination Notice**") within thirty (30) days following submission to Landlord by Tenant of the information specified in Section 21.6, Landlord may (1) terminate this Lease in the event of an assignment of this Lease or sublet of the entire Premises, or (2) terminate this Lease as to the portion of the Premises to be sublet, if the sublet is to be of less than the entire Premises. If Landlord elects to terminate under the provisions hereof, and the area to be terminated is less than the entire Premises, an amendment to this Lease shall be executed in which Tenant's obligations for rent and other charges shall be reduced in proportion to the reduction in the size of the Premises caused thereby by restating the description of the Premises, and its monetary obligations hereunder shall be reduced by multiplying such obligations by a fraction, the numerator of which is the Rentable Area of the Premises offered for sublease and the denominator of which is the Rentable Area of the Premises immediately prior to such termination, as reasonably determined by Landlord.

21.8 Reasonable Restriction. The restrictions on Transfer described in this Lease are acknowledged by Tenant to be reasonable for all purposes, including, without limitation, the provisions of California Civil Code (the "**Code**") Section 1951.4(b)(2). Tenant expressly waives any rights which it might otherwise be deemed to possess pursuant to applicable law, including, without limitation, Section 1997.040 of the Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

21.9 Effect of Transfer. If Landlord consents to a Transfer and does not elect to recapture as provided in section 21.7, the following conditions shall apply:

(a) Each and every covenant, condition or obligation imposed upon Tenant by this Lease and each and every right, remedy or benefit afforded Landlord by this Lease shall not be impaired or diminished as a result of such Transfer.

(b) Tenant shall pay to Landlord on a monthly basis, fifty percent (50%) of the excess of any sums of money, or other economic consideration received by Tenant from the Transferee in such month (whether or not for a period longer than one month), including higher rent, bonuses, key money, or the like over the aggregate of the total sums which Tenant pays Landlord under this Lease in such month, or the prorated portion thereof if the Premises transferred is less than the entire Premises, after deducting the reasonable and customary costs incurred and paid by Tenant for leasing commissions and legal fees for such Transfer and for improvement costs for improvements affixed to the portion of the Premises that is being sublet to such Transferee. The amount so derived shall be paid with Tenant's payment of Minimum Monthly Rent.

(c) No Transfer, whether or not consent of Landlord is required hereunder, shall relieve Tenant of its primary obligation to pay the rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of rent by Landlord from any person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any Transfer of the Premises.

(d) If Landlord consents to a sublease, such sublease shall not extend beyond the expiration of the Term of this Lease.

(e) No Transfer shall be valid and no transferee shall take possession of the Premises or any part thereof unless, Tenant shall deliver to Landlord, at least ten (10) days prior to the effective date of such Transfer, a duly executed duplicate original of the Transfer instrument in form satisfactory to Landlord which provides that (i) the transferee assumes Tenant's obligations for the payment of rent and for the full and faithful observance and performance of the covenants, terms and conditions contained herein, (ii) such transferee will, at Landlord's election, attorn directly to Landlord in the event Tenant's Lease is terminated for any reason on the terms set forth in the instrument of transfer and (iii) such instrument of transfer contains such other assurances as Landlord reasonably deems necessary.

21.10 Costs. Tenant shall reimburse Landlord as additional rent for Landlord's reasonable costs and attorneys' fees incurred in conjunction with the processing and documentation of any proposed Transfer of the Premises, whether or not consent is granted.

ARTICLE 22 ENTRY BY LANDLORD

22.1 Rights of Landlord. Tenant shall permit Landlord and Landlord's agents and any mortgagee under a mortgage or beneficiary under a deed of trust encumbering the Building containing the Premises and such party's agents to enter the Premises at all reasonable times for the purpose of (a) inspecting the same, (b) maintaining the Building, (c) making repairs, replacements, alterations or additions to any portion of the Building, including the erection and maintenance of such scaffolding, canopies, fences and props as may be required, (d) posting notices of non-responsibility for alterations, additions or repairs, (c) placing upon the Building any usual

or ordinary “for sale” signs and showing the space to prospective purchasers, investors and lenders, without any rebate of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned, and (e) during the last nine (9) months of the Term, placing on the Premises any “to let” or “to lease” signs and marketing and showing the Premises to prospective tenants. This Section in no way affects the maintenance obligations of the parties hereto. Landlord will use its commercially reasonable efforts to minimize any disruption in Tenant’s business in the exercise of Landlord’s rights under this Section.

ARTICLE 23 INTENTIONALLY DELETED

ARTICLE 24 DEFAULT

24.1 Definition. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

(a) Payment. Any failure by Tenant to pay the rent or to make any other payment required to be made by Tenant hereunder when due; or

(b) Other Covenants. A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for ten (10) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within the ten (10) day period allowed, Tenant shall not be deemed to be in default if Tenant shall, within such ten (10) day period, commence to cure and thereafter diligently prosecute the same to completion. Notwithstanding the foregoing, any default by Tenant to comply with the terms and conditions contained in Article 15 (Liability and Other Insurance), Article 16 (Insurance Policy Requirements & Insurance Defaults) and/or Article 32 (Estoppel Certificates) shall be an immediate default without benefit of notice or opportunity to cure; or

(c) Receivership. Either (1) the appointment of a receiver (except a receiver appointed at the instance or request of Landlord) to take possession of all or substantially all of the assets of Tenant, or (2) a general assignment by Tenant for the benefit of creditors, or (3) any action taken or suffered by Tenant under any insolvency or bankruptcy act shall constitute a breach of this Lease by Tenant. In such event, Landlord may, at its option, declare this Lease terminated and forfeited by Tenant, and Landlord shall be entitled to immediate possession of the Premises. Upon such notice of termination, this Lease shall terminate immediately and automatically by its own limitation; or

ARTICLE 25 REMEDIES UPON DEFAULT

25.1 Termination and Damages. In the event of any default by Tenant, then in addition to any other remedies available to Landlord herein or at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(a) The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; and

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the applicable law in the state in which the Premises are located.

25.2 Definition. As used in Sections 25.1(a) and (b) above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in Section 25.1(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank for the region in which the Complex is located at the time of award plus one percent (1%).

25.3 Personal Property. In the event of any default by Tenant, Landlord shall also have the right and option, with or without terminating this Lease, to do any one or combination of the following:

(a) to reenter the Premises and remove all persons and property from the Premises;

(b) to have all of Tenant's fixtures, furniture, equipment, improvements, additions, alterations and other personal property remain upon the Premises during the length of any default by Tenant or a lesser period; or

(c) to require Tenant to forthwith remove such property.

Landlord shall have the sole right to take exclusive possession of such property and to use it, rent, or charge free, until all defaults are cured, except to the extent Landlord has subordinated its interest in such property pursuant to Section 17.2. If Landlord shall remove property from the Premises, Landlord may, in its sole and absolute discretion, store such property in the Complex, in a public warehouse or elsewhere. All costs incurred by Landlord under this Section, including, without limitation, those for removal and storage (including, without limitation, charges imposed by Landlord for storage within the Complex), shall be at the sole cost of and for the account of Tenant. The rights stated herein are in addition to Landlord's rights described in Article 17.

25.4 Recovery of Rent; Reletting.

(a) In the event of the vacation or abandonment of the Premises by Tenant or in the event that Landlord shall elect to reenter as provided in Section 25.3 above, or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease as provided in Section 25.1 above, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under this Lease, including, without limitation, Landlord's right from time to time, without terminating this Lease, to either recover all rental as it becomes due or relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord, in its sole discretion, may deem advisable with the right to make alterations and repairs to the Premises. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiation of Landlord or other legal proceeding granting Landlord or its agent possession to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession.

(b) In the event that Landlord shall elect to so relet, then rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any cost of such reletting; third, to the payment of the cost of any alterations and repairs to the Premises ; fourth, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied by the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

(c) No reentry or taking possession of the Premises or any other action under this Section shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of any default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such default.

(d) Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has right to sublet or assign, subject only to reasonable limitations).

25.5 No Waiver. Efforts by Landlord to mitigate the damages caused by Tenant's default in this Lease shall not constitute a waiver of Landlord's right to recover damages hereunder, nor shall Landlord have any obligation to mitigate damages hereunder, except to the extent Landlord is required under applicable law to mitigate its damages.

25.6 Curing Defaults. Should Tenant fail to repair, maintain, and/or service the Premises, or any part or contents thereof at any time or times, or perform any other obligations imposed by this Lease or otherwise, then after having given Tenant reasonable notice of the failure or failures and a reasonable opportunity which in no case shall exceed thirty (30) days, to remedy the failure, Landlord may perform or contract for the performance of the repair, maintenance, or other Tenant obligation, and Tenant shall pay Landlord for all direct and indirect costs incurred in connection therewith within ten (10) business days of receiving a bill therefor from Landlord.

25.7 Cumulative Remedies. The various rights, options, election powers, and remedies of Landlord contained in this Article and elsewhere in this Lease shall be construed as cumulative and no one of them exclusive of any others or of any legal or equitable remedy which Landlord might otherwise have in the event of breach or default, and the exercise of one right or remedy by Landlord shall not in any way impair its right to any other right or remedy.

ARTICLE 26 BANKRUPTCY

26.1 Bankruptcy Events. If at any time during the term of this Lease there shall be filed by or against Tenant in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or if a receiver or trustee takes possession of any of the assets of Tenant, or if the leasehold interest herein passes to a receiver, or if Tenant makes an assignment for the benefit of creditors or petitions for or enters into an arrangement (any of which are referred to herein as "**a bankruptcy event**"), then the following provisions shall apply:

(a) Assume or Reject. At all events any receiver or trustee in bankruptcy or Tenant as debtor in possession ("**debtor**") shall either expressly assume or reject this Lease within the earlier of sixty (60) days following the entry of an "Order for Relief" or such earlier period of time provided by law.

(b) Cure. In the event of an assumption of this Lease by a debtor, receiver or trustee, such debtor, receiver or trustee shall immediately after such assumption (1) cure any default or provide adequate assurances that defaults will be promptly cured; and (2) compensate Landlord for actual pecuniary loss or provide adequate assurances that compensation will be made for actual pecuniary loss; and (3) provide adequate assurance of future performance.

(c) Adequate Assurance. For the purposes of Section 26.1(b), adequate assurance of future performance of all obligations under this Lease shall include, but is not limited to:

(1) written assurance that rent and any other consideration due under this Lease shall first be paid before any other of Tenant's costs of operation of its business in the Premises is paid;

(2) written agreement that assumption of this Lease will not cause a breach of any provision hereof including, but not limited to, any provision relating to use or exclusivity in this or any other Lease, or agreement relating to the Premises, or if such a breach is caused, the debtor, receiver or trustee will indemnify Landlord against such loss (including costs of suit and attorneys' fees), occasioned by such breach;

(d) Landlord's Obligation. Where a default exists under this Lease, the party assuming this Lease may not require Landlord to provide services or supplies incidental to this Lease before its assumption by such trustee or debtor, unless Landlord is compensated under the terms of this Lease for such services and supplies provided before the assumption of such Lease.

(e) Assignment. The debtor, receiver, or trustee may assign this Lease only if adequate assurance of future performance by the assignee is provided, whether or not there has been a default under this Lease. Any consideration paid by any assignee in excess of the rental reserved in this Lease shall be the sole property of, and paid to, Landlord. Upon assignment by the debtor or trustee, the obligations of this Lease shall be deemed to have been assumed, and the assignee shall execute an assignment agreement on request of Landlord.

(f) Fair Value. Landlord shall be entitled to the fair market value for the Premises and the services provided by Landlord (but in no event less than the rental reserved in this Lease) subsequent to the commencement of a bankruptcy event.

(g) Reservation of Rights. Landlord specifically reserves any and all remedies available to Landlord in Article 25 hereof or at law or in equity in respect of a bankruptcy event by Tenant to the extent such remedies are permitted by law.

ARTICLE 27 SURRENDER OF LEASE

27.1 No Merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work as a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

ARTICLE 28 LANDLORD'S EXCULPATION

28.1 Limited Liability. Redress for any claim against Landlord under this Lease shall be limited to and enforceable only against and to the extent of Landlord's interest in the Building. The obligations of Landlord shall not be personally binding on, nor shall any resort be had to the private properties of, any of its or its investment manager's trustees, directors, officers, partners, beneficiaries, members, stockholders, employees, or agents, and in no case shall Landlord be liable to Tenant hereunder for any lost profits, damage to business, or any form of special, indirect or consequential damages.

ARTICLE 29 ATTORNEYS' FEES

29.1 Attorneys' Fees. In the event of any litigation or arbitration (if each party in its sole and absolute discretion elects to use arbitration) proceeding between the parties with respect to this Lease, then all costs and expenses, including without limitation, all reasonable professional fees such as appraisers', accountants' and attorneys' fees, incurred by the prevailing party therein shall be paid or reimbursed by the other party. The "**prevailing party**" means the party determined by the court or arbitrator (if the parties elected to use arbitration) to have most nearly prevailed, even if such party did not prevail in all matters, not necessarily the one in whose favor a judgment is rendered. Further, in the event of any breach or default by either party under any of the terms and conditions of this Lease after notice and the expiration of any applicable cure period, such defaulting party shall pay the reasonable expenses and attorneys' fees and costs incurred by the other party in connection with such default, whether or not litigation is commenced**.** Should Landlord be named as a defendant or requested or required to appear as a witness or produce any documents in any suit brought by Tenant against any other party or against Tenant in connection with or arising out of Tenant's occupancy hereunder, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, all reasonable professional fees such as appraisers', accountants' and attorneys' fees. The provisions of this section shall survive the expiration or termination of this Lease.

ARTICLE 30 NOTICES

30.1 Writing. All notices, demands and requests required or permitted to be given or made under any provision of this Lease shall be in writing and shall be given or made by personal service or by mailing same by registered or certified mail, return receipt requested, postage prepaid, or overnight by Fed Ex or reputable courier

which provides written evidence of delivery or other means of confirmation of delivery (such as computer confirmation by Fed Ex), or by facsimile with facsimile confirmation that the notice was sent, addressed to the respective party at the address set forth in Section 1.2 of this Lease or at such other address as the party may from time to time designate, by a written notice sent to the other in the manner aforesaid.

30.2 Effective Date. Any such notice, demand or request ("**notice**") shall be deemed given or made on the third day after the date so mailed. Notwithstanding the foregoing, notice given by personal delivery or by fax to the party at its address or fax number as aforesaid shall be deemed given on the day on which delivery is made or the fax is sent, respectively. Notice given overnight by a reputable courier service which provides written evidence of delivery shall be deemed given on the business day immediately following deposit with the courier service.

30.3 Authorization to Receive. Each person and/or entity whose signature is affixed to this Lease as Tenant or as guarantor of Tenant's obligations ("**obligor**") designates such other obligor its agent for the purpose of receiving any notice pertaining to this Lease or service of process in the event of any litigation or dispute arising from any obligation imposed by this Lease.

ARTICLE 31 SUBORDINATION AND FINANCING PROVISIONS

31.1 Priority of Encumbrances. This Lease is subordinate to any ground lease, mortgage, deed of trust or any other hypothecation for security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

Landlord shall use commercially reasonable efforts to provide Tenant with a non-disturbance, subordination, and attornment agreement in favor of Tenant from any existing current mortgagee, beneficiary or ground or underlying lessor with an interest in the Building. Such non-disturbance, subordination, and attornment agreement in favor of Tenant shall provide that, so long as Tenant is paying the rent due under the Lease and is not otherwise in default under the Lease beyond any applicable cure period, its right to possession and the other terms of the Lease shall remain in full force and effect. Such non-disturbance, subordination, and attornment agreement may include other commercially reasonable provisions in favor of the mortgagee, beneficiary or ground or underlying lessor, including, without limitation, additional time on behalf of the mortgagee, beneficiary or ground or underlying lessor to cure defaults of the Landlord and provide that (a) neither mortgagee, beneficiary or ground or underlying lessor nor any successor-in-interest thereto shall be bound by (i) any payment of the Minimum Monthly Rent, additional rent, or other sum due under this Lease for more than one (1) month in advance of the due date thereof or (ii) any amendment or modification of the Lease made without the express written consent of mortgagee, beneficiary or ground or underlying lessor or any successor-in-interest thereto; (b) neither mortgagee, beneficiary, ground or underlying lessor nor any successor-in-interest thereto will be liable for (i) any act, omission, representation or warranties of any prior landlord (including Landlord), (ii) the breach of any representations, warranties or other obligations relating to construction of improvements in the Building or any tenant finish work performed or to have been performed by any prior landlord (including Landlord), or (iii) the return of any security deposit, except to the extent such deposits have been received by mortgagee, beneficiary or ground or underlying lessor, as the case may be; and (c) neither mortgagee, beneficiary or ground or underlying lessor nor any successor-in-interest thereto shall be subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord).

31.2 Execution of Documents. Tenant agrees to execute any documents required to further effectuate such subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be, if requested by Landlord or any lender. It is understood by all parties that Tenant's failure to

execute the subordination documents referred to above may cause Landlord serious financial damage by causing the failure of a financing or sale transaction.

31.3 Attornment. If the holder of any ground lease, mortgage, deed of trust or security described above (or its successor-in-interest), enforces its remedies provided by law or under the pertinent mortgage, deed of trust or security instrument and succeeds to Landlord's interest in the Premises, Tenant shall, upon request of any person succeeding to the interest of such lender as result of such enforcement, automatically become the Tenant of said successor-in-interest without change in the terms or other provisions of this Lease, provided, however, that said successor-in-interest shall not be (i) bound by any payment of rent for more than thirty (30) days in advance, except prepayment in the nature of security for the performance by Tenant of its obligations under this Lease, (ii) liable for any act or omission of any previous landlord (including Landlord), (iii) subject to any offset, defense, recoupment or counterclaim that Tenant may have given to any previous landlord (including Landlord), or (iv) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) that has not, as such, been transferred to said successor-in-interest. Within ten (10) days after receipt of request by said successor-in-interest, Tenant shall execute and deliver an instrument or instruments confirming such attornment, including a non-disturbance, attornment and subordination agreement in a form required by any such successor-in-interest.

31.4 Notice and Right to Cure Default. Tenant agrees to give any mortgagee(s) and/or trust deed holders, by registered mail, a copy of any notice of default served upon Landlord, provided that prior to such notice Tenant has been notified, in writing (by way of Notice of Assignment of Rents and Leases, or otherwise), of the address of such mortgagees and/or trust deed holders. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then, so long as the default is not resulting in immediate material harm to the Tenant (and its employees and invitees), the mortgagees and/or trust deed holders shall have an additional thirty (30) days within which to cure such default or, if such default cannot be cured within that time, then such additional time as may be necessary if, within such thirty (30) days, any mortgagee and/or trust deed holder has commenced and is diligently pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so diligently pursued.

ARTICLE 32 ESTOPPEL CERTIFICATES

32.1 Execution by Tenant. Within ten (10) business days after receipt of written request by Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate acknowledging such facts regarding this Lease as Landlord may reasonably require, including without limitation, that to the extent of Tenant's knowledge (i) this Lease is in full force and effect, binding and enforceable in accordance with its terms and unmodified (or if modified, specifying the written modification documents); (ii) no default exists on the part of Landlord or Tenant under this Lease; (iii) there are no events which with the passage of time, or the giving of notice, or both, would create a default under this Lease; (iv) no rent in excess of one month's rent has been paid in advance; (v) Tenant has not received any written notice of any other sale, assignment, transfer, mortgage or pledge of this Lease or the rent due hereunder; and (vi) Tenant has no defense, setoff, recoupment or counterclaim against Landlord. Any such estoppel certificate may be relied upon by Landlord, any lender and any prospective purchaser of the Building or Complex or any interest therein. Failure to comply with this Article shall be a material breach of this Lease by Tenant giving Landlord all rights and remedies under this Lease, as well as a right to damages caused by the loss of a loan or sale which may result from such failure by Tenant.

32.2 Financial Statements and Credit Reports. At Landlord's request, Tenant shall deliver to Landlord a copy, certified by an officer of Tenant as being a true and correct copy, of Tenant's most recent audited financial statement, or, if unaudited, certified by Tenant's chief financial officer as being true, complete and correct in all material respects. Tenant hereby authorizes Landlord to obtain one or more credit reports on Tenant at any time, and shall execute such further authorizations as Landlord may reasonably require in order to obtain a credit report.

ARTICLE 33 LETTER OF CREDIT

33.1 Concurrently with Tenant's execution and delivery of this Lease to Landlord, Tenant shall deliver to Landlord, as collateral for the full performance by Tenant of all of its obligations under this Lease and for all losses and damages Landlord may suffer as a result of Tenant's failure to comply with one or more provisions of this Lease, including, but not limited to, any post-lease termination damages under section 1951.2 of the California Civil Code, an Irrevocable Standby Letter of Credit (the "Letter of Credit") in the amount of Eighty-six Thousand Dollars ($86,000.00), reducing to Forty-Three Thousand Dollars (43,000.00) at the end of the forty-second (42nd) full calendar month of the Term on the terms and conditions set forth in Section 33.11 below. The following terms and conditions shall apply to the Letter of Credit:

33.2 The Letter of Credit shall be in favor of Landlord, shall be issued by a bank acceptable to Landlord with a Standard & Poors rating of "A" or better, shall comply with all of the terms and conditions of this Article and shall otherwise be in the form attached hereto as Exhibit F.

33.3 The Letter of Credit or any replacement Letter of Credit shall be irrevocable for the term thereof and shall automatically renew on a year to year basis until a period ending not earlier than two (2) months subsequent to the termination date of this Lease (the "LOC Expiration Date") without any action whatsoever on the part of Landlord; provided that the issuing bank shall have the right not to renew the Letter of Credit by giving written notice to Landlord not less than sixty (60) days prior to the expiration of the then current term of the Letter of Credit that it does not intend to renew the Letter of Credit. Tenant understands that the election by the issuing bank not to renew the Letter of Credit shall not, in any event, diminish the obligation of Tenant to deposit the Security Deposit or maintain such an irrevocable Letter of Credit in favor of Landlord through the LOC Expiration Date.

33.4 Landlord, or its then managing agent, upon Tenant's failure to comply with one or more provisions of this Lease, or as otherwise specifically agreed by Landlord and Tenant pursuant to this Lease or any amendment hereof, without prejudice to any other remedy provided in this Lease or by regulations, shall have the right from time to time to make one or more draws on the Letter of Credit and use all or part of the proceeds in accordance with Section 33.5 below. In addition, if Tenant fails to furnish a renewal or replacement letter of credit complying with all of the provisions of this Article 33 at least thirty (30) days prior to the stated expiration date of the Letter of Credit then held by Landlord, Landlord may draw upon such Letter of Credit and hold the proceeds thereof (and such proceeds need not be segregated) in accordance with the terms of this Article 33. Funds may be drawn down on the Letter of Credit upon presentation to the issuing bank of Landlord's (or Landlord's then managing agent's) certification set forth in Exhibit F.

33.5 Tenant acknowledges and agrees (and the Letter of Credit shall so state) that the Letter of Credit shall be honored by the issuing bank without inquiry as to the truth of the statements set forth in such draw request and regardless of whether the Tenant disputes the content of such statement. The proceeds of the Letter of Credit shall constitute Landlord's sole and separate property (and not Tenant's property or the property of Tenant's bankruptcy estate) and Landlord may immediately upon any draw (and without notice to Tenant) apply or offset the proceeds of the Letter of Credit: (a) against any rent or other amounts payable by Tenant under this Lease that is not paid when due; (b) against all losses and damages that Landlord has suffered or that Landlord reasonably estimates that it may suffer as a result of Tenant's failure to comply with one or more provisions of this Lease, including any damages arising under Section 1951.2 of the California Civil Code following termination of this Lease; (c) against any costs incurred by Landlord in connection with this Lease (including reasonable attorneys' fees); and (d) against any other amount that Landlord may spend or become obligated to spend by reason of Tenant's default. Provided Tenant has performed all of its obligations under this Lease, Landlord agrees, within thirty (30) days after the later of the LOC Expiration Date or the date that Tenant surrenders the Premises to Landlord in accordance with this Lease, to return the outstanding Letter of Credit to Tenant and/or to pay to Tenant the amount of any proceeds of the Letter of Credit received by Landlord and not applied as allowed above; provided that if prior to the later of the LOC Expiration Date or the date that Tenant surrenders the Premises to

Landlord in accordance with this Lease a voluntary petition is filed by Tenant or any guarantor, or an involuntary petition is filed against Tenant or any Guarantor by any of Tenant's or guarantor's creditors, under the Federal Bankruptcy Code, then Landlord shall not be obligated to make such payment in the amount of the unused Letter of Credit proceeds until either all preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or such bankruptcy or reorganization case has been dismissed, in each case pursuant to a final court order not subject to appeal or any stay pending appeal. In addition to any other deductions Landlord is entitled to make pursuant to the terms hereof, Landlord shall have the right to make a good faith estimate of any unreconciled Operating Costs, Taxes and/or Insurance Costs as of the date of such surrender and to deduct any anticipated shortfall from the proceeds of the Letter of Credit, or the Letter of Credit then outstanding; provided, however, that in the event Landlord deducts funds in excess of the actual Operating Costs, Taxes and/or Insurance Costs owed by Tenant, Landlord shall refund such excess to Tenant within thirty (30) days of the actual amount for such costs being determined.

33.6 If, as result of any application or use by Landlord of all or any part of the Letter of Credit, the amount of the Letter of Credit shall be less than the amount set forth in this Article 33, Tenant shall, within five (5) business days thereafter, provide Landlord with additional letter(s) of credit in an amount equal to the deficiency (or a replacement letter of credit in the total amount required pursuant to this Article 33), and any such additional (or replacement) letter of credit shall comply with all of the provisions of this Article 33, and if Tenant fails to comply with the foregoing, notwithstanding anything to the contrary contained in this Lease, the same shall constitute an incurable Event of Default by Tenant. Tenant further covenants and warrants that it will neither assign nor encumber the Letter of Credit or any part thereof and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

33.7 Landlord may, at any time and without notice to Tenant and without first obtaining Tenant's consent thereto, transfer all or any portion of its interest in and to the Letter of Credit to a purchaser of the Building or to Landlord's mortgagee and/or to have the Letter of Credit reissued in the name of Landlord's mortgagee. If Landlord transfers its interest in the Building and transfers the Letter of Credit (or any proceeds thereof then held by Landlord) in whole or in part to the transferee, Landlord shall, without any further agreement between the parties hereto, thereupon be released by Tenant from all liability therefor. The provisions hereof shall apply to every transfer or assignment of all or any part of the Letter of Credit to a new landlord. In connection with any such transfer of the Letter of Credit by Landlord, Tenant shall, at Tenant's sole cost and expense, execute and submit to the issuer of the Letter of Credit such applications, documents and instruments as may be necessary to effectuate such transfer. Tenant shall be responsible for paying the issuer's transfer and processing fees in connection with any transfer of the Letter of Credit and, if Landlord advances any such fees (without having any obligation to do so), Tenant shall reimburse Landlord for any such transfer or processing fees within ten (10) days after Landlord's written request therefor.

33.8 If the Letter of Credit expires earlier than the LOC Expiration Date, or the issuing bank notifies Landlord that it shall not renew the Letter of Credit, Landlord shall accept a renewal thereof or substitute letter credit (such renewal or substitute Letter of Credit to be in effect not later than thirty (30) days prior to the expiration thereof), irrevocable and automatically renewable through the LOC Expiration Date upon the same terms as the expiring Letter of Credit or upon such other terms as may be acceptable to Landlord. However, if (a) the Letter of Credit is not timely renewed, or (b) a substitute Letter of Credit, complying with all of the terms and conditions of this paragraph is not timely received, Landlord may present such Letter of Credit to the issuing bank, and the entire sum so obtained shall be paid to Landlord, to be held by Landlord in accordance with Article 8 of this Lease. Notwithstanding the foregoing, Landlord shall be entitled to receive from Tenant all reasonable attorneys' fees and costs incurred in connection with the review of any proposed substitute Letter of Credit pursuant to this Section.

33.9 Landlord and Tenant (a) acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal thereof or substitute therefor or any proceeds thereof be deemed to be or treated as a “security deposit” under any Regulation applicable to security deposits in the commercial context including

Section 1950.7 of the California Civil Code, as such section now exist or as may be hereafter amended or succeeded ("Security Deposit Laws"), (b) acknowledge and agree that the Letter of Credit (including any renewal thereof or substitute therefor or any proceeds thereof) is not intended to serve as a security deposit, and the Security Deposit Laws shall have no applicability or relevancy thereto, and (c) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code and all other provisions of Regulations, now or hereafter in effect, which (i) establish the time frame by which Landlord must refund a security deposit under a lease, and/or (ii) provide that Landlord may claim from the security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums specified above in this Section 33.9 and/or those sums reasonably necessary to compensate Landlord for any loss or damage caused by Tenant's breach of this Lease or the acts or omission of Tenant or any other Tenant Entities, including any damages Landlord suffers following termination of this Lease.

33.10 Notwithstanding anything to the contrary contained in this Lease, in the event that at any time the financial institution which issued the Letter of Credit held by Landlord is declared insolvent by the FDIC or is closed for any reason, Tenant must immediately provide a substitute letter of credit that satisfies the requirements of the Lease as amended hereby from a financial institution acceptable to Landlord, in Landlord's reasonable discretion.

33.11 Provided no default has occurred hereunder in the twelve (12) month period prior to the reduction, and Tenant notifies Landlord no less than thirty (30) days prior to the letter of credit reduction date, Tenant may reduce the amount of Letter of Credit required amount to $43,000.00 effective as of the end of the forty-second (42nd) full calendar month of the Term of the Lease. Notwithstanding anything to the contrary contained herein, if Tenant has been in default under this Lease at any time prior to the effective date of such reduction of the amount of the Letter of Credit and Tenant has failed to cure such default within any applicable cure period, then Tenant shall have no further right to reduce the amount of the Letter of Credit as described herein. Any reduction in the Letter of Credit amount shall be accomplished by Tenant providing Landlord with a substitute Letter of Credit in the reduced amount, which substitute Letter of Credit shall comply with the requirements of this Article 33.

ARTICLE 34 OPTION TO RENEW

34.1 Tenant, provided (a) this Lease is in full force and effect, (b) Tenant is not in default beyond applicable notice and cure periods under any of the other terms and conditions of this Lease at the time of notification or commencement, and (c) Tenant has not assigned this Lease or subleased any of the Premises (except in connection with a transfer to an Affiliated Transferee), shall have one (1) option to renew (the "**Renewal Option**") this Lease for a term of sixty (60) months (the "**Renewal Term**"), for the portion of the Premises being leased by Tenant as of the date the Renewal Term is to commence, on the same terms and conditions set forth in this Lease, except as modified by the terms, covenants and conditions as set forth below:

34.2 If Tenant elects to exercise the Renewal Option, then Tenant shall provide Landlord with written notice no earlier than the date which is nine (9) months prior to the expiration of the original Term of this Lease but no later than the date which is six (6) months prior to the expiration of the original Term of this Lease. If Tenant fails to provide such notice, Tenant shall have no further or additional right to extend or renew the Term of this Lease.

34.3 The Minimum Monthly Rent in effect at the expiration of the original Term of this Lease shall be adjusted to reflect the Prevailing Market (defined below) rate as of the date the Renewal Term is to commence, taking into account the specific provisions of this Lease which will remain constant. Landlord shall advise Tenant of the new Minimum Monthly Rent for the Premises no later than thirty (30) days after receipt of Tenant's written request therefor. Said request shall be made no earlier than thirty (30) days prior to the first date on which Tenant

may exercise the Renewal Option under this Article 34. Said notification of the new Minimum Monthly Rent may include a provision for its escalation to provide for a change in fair market rental between the time of notification and the commencement of the Renewal Term.

34.4 The Renewal Options are not transferable (except in the event of a transfer to an Affiliated Transferee); the parties hereto acknowledge and agree that they intend that the aforesaid options to renew this Lease shall be "personal" to Tenant and to any Affiliated Transferee and that in no event will any assignee or sublessee have any rights to exercise the aforesaid options to renew.

34.5 If Tenant validly exercises the Renewal Option or if Tenant fails to validly exercise the Renewal Option, Tenant shall have no further right extend the term of this Lease.

34.6 For purposes of this Article 34, "**Prevailing Market**" shall mean the arms' length fair market annual rental rate per rentable square foot under leases entered into on or about the date on which the Prevailing Market is being determined hereunder for space comparable to the Premises in the Building and buildings comparable to the Building in the downtown San Jose, California area as of the date the Renewal Term is to commence, taking into account the specific provisions of this Lease which will remain constant, and may, if applicable, include parking charges. The determination of Prevailing Market shall take into account any material economic differences between the terms of this Lease and any comparison lease or amendment, such as rent abatements, construction costs and other concessions and the manner, if any, in which the landlord under any such lease is reimbursed for operating expenses, insurance costs and taxes.

ARTICLE 35 RIGHT OF FIRST OFFER

35.1 Following Landlord's first leasing of the Offer Space (as defined below) after the date of this Amendment, Tenant shall have a one-time right of first offer (the "**Offer Right**") with respect to the entirety of the second (2nd) floor, the third (3rd) floor, the fourth (4th) floor, the sixth (6th) floor and/or the ninth (9th) floor (each, an "**Offer Space**"). Tenant's Offer Right shall be exercised as follows: at any time after Landlord has determined that an Offer Space has become Available (defined below), but prior to leasing such Offer Space to a party other than the existing tenant thereto, Landlord shall advise Tenant (the "**Advice**") of the terms under which Landlord is prepared to lease such Offer Space to Tenant. For purposes hereof, such Offer Space shall be deemed to become "**Available**" if, following Landlord's first leasing of such Offer Space following the date of this Amendment, Landlord determines that the existing tenant of such Offer Space will not extend or renew the term of its lease, or enter into a new lease for such Offer Space and Landlord intends to offer such Offer Space for lease to the public. Tenant may lease such Offer Space in its entirety only, under the terms set forth in the Advice, by delivering written notice of exercise to Landlord (the "**Notice of Exercise**") within fifteen (15) days after the date of the Advice, except that Tenant shall have no such Offer Right and Landlord need not provide Tenant with an Advice with respect to such Offer Space, if:

35.1.1 Tenant is in default under the Lease at the time that Landlord would otherwise deliver the Advice; or

35.1.2 More than fifty percent (50%) of the Premises is sublet (other than to an Affiliated Transferee) at the time Landlord would otherwise deliver the Advice; or

35.1.3 the Lease has been assigned (other than to an Affiliated Transferee) prior to the date Landlord would otherwise deliver the Advice; or

35.1.4 Tenant or an Affiliated Transferee is not occupying at least fifty percent (50%) of the Premises on the date Landlord would otherwise deliver the Advice; or

35.1.5 such Offer Space is not intended for the exclusive use of Tenant during the Term; or

35.1.6 the existing tenant in such Offer Space is interested in extending or renewing its lease for such Offer Space or entering into a new lease for such Offer Space.

