

SECURITIES AND EXCHANGE COMMISSION

FORM 10-K/A

Annual report pursuant to section 13 and 15(d) [amend]

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FILER

SYMPHONIX DEVICES INC

CIK: **930481** | IRS No.: **770376250** | State of Incorpor.: **DE** | Fiscal Year End: **1231**
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SIC: **3842** Orthopedic, prosthetic & surgical appliances & supplies

Mailing Address
2331 ZANKER ROAD
SAN JOSE CA 95131-1107

Business Address
2331 ZANKER ROAD
SAN JOSE CA 95131-1107
4082320710

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1 to FORM 10-K

(Mark One)

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

For the fiscal year ended: December 31, 2002

OR

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

For the transition period from _____ to _____

Commission File Number 000-23767

SYMPHONIX DEVICES, INC.

(Exact name of Registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation or organization)

77-0376250

(I.R.S. Employer
Identification Number)

1735 N. First St., Suite 311, San Jose, California

(address of principal executive offices)

95112

(zip code)

Registrant's telephone number, including area code:

(408) 232-0710

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

None

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

<u>Title of class</u>	<u>Name of exchange on which registered</u>
Common Stock, \$0.001 par value	NASDAQ

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K .

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes No

The aggregate market value of voting stock held by non-affiliates of the registrant as of February 11, 2003 was approximately \$1,400,000 based upon the last sales price reported for such date on the NASDAQ Market. For purposes of this disclosure, shares of Common Stock held by persons who hold more than 5% of the outstanding shares of Common Stock and shares held by officers and directors of the registrant, have been excluded in that such persons may be deemed to be affiliates. This determination is not necessarily conclusive.

At February 11, 2003, registrant had outstanding 35,887,000 shares of Common Stock.

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PART I

This Annual Report on Form 10-K contains certain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, including statements that indicate what Symphonix “believes”, “expects” and “anticipates” or similar expressions. These statements involve known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements of Symphonix to differ materially from those expressed or implied by such forward-looking statements. Such factors include, among others, the information contained under the captions Part I, Item 1, “Business,” and Part II, Item 7 “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Additional Factors that May Affect Future Results” in this Annual Report. The reader is cautioned not to place undue reliance on these forward-looking statements, which reflect management’s analysis only as of the date of this Annual Report. Symphonix undertakes no obligation to publicly release the results of any revision of these forward-looking statements. The reader is strongly urged to read the information set forth under the captions Part I, Item 1, “Business,” and Part II, Item 7 “Management’s Discussion and Analysis of Financial Condition and Results of Operations” for a more detailed description of these significant risks and uncertainties.

ITEM 1. BUSINESS

Overview

Symphonix has developed a family of proprietary implantable Soundbridges for the management of mild to severe hearing impairment. Our family of Vibrant Soundbridges is based on our patented core Floating Mass Transducer, or FMT, technology. In March 1998, we received authorization to market and sell the Vibrant Soundbridge in the European Union and in early 2000 began selling through our European distribution partner, Siemens Audiologische Technik GmbH. Late in 2000, we received approval from the Food and Drug Administration, or FDA, to commercially market our products in the United States. Subsequent to FDA approval, our products were launched to the otology community and audiology community in the U.S. Symphonix was incorporated in California in 1994 and reincorporated in Delaware in 1998. Our website is www.symphonix.com.

On November 13, 2002, the Company’s Board of Directors approved a plan of complete dissolution and liquidation, subject to approval by the Company’s stockholders at a special meeting to be held at a future date set by the Company’s Board of Directors. In connection with the proposed liquidation, we have terminated the majority of our employees. We have retained only a limited number of personnel necessary to facilitate the liquidation process. In connection with the liquidation, we intend to liquidate our property, equipment, intellectual property and other assets. In addition, we may consider various legal alternatives to liquidating the Company, including bankruptcy.

On March 20, 2003, the Company entered into a purchase agreement with MED-EL GmbH (“MED-EL”) whereby MED-EL will purchase the inventory, property and equipment, intellectual property and assume the product warranty of the Company for \$2.5 million. The closing of the purchase agreement is contingent upon the shareholders of the Company approving the proposed plan of liquidation and dissolution of the Company.

On March 20, 2003, the Company entered into an agreement with Siemens whereby Siemens and the Company agree to terminate the Marketing and Distribution Agreement between the Company and Siemens with no consideration due to either party. The agreement also provides for the assignment of the OEM Purchase Agreement between the Company and Siemens to MED-EL with no consideration due to either party. The agreement is contingent upon the closing of the purchase agreement between the Company and MED-EL.

On March 28, 2003 our common stock will be delisted from the NASDAQ Market and commence trading on the Over-the-Counter Bulletin Board.

Employees

At December 31, 2002, Symphonix had five employees. In conjunction with the Company' s announced intention to dissolve, the Company has retained these key employees for the purpose of executing the dissolution

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process, including the sale of assets, and other key milestones such as our annual audit, filing our Annual Report on Form 10-K for the fiscal year ended December 31, 2002 and filing our tax returns for the year ended December 31, 2002.

ITEM 2. PROPERTIES

Symphonix leases approximately 2,000 square feet of office space in San Jose, California, on a month-to-month basis for administrative purposes pursuant to executing the liquidation and dissolution of its business.

ITEM 3. LEGAL PROCEEDINGS

Symphonix has filed a complaint against Soundtec, Inc., the Central Ear Research Institute, or CERI, and three senior Soundtec executives in late 2001 alleging actions that include misappropriation of trade secrets, breach of contract and inducing breach of contract. Central to the complaint is Symphonix' s contention that Soundtec and its three executives utilized Symphonix' s confidential, proprietary and trade secret information to develop and market the Direct System™, Soundtec' s implantable middle ear hearing device. Prior to their tenure at Soundtec, the three executives named in the complaint were employed by CERI, which, in December 1994, entered into an agreement to undertake a research and development project with Symphonix on the development of an implantable hearing device. The agreement permanently transferred exclusive rights to Symphonix for all technology developed during the research period. It further required that CERI disclose and permanently transfer rights to Symphonix for all improvements invented, developed or otherwise acquired by CERI for five years after termination of the agreement. Two of the named executives in the complaint executed this agreement on CERI' s behalf. Soundtec was founded in March 1997, five months after CERI terminated its agreement with Symphonix. Among other requests, Symphonix is seeking to restrain Soundtec from selling its Direct System device for a period of two years and to collect related damages.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted for a vote of security holders during the fourth quarter of the fiscal year covered by this Report.