35.2 The term for such Offer Space shall commence upon the commencement date stated in the Advice and thereupon such Offer Space shall be considered a part of the Premises, provided that all of the terms stated in the Advice, including the termination date set forth in the Advice (which shall be coterminous with the termination date of this Lease), shall govern Tenant's leasing of such Offer Space and only to the extent that they do not conflict with the Advice, the terms and conditions of the Lease shall apply to such Offer Space. Tenant shall pay Base Rent, Tenant's pro rata share of Operating Costs and any other additional rent for such Offer Space in accordance with the terms and conditions of the Advice.

35.3 Such Offer Space (including improvements and personalty, if any) shall be accepted by Tenant in its condition and as-built configuration existing on the earlier of the date Tenant takes possession of such Offer Space or the date the term for such Offer Space commences, unless the Advice specifies work to be performed by Landlord in such Offer Space, in which case Landlord shall perform such work in such Offer Space. If Landlord is delayed delivering possession of such Offer Space due to the holdover or unlawful possession of such space by any party, Landlord shall use reasonable efforts to obtain possession of such space, and the commencement of the term for such Offer Space shall be postponed until the date Landlord delivers possession of such Offer Space to Tenant free from occupancy by any party.

35.4 The rights of Tenant hereunder with respect to such Offer Space shall terminate on the earlier to occur of: (i) twelve (12) months prior to the termination date of this Lease; (ii) Tenant's failure to exercise its Offer Right within the fifteen (15) day period provided in Section 35.1 above; and (iii) the date Landlord would have provided Tenant the Advice if Tenant had not been in violation of one or more of the conditions set forth in Section 35.1 above.

35.5 If Tenant exercises its Offer Right, Landlord shall prepare an amendment (the "**Offer Space Amendment**") adding such Offer Space to the Premises on the terms set forth in the Advice and reflecting the changes in the Base Rent, rentable square footage of the Premises, Tenant's pro rata share and other appropriate terms. A copy of such Offer Space Amendment shall be sent to Tenant within a reasonable time after Landlord's receipt of the Notice of Exercise executed by Tenant, and Tenant shall execute and return such Offer Space Amendment to Landlord within fifteen (15) days thereafter, but an otherwise valid exercise of the Offer Right shall be fully effective whether or not such Offer Space Amendment is executed.

35.6 Notwithstanding anything herein to the contrary, Tenant's Offer Right is subject and subordinate to the expansion rights (whether such rights are designated as a right of first offer, right of first refusal, expansion option or otherwise) of any tenant of the Building existing on the date hereof.

ARTICLE 36 TEMPORARY SPACE

36.1 During the period beginning on the later of the full and final execution of this Lease by Landlord and Tenant, delivery of the Security Deposit and all prepaid rental, if any, required under this Lease, delivery of all initial certificates of insurance required by this Lease (which certificates of insurance shall specifically cover both the Temporary Space during the Temporary Space Term, as hereinafter defined, and the Premises), and ending on the date that is fourteen (14) days after the Commencement Date of this Lease (such period being referred to herein as the "Temporary Space Term"), Landlord shall allow Tenant to use approximately 5,736 rentable square feet of space known as Suite 750 located in the Building as shown on Exhibit G of this Lease (the "Temporary Space") for the Permitted Use. During the Temporary Space Term, the Temporary Space shall be deemed the "Premises" for purposes of Articles 13, 14, 15 and 16 of the Lease. Such Temporary Space shall be accepted by Tenant in its "as-is" condition and configuration, it being agreed that Landlord shall be under no obligation to perform any work in the Temporary Space or to incur any costs in connection with Tenant's move in, move out or occupancy of the Temporary Space. Tenant acknowledges that it shall be entitled to use and occupy the Temporary Space at its sole cost, expense and risk. Tenant shall not construct any improvements or make any alterations of any type to the

Temporary Space without the prior written consent of Landlord. All costs in connection with making the Temporary Space ready for occupancy by Tenant shall be the sole responsibility of Tenant.

36.2 The Temporary Space shall be subject to all the terms and conditions of the Lease except as expressly modified herein, provided that no Minimum Monthly Rent for the Temporary Space shall be due during the Temporary Space Term. Tenant shall not be required to pay Tenant's Proportionate Share of Operating Costs, Insurance Costs and Taxes for the Temporary Space during the Temporary Space Term. Tenant shall not be entitled to receive any allowances, abatement or other financial concession in connection with the Temporary Space which was granted with respect to the Premises unless such concessions are expressly provided for herein with respect to the Temporary Space, and the Temporary Space shall not be subject to any renewal or expansion rights of Tenant under the Lease.

36.3 Upon termination of the Temporary Space Term, Tenant shall vacate the Temporary Space and deliver the same to Landlord in the same condition that the Temporary Space was delivered to Tenant, ordinary wear and tear excepted. At the expiration or earlier termination of the Temporary Space Term, Tenant shall remove all debris, all items of Tenant's personalty, and any trade fixtures of Tenant from the Temporary Space. Tenant shall be fully liable for all damage Tenant or Tenant's agents, employees, contractors, or subcontractors cause to the Temporary Space. Tenant shall have no right to hold over or otherwise occupy the Temporary Space at any time following the expiration or earlier termination of the Temporary Space Term, and in the event of such holdover, Landlord shall immediately be entitled to institute dispossessory proceedings to recover possession of the Temporary Space, without first providing notice thereof to Tenant. In the event of holding over by Tenant after expiration or termination of the Temporary Space Term without the written authorization of Landlord, Tenant shall pay, for such holding over, 125% of the monthly Minimum Monthly Rent due for the Premises at the rate in effect immediately preceding the expiration of the Temporary Space Term for each month or partial month of holdover up to sixty (60) days, and thereafter 150% of such Minimum Monthly Rent for each month or partial month of further holdover, plus all consequential damages that Landlord incurs as a result of the Tenant's hold over. During any such holdover, Tenant's occupancy of the Temporary Space shall be deemed that of a tenant at sufferance, and in no event, either during the Temporary Space Term or during any holdover by Tenant, shall Tenant be determined to be a tenant-at-will under applicable law. While Tenant is occupying the Temporary Space, Landlord or Landlord's authorized agents shall be entitled to enter the Temporary Space, upon reasonable notice, to display the Temporary Space to prospective tenants.

ARTICLE 37 SIGNAGE

37.1 Approval, Installation and Maintenance. Except as otherwise provided herein, Tenant shall not place on the Premises or on the Building or Common Areas of the Complex, any exterior signs or advertisements nor any interior signs or advertisements that are visible from the exterior of the Premises, without Landlord's prior written consent, which Landlord reserves the right to withhold for any aesthetic or other reason in its sole and absolute discretion. The cost of installation and regular maintenance of any such signs approved by Landlord shall be at the sole expense of Tenant. At the termination of this Lease, or any extension thereof, Tenant shall remove all its signs, and all damage caused by such removal shall be repaired at Tenant's expense. Landlord will include Tenant's name in the directory of tenant names for the Building.

37.2 Floor Signs. At Landlord's expense, Tenant will be entitled to Building standard elevator lobby signage to list Tenant's name in the elevator lobby of each floor on which space is leased by Tenant under this Lease.

37.3 Building Sign(s). In the event that Tenant leases additional space such that the Premises are 30,000 or more rentable square feet in size, Tenant may also have one (1) sign with Tenant's name installed on the top of the Building on the top of one side of the Building and one (1) roof sign on the tower of the Building visible from the sky; provided that Landlord approves of the size, location, design and quality of such signs, Tenant obtains all governmental approvals for such sign and such sign otherwise complies with all applicable governmental laws, ordinances and rules (a "Building Sign"). At no additional cost or liability to Landlord, Landlord will cooperate with Tenant in obtaining all such approvals for the Building Sign. The failure of Tenant to obtain such approvals shall not release Tenant of any of its obligations under this Lease. In addition, Landlord shall have the right to terminate

Tenant's right to have the other remaining Building Sign on the top of the Building and require Tenant to remove such sign at any time that the Premises comprise less than 30,000 rentable square feet in size. Tenant shall remove such Building Sign as soon as is commercially reasonable after receipt of notice from Landlord, but not later than thirty (30) days after receipt of Landlord's termination notice.

37.4 Building Directory. Tenant shall have its name listed in the directory of tenants in the lobby of the Building at Landlord's expense.

37.5 Signage Obligations. The installation of such sign(s) by Tenant shall constitute an alteration and Tenant shall comply with the requirements of this Lease for the construction of alterations with respect to the installation of such sign(s). Tenant shall be responsible for all costs repair and maintain such signs. At its expense, Tenant shall remove such signs prior to the expiration or earlier termination of this Lease, and repair any damage caused to the Building in connection therewith. Tenant shall indemnify, defend and hold harmless Landlord and its property manager and lender for all claims, demands, damages, losses, liabilities, costs and expenses, including, without limitation, reasonable attorney fees, arising from any injury to any person or damage to any property caused or in any way related to any such sign or the installation, repair, maintenance or removal of any such signs, including, without limitation, the sign on the Building. The foregoing signage rights are personal to the original party signing this Lease as Tenant and may not be transferred or assigned to or exercised by any other party except to the extent such other party is the assignee of the all of the Premises at the time of Transfer and Landlord has approved of the Transfer and the assignment of the signage rights under this Article 37. The foregoing signage rights under this Article 37 are personal to the original Tenant signing the Lease and any assignee under an assignment of this Lease that is approved by Landlord or constitutes a Permitted Transfer, but none of the rights may be assigned or transferred to or exercised by any sublessee or transferee under a Transfer.

ARTICLE 38 MISCELLANEOUS PROVISIONS

38.1 Effect of Waiver. The waiver by Landlord or Tenant of any breach of any Lease provision by the other party shall not be deemed to be a waiver of such Lease provision or any subsequent breach of the same or any other term, covenant or condition therein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any provision of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. Any failure by Landlord or Tenant to insist upon strict performance by the other of this Lease of any of the terms and provisions of this Lease or any guaranty of this Lease shall not be deemed to be a waiver of any of the terms or provisions of this Lease or such guaranty, and Landlord or Tenant, as the case may be, shall have the right thereafter to insist upon strict performance by the other of any and all of them.

38.2 Holding Over. Tenant shall pay Landlord for each day Tenant retains possession of the Premises or part of them after termination of this Lease by lapse of time or otherwise at the rate ("**Holdover Rate**") which shall be One Hundred Twenty-five Percent (125%) of the monthly Minimum Monthly Rent due for the Premises at the rate in effect immediately preceding the expiration of the Term of this Lease for each month or partial month of holdover up to sixty (60) days, and thereafter One Hundred Fifty Percent (150%) of such Minimum Monthly Rent for each month or partial month of further holdover, plus Tenant's Proportionate Share of Operating Costs, Real Estate Taxes and Insurance, prorated on a daily basis, and Tenant also pay all damages sustained by Landlord by reason of such retention. If Landlord gives notice to Tenant of Landlord's election to such effect, such holding over shall constitute renewal of this Lease for a period from month to month at the Holdover Rate, but if the Landlord does not so elect, no such renewal shall result notwithstanding acceptance by Landlord of any sums due hereunder after such termination; and instead, a tenancy at sufferance at the Holdover Rate shall be deemed to have been created. In any event, no provision of this Section 38.2 shall be deemed to waive Landlord's right of reentry or any other right under this Lease or at law. Additionally, in the event that upon termination of this Lease, Tenant has not fulfilled its obligation with respect to repairs and cleanup of the Premises or any other Tenant obligations as set forth in this Lease, then Landlord, after ten (10) days' prior written notice to

Tenant, shall have the right to perform any such obligations as it deems necessary at Tenant's sole cost and expense, and any time required by Landlord to complete such obligations shall be considered a period of holding over and the terms of this section shall apply.

38.3 Binding Effect. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

38.4 Time of the Essence. Time is of the essence of this Lease with respect to each and every article, section and subsection hereof.

38.5 Release of Landlord. If, during the term of this Lease, Landlord shall sell its interest in the Building or Complex of which the Premises form a part, or the Premises, then from and after the effective date of the sale or conveyance, Landlord shall be released and discharged from any and all obligations and responsibilities under this Lease, except those already accrued.

38.6 Rules and Regulations. Landlord or such other person(s) as Landlord may appoint shall have the exclusive control and management of the Common Areas and Building and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect thereto. Tenant agrees to abide by and conform to all such rules and regulations, and to cause its employees, suppliers, shippers, customers, and invitees to so abide and conform. Landlord shall not be responsible to Tenant for the non-compliance with said rules and regulations by other tenants of the Building or Complex.

38.7 Transfer to Purchaser. If any security be given by Tenant to secure the faithful performance of all or any of the covenants of this Lease on the part of Tenant, Landlord may transfer and/or deliver the security, as such, to the purchaser of the reversion, in the event that the reversion be sold, and thereupon Landlord shall be discharged from any further liability in reference thereto.

38.8 Late Charges. Tenant acknowledges that late payment by Tenant to Landlord of rent or any other payment due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any installment of rent, or any other payment due hereunder from Tenant is not received by Landlord when due, Tenant shall pay to Landlord an additional sum of ten percent (10%) of such rent or other charge as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the cost that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant default with respect to the overdue amount, or prevent Landlord from exercising any other rights or remedies available to Landlord

38.9 Interest. Any amount owed by Tenant to Landlord which is not paid when due shall bear interest at the lesser of ten percent (10%) per annum or the maximum rate of interest permitted to be contracted for by law. However, interest shall not be payable on late charges to be paid by Tenant under this Lease. The payment of interest on such amounts shall not excuse or cure any default by Tenant under this Lease.

38.10 Authorization to Execute. If Tenant is a corporation, limited liability company, partnership or other entity, each individual executing this Lease on behalf of said organization represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said organization in accordance with a duly adopted resolution or other applicable authorization of said organization, and that this Lease is binding upon said organization in accordance with its terms. Further, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of a resolution or other applicable authorization of said organization authorizing or ratifying the execution of this Lease.

38.11 Captions. The captions of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

38.12 Number and Gender. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, the plural shall include the singular, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm or association. If there be more than one Tenant, the obligations imposed under this Lease upon Tenant shall be joint and several.

38.13 Modifications. This instrument contains all of the agreements, conditions and representations made between the parties to this Lease and may not be modified orally or in any other manner than by an agreement in writing signed by all of the parties to this Lease.

38.14 Payments. Except as otherwise expressly stated, each payment required to be made by Tenant shall be in addition to and not in substitution for other payments to be made by Tenant.

38.15 Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

38.16 No Offer. The preparation and submission of a draft of this Lease by either party to the other shall not constitute an offer, nor shall either party be bound to any terms of this Lease or the entirety of this Lease itself until both parties have fully executed a final document and an original signature document has been received by both parties. Until such time as described in the previous sentence, either party is free to terminate negotiations with no obligation to the other.

38.17 Light, Air and View. No diminution of light, air, or view by any structure which may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of Rent, result in any liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

38.18 Public Transportation Information. Tenant shall establish and maintain during the Term hereof a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including without limitation the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Complex, staggering working hours of employees, and encouraging use of such facilities, all at Tenant's sole reasonable cost and expense. Tenant shall comply with all requirements of any local transportation management ordinance.

38.19 Joint and Several Liability. Should Tenant consist of more than one person or entity, they shall be jointly and severally liable on this Lease.

38.20 Survival of Obligations. All obligations of Tenant which may accrue or arise during the term of this Lease or as a result of any act or omission of Tenant during said term shall, to the extent they have not been fully performed, satisfied or discharged, survive the expiration or termination of this Lease.

38.21 Real Estate Brokers. Landlord and Tenant each represents and warrants to the other party that it has not authorized or employed, or acted by implication to authorize or employ, any real estate broker or salesman to act for it in connection with this Lease, except for the Broker identified in Article 1. Landlord and Tenant shall each indemnify, defend and hold the other party harmless from and against any and all claims by any real estate broker or salesman whom the indemnifying party authorized or employed, or acted by implication to authorize or employ, to act for the indemnifying party in connection with this Lease.

38.22 Waiver of California Code Sections. In this Lease, numerous provisions have been negotiated by the parties, some of which provisions are covered by statute. Whenever a provision of this Lease and a provision of any statute or other law cover the same matter, the provisions of this Lease shall control. Therefore, Tenant waives (for itself and all persons claiming under Tenant) the provisions of Civil Code Sections 1932(2) and 1933

(4) with respect to the destruction of the Premises; Civil Code Sections 1941 and 1942 with respect to Landlord's repair duties and Tenant's right to repair; Code of Civil Procedure Section 1265.130, allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises by

condemnation as herein defined; and any right of redemption or reinstatement of Tenant under any present or future case law or statutory provision (including Code of Civil Procedure Sections 473 and 1179 and Civil Code Section 3275) in the event Tenant is dispossessed from the Premises for any reason. This waiver applies to future statutes enacted in addition to or in substitution for the statutes specified herein.

38.23 Quiet Enjoyment. So long as Tenant pays all of the Minimum Monthly Rent, all additional rent and other sums and charges under this Lease and otherwise performs all of its obligations in this Lease, Tenant shall have the right to possession and quiet enjoyment of the Premises free from any unreasonable disturbance or interference, subject to the terms and provisions of this Lease. Landlord represents and warrants that it has the full right and power to execute and perform this Lease and to grant the estate demised herein.

38.24 Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one agreement.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first written above.

LANDLORD:

PARK CENTER PLAZA INVESTORS, L.P.,
a Delaware limited partnership

By: /s/ Joseph I. Neverauskas
Name: Joseph I. Neverauskas
Its: SVP

TENANT:

OVERLAND STORAGE, INC., a California corporation

By: /s/ Eric Kelly
Name: Eric Kelly
Its: President and CEO

By: _____
Name: _____
Its: _____

EXHIBIT A – PLAN OF COMPLEX

attached to and made a part of the Lease bearing the Lease Reference Date of February 9, 2010, between PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership, as Landlord, and OVERLAND STORAGE, INC., a California corporation, as Tenant

Exhibit A is intended only to show the general layout of the Complex as of the beginning of the Term of this Lease. It does not in any way supersede any of Landlord's rights set forth in the Lease with respect to arrangements and/or locations of public parts of the Building and/or Complex and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.

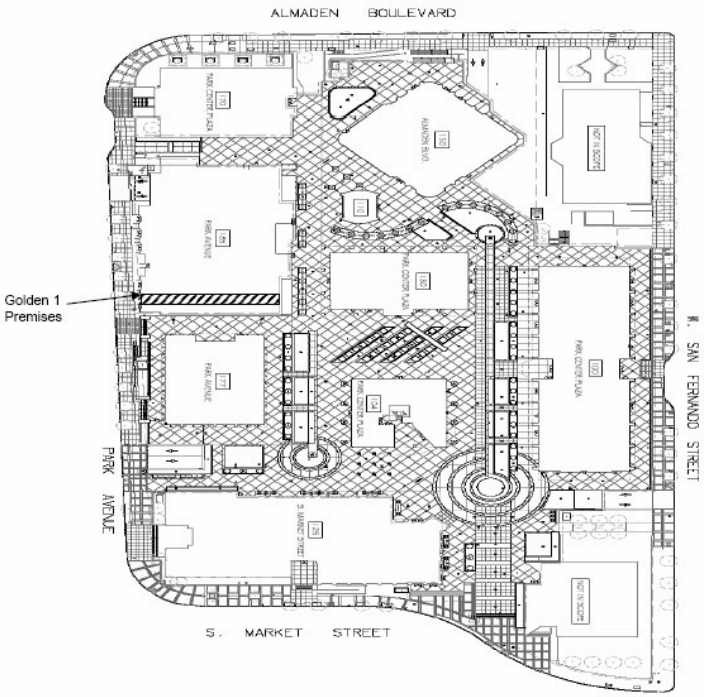

EXHIBIT B – FLOOR PLAN OF PREMISES

attached to and made a part of the Lease bearing the
Lease Reference Date of February 9, 2010, between
PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership,
as Landlord, and OVERLAND STORAGE, INC., a California corporation, as Tenant

Exhibit B is intended only to show the general layout of the Premises as of the beginning of the Term of this Lease. It does not in any way supersede any of Landlord's rights set forth in the Lease with respect to arrangements and/or locations of public parts of the Building and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.

aai
architecture + interior design
OVERLAND DATA STORAGE
SPACE PLAN OPTION 7
125 S. MARKET - 2ND FLOOR
02/04/2010

aai
architecture + interior design
SAN JOSE, PLEASANTON
www.aaiarchitecture.com
OVERLAND DATA STORAGE
SPACE PLAN (OPTION B)
388 S. MARKET - 13TH FLOOR
3/32"=1'-0"
02/04/2010
GENERAL NOTES:
1. NEW UPPER AND LOWER CABINETS AT RM. # 1303.
2. CARPET, VCT, BASE AND PAINT TO BE BUILDING STANDARD.
3. ALL FURNITURE SHOWN (DASHED LINES) TO BE PROVIDED BY TENANT.
SUMMARY:
8 OFFICES
3 CONFERENCE
3 8X10 WORKSTATION
4 8X9 WORKSTATION
3 8X8 WORKSTATION
22 6X8 WORKSTATION

EXHIBIT C – WORK LETTER FOR CONSTRUCTION OBLIGATIONS

attached to and made a part of the Lease bearing the Lease Reference Date of February 9, 2010, between PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership, as Landlord, and OVERLAND STORAGE, INC., a California corporation, as Tenant

1. Landlord shall perform improvements to the Premises in accordance with the plans prepared by AAI, dated February 4, 2010 and attached hereto as Schedule 2 to Exhibit C (the "**Plans**"). The improvements to be performed by Landlord in accordance with the Plans are hereinafter referred to as the "**Tenant Improvements**." It is agreed that construction of the Tenant Improvements will be completed at Landlord's sole cost and expense (subject to the terms of Section 2 below) using Building standard methods, materials and finishes. Landlord shall enter into a direct contract for the Tenant Improvements with a general contractor selected by Landlord. In addition, Landlord shall have the right to select and/or approve of any subcontractors used in connection with the Tenant Improvements. Landlord's supervision or performance of any work for or on behalf of Tenant shall not be deemed a representation by Landlord that such Plans or the revisions thereto comply with applicable insurance requirements, building codes, ordinances, laws or regulations, or that the improvements constructed in accordance with the Plans and any revisions thereto will be adequate for Tenant's use, it being agreed that Tenant shall be responsible for all elements of the design of Tenant's Plans (including, without limitation, compliance with law, functionality of design, the structural integrity of the design, the configuration of the Premises and the placement of Tenant's furniture, appliances and equipment).

2. If Tenant requests, as a part of the Tenant Improvements, alterations or modifications to the mechanical and/or electrical systems serving the Premises (including, without limitation, the lab portion of Suite 200) that are, in Landlord's sole discretion, in excess of what Landlord reasonably determines Tenant requires (considering Tenant's use of such space), such alterations or modifications shall be at Tenant's sole cost and expense. If Tenant shall request any revisions to the Plans after the same have been approved by Landlord and Tenant, Landlord shall have such revisions prepared at Tenant's sole cost and expense and Tenant shall reimburse Landlord for the cost of preparing any such revisions to the Plans, plus any applicable state sales or use tax thereon, upon demand. Promptly upon completion of the revisions, Landlord shall notify Tenant in writing of the increased cost in the Tenant Improvements, if any, resulting from such revisions to the Plans. Tenant, within one business day, shall notify Landlord in writing whether it desires to proceed with such revisions. In the absence of such written authorization, Landlord shall have the option to continue work on the Premises disregarding the requested revision. Tenant shall be responsible for any Tenant Delay in completion of the Premises resulting from any revision to the Plans. If such revisions result in an increase in the cost of Tenant Improvements, such increased costs, plus any applicable state sales or use tax thereon, shall be payable by Tenant upon demand. Notwithstanding anything herein to the contrary, all revisions to the Plans shall be subject to the approval of Landlord.

3. Subject to the provisions contained herein, so long as Tenant is not in default under the Lease, Tenant, by delivering written notice to Landlord, shall be entitled to an amount not to exceed $83,108.00 (i.e., a sum equal to $4.00 per rentable square foot in the Premises) (the "**Allowance**") to be applied toward (i) Moving and Relocation Costs (as defined below) and/or (ii) the purchase of furnishings, fixtures and equipment (collectively, the "**FF&E**") to be located at all times at the Premises and for use by Tenant in the Premises. Tenant shall own all the FF&E and shall be responsible for all costs associated with such FF&E including, without limitation, the cost of insuring the same, all maintenance and repair costs, removal and restoration costs, and taxes), and the FF&E shall be the property of Tenant. Tenant shall maintain and repair the FF&E in good and working order and shall insure the FF&E to the same extent Tenant is required to insure Tenant's property pursuant to the terms of the Lease. As used herein, "**Moving and Relocation Costs**" shall be deemed to mean the cost of moving Tenant's employees (including related furniture and fixtures) currently

located at a different location into the Premises. Landlord shall disburse the Allowance, or applicable portion thereof, to Tenant within forty-five (45) days after Tenant's written request therefor, accompanied by such reasonable supporting documentation as requested by Landlord. In the event that the Lease is terminated prior to the termination date of the Lease, Tenant, at Landlord's election, shall pay to Landlord the unamortized portion of the costs of the Allowance (no later than the date of such early termination of the Lease), or the FF&E shall remain the property of Landlord and Tenant shall and, in such event, hereby does, waive all of its rights thereto.

4. Any additional construction, alterations or improvements to the Premises that Tenant wishes to make over and above the Tenant Improvements (the "**Additional Alterations**") shall be performed by Tenant at its sole cost and expense using contractors selected by Tenant and approved by Landlord and shall be governed in all respects by the terms of the Lease, including without limitation Article 12. In any and all events, the Commencement Date shall not be postponed or delayed if any Additional Alterations to the Premises that Tenant elects to make are incomplete on the Commencement Date for any reason whatsoever. Any delay in the completion of any such Additional Alterations to the Premises shall not subject Landlord to any liability for any loss or damage resulting therefrom.

5. Upon Tenant's written request, and provided Tenant is not in default beyond applicable notice and cure periods, Tenant shall be entitled to request an additional allowance (the "**Additional Allowance Request**") of up to $331,892.00 (the "**Maximum Additional Allowance**") from Landlord in order to finance the costs of such Additional Alterations during the initial Term. The amount of the Maximum Additional Allowance requested by Tenant is referred to as the "**Additional Allowance**". In order to request the Additional Allowance, Tenant must complete, execute and deliver to Landlord, no later than sixty (60) days prior to the Final Additional Allowance Disbursement Date (defined below), the "Request for Additional Allowance" in the form attached hereto as Schedule 1. Provided Tenant is not in default beyond any applicable notice and cure period under the Lease, Landlord (subject to Section 7 below) shall disburse the Additional Allowance to Tenant or, at Landlord's option, to Tenant's contractor, for payment of the costs of the Additional Alterations in accordance with the provisions applicable for the disbursement of the Allowance set forth above. In no event shall Tenant be entitled to any disbursement of the Additional Allowance after the date that is six (6) months following the date that the Tenant Improvements are substantially complete (the "**Final Additional Allowance Disbursement Date**"). The parties acknowledge and agree that the Minimum Monthly Rent set forth in Section 1.09 of the Lease assumes that Tenant will request the entire Maximum Additional Allowance. If Tenant requests less than the Maximum Additional Allowance, the amount of Minimum Monthly Rent set forth in Section 1.09 of the Lease shall be proportionately decreased over the remainder of the Term taking into account the actual amount of the Additional Allowance, and the parties will promptly enter into an amendment to the Lease to evidence the same. If Tenant is in default under the Lease after the expiration of applicable cure periods, the entire unpaid balance of the Additional Allowance paid to or on behalf of Tenant shall become immediately due and payable and, except to the extent required by applicable law, shall not be subject to mitigation or reduction in connection with a reletting of the Premises by Landlord.

   If at any time prior to disbursement of the Additional Allowance it is determined that Landlord and/or any Landlord Affiliate (as described above) owns more than ten percent (10%) of an Ownership Interest in Tenant (as such term is described in the Request Form For Additional Allowance attached as Schedule 1), then, rather than Landlord applying the Additional Allowance, Landlord may cause a Landlord Affiliate to apply the Additional Allowance to the Excess Costs and, as a condition to the Landlord Affiliate making such application of the Additional Allowance, Tenant shall execute and deliver to the Landlord Affiliate a commercially reasonable promissory note, prepared by Landlord or the Landlord Affiliate, which will evidence the Tenant's obligation to repay the Additional Allowance to the Landlord Affiliate or its assigns generally in accordance with the repayment provisions described in Section 5 above.

6. Landlord's obligation to disburse the Additional Allowance and the right to receive repayment of same from Tenant, as described above, is referred to herein as the "**Loan**". Notwithstanding anything to the contrary

contained in the Lease or this Exhibit C, Landlord may transfer or assign all or part of the Loan, without the prior consent of Tenant, as follows: (a) if Landlord or any subsequent permitted assignee of the Loan is a partnership or limited liability company, in a distribution without consideration, to a partner (including a limited partner) of such partnership or a member of such limited liability company; (b) to any parent or majority-owned subsidiary of Landlord (or, with respect to a permitted assignee holding the Loan, to the parent or majority-owned subsidiary of such permitted assignee); or (c) to any "affiliate" (as defined in Rule 12b-2 of the Exchange Act) of Landlord (or, with respect to a permitted assignee holding the Loan, to any affiliate of such permitted assignee) (for convenience, each and all of the foregoing entities described above is referred to as a "**Landlord Affiliate**"). In the event of any such assignment of the Loan, Tenant, upon request of Landlord, shall execute and deliver to Landlord, or the Landlord Affiliate, a commercially reasonable promissory note, prepared by Landlord or the Landlord Affiliate, which will evidence the Tenant's obligation to repay the Additional Allowance to the Landlord or the Landlord Affiliate, as applicable, generally in accordance with the repayment provisions described in Section 5 above.

7. This Exhibit C shall not be deemed applicable to any additional space added to the Premises at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original Premises or any additions to the Premises in the event of a renewal or extension of the original Term of the Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement to the Lease.

SCHEDULE 1 TO EXHIBIT C – REQUEST FOR ADDITIONAL ALLOWANCE

REQUEST FOR ADDITIONAL ALLOWANCE

TO: Landlord

DATE: _____

REGARDING: Lease dated as of February 9, 2010, by and between _____, as "Landlord", and _____, as "Tenant", as same may have been amended from time to time, (collectively, the "Lease"), relating to which Landlord has leased to Tenant certain premises in the building located at _____ (the "Building").

REQUEST FOR ADDITIONAL ALLOWANCE: Pursuant to Section 5 (the "Additional Allowance Provision") of Exhibit C to the Lease, Tenant hereby requests that Landlord disburse $_____ of the Maximum Additional Allowance (as defined in the Additional Allowance Provision) to Tenant for the purposes allowed therein. It is understood that the Additional Allowance requested by Tenant shall be disbursed as described in the Additional Allowance Provision, and Tenant shall repay such sum as described in the Additional Allowance Provision.

REPRESENTATION BY TENANT: Tenant recognizes and acknowledges that Landlord intends to qualify as a "real estate investment trust" for purposes of the Internal Revenue Code and that maintaining such status is of material concern to Landlord. Accordingly, Tenant represents and warrants to Landlord that as of the date hereof ***[Instruction to Tenant: check (a) or (b) below, but not both. If (a) is checked, then (b) is not applicable; and if (b) is checked, then (a) is not applicable.]:***

_____ (a) the disbursement of the Additional Allowance to Tenant and to be repaid to Landlord (the "Loan"), plus all other securities of Tenant held by Landlord or, to the knowledge of Tenant, any affiliate of Landlord (such other securities, collectively, the "Other Securities"), do not constitute 10% or more of either (a) the total voting power of all outstanding securities of Tenant on an aggregate basis or (b) the total dollar value of all outstanding securities of Tenant on an aggregate basis (each of the foregoing items (a) and (b) are referred to as an "Ownership Interest in Tenant"). Tenant shall notify Landlord of any redemption, repurchase or other actions taken by Tenant or any other person, which would cause the Loan plus all Other Securities to constitute ten percent (10%) or more of either (i) the total voting power of all outstanding securities of Tenant on an aggregate basis or (ii) the total dollar value of all outstanding securities of Tenant on an aggregate basis. For purposes of this provision, the term "securities" (or, in the singular, "security") shall have the meaning used for such term in the Investment Company Act of 1940, as amended.

OR

_____ (b) Tenant is unable to make the representation in subsection (a) above because Landlord and/or the affiliate(s) of Landlord do hold 10% or more of an Ownership Interest in Tenant (as described above), as described more fully below:

_____

The undersigned represents hereby that he or she has the authority to execute and deliver this Request Form on behalf of the Tenant, and the Tenant shall be fully bound hereby.