PART II**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS**

Symphonix's common stock will be traded on the NASDAQ SmallCap Market under the symbol "SMPX" until March 27, 2003. On March 28, 2003 our common stock will be delisted from the NASDAQ Market and commence trading on the Over-the-Counter Bulletin Board. The following table sets forth, for the periods indicated, the range of the low and high sales prices for Symphonix's common stock as reported on the NASDAQ SmallCap Market.

	High	Low
Fiscal 2001:		
First Quarter	\$ 4.06	\$ 0.91
Second Quarter	\$ 2.49	\$ 1.00
Third Quarter	\$ 1.33	\$ 0.30
Fourth Quarter	\$ 0.56	\$ 0.24
Fiscal 2002:		
First Quarter	\$ 0.78	\$ 0.07
Second Quarter	\$ 1.23	\$ 0.28
Third Quarter	\$ 0.67	\$ 0.25
Fourth Quarter	\$ 0.39	\$ 0.05

As of February 11, 2003, there were approximately 5,150 holders of record of the common stock. On February 11, 2003, the last reported sale price on the NASDAQ Market for the common stock was \$0.04.

Symphonix has not declared or paid any cash dividends on its common stock. Although the Board of Directors has not established a firm timetable for distributions to stockholders, if a plan of dissolution is ratified and approved by the stockholders, the Board of Directors intends, subject to contingencies inherent in winding up our business, to make such distributions as promptly as practicable. While we intend that any distributions to the stockholders will be in the form of cash, we cannot be certain since we have not completed a sale of our assets at this time. In the event that we sell our assets for property other than cash and we cannot effectively liquidate such property, we may distribute property to the stockholders rather than cash.

Equity Compensation Plan Information

Information regarding Symphonix's equity compensation plans, including both stockholder approved plans and non-stockholder approved plans, is set forth in the following table (in thousands, except per share data):

<u>Plan Category</u>	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders	2,138	\$ 1.71	2,971
Equity compensation plans not approved by security holders(1)	700	0.30	50

Total	2,838	\$	1.36	3,021
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- (1) A brief description of the material provisions of the 2002 Nonstatutory Stock Option Plan is provided in “Note 7. Stockholder’ s Equity” to the Notes to Consolidated Financial Statements contained in this Annual Report on Form 10-K.

[Table of Contents](#)**ITEM 6. SELECTED FINANCIAL DATA****SELECTED CONSOLIDATED FINANCIAL DATA****(In thousands, except per share amounts)**

The consolidated statement of operations data for each of the three years in the period ended December 31, 2002 and the consolidated balance sheet data at December 31, 2002 and 2001 are derived from the audited consolidated financial statements included in this report. The consolidated statement of operations data for each of the two years in the period ended December 31, 1999 and the consolidated balance sheet data at December 31, 2000, 1999 and 1998 are derived from audited financial statements not included in this report. Our historical results are not necessarily indicative of results to be expected for future periods. The consolidated financial data set forth below should be read in conjunction with the accompanying consolidated financial statements of Symphonix and related notes thereto, and Management's Discussion and Analysis of Financial Condition and Results of Operations.

	Year Ended December 31,				
	2002	2001	2000	1999	1998
Consolidated Statement of Operations Data:					
Revenues	\$ 1,683	\$ 2,020	\$ 1,247	\$ 331	\$ 597
Costs and expenses:					
Costs of goods sold	1,554	4,280	3,094	4,078	1,663
Research and development	2,114	6,104	7,119	7,848	8,322
Selling, general and administrative	5,657	9,158	8,654	5,847	5,633
Total costs and expenses	9,325	19,542	18,867	17,773	15,618
Operating loss	(7,642)	(17,522)	(17,620)	(17,442)	(15,021)
Interest income, net	338	793	463	763	1,375
Net loss	\$ (7,304)	\$ (16,729)	\$ (17,157)	\$ (16,679)	\$ (13,646)
Basic and diluted net loss per common share	\$ (0.20)	\$ (0.60)	\$ (1.18)	\$ (1.35)	\$ (1.24)
Shares used in computing basic and diluted net loss per common share	35,746	27,798	14,594	12,393	10,987
December 31,					
Consolidated Balance Sheet Data:					
Total assets	\$ 3,652	\$ 15,155	\$ 34,030	\$ 17,934	\$ 28,695
Working capital	\$ 1,569	\$ 9,033	\$ 25,878	\$ 11,256	\$ 21,791
Long-term debt and capital lease obligations	\$ -	\$ 500	\$ 1,000	\$ 1,508	\$ 2,098
Stockholders' equity	\$ 1,815	\$ 9,288	\$ 25,519	\$ 10,655	\$ 23,875

ITEM 7. MANAGEMENT' S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Results of Operations

Revenues. Revenues of \$1.7 million, \$2.0 million and \$1.2 million were recorded in the years ended December 31, 2002, 2001 and 2000, respectively, for sales of the Vibrant Soundbridge in North America, Europe and Latin America. The decrease in revenues from 2001 to 2002 is due to decreased unit sales in both the U.S. and European markets resulting from longer than expected buying decisions from customers and the fact that the Company, with its November 2002 announcement to dissolve, did not sell any of its products in December 2002. The increase in revenue from 2000 to 2001 is a result of increased unit sales in the U.S. resulting from increased investments in sales and marketing activities. Included in revenue for 2002, 2001 and 2000 is \$0.4 million, \$0.4 million and \$0.4 million, respectively, representing the amortization of \$1,885,000 which was the difference between the purchase price and the fair market value of Symphonix' s common stock purchased by Siemens in accordance with a marketing and distribution agreement. The deferred revenue is being amortized on a straight line basis over the five year life of the agreement. In conjunction with the Company' s decision to dissolve the business in November 2002, the Company ceased all selling activity and does not plan to generate any product revenue in the future.

Costs of Goods Sold. Costs of goods sold were \$1.6 million, \$4.3 million and \$3.1 million in the years ended December 31, 2002, 2001 and 2000, respectively, and represent the direct costs of the products sold as well as warranty provisions and production variances. The reduction in costs of goods sold from 2001 to 2002 is due primarily to a reduction in the warranty provision resulting from lower than expected repair costs, plus lower product costs resulting from lower unit sales in the U.S. and European markets. Additionally, early in 2002, Symphonix implemented a reduction in force which reduced its manufacturing overhead and direct labor costs. In November 2002, in conjunction with Symphonix' s announced intention to dissolve, Symphonix laid off all of its manufacturing personnel further reducing 2002 costs of goods sold. In conjunction with Symphonix' s decision to dissolve the business in November 2002, Symphonix ceased all selling activity and does not plan to incur any manufacturing costs in the future, including manufacturing overhead, direct labor or direct product cost. However, Symphonix plans to continue to incur some costs associated with its warranty obligations in the future.