TENANT:

_____
_____
By: _____
Name: _____
Title: _____

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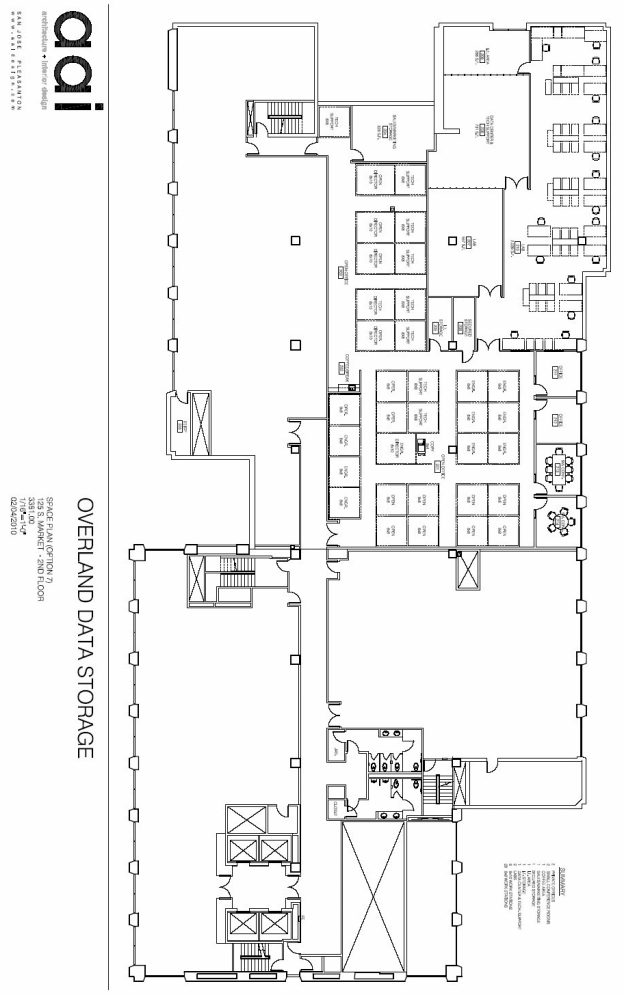
SCHEDULE 2 TO EXHIBIT C – PLANS



aai
architecture + interior design
SAN JOSE, PLEASANTON
www.aaiarchitecture.com
OVERLAND DATA STORAGE
SPACE PLAN (OPTION 6)
1155 N. MARKET - 13TH FLOOR
3/32"=1'-0"
02/24/2010
GENERAL NOTES:
1. NEW UPPER AND LOWER CABINETS AT RM. #1303.
2. CARPET, VCT, BASE AND PAINT TO BE BUILDING STANDARD.
3. ALL FURNITURE SHOWN (DASHED LINES) TO BE PROVIDED BY TENANT.
SUMMARY:
8 OFFICES
3 CONFERENCE
3 8X10 WORKSTATION
4 8X9 WORKSTATION
3 8X8 WORKSTATION
22 6X8 WORKSTATION

EXHIBIT D – ACKNOWLEDGEMENT OF COMMENCEMENT DATE

attached to and made a part of the Lease bearing the Lease Reference Date of February 9, 2010, between PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership, as Landlord, and OVERLAND STORAGE, INC., a California corporation, as Tenant

ACKNOWLEDGEMENT OF COMMENCEMENT DATE

THIS ACKNOWLEDGEMENT OF COMMENCEMENT DATE made as of _____, 20___, by and between _____ ("**Landlord**") and _____ ("**Tenant**").

Recitals:

A Landlord and Tenant are parties to that certain Office Lease, dated for reference _____, 20__ (the "**Lease**") for certain premises (the "**Premises**") consisting of approximately ___ square feet at the building commonly known as Cityview Plaza.

B. Tenant is in possession of the Premises and the Term of the Lease has commenced.

C. Landlord and Tenant desire to enter into this document to confirm the Commencement Date, the expiration date of the initial Term and other matters under the Lease.

NOW, THEREFORE, Landlord and Tenant agree as follows:

1. The actual Commencement Date is _____.
2. The actual expiration date of the initial Term of the Lease is _____.
3. The schedule of the Minimum Monthly Rent set forth in Section 1.9 of Article 1 of the Lease (Salient Lease Terms) is deleted in its entirety, and the following is substituted therefor:

[insert rent schedule]

4. Capitalized terms not defined herein shall have the same meaning as set forth in the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

LANDLORD:

PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership

By: __DO_NOT-SIGN_____
Name: _____
Its: _____

TENANT:

OVERLAND STORAGE, INC., a California corporation

By: __DO_NOT-SIGN_____
Name: _____
Its: _____

By: __DO_NOT-SIGN_____
Name: _____
Its: _____

EXHIBIT E – RULES AND REGULATIONS

attached to and made a part of the Lease bearing the Lease Reference Date of February 9, 2010, between PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership, as Landlord, and OVERLAND STORAGE, INC., a California corporation, as Tenant

1. No sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside or inside of the Building without the prior written consent of the Landlord. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at Tenant's expense by a vendor designated or approved by Landlord. In addition, Landlord reserves the right to change from time to time the format of the signs or lettering and to require previously approved signs or lettering to be appropriately altered.

2. If Landlord objects in writing to any curtains, blinds, shades or screens attached to or hung in or used in connection with any window or door of the Premises, Tenant shall immediately discontinue such use. No awning shall be permitted on any part of the Premises. Tenant shall not place anything or allow anything to be placed against or near any glass partitions or doors or windows which may appear unsightly, in the opinion of Landlord, from outside the Premises.

3. Tenant shall not obstruct any sidewalks, halls, passages, exits, entrances, elevators, or stairways of the Building. No tenant and no employee or invitee of any tenant shall go upon the roof of the Building.

4. Any directory of the Building, if provided, will be exclusively for the display of the name and location of tenants only and Landlord reserves the right to exclude any other names. Landlord reserves the right to charge for Tenant's directory listing.

5. All cleaning and janitorial services for the Building and the Premises shall be provided exclusively through Landlord. Tenant shall not cause any unnecessary labor by carelessness or indifference to the good order and cleanliness of the Premises. Landlord shall not in any way be responsible to any Tenant for any loss of property on the Premises, however occurring, or for any damage to any Tenant's property by the janitor or any other employee or any other person.

6. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed. No foreign substance of any kind whatsoever shall be thrown into any of them, and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees or invitees, shall have caused it.

7. Tenant shall store all its trash and garbage within its Premises. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by Landlord. Tenant will comply with any and all recycling procedures designated by Landlord.

8. Landlord will furnish Tenant two (2) keys free of charge to each door in the Premises that has a passage way lock. Landlord may charge Tenant a reasonable amount for any additional keys, and Tenant shall not make or have made additional keys on its own. Tenant shall not alter any lock or install a new or additional lock or bolt on any door of its Premises. Tenant, upon the termination of its tenancy, shall deliver to Landlord the keys of all doors which have been furnished to Tenant, and in the event of loss of any keys so furnished, shall pay Landlord therefor.

9. If Tenant requires telephone, data, burglar alarm or similar service, the cost of purchasing, installing and maintaining such service shall be borne solely by Tenant. No boring or cutting for wires will be allowed without the prior written consent of Landlord.

10. No equipment, materials, furniture, packages, bulk supplies, merchandise or other property will be received in the Building or carried in the elevators except between such hours and in such elevators as may be designated by Landlord. The persons employed to move such equipment or materials in or out of the Building must be acceptable to Landlord.

11. Tenant shall not place a load upon any floor which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Heavy objects shall stand on such platforms as determined by Landlord to be necessary to properly distribute the weight. Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building or to any space in the Building to such a degree as to be objectionable to Landlord or to any tenants shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate the noise or vibration. Landlord will not be responsible for loss of or damage to any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.

12. Landlord shall in all cases retain the right to control and prevent access to the Building of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation or interests of the Building and its tenants, provided that nothing contained in this rule shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Landlord reserves the right to exclude from the Building between the hours of 6 p.m. and 7 a.m. the following day, or such other hours as may be established from time to time by Landlord, and on Sundays and legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any person.

13. Tenant shall not use any method of heating or air conditioning other than that supplied or approved in writing by Landlord.

14. Tenant shall not waste electricity, water or air conditioning. Tenant shall keep corridor doors closed. Tenant shall close and lock the doors of its Premises and entirely shut off all water faucets or other water apparatus and electricity, gas or air outlets before Tenant and its employees leave the Premises. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building or by Landlord for noncompliance with this rule.

15. Tenant shall not install any radio or television antenna, satellite dish, loudspeaker or other device on the roof or exterior walls of the Building without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion, and which consent may in any event be conditioned upon Tenant's execution of Landlord's standard form of license agreement. Tenant shall be responsible for any interference caused by such installation.

16. Tenant shall not mark, drive nails, screw or drill into the partitions, woodwork, plaster, or drywall (except for pictures, tackboards and similar office uses) or in any way deface the Premises. Tenant shall not cut or bore holes for wires. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by Landlord. Tenant shall repair any damage resulting from noncompliance with this rule.

17. Tenant shall not install, maintain or operate upon the Premises any vending machine without Landlord's prior written consent, except that Tenant may install food and drink vending machines solely for the convenience of its employees.

18. No cooking shall be done or permitted by any tenant on the Premises, except that Underwriters' Laboratory approved microwave ovens or equipment for brewing coffee, tea, hot chocolate and similar

beverages shall be permitted provided that such equipment and use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations.

19. Tenant shall not use in any space or in the public halls of the Building any hand trucks except those equipped with the rubber tires and side guards or such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicles of any kind into the Building.

20. Tenant shall not permit any motor vehicles to be washed or mechanical work or maintenance of motor vehicles to be performed in any parking lot.

21. Tenant shall not use the name of the Building or any photograph or likeness of the Building in connection with or in promoting or advertising Tenant's business, except that Tenant may include the Building name in Tenant's address. Landlord shall have the right, exercisable without notice and without liability to any tenant, to change the name and address of the Building.

22. Tenant requests for services must be submitted to the Building office by an authorized individual. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instruction from Landlord, and no employee of Landlord will admit any person (Tenant or otherwise) to any office without specific instructions from Landlord.

23. Tenant shall not permit smoking or carrying of lighted cigarettes or cigars other than in areas designated by Landlord as smoking areas.

24. Canvassing, soliciting, distribution of handbills or any other written material in the Building is prohibited and each tenant shall cooperate to prevent the same. No tenant shall solicit business from other tenants or permit the sale of any good or merchandise in the Building without the written consent of Landlord.

25. Tenant shall not permit any animals other than service animals, e.g. seeing-eye dogs, to be brought or kept in or about the Premises or any common area of the Building.

26. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of any premises in the Building. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.

27. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for safety and security, for care and cleanliness of the Building, and for the preservation of good order in and about the Building. Tenant agrees to abide by all such rules and regulations herein stated and any additional rules and regulations which are adopted. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, clients, customers, invitees and guests.

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EXHIBIT F – FORM OF LETTER OF CREDIT

attached to and made a part of the Lease bearing the Lease Reference Date of February 9, 2010, between PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership, as Landlord, and OVERLAND STORAGE, INC., a California corporation, as Tenant

IRREVOCABLE STANDBY LETTER OF CREDIT

NUMBER _____

ISSUANCE DATE:_____

BENEFICIARY:	**APPLICANT:**
[Landlord] [Address]	**[Tenant]** [Address]

With copies of all notices to:

AMOUNT:	**EXPIRATION:**
USD $_____	_____, 20__, OR AS EXTENDED

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____ IN YOUR FAVOR AND AUTHORIZE YOU TO DRAW ON US, FOR THE ACCOUNT OF APPLICANT, UP TO AN AGGREGATE AMOUNT OF _____ AND 00/100 UNITED STATES DOLLARS (USD $ _____), AVAILABLE BY YOUR DRAFT(S) AT SIGHT IN THE FORM OF EXHIBIT A ATTACHED HERETO, DRAWN ON US, TO BE ACCOMPANIED BY:

1. THE ORIGINAL LETTER OF CREDIT, AND
2. ORIGINAL BENEFICIARY'S CERTIFICATE, PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY OR OF ITS AUTHORIZED AGENT, IN THE FORM OF EXHIBIT B ATTACHED HERETO.

PARTIAL DRAWINGS ARE PERMITTED UNDER THIS LETTER OF CREDIT.

IT IS A CONDITION OF THE LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR PERIODS OF ONE YEAR FROM THE EXPIRATION DATE OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO THE EXPIRATION DATE WE SHALL NOTIFY YOU IN WRITING VIA OVERNIGHT COURIER, OF OUR INTENTION NOT TO RENEW THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD.

THIS STANDBY LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING WHICH SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED, OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT, OR AGREEMENT, WHETHER OR NOT REFERRED TO HEREIN.

THIS ORIGINAL STANDBY LETTER OF CREDIT MUST BE SUBMITTED TO US TOGETHER WITH ANY DRAWINGS HEREUNDER FOR OUR ENDORSEMENT OF ANY PAYMENTS EFFECTED BY US AND/OR FOR CANCELLATION.

ALL DRAFTS MUST BE MARKED "DRAWN UNDER _____ STANDBY LETTER OF CREDIT NUMBER _____."

WE AGREE WITH YOU TO PAY DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT PRESENTED AT OUR OFFICE IN _____, TOGETHER WITH THIS STANDBY LETTER OF CREDIT AND DOCUMENTS SPECIFIED ON OR BEFORE THE CLOSE OF OUR BUSINESS ON THE EXPIRATION DATE, AS EXTENDED FROM TIME TO TIME.

THIS LETTER OF CREDIT IS FOR THE BENEFIT OF BENEFICIARY AND ITS SUCCESSORS AND ASSIGNS. SHOULD YOU WISH TO EFFECT A TRANSFER UNDER THIS CREDIT, SUCH TRANSFER WILL BE SUBJECT TO THE RETURN TO US OF THE ORIGINAL CREDIT INSTRUMENT, ACCOMPANIED BY OUR FORM OF TRANSFER IN THE FORM OF EXHIBIT C ATTACHED HERETO, PROPERLY COMPLETED AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF YOUR FIRM, AND SUBJECT TO PAYMENT OF OUR CUSTOMARY TRANSFER CHARGES, NOT TO EXCEED $500.00.

THIS CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (ISP98), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590, OR ANY SUBSEQUENT REVISION THERETO.

YOURS VERY TRULY,

_____

_____
AUTHORIZED SIGNATURE

EXHIBIT A TO LETTER OF CREDIT NO. _____

FORM OF SIGHT DRAFT

Dated: , 20__

Pay to the order of _____ [Beneficiary], the sum of _____ Dollars ($_____) drawn on _____ [Issuer], as issuer of its Irrevocable Letter of Credit No. _____, dated _____, 20__.

[Beneficiary]

By: _____
Its: Authorized Representative

EXHIBIT B TO LETTER OF CREDIT NO. _____

FORM OF CERTIFICATE

The undersigned hereby certifies that (i) he or she is authorized to execute this certificate on behalf of _____, the beneficiary under that certain Irrevocable Letter of Credit No. ___ issued by _____ (the "Letter of Credit"), and (ii) the Landlord is entitled to draw on the Letter of Credit pursuant to that certain lease dated for reference _____ between _____, landlord, and_____, tenant, as amended from time to time.

[Beneficiary]

By: _____
Its: Authorized Representative
Date: _____

EXHIBIT C TO LETTER OF CREDIT NO. _____

FORM OF TRANSFER

[Name and Address of Issuing Bank]

Ladies and Gentlemen:

We refer to your enclosed Irrevocable Letter of Credit No. _____ (the "Letter of Credit") in the available amount of US $_____.

We hereby assign all of our right, title and interest as beneficiary under the Letter of Credit to _____("Transferee"), whose address is _____.

Upon your acknowledgment of this transfer of the Letter of Credit and receipt by us of your acknowledgment and the acknowledgment by the Transferee of this transfer notice, the Letter of Credit shall be deemed to have been transferred to the Transferee.

(***Name of Beneficiary***)

By: _____
Its: Authorized Representative
Date: _____

Agreed and Accepted:
(***Name of Issuer***)

By: _____
Its: Authorized Representative
Date: _____

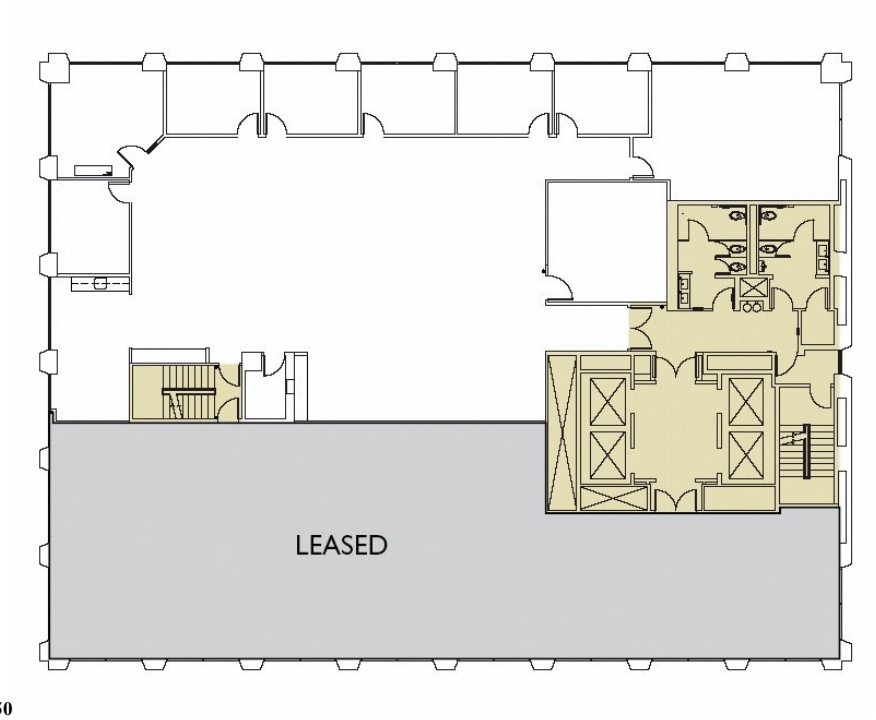
Acknowledged:

(***Name of Transferee***)

By: _____
Its: Authorized Representative
Date: _____

EXHIBIT G – TEMPORARY SPACE

attached to and made a part of the Lease bearing the Lease Reference Date of February 9, 2010, between PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership, as Landlord, and OVERLAND STORAGE, INC., a California corporation, as Tenant



Suite 750

ADDENDUM NO. 1

This ADDENDUM NO. 1 (this "**Addendum**") is made in connection with and is a part of that certain Lease, dated as of February 9, 2010, by and between **PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership**, as Landlord, and **OVERLAND STORAGE, INC., a California corporation**, as Tenant (the "**Lease**").

1. Definitions and Conflict. All capitalized terms referred to in this Addendum shall have the same meaning as provided in the Lease, except as expressly provided to the contrary in this Addendum. In case of any conflict between any term or provision of the Lease and any exhibits attached thereto and this Addendum, this Addendum shall control.

2. Parking. Tenant shall have the right to use during the Term of the Lease up to forty-five (45) parking stalls in the Cityview Plaza parking garage, for the Term of the Lease at the then prevailing market rate as set forth by the tenant and/or operator of each such parking garage (each such parking facility shall be referred to herein as the "**Parking Garage**") for each parking space; provided, however, that (a) Tenant shall not be required to pay for any of Tenant's parking spaces for the first twenty-nine (29) months of the initial Term, and (b) thereafter during the initial Term, Tenant shall pay the prevailing market rate for such parking spaces. Five (5) of such parking stalls will be reserved at a location to be mutually agreed upon (in close proximity to the Building), and the balance will be on an unreserved basis. Landlord shall have the right to designate from time to time in which areas of such Parking Garage the foregoing parking spaces will be located; however (except to the extent expressly provided herein) such designation shall not be construed as providing Tenant with any reserved or marked parking.

2.1 Notice of Exercise. To exercise its rights to use any or all of such spaces, Tenant agrees that it must enter into a parking agreement, in the form reasonably required by the applicable tenant or operator of the applicable Parking Garage, and comply with the requirements of such tenant or operator of said Parking Garage.

2.2 General Procedures. The parking spaces will not be separately identified and Landlord shall have no obligation to monitor the use of the Parking Garage, nor shall Landlord be responsible for any loss or damage to any vehicle or other property at the Parking Garage or for any injury to any person. Said parking spaces shall be used only for parking of automobiles no larger than full size passenger automobiles or pick-up trucks. Tenant shall comply with all rules and regulations of the tenant or operator of the Parking Garage where the parking spaces are located. A failure by Tenant or any of its employees, suppliers, shippers, customers or invitees to comply with the foregoing provisions shall subject Tenant to the loss of use of such parking spaces, in which case the Lease shall continue without any abatement in rent or charge to Landlord.

2.3 Force Majeure. Landlord's agreement to provide or arrange for the parking spaces as provided herein shall be subject to casualties, Acts of God and other events beyond the control of Landlord.

2.4 Condition. Tenant's rights to any parking spaces under this Section 2 are expressly conditioned upon (a) Tenant not being in default (after notice and the expiration of the applicable cure period) of any term or provision of the Lease, and (b) Tenant or any Affiliated Transferee being in occupancy of the Premises.

2.5 Limitation. Landlord shall not be responsible for any loss or damage to property or injury to persons in or about the Parking Garage; it being acknowledged by the parties that Tenant assumes all risk of loss or damage at or about any parking garage. The parking rights available to Tenant hereunder are personal to Tenant, but not any assignee, sublessee or transferee under any Transfer referred to in the Lease, other than an Affiliated Transferee.

Exhibit 4.52

FIRST AMENDMENT

THIS FIRST AMENDMENT (this "**Amendment**") is made and entered into as of March 22, 2017, by and between **PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership** ("**Landlord**"), and **SPHERE 3D CORP., an Ontario corporation** ("**Tenant**").

RECITALS

A. Landlord and Tenant (as successor by merger to Overland Storage, a California corporation ("**Former Tenant**")) are parties to that certain Office Lease dated February 9, 2010 (the "**Lease**"). Pursuant to the Lease, Landlord has leased to Tenant space currently containing approximately **20,777** square feet of Rentable Area (the "**Premises**") comprised of (i) **10,879** square feet of Rentable Area described as Suite 200 in the building located at 125 South Market Street, San Jose, California (the "**Building**"); and (ii) approximately **9,898** square feet of Rentable Area described as Suite 1300 in the Building.

B. Tenant desires to surrender a portion of the Original Premises to Landlord containing approximately **10,879** square feet of Rentable Area described as Suite 200 on the second (2nd) floor of the Building (the "**Reduction Space**"), as shown on **Exhibit A** hereto (the Original Premises, less the Reduction Space, is referred to herein as the "**Remaining Portion of the Original Premises**"), and that the Lease be appropriately amended, and Landlord is willing to accept such surrender on the following terms and conditions.

C. Tenant has requested that additional space containing approximately **384** square feet of Rentable Area on the second (2nd) floor of the Building (the "**Expansion Space**"), as shown on **Exhibit B** attached hereto, be added to the Premises and that the Lease be appropriately amended and Landlord is willing to do the same on the following terms and conditions.

D. The Lease by its terms shall expire on June 30, 2017 ("**Prior Termination Date**"), and the parties desire to extend the Term of the Lease, all on the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Merger.** Tenant and Former Tenant have entered into a certain agreement whereby Tenant and Former Tenant have merged (the "**Merger**"), and, as a consequence of the Merger, all or substantially all of the ownership interests of Former Tenant are owned by Tenant and Former Tenant has become a wholly-owned subsidiary of Tenant. Tenant hereby ratifies and confirms the Lease, and agrees that, retroactively effective as of the date of the Merger, it is the tenant under the Lease and it is bound by all terms and provisions of the Lease. Tenant further represents and warrants that, as of the date of this Amendment, Tenant has a net worth that is equal to or greater than the net worth of Former Tenant as of the Commencement Date (as defined in the Lease) of the Lease, and the Premises will continue to be operated for the Permitted Use (as defined in the Lease) set forth in Section 1.12 of the Lease.

2. **Reduction.**

2.1 Tenant shall vacate the Reduction Space in accordance with the terms of the Lease on or prior to March 31, 2017 (the "**Required Vacation Date**"), which is the date immediately

preceding the Reduction Effective Date (defined in 2.2 below) and Tenant shall fully comply with all obligations under the Lease respecting the Reduction Space up to the Reduction Effective Date, including those provisions relating to the condition of the Reduction Space and removal of Tenant's personal property therefrom.

2.2 Effective as of April 1, 2017 (the "**Reduction Effective Date**"), the Reduction Space shall no longer be considered part of the Premises. As of the Reduction Effective Date, the Reduction Space shall be deemed surrendered by Tenant to Landlord, the Lease shall be deemed terminated with respect to the Reduction Space, and the "Premises", as defined in the Lease, shall be deemed to mean the Remaining Portion of the Original Premises.

2.3 If Tenant shall holdover in the Reduction Space beyond the day immediately preceding the Reduction Effective Date, Tenant shall be liable for Minimum Monthly Rent, Tenant's Proportionate Share of Operating Costs, Insurance Costs and Taxes and other charges respecting the Reduction Space equal to (i) one hundred twenty-five percent (125%) of the Minimum Monthly Rent in effect under the Lease for the first sixty (60) days of such holdover; and (ii) commencing as of the sixty-first (61st) day of such holdover, one hundred fifty percent (150%) of the Minimum Monthly Rent in effect under the Lease, prorated on a per diem basis and on a per square foot basis for the Reduction Space. Such holdover amount shall not be deemed permission for Tenant to holdover in the Reduction Space. In addition, Tenant shall be liable for consequential and other damages arising from Tenant's holding over.

3. **Expansion and Effective Date.**

3.1 Effective as of the Expansion Effective Date (as defined below), the Expansion Space shall be deemed part of the Premises, as defined in the Lease, and from and after the Expansion Effective Date, the Remaining Portion of the Original Premises and the Expansion Space, collectively, shall be deemed the Premises, as defined in the Lease. As of the Expansion Effective Date, the Premises, as defined in the Lease, shall be deemed to contain **10,282** square feet of Rentable Area in the Building, comprised of the Remaining Portion of Original Premises and the Expansion Space. The Term for the Expansion Space shall commence on the Expansion Effective Date and end on the Extended Termination Date (defined in Section 4 below). Notwithstanding anything to the contrary contained in the Lease, as amended hereby, the Expansion Space shall be used by Tenant solely for the storage and operation of Tenant's data equipment and racks and for no other purpose whatsoever. The Expansion Space is subject to all the terms and conditions of the Lease except as expressly modified herein, except that, notwithstanding anything to the contrary contained in the Lease, as amended hereby, no janitorial service or climate control (i.e., heating, ventilation and air conditioning service) will be supplied to the Expansion Space and Tenant shall not be entitled to receive any allowances, abatements or other financial concessions granted with respect to the Original Premises unless such concessions are expressly provided for herein with respect to the Expansion Space.

3.2 The Expansion Effective Date shall be the date upon which the Side Light Work (as defined in **Exhibit C** attached hereto) in the Expansion Space has been substantially completed; provided, however, that if Landlord shall be delayed in substantially completing the Side Light Work as a result of the occurrence of a Tenant Delay (defined below), then, for purposes of determining the Expansion Effective Date, the date of substantial completion shall be deemed to be the day that said Side Light Work would have been substantially completed

absent any such Tenant Delay(s). A "**Tenant Delay**" means any act or omission of Tenant or its agents, employees, vendors or contractors that actually delays substantial completion of the Side Light Work, including, without limitation, the following: (i) Tenant's failure to furnish information or approvals within any time period specified in the Lease or this Amendment, including the failure to prepare or approve preliminary or final plans by any applicable due date; (ii) Tenant's selection of equipment or materials that have long lead times after first being informed by Landlord that the selection may result in a delay; (iii) changes requested or made by Tenant to previously approved plans and specifications; (iv) the performance of work in the Expansion Space by Tenant or Tenant's contractor(s) during the performance of the Side Light Work; or (v) if the performance of any portion of the Side Light Work depends on the prior or simultaneous performance of work by Tenant, a delay by Tenant or Tenant's contractor(s) in the completion of such work.

3.3 The Expansion Space shall be deemed to be substantially completed on the date that Landlord reasonably determines that the Side Light Work has been performed (or would have been performed absent any Tenant Delays). Landlord and Tenant shall together conduct an inspection of the Side Light Work and prepare a "punch list" setting forth any portions of the Side Light Work that are not in conformity with **Exhibit C** to this Lease. Landlord shall use good faith efforts to perform such punch list work within a reasonable time following the completion of the punch list. The adjustment of the Expansion Effective Date and, accordingly, the postponement of Tenant's obligation to pay rent on the Expansion Space shall be Tenant's sole remedy and shall constitute full settlement of all claims that Tenant might otherwise have against Landlord by reason of the Expansion Space not being ready for occupancy by Tenant on or before Landlord's estimated completion date.

3.4 In addition to the postponement, if any, of the Expansion Effective Date as a result of the applicability of Section 3.3 above, the Expansion Effective Date shall be delayed to the extent that Landlord fails to deliver possession of the Expansion Space for any other reason (other than Tenant Delays by Tenant). Any such delay in the Expansion Effective Date shall not subject Landlord to any liability for any loss or damage resulting therefrom. If the Expansion Effective Date is delayed, the Extended Termination Date shall not be similarly extended.

4. **Extension.** The Term of the Lease is hereby extended for a period of sixty-four (64) months and shall expire on October 31, 2022 ("**Extended Termination Date**"), unless sooner terminated in accordance with the terms of the Lease. That portion of the Term commencing the day immediately following the Prior Termination Date ("**Extension Date**") and ending on the Extended Termination Date shall be referred to herein as the "**Extended Term**".

5. **Minimum Monthly Rent.**

5.1 **Minimum Monthly Rent for Remaining Portion of the Original Premises.** The Minimum Monthly Rent, Tenant's Proportionate Share of Operating Costs, Insurance Costs and Taxes and all other charges under the Lease shall be payable as provided therein with respect to the Remaining Portion of the Original Premises through and including the Prior Termination Date. Notwithstanding the foregoing, provided that (i) Tenant has vacated the Reduction Space on or before the Required Vacation Date in compliance with the terms and conditions of Section 2 above; and (ii) Tenant is not in default under the Lease, as amended hereby, Tenant shall be entitled to an abatement of Minimum Monthly Rent for the month of April, 2017 in an amount equal to $25,565.65.

5.2 **Minimum Monthly Rent for Remaining Portion of the Original Premises During Extended Term.** As of the Extension Date, the schedule of Minimum Monthly Rent payable for the Remaining Portion of the Original Premises during the Extended Term is the following:

Period	Rentable Square Footage	Minimum Monthly Rent
7/1/2017 – 6/30/2018	9,898	$41,076.70
7/1/2018 – 6/30/2019	9,898	$42,305.70
7/1/2019 – 6/30/2020	9,898	$43,575.95
7/1/2020 – 6/30/2021	9,898	$44,879.18
7/1/2021 – 6/30/2022	9,898	$46,223.66
7/1/2022 – 10/31/2022	9,898	$47,609.38

All such Minimum Monthly Rent shall be payable by Tenant in accordance with the terms of the Lease, as amended hereby.

5.3 **Minimum Monthly Rent for Expansion Space through Extended Termination Date.** In addition to Tenant's obligation to pay Minimum Monthly Rent for the Remaining Portion of the Original Premises, during the period commencing on the Expansion Effective Date and continuing through the Extended Termination Date, Tenant shall pay Landlord Minimum Monthly Rent for the Expansion Space as follows:

Period	Rentable Square Footage	Minimum Monthly Rent
Expansion Effective Date – 6/30/2018	384	$1,171.20
7/1/2018 – 6/30/2019	384	$1,206.40
7/1/2019 – 6/30/2020	384	$1,242.56
7/1/2020 – 6/30/2021	384	$1,279.68
7/1/2021 – 6/30/2022	384	$1,318.08
7/1/2022 – 10/31/2022	384	$1,357.76

All such Minimum Monthly Rent shall be payable by Tenant in accordance with the terms of the Lease, as amended hereby.

5.4 **Abated Minimum Monthly Rent.** Notwithstanding anything in the Lease, as amended hereby, to the contrary, so long as Tenant is not in default under the Lease, as amended hereby, Tenant shall be entitled to an abatement of Minimum Monthly Rent as follows: (i) with respect to the Remaining Portion of the Original Premises, in the monthly amount of $41,076.70 during the period commencing July 1, 2017 and continuing through October 31, 2017; and (ii) with respect to the Expansion Space, in the monthly amount of $1,171.20 for the first four (4) full calendar months after the Expansion Effective Date. The maximum total amount of Minimum Monthly Rent abated in accordance with the foregoing shall equal $168,991.60 (the "**Abated Minimum Monthly Rent**"). If Tenant defaults under the Lease, as amended hereby, at any time during the Term (as the same may be further extended) and fails to cure such default within any applicable cure period under the Lease, then all Abated Minimum Monthly Rent shall immediately become due and payable. Only Minimum

Monthly Rent shall be abated pursuant to this Section, as more particularly described herein, and all other rent and other costs and charges specified in the Lease, as amended hereby, shall remain as due and payable pursuant to the provisions of the Lease, as amended hereby.

6. **Security Deposit.**

6.1 Landlord and Tenant acknowledge and agree that Tenant has provided, and Landlord is currently holding, a cash Security Deposit in accordance with the terms and conditions of Article 8 of the Lease, as amended by Sections 6.2, 6.3 and 6.4 below, in an amount equal to $43,000.00 as collateral for Tenant's performance of its obligations under the Lease, as amended hereby, in lieu of a standby Letter of Credit. No additional Security Deposit shall be required in connection with this Amendment.

6.2 Section 8.1 of the Lease is hereby amended as follows:

6.1.1 The second (2nd) and third (3rd) sentences thereof are hereby deleted in their entireties and replaced with the following:

"This sum is designated as a Security Deposit and shall remain the sole and separate property of Landlord until actually repaid to Tenant (or at Landlord's option the last assignee, if any, of Tenant's interest hereunder), said sum not being earned by Tenant until all conditions precedent for its payment to Tenant have been fulfilled. As this sum both in equity and at law is Landlord's separate property, Landlord shall not be required to (1) keep said deposit separate from his general accounts, or (2) pay interest, or other increment for its use.".

6.1.2 The reference to "return of the Letter of Credit or the proceeds thereof" set forth in the fourth (4th) sentence thereof is hereby deleted in its entirety and replaced with "repayment of the Security Deposit".

6.1.3 The reference to "proceeds of the Letter of Credit" set forth in the fifth (5th) sentence thereof is hereby deleted in its entirety and replaced with "Security Deposit".

6.1.4 There reference to "or proceeds of the Letter of Credit are" set forth in the sixth (6th) sentence thereof is hereby deleted in its entirety and replaced with "is".