Warranty expense is computed based on the number of audio processor units outstanding. In 1999, when these units began shipping, Symphonix reserved approximately 65% of the units outstanding, representing \$320,000 in warranty provision less \$72,000 in warranty costs charged against the provision. In 2000, Symphonix reserved approximately 58% of units outstanding, representing \$1,248,000 in warranty provision less \$377,000 in warranty costs charged against the provision. In 2001, Symphonix charged \$279,000 in warranty costs against the provision. In 2002, Symphonix charged \$755,000 in warranty costs against the provision. At December 31, 2002 the remaining provision of \$85,000 represents approximately 7% of units outstanding. The decrease in percentage of units outstanding reserved for the year ended December 31, 2002 is due to fewer units covered by the warranty as a percentage of units outstanding.

Research and Development Expenses. Research and development expenses were \$2.1 million, \$6.1 million, and \$7.1 million in the years ended December 31, 2002, 2001, and 2000, respectively. Research and development expenses consist primarily of personnel costs, professional services, materials, supplies and equipment in support of product development, clinical trials, regulatory submissions and the preparation and filing of patent applications. Research and development expenses decreased from 2000 to 2001 in part due to the PMA approval from the FDA. Research and development expenses decreased from 2001 to 2002 due to the completion of a number of key research and development milestones and subsequent significant reduction in headcount, consulting and project costs. In November 2002, in conjunction with Symphonix' s announced intention to dissolve, all research and development projects were ceased and all research and development personnel, except for Symphonix' s CTO and VP Clinical Affairs, were laid off. Symphonix does not plan to incur any research and development expenses in the future, other than compensation expenses associated with the CTO and VP Clinical Affairs in their roles in the dissolution process.

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Selling, General and Administrative Expenses. Selling, general and administrative expenses were \$5.7 million, \$9.2 million, and \$8.7 million in the years ended December 31, 2002, 2001, and 2000, respectively. Selling, general and administrative expenses consist primarily of personnel, marketing, legal and consulting costs. Expenses increased from 2000 to 2001 due to increased investment in U.S. marketing and selling efforts. Expenses decreased from 2001 to 2002 due to a reduction in headcount and marketing and selling programs in conjunction with expense reductions implemented by Symphonix in early 2002. In conjunction with the November 2002 announcement by Symphonix of its intention to dissolve its business, Symphonix laid off all of its sales and marketing personnel and ceased all selling efforts. Additionally, in November 2002, Symphonix laid off the majority of its administrative staff. Symphonix does not plan to incur any selling or marketing expenses in the future. Symphonix will continue to incur administrative expenses associated with the management of the dissolution process including compensation, professional fees and rent expense.

Deferred compensation of \$2.3 million was recorded in 1997, representing the difference between the exercise prices of certain options granted and the deemed fair value of Symphonix' s common stock on the grant dates. Deferred compensation expense of zero, \$34,000, and \$295,000 attributed to such options was amortized during the years ended December 31, 2002, 2001, and 2000, respectively. During 2002, 2001 and 2000, Symphonix reversed zero, zero and \$411,000, respectively, of unrecognized deferred compensation relating to employees that have terminated employment with Symphonix.

Interest Income, net. Interest income, net was \$338,000, \$793,000, and \$463,000 in the years ended December 31, 2002, 2001, and 2000, respectively. The decrease from 2001 to 2002 was due to a decrease in cash associated with funding Symphonix' s net loss in 2002. The increase from 2000 to 2001 was due to an increase in cash associated with a private placement in 2000.

Income Taxes. To date, Symphonix has not incurred any U.S. income tax obligations. At December 31, 2002, Symphonix had net operating loss carryforwards of approximately \$84.5 million for federal and \$42.7 million for state income tax purposes, which will expire at various dates in 2022 and 2013, respectively, if not utilized. The principal differences between losses for financial and tax reporting purposes are the result of the capitalization of research and development and start-up expenses for tax purposes. United States and state tax laws contain provisions that may limit the net operating loss carryforwards that can be used in any given year, if certain changes in the beneficial ownership of Symphonix' s outstanding common stock occur. Such events could limit the future utilization of Symphonix' s net operating loss carryforwards.

Liquidity and Capital Resources

Since its inception, Symphonix has funded its operations and its capital expenditures from proceeds of its initial public offering completed in February 1998 totaling \$28.4 million, net of issuance costs, from the private sale of equity securities totaling \$62.5 million, from an equipment lease financing totaling \$1.3 million and from bank borrowings totaling \$2.0 million, net. Included in the \$62.5 million private sale of equity securities was \$10.0 million to Siemens and \$26.0 million in a private placement in 2000. At December 31, 2002, Symphonix had \$1.6 million in working capital, and its primary source of liquidity was \$2.0 million in cash and cash equivalents.

Capital expenditures, related primarily to Symphonix' s research and development and manufacturing activities, were \$17,000, \$749,000, and \$608,000 in the years ended December 31, 2002, 2001, and 2000 respectively. The increased capital expenditures in 2001 from 2000 related primarily to the purchase of test and production equipment. The reduction in capital expenditures from 2001 to 2002 was a result of slowing business for Symphonix and cuts made in research and development and manufacturing programs during 2002. At December 31, 2002, Symphonix did not have any material commitments for capital expenditures.

In November 2002, Symphonix paid down its remaining loan obligation of \$0.6 million pursuant to a loan agreement with a bank. Symphonix has no amounts available for future borrowings under the loan agreement.

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Symphonix used \$9.2 million in cash for operations in 2002, down from \$16.3 million in 2001 and \$15.8 million in 2000 due primarily to the reduction of program and headcount expenditures in marketing and research and development. The primary use of cash was to fund operating losses during the year.

Since Symphonix' s formation in May 1994 through December 2001, Symphonix has generated an accumulated deficit of approximately \$90.0 million.

In connection with the proposed liquidation, we expect to liquidate our remaining assets, including property, equipment and intellectual property. We also expect to incur liquidation expenses, in addition to payments of ongoing operating expenses and settlement of existing and potential obligations. Liquidation expenses may include, among others, employee severance and related costs, customer warranty obligations and legal and accounting fees. While we cannot currently make a precise estimate of these expenses, we believe that most if not all of our current cash and cash equivalents, together with proceeds from future sales of the remaining assets may be required to pay for the above expenditures.

Critical Accounting Policies

Symphonix' s discussion and analysis of its financial condition and results of operations are based upon the consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires Symphonix to make estimates and judgements that affect the reported amounts of assets, liabilities, revenues, and expenses, and related contingent liabilities. On an on going basis Symphonix evaluates its estimates, including those related to revenues, collectibility of receivables, inventories, investments, income taxes, contingencies and litigation. Symphonix bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

Symphonix' s critical accounting policies are as follows:

Revenue Recognition

Symphonix recognizes revenue from product sales upon shipment to the customer against a valid purchase order, provided no significant obligations remain and collection of the receivables is probable. Upon shipment, Symphonix provides for estimated product return and estimated costs that may be incurred for product warranties.

Estimating Expenses

On an ongoing basis, Symphonix evaluates its estimates for expenses including bonus and commissions related to our sales force, collectibility of receivables, inventory reserves, impairment of investments, valuation allowance for deferred income taxes, warranty provisions and other various expenses. Symphonix bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ from those estimates under different assumptions and conditions.

Recent Accounting Pronouncements

In April 2002, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 145 ("SFAS 145"), *"Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Corrections,"* which is effective for fiscal years beginning after May 15, 2002. Under SFAS 145, gains and losses from the extinguishment of debt should be classified as extraordinary items only if they meet the criteria of Accounting Principles Board Opinion No. 30. SFAS also addresses financial accounting and reporting for capital leases that are modified in such a way as to give rise to a new

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agreement classified as an operating lease. The Company believes that the adoption of SFAS 145 will not have a material impact on the consolidated financial position or results of operations of the Company.

In June 2002, the FASB issued Statement of Financial Accounting Standards No. 146 (“SFAS 146”), “*Accounting for Costs Associated with Exit or Disposal Activities*,” which is effective for exit or disposal activities initiated after December 31, 2002. SFAS 146 nullifies Emerging Issues Task Force Issue No. 94-3, “*Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)*.” Under SFAS 146, a liability is required to be recognized for a cost associated with an exit or disposal activity when the liability is incurred. SFAS 146 applies to costs associated with an exit activity that does not involve an entity newly acquired in a business combination or with a retirement or disposal activity covered by FASB Statements No. 143 and 144. The Company believes that the adoption of SFAS 146 will not have a material impact on the consolidated financial position or results of operations of the Company.

In November 2002, the FASB issued FASB Interpretation No. 45 (“FIN45”), “*Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*.” FIN 45 requires that a liability be recorded in the guarantor’s balance sheet upon issuance of a guarantee. In addition, FIN 45 requires disclosures about the guarantees that an entity has issued, including a reconciliation of changes in the entity’s product warranty liabilities. The initial recognition and initial measurement provisions of FIN 45 are applicable on a prospective basis to guarantees issued or modified after December 31, 2002, irrespective of the guarantor’s fiscal year-end. The disclosure requirements of FIN 45 are effective for financial statements of interim or annual periods ending after December 15, 2002. The Company believes that the adoption of FIN 45 will not have a material impact on the consolidated financial position or results of operations of the Company.

In December 2002, the FASB issued Statement of Financial Accounting Standards No. 148 (“SFAS 148”), “*Accounting for Stock-Based Compensation, Transition and Disclosure*.” SFAS 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. SFAS 148 also requires that disclosures of the pro forma effect of using the fair value method of accounting for stock-based employee compensation be displayed more prominently and in a tabular format. Additionally, SFAS 148 requires disclosure of the pro forma effect in interim financial statements. The transition and annual disclosure requirements of SFAS 148 are effective for fiscal years ended after December 15, 2002. The interim disclosure requirements are effective for interim periods beginning after December 15, 2002. The Company believes that the adoption of SFAS 148 will not have a material impact on the consolidated financial position or results of operations of the Company.

ADDITIONAL FACTORS THAT MIGHT AFFECT FUTURE RESULTS

WE CANNOT ASSURE YOU OF THE AMOUNT, IF ANY, OF ANY DISTRIBUTION TO OUR STOCKHOLDERS UNDER THE PLAN OF COMPLETE LIQUIDATION AND DISSOLUTION.

Liquidation and dissolution may not create value to our stockholders or result in any remaining capital for distribution to our stockholders. We cannot assure you of the precise nature and amount of any distribution to our stockholders pursuant to the plan of dissolution. Uncertainties as to the precise net value of our non-cash assets and the ultimate amount of our liabilities make it impracticable to predict the aggregate net value, if any, ultimately distributable to our stockholders. The actual nature and amount of all distributions will depend in part upon our ability to convert our remaining non-cash assets into cash. We may not be successful in selling our non-cash assets, in which case we may not generate meaningful cash, if any, to return to our stockholders.

THE PROCEEDS FROM ANY SALES OF OUR NON-CASH ASSETS MAY BE LESS THAN ANTICIPATED.

Sales of our non-cash assets will be made on terms approved by our Board of Directors and may be conducted by competitive bidding, public sales or privately negotiated sales. The prices at which we will be able

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to sell our various non-cash assets will depend largely on factors beyond our control, including, without limitation, the condition of financial markets, the availability of financing to prospective purchasers of the assets, regulatory approvals and public market perceptions. In addition, we may not obtain as high a price for a particular asset as we might secure if we were not in liquidation. Furthermore, many of our non-cash assets, particularly our intellectual property, will decline in value over time, and we may not be able to consummate the sale of these assets in time to generate meaningful value which could be returned to our stockholders.

WE MAY NOT BE ABLE TO SETTLE ALL OF OUR OBLIGATIONS TO CREDITORS.

We have current and future obligations to creditors. These include, without limitation, long-term contractual obligations associated with business agreements with customers, including certain product warranties, and other third parties. As part of the wind down process, we will attempt to settle our obligations with our creditors. We may not, however, succeed in doing so. If we cannot reach an agreement with a creditor concerning an obligation, that creditor may choose to bring a lawsuit against us. Any litigation could delay or even prevent us from completing the plan of dissolution. Moreover, amounts required to settle our obligations to creditors will reduce the amount of remaining capital available for distribution to stockholders.

WE WILL CONTINUE TO INCUR CLAIMS, LIABILITIES AND EXPENSES WHICH WILL REDUCE THE AMOUNT AVAILABLE FOR DISTRIBUTION TO STOCKHOLDERS.

Claims, liabilities and expenses from operations (such as operating costs, salaries, directors' and officers' insurance, payroll and local taxes, legal, accounting and consulting fees and miscellaneous office expenses) will continue to be incurred as we wind down. These expenses will reduce the amount of assets available for ultimate distribution to stockholders. If available cash and amounts received on the sale of non-cash assets are not adequate to provide for our obligations, liabilities, expenses and claims, we may not be able to distribute meaningful cash, or any cash at all, to our stockholders.

DISTRIBUTION OF ASSETS, IF ANY, TO OUR STOCKHOLDERS COULD BE DELAYED.