6.1.5 The following is hereby added to Section 8.1 of the Lease: "If Tenant is not in default of the Lease, the Security Deposit or any balance thereof shall be returned to Tenant sixty (60) days after the later of: (i) the date Tenant surrenders possession of the Premises to Landlord in accordance with the terms and conditions of this Lease, and (ii) date of the expiration or earlier termination of this Lease."

6.3 The first sentence of Section 8.2 of the Lease is hereby deleted in its entirety and replaced with the following:

"If Landlord elects to use or apply all or any portion of the Security Deposit as provided in Section 8.1, Tenant shall within ten (10) business days after written demand therefor pay to Landlord in cash, an amount equal to that portion of the Security Deposit used or applied by Landlord, and Tenant's failure to so do shall be a material breach of this Lease."

6.4 The last sentence of Section 8.2 of the Lease and Article 33 of the Lease are each hereby deleted in their entirety.

7. **Tenant's Proportionate Share.** For the period commencing on the Reduction Effective Date and ending on the Extended Termination Date, Tenant's Proportionate Share for the Remaining Portion of the Original Premises is **6.22%** of the Building. For the period commencing on the Expansion Effective Date and ending on the Extended Termination Date, Tenant's Proportionate Share for the Expansion Space is **0.24%** of the Building. For the period commencing on the Expansion Effective Date and ending on the Extended Termination Date, Tenant's Proportionate Share for the Remaining Portion of the Original Premises and the Expansion Space, collectively, is **6.46%** of the Building. Notwithstanding anything in this Amendment to the contrary, Tenant shall remain liable for all year-end adjustments with respect to Tenant's Proportionate Share of Operating Costs, Insurance Costs and Taxes applicable to the Reduction Space for that portion of the calendar year preceding the Reduction Effective Date. Such adjustments shall be paid at the time, in the manner and otherwise in accordance with the terms of the Lease, unless otherwise specified herein.

8. **Additional Rent.**

8.1 **Remaining Portion of Original Premises.** For the period commencing on the Extension Date and ending on the Extended Termination Date, Tenant shall pay all additional Rent payable under the Lease, including Tenant's Proportionate Share of Operating Costs, Insurance Costs and Taxes in accordance with the terms of the Lease, provided, however, effective as of the Extension Date, the Base Year for the computation of Tenant's Proportionate Share of Operating Costs, Insurance Costs and Taxes for the Remaining Portion of the Original Premises is amended from 2010 to 2017.

8.2 **Expansion Space.** For the period commencing with the Expansion Effective Date and ending on the Extended Termination Date, Tenant shall pay for Tenant's Proportionate Share of Operating Costs, Insurance Costs and Taxes applicable to the Expansion Space in accordance with the terms of the Lease, as amended hereby; provided, however, that effective as of the Expansion Effective Date, the Base Year for the computation of Tenant's Proportionate Share of Operating Costs, Insurance Costs and Taxes solely with respect to the Expansion Space is calendar year 2017.

9. **Access to Expansion Space.** Tenant shall be permitted to access the Expansion Space prior to the Expansion Effective Date. In connection therewith, Tenant shall comply with all terms and provisions of the Lease, as amended hereby, and this Amendment, except those provisions requiring payment of Minimum Monthly Rent as to the Expansion Space. However, Tenant shall be liable for all utilities (including, without limitation, all costs in connection with the Supplemental Cooling Unit, as defined in Section 10.2.2 below) and special services during such period.

10. **Condition; Improvements.**

10.1 **Condition of Remaining Portion of the Original Premises.** By being in possession of the Remaining Portion of the Original Premises, Tenant agrees it has accepted the same "as is" without any agreements, representations, understandings or obligations on the part of Landlord to perform any alterations, repairs or improvements, except as may be expressly provided otherwise in this Amendment. Tenant hereby acknowledges and agrees that Landlord has fulfilled all of its obligations pursuant to Exhibit "C" to the Lease.

10.2 **Condition of Expansion Space.**

10.2.1 Tenant acknowledges and agrees that Tenant has been in occupancy of the Expansion Space without Landlord's consent and has been using the same for storage purposes

prior to the date of this Amendment. By being in possession of the Expansion Space, Tenant shall be deemed to have accepted the same "as is" without any agreements, representations, understandings or obligations on the part of Landlord to perform any alterations, repairs or improvements, except as may be expressly provided otherwise in this Amendment. Tenant hereby agrees to indemnify, defend, and hold Landlord and the Landlord Entities harmless from and against any and all conditions, losses, costs, damages, claims, liabilities, expenses, demands or obligations, of any kind or nature whatsoever (including reasonable attorneys' fees, expenses and disbursements) arising from the use or occupancy of the Expansion Space by Tenant or any Tenant Entities and/or any act or omission of Tenant or any Tenant Entities prior to the date of this Amendment.

10.2.2 Subject to Landlord's prior written approval, Tenant shall have the right to install and use a Supplemental Cooling Unit (defined below) in the Expansion Space, subject to all applicable terms and conditions of the Lease (including, without limitation, Article 12 of the Lease) and the terms and conditions set forth in this Section. For purposes hereof, the "**Supplemental Cooling Unit**" shall mean a dedicated, self-contained supplemental cooling unit with capacity that shall be subject to Landlord's prior written approval, and which shall operate independently of and without any connection to the Building's heating, ventilating and air conditioning system, water or any other system of the Building, except for a connection for electrical power. Landlord may withdraw Tenant's permission to install the Supplemental Cooling Unit during Landlord's performance of the Side Light Work at any time that Landlord reasonably determines that Tenant's installation thereof is causing a dangerous situation for Landlord, Tenant or their respective contractors or employees, or if Landlord reasonably determines that Tenant's installation of the Supplemental Cooling Unit is hampering or otherwise preventing Landlord from proceeding with the completion of the Side Light Work at the earliest possible date. In addition, Landlord may terminate Tenant's right to install and operate the Supplemental Cooling Unit if Landlord determines in its sole discretion that the Supplemental Cooling Unit is causing noise and/or disturbing or interfering with Landlord or other tenants of the Building. Tenant shall be responsible, at its cost, for maintaining and repairing the Supplemental Cooling Unit to the reasonable satisfaction of Landlord and the cost of purchasing and installing a submeter (or submeters if reasonably necessary) to measure electricity consumed in connection with the Supplemental Cooling Unit, as well as the cost of all such electricity that is consumed. Tenant shall pay Landlord, within ten (10) days after Landlord's demand therefor, for all electricity so used at the then current rates charged to Landlord for electricity by the utility provider, plus any additional cost of Landlord in keeping account of and billing Tenant for the electric current so consumed. Upon expiration or earlier termination of the Lease, title to the Supplemental Cooling Unit shall pass to Landlord although, upon the request of Landlord, Tenant shall be required to remove the Supplemental Cooling Unit, at Tenant's cost, in accordance with the terms of Section 12.4 of the Lease.

10.3 **Responsibility for Improvements to Remaining Portion of the Original Premises.** Landlord shall perform improvements to the Remaining Portion of the Original Premises and to the Expansion Space in accordance with **Exhibit C** attached hereto.

11. **Representations.** Tenant represents that it has not made any assignment, sublease, transfer, conveyance of the Lease or any interest therein or in the Reduction Space other than those explicitly recited herein and further represents that there is not any claim, demand, obligation, liability, action or cause of action by any other party respecting, relating to or arising out of the Reduction Space, and Tenant agrees to indemnify and hold harmless Landlord and the Landlord Entities from all liabilities, expenses, claims, demands, judgments, damages or costs arising from any of the same, including without limitation, attorneys' fees. Tenant acknowledges that Landlord will be relying on this Amendment in entering into leases for the Reduction Space with other parties.

12. **Extension Option.** Article 34 (Option to Renew) of the Lease is hereby deleted in its entirely. Provided the Lease, as amended hereby, is in full force and effect and Tenant is not in default under any of the other terms and conditions of the Lease, as amended hereby, at the time of notification or commencement, Tenant shall have one (1) option to extend (the "**Extension Option**") the Lease for a term of five (5) years (the "**Second Extension Term**"), for the portion of the Premises being leased by Tenant as of the date the Second Extension Term is to commence, on the same terms and conditions set forth in the Lease, as amended hereby, except as modified by the terms, covenants and conditions as set forth below. Notwithstanding the foregoing, Tenant may only exercise the Extension Option hereunder if (a) at the time of exercise, Tenant is conducting regular, active, ongoing business in, and is in occupancy, (b) at the time of exercise, no part of the Premises is sublet; and (c) the Lease has not been assigned (other than to an Affiliated Transferee).

12.1 If Tenant elects to exercise the Extension Option, then Tenant shall provide Landlord with written notice no earlier than the date which is three hundred sixty-five (365) days prior to the expiration of Extended Term but no later than the date which is two hundred seventy (270) days prior to the expiration of the Extended Term. If Tenant fails to provide such notice, Tenant shall have no further or additional right to extend the Extended Term.

12.2 The Minimum Monthly Rent in effect at the expiration of the Extended Term shall be adjusted to reflect the Prevailing Market (defined below) rate. Landlord shall advise Tenant of the new Minimum Monthly Rent for the Premises no later than thirty (30) days after receipt of Tenant's written request therefor. Said request shall be made no earlier than thirty (30) days prior to the first date on which Tenant may exercise its Extension Option under this Section 12. Said notification of the new Minimum Monthly Rent may include a provision for its escalation to provide for a change in the Prevailing Market rate between the time of notification and the commencement of the Second Extension Term.

12.3 This Extension Option is not transferable (other than to an Affiliated Transferee that is an assignee of Tenant's interest in this Lease); the parties hereto acknowledge and agree that they intend that the Extension Option shall be "personal" to Tenant as set forth above and that in no event will any assignee (other than an Affiliated Transferee) or sublessee have any rights to exercise the Extension Option.

12.4 If the Extension Option is validly exercised or if Tenant fails to validly exercise the Extension Option, Tenant shall have no further right to extend the Extended Term.

12.5 For purposes of this Extension Option, "**Prevailing Market**" shall mean the arms length fair market annual rental rate per rentable square foot under renewal leases and amendments entered into on or about the date on which the Prevailing Market is being determined hereunder for space comparable to the Premises in the Building and buildings comparable to the Building in the same rental market in the San Jose, California area as of the date the Second Extension Term is to commence, taking into account the specific provisions of the

Lease, as amended hereby, which will remain constant. The determination of Prevailing Market shall take into account any material economic differences between the terms of the Lease, as amended hereby, and any comparison lease or amendment, such as rent abatements, construction costs and other concessions and the manner, if any, in which the landlord under any such lease is reimbursed for operating expenses and taxes.

13. **Other Pertinent Provisions.** Landlord and Tenant agree that, effective as of the date of this Amendment (unless different effective date(s) is/are specifically referenced in this Section), the Lease shall be amended in the following additional respects:

13.1 **Right of First Offer.** Article 35 (Right of First Offer) of the Lease is hereby deleted in its entirety and of no further force or effect.

13.2 **Temporary Space.** Article 36 (Temporary Space) of the Lease is hereby deleted in its entirety.

13.3 **Tenant's Insurance.** Tenant's insurance required under the Lease, as amended hereby ("**Tenant's Insurance**"), shall apply to and include (as applicable) the Expansion Space. Tenant shall provide Landlord with a certificate of insurance, in form and substance satisfactory to Landlord and otherwise in compliance with the terms of the Lease, as amended hereby, evidencing that Tenant's Insurance covers the Remaining Portion of the Original Premises and the Expansion Space, as soon as practicable after the date of this Amendment but in any event prior to the Expansion Effective Date, and thereafter on an annual basis or more frequently if reasonably requested by Landlord in order to assure that Landlord always has current certificates evidencing Tenant's Insurance.

13.4 **Parking.** Notwithstanding anything in the Lease to the contrary, commencing on the Reduction Effective Date, Tenant shall have the right to lease up to twenty-one (21) parking stalls, consisting of (i) up to twenty (20) unreserved parking stalls; and (ii) up to one (1) reserved parking stall, at the then prevailing market rate. Except as modified herein, the use of such unreserved parking spaces shall be subject to the terms of the Lease.

13.5 **Climate Control Hours.** The definition of Climate Control Hours set forth in Section 11.1 of the Lease is hereby deleted in its entirety and replaced with:

"8:00 a.m. to 6:00 p.m. on weekdays and 9:00 a.m. to 12:00 p.m. Saturdays (Sundays and holidays excepted)".

13.6 **Building Sign(s).** Section 37.3 of the Lease is hereby deleted in its entirety.

13.7 **Monument Signage**.

13.7.1 As of the date of this Amendment, Tenant's name is installed on one (1) Monument Sign (as defined below) located on 125 S. Market Street (the "**Market Street Sign**") and one (1) Monument Sign located on Park Avenue (the "**Park Avenue Sign**"). Subject to the terms of this Section, so long as (a) Tenant is not in default under the terms of this Lease; (b) Tenant is in occupancy of the entire Premises; and (c) Tenant has not assigned the Lease (other than to an Affiliated Transferee) or sublet the Premises, Tenant shall have the right to continue to have its name listed on the Market Street Sign and the Park Avenue Sign (collectively, the "**Monument Signs**"). Any changes to the design, size, method of attachment and color of Tenant's signage on the Monument Signs, shall comply with all applicable Laws and shall be subject to the approval of Landlord and any applicable

governmental authorities. Landlord reserves the right to withhold consent to any change in Tenant's signs that, in the sole judgment of Landlord, is not harmonious with the design standards of the Building and Monument Signs. Landlord shall have the right to require that all names on the Monument Signs be of the same size and style. Tenant must obtain Landlord's prior written consent to any changes to the signage and lettering. To obtain Landlord's consent, Tenant shall submit design drawings to Landlord showing the type and sizes of all lettering; the colors, finishes and types of materials used; and (if applicable and Landlord consents in its sole discretion) any provisions for illumination. Although the Monument Signs will be maintained by Landlord, Tenant shall pay its proportionate share of the cost of any maintenance and repair associated with the Monument Signs. In the event that additional names are listed on a Monument Sign, all costs of maintenance and repair shall be prorated between Tenant and the other parties that are listed on such Monument Sign. Tenant's name on the Monument Signs shall be designed, constructed, installed, insured, maintained, repaired and removed from the Monument Signs all at Tenant's sole risk, cost and expense. Tenant, at its cost, shall be responsible for the maintenance, repair or replacement of Tenant's signage on the Monument Signs, which shall be maintained in a manner reasonably satisfactory to Landlord.

13.7.2 Notwithstanding anything in the Lease or this Amendment to the contrary, Landlord shall have the right to terminate Tenant's right to have its name installed on the Market Street Sign upon thirty (30) days' prior written notice to Tenant, and Tenant shall remove Tenant's name from the Market Street Sign at Tenant's sole cost and expense and restore such Market Street Sign to the condition it was in prior to installation of Tenant's signage thereon.

13.7.3 Upon the expiration or earlier termination of the Lease, or if during the Term (and any extensions thereof) (a) Tenant is in default under the terms of the Lease, as amended hereby, after the expiration of applicable cure periods; (b) Tenant leases and occupies less than the entire Premises; or (c) Tenant assigns the Lease (other than to an Affiliated Transferee), then Tenant's rights granted herein will terminate and Landlord may remove Tenant's name from each or both of the Monument Sign(s) at Tenant's sole cost and expense and restore the applicable Monument Sign to the condition it was in prior to installation of Tenant's signage thereon, ordinary wear and tear excepted. The cost of such removal and restoration shall be payable as additional rent within five (5) days of Landlord's demand. Landlord may, at anytime during the Term (or any extension thereof), upon five (5) days prior written notice to Tenant, relocate the position of Tenant's name on the Monument Signs. The cost of such relocation of Tenant's name shall be at the cost and expense of Tenant.

13.7.4 The rights provided in this Section 13.7 shall be non-transferable unless otherwise agreed by Landlord in writing in its sole discretion.

14. **Miscellaneous.**

14.1 This Amendment, including **Exhibit A** (Outline and Location of Reduction Space), **Exhibit B** (Outline and Location of Expansion Space) and **Exhibit B** (Tenant Alterations) attached hereto, sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Under no circumstances shall Tenant be entitled to any rent abatement, improvement allowance, leasehold improvements, or other work to the Premises, or any similar economic incentives that may have been provided Tenant in connection with entering into the Lease,

unless specifically set forth in this Amendment. This Amendment shall not be relied upon by any other party, individual, corporation, partnership or entity as a basis for reducing its lease obligations with Landlord or for any other purpose. Tenant agrees that it shall not disclose any matters set forth in this Amendment or disseminate or distribute any information concerning the terms, details or conditions hereof to any person, firm or entity without obtaining the express written consent of Landlord.

14.2 Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect. In the case of any inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern and control. The capitalized terms used in this Amendment shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this Amendment.

14.3 Landlord shall not be bound by this Amendment until Landlord has executed and delivered the same to Tenant.

14.4 Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this Amendment other than Cushman & Wakefield. Tenant agrees to indemnify and hold Landlord and the Landlord Entities harmless from all claims of any other brokers claiming to have represented Tenant in connection with this Amendment.

14.5 Each signatory of this Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting. Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("**OFAC**"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons." If the foregoing representation is untrue at any time during the Term (as extended), an event of default under the Lease will be deemed to have occurred, without the necessity of notice to Tenant.

14.6 Pursuant to California Civil Code Section 1938, Landlord hereby notifies Tenant that as of the date of this Amendment, the Premises have not undergone inspection by a "Certified Access Specialist" ("**CASp**") to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code Section 55.53. Landlord hereby discloses pursuant to California Civil Code Section 1938 as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary

to correct violations of construction-related accessibility standards within the premises." Landlord and Tenant hereby acknowledge and agree that in the event that Tenant elects to perform a CASp inspection of the Premises hereunder (the "**Inspection**"), such Inspection shall be (a) performed at Tenant's sole cost and expense, (b) limited to the Premises and (c) performed by a CASp who has been approved or designated by Landlord prior to the Inspection. Any Inspection must be performed in a manner which minimizes the disruption of business activities in the Building, and at a time reasonably approved by Landlord. Landlord reserves the right to be present during the Inspection. Tenant agrees to: (i) promptly provide to Landlord a copy of the report or certification prepared by the CASp inspector upon request (the "**Report**"), (ii) keep the information contained in the Report confidential, except to the extent required by law, or to the extent disclosure is needed in order to complete any necessary modifications or improvements required to comply with all applicable accessibility standards under state or federal law, as well as any other repairs, upgrades, improvements, modifications or alterations required by the Report or that may be otherwise required to comply with applicable laws or accessibility requirements (the "**Access Improvements**"). Tenant shall be solely responsible for the cost of Access Improvements to the Premises necessary to correct any such violations of construction-related accessibility standards identified by such Inspection as required by law, which Access Improvements may, at Landlord's option, be performed in whole or in part by Landlord at Tenant's expense, payable as additional Rent within ten (10) days following Landlord's demand.

14.7 Tenant shall not bring upon the Premises or any portion of the Building or use the Premises or permit the Premises or any portion thereof to be used for the growing, manufacturing, administration, distribution (including without limitation, any retail sales), possession, use or consumption of any cannabis, marijuana or cannabinoid product or compound, regardless of the legality or illegality of the same.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amendment as of the day and year first above written.

LANDLORD:	**TENANT:**
PARK CENTER PLAZA INVESTORS, L.P., **a Delaware limited partnership**	**SPHERE 3D CORP., an Ontario corporation**
By: /s/ Jonathan Praw	By: /s/ Eric Kelly
Name: Jonathan Praw	Name: Eric Kelly
Title: V.P.	Title: CEO
Dated: March 22, 2017	Dated: March 15, 2017

EXHIBIT A - OUTLINE AND LOCATION OF REDUCTION SPACE

**attached to and made a part of the Amendment dated as of March 14, 2017,
between PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership,
as Landlord and SPHERE 3D CORP., an Ontario corporation, as Tenant**

Exhibit A is intended only to show the general layout of the Reduction Space as of the beginning of the Reduction Effective Date. It does not in any way supersede any of Landlord's rights set forth in the Lease with respect to arrangements and/or locations of public parts of the Building and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.

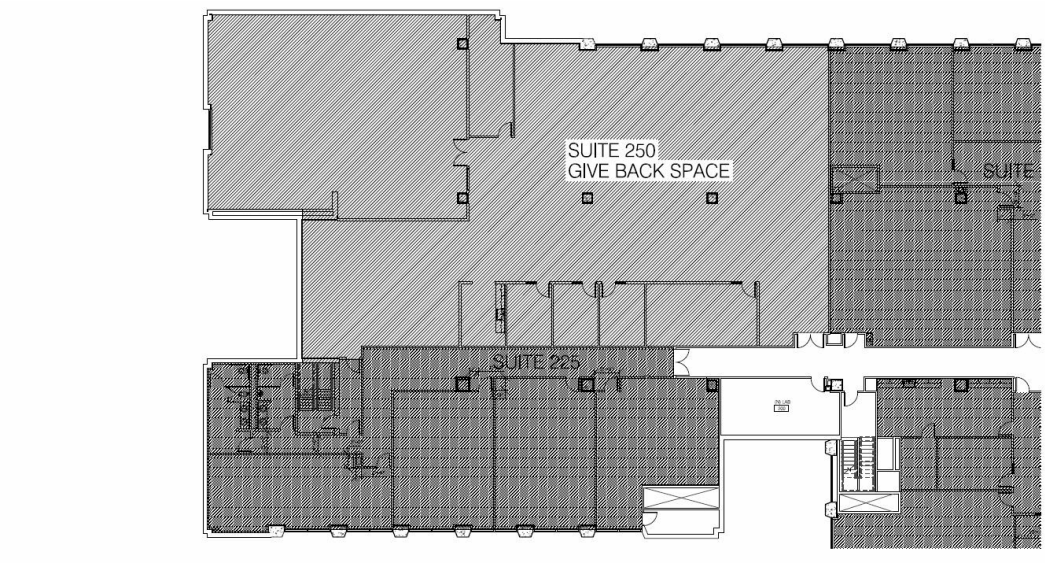


EXHIBIT B - OUTLINE AND LOCATION OF EXPANSION SPACE

**attached to and made a part of the Amendment dated as of March 14, 2017,
between PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership,
as Landlord and SPHERE 3D CORP., an Ontario corporation, as Tenant**

Exhibit B is intended only to show the general layout of the Expansion Space as of the beginning of the Expansion Effective Date. It does not in any way supersede any of Landlord's rights set forth in the Lease with respect to arrangements and/or locations of public parts of the Building and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.

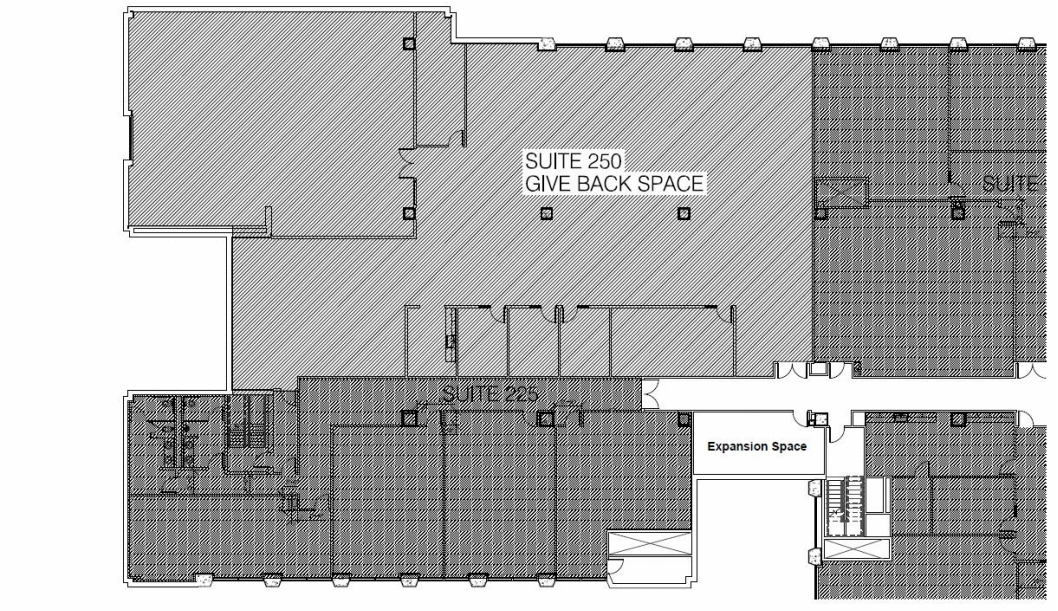


EXHIBIT C – TENANT ALTERATIONS

**attached to and made a part of the Amendment dated as of March 14, 2017,
between PARK CENTER PLAZA INVESTORS, L.P., a Delaware limited partnership,
as Landlord and SPHERE 3D CORP., an Ontario corporation, as Tenant**

1. Landlord, at its sole cost and expense (subject to the terms and provisions of Section 2 below) shall perform improvements to the Remaining Portion of the Original Premises and the Expansion Space in accordance with the following work lists using Building standard methods, materials and finishes and as otherwise reasonably determined by Landlord. The improvements to be performed in the Remaining Portion of the Original Premises and described in the first work list below and the improvements to be performed in the Expansion Space and described in the second work list below (such work to be performed in the Expansion Space, hereinafter, the "**Side Light Work**") are collectively referred to herein as the "**Tenant Alterations**". Landlord shall enter into a direct contract for the Tenant Alterations with a general contractor selected by Landlord. In addition, Landlord shall have the right to select and/or approve of any subcontractors used in connection with the Tenant Alterations. Notwithstanding anything to the contrary contained herein or in the Amendment, Landlord shall provide Tenant with written notice of Landlord's intent to commence the Tenant Alterations, and not later than three (3) business days following the date of such notice by Landlord, Tenant shall remove, at Tenant's sole cost and expense all Tenant's furniture, equipment, fixtures and other personal property located within the Remaining Portion of the Original Premises and, if applicable, the Expansion Space (collectively, "**Tenant's Property**") in a manner satisfactory to Landlord in order to enable Landlord to perform the Tenant Alterations. Tenant shall move such Tenant's Property back into the Remaining Portion of the Original Premises and, if applicable, the Expansion Space at Tenant's sole cost and expense only at such time that Landlord has notified Tenant that the Tenant Alterations (or the portion thereof affected by the placement of Tenant's Property) has been completed. Tenant hereby acknowledges and agrees that Landlord shall have no obligation to move any of Tenant's Property and shall not commence any of the Tenant Alterations until such Tenant's Property is removed by Tenant in accordance with this Section 1.

ORIGINAL PREMISES WORK LIST

A. Relocate one (1) office door within the Remaining Portion of the Original Premises;
B. Install one (1) door in the boardroom within the Remaining Portion of the Original Premises;
C. Remove the existing interior wall in the conference room within the Remaining Portion of the Original Premises; and
D. Paint up to 5 interior exposed accent walls within the Remaining Portion of the Original Premises.

EXPANSION SPACE WORK LIST

A. Install one (1) side light adjacent to the entry door to the Expansion Space with frosted glass; and
B. Install one (1) horizontal side light at the top of the wall in the Expansion Space.

2. All other work and upgrades, subject to Landlord's approval, shall be at Tenant's sole cost and expense, plus any applicable state sales or use tax thereon, payable upon demand as additional rent. Tenant shall be responsible for any Tenant Delay in completion of the Tenant Alterations resulting from any such other work and upgrades requested or performed by Tenant or any failure by Tenant to remove Tenant's Property in accordance with Section 1 above.

3. Landlord's supervision or performance of any work for or on behalf of Tenant shall not be deemed to be a representation by Landlord that such work complies with applicable insurance requirements, building codes, ordinances, laws or regulations or that the improvements constructed will be adequate for Tenant's use.

4. Tenant acknowledges that the Tenant Alterations may be performed by Landlord in the Premises during and/or after normal business hours for the Building subsequent to the Extension Date. Landlord and Tenant agree to cooperate with each other in order to enable the Tenant Alterations to be performed in a timely manner and with as little inconvenience to the operation of Tenant's business as is reasonably possible. Notwithstanding anything herein to the contrary, any delay in the completion of the Tenant Alterations or inconvenience suffered by Tenant during the performance of the Tenant Alterations shall not delay the Extension Date nor shall it subject Landlord to any liability for any loss or damage resulting therefrom or entitle Tenant to any credit, abatement or adjustment of rent or other sums payable under the Lease.

5. Provided Tenant is not in default after the expiration of applicable cure periods under the Lease, as amended, Landlord shall provide Tenant with an allowance (the "**FF&E Allowance**") in an amount not to exceed $9,898.00 (i.e. a sum of up to $1.00 per square foot of Rentable Area in the Remaining Portion of the Original Premises) to be applied toward the cost of purchasing and installing furniture, fixtures and equipment (collectively, "**FF&E**"), which FF&E shall be located at all times at the Premises and for use by Tenant in the Premises. Landlord shall disburse the FF&E Allowance, or applicable portion thereof, to Tenant within forty-five (45) days after Landlord's receipt of paid invoices from Tenant with respect to the FF&E. However, in no event shall Landlord have any obligation to disburse any portion of the FF&E Allowance after September 30, 2017. Any unused portion of the FF&E Allowance remaining after such date shall accrue to the sole benefit of Landlord, it being understood that Tenant shall not be entitled to any credit, abatement or other concession in connection therewith. Landlord shall own all FF&E until the expiration of the Lease (provided that Tenant, not Landlord, shall be responsible for all costs associated with such FF&E, including, without limitation, the cost of insuring the same, all maintenance and repair costs and taxes), at which time such FF&E shall become the property of Tenant as if by bill of sale hereunder. Tenant shall maintain and repair all FF&E in good and working order and shall insure such FF&E to the same extent Tenant is required to insure Tenant's personal property pursuant to the terms of the Lease.

6. This **Exhibit C** shall not be deemed applicable to any additional space added to the Premises at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original Premises or any additions to the Premises in the event of a renewal or extension of the Term of the Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement to the Lease.

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Exhibit 4.53

Lease Renewal Contract

This Lease Renewal Contract ("**Contract**") is entered into on May 19, 2016 ("**Signature Date**") by and between:

Party A (Lessor): **Guangzhou Shi Panyu Tongxing Paper Products Co., Ltd.**
Legal Address: Pingshan Village No.1, Zhongcun Town, Panyu District, Guangzhou

Party B (Lessee): **Guangzhou Tandberg Electronic Components Co., Ltd.**
Legal Address: The G/F of Plant 2, Zhongsan No. 9, Shiguang Rd, Panyu District, Guangzhou, Guangdong Province, China

Party A and Party B are collectively referred to as the "**Parties**" and individually as a "**Party**".

The Parties have agreed to enter into this Contract through friendly discussions based on the principle of equality and mutual benefit.

Chapter I Definitions

In this Contract, the following words and expressions shall have the following meanings. Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa.

1. "**Affiliate**" means in relation to any corporate entity, any parent or holding company or direct or indirect subsidiary of such corporate entity or any direct or indirect subsidiary of a parent or holding company of such corporate entity, and in relation to any natural person shareholder, director, officer or employee of the aforesaid, a family member of such natural person.

2. "**Base Prices**" has the meaning ascribed to it in Article 11.1 below.

3. "**CIETAC**" has the meaning ascribed to it in Article 20 below.

4. "**Contract**" or "**this Contract**" means this "**Lease Renewal Contract**" including all its attachments and all valid amended agreements.

5. "**Event of Force Majeure**" means occurrence of events unforeseeable, unavoidable and uncontrollable such as earthquakes, hurricanes, floods, fires, wars and any other similar unforeseeable event whose occurrence and consequence cannot be prevented or avoided, have directly affected the performance of this Contract or have prevented this Contract from being performed in compliance with the agreed terms and conditions.

6. "**First Deposit**" has the meaning ascribed to it in Article 12 below.

7. "**Hazardous Material**": any substance, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or other material which is hazardous, toxic or otherwise harmful to health, safety or the environment, and includes any material identified or classified as such under any applicable environmental laws and regulations.

8. "**Open Space**" has the meaning ascribed to it in Article 2 below.

9. "**Party**" means Party A and Party B individually, and "Parties" means Party A and Party B collectively.

10. "**PRC**" or "**China**" means the People's Republic of China.

11. "**Premises**" means the factory, dormitories and Open Space leased to Party B pursuant to this Contract and as further described in Annex I hereto.

12. "**Renewal Term**" has the meaning ascribed to it in Article 4 below.

13. "**Second Deposit**" has the meaning ascribed to it in Article 12 below.

14. "**Signature Date**" has the meaning ascribed to it in the Preamble above.

15. "**Term**" has the meaning ascribed to it in Article 4 below.

16. "**Utilities**" includes the power capacity, water supply, sewage and other facilities as set forth in Annex II hereto.

Chapter II Premises and Delivery

Article 1: Premises Location

The Premises are located at the following address: Pingshan Village No.1, Zhongcun Town, Panyu District, Guangzhou, Guangdong Province, China.

Article 2: Indoor Floor Space and Open Space

The indoor floor space of the Premises, as specified in Annex I attached hereto, is [8,081] sq.m. in total, which includes factory with an area of [7,343] sq.m. and dormitories with an area of [738] sq.m. (The indoor floor space of the Premises shall be subject to the Building Ownership Certificate)

The open space, as specified in Annex I attached hereto, is [3,304] sq.m. ("**Open Space**") (Open Space area shall be subject to actual measurement)

Article 3: Government Approvals and Filings

Throughout the Term, Party A shall obtain and maintain in legal effect all governmental and other approvals required in connection with the lease of the Premises and transactions contemplated hereby, and shall handle all registration formalities required by applicable laws and regulations. Within 10 days after the Signature Date of this Contract, Party A shall file this Contract with the competent Real Estate Administration Bureau or other relevant government authorities. All relevant charges for such filing shall be handled and born by Party A.

Chapter III Term, Fit-out, Use and Management

Article 4: Term

The lease term is three years ("**Term**"), from August 1, 2016 to July 31, 2019.

Party B shall have the priority right to renew this Contract upon the expiry of the Term by serving a three-month prior written notice to Party A. ("**Renewal Term**"). The rent during the renewal term should be discussed by both Parties according to the market.

Article 5: Party B's Fit-out

Party B may, at its own expenses, carry out additional fit-out of the Premises according to its own requirements, provided, the fit-out shall not change the main structure of the Premises.

Article 6: Use of the Premises

Within the Term, Party B may unilaterally use the Premises as electronic components manufacturing factory, employee dormitories and canteen, or carry out other productive and business activities within the scope of its business license, but may not use the Premises to engage in illegal, unethical, or un-licensed activities.

Party B shall be entitled to display its sign boards, directories and signage free of any charge.

Article 7: Party A's Obligations

Party A undertakes the following obligations:

1. Party A shall (a) ensure that the Premises and fit-out are safe for use and that the structure and building materials of the Premises comply with local/national building code requirements, (b) ensure the normal operation of the infrastructure connected to the Premises such as water supply, electricity supply, etc., and (c) ensure the normal operation of fire infrastructure.

2. Party A shall provide Party B with sufficient capacity of public facilities as required for Party B's lawful operation and production.

3. In the event that the Premises are subject to any legal measures by any legal or government agencies, resulting in the curtailment of integrity of the rights to the Premises or Party A is merged or re-organized or in the event that Party A transfers, mortgages or sells the Premises to a third party within the Term or if a third party exercises its rights under a lien or other encumbrance so as to acquire the Premises, then Party A shall, on its own initiative and at its own cost, actively take all measures to maintain the integrity of the rights to the Premises, and to ensure that Party B's legal right to use the Premises is not restricted and that this Contract remains fully enforceable and legally binding.

4. Party A is responsible for timely repair if quality problems of the Premises result in damage to or potential damage to the Premises. If Party B discovers such damage or potential damage, Party A shall arrange for repairs within twentyfour (24) hours after receiving written notice from Party B, and Party A shall bear the cost of such repairs. In the event that Party A fails to replace or repair the Premises as required, Party B may make any such replacements and repairs and deduct such costs from the rental due. If the damage or the repairs result in Party B's suspension or partial suspension of business operation, Party A shall compensate Party B for economic losses.

5. Party A shall be responsible, at its own cost, for purchasing all necessary insurance policies for the Premises and shall provide the true copies of the insurance certificates to Party B.

Article 8: Damage or Destruction

1. In the event that the Premises are damaged due to the fault of Party A or any third party, to such an extent as to render them untenantable in whole or in substantial part, or the Premises are destroyed, Party A shall carry out the work of repairing or rebuilding the Premises without unnecessary delay upon its receipt of notice from Party B of such damage or destruction. In the event that Party A does not carry out the work of repairing or rebuilding within [thirty (30)] calendar days after its receipt of notice from Party B, Party B may terminate this Contract at its discretion and Party A shall compensate Party B for all its economic losses in connection with such termination of this Contract, including but not limited to relocation costs.

2. In the event that the Premises are damaged due to Party A's fault to such extent that Party B is unable to use the Premises, Party A shall be liable for all economic losses suffered by Party B arising from such untenantability. Under such circumstances, Party A must promptly repair or rebuild the Premises, all payments of rent due with respect to the Premises shall be abated (to the extent of such untenantability or unusability) for the period from the date of such damage to the date on which the repaired Premises are delivered to Party B in a condition that is at least equivalent to the condition that existed prior to the occurrence of the damage. Furthermore, Party A shall compensate Party B for any economic losses incurred by Party B during such repair or reconstruction period.

3. In the event that the Premises are rendered untenantable or unusable (in whole or in part) due to Party B's fault, Party B shall promptly repair or rebuild the damaged Premises or the part of the Premises so damaged. Party B shall continue to carry out its obligations under this Contract during such repair or reconstruction period.

4. Under the circumstances set forth in (2) and (3) above, Party A and Party B shall make a prompt claim for their insurance compensation to their respective insurance companies. During the period of claim and prior to obtaining their insurance compensation, the Party responsible for such repair or reconstruction shall not delay the repair or reconstruction work of the damaged or destructed Premises.

5. In the event that the Premises are rendered untenantable or unusable (in whole or in part) not due to the fault of either party, and Party A decides to repair or rebuild the damaged Premises, all payments of rent due with respect to the Premises shall be abated (to the extent of such untenantability or unusability) for the period from the date of such damage to the date on which the repaired Premises are delivered to Party B in a condition that is at least equivalent to the condition that existed prior to the occurrence of the damage.

Article 9: Sub-lease

Party B may sublease part or all of the Premises to any of its Affiliates or any third parties subject to Party A's prior written consent; provided: the terms of the sublease agreement are fully consistent with those of this Contract and a copy of such sublease agreement is

provided to Party A.

Article 10: Premises Service Management

Party B shall be responsible for the routine day-to-day care and maintenance of the Premises. Responsibility for any structural or nonstructural repairs and maintenance including repairs or maintenance to the roof, windows or areas of water leaks or water damage shall be handled in accordance with Article 7.4 hereof.

Chapter IV Rent and Payment Methods

Article 11: Rent

1. The rent for the indoor space on the Premises shall be based on a price of RMB [19.82]/sq.m/month, and the rent for the Open Space shall be based on a price of RMB [4.66]/sq.m/month ("**Base Prices**") for the three years of the Term.

2. Rent Payment Method

Party B shall pay the rent to Party A on a monthly basis by the fifth day of each month.

Article 12: Deposit

The previous deposits RMB 150,593 ("**First Deposit**") and RMB 301,186 ("**Second Deposit**") that Party B paid to Party A in the first Lease Contract would be used as the deposit of this Contract. Upon the termination of this Contract, Party A shall refund the entire amount of the First Deposit and the Second Deposit to Party B with no interest accrued.

Article 13: Utilities

1. Connection and Responsibilities

Party A shall provide Party B with a continuous uninterrupted supply of Utilities directly connected to the Premises necessary for satisfying the full operating requirements of Party B, including, but not limited to, water and electricity supplies, so as to meet Party B's requirements for operating Party B's factory. Party A shall ensure that the Utilities required by Party B shall be supplied to Party B at the same price and upon the same terms and conditions enjoyed by other factories in this area. In the event of contradictions between this clause and the relevant regulations of the government authorities, the relevant regulations of the government authorities shall be complied with.

2. Payment of Utilities Fees

(a) Party B shall be responsible for the payment of all charges for the Utilities it uses. The consumption of water, electricity and gas shall be charged based on the readings of separate meters and according to the relevant standard rates provided by the relevant government authorities.

(b) Where possible, Party B shall be entitled to directly pay any charges or fees in relation to the consumption of the Utilities to the relevant Utilities suppliers.

(c) Party A shall not charge Party B for any expenses or fees other than based on the relevant standard rates for Utilities.

(d) Party B shall pay the charges for Utilities in accordance with the time schedule stipulated by the relevant offices in charge of collecting the Utilities fees.

3. Suspension and Termination of Utilities

During the Term, Party A shall not in any circumstances (except for Force Majeure or Party B's failure to make the payments under Article 11 and 13.2 for more than three (3) consecutive months) suspend or terminate the supply of any of the Utilities. Party A shall indemnify and hold harmless Party B against any and all claims, damages and losses (including legal fees) resulting from Party A's breach of this Article, or Party A's negligence, fault, act, or omission. Any breach of this Article by Party A shall be deemed a material breach and shall give the right to Party B to terminate this Contract.

Article 14: Management Fee and Other expenses

1. No Management Fee, other than the rent, shall be charged and Party A shall not collect any other similar fees from Party B other than those required from property lessees by PRC laws and regulations.
2. Party B shall reimburse Party A for the business tax, urban planning and education surcharge, property tax and mound maintenance fee, subject to the applicable tax rates under effective Chinese law, incurred by Party A due to the rent income with respect to the lease of the Premises to Party B.

Chapter V Representations, Warranties and Covenants of Party A

Article 15: Representations, Warranties and Covenants

1. In addition to the other representations and warranties hereunder, Party A warrants as of the Signature Date and shall continuously warrant for the entire Term as follows:

   (a) It is the owner of the Premises and the holder of the Building Ownership Certificate for the Premises as attached hereto as Annex III. Such Building Ownership Certificate has been duly issued and will continue to be in full force and effect during the entire Term.

   (b) It is duly authorized and shall continuously be authorized during the Term to lease the Premises to Party B. It is and shall continue to be the holder of the Property Leasing Permit attached hereto as Annex V, and such Property Leasing Permit has been duly issued and will continue to be in full force and effect during the entire Term.

   (c) Its ownership, construction and operation of the Premises are in compliance with applicable laws and regulations. Party A shall be responsible for any modifications to the Premises necessary to comply with any changes to applicable laws and regulations.

   (d) It is and shall continue to be the holder of the Land Use Rights Certificate pertaining to such land as including the Premises and attached hereto as Annex IV. The Premises and such land use rights, prior to the registration of this Contract as a lease contract with the relevant governmental authorities, have not been leased to other person(s) and are free and clear from any mortgages or any other rights of any third party, and there are no claims pending or threatened which would result in the creation of any encumbrances or liens on the Premises or such land use rights.

   (e) Party B shall not be requested to make any additional payment related to the Premises or for the use of the Premises except for the payments set forth herein.

   (f) The Premises comply with all applicable laws and regulations.

   (g) The Premises are in compliance with all material obligations set forth in the applicable environmental laws and regulations relating to pollution control and the protection of the environment, including with respect to emission, discharges, releases or threatened releases of pollutants, contaminants, chemicals or toxins, industrial or hazardous substances or wastes into the environment and Party A is not aware of any events or conditions which may interfere with or prevent such compliance of the Premises with the relevant applicable environmental laws and regulations.

   (h) The Premises do not contain and have not contained any Hazardous Material, landfills or dumps that are not in compliance with applicable PRC laws and regulations. The Premises have not been affected by any pollution whatsoever and do not contain and have not contained any underground storage tanks that are not in compliance with applicable environmental laws and regulations.

   (i) Party A has not used any Hazardous Material on the Premises in material violation of any applicable environmental laws and regulations. There are no events, practices or actions (including the generation, use, treatment, storage, transport, deposit, disposal, discharge or management of Hazardous Material) that have occurred or are occurring of have been or are in existence at the Premises that are in violation of any applicable environmental laws and regulations.

(j) There is no other applicable laws or regulations currently existing which would prevent or limit the usage of the Premises as contemplated by this Contract.

2. Party A hereby covenants to Party B that Party A shall indemnify, reimburse, defend and hold harmless Party B for all losses, damages and claims, including but not limited to, attorneys' fees, interest and penalties, incurred by Party B in connection with Party A's breach of its representations and warranties contained in this Contract, or the untruthfulness thereof, including but not limited to any claim based on pollution or threat to the environment related to the Premises.

Chapter VI Breach of Contract and Termination

Article 16: Breach of Contract and Termination

1. Breach

(a) In the event of breach by any Party of any provision of this Contract, the other Party shall have the right to cancel and terminate this Contract immediately: (a) if the breach is not rectified within [ninety days] after the notice thereof, or (b) if the breach is not rectifiable. Whether or not this Contract is terminated, the Party in breach of this Contract shall be liable to pay all such costs, losses, damages, and expenses, as may be incurred by the non-breaching Party as a result of such breach.

(b) Notwithstanding the provisions of Article 16.1.a, Party B shall be entitled to terminate this Contract, if due to Party A's fault or omission, this Contract is unable to be filed for recordation and registration with the governmental department in charge of real estate administration as per the relevant stipulations, or this Contract is cancelled. In such case Party A shall indemnify Party B for all the expenses and losses it has incurred for the installation of the facilities and equipment within the Premises.

2.Right to Terminate

a. Either Party may terminate this Contract immediately upon the occurrence of any of the following events:

(i) either Party in writing to terminate this Contract with three month notice, then with no compensation incurred;

(ii) the other Party is prevented from performing its obligations by reason of an Event of Force Majeure for a period of six (6) months or more;

(iii) the other Party is involved in cancellation or revocation of its business license, bankruptcy, receivership, liquidation, a composition with its creditors, dissolution, or any similar proceeding;

(iv) the relevant government department requires to cease construction of/remove the Premises or imposes restrictions on the rights and interests attached to the Premises; or

(v) the performance of this Contract has become in any material respect commercially impracticable by virtue of any law, order, interference or intervention of any government agency.

In the event that one of any above events occurs, either Party is entitled to terminate this Contract after giving the other Party a notice on termination of this Contract in accordance with Article 22. This Contract shall be terminated on the termination date stated in the relevant termination notice. After the delivery of the above termination notice, Party B shall return the Premises to Party A within one hundred and twenty (120) days after the date of the above termination in the reinstated state; provided that if an event as described in Article 16.2.a (ii), (iii), (iv) and (v) occurs Party B shall have no obligation to return the Premises in its reinstated state. In the event that this Contract is terminated pursuant to this Article 16.2(a), both Parties have no further obligations under this Contract.

b. Upon the expiration of the Term or the early termination of the Contract, Party B shall retain ownership of all equipment installed by itself, and may remove all equipment (including all signage, installations and movable partitions set up by Party B in the Premises) provided that any damage caused during such removal shall be repaired by Party B at its own cost. If Party A's property is damaged due to such equipment removal and is not restorable, Party B shall indemnify Party A for all such losses. Party A agrees not to charge the rent or any other fees from Party B during the period of removal/restoration, provided that the period of removal/restoration shall not exceed three months.

Chapter VII Miscellaneous

Article 17: Where one Party legally merges or divides, the appropriate rights and duties under this Contract shall be borne by the successor to the rights and duties of that Party and the necessary amendment procedures completed.

Article 18:Assignment

1. During the Term, Party A shall have the right to assign its rights and obligations under this Contract to its Affiliates, provided that Party A guarantees the rights and interests of Party B under this Contract shall remain intact. Party B hereby gives its consent to the assignment and undertakes to assist Party A to execute relevant assignment contracts with the assignee.

2. During the Term, Party B shall have the right to assign its rights and obligations under this Contract to its Affiliates, provided that Party B guarantees that the rights and interests of Party A under this Contract shall remain intact. Party A hereby gives its consent to the assignment and undertakes to assist Party B to execute relevant assignment contracts with the assignee.

Article 19: Unless otherwise provided, the Annexes to this Contract, and any supplementary documents executed by the Parties, shall form an integral part of this Contract.

Article 20: Any dispute, controversy or claim arising out of or in relation to this Contract, shall be resolved through friendly consultation. Such consultation shall begin immediately after one Party has given the other Party a written notice specifying the disputes that exist, the nature and points in dispute, and its intention for settling the disputes through consultation. If the Parties fail to resolve such disputes through consultation within thirty (30) days from the date upon which the aforementioned notice of dispute is given to the other Party, either Party may submit the disputes to the China International Economic and Trade Arbitration Commission ("**CIETAC**") for arbitration in accordance with CIETAC's arbitration rules in effect at that time. The arbitration proceedings shall be conducted in English and in Chinese and shall take place in Beijing. The arbitration tribunal shall consist of three arbitrators. The presiding arbitrator shall not be, nor shall have been, a national of either the PRC or the United State of America. The arbitral award rendered by the arbitration tribunal shall be final and binding upon the parties. During the period when a dispute is being resolved, the Parties shall in all other respects continue their implementation of this Contract.

Article 21: This Contract shall be governed by the laws of the PRC.

Article 22: Any notice required or permitted to be given under this Contract shall have been sufficiently given if delivered by hand or courier (with proof that the notice was properly addressed and delivered) or if deposited in the Chinese or Norweigian mail postage prepaid (with proof that the notice was properly addressed and posted) or by facsimile (with proof that the transmission was confirmed as sent by the originating machine to the facsimile number of the recipient on the date specified) addressed as follows:

If to Party A:
Attention: Li Zhaozhu
Facsimile No.: +86 20 34710770

If to Party B:
Attention: Fok KamTong
Facsimile No.: +86 20 39169008

Or to such other address or employee of either Party as may be specified from time to time in a written notice given by that Party. The Parties agree to acknowledge in writing the receipt of any notice delivered in person.

Article 23: This Contract shall become effective on its Signature Date as indicated on page one hereinabove.

Article 24: This Contract is executed in English and Chinese. In the event of any discrepancy, the Chinese version shall prevail.

Article 25: The invalidity of any provision of this Contract shall not affect the validity of any other provision of this Contract.

Article 26: Failure or delay on the part of either Party hereto to exercise any right, power or privilege under this Contract, or to require full performance by the other Party, shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude the exercise of any other right, power or privilege.

Party A:	
By: /s/ Li Zhaozhu **Name:** Li Zhaozhu **Title:**	**(chop)**
Party B:	
By: /s/ Fok Kam Tong **Name:** Fok Kam Tong **Title: General Manager**	**(chop)**

Annex I Premises

[ ]

Annex II Utilities

[ ]

Annex III Building Ownership Certificate

[ ]

Annex IV Land Use Right Certificate

[ ]

Annex V Property Leasing Permit

[ ]

Exhibit 4.54

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made as of the ___ day of _____ 2017 by and among Sphere 3D Corp., an Ontario corporation (the "Company"), and the Investors set forth on the signature pages affixed hereto (each an "Investor" and collectively the "Investors").

A. The Company and the Investors are executing and delivering this Agreement in reliance upon (i) the exemption from securities registration afforded by the provisions of Regulation D ("Regulation D"), as promulgated by the U.S. Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended, or (ii) the prospectus exemption provided by Section 2.3 of National Instrument 45-106 – *Prospectus Exemptions* ("NI 45 106"), in accordance with Schedule IV hereto; and

B. The Investors wish to purchase from the Company, and the Company wishes to sell and issue to the Investors, upon the terms and conditions stated in this Agreement, (i) up to an aggregate of [•] Common Shares (as defined below) ("Shares"), (ii) the One Year Warrants (as defined below) to purchase an aggregate of [•] Common Shares (subject to adjustment) at an exercise price of $0.40 per share (subject to adjustment), and (iii) the Five Year Warrants (as defined below) to purchase an aggregate of [•] Common Shares (subject to adjustment) at an exercise price of $0.55 per share (subject to adjustment) (together, the "Transaction").

In consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to those terms defined above and elsewhere in this Agreement, for the purposes of this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries Controls, is controlled by, or is under common control with, such Person.

"Business Day" means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

"Canadian Investor" means an Investor that is resident in or otherwise subject to the securities laws of a jurisdiction of Canada.

"Canadian Securities Laws" means the securities laws, regulations and rules, and the blanket rulings, policies and written interpretations of and multilateral or national instruments adopted by the securities regulators in each of the provinces and territories of Canada.

"Common Share Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Shares, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Shares.

"Common Shares" means the common shares in the capital of the Company (no par value).

"Company's Knowledge" means the actual knowledge of the executive officers (as defined in Rule 405 under the 1933 Act) of the Company, after due inquiry.

"Confidential Information" means trade secrets, confidential information and know-how (including but not limited to ideas, formulae, compositions, processes, procedures and techniques, research and development information, computer program code, performance specifications, support documentation, drawings, specifications, designs, business and marketing plans, and customer and supplier lists and related information).

"Control" (including the terms "controlling", "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"First Closing Amount" means such amount that is the product of (i) the Purchase Price and (ii) that number of Common Shares purchased at the First Closing.

"Five Year Warrants" means, as to each Investor, a warrant to purchase Common Shares in the form attached hereto as Exhibit C.

"Intellectual Property" means all of the following: (i) patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice); (ii) trademarks, service marks, trade dress, trade names, corporate names, logos, slogans and Internet domain names, together with all goodwill associated with each of the foregoing; (iii) copyrights and copyrightable works; (iv) registrations, applications and renewals for any of the foregoing; and (v) proprietary computer software (including but not limited to data, data bases and documentation).

"Material Adverse Effect" means a material adverse effect on (i) the assets, liabilities, results of operations, condition (financial or otherwise), business or prospects of the Company and its Subsidiaries taken as a whole, or (ii) the ability of the Company to perform its obligations under the Transaction Documents.

"Material Contract" means any contract, instrument or other agreement to which the Company or any Subsidiary is a party or by which it is bound which has been listed on Schedule II.

"Nasdaq" means The Nasdaq Global Market.

"OSC" means the Ontario Securities Commission.

"One Year Warrants" means, as to each Investor, a warrant to purchase Common Shares in the form attached hereto as Exhibit B.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"Purchase Price" means $0.30.

"SEC Filings" has the meaning set forth in Section 4.6.

"Second Closing Amount" means such amount equal to the product of (i) the Purchase Price and (ii) that number of Common Shares purchased at the Second Closing.

"Securities" means the Shares, the Warrants and the Warrant Shares.

"Shares" means the Common Shares to be purchased by the Investors hereunder.

"Subsidiary" of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person.

"Transaction Documents" means this Agreement and the Warrants.

"Warrants" means, as to each Investor, the One Year Warrants and the Five Year Warrants.

"Warrant Shares" means the Common Shares issuable upon the exercise of the Warrants.

"1933 Act" means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"1934 Act" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

2 . Purchase and Sale of the Shares and Warrants. Subject to the terms and conditions of this Agreement, (i) on the First Closing Date (as defined below), each of the Investors shall severally, and not jointly, purchase, and the Company shall sell and issue to the Investors, the Shares in the respective amounts set forth on Schedule I attached hereto and (ii) on the Second Closing Date (as defined below), each of the Investors shall severally, and not jointly, purchase, and the Company shall sell and issue to the Investors, the Shares and the Warrants representing the right to purchase Warrant Shares in the respective amounts set forth on Schedule I attached hereto.

3. Closings.

3.1 First Closing. Unless other arrangements have been made with a particular Investor, upon confirmation that the other conditions to closing specified herein have been satisfied or duly waived by the Investors, the Company shall deliver to O'Melveny & Myers LLP ("OMM"), in trust, a certificate or certificates, registered in such name or names as the Investors may designate, representing the Shares, with instructions that such certificates are to be held for release to the Investors only upon payment in full of the First Closing Amount to the Company by the Investors. Unless other arrangements have been made with a particular Investor, upon such receipt by OMM of the certificates issuable to an Investor, such Investor shall promptly, but no more than one (1) Business Day thereafter, cause a wire transfer in same day funds to be sent to the account of the Company as instructed in writing by the Company, in an amount representing such Investor's First Closing Amount. On the date (the "First Closing Date") the Company receives the First Closing Amount, the certificates evidencing the Shares shall be released to the Investors (the "First Closing"). The First Closing of the purchase and sale of the Shares shall take place at the offices of OMM, Two Embarcadero Center, 28th Floor, San Francisco, CA 94111, or at such other location and on such other date as the Company and the Investors shall mutually agree.

3.2 Second Closing. Unless other arrangements have been made with a particular Investor, upon confirmation that the other conditions to closing specified herein have been satisfied or duly waived by the Investors, the Company shall deliver to OMM, in trust, a certificate or certificates, registered in such name or names as the Investors may designate, representing the Shares and Warrants, with instructions that such certificates are to be held for release to the Investors only upon payment in full of the Second Closing Amount to the Company by the Investors. Unless other arrangements have been made with a particular Investor, upon such receipt by OMM of the certificates issuable to an Investor, such Investor shall promptly, but no more than one (1) Business Day thereafter, cause a wire transfer in same day funds to be sent to the account of the Company as instructed in writing by the Company, in an amount representing such Investor's Second Closing Amount. On the date (the "Second Closing Date" and, together with the First Closing Date, the "Closing Dates" and each a "Closing Date") the Company receives the Second Closing Amount, the certificates evidencing the Shares purchased on the Second Closing Date and Warrants shall be released to the Investors (the "Second Closing" and, together with the First Closing, the "Closings" and each a "Closing"). The Second Closing of the purchase and sale of the Warrants shall take place at the offices of OMM, Two Embarcadero Center, 28th Floor, San Francisco, CA 94111, or at such other location and on such other date as the Company and the Investors shall mutually agree.

4. Representations and Warranties of the Company. The Company hereby represents and warrants to each Investor that:

4. 1 Organization, Good Standing and Qualification. Each of the Company and its Subsidiaries is a corporation duly organized, validly existing and in good standing (where such concept exists) under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to own or lease its properties, in each case as described in the SEC Filings. Each of the Company and its Subsidiaries is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property makes such qualification or leasing necessary unless the failure to so qualify has not had and could not reasonably be expected to have a Material Adverse Effect.

4.2 Authorization. The Company has the corporate power and authority to enter into this Agreement and has taken all requisite action on its part, its officers, directors and shareholders necessary for (i) the authorization, execution and delivery of the Transaction Documents, (ii) the authorization of the performance of all obligations of the Company hereunder or thereunder, and (iii) the authorization, issuance (or reservation for issuance) and delivery of the Securities. The Transaction Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally and to general equitable principles.

4.3 Capitalization. The authorized capital of the Company consists of an unlimited number of Common Shares, as set forth in the SEC Filings and in the Articles of Amalgamation of the Company, as amended and as in effect as of the date of this Agreement (the "Articles of Amalgamation"). All of the issued and outstanding Common Shares have been duly authorized and validly issued and are fully paid, nonassessable and free of pre-emptive rights and were issued in full compliance with applicable provincial, state and federal securities law and any rights of third parties. Except as described in the SEC Filings or described in Schedule III, all of the issued and outstanding shares of capital stock of each Subsidiary have been duly authorized and validly issued and are fully paid, nonassessable and free of pre-emptive rights, were issued in full compliance with applicable provincial, state and federal securities law and any rights of third parties and are owned by the Company, beneficially and of record, subject to no lien, encumbrance or other adverse claim. Except as described in the SEC Filings, no Person is entitled to pre-emptive or similar

statutory or contractual rights with respect to any securities of the Company. Except as described in the SEC Filings or described in Schedule III, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which the Company or any of its Subsidiaries is or may be obligated to issue any equity securities of any kind. Except as described or listed in the SEC Filings and warrants and purchase agreements entered into with one or more additional investors (each an "Additional Investor") on or about the date hereof, there are no voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among the Company and any of the securityholders of the Company relating to the securities of the Company held by them. Except as described in the SEC Filings, no Person has the right to require the Company to register any securities of the Company under the 1933 Act, whether on a demand basis or in connection with the registration of securities of the Company for its own account or for the account of any other Person.

Except as described in the SEC Filings, the issuance and sale of the Securities hereunder will not obligate the Company to issue Common Shares or other securities to any other Person (other than the Investors) and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security.

Except as described in the SEC Filings, the Company does not have outstanding shareholder purchase rights, a "poison pill" or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

As of December 15, 2016 and prior to giving effect to the Transaction, there were (i) 52,361,967 Common Shares issued and outstanding, (ii) 10,922,623 Common Shares issuable upon exercise of outstanding warrants, (iii) 3,313,507 Common Shares issuable upon exercise of outstanding options and (iv) 3,992,834 outstanding restricted stock units.

4.4 Valid Issuance. The Shares have been duly and validly authorized and, when issued and paid for pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and shall be free and clear of all encumbrances and restrictions, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws. The Warrants have been duly and validly authorized. Upon the due exercise of the Warrants and full payment for the exercise price thereof, the Warrant Shares will be validly issued, fully paid and non-assessable free and clear of all encumbrances and restrictions, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws. The Company has reserved a sufficient number of Common Shares for issuance upon the exercise of the Warrants, free and clear of all encumbrances and restrictions, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws.

4.5 Consents. The execution, delivery and performance by the Company of the Transaction Documents and the offer, issuance and sale of the Securities require no consent of, action by or in respect of, or filing with, any Person, governmental body, agency, or official other than filings that have been made pursuant to applicable provincial and state securities laws and post-sale filings pursuant to applicable provincial, state and federal securities laws which the Company undertakes to file within the applicable time periods. Subject to the accuracy of the representations and warranties of each Investor set forth in Section 5 hereof, and, in the case of each Canadian Investor, Schedule IV hereto, the Company has taken all action necessary to exempt (i) the issuance and sale of the Securities, (ii) the issuance of the Warrant Shares upon due exercise of the Warrants, and (iii) the other transactions contemplated by the Transaction Documents from the provisions of any shareholder rights plan or other "poison pill" arrangement, any anti-takeover, business combination or control share law or statute binding on the Company or to which the Company or any of its assets and properties may be subject and any provision of the Articles of Amalgamation

or the Company's Bylaw No. 1, as amended and as in effect as of the date of this Agreement (the "Bylaws"), that is or could reasonably be expected to become applicable to the Investors as a result of the transactions contemplated hereby, including, without limitation, the issuance of the Securities and the ownership, disposition or voting of the Securities by the Investors or the exercise of any right granted to the Investors pursuant to this Agreement or the other Transaction Documents.

4.6 Delivery of SEC Filings; Business. The Company has made available to the Investors through the EDGAR system, true and complete copies of the Company's most recent Annual Report on Form 40-F for the fiscal year ended December 31, 2015 (as amended prior to the date hereof, the "40-F"), and all other reports filed or furnished by the Company pursuant to Sections 13(a), 13(e), 14 and 15(d) of the 1934 Act since July 7, 2014 (collectively, the "SEC Filings"). The SEC Filings are the only filings required of the Company pursuant to the 1934 Act for such period. The Company and its Subsidiaries are engaged in all material respects only in the business described in the SEC Filings and the SEC Filings contain a complete and accurate description in all material respects of the business of the Company and its Subsidiaries, taken as a whole.

4.7 Use of Proceeds. The net proceeds of the sale of the Shares and the Warrants hereunder shall be used by the Company for working capital and general corporate purposes, as well as to fund potential acquisitions of the stock or assets of other companies.

4.8 No Material Adverse Change. Since December 31, 2015, except as described in the SEC Filings, there has not been:

(i) any change in the consolidated assets, liabilities, financial condition or operating results of the Company from that reflected in the financial statements included in the Company's Form 6-K dated November 14, 2016, except for changes in the ordinary course of business which have not had and could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate;

(ii) any declaration or payment of any dividend, or any authorization or payment of any distribution, on any of the capital stock of the Company, or any redemption or repurchase of any securities of the Company;

(iii) any material damage, destruction or loss, whether or not covered by insurance to any assets or properties of the Company or its Subsidiaries;

(iv) any waiver, not in the ordinary course of business, by the Company or any Subsidiary of a material right or of a material debt owed to it;

(v) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company or a Subsidiary, except in the ordinary course of business and which is not material to the assets, properties, financial condition, operating results or business of the Company and its Subsidiaries taken as a whole (as such business is presently conducted and as it is proposed to be conducted);

(vi) any change or amendment to the Articles of Amalgamation (other than in connection with the transactions contemplated hereby) or Bylaws, or material change to any material contract or arrangement by which the Company or any Subsidiary is bound or to which any of their respective assets or properties is subject;

(vii) any material labor difficulties or labor union organizing activities with respect to employees of the Company or any Subsidiary;

(viii) any material transaction entered into by the Company or a Subsidiary other than in the ordinary course of business;

(ix) the loss of the services of any key employee, or material change in the composition or duties of the senior management of the Company or any Subsidiary;

(x) the loss or, to the Company's Knowledge, threatened loss of any customer which has had or could reasonably be expected to have a Material Adverse Effect; or

(xi) any other event or condition of any character that has had or could reasonably be expected to have a Material Adverse Effect.

4.9 SEC Filings. At the time of filing thereof, the SEC Filings complied as to form in all material respects with the requirements of the 1934 Act and did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

4.10 No Conflict, Breach, Violation or Default. The execution, delivery and performance of the Transaction Documents by the Company and the issuance and sale of the Securities will not (i) conflict with or result in a breach or violation of (a) any of the terms and provisions of, or constitute a default under the Articles of Amalgamation or the Bylaws (true and complete copies of which have been made available to the Investors through the EDGAR system), or (b) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company, any Subsidiary or any of their respective assets or properties, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien, encumbrance or other adverse claim upon any of the properties or assets of the Company or any Subsidiary or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any Material Contract, except in the case of clauses (i)(b) and (ii) above, such as could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate.

4.11 Tax Matters. The Company and each Subsidiary has prepared and filed (or filed applicable extensions therefore) all tax returns required to have been filed by the Company or such Subsidiary with all appropriate governmental agencies and paid all taxes shown thereon or otherwise owed by it, other than any such taxes which the Company or any Subsidiary are contesting in good faith and for which adequate reserves have been provided and reflected in the Company's financial statements included in the SEC Filings. The charges, accruals and reserves on the books of the Company in respect of taxes for all fiscal periods are adequate in all material respects, and there are no material unpaid assessments against the Company or any Subsidiary nor, to the Company's Knowledge, any basis for the assessment of any additional taxes, penalties or interest for any fiscal period or audits by any federal, state or local taxing authority except for any assessment which is not material to the Company and its Subsidiaries, taken as a whole. All taxes and other assessments and levies that the Company or any Subsidiary is required to withhold or to collect for payment have been duly withheld and collected and paid to the proper governmental entity or third party when due, other than any such taxes which the Company or any Subsidiary are contesting in good faith and for which adequate reserves have been provided and reflected in the Company's financial statements included in the SEC Filings. There are no tax liens or claims pending or, to the Company's Knowledge, threatened in writing against the Company or any Subsidiary or any of their respective assets or property. Except as described in

the SEC Filings, there are no outstanding tax sharing agreements or other such arrangements between the Company and any Subsidiary or other corporation or entity.

4.12 Title to Properties. Except as disclosed in the SEC Filings, the Company and each Subsidiary has good and marketable title to all real properties and all other properties and assets (excluding Intellectual Property assets which are the subject of Section 4.15 hereof) owned by it, in each case free from liens, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or currently planned to be made thereof by them; and except as disclosed in the SEC Filings, the Company and each Subsidiary holds any leased real or personal property under valid and enforceable leases with no exceptions that would materially interfere with the use made or currently planned to be made thereof by them.

4.13 Certificates, Authorities and Permits. The Company and each Subsidiary possess adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by it, except to the extent failure to possess such certificates, authorities or permits could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate, and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that, if determined adversely to the Company or such Subsidiary, could reasonably be expected to have a Material Adverse Effect, individually or in the aggregate.

4.14 Labor Matters.

(a) Except as set forth in the SEC Filings, the Company is not a party to or bound by any collective bargaining agreements or other agreements with labor organizations. The Company has not violated in any material respect any laws, regulations, orders or contract terms, affecting the collective bargaining rights of employees, labor organizations or any laws, regulations or orders affecting employment discrimination, equal opportunity employment, or employees' health, safety, welfare, wages and hours.