Our Board of Directors has not established a firm timetable for distributions to our stockholders, and we are currently unable to predict the precise timing of any distribution, if any, pursuant to our wind down. The timing of distribution, if any, will depend on and could be delayed by, among other things, the timing of sales of our non-cash assets, claim settlements with creditors and the amounts paid out under warranty claims. Additionally, a creditor could seek an injunction against the making of distributions to our stockholders on the ground that the amounts to be distributed were needed to provide for the payment of our liabilities and expenses. Additionally, we could seek protection from creditors under the federal bankruptcy code. Any action of this type could delay or substantially diminish, or eliminate, the amount available for distribution to our stockholders.

IF WE FAIL TO CREATE AN ADEQUATE CONTINGENCY RESERVE FOR PAYMENT OF OUR EXPENSES AND LIABILITIES, OUR STOCKHOLDERS COULD BE HELD LIABLE FOR PAYMENT TO OUR CREDITORS OF EACH SUCH STOCKHOLDER'S PRO RATA SHARE OF AMOUNTS OWED TO THE CREDITORS IN EXCESS OF THE CONTINGENCY RESERVE, UP TO THE AMOUNT ACTUALLY DISTRIBUTED TO SUCH STOCKHOLDER.

If the plan of dissolution is ratified and approved by our stockholders, we will file a Certificate of Dissolution with the State of Delaware dissolving Symphonix. Pursuant to the Delaware General Corporation Law, we will continue to exist for three years after the dissolution becomes effective or for such longer period as the Delaware Court of Chancery shall direct, for the purpose of prosecuting and defending suits against us and enabling us gradually to close our business, to dispose of our property, to discharge our liabilities and to distribute to our stockholders any remaining assets. Under the Delaware General Corporation Law, in the event we fail to create an adequate contingency reserve for payment of our expenses and liabilities during this three-year period, each stockholder could be held liable for payment to our creditors of such stockholder's pro rata

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share of amounts owed to creditors in excess of the contingency reserve, up to the amount actually distributed to such stockholder.

However, the liability of any stockholder would be limited to the amounts previously received by such stockholder from us (and from any liquidating trust or trusts) in the dissolution. Accordingly, in such event a stockholder could be required to return all distributions previously made to such stockholder. In such event, a stockholder could receive nothing from us under the plan of dissolution. Moreover, in the event a stockholder has paid taxes on amounts previously received, a repayment of all or a portion of such amount could result in a stockholder incurring a net tax cost if the stockholder's repayment of an amount previously distributed does not cause a commensurate reduction in taxes payable. There can be no assurance that the contingency reserve established by us will be adequate to cover any expenses and liabilities. See "Contingent Liabilities; Contingency Reserve; Liquidating Trust."

OUR STOCK TRANSFER BOOKS WILL CLOSE ON THE DATE WE FILE THE CERTIFICATE OF DISSOLUTION WITH THE DELAWARE SECRETARY OF STATE, AFTER WHICH IT WILL NOT BE POSSIBLE FOR STOCKHOLDERS TO PUBLICLY TRADE OUR STOCK.

We intend to close our stock transfer books and discontinue recording transfers of our common stock at the close of business on the date we file the Certificate of Dissolution with the Delaware Secretary of State, referred to as the "final record date." Thereafter, certificates representing our common stock shall not be assignable or transferable on our books except by will, intestate succession or operation of law. The proportionate interests of all of our stockholders shall be fixed on the basis of their respective stock holdings at the close of business on the final record date, and, after the final record date, any distributions made by us shall be made solely to the stockholders of record at the close of business on the final record date, except as may be necessary to reflect subsequent transfers recorded on our books as a result of any assignments by will, intestate succession or operation of law.

WE DO NOT EXPECT TO RECOGNIZE ANY MATERIAL REVENUE FOLLOWING THE ANNOUNCEMENT OF OUR INTENT TO WIND DOWN.

Except for revenue resulting from the sale of our remaining inventory, we do not expect to recognize much, if any, additional revenue. Furthermore, it may be difficult to collect receivables now that we have announced our intent to wind down.

WE WILL CONTINUE TO INCUR THE EXPENSES OF COMPLYING WITH PUBLIC COMPANY REPORTING REQUIREMENTS.

We have an obligation to continue to comply with the applicable reporting requirements of the Securities Exchange Act of 1934, as amended, referred to as the "Exchange Act," even though compliance with such reporting requirements is economically burdensome. In order to curtail expenses, we intend to, after filing our Certificate of Dissolution, seek relief from the Securities and Exchange Commission from the reporting requirements under the Exchange Act. We anticipate that, if such relief were granted, we would continue to file current reports on Form 8-K to disclose material events relating to our liquidation and dissolution along with any other reports that the Securities and Exchange Commission might require. However, the Securities and Exchange Commission may not grant any such relief.

IF WE FAIL TO RETAIN THE SERVICES OF CERTAIN KEY PERSONNEL, THE PLAN MAY NOT SUCCEED.

The success of the plan of dissolution depends in large part upon our ability to retain the services of certain of our current officers. The retention of Kirk B. Davis and Terence J. Griffin is particularly difficult under our current circumstances. Failure to retain these personnel could harm the implementation of the plan of dissolution.

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If we fail to retain these personnel, we will need to hire others to oversee our liquidation and dissolution, which could involve additional compensation expenses, if such other personnel are available at all. For this reason and others discussed below, we are providing retention incentives to our remaining employees certain executive officers with the exception of Kirk B. Davis, our Chief Executive Officer, who has a severance agreement.

OUR STOCKHOLDERS COULD VOTE AGAINST THE PLAN.

Our stockholders could vote against the plan of dissolution. If we do not obtain stockholder ratification and approval of the plan of dissolution, we would have to continue our business operations from a difficult position, in light of our announced intent to liquidate and dissolve. Among other things, a substantial majority of our employees have been terminated, and customer relationships will have been severely strained. On November 14, 2002, we terminated all of our employees with the exception of our Chief Executive Officer, our Chief Financial Officer, our Chief Technical Officer, our Vice President of Clinical Affairs and our Controller. Prospective employees, customers and other third parties may refuse to form relationships or conduct business with us if they have no confidence in our future.

THE COMPANY'S STOCK IS TO BE DELISTED FROM THE NASDAQ MARKET

The Nasdaq has informed the Company that its common stock will be delisted from the Nasdaq Market commencing on March 28, 2003. The decision by the Nasdaq Listing Qualifications Panel to delist Symphonix was based on the Company's failure to meet the Nasdaq's minimum \$1 bid price per share requirement. On March 28, 2003, the Company's shares will commence trading on the Over-the-Counter Bulletin Board (OTCBB). The OTCBB is a regulated quotation service that displays real-time quotes, last-sale prices and volume information in over-the-counter equity securities. As a result of the Company's common stock being listed on the OTCBB, your ability to resell your shares of our common stock be adversely affected.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Symphonix considered the provisions of Financial Reporting Release No. 48 "Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments, and Disclosure of Quantitative and Qualitative Information about Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments and Derivative Commodity Instruments". Symphonix had no holdings of derivative financial or commodity instruments at December 31, 2002. Symphonix is exposed to financial market risks, including changes in interest rates and foreign currency exchange rates. The fair value of Symphonix's investment portfolio or related income would not be significantly impacted by either a 100 basis point increase or decrease in interest rates due mainly to the short-term nature of Symphonix's investment portfolio. Symphonix's debt obligations are subject to interest rate risk but due to the minimal amount of debt, this risk is insignificant. An increase in interest rates would not significantly affect the Company's net loss. Much of the Company's revenue and all of its capital spending is transacted in U.S. dollars. However, the Company does enter into transactions in other currencies, primarily the Euro. Gains and losses on the conversion to U.S. dollars of accounts receivable and accounts payable resulting from these transactions may contribute to fluctuations in our operating results. However, these transactions in other currencies were not material relative to transactions in U.S. dollars. At December 31, 2002, the Company performed sensitivity analyses to assess the potential effect of this risk and concluded that near-term changes in interest rates and foreign currency exchange rates should not materially adversely affect the Company's financial position, results of operations or cash flows.

ITEM 8. CONSOLIDATED FINANCIAL STATEMENTS

The consolidated financial statements as of December 31, 2002 and 2001 and for the years then ended and the related report of PricewaterhouseCoopers LLP, independent accountants, and the consolidated financial statements for the year ended December 31, 2000 and the related report of KPMG LLP, independent auditors, are included on the following pages.

REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and
Stockholders of Symphonix Devices, Inc.:

In our opinion, the consolidated financial statements listed in the index appearing under Item 15(a)(1) on page 42, present fairly, in all material respects, the financial position of Symphonix Devices, Inc. and its subsidiaries at December 31, 2002 and 2001, and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2002 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under Item 15(a)(2) on page 42, presents fairly, in all material respects, the information set forth therein for each of the two years in the period ended December 31, 2002 when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations and operating cash flow deficiencies that raise substantial doubt about its ability to continue as a going concern. On November 13, 2002, the Company's Board of Directors approved a plan of complete dissolution and liquidation, subject to approval by the Company's stockholders at a special meeting to be held at a future date set by the Company's Board of Directors. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ PRICEWATERHOUSECOOPERS LLP

San Jose, California
January 24, 2003, except as to Note 12,
which is as of March 20, 2003

REPORT OF INDEPENDENT AUDITORS

To the Board of Directors and
Stockholders of Symphonix Devices, Inc.:

We have audited the accompanying consolidated statements of operations, stockholders' equity, comprehensive loss, and cash flows of Symphonix Devices, Inc. for the year ended December 31, 2000 as listed in the accompanying index appearing under Item 15(a)(1) on Page 42. In connection with our audit of the consolidated financial statements, we have also audited the related consolidated financial statement schedule as it relates to the year ended December 31, 2000 as listed in the index appearing under Item 15(a)(2). These consolidated financial statements and the related financial statement schedule are the responsibility of Symphonix' s management. Our responsibility is to express an opinion on the related consolidated financial statements and the financial statement schedule based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the results of operations of Symphonix Devices, Inc. and subsidiaries and their cash flows for the year ended December 31, 2000, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the related consolidated financial statement schedule as it relates to the year ended December 31, 2000, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/ KPMG LLP

San Francisco, California
February 14, 2001

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SYMPHONIX DEVICES, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	December 31,	
	2002	2001
ASSETS		
Current assets:		
Cash and cash equivalents.	\$ 1,966	\$ 1,343
Restricted cash	10	-
Short-term investments	-	10,774
Accounts receivable, net of allowance for doubtful accounts of zero in 2002 and \$27 in 2001	175	329
Inventories	676	656
Prepaid expenses and other current assets	222	566
	-----	-----
Total current assets	3,049	13,668
Property and equipment, net	603	1,313
Restricted cash	-	174
	-----	-----
Total assets	\$ 3,652	\$ 15,155
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 218	\$ 451
Accrued compensation	291	976
Other accrued liabilities	971	2,708
Current portion of bank borrowing	-	500
	-----	-----
Total current liabilities	1,480	4,635
Deferred revenue	357	732
Bank borrowings, less current portion	-	500
	-----	-----
Total liabilities	1,837	5,867
	=====	=====
Commitments (Note 5)		
Stockholders' equity:		
Convertible preferred stock, \$.001 par value:		
Authorized: 5,000,000 shares		
Issued and outstanding: no shares in 2002 and 2001	-	-
Common stock, \$.001 par value:		
Authorized: 50,000,000 shares		
Issued and outstanding: 35,887,000 shares in 2002 and 35,635,000 shares in 2001	36	36
Notes receivable from stockholders	(320)	(400)
Additional paid-in capital	92,053	92,107
Accumulated other comprehensive income	65	260

Accumulated deficit	(90,019)	(82,715)
Total stockholders' equity	1,815	9,288
Total liabilities and stockholders' equity	\$ 3,652	\$ 15,155

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

SYMPHONIX DEVICES, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Year Ended December 31,		
	2002	2001	2000
Revenues	\$ 1,683	\$ 2,020	\$ 1,247
Costs and expenses:			
Costs of goods sold	1,554	4,280	3,094
Research and development	2,114	6,104	7,119
Selling, general and administrative	5,657	9,158	8,654
Total costs and expenses	9,325	19,542	18,867
Operating loss	(7,642)	(17,522)	(17,620)
Interest income	366	894	652
Interest expense	(28)	(101)	(189)
Net loss	\$ (7,304)	\$ (16,729)	\$ (17,157)
Basic and diluted net loss per common share	\$ (0.20)	\$ (0.60)	\$ (1.18)
Shares used in computing basic and diluted net loss per common share	35,746	27,798	14,594