(b) (i) There are no labor complaint, grievance, disputes or arbitration existing, or to the Company's Knowledge, threatened, involving strikes, slow-downs, work stoppages, job actions, disputes, lockouts or any other disruptions of or by the Company's employees, (ii) there are no unfair labor practices or petitions for election pending or, to the Company's Knowledge, threatened before the Ontario Labour Relations Board, the National Labor Relations Board or any other federal, provincial, state or local labor commission or tribunal relating to the Company's employees, (iii) no demand for recognition or certification heretofore made by any labor organization or group of employees is pending with respect to the Company and (iv) to the Company's Knowledge, the Company enjoys good labor and employee relations with its employees and labor organizations.

(c) The Company is, and at all times has been, in compliance with all applicable laws respecting employment (including laws relating to classification of employees and independent contractors) and employment practices, terms and conditions of employment, wages and hours, and immigration and naturalization, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate. There are no claims pending against the Company before the Human Rights Code, the Equal Employment Opportunity Commission or any other administrative body or in any court asserting any violation of the Human Rights Code, Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1967, 42 U.S.C. §§ 1981 or 1983 or any other federal, provincial, state or local Law, statute or ordinance barring discrimination in employment.

(d) To the Company's Knowledge, the Company has no liability for the improper classification by the Company of its employees as independent contractors or leased employees prior to each Closing.

4.15 Intellectual Property. The Company and the Subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the Intellectual Property necessary for the conduct of the business of the Company and the Subsidiaries as currently conducted and as described in the SEC Filings as being owned or licensed by them, except where the failure to own, license or have such rights could not reasonably be expected to result in a Material Adverse Effect, individually or in the aggregate. Except as described in the SEC Filings, (i) to the Company's Knowledge, there are no third parties who have or will be able to establish rights to any Intellectual Property, except for the ownership rights of the owners of the Intellectual Property which is licensed to the Company as described in the SEC Filings or where such rights could not reasonably be expected to result in a Material Adverse Effect, individually or in the aggregate, (ii) there is no pending or, to the Company's Knowledge, threat of any, action, suit, proceeding or claim by others challenging the Company's or any Subsidiary's rights in or to, or the validity, enforceability, or scope of, any Intellectual Property owned by or licensed to the Company or any Subsidiary or claiming that the use of any Intellectual Property by the Company or any Subsidiary in their respective businesses as currently conducted infringes, violates or otherwise conflicts with the intellectual property rights of any third party, and (iii) to the Company's Knowledge, the use by the Company or any Subsidiary of any Intellectual Property by the Company or any Subsidiary in their respective businesses as currently conducted does not infringe, violate or otherwise conflict with the intellectual property rights of any third party.

4.16 Environmental Matters. To the Company's Knowledge, neither the Company nor any Subsidiary is in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "Environmental Laws"), owns or operates any real property contaminated with any substance that is subject to any Environmental Laws, is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim has had or could reasonably be expected to have a Material Adverse Effect, individually or in the aggregate; and there is no pending or, to the Company's Knowledge, threatened investigation that might lead to such a claim.

4.17 Litigation. There are no pending actions, suits or proceedings against or affecting the Company, its Subsidiaries or any of its or their properties; and to the Company's Knowledge, no such actions, suits or proceedings are threatened, except (i) as described in the SEC Filings or (ii) any such proceeding, which if resolved adversely to the Company or any Subsidiary, could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or since January 1, 2014 has been the subject of any action involving a claim of violation of or liability under federal, provincial, or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the Company's Knowledge, there is not pending or contemplated, any investigation by the OSC (or any other Canadian securities regulatory authority) or SEC involving the Company or any current or former director or officer of the Company. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the 1933 Act or the 1934 Act.

4.18 Financial Statements. The financial statements included in each SEC Filing comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing (or to the extent corrected by a subsequent restatement)

and present fairly, in all material respects, the consolidated financial position of the Company as of the dates shown and its consolidated results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis ("GAAP") (except as may be disclosed therein or in the notes thereto). Except as set forth in the SEC Filings filed prior to the date hereof, neither the Company nor any of its Subsidiaries has incurred any liabilities, contingent or otherwise, except those incurred in the ordinary course of business, consistent (as to amount and nature) with past practices since the date of such financial statements, none of which, individually or in the aggregate, have had or could reasonably be expected to have a Material Adverse Effect.

4.19 Insurance Coverage. The Company and each Subsidiary maintain in full force and effect insurance coverage that is customary for comparably situated companies for the business being conducted and properties owned or leased by the Company and each Subsidiary.

4.20 Brokers and Finders. No Person, including, without limitation, any Investor or any current holder of Common Shares, will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company, any Subsidiary or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company.

4.21 No Directed Selling Efforts or General Solicitation. Neither the Company nor any Person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D) in connection with the offer or sale of any of the Securities.

4.22 No Integrated Offering. Assuming the accuracy of the Investors' representations and warranties set forth in Section 5 hereof, neither the Company nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security, which are or will be integrated with this offering of the Securities hereunder in a manner that would adversely affect reliance by the Company on Section 4(a)(2) for the exemption from registration for the transactions contemplated hereby or would require registration of the Securities under the 1933 Act.

4.23 Private Placement. Assuming the accuracy of the Investors' representations and warranties set forth in Section 5 hereof and, in the case of Canadian Investors, Schedule IV hereto, the offer and sale of the Securities to the Investors as contemplated hereby is exempt from the registration requirements of the 1933 Act, and, in the case of Canadian Investors, is exempt from the prospectus requirement under applicable Canadian Securities Laws.

4.24 Questionable Payments. Neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, any of their respective current or former shareholders, directors, officers, employees, agents or other Persons acting on behalf of the Company or any Subsidiary, has, on behalf of the Company or any Subsidiary or in connection with their respective businesses, (i) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any direct or indirect unlawful payments to any governmental officials or employees from corporate funds, (iii) established or maintained any unlawful or unrecorded fund of corporate monies or other assets, (iv) made any false or fictitious entries on the books and records of the Company or any Subsidiary, or (v) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment of any nature.

4.25 Transactions with Affiliates. Except as disclosed in the SEC Filings and except as would not be required to be disclosed in the SEC Filings, none of the officers or directors of the Company and, to the Company's Knowledge, none of the employees of the Company is presently a party to any transaction with the Company or any Subsidiary (other than as holders of stock options and/or warrants, and for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the Company's Knowledge, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

4.26 Internal Controls. The Company is in material compliance with the provisions of the Sarbanes-Oxley Act of 2002 currently applicable to the Company. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in 1934 Act Rules 13a-15(e) and 15d-15(e)) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company, including the Subsidiaries, is made known to the certifying officers by others within those entities, particularly during the period in which the Company's most recently filed periodic report under the 1934 Act, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by the most recently filed periodic report under the 1934 Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the 1934 Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 308 of Regulation S-K) or, to the Company's Knowledge, in other factors that could significantly affect the Company's internal controls. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP and the applicable requirements of the 1934 Act.

4.27 Investment Company. The Company is not required to be registered as, and is not an Affiliate of, and immediately following each of the Closings will not be required to register as, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Each of the Investors acknowledges and agrees that the Company has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in this Section 4. Each of the Investors further acknowledges and agrees that neither the Company nor any other Person has made any representation or warranty, expressed or implied, as to the accuracy or completeness of any information received by any such Investor which constitutes or may be deemed to constitute a projection, estimate or other forecast and certain business plan information, except that such information was prepared in good faith and based upon assumptions that the Company believes to have been reasonable at the time such information, if any, was provided to the applicable Investor.

5. Representations and Warranties of the Investors. Each of the Investors hereby severally, and not jointly, represents and warrants to the Company that:

5.1 Organization and Existence. Such Investor is a corporation, limited partnership or limited liability company, it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite corporate, partnership or limited liability company power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder.

5.2 Authorization. The execution, delivery and performance by such Investor of the Transaction Documents to which such Investor is a party have been duly authorized and each will constitute the legal, valid and binding obligation of such Investor, enforceable against such Investor in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.

5.3 Consents. All consents, approvals, orders and authorizations required on the part of such Investor in connection with the execution, delivery or performance of each Transaction Document and the consummation of the transactions contemplated hereby and thereby have been obtained and are effective as of the date hereof.

5.4 Purchase Entirely for Own Account. The Securities to be received by such Investor hereunder will be acquired for such Investor's own account, not as nominee, trustee, representative or agent, and not with a view to the resale or distribution of any part thereof in violation of the 1933 Act, and such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same and has no arrangement or understanding with any other Persons regarding the distribution of such Securities in violation of the 1933 Act or any applicable federal, provincial or state securities law without prejudice, however, to such Investor's right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal, provincial and state securities laws. Such Investor is acquiring the Securities hereunder in the ordinary course of its business. Nothing contained herein shall be deemed a representation or warranty by such Investor to hold the Securities for any period of time. Such Investor is not a broker-dealer registered with the SEC under the 1934 Act or an entity engaged in a business that would require it to be so registered.

5.5 Investment Experience. Such Investor acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

5.6 Disclosure of Information. Such Investor has had an opportunity to receive all information related to the Company requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Securities. Such Investor acknowledges receipt of copies of the SEC Filings. Neither such inquiries nor any other due diligence investigation conducted by such Investor shall modify, limit or otherwise affect such Investor's right to rely on the Company's representations and warranties contained in this Agreement.

5.7 Restricted Securities. Such Investor understands that the Securities are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the 1933 Act only in certain limited circumstances.

5.8 Legends. It is understood that, except as provided below, certificates evidencing the Securities and any record of a book entry or electronic issuance evidencing the Securities may bear the following or any similar legend:

(a) "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE " SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE TRANSFERRED UNLESS (I) SUCH SECURITIES HAVE BEEN REGISTERED FOR SALE PURSUANT TO THE SECURITIES ACT, (II) SUCH SECURITIES MAY BE SOLD PURSUANT TO RULE 144, OR (III) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL TO THE TRANSFEROR, THE SUBSTANCE OF WHICH OPINION SHALL BE REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT."

(b) If required by the authorities of any state in connection with the issuance of sale of the Securities, the legend required by such state authority, including the legend set forth in Schedule IV hereto.

5.9 Accredited Investor. (i) In the case of a non-Canadian Investor, such Investor is an accredited investor as defined in Rule 501(a) of Regulation D, as amended, under the 1933 Act, or (ii) in the case of a Canadian investor, has completed, executed and delivered to the Company the form attached hereto as Schedule IV. Such Investor was not organized for the specific purpose of acquiring the Securities and is not required to be registered as a broker-dealer under Section 15 of the Exchange Act. Each Canadian Investor shall complete, execute and deliver to the Company the form attached hereto as Schedule IV.

5.10 No General Solicitation. Such Investor did not learn of the investment in the Securities as a result of any general solicitation or general advertising.

5.11 Brokers and Finders. No Person will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company, any Subsidiary or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of such Investor.

5.12 Prohibited Transactions. Since the such time as such Investor was first contacted by the Company or any other Person acting on behalf of the Company regarding the transactions contemplated hereby through the public announcement of the Transaction, neither such Investor nor any Affiliate of such Investor which (a) had knowledge of the transactions contemplated hereby, (b) has or shares discretion relating to such Investor's investments or trading or information concerning such Investor's investments, including in respect of the Securities, or (c) is subject to such Investor's review or input concerning such Affiliate's investments or trading (collectively, "Trading Affiliates") has, directly or indirectly, effected or agreed to effect, or will directly or indirectly effect, any short sale, whether or not against the box, established any "put equivalent position" (as defined in Rule 16a-1(h) under the 1934 Act) with respect to the Common Shares, granted any other right (including, without limitation, any put or call option) with respect to the Common Shares or with respect to any security that includes, relates to or derived any significant part of its value from the Common Shares or otherwise sought to hedge its position in the Securities (each, a "Prohibited Transaction"). Such Investor acknowledges that the representations, warranties and covenants contained in this Section 5.12 are being made for the benefit of the Investors as well as the Company and that each of the

other Investors shall have an independent right to assert any claims against such Investor arising out of any breach or violation of the provisions of this Section 5.12.

The Company acknowledges and agrees that each Investor has not made any representations or warranties with respect to the transactions contemplated by the Transaction Documents other than those specifically set forth in this Section 5 and, in the case of each Canadian investor, Schedule IV hereto.

6. Conditions to Closings.

6.1 Conditions to the Investors' Obligations. The obligation of each Investor to (i) purchase the Shares at the First Closing is subject to the fulfillment to such Investor's satisfaction, on or prior to the First Closing Date, of the following conditions, any of which may be waived by such Investor (as to itself only) and (ii) purchase the Shares and Warrants at the Second Closing is subject to the fulfillment to such Investor's satisfaction, on or prior to the Second Closing Date, of the following conditions, any of which may be waived by such Investor (as to itself only):

(a) The representations and warranties made by the Company in Section 4 hereof qualified as to materiality shall be true and correct at all times prior to and on the applicable Closing Date as so qualified, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date as so qualified, and, the representations and warranties made by the Company in Section 4 hereof not qualified as to materiality shall be true and correct in all material respects at all times prior to and on the applicable Closing Date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date. The Company shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the applicable Closing Date.

(b) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary or appropriate for consummation of the purchase and sale of the Securities and the consummation of the other transactions contemplated by the Transaction Documents, all of which shall be in full force and effect.

(c) The Company shall have filed with Nasdaq a Notification Form: Listing of Additional Shares for the listing of the Shares and the Warrant Shares on Nasdaq, a copy of which shall have been provided to the Investors.

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

(e) The Company shall have delivered a certificate, executed on behalf of the Company by its Chief Executive Officer or its Chief Financial Officer, dated as of the applicable Closing Date, certifying to the fulfillment of the conditions specified in subsections (a), (b), (d) and (h) of this Section 6.1.

(f) The Company shall have delivered a certificate, executed on behalf of the Company by its Secretary, dated as of the applicable Closing Date, certifying the resolutions adopted by the

Board of Directors of the Company or any duly authorized committee thereof approving the transactions contemplated by this Agreement and the other Transaction Documents and the issuance of the Securities, certifying the current versions of the Articles of Amalgamation and Bylaws and certifying as to the signatures and authority of persons signing the Transaction Documents and related documents on behalf of the Company.

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

6.2 Conditions to Obligations of the Company. The Company's obligation to (i) sell and issue the Shares at the First Closing is subject to the fulfillment to the satisfaction of the Company on or prior to the First Closing Date of the following conditions, any of which may be waived by the Company and (ii) sell and issue the Shares and Warrants at the Second Closing is subject to the fulfillment to the satisfaction of the Company on or prior to the Second Closing Date of the following conditions, any of which may be waived by the Company:

(a) The representations and warranties made by the Investors in Section 5 hereof and, in the case of Canadian Investors, Schedule IV hereto, other than the representations and warranties contained in Sections 5.4, 5.5, 5.6, 5.7, 5.8, 5.9 and 5.10 (the "Investment Representations"), shall be true and correct in all material respects when made, and shall be true and correct in all material respects on the applicable Closing Date with the same force and effect as if they had been made on and as of said date. The Investment Representations shall be true and correct in all respects when made, and shall be true and correct in all respects on the applicable Closing Date with the same force and effect as if they had been made on and as of said date. The Investors shall have performed in all material respects all obligations and covenants herein required to be performed by them on or prior to the applicable Closing Date.

(b) The Investors shall have delivered the First Closing Amount and the Second Closing Amount, as applicable, to the Company.

6.3 Termination of Obligations to Effect Closing; Effects.

(a) The obligations of the Company, on the one hand, and the Investors, on the other hand, to effect the First Closing and the Second Closing, as applicable, shall terminate as follows:

(i) Upon the mutual written consent of the Company and the Investors;

(ii) By the Company if any of the conditions set forth in Section 6.2 shall have become incapable of fulfillment, and shall not have been waived by the Company;

(iii) By an Investor (with respect to itself only) if any of the conditions set forth in Section 6.1 shall have become incapable of fulfillment, and shall not have been waived by the Investor; or

(iv) By either the Company or any Investor (with respect to itself only) if the Second Closing has not occurred on or prior to January 30, 2017;

provided, however, that, except in the case of clause (i) above, the party seeking to terminate its obligation to effect the Closing shall not then be in breach of any of its representations, warranties, covenants or agreements contained in this Agreement or the other Transaction Documents if such breach has resulted in

the circumstances giving rise to such party's seeking to terminate its obligation to effect the applicable Closing.

(b) In the event of termination by the Company or any Investor of its obligations to effect the First Closing or the Second Closing pursuant to this Section 6.3, written notice thereof shall forthwith be given to the other Investors by the Company and the other Investors shall have the right to terminate their obligations to effect the applicable Closing upon written notice to the Company and the other Investors. Nothing in this Section 6.3 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

7. Covenants and Agreements.

7.1 Reservation of Common Shares. The Company shall at all times reserve and keep available out of its authorized but unissued Common Shares, solely for the purpose of providing for the exercise of the Warrants, such number of Common Shares as shall from time to time equal the Warrant Shares issuable from time to time.

7.2 Reports. The Company will furnish to the Investors and/or their assignees such information relating to the Company and its Subsidiaries as from time to time may reasonably be requested by the Investors and/or their assignees; provided, however, that the Company shall not disclose material nonpublic information to the Investors, or to advisors to or representatives of the Investors, in connection with the transactions contemplated by this Agreement unless prior to disclosure of such information the Company identifies such information as being material nonpublic information and provides the Investors, such advisors and representatives with the opportunity to accept or refuse to accept such material nonpublic information for review and any Investor wishing to obtain such information enters into an appropriate confidentiality agreement with the Company with respect thereto.

7.3 No Conflicting Agreements. The Company will not take any action, enter into any agreement or make any commitment that would conflict or interfere in any material respect with the Company's obligations to the Investors under the Transaction Documents.

7.4 Insurance. The Company shall not materially reduce the insurance coverages described in Section 4.19.

7.5 Compliance with Laws. The Company will comply in all material respects with all applicable laws, rules, regulations, orders and decrees of all governmental authorities.

7.6 Listing of Underlying Shares and Related Matters. Promptly following the date hereof, the Company shall (i) take all necessary action to cause the Shares to be listed on Nasdaq no later than the First Closing Date and (ii) take all necessary action to cause the Warrant Shares to be listed on Nasdaq no later than the Second Closing Date. Further, if the Company applies to have its Common Shares or other securities traded on any other principal stock exchange or market, it shall include in such application the Shares and the Warrant Shares and will take such other action as is necessary to cause such Common Shares to be so listed. The Company will use commercially reasonable efforts to continue the listing and trading of its Common Shares on Nasdaq and, in accordance, therewith, will use commercially reasonable efforts to comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of such market or exchange, as applicable.

7.7 Termination of Covenants. The provisions of Sections 7.2 through 7.5 shall terminate and be of no further force and effect on the earlier of (i) the sale or disposition of any Securities by an Investor pursuant to Rule 144 or pursuant to any other exemption under the 1933 Act such that the purchaser acquires freely tradable securities or (ii) any Securities of the Investor becoming eligible to be sold without restriction pursuant to Rule 144.

7.8 Removal of Legends. Upon the earlier of (i) the sale or disposition of any Securities by an Investor pursuant to Rule 144 or pursuant to any other exemption under the 1933 Act such that the purchaser acquires freely tradable securities or (ii) any Securities of the Investor becoming eligible to be sold without restriction pursuant to Rule 144, upon the written request of such Investor, subject to any applicable Canadian Securities Laws, the Company shall or, in the case of Common Shares, shall cause the transfer agent for the Common Shares (the "Transfer Agent") to issue replacement certificates representing such Securities or updated or replacement records of book entries or electronic issuances evidencing such Securities. From and after the earlier of such dates, upon an Investor's written request, the Company shall promptly cause certificates or records of book-entries or electronic issuances evidencing the Investor's Securities to be replaced with certificates or records of book-entries or electronic issuances, respectively, which do not bear such restrictive legends, and Warrant Shares subsequently issued upon due exercise of the Warrants shall not bear such restrictive legends provided the provisions of either clauses (i) or (ii) above, as applicable, are satisfied with respect thereto. In addition, upon the Shares and/or the Warrant Shares becoming eligible to be sold without restriction pursuant to Rule 144, the Company shall (1) deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall reissue a certificate or a record of book entry or electronic issuance representing Common Shares without legends upon receipt by such Transfer Agent of the legended certificates or the appropriate ownership records of book-entry or electronically issued Common Shares bearing legends, as applicable, for such Common Shares, together with either (A) a customary representation by the Investor that Rule 144 applies to the Common Shares represented thereby or (B) a statement by the Investor that such Investor has sold the Common Shares represented thereby in accordance with the Plan of Distribution contained in the Registration Statement, and (2) cause its counsel to deliver to the Transfer Agent one or more blanket opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act. When the Company is required to cause an unlegended certificate to replace a previously issued legended certificate or an unlegended record of book-entry or electronic issuance to replace a previously issued legended record of book-entry or electronic issuance, if: (x) the unlegended certificate or unlegended record of book-entry or electronic issuance is not delivered to an Investor within three (3) Business Days of submission by that Investor of a legended certificate or appropriate ownership records of book-entry or electronically issued Common Shares bearing legends, as applicable, and supporting documentation to the Transfer Agent as provided above and (y) prior to the time such unlegended certificate or unlegended record of book-entry or electronic issuance is received by the Investor after such three (3) Business Day period, the Investor, or any third party on behalf of such Investor or for the Investor's account, purchases (in an open market transaction or otherwise) Common Shares to deliver in satisfaction of a sale by the Investor of Common Shares represented by such certificate or record of book-entry or electronic issuance (a "Buy-In"), then the Company shall pay in cash to the Investor (for costs incurred either directly by such Investor or on behalf of a third party) the amount by which the total purchase price paid for Common Shares as a result of the Buy-In (including brokerage commissions, if any) exceeds the proceeds received by such Investor as a result of the sale to which such Buy-In relates. The Investor shall provide the Company written notice together with a reasonably detailed summary indicating the amounts payable to the Investor in respect of the Buy-In.

7.9 Subsequent Equity Sales. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy

or otherwise negotiate in respect of any security (as defined in Section 2 of the 1933 Act) that will be integrated with the offer or sale of the Securities in a manner that would require the registration under the 1933 Act of the sale of the Securities to the Investors, or that will be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any trading market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

7.10 Equal Treatment of Investors. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration is also offered to all of the parties to the Transaction Documents. For clarification purposes, this provision constitutes a separate right granted to each Investor by the Company and negotiated separately by each Investor, and is intended for the Company to treat the Investors as a class and shall not in any way be construed as the Investors acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise.

8. Survival and Indemnification.

8.1 Survival. The representations, warranties, covenants and agreements contained in this Agreement shall survive the Second Closing of the transactions contemplated by this Agreement until the expiration of the applicable statute of limitations.

8.2 Indemnification. The Company agrees to indemnify and hold harmless each Investor and its Affiliates and their respective directors, officers, trustees, members, managers, employees and agents, and their respective successors and assigns, from and against any and all losses, claims, damages, liabilities and expenses (including, without limitation, reasonable attorney fees and disbursements (subject to Section 8.3 below) and other expenses incurred in connection with investigating, preparing or defending any action, claim or proceeding, pending or threatened and the costs of enforcement thereof) (collectively, "Losses") to which such Person may become subject as a result of any breach of any representation, warranty, covenant or agreement made by or to be performed on the part of the Company under the Transaction Documents, and will reimburse any such Person for all such amounts as they are incurred by such Person.

8.3 Conduct of Indemnification Proceedings. Any person entitled to indemnification hereunder shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (a) the indemnifying party has agreed to pay such fees or expenses, (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and provided, further, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the

indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. The Company will not be liable to any indemnified party under this Agreement (x) for any settlement by such indemnified party effected without the Company's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, or (y) for any Losses incurred by such indemnified party which a court of competent jurisdiction determines in a final judgment which is not subject to further appeal are solely attributable to (A) a breach of any of the representations, warranties, covenants or agreements made by such indemnified party under this Agreement or in any other Transaction Document or (B) the fraud, gross negligence or willful misconduct of such indemnified party.

9. Miscellaneous.

9.1 Successors and Assigns. This Agreement may not be assigned by a party hereto without the prior written consent of the Company or the Investors, as applicable, provided, however, that an Investor may assign its rights and delegate its duties hereunder in whole or in part to an Affiliate or to a third party acquiring some or all of its Securities in a transaction complying with applicable securities laws without the prior written consent of the Company or the other Investors. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Without limiting the generality of the foregoing, in the event that the Company is a party to a merger, amalgamation, consolidation, share exchange or similar business combination transaction in which the Common Shares is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Common Shares" shall be deemed to refer to the securities received by the Investors in connection with such transaction. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

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

9.3 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

9.4 Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given as hereinafter described (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by electronic mail, telex or telecopier, then such notice shall be deemed given upon receipt of confirmation of complete transmittal, (iii) if given by mail, then such notice shall be deemed given upon the earlier of (a) receipt of such notice by the recipient or (b) three days after such notice is deposited in first class mail, postage prepaid, and (iv) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one Business Day after delivery to such carrier. All notices shall be addressed to the party to be notified at the address as follows, or at such other address as such party may designate by ten days' advance written notice to the other party:

If to the Company:

Sphere 3D Corp.

9112 Spectrum Center Boulevard
San Diego, California 92123
Attention: Kurt Kalbfleisch, Chief Financial Officer
Fax: (858) 495-4267

With a copy to:

O'Melveny & Myers LLP
2756 Sand Hill Road
Menlo Park, California 94025
Attention: Warren T. Lazarow, Esq.
Paul L. Sieben, Esq.
Fax: (650) 473-2601

If to the Investors:

to the addresses set forth on the signature pages hereto.

9.5 Expenses. The parties hereto shall pay their own costs and expenses in connection herewith, regardless of whether the transactions contemplated hereby are consummated. In the event that legal proceedings are commenced by any party to this Agreement against another party to this Agreement in connection with this Agreement or the other Transaction Documents, the party or parties which do not prevail in such proceedings shall severally, but not jointly, pay their pro rata share of the reasonable attorneys' fees and other reasonable out-of-pocket costs and expenses incurred by the prevailing party in such proceedings.

9.6 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investors. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Securities purchased under this Agreement at the time outstanding, each future holder of all such Securities, and the Company.

9.7 Publicity. Except as set forth below, no public release or announcement concerning the transactions contemplated hereby shall be issued by the Company or the Investors without the prior consent of the Company (in the case of a release or announcement by the Investors) or the Investors (in the case of a release or announcement by the Company) (which consents shall not be unreasonably withheld), except as such release or announcement may be required by law or the applicable rules or regulations of any securities exchange or securities market, in which case the Company or the Investors, as the case may be, shall allow the Investors or the Company, as applicable, to the extent reasonably practicable in the circumstances, reasonable time to comment on the portion of such release or announcement concerning the transactions contemplated hereby in advance of such issuance. The Company will make such filings and notices in the manner and time required by the OSC (or any other Canadian securities regulatory authority), the SEC or Nasdaq. The Company will disclose the consummation of the transactions contemplated by this Agreement no later than its next quarterly earnings release issued after the consummation of the transactions contemplated by this Agreement.

9.8 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or

unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

9.9 Entire Agreement. This Agreement, including the Exhibits and the Schedules, and the other Transaction Documents constitute the entire agreement among the parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

9.10 Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

9.11 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements made and to be performed entirely within the State of New York (except to the extent the provisions of the Business Corporations Act (Ontario) would be mandatorily applicable to the issuance of the Shares, the Warrants, the Warrant Shares). Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **TO THE EXTENT ALLOWABLE UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

9.12 Independent Nature of Investors' Obligations and Rights. The obligations of each Investor under any Transaction Document are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under any Transaction Document. The decision of each Investor to purchase Securities pursuant to the Transaction Documents has been made by such Investor independently of any other Investor. Nothing contained herein or in any Transaction Document, and no action taken by any Investor pursuant thereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Investor acknowledges that no other Investor has acted as agent for such Investor in connection with making its investment hereunder and that no Investor will be acting as agent of such Investor in connection with monitoring its investment in the Securities or enforcing its rights under the Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. Each Investor

has been represented by its own separate legal counsel in their review and negotiation of the Transaction Documents. The Company acknowledges that each of the Investors has been provided with the same Transaction Documents for the purpose of closing a transaction with multiple Investors and not because it was required or requested to do so by any Investor.

[Signature page follows]

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

The Company: SPHERE 3D CORP.

By:_____
Name: Kurt Kalbfleisch
Title: Chief Financial Officer

The Investors: _____

By:_____
Name:

Title:

Address for Notice:

_____
_____
_____

Fax: _____

Investor Aggregate Purchase Price: US$_____

Schedule I

Purchase and Sale of Shares and Warrants

Name	Number of Shares Purchased at First Closing	Number of Shares Purchased at Second Closing	Number of Warrant Shares Issuable Upon Exercise of One Year Warrants	Number of Warrant Shares Issuable Upon Exercise of Five Year Warrants	Aggregate Purchase Price
					US$

Schedule II

Material Contracts

- Voting Agreements each dated July 15, 2013 between Eric L. Kelly and various shareholders of the Company.
- Board Nomination Right Agreement dated July 15, 2013 between Eric L. Kelly and the Company.
- Special Warrant Indenture dated June 5, 2014 between the Company and Equity Financial Trust Company.
- 8% Senior Secured Convertible Debenture dated December 1, 2014 between the Company and FBC Holdings S.A.R.L. for $19.5 million.
- Escrow Agreement dated December 1, 2014 between the Company and Continental Stock Transfer and Trust Company.
- Asset Purchase Agreement dated August 10, 2015 between Imation Corp., Overland Storage, Inc. and Sphere 3D Corp.
- Lock-Up Agreement dated August 10, 2015 between Imation Corp. and Sphere 3D Corp.
- First Amendment to 8% Senior Secured Convertible Debenture dated November 30, 2015 between the Company and FBC Holdings S.A.R.L.
- Credit Agreement, dated April 6, 2014, by and among Overland Storage, Inc., Tandberg Data GmbH, and Opus Bank.
- Term Loan Agreement dated as of September 16, 2016 by and between Sphere 3D Corp. and FBC Holdings S.à r.l.

Schedule III

Opus Credit Facility

Pursuant to that certain Credit Agreement, dated April 6, 2014, by and among Overland Storage, Inc., Tandberg Data GmbH, and Opus Bank, (i) the stock of Overland Storage, Inc., Sphere 3D Inc., V3 Systems Holdings, Inc., and (ii) 65% of the stock of Overland Storage (Europe) Limited, Overland Storage S.à r.l., Overland Storage GmbH, and Overland Technologies Luxembourg S.à r.l. have been pledged as collateral.

FBC Facilities

Pursuant to the Term Loan Agreement dated as of September 16, 2016 among Sphere 3D Corp. and FBC Holdings S.à r.l., (i) the stock of Overland Storage, Inc., Sphere 3D Inc., V3 Systems Holdings, Inc., and (ii) 65% of the stock of Overland Storage (Europe) Limited, Overland Storage S.à r.l., Overland Storage GmbH, and Overland Technologies Luxembourg S.à r.l. have been pledged as collateral.

Pursuant to that certain 8% Senior Secured Convertible Debenture due March 31, 2018, (i) the stock of Overland Storage, Inc., Sphere 3D Inc., V3 Systems Holdings, Inc., (ii) 65% of the stock of Overland Storage (Europe) Limited, Overland Storage S.à r.l., Overland Storage GmbH, and Overland Technologies Luxembourg S.à r.l. and (iii) 100% of the stock of Tandberg Data GmbH have been pledged as collateral.

Preferred Equity Certificates

Preferred Equity Certificates, dated June 30, 2014, issued by Tandberg Data Holdings S.à r.l. to Overland Technologies Luxembourg S.à r.l., as holder, having a par value of $17,000,000.

Preferred Equity Certificates, dated June 30, 2014, issued by Overland Technologies Luxembourg S.à r.l. to Overland Storage, Inc., as holder, having a par value of $17,000,000.

Warrants

Warrant, issued November 8, 2016, to Peter Smiechowski for the purchase of up to 25,000 common shares at an exercise price of $2.00 per common share, having an expiration date of November 8, 2019.

Warrant, issued December 30, 2016, to Opus Bank for the purchase of up to 862,068 common shares at an exercise price of $0.01 per common share, having an expiration date of December 30, 2022.

Schedule IV

Special Conditions for Canadian Investors

This Schedule IV, including Annex IV-1 annexed hereto, are to be completed and executed by any Investor who is a Canadian Investor, being an Investor resident in or otherwise subject to the securities laws of a jurisdiction of Canada. This Schedule IV, including Annex IV-1 annexed hereto, forms part of the Purchase Agreement to which it is attached (the "Agreement") and the Investor is otherwise subject to the terms and conditions specified in such Agreement. *Terms not otherwise defined herein have the meanings attributed to them in the Agreement.*

1. Acknowledgments of the Investor

The Investor acknowledges that:

(a) AN INVESTMENT IN THE SECURITIES IS NOT WITHOUT RISK AND THE INVESTOR MAY LOSE ITS ENTIRE INVESTMENT;

(b) The Company may complete additional financings in the future in order to develop the business of the Company and fund its ongoing development, and such future financings may have a dilutive effect on current securityholders of the Company, including the Investor;

(c) The offer, sale and issuance of the Securities is exempt from the prospectus requirements of Canadian Securities Laws and, as a result: (i) the Investor may not receive information that would otherwise be required under Canadian Securities Laws or be contained in a prospectus prepared in accordance with Canadian Securities Laws, (ii) the Investor is restricted from using most of the protections, rights and remedies available under Canadian Securities Laws, including statutory rights of rescission or damages , and (iii) the Company is relieved from certain obligations that would otherwise apply under Canadian Securities Laws;

(d) No prospectus has been filed with any Regulator in connection with the Transaction and no Regulator has made any finding or determination as to the merit for investment in, or made any recommendation or endorsement with respect to, the Securities. As used in this Schedule, "**Regulator**" means (i) any governmental or public entity department, court, commission, board, bureau, agency or instrumentality, (ii) any quasi-governmental, self-regulatory or private body exercising any regulatory authority and (iii) any stock exchange;

(e) The Company is required to file a report of trade with all applicable Regulators containing personal information about Investors of the Securities. This report of trade will include the full name, residential address and telephone number of each Investor, the number and type of Securities purchased, the total purchase price paid for such Securities, the date of the Closings and the prospectus exemption relied upon under Canadian Securities Laws to complete such purchase. In Ontario, this information is collected indirectly by the OSC (or any other Canadian securities regulatory authority) under the authority granted to it under, and for the purposes of the administration and enforcement of, the securities legislation in Ontario. Any Investor may contact the Administrative Support Clerk at the OSC (or any other Canadian securities regulatory authority) at Suite 1903, Box 55, 20 Queen Street West, Toronto, Ontario, M5H 3S8 or by telephone at (416) 593-3684 for more information regarding the indirect collection of such information by the OSC (or any other Canadian securities regulatory authority). The Company may also be required pursuant to Canadian Securities Laws to file this Agreement on SEDAR. By completing this Agreement, the Investor authorizes the indirect collection of the information described in this Section 1(e) by all applicable Regulators

and consents to the disclosure of such information to the public through (i) the filing of a report of trade with all applicable Regulators and (ii) the filing of this Agreement on SEDAR.