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

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SYMPHONIX DEVICES, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2002	2001	2000
Cash flows from operating activities:			
Net loss	\$ (7,304)	\$ (16,729)	\$ (17,157)
Adjustments to reconcile net loss to net cash used in operating activities:			
Amortization of deferred compensation	–	34	295
Amortization of premium on investments	50	201	–
Gain on sale of short-term investments	(48)	(46)	–
Stock based compensation	–	–	40
Allowance for doubtful accounts	–	20	–
Depreciation and amortization	687	751	766
Disposal of fixed assets	5	11	–
Changes in operating assets and liabilities:			
Accounts receivable	154	7	(239)
Inventories	(20)	1,378	(1,372)
Prepaid expenses and other current assets	344	124	46
Accounts payable	(233)	(383)	260
Accrued compensation	(685)	(328)	143
Deferred revenue	(375)	(369)	(319)
Other accrued liabilities	(1,737)	(994)	1,746
Net cash used in operating activities	(9,162)	(16,323)	(15,791)
Cash flows from investing activities:			
Purchases of short-term investments	–	(27,380)	(3,656)
Sales and maturities of short-term and long-term investments	10,592	16,631	10,550
Purchases of property and equipment	(17)	(749)	(608)
Proceeds from sale of property and equipment	35	–	–
Change in restricted cash	164	97	(271)
Change in other assets	–	19	3
Net cash provided by (used in) investing activities	10,774	(11,382)	6,018
Cash flows from financing activities:			
Payments on capital lease obligations	–	–	(98)
Payments on bank borrowings	(1,000)	(500)	(500)
Proceeds from issuance of common stock, net of issuance costs	26	237	31,025
Issuance of notes receivable from stockholders	–	–	(160)
Payments received on notes receivable from stockholders	–	21	711
Net cash provided by (used in) financing activities	(974)	(242)	30,978
Net increase (decrease) in cash and cash equivalents	638	(27,947)	21,205

Effect of exchange rates on cash and cash equivalents	(15)	26	61
Cash and cash equivalents, beginning of year	1,343	29,264	7,998
Cash and cash equivalents, end of year	\$ 1,966	\$ 1,343	\$ 29,264
Supplemental disclosure of cash flow information and non-cash activities			
Cash paid for interest	\$ 28	\$ 101	\$ 189
Reversal of unrealized deferred compensation	\$ -	\$ -	\$ 411
Cancellation of notes receivable to stockholders for unvested restricted stock	\$ 80	\$ -	\$ 107

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

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SYMPHONIX DEVICES, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

For the three years ended December 31, 2002

(in thousands, except per share data)

	Common Stock		Notes Receivable		Paid-In Capital	Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	From Stockholders	Deferred Compensation				
Balances, December 31, 1999	13,443	\$ 13	\$ (1,079)	\$ (740)	\$61,346	\$ (56)	\$ (48,829)	\$ 10,655
Note receivable issued to stockholder			(160)					(160)
Payment on and forfeiture of stockholder notes receivable	(134)		818		(107)			711
Cancellations of stock options				411	(411)			-
Amortization of deferred compensation				295				295
Stock based compensation					40			40
Common stock issued in connection with warrant exercises	18							-
Common stock issued in connection with stock option exercises	77				145			145
Common stock issued pursuant to the Company's stock purchase plan	84				158			158
Private placement, net of issuance costs	7,424	8			30,714			30,722
Change in unrealized losses on investments						49		49
Translation adjustments						61		61
Net loss							(17,157)	(17,157)
Balances, December 31, 2000	20,912	\$ 21	\$ (421)	\$ (34)	\$91,885	\$ 54	\$ (65,986)	\$ 25,519
Repurchase of common stock	(3)				(2)			(2)
Payment on stockholder note receivable			21					21
Amortization of deferred compensation				34				34
Common stock issued in connection with stock option exercises	172				221			221
Common stock issued pursuant to purchase price adjustment, net of issuance costs	14,336	15			(129)			(114)
Common stock issued pursuant to the Company's stock purchase plan	218				132			132
Change in unrealized gains on investments						180		180
Translation adjustments						26		26
Net loss							(16,729)	(16,729)
Balances, December 31, 2001	35,635	\$ 36	\$ (400)	\$ -	\$92,107	\$ 260	\$ (82,715)	\$ 9,288
Common stock issued in connection with stock option exercises	18				2			2
Common stock issued pursuant to the Company's stock purchase plan	278				71			71

Change in unrealized gains on investments						(180)		(180)
Translation adjustments						(15)		(15)
Issuance costs in connection with private placement						(47)		(47)
Forfeiture of stockholder note receivable	(44)		80			(80)		-
Net loss							(7,304)	(7,304)
Balances, December 31, 2002	35,887	\$ 36	\$ (320)	\$ -	\$92,053	\$ 65	\$ (90,019)	\$ 1,815

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

SYMPHONIX DEVICES, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(in thousands)

	<u>Year Ended December 31,</u>		
	<u>2002</u>	<u>2001</u>	<u>2000</u>
Net loss	\$ (7,304)	\$ (16,729)	\$ (17,157)
Change in unrealized gains (losses) on short-term investments	(180)	180	49
Translation adjustments	(15)	26	61
Comprehensive loss	<u>\$ (7,499)</u>	<u>\$ (16,523)</u>	<u>\$ (17,047)</u>

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

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Formation and Business of Symphonix

Symphonix Devices, Inc. (the “Company” or “Symphonix”) was incorporated on May 17, 1994 to develop and manufacture implantable and semi-implantable hearing devices. Symphonix sells products in North America and Europe through its direct sales force and distributors.

Plan of Dissolution:

On November 13, 2002, the Company’s Board of Directors approved a plan of complete dissolution and liquidation, subject to approval by the Company’s stockholders at a special meeting to be held at a future date set by the Company’s Board of Directors. In connection with the proposed liquidation, the Company terminated the majority of its employees and retained only a limited number of personnel necessary to facilitate the liquidation process. Additionally, the Company intends to liquidate all the property, equipment, intellectual property and other assets.

In the event that Symphonix’s shareholders do not approve the plan of dissolution and liquidation, Symphonix may seek protection under federal bankruptcy laws or Symphonix may seek to raise additional capital, hire new research and development staff and invest in its next generation of products. Symphonix would attempt to design its next generation products such that the potential for reimbursement from Medicare would be improved. Symphonix believes that reimbursement is necessary for its products to be affordable and appealing to the broader hearing market and to have a viable stand alone business. However, Symphonix may not be successful in its efforts to raise additional capital, hire new staff or design a product that would meet the criteria necessary to obtain reimbursement from Medicare. If the plan of dissolution and liquidation is not approved, Symphonix will be required to fulfill its obligations under its Marketing and Distribution Agreement with Siemens or pay a \$2 million termination fee. There are no current specific plans or commitments with regard to efforts to raise additional capital.

Liquidity:

At December 31, 2002, Symphonix had aggregate consolidated net losses of approximately \$90.0 million. In connection with the proposed liquidation, we expect to liquidate our remaining assets, including property, equipment and intellectual property. We also expect to incur liquidation expenses, in addition to payments of ongoing operating expenses and settlement of existing and potential obligations. Liquidation expenses may include, among others, employee severance and related costs, customer warranty obligations and legal and accounting fees. While we cannot currently make a precise estimate of these expenses, we believe that most if not all of our current cash and cash equivalents, together with proceeds from future sales of the remaining assets may be required to pay for the above expenditures.

2. Summary of Significant Accounting Policies

Basis of presentation:

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America which contemplate the continued existence of Symphonix. Symphonix’s recurring losses from operations raise substantial doubt regarding Symphonix’s ability to continue for a going concern for a reasonable period of time. Symphonix’s shareholders have not as of yet voted on the plan of dissolution and liquidation (see Note 1), which is required under Delaware law, and the accompanying financial statements do not include any adjustments that might result from this uncertainty.

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Basis of Consolidation:

The consolidated financial statements include the accounts of Symphonix and its wholly-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated.

Use of Estimates:

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

Concentration of Credit Risk and Other Risks and Uncertainties:

Symphonix' s cash and cash equivalents are primarily maintained at two financial institutions in the United States. Deposits held with banks may exceed the amount of insurance provided on such deposits. Generally these deposits may be redeemed upon demand and therefore, bear minimal risk.

Symphonix performs ongoing credit evaluations of its customers and maintains an allowance for doubtful accounts. Historically Symphonix has not experienced significant losses related to individual customers. At December 31, 2002 and 2001 one customer accounted for approximately 90.3% and 60.0%, respectively, of accounts receivable.

Fair value of Financial Instruments:

Carrying amounts of certain of Symphonix' s financial instruments including cash and cash equivalents, short-term investments, accounts receivable and accounts payable approximate fair values due to their short maturities. Based on the borrowing rates currently available to Symphonix for loans with similar terms, the carrying value of the bank loan approximates fair value. Estimated fair values for short-term investments, which are separately disclosed elsewhere, are based on quoted market prices for the same or similar instruments.

Cash and Cash Equivalents and Restricted Cash:

Symphonix considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents. Restricted cash consists of a certificate of deposit held with a financial institution as a security deposit in connection with a point-of-sale software agreement.

Investments:

All investments are classified as available-for-sale and therefore are carried at fair market value. Unrealized gains and losses on such securities are reported as a separate component of other comprehensive income (loss). Interest income is recorded using an effective interest rate, with associated premium or discount amortized to interest income. Realized gains and losses on sales of all such securities are reported in earnings and computed using the specific identification cost method. All investments with maturity dates greater than one year are classified as long term.

Inventories:

Inventories are stated at the lower of cost or market. Cost is determined on a standard cost basis that approximates the first-in, first-out (FIFO) method. Appropriate consideration is given to obsolescence, excessive levels, deterioration and other factors in evaluating lower of cost or market.

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Property and Equipment:

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation is provided on a straight-line basis over the estimated useful lives of the assets, which is generally three to five years. Amortization of leasehold improvements and property and equipment under capital lease obligations is computed using the straight-line method over the shorter of the remaining lease term or the estimated useful life of the related assets, typically five years. Upon retirement or disposal of the asset, the cost and related accumulated depreciation are removed from the balance sheet and any related gain or loss is reflected in operations. Maintenance and repairs are charged to operations as incurred.

Long-Lived Assets:

Symphonix periodically reviews the value of long-lived assets for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable or that the useful lives of these assets are no longer appropriate. Each impairment test is based on a comparison of the future undiscounted cash flows arising from the assets with the carrying value of the asset. If an impairment is indicated, the asset is written down to its estimated fair value on a discounted cash flow basis. Since inception through December 31, 2002, no impairment losses have been identified.

Income Taxes:

Symphonix accounts for income taxes under the asset and liability method, whereby deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

Foreign Currency Translation:

Symphonix' s international subsidiaries use their local currency as their functional currency. Assets and liabilities are translated at exchange rates in effect at the balance sheet date and income and expense accounts at average exchange rates during the year. Resulting translation adjustments are recorded directly to a separate component of other comprehensive income (loss). Foreign currency transaction gains and losses are included in results of operations and have been immaterial for all periods presented.

Revenue Recognition:

Symphonix recognizes revenue in accordance with Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements." Revenue from product sales is recognized upon shipment of product against a valid purchase order provided no significant obligations remain and collection of the receivables are deemed probable. Upon shipment, Symphonix provides for estimated product returns and estimated costs that may be incurred for product warranties. Amounts received prior to completion of the earnings process are recorded as deferred revenue and recognized on a straight line basis over the life of the agreement. Included in revenues are \$0.4 million, \$0.4 million and \$0.4 million for the years ended December 31, 2002, 2001 and 2000, respectively, which represents the amortization of the premium of \$1,885,000 on the common stock purchased by Siemens in accordance with the Marketing and Distribution Agreement (Note 6).

Research and Development:

Research and development costs are charged to operations as incurred. Legal expenses relating to patent costs are expensed as incurred.

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Accounting for Stock-Based Compensation:

The Company accounts for stock-based employee compensation arrangements in accordance with provisions of Accounting Principles Board Opinion No. 25 (“APB 25”), “Accounting for Stock Issued to Employees” and related interpretations and complies with the disclosure provisions of Statement of Financial Accounting Standards No. 123 (“SFAS 123”), “Accounting for Stock-Based Compensation.”

Under APB 25, compensation expense is based on the difference, if any, on the date of the grant, between the fair value of the Company’s stock and the exercise price. SFAS 123 defines a “fair value” based method of accounting for an employee stock option or similar equity investment.

The Company accounts for equity instruments issued to non-employees in accordance with the provisions of SFAS 123 and Emerging Issues Task Force Issue No. 96-18 (“EITF 96-18”), “Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services” and Financial Accounting Standards Board Interpretation No. 28 (“FIN 28”), “Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans.”

During the year ended December 31, 2002, the Company adopted Statement of Financial Accounting Standards No. 148, “Accounting for Stock-Based Compensation, Transition and Disclosure.” The Company accounts for stock-based employee compensation using the intrinsic value method under APB 25 and related interpretations and complies with the disclosure provisions of SFAS 123. The following table illustrates the effect on net loss and net loss per common share if the Company had applied the fair value recognition provisions of SFAS 123 to stock-based employee compensation:

	Year Ended December 31,		
	2002	2001	2000
	(Dollars in thousands, except per share amounts)		
Net loss, as reported	\$ (7,304)	\$ (16,729)	\$ (17,157)
Add: Stock-based employee compensation expense included in reported net earnings	—	34	335
Deduct: Total stock-based employee