(f) The Securities are being offered on a "private placement" basis and will be subject to resale restrictions under Canadian Securities Laws, and the Company may make a notation on its records or give instructions to any transfer agent of the Shares in order to implement such resale restrictions;

(g) The physical certificates representing the Securities (and any replacement certificate issued prior to the expiration of the applicable hold periods), if any, will bear a legend in accordance with Canadian Securities Laws in substantially the following form and, in the event that no physical certificates are issued, the below constitutes written notice of the legend restriction under applicable Canadian Securities Laws:

"UNLESS PERMITTED UNDER APPLICABLE SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THIS SECURITY TO OR FOR THE BENEFIT OF A CANADIAN PURCHASER UNTIL THE DATE THAT IS FOUR MONTHS AND A DAY AFTER _____ 2017."

2. Representations and Warranties of the Investor

The Investor represents and warrants as follows to the Company at the date of this Agreement and at each Closing Date and acknowledges and confirms that the Company is relying on such representations and warranties in connection with the offer, sale and issuance of the Securities to the Investor:

(a) THE INVESTOR HAS KNOWLEDGE IN FINANCIAL AND BUSINESS AFFAIRS, IS CAPABLE OF EVALUATING THE MERITS AND RISKS OF AN INVESTMENT IN THE SECURITIES, AND IS ABLE TO BEAR THE ECONOMIC RISK OF SUCH INVESTMENT EVEN IF THE ENTIRE INVESTMENT IS LOST;

(b) The Investor has not been provided with a prospectus, an offering memorandum or any other document in connection with its subscription for Securities and the decision to subscribe for Securities and execute this Agreement has not been based upon any verbal or written representation made by or on behalf of the Company or any employee or agent of the Company;

(c) The distribution of the Securities has not been made through, or as a result of, and is not being accompanied by, (i) a general solicitation, (ii) any advertisement including articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio or television, or (iii) any seminar or meeting whose attendees have been invited by general solicitation or general advertising;

(d) The Investor is eligible to purchase the Securities pursuant to an exemption from the prospectus requirements of Canadian Securities Laws. The Investor has completed and delivered to the Company the Canadian Investor Certificate annexed to this Schedule IV as Annex IV-1, evidencing the Investor's status and criteria for reliance on the relevant prospectus exemption under Canadian Securities Laws and: (i) confirms that it complies with the criteria for reliance on the prospectus exemption and the truth and accuracy of all statements made in such certificate as of the date of this Agreement and as of each Closing Date; (ii) understands that the Company is required to verify that the Investor satisfies the relevant criteria to qualify for the prospectus exemption; and (iii) may be required to provide additional information or documentation to evidence compliance with the prospectus exemption.

(e) The Investor is resident of a province of territory of Canada, and, where required, is purchasing the Securities as principal;

(f) The Investor has been independently advised as to and is aware of the resale restrictions under Canadian Securities Laws with respect to the Securities;

(g) The Investor has obtained such legal and tax advice as it considers appropriate in connection with the offer, sale and issuance of the Securities and the execution, delivery and performance by it of this Agreement and the transactions contemplated by the Transaction Documents. The Investor is not relying on the Company, its affiliates or its counsel in this regard;

(h) None of the funds that the Investor is using to purchase the Securities are to the knowledge of the Investor, proceeds obtained or derived, directly or indirectly, as a result of illegal activities;

(i) No Person has made any oral or written representations to the Investor: (i) that any Person will resell or repurchase; (ii) that any Person will refund the purchase price of the Securities; or (iii) as to the future value or price of any of the Securities;

(j) The funds representing the aggregate Purchase Price advanced by the Investor are not proceeds of crime as defined in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) (the "**PCMLTFA**"). To the Investor's knowledge none of the subscription funds to be provided by the Investor (i) have been or will be derived from or related to any activity that is deemed criminal under the laws of Canada or any other applicable jurisdiction, or (ii) are being tendered on behalf of a person or entity (A) with whom the Company would be prohibited from dealing with under applicable money laundering, terrorist financing, economic sanctions, criminal or other similar laws or regulations or (B) who has not been identified to the Investor. The Investor acknowledges that the Company may in the future be required by law to disclose the Investor's name and other information relating to this Agreement and the Investor's subscription hereunder, on a confidential basis pursuant to the PCMLTFA or other laws or regulations and shall promptly notify the Company if the Investor discovers that any of the foregoing representations ceases to be true, and to provide the Company with appropriate information in connection therewith.

3. Covenants of the Investor

(a) The Investor will comply with Canadian Securities Laws concerning the subscription, purchase, holding and resale of the Securities and will consult with its legal advisers with respect to complying with resale restrictions under Canadian Securities Laws with respect to the Securities. Resale restrictions may apply to resales of the Securities outside of Canada.

(b) The Investor will execute, deliver, file and otherwise assist the Company in filing any reports, undertakings and other documents required under Canadian Securities Laws in connection with the offer, sale and issuance of the Securities.

4. Language

The Investor confirms its express wish that this Agreement (including all Schedules and Annexes), the Transaction Documents and all related documents be drafted in English. *L'acquéreur confirme sa volonté expresse que la présente convention (y compris toutes les annexes et tous les appendices), les « Transaction Documents » décrits à la présente convention, ainsi que tous les documents et contrats s'y rapportant directement ou indirectement soient rédigés en anglais.*

[Signature page follows]

The Investor: [_____]

By:_____
Name:
Title:

[Annex IV-1 on next page]

Annex IV-1

Canadian Investor Certificate
(annex to Schedule IV (Special Conditions for Canadian Investors))

TO: SPHERE 3D CORP. (THE "ISSUER")

I. REPRESENTATIONS AND WARRANTIES

Reference is made to the Purchase Agreement between, the Issuer and the undersigned (referred to herein as the "**Investor**") dated as of the date hereof (the "**Agreement**"). Upon execution of this Canadian Investor Certificate by the Investor, this Canadian Investor Certificate shall be incorporated into and form a part of the Agreement with respect to such Investor. Terms not otherwise defined herein have the meanings attributed to them in the Agreement (including Schedule IV thereto) and in National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**"). All monetary references in this Annex IV-1 are in Canadian dollars.

In connection with the purchase of the Securities by the Investor, the Investor hereby represents, warrants and certifies to the Issuer that the Investor:

(i) is purchasing the Securities as principal;

(ii) is resident in or is subject to the laws of the Province or Territory of (check one):

☐ Alberta	☐ Northwest Territories	☐ Prince Edward Island
☐ British Columbia	☐ Nova Scotia	☐ Quebec
☐ Manitoba	☐ Nunavut	☐ Saskatchewan
☐ Newfoundland and Labrador	☐ Ontario	☐ Yukon
☐ New Brunswick		

(iii) has not been provided with any offering memorandum in connection with the purchase of the Securities; and

(iv) is an "accredited investor" (as defined in NI 45-106), and falls within the category(ies) of accredited investor (check all applicable exemptions):

☐ 1. a financial institution,

☐ 2. the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),

☐ 3. a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,

☐ 4. a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer,

☐ 5. an individual registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d),

☐ 6. an individual formerly registered under the securities legislation of a jurisdiction of Canada, other than an individual formerly registered solely as a representative of a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),

☐ 7. the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,

☐ 8. a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec,

☐ 9. any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,

☐ 10. a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada), a pension commission or similar regulatory authority of a jurisdiction of Canada,

☐ 11. an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000,

☐ **- Please mark to indicate that you have returned an executed copy of Form 45-106F9 (attached to this Certificate)**

☐ 12. an individual who beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5,000,000,

☐ 13. an individual whose net income before taxes exceeded $200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,

☐ **- Please mark to indicate that you have returned an executed copy of the Risk Acknowledgement Form 45-106F9 (attached to this Certificate)**

☐ 14. an individual who, either alone or with a spouse, has net assets of at least $5,000,000,

☐ **- Please mark to indicate that you have returned an executed copy of the Risk Acknowledgement Form 45-106F9 (attached to this Certificate)**

☐ 15. a person, other than an individual or investment fund, that has net assets of at least $5,000,000 as shown on its most recently prepared financial statements and that has not been created or used solely to purchase or hold securities as an accredited investor as defined in this paragraph (m),

☐ 16. an investment fund that distributes or has distributed its securities only to

(i) a person that is or was an accredited investor at the time of the distribution,

(ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 (Minimum amount investment) of NI 45-106, or 2.19 (Additional investment in investment funds) of NI 45-106, or

(iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 (Investment fund reinvestment) of NI 45-106,

☐ 17. an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt,

☐ 18. a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be,

☐ 19. a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction,

☐ 20. a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded,

☐ 21. an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function,

☐ 22. a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors,

☐ 23. an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser,

☐ 24. a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as an accredited investor,

☐ 25. a trust established by an accredited investor for the benefit of the accredited investor's family members of which a majority of the trustees are accredited investors and all of the beneficiaries are the accredited investor's spouse, a former spouse of the accredited investor or a parent, grandparent, brother, sister, child or grandchild of that accredited investor, of that accredited investor's spouse or of that accredited investor's former spouse.

AS USED IN THIS ANNEX IV-1, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

"**control person**" means

in Ontario, Alberta, Newfoundland and Labrador, Nova Scotia and Saskatchewan:

(a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a person or company holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or

(b) each person or company in a combination of persons or companies, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a combination of persons or companies holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

in British Columbia and New Brunswick:

(a) a person who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or

(b) each person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer,

and, if a person or combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;]

in Prince Edward Island, Northwest Territories, Nunavut and the Yukon:

(a) a person who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a person holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or

(b) each person in a combination of persons acting in concert by virtue of an agreement, arrangement, commitment or understanding, who holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons

is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

in Quebec:

(a) a person that, alone or with other persons acting in concert by virtue of an agreement, holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer. If the person, alone or with other persons acting in concert by virtue of an agreement, holds more than 20% of those voting rights, the person is presumed to hold a sufficient number of the voting rights to affect materially the control of the issuer; and

in Manitoba

(a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer,

(b) each person or company, or combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or understanding, that holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or

(c) a person or company, or combination of persons or companies, that holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, unless there is evidence that the holding does not affect materially the control of the issuer;

"**director**" means

(a) a member of the board of directors of a company or an individual who performs similar functions for a company, and

(b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

"**eligibility adviser**" means

(a) a person that is registered as an investment dealer and authorized to give advice with respect to the type of security being distributed, and

(b) in Saskatchewan or Manitoba, also means a lawyer who is a practicing member in good standing with a law society of a jurisdiction of Canada or a public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada provided that the lawyer or public accountant must not

(i) have a professional, business or personal relationship with the issuer, or any of its directors, executive officers, founders, or control persons (as such term is defined in applicable securities legislation), and

(ii) have acted for or been retained personally or otherwise as an employee, executive officer, director, associate or partner of a person that has acted for or been retained by the issuer or any of its directors, executive officers, founders or control persons (as such term is defined in applicable securities legislation) within the previous 12 months;

"**executive officer**" means, for an issuer, an individual who is

(a) a chair, vice-chair or president,

(b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or

(c) performing a policy-making function in respect of the issuer;

"**financial assets**" means

(a) cash,

(b) securities, or

(c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

"**financial institution**" means,

(a) other than in Ontario,

(i) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act,

(ii) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada; or

(iii) a Schedule III bank,

(b) and in Ontario,

(i) a bank listed in Schedule I, II or III to the *Bank Act* (Canada);

(ii) an association to which the *Cooperative Credit Association Act* (Canada) applies or a central cooperative credit society for which an order has been made under subsection 473(1) of that Act; or

(iii) a loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative or credit union

league or federation that is authorized by a statute of Canada or Ontario to carry on business in Canada or Ontario, as the case may be.

"**founder**" means, in respect of an issuer, a person who,

(a) acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, and

(b) at the time of the distribution or trade is actively involved in the business of the issuer;

"**fully managed account**" means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client's express consent to a transaction;

"**investment fund**" has the same meaning as in National Instrument 81-106 Investment Fund Continuous Disclosure;

"**person**" includes

(a) an individual,

(b) a corporation,

(c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and

(d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

"**offering memorandum**" means a document, together with any amendments to that document, purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision in respect of securities being sold in a distribution to which section 53 of the *Securities Act* (Ontario) would apply but for the availability of one or more exemptions contained in Ontario securities laws, but does not include a document setting out current information about an issuer for the benefit of a prospective purchaser familiar with the issuer through prior investment or business contacts,

"**related liabilities**" means

(a) liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets, or

(b) liabilities that are secured by financial assets;

"**Schedule III bank**" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"**spouse**" means, an individual who,

(a) is married to another individual and is not living separate and apart within the meaning of the Divorce Act (Canada), from the other individual,

(b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender, or

(c) in Alberta, is an individual referred to in paragraph (a) or (b), or is an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act* (Alberta);

"**subsidiary**" means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

Interpretation

In this Annex IV-1, a person (first person) is considered to control another person (second person) if

(a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,

(b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or

(c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Certified at _____this, _____.

_____ By: _____

Witness Name:

Title:

(d)

Form 45-106F9
Form for Individual Accredited Investors

WARNING! **This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.**

SECTION 1 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITYHOLDER	
1. About your investment	
Type of securities: Common Shares, Warrants	Issuer:
Purchased from: Sphere 3D Corp.	
SECTIONS 2 TO 4 TO BE COMPLETED BY THE INVESTOR	
2. Risk acknowledgement	
This investment is risky. Initial that you understand that:	**Your initials**
Risk of loss – You could lose your entire investment of: _____	
Liquidity risk – You may not be able to sell your investment quickly – or at all.	
Lack of information – You may receive little or no information about your investment.	
Lack of advice – You will not receive advice from the salesperson about whether this investment is suitable for you unless the salesperson is registered. The salesperson is the person who meets with, or provides information to, you about making this investment. To check whether the salesperson is registered, go to www.aretheyregistered.ca.	
3. Accredited investor status	
You must meet at least **one** of the following criteria to be able to make this investment. Initial the statement that applies to you. (You may initial more than one statement). The person identified in section 6 is responsible for ensuring that you meet the definition of accredited investor. That person, or the salesperson identified in section 5, can help you if you have questions about whether you meet these criteria.	**Your initials**
• Your net income before taxes was more than C$200,000 in each of the 2 most recent calendar years, and you expect it to be more than C$200,000 in the current calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Your initials
• Your net income before taxes combined with your spouse's was more than C$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than C$300,000 in the current calendar year.	
• Either alone or with your spouse, you own more than C$1 million in cash and securities, after subtracting any debt related to the cash and securities.	

• Either alone or with your spouse, you have net assets worth more than C$5 million. (Your net assets are your total assets (including real estate) minus your total debt.)	

4. Your name and your signature

By signing this form, you confirm that you have read this form and you understand the risks of making this investment as identified in this form.

First and last name (please print):	
Signature:	Date:

SECTION 5 TO BE COMPLETED BY THE SALESPERSON

5. Salesperson information

First and last name of salesperson (please print):	
Telephone:	Email:
Name of firm (if registered):	

SECTION 6 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY

6. For more information about this investment, contact:

Sphere 3D Corp.
[Investor Contact:
MKR Group Inc.
Todd Kehrli or Jim Byers
+1 323/468-2300]

For more information about prospectus exemptions, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.

Exhibit 4.55

UNLESS PERMITTED UNDER APPLICABLE SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THIS SECURITY TO OR FOR THE BENEFIT OF A CANADIAN PURCHASER UNTIL THE DATE THAT IS FOUR MONTHS AND A DAY AFTER [_____], 2017.

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED UNLESS REGISTERED UNDER THE 1933 ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE, AND THE CORPORATION AND ITS TRANSFER AGENT HAS RECEIVED AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THEM TO SUCH EFFECT.

Void after 5:00 p.m. (New York City time) on the Expiry Date.

WARRANT

For the purchase of Common Shares of

SPHERE 3D CORP.

(Organized under the laws of the Province of Ontario, Canada)

Number of Warrants: [•] Warrant Certificate No. [•]

This is to certify that, for value received, [_____], [*address of holder*] (the "**Holder**"), shall have the right to purchase from Sphere 3D Corp. (the "**Corporation**"), at any time and from time to time up to 5:00 p.m. (New York City time) (the "**Expiry Time**") on [_____], 2018 (the "**Expiry Date**"), as amended herein, one fully paid and non-assessable common share in the capital of the Corporation (a "**Common Share**") for each Warrant (individually, a "**Warrant**") represented hereby at a price of US$0.40 per Common Share (the "**Exercise Price**"), upon and subject to the terms and conditions set forth herein. This Warrant is one of the Warrants to purchase Common Shares issued pursuant to that certain Purchase Agreement, dated as of [_____], 2017, by and among the Company and the investors (the "**Investors**") referred to therein (the "**Purchase Agreement**").

1. For the purposes of this Warrant Certificate, the term "**Common Shares**" means common shares without par value in the capital of the Corporation as constituted as of the date hereof, provided that in the event of a subdivision, redivision, reduction, combination or consolidation thereof or any other adjustment under Section 8 hereof, or successive such subdivisions, redivisions, reductions, combinations, consolidations or other adjustments, then subject to the adjustments, if any, having been made in accordance with the provisions of this Warrant Certificate, "**Common Shares**" shall thereafter mean the shares, other securities or other property resulting from such subdivision, redivision, reduction, combination or consolidation or other adjustment.

2. All Warrant Certificates shall be signed by an officer of the Corporation holding office at the time of signing, or any successor or replacement of such person and notwithstanding any change in any of the persons holding said offices between the time of actual signing and the delivery of the Warrant Certificate, the Warrant Certificate so signed shall be valid and binding upon the Corporation.

3. All rights under any of the Warrants in respect of which the right of subscription and purchase therein provided for shall not theretofore have been exercised shall wholly cease and such Warrants shall be wholly void and of no valid or binding effect after the Expiry Time.

4. The right to purchase Common Shares of the Corporation pursuant to the Warrants may only be exercised by the Holder at or before the Expiry Time by:

(a) duly completing and executing a subscription substantially in the form attached as Schedule "A" (the "**Subscription Form**"), in the manner therein indicated; and

(b) surrendering this Warrant Certificate and the duly completed and executed Subscription Form to the Corporation prior to the Expiry Time at 9112 Spectrum Center Boulevard, San Diego, California, 92123, together with payment of the purchase price for the Common Shares subscribed for in the form of certified cheque, money order or bank draft payable to the Corporation in an amount equal to the then applicable Exercise Price multiplied by the number of Common Shares subscribed for ("**Aggregate Exercise Price**").

5. Upon delivery and payment as set forth in Section 4, the Corporation shall cause to be issued to the Holder the number of Common Shares subscribed for by the Holder and the Holder shall become a shareholder of the Corporation in respect of such Common Shares with effect from the date of such delivery and payment and shall be entitled to delivery of a certificate or certificates evidencing such shares, or to a non-transferable written acknowledgement of the right to obtain a certificate. The Corporation shall cause such certificate or certificates to be mailed to the Holder at the address or addresses specified in the Subscription Form within five (5) Business Days (as defined below) of such delivery and payment as set forth in Section 4 or, if so instructed by the Holder, held for pick-up by the Holder at the principal office of the Corporation; provided, however, if the transfer agent for the Common Shares is participating in DTC Fast Automated Securities Transfer Program (the "**DTC Program**") and the Common Shares to be delivered to the Holder pursuant to this Section 5 are eligible to participate in the DTC Program, the Corporation will cause the transfer agent to credit such aggregate number of Common Shares to which the Holder is entitled pursuant to this Section 5 to the Holder's or its designee's balance account with DTC through its Deposit / Withdrawal At Custodian system. Notwithstanding any adjustment provided for in Section 8 hereof, the Corporation shall not be required upon the exercise of any Warrants to issue fractional Common Shares in satisfaction of its obligations hereunder and the Holder understands and agrees that it will not be entitled to any cash payment or other form of compensation in respect of a fractional Common Share that might otherwise have been issued. As used in this Warrant Certificate, "**Business Day**" means a day, other than a Saturday or Sunday, on which banks in New York City and Toronto (Ontario) are open for the general transaction of business.

6. The holding of a Warrant shall not constitute the Holder a shareholder of the Corporation nor entitle him to any right or interest in respect thereof except as herein expressly provided.

7. The Corporation covenants and agrees that until the Expiry Time, while any of the Warrants shall be outstanding, it shall reserve and there shall remain unissued out of its authorized capital a sufficient number of Common Shares to satisfy the right of purchase herein provided, as such right of purchase may be adjusted pursuant to Sections 8 and 9 hereof. The Corporation further covenants and agrees that while any of the Warrants shall be outstanding, the Corporation shall (a) comply with the securities legislation applicable to it; and (b) use its commercially reasonable efforts to do or cause to be done all things necessary to preserve and maintain its corporate existence. All Common Shares which shall be issued upon the exercise of the right to purchase herein provided for, upon payment therefor of the amount at which such Common Shares

may at the time be purchased pursuant to the provisions hereof, shall be issued as fully paid and non-assessable shares and the holders thereof shall not be liable to the Corporation or its creditors in respect thereof.

8. (a) As used in this Warrant, unless there is something in the subject matter or context inconsistent therewith, the words and terms defined below shall have the respective meanings specified therefor:

"**Current Market Price**" of the Common Shares at any date means the price per share equal to the Weighted Average Price (as defined below) at which the Common Shares have traded on the Nasdaq Global Market or, if the Common Shares are not then listed on the Nasdaq, on such other stock exchange on which the shares trade as may be selected by the directors of the Corporation for such purpose (collectively, "**Nasdaq**"); and

"**director**" means a director of the Corporation and, unless otherwise specified herein, a reference to action "by the directors" means action by the directors of the Corporation as a board or, whenever empowered, action by the executive committee of such board; and

"**Weighted Average Price** " means, for the Common Shares as of any date, the dollar volume-weighted average price for the Common Shares on Nasdaq during the period beginning at 9:30:01 a.m., New York time (or such other time as Nasdaq publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as Nasdaq publicly announces is the official close of trading), as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as such market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the OTC Link or "pink sheets" by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of the Common Shares on such date shall be the fair market value as mutually determined by the Corporation and the Holder. If the Corporation and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 26.

(b) If and whenever at any time after the date hereof and prior to the Expiry Time the Corporation shall (i) subdivide or redivide its then outstanding Common Shares into a greater number of Common Shares, (ii) reduce, combine or consolidate its then outstanding Common Shares into a lesser number of Common Shares or (iii) issue Common Shares (or securities exchangeable for or convertible into Common Shares) to the holders of all or substantially all of its then outstanding Common Shares by way of a stock dividend or other distribution (any of such events herein called a "**Common Share Reorganization**"), then the Exercise Price shall be adjusted effective immediately after the effective date of any such event in (i) or (ii) above or the record date at which the holders of Common Shares are determined for the purpose of any such dividend or distribution in (iii) above, as the case may be, by multiplying the Exercise Price in effect on such effective date or record date, as the case

may be, by a fraction, the numerator of which shall be the number of Common Shares outstanding on such effective date or record date, as the case may be, before giving effect to such Common Share Reorganization and the denominator of which shall be the number of Common Shares outstanding immediately after giving effect to such Common Share Reorganization including, in the case where securities exchangeable for or convertible into Common Shares are distributed, the number of Common Shares that would be outstanding if such securities were exchanged for or converted into Common Shares.

(c) If and whenever at any time after the date hereof and prior to the Expiry Time there is a capital reorganization of the Corporation or a reclassification or other change in the Common Shares (other than a Common Share Reorganization) or a consolidation or merger or amalgamation of the Corporation with or into any other corporation or other entity (other than a consolidation, merger or amalgamation which does not result in any reclassification of the outstanding Common Shares or a change of the Common Shares into other securities), or a transfer of all or substantially all of the Corporation's undertaking and assets to another corporation or other entity in which the holders of Common Shares are entitled to receive shares, other securities or other property) (any of such events, excluding, however, a transaction effected solely to change the domicile of the Corporation, being called a "**Capital Reorganization**"), after the effective date of the Capital Reorganization the Holder shall be entitled to receive, and shall accept, for the same aggregate consideration, upon exercise of the Warrants, in lieu of the number of Common Shares to which the Holder was theretofore entitled upon the exercise of the Warrants, the kind and aggregate number of Common Shares and other securities or property resulting from the Capital Reorganization which the Holder would have been entitled to receive as a result of the Capital Reorganization if, on the effective date thereof, the Holder has been the registered holder of the number of Common Shares to which the Holder was theretofore entitled to purchase or receive upon the exercise of the Warrants. If necessary, as a result of any Capital Reorganization, appropriate adjustments shall be made in the application of the provisions of this Warrant Certificate with respect to the rights and interest thereafter of the Holder such that the provisions of this Warrant Certificate shall thereafter correspondingly be made applicable as nearly as may reasonably be possible in relation to any shares or other securities or property thereafter deliverable upon the exercise of this Warrant Certificate.

(d) If and whenever at any time after the date hereof and prior to the Expiry Time, any of the events set out in Sections 8 (b) or (c) shall occur and the occurrence of such event results in an adjustment of the Exercise Price pursuant to the provisions of this Section 8, then the number of Common Shares purchasable pursuant to this Warrant shall be adjusted contemporaneously with the adjustment of the Exercise Price by multiplying the number of Common Shares then otherwise purchasable on the exercise thereof by a fraction, the numerator of which shall be the Exercise Price in effect immediately prior to the adjustment and the denominator of which shall be the Exercise Price resulting from such adjustment.

(e) If the Corporation takes any action affecting its Common Shares to which the foregoing provisions of this Section 8, in the opinion of the board of directors of the Corporation, acting in good faith, are not strictly applicable, or if strictly applicable would not fairly adjust the rights of the Holder against dilution in accordance with the intent and purposes hereof, or would otherwise materially affect the rights of the Holder hereunder, then the Corporation shall, subject to the approval of the Nasdaq (or such other stock exchange or quotation system on which the Common Shares are then listed and posted (or quoted) for

trading, as applicable), execute and deliver to the Holder an amendment hereto providing for an adjustment in the application of such provisions so as to adjust such rights as aforesaid in such manner as the board of directors of the Corporation may determine to be equitable in the circumstances, acting in good faith. The failure of the taking of action by the board of directors of the Corporation to so provide for any adjustment on or prior to the effective date of any action or occurrence giving rise to such state of facts will be conclusive evidence that the board of directors has determined that it is equitable to make no adjustment in the circumstances.

9. The following rules and procedures shall be applicable to the adjustments made pursuant to Section 8:

(a) any Common Shares owned or held by or for the account of the Corporation shall be deemed not be to outstanding except that, for the purposes of Section 8, any Common Shares owned by a pension plan or profit sharing plan for employees of the Corporation or any of its subsidiaries shall not be considered to be owned or held by or for the account of the Corporation;

(b) no adjustment in the Exercise Price or the number of Common Shares purchasable pursuant to this Warrant shall be required unless a change of at least 1% of the prevailing Exercise Price or the number of Common Shares purchasable pursuant to this Warrant would result, provided, however, that any adjustment which, except for the provisions of this Section 9(b), would otherwise have been required to be made, shall be carried forward and taken into account in any subsequent adjustment;

(c) the adjustments provided for in Section 8 are cumulative and shall apply to successive subdivisions, consolidations, dividends, distributions and other events resulting in any adjustment under the provisions of such section;

(d) if the Corporation sets a record date to take any action and thereafter and before the taking of such action abandons its plan to take such action, then no adjustment to the Exercise Price will be required by reason of the setting of such record date;

(e) as a condition precedent to the taking of any action which would require any adjustment to the Warrants evidenced hereby, including the Exercise Price, the Corporation must take any corporate action which may be necessary in order that the Corporation shall have unissued and reserved in its authorized capital and may validly and legally issue as fully paid and non-assessable all of the shares or other securities which the Holder is entitled to receive on the full exercise thereof in accordance with the provisions hereof;

(f) forthwith, but no later than fourteen (14) days, after any adjustment to the Exercise Price or the number of Common Shares purchasable pursuant to the Warrants, the Corporation shall provide to the Holder a certificate of an officer of the Corporation certifying as to the amount of such adjustment and, in reasonable detail, describing the event requiring and the manner of computing or determining such adjustment;

(g) any question that at any time or from time to time arises with respect to the amount of any adjustment to the Exercise Price or other adjustment pursuant to Section 8 shall be conclusively determined by a firm of independent chartered accountants (who may be the Corporation's auditors) and shall be binding upon the Corporation and the Holder;

(h) any adjustment to the Exercise Price or the number of Common Shares purchasable pursuant to the Warrants under the terms of this Warrant Certificate shall be subject to the prior approval of the Nasdaq (or such other stock exchange or quotation system on which the Common Shares are then listed and posted (or quoted) for trading, as applicable); and

(i) in case the Corporation, after the date of issue of this Warrant Certificate, takes any action affecting the Common Shares, other than an action described in Section 8, which in the opinion of the directors of the Corporation would materially affect the rights of the Holder, the Exercise Price will be adjusted in such manner, if any, and at such time, by action by the directors of the Corporation but subject in all cases to any necessary regulatory approval, including approval of the Nasdaq (or such other stock exchange or quotation system on which the Common Shares are then listed and posted (or quoted) for trading, as applicable). Failure of the taking of action by the directors of the Corporation so as to provide for an adjustment on or prior to the effective date of any action by the Corporation affecting the Common Shares will be conclusive evidence that the board of directors of the Corporation has determined that it is equitable to make no adjustment in the circumstances.

10. At least 21 days prior to the effective date or record date, as the case may be, of any event referred to in Section 8 herein, the Corporation shall notify the Holder of the particulars of such event and the estimated amount of any adjustment required as a result thereof.

11. On the happening of each and every such event set out in Section 8, the applicable provisions of this Warrant Certificate, including the Exercise Price, shall, *ipso facto*, be deemed to be amended accordingly and the Corporation shall take all necessary action so as to comply with such provisions as so amended.

12. The Corporation shall not be required to deliver certificates for Common Shares while the share transfer books of the Corporation are properly closed, having regard to the provisions of Sections 8 and 9 hereof, prior to any meeting of shareholders or for the payment of dividends or for any other purpose and in the event of the surrender of any Warrant in accordance with the provisions hereof and the making of any subscription and payment for the Common Shares called for thereby during any such period, delivery of certificates for Common Shares may be postponed for not more than five (5) Business Days after the date of the re-opening of said share transfer books; provided, however, that any such postponement of delivery of certificates shall be without prejudice to the right of the Holder so surrendering the same and making payment during such period to receive after the share transfer books shall have been re-opened such certificates for the Common Shares called for, as the same may be adjusted pursuant to Sections 8 and 9 hereof as a result of the completion of the event in respect of which the transfer books were closed.

13. Subject as hereinafter provided, all or any of the rights conferred upon the Holder by the terms hereof may be enforced by the Holder by appropriate legal proceedings. No recourse under or upon any obligation, covenant or agreement contained herein shall be had against any shareholder, director or officer of the Corporation either directly or through the Corporation, it being expressly agreed and declared that the obligations under the Warrants are solely corporate obligations and that no personal liability whatever shall attach to or be incurred by the shareholders, directors or officers of the Corporation or any of them in respect thereof, any and all rights and claims against every such shareholder, officer or director being hereby expressly waived as a condition of and as a consideration for the issue of the Warrants.

14. The Holder may subscribe for and purchase any lesser number of Common Shares than the number of Common Shares expressed in any Warrant Certificate. In the case of any subscription for a lesser number of Common Shares than expressed in any Warrant Certificate, the Holder hereof shall be entitled to receive,

at no cost to the Holder, a new Warrant Certificate in respect of the balance of Warrants not then exercised. Such new Warrant Certificate shall be mailed to the Holder by the Corporation or, at its direction, the transfer agent of the Corporation, contemporaneously with the mailing of the certificate or certificates representing the Common Shares issued pursuant to Section 5.

15. If any Warrant Certificate becomes stolen, lost, mutilated or destroyed, the Corporation shall, on such terms as it may in its discretion impose, acting reasonably, issue and sign a new Warrant Certificate of like denomination, tenor and date as the Warrant Certificate so stolen, lost, mutilated or destroyed for delivery to the Holder. The applicant for the issue of a new Warrant Certificate pursuant to this section shall bear the cost of the issue thereof and in the case of mutilation shall as a condition precedent to the issue thereof, deliver to the Corporation the mutilated Warrant Certificate, and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation such evidence of ownership and of the loss, destruction or theft of the Warrant Certificate so lost, destroyed or stolen as shall be satisfactory to the Corporation in its discretion and the applicant shall also be required to furnish an indemnity and surety bond in amount and form satisfactory to the Corporation in its discretion and shall pay the reasonable charges of the Corporation in connection therewith.

16. The Holder may transfer the Warrants represented hereby by:

(a) duly completing and executing the transfer form attached as Schedule "B" ("Transfer Form"); and

(b) surrendering this Warrant Certificate and the completed Transfer Form, together with such other documents as the Corporation may reasonably request, to the Corporation at the address set forth on the Transfer Form or such other office as may be specified by the Corporation, in a written notice to the Holder, from time to time,

provided that all such transfers shall be effected in accordance with all applicable securities laws, and provided that, after such transfer, the term "Holder" shall mean and include any transferee or assignee of the current or any future Holder. If only part of the Warrants evidenced hereby is transferred, the Corporation will deliver to the Holder and the transferee replacement Warrant Certificates substantially in the form of this Warrant Certificate.

17. Neither the issuance and sale of the securities represented by this Warrant Certificate nor the Common Shares into which these securities are exercisable have been registered under the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**") or applicable state securities laws. These securities may not be offered for sale, sold, transferred or assigned unless registered under the U.S. Securities Act and any applicable state securities laws or unless an exemption from such registration is available, and the Corporation and its transfer agent has received an opinion of counsel of recognized standing in form and substance reasonably satisfactory to them to such effect.

18. Any certificate representing Common Shares issued upon the exercise of this Warrant may bear the following legends:

"UNLESS PERMITTED UNDER APPLICABLE SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THIS SECURITY TO OR FOR THE BENEFIT OF A CANADIAN PURCHASER UNTIL THE DATE THAT IS FOUR MONTHS AND A DAY AFTER [_____]. (In the event that no physical certificates are issued, the above constitutes written notice of the legend restriction under applicable Canadian securities laws.)

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED UNLESS REGISTERED UNDER THE 1933 ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE, AND THE CORPORATION AND ITS TRANSFER AGENT HAVE RECEIVED AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THEM TO SUCH EFFECT."

19. The Corporation will maintain a register of holders of Warrants at its principal office. The Corporation may deem and treat the registered holder of any Warrant Certificate as the absolute owner of the Warrants represented thereby for all purposes, and the Corporation shall not be affected by any notice or knowledge to the contrary except where the Corporation is required to take notice by statute or by order of a court of competent jurisdiction. A Holder shall be entitled to the rights evidenced by such Warrant free from all equities or rights of set-off or counterclaim between the Corporation and the original or any intermediate holder thereof and all persons may act accordingly and the receipt by any such Holder of the Common Shares purchasable pursuant to such Warrant shall be a good discharge to the Corporation for the same and the Corporation shall not be bound to inquire into the title of any such Holder except where the Corporation is required to take notice by statute or by order of a court of competent jurisdiction.

20. The Corporation shall notify the Holder forthwith of any change of the Corporation's address.

21. All notices to be sent hereunder shall be deemed to be validly given to the registered holders of the Warrants if delivered personally or if sent by registered letter through the post addressed to such holders at their post office addresses appearing in the register of Warrant holders caused to be maintained by the Corporation, and such notice shall be deemed to have been given, if delivered personally when so delivered, and if sent by post on the fifth Business Day next following the post thereof.

22. If for any reason, other than the failure or default of the Holder, the Corporation is unable to issue and deliver the Common Shares or other securities as contemplated herein to the Holder upon the proper exercise by the Holder of the right to purchase any of the Common Shares purchasable upon exercise of the Warrants represented hereby, the Corporation may pay, at its option and in complete satisfaction of its obligations and the rights of the Holder hereunder, to the Holder, in cash, an amount equal to the difference between the Exercise Price and the Current Market Price of such Common Shares on the date of exercise by the Holder, and upon such payment the Corporation shall have no liability or other obligation to the Holder relating to or in respect of the Warrants or this Warrant Certificate.

23. This Warrant Certificate shall be governed by the internal laws of the State of New York , without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York.

24. If one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Warrant Certificate, but this Warrant Certificate shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

25. This Warrant Certificate shall enure to the benefit of and shall be binding upon the Holder and the Corporation and their respective successors and assigns.

26. In the case of a dispute as to the determination of the Weighted Average Price, the Exercise Price or the arithmetic calculation of the Common Shares for which this Warrant is exercisable, the Corporation shall submit the disputed determinations or arithmetic calculations via facsimile or electronic mail to the Holder. If the Holder and the Corporation are unable to agree upon such determination or calculation of the Exercise Price or of the Common Shares for which this Warrant is exercisable within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Corporation shall submit via facsimile or electronic mail (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Corporation and approved by the Holder or (b) the disputed arithmetic calculation of the Common Shares for which this Warrant is exercisable to the Corporation's independent, outside accountant. The Corporation shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Corporation and the Holder of the results. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

IN WITNESS WHEREOF the Corporation has caused this Warrant Certificate to be signed by its duly authorized officer.

DATED as of the __ day of _____.

SPHERE 3D CORP.

Per: _____

Kurt Kalbfleisch, Chief Financial Officer

Schedule "A"

SUBSCRIPTION FORM

TO BE COMPLETED IF WARRANTS ARE TO BE EXERCISED:

TO: **SPHERE 3D CORPORATION**
9112 Spectrum Center Boulevard, San Diego, California, 92123

The undersigned hereby subscribes for Common Shares of Sphere 3D Corp. according to the terms and conditions set forth in the annexed Warrant Certificate (or such number of other securities or property to which such Warrant Certificate entitles the undersigned to acquire under the terms and conditions set forth in such Warrant Certificate).

Registered Name: _____

Address for Delivery of Common Shares: _____

_____

Attention: _____

Exercise Price Tendered (US$[•] per Common Share or as adjusted) US$_____

Capitalized terms not defined herein shall have the meanings assigned to them in the Warrant Certificate to which this subscription form is attached.

Dated at , this day of , 20 .

WITNESS:

_____
Holder's Name

_____
Authorized Signature

_____
Title (if applicable)

Signature guaranteed[1]:

_____

1. If the Common Shares are to be registered in a name other than the name of the registered Warrant Holder, the signature of the Warrant Holder must be medallion guaranteed by a bank, trust Corporation or a member of a stock exchange in the United States.

Schedule "B"

WARRANT TRANSFER FORM

FOR VALUE RECEIVED, subject to receipt of prior written approval of SPHERE 3D CORP. (the " **Corporation**"), the undersigned (the "**Transferor**") hereby sells, assigns and transfers unto (name) _____ (the "**Transferee**") of (residential address) _____ Warrants of the Corporation registered in the name of the undersigned represented by the within certificate, and irrevocably appoints the Corporation as the attorney of the undersigned to transfer the said securities on the register of transfers for the said Warrants, with full power of substitution.

NOTICE: The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement or any change whatever, and must be guaranteed by a bank, trust Corporation or a member of a recognized stock exchange. The guarantor must affix a stamp bearing the actual words "Signature Guaranteed".

DATED this day of , 20_.

_____

Signature Guaranteed (Signature of transferring Warrantholder)

_____

Name (please print)

_____

Address

_____

TRANSFEREE ACKNOWLEDGMENT

In connection with this transfer the undersigned transferee is delivering a written opinion of U.S. Counsel acceptable to the Corporation to the effect that this transfer of Warrants has been registered under the 1933 Act or is exempt from registration thereunder.

___

(Signature of Transferee)

___ _____

Date Name of Transferee (please print)

The Warrants and the common shares issuable upon exercise of the Warrants shall only be transferable in accordance with applicable laws. The Warrants may only be exercised in the manner required by the certificate representing the Warrants and the Warrant Exercise Form attached thereto. Any common shares acquired pursuant to this Warrant shall be subject to applicable hold periods and any certificate representing such common shares will bear restrictive legends.

Exhibit 4.56

UNLESS PERMITTED UNDER APPLICABLE SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THIS SECURITY TO OR FOR THE BENEFIT OF A CANADIAN PURCHASER UNTIL THE DATE THAT IS FOUR MONTHS AND A DAY AFTER [_____], 2017.

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED UNLESS REGISTERED UNDER THE 1933 ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE, AND THE CORPORATION AND ITS TRANSFER AGENT HAS RECEIVED AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THEM TO SUCH EFFECT.

Void after 5:00 p.m. (New York City time) on the Expiry Date.

WARRANT

For the purchase of Common Shares of

SPHERE 3D CORP.

(Organized under the laws of the Province of Ontario, Canada)

Number of Warrants: [•] Warrant Certificate No. [•]

This is to certify that, for value received, [_____], [*address of holder*] (the "**Holder**"), shall have the right to purchase from Sphere 3D Corp. (the "**Corporation**"), at any time and from time to time up to 5:00 p.m. (New York City time) (the "**Expiry Time**") on January __, 2022 (the "**Expiry Date**"), as amended herein, one fully paid and non-assessable common share in the capital of the Corporation (a "**Common Share**") for each Warrant (individually, a "**Warrant**") represented hereby at a price of US$0.55 per Common Share (the "**Exercise Price**"), upon and subject to the terms and conditions set forth herein. This Warrant is one of the Warrants to purchase Common Shares issued pursuant to that certain Purchase Agreement, dated as of [_____], by and among the Company and the investors (the "**Investors**") referred to therein (the "**Purchase Agreement**").

1. For the purposes of this Warrant Certificate, the term "**Common Shares**" means common shares without par value in the capital of the Corporation as constituted as of the date hereof, provided that in the event of a subdivision, redivision, reduction, combination or consolidation thereof or any other adjustment under Section 8 hereof, or successive such subdivisions, redivisions, reductions, combinations, consolidations or other adjustments, then subject to the adjustments, if any, having been made in accordance with the provisions of this Warrant Certificate, "**Common Shares**" shall thereafter mean the shares, other securities or other property resulting from such subdivision, redivision, reduction, combination or consolidation or other adjustment.

2. All Warrant Certificates shall be signed by an officer of the Corporation holding office at the time of signing, or any successor or replacement of such person and notwithstanding any change in any of the persons holding said offices between the time of actual signing and the delivery of the Warrant Certificate, the Warrant Certificate so signed shall be valid and binding upon the Corporation.

3. All rights under any of the Warrants in respect of which the right of subscription and purchase therein provided for shall not theretofore have been exercised shall wholly cease and such Warrants shall be wholly void and of no valid or binding effect after the Expiry Time.

4. The right to purchase Common Shares of the Corporation pursuant to the Warrants may only be exercised by the Holder at or before the Expiry Time by:

(a) duly completing and executing a subscription substantially in the form attached as Schedule "A" (the "**Subscription Form**"), in the manner therein indicated; and

(b) surrendering this Warrant Certificate and the duly completed and executed Subscription Form to the Corporation prior to the Expiry Time at 9112 Spectrum Center Boulevard, San Diego, California, 92123, together with payment of the purchase price for the Common Shares subscribed for in the form of certified cheque, money order or bank draft payable to the Corporation in an amount equal to the then applicable Exercise Price multiplied by the number of Common Shares subscribed for ("**Aggregate Exercise Price**").

5. Upon delivery and payment as set forth in Section 4, the Corporation shall cause to be issued to the Holder the number of Common Shares subscribed for by the Holder and the Holder shall become a shareholder of the Corporation in respect of such Common Shares with effect from the date of such delivery and payment and shall be entitled to delivery of a certificate or certificates evidencing such shares, or to a non-transferable written acknowledgement of the right to obtain a certificate. The Corporation shall cause such certificate or certificates to be mailed to the Holder at the address or addresses specified in the Subscription Form within five (5) Business Days (as defined below) of such delivery and payment as set forth in Section 4 or, if so instructed by the Holder, held for pick-up by the Holder at the principal office of the Corporation; provided, however, if the transfer agent for the Common Shares is participating in DTC Fast Automated Securities Transfer Program (the "**DTC Program**") and the Common Shares to be delivered to the Holder pursuant to this Section 5 are eligible to participate in the DTC Program, the Corporation will cause the transfer agent to credit such aggregate number of Common Shares to which the Holder is entitled pursuant to this Section 5 to the Holder's or its designee's balance account with DTC through its Deposit / Withdrawal At Custodian system. Notwithstanding any adjustment provided for in Section 8 hereof, the Corporation shall not be required upon the exercise of any Warrants to issue fractional Common Shares in satisfaction of its obligations hereunder and the Holder understands and agrees that it will not be entitled to any cash payment or other form of compensation in respect of a fractional Common Share that might otherwise have been issued. As used in this Warrant Certificate, "**Business Day**" means a day, other than a Saturday or Sunday, on which banks in New York City and Toronto (Ontario) are open for the general transaction of business.

6. The holding of a Warrant shall not constitute the Holder a shareholder of the Corporation nor entitle him to any right or interest in respect thereof except as herein expressly provided.

7. The Corporation covenants and agrees that until the Expiry Time, while any of the Warrants shall be outstanding, it shall reserve and there shall remain unissued out of its authorized capital a sufficient number of Common Shares to satisfy the right of purchase herein provided, as such right of purchase may be adjusted pursuant to Sections 8 and 9 hereof. The Corporation further covenants and agrees that while any of the Warrants shall be outstanding, the Corporation shall (a) comply with the securities legislation applicable to it; and (b) use its commercially reasonable efforts to do or cause to be done all things necessary to preserve and maintain its corporate existence. All Common Shares which shall be issued upon the exercise of the right to purchase herein provided for, upon payment therefor of the amount at which such Common Shares

may at the time be purchased pursuant to the provisions hereof, shall be issued as fully paid and non-assessable shares and the holders thereof shall not be liable to the Corporation or its creditors in respect thereof.

8. (a) As used in this Warrant, unless there is something in the subject matter or context inconsistent therewith, the words and terms defined below shall have the respective meanings specified therefor:

"**Current Market Price**" of the Common Shares at any date means the price per share equal to the Weighted Average Price (as defined below) at which the Common Shares have traded on the Nasdaq Global Market or, if the Common Shares are not then listed on the Nasdaq, on such other stock exchange on which the shares trade as may be selected by the directors of the Corporation for such purpose (collectively, "**Nasdaq**"); and

"**director**" means a director of the Corporation and, unless otherwise specified herein, a reference to action "by the directors" means action by the directors of the Corporation as a board or, whenever empowered, action by the executive committee of such board; and

"**Weighted Average Price** " means, for the Common Shares as of any date, the dollar volume-weighted average price for the Common Shares on Nasdaq during the period beginning at 9:30:01 a.m., New York time (or such other time as Nasdaq publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as Nasdaq publicly announces is the official close of trading), as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as such market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the OTC Link or "pink sheets" by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of the Common Shares on such date shall be the fair market value as mutually determined by the Corporation and the Holder. If the Corporation and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 26.

(b) If and whenever at any time after the date hereof and prior to the Expiry Time the Corporation shall (i) subdivide or redivide its then outstanding Common Shares into a greater number of Common Shares, (ii) reduce, combine or consolidate its then outstanding Common Shares into a lesser number of Common Shares or (iii) issue Common Shares (or securities exchangeable for or convertible into Common Shares) to the holders of all or substantially all of its then outstanding Common Shares by way of a stock dividend or other distribution (any of such events herein called a "**Common Share Reorganization**"), then the Exercise Price shall be adjusted effective immediately after the effective date of any such event in (i) or (ii) above or the record date at which the holders of Common Shares are determined for the purpose of any such dividend or distribution in (iii) above, as the case may be, by multiplying the Exercise Price in effect on such effective date or record date, as the case

may be, by a fraction, the numerator of which shall be the number of Common Shares outstanding on such effective date or record date, as the case may be, before giving effect to such Common Share Reorganization and the denominator of which shall be the number of Common Shares outstanding immediately after giving effect to such Common Share Reorganization including, in the case where securities exchangeable for or convertible into Common Shares are distributed, the number of Common Shares that would be outstanding if such securities were exchanged for or converted into Common Shares.

(c) If and whenever at any time after the date hereof and prior to the Expiry Time there is a capital reorganization of the Corporation or a reclassification or other change in the Common Shares (other than a Common Share Reorganization) or a consolidation or merger or amalgamation of the Corporation with or into any other corporation or other entity (other than a consolidation, merger or amalgamation which does not result in any reclassification of the outstanding Common Shares or a change of the Common Shares into other securities), or a transfer of all or substantially all of the Corporation's undertaking and assets to another corporation or other entity in which the holders of Common Shares are entitled to receive shares, other securities or other property) (any of such events, excluding, however, a transaction effected solely to change the domicile of the Corporation, being called a "**Capital Reorganization**"), after the effective date of the Capital Reorganization the Holder shall be entitled to receive, and shall accept, for the same aggregate consideration, upon exercise of the Warrants, in lieu of the number of Common Shares to which the Holder was theretofore entitled upon the exercise of the Warrants, the kind and aggregate number of Common Shares and other securities or property resulting from the Capital Reorganization which the Holder would have been entitled to receive as a result of the Capital Reorganization if, on the effective date thereof, the Holder has been the registered holder of the number of Common Shares to which the Holder was theretofore entitled to purchase or receive upon the exercise of the Warrants. If necessary, as a result of any Capital Reorganization, appropriate adjustments shall be made in the application of the provisions of this Warrant Certificate with respect to the rights and interest thereafter of the Holder such that the provisions of this Warrant Certificate shall thereafter correspondingly be made applicable as nearly as may reasonably be possible in relation to any shares or other securities or property thereafter deliverable upon the exercise of this Warrant Certificate.

(d) If and whenever at any time after the date hereof and prior to the Expiry Time, any of the events set out in Sections 8 (b) or (c) shall occur and the occurrence of such event results in an adjustment of the Exercise Price pursuant to the provisions of this Section 8, then the number of Common Shares purchasable pursuant to this Warrant shall be adjusted contemporaneously with the adjustment of the Exercise Price by multiplying the number of Common Shares then otherwise purchasable on the exercise thereof by a fraction, the numerator of which shall be the Exercise Price in effect immediately prior to the adjustment and the denominator of which shall be the Exercise Price resulting from such adjustment.

(e) If the Corporation takes any action affecting its Common Shares to which the foregoing provisions of this Section 8, in the opinion of the board of directors of the Corporation, acting in good faith, are not strictly applicable, or if strictly applicable would not fairly adjust the rights of the Holder against dilution in accordance with the intent and purposes hereof, or would otherwise materially affect the rights of the Holder hereunder, then the Corporation shall, subject to the approval of the Nasdaq (or such other stock exchange or quotation system on which the Common Shares are then listed and posted (or quoted) for

trading, as applicable), execute and deliver to the Holder an amendment hereto providing for an adjustment in the application of such provisions so as to adjust such rights as aforesaid in such manner as the board of directors of the Corporation may determine to be equitable in the circumstances, acting in good faith. The failure of the taking of action by the board of directors of the Corporation to so provide for any adjustment on or prior to the effective date of any action or occurrence giving rise to such state of facts will be conclusive evidence that the board of directors has determined that it is equitable to make no adjustment in the circumstances.

9. The following rules and procedures shall be applicable to the adjustments made pursuant to Section 8:

(a) any Common Shares owned or held by or for the account of the Corporation shall be deemed not be to outstanding except that, for the purposes of Section 8, any Common Shares owned by a pension plan or profit sharing plan for employees of the Corporation or any of its subsidiaries shall not be considered to be owned or held by or for the account of the Corporation;

(b) no adjustment in the Exercise Price or the number of Common Shares purchasable pursuant to this Warrant shall be required unless a change of at least 1% of the prevailing Exercise Price or the number of Common Shares purchasable pursuant to this Warrant would result, provided, however, that any adjustment which, except for the provisions of this Section 9(b), would otherwise have been required to be made, shall be carried forward and taken into account in any subsequent adjustment;

(c) the adjustments provided for in Section 8 are cumulative and shall apply to successive subdivisions, consolidations, dividends, distributions and other events resulting in any adjustment under the provisions of such section;

(d) if the Corporation sets a record date to take any action and thereafter and before the taking of such action abandons its plan to take such action, then no adjustment to the Exercise Price will be required by reason of the setting of such record date;

(e) as a condition precedent to the taking of any action which would require any adjustment to the Warrants evidenced hereby, including the Exercise Price, the Corporation must take any corporate action which may be necessary in order that the Corporation shall have unissued and reserved in its authorized capital and may validly and legally issue as fully paid and non-assessable all of the shares or other securities which the Holder is entitled to receive on the full exercise thereof in accordance with the provisions hereof;

(f) forthwith, but no later than fourteen (14) days, after any adjustment to the Exercise Price or the number of Common Shares purchasable pursuant to the Warrants, the Corporation shall provide to the Holder a certificate of an officer of the Corporation certifying as to the amount of such adjustment and, in reasonable detail, describing the event requiring and the manner of computing or determining such adjustment;

(g) any question that at any time or from time to time arises with respect to the amount of any adjustment to the Exercise Price or other adjustment pursuant to Section 8 shall be conclusively determined by a firm of independent chartered accountants (who may be the Corporation's auditors) and shall be binding upon the Corporation and the Holder;

(h) any adjustment to the Exercise Price or the number of Common Shares purchasable pursuant to the Warrants under the terms of this Warrant Certificate shall be subject to the prior approval of the Nasdaq (or such other stock exchange or quotation system on which the Common Shares are then listed and posted (or quoted) for trading, as applicable); and

(i) in case the Corporation, after the date of issue of this Warrant Certificate, takes any action affecting the Common Shares, other than an action described in Section 8, which in the opinion of the directors of the Corporation would materially affect the rights of the Holder, the Exercise Price will be adjusted in such manner, if any, and at such time, by action by the directors of the Corporation but subject in all cases to any necessary regulatory approval, including approval of the Nasdaq (or such other stock exchange or quotation system on which the Common Shares are then listed and posted (or quoted) for trading, as applicable). Failure of the taking of action by the directors of the Corporation so as to provide for an adjustment on or prior to the effective date of any action by the Corporation affecting the Common Shares will be conclusive evidence that the board of directors of the Corporation has determined that it is equitable to make no adjustment in the circumstances.

10. At least 21 days prior to the effective date or record date, as the case may be, of any event referred to in Section 8 herein, the Corporation shall notify the Holder of the particulars of such event and the estimated amount of any adjustment required as a result thereof.

11. On the happening of each and every such event set out in Section 8, the applicable provisions of this Warrant Certificate, including the Exercise Price, shall, *ipso facto*, be deemed to be amended accordingly and the Corporation shall take all necessary action so as to comply with such provisions as so amended.

12. The Corporation shall not be required to deliver certificates for Common Shares while the share transfer books of the Corporation are properly closed, having regard to the provisions of Sections 8 and 9 hereof, prior to any meeting of shareholders or for the payment of dividends or for any other purpose and in the event of the surrender of any Warrant in accordance with the provisions hereof and the making of any subscription and payment for the Common Shares called for thereby during any such period, delivery of certificates for Common Shares may be postponed for not more than five (5) Business Days after the date of the re-opening of said share transfer books; provided, however, that any such postponement of delivery of certificates shall be without prejudice to the right of the Holder so surrendering the same and making payment during such period to receive after the share transfer books shall have been re-opened such certificates for the Common Shares called for, as the same may be adjusted pursuant to Sections 8 and 9 hereof as a result of the completion of the event in respect of which the transfer books were closed.

13. Subject as hereinafter provided, all or any of the rights conferred upon the Holder by the terms hereof may be enforced by the Holder by appropriate legal proceedings. No recourse under or upon any obligation, covenant or agreement contained herein shall be had against any shareholder, director or officer of the Corporation either directly or through the Corporation, it being expressly agreed and declared that the obligations under the Warrants are solely corporate obligations and that no personal liability whatever shall attach to or be incurred by the shareholders, directors or officers of the Corporation or any of them in respect thereof, any and all rights and claims against every such shareholder, officer or director being hereby expressly waived as a condition of and as a consideration for the issue of the Warrants.

14. The Holder may subscribe for and purchase any lesser number of Common Shares than the number of Common Shares expressed in any Warrant Certificate. In the case of any subscription for a lesser number of Common Shares than expressed in any Warrant Certificate, the Holder hereof shall be entitled to receive,

at no cost to the Holder, a new Warrant Certificate in respect of the balance of Warrants not then exercised. Such new Warrant Certificate shall be mailed to the Holder by the Corporation or, at its direction, the transfer agent of the Corporation, contemporaneously with the mailing of the certificate or certificates representing the Common Shares issued pursuant to Section 5.

15. If any Warrant Certificate becomes stolen, lost, mutilated or destroyed, the Corporation shall, on such terms as it may in its discretion impose, acting reasonably, issue and sign a new Warrant Certificate of like denomination, tenor and date as the Warrant Certificate so stolen, lost, mutilated or destroyed for delivery to the Holder. The applicant for the issue of a new Warrant Certificate pursuant to this section shall bear the cost of the issue thereof and in the case of mutilation shall as a condition precedent to the issue thereof, deliver to the Corporation the mutilated Warrant Certificate, and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation such evidence of ownership and of the loss, destruction or theft of the Warrant Certificate so lost, destroyed or stolen as shall be satisfactory to the Corporation in its discretion and the applicant shall also be required to furnish an indemnity and surety bond in amount and form satisfactory to the Corporation in its discretion and shall pay the reasonable charges of the Corporation in connection therewith.

16. The Holder may transfer the Warrants represented hereby by:

(a) duly completing and executing the transfer form attached as Schedule "B" ("Transfer Form"); and

(b) surrendering this Warrant Certificate and the completed Transfer Form, together with such other documents as the Corporation may reasonably request, to the Corporation at the address set forth on the Transfer Form or such other office as may be specified by the Corporation, in a written notice to the Holder, from time to time,

provided that all such transfers shall be effected in accordance with all applicable securities laws, and provided that, after such transfer, the term "Holder" shall mean and include any transferee or assignee of the current or any future Holder. If only part of the Warrants evidenced hereby is transferred, the Corporation will deliver to the Holder and the transferee replacement Warrant Certificates substantially in the form of this Warrant Certificate.

17. Neither the issuance and sale of the securities represented by this Warrant Certificate nor the Common Shares into which these securities are exercisable have been registered under the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**") or applicable state securities laws. These securities may not be offered for sale, sold, transferred or assigned unless registered under the U.S. Securities Act and any applicable state securities laws or unless an exemption from such registration is available, and the Corporation and its transfer agent has received an opinion of counsel of recognized standing in form and substance reasonably satisfactory to them to such effect.

18. Any certificate representing Common Shares issued upon the exercise of this Warrant may bear the following legends:

"UNLESS PERMITTED UNDER APPLICABLE SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THIS SECURITY TO OR FOR THE BENEFIT OF A CANADIAN PURCHASER UNTIL THE DATE THAT IS FOUR MONTHS AND A DAY AFTER [_____]. (In the event that no physical certificates are issued, the above constitutes written notice of the legend restriction under applicable Canadian securities laws.)

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED UNLESS REGISTERED UNDER THE 1933 ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE, AND THE CORPORATION AND ITS TRANSFER AGENT HAVE RECEIVED AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THEM TO SUCH EFFECT."

19. The Corporation will maintain a register of holders of Warrants at its principal office. The Corporation may deem and treat the registered holder of any Warrant Certificate as the absolute owner of the Warrants represented thereby for all purposes, and the Corporation shall not be affected by any notice or knowledge to the contrary except where the Corporation is required to take notice by statute or by order of a court of competent jurisdiction. A Holder shall be entitled to the rights evidenced by such Warrant free from all equities or rights of set-off or counterclaim between the Corporation and the original or any intermediate holder thereof and all persons may act accordingly and the receipt by any such Holder of the Common Shares purchasable pursuant to such Warrant shall be a good discharge to the Corporation for the same and the Corporation shall not be bound to inquire into the title of any such Holder except where the Corporation is required to take notice by statute or by order of a court of competent jurisdiction.

20. The Corporation shall notify the Holder forthwith of any change of the Corporation's address.

21. All notices to be sent hereunder shall be deemed to be validly given to the registered holders of the Warrants if delivered personally or if sent by registered letter through the post addressed to such holders at their post office addresses appearing in the register of Warrant holders caused to be maintained by the Corporation, and such notice shall be deemed to have been given, if delivered personally when so delivered, and if sent by post on the fifth Business Day next following the post thereof.

22. If for any reason, other than the failure or default of the Holder, the Corporation is unable to issue and deliver the Common Shares or other securities as contemplated herein to the Holder upon the proper exercise by the Holder of the right to purchase any of the Common Shares purchasable upon exercise of the Warrants represented hereby, the Corporation may pay, at its option and in complete satisfaction of its obligations and the rights of the Holder hereunder, to the Holder, in cash, an amount equal to the difference between the Exercise Price and the Current Market Price of such Common Shares on the date of exercise by the Holder, and upon such payment the Corporation shall have no liability or other obligation to the Holder relating to or in respect of the Warrants or this Warrant Certificate.

23. This Warrant Certificate shall be governed by the internal laws of the State of New York , without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York.

24. If one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Warrant Certificate, but this Warrant Certificate shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

25. This Warrant Certificate shall enure to the benefit of and shall be binding upon the Holder and the Corporation and their respective successors and assigns.

26. In the case of a dispute as to the determination of the Weighted Average Price, the Exercise Price or the arithmetic calculation of the Common Shares for which this Warrant is exercisable, the Corporation shall submit the disputed determinations or arithmetic calculations via facsimile or electronic mail to the Holder. If the Holder and the Corporation are unable to agree upon such determination or calculation of the Exercise Price or of the Common Shares for which this Warrant is exercisable within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Corporation shall submit via facsimile or electronic mail (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Corporation and approved by the Holder or (b) the disputed arithmetic calculation of the Common Shares for which this Warrant is exercisable to the Corporation's independent, outside accountant. The Corporation shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Corporation and the Holder of the results. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

IN WITNESS WHEREOF the Corporation has caused this Warrant Certificate to be signed by its duly authorized officer.

DATED as of the __ day of January.

SPHERE 3D CORP.

Per: _____

Kurt Kalbfleisch, Chief Financial Officer

Schedule "A"

SUBSCRIPTION FORM

TO BE COMPLETED IF WARRANTS ARE TO BE EXERCISED:

TO: **SPHERE 3D CORPORATION**
9112 Spectrum Center Boulevard, San Diego, California, 92123

The undersigned hereby subscribes for Common Shares of Sphere 3D Corp. according to the terms and conditions set forth in the annexed Warrant Certificate (or such number of other securities or property to which such Warrant Certificate entitles the undersigned to acquire under the terms and conditions set forth in such Warrant Certificate).

Registered Name: _____

Address for Delivery of Common Shares: _____

_____

Attention: _____

Exercise Price Tendered (US$[•] per Common Share or as adjusted) US$_____

Capitalized terms not defined herein shall have the meanings assigned to them in the Warrant Certificate to which this subscription form is attached.

Dated at , this day of , 20 .

WITNESS:

_____
Holder's Name

_____
Authorized Signature

_____
Title (if applicable)

Signature guaranteed[1]:

_____

1. If the Common Shares are to be registered in a name other than the name of the registered Warrant Holder, the signature of the Warrant Holder must be medallion guaranteed by a bank, trust Corporation or a member of a stock exchange in the United States.

Schedule "B"

WARRANT TRANSFER FORM

FOR VALUE RECEIVED, subject to receipt of prior written approval of SPHERE 3D CORP. (the " **Corporation**"), the undersigned (the "**Transferor**") hereby sells, assigns and transfers unto (name) _____ (the "**Transferee**") of (residential address) _____ Warrants of the Corporation registered in the name of the undersigned represented by the within certificate, and irrevocably appoints the Corporation as the attorney of the undersigned to transfer the said securities on the register of transfers for the said Warrants, with full power of substitution.

NOTICE: The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement or any change whatever, and must be guaranteed by a bank, trust Corporation or a member of a recognized stock exchange. The guarantor must affix a stamp bearing the actual words "Signature Guaranteed".

DATED this day of , 20_.

_____

Signature Guaranteed (Signature of transferring Warrantholder)

_____

Name (please print)

_____

Address

_____

TRANSFEREE ACKNOWLEDGMENT

In connection with this transfer the undersigned transferee is delivering a written opinion of U.S. Counsel acceptable to the Corporation to the effect that this transfer of Warrants has been registered under the 1933 Act or is exempt from registration thereunder.

___

(Signature of Transferee)

___ _____

Date Name of Transferee (please print)

The Warrants and the common shares issuable upon exercise of the Warrants shall only be transferable in accordance with applicable laws. The Warrants may only be exercised in the manner required by the certificate representing the Warrants and the Warrant Exercise Form attached thereto. Any common shares acquired pursuant to this Warrant shall be subject to applicable hold periods and any certificate representing such common shares will bear restrictive legends.

Exhibit 8.1

Subsidiaries of the Company

Name of subsidiary	Jurisdiction of Incorporation or Organization
Sphere 3D Inc.	Ontario, Canada
V3 Systems Holdings, Inc.	Delaware, United States
Overland Storage, Inc.	California, United States
Overland Storage (Europe), Ltd.	United Kingdom
Overland Storage S.a.r.L.	France
Overland Storage GmbH	Germany
Overland Technologies Luxembourg S.a.r.L.	Luxembourg
Tandberg Data Holdings S.a.r.L.	Luxembourg
Tandberg Data SAS	France
Tandberg Data (Asia) Pte., Ltd.	Singapore
Tandberg Data (Japan), Inc.	Japan
Tandberg Data (Hong Kong), Ltd.	Hong Kong
Tandberg Data GmbH	Germany
Tandberg Data Norge AS	Norway
Guangzhou Tandberg Electronic Components Co. Ltd.	China

Exhibit 12.1

CERTIFICATION

I, Eric L. Kelly, certify that:

1. I have reviewed this annual report on Form 20-F 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: March 30, 2017

/s/ Eric L. Kelly

Eric L. Kelly
Chief Executive Officer

Exhibit 12.2

CERTIFICATION

I, Kurt L. Kalbfleisch, certify that:

1. I have reviewed this annual report on Form 20-F 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: March 30, 2017

/s/ Kurt L. Kalbfleisch

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

Exhibit 13.1

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 filing of the Annual Report on Form 20-F for the fiscal year ended December 31, 2016 (the "Report") by Sphere 3D Corp. (the "Company"), the undersigned, as the Chief Executive Officer of the Company, hereby certifies 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: March 30, 2017

/s/ Eric L. Kelly

Eric L. Kelly
Chief Executive Officer

Exhibit 13.2

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 filing of the Annual Report on Form 20-F for the fiscal year ended December 31, 2016 (the "Report") by Sphere 3D Corp. (the "Company"), the undersigned, as the Chief Financial Officer of the Company, hereby certifies 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: March 30, 2017

/s/ Kurt L. Kalbfleisch

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

Exhibit 15.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on Form F-3 (No. 333-206357, No. 333-206358, No. 333-206359, No. 333-207384, No. 333-210735) and Form S-8 (No. 333-203149, No. 333-203151, No. 333-205236, No. 333-209251, No. 333-214605, No. 333-216209) of Sphere 3D Corp. (the "Company") of our report dated March 30, 2017, relating to the consolidated financial statements of the Company (which report expresses an unqualified opinion and includes an explanatory paragraph regarding the Company's going concern uncertainty), appearing in the Company's Annual Report on Form 20-F for the year ended December 31, 2016, filed with the Securities and Exchange Commission.

/s/ Moss Adams LLP

Moss Adams LLP

San Diego, California, U.S.A
March 30, 2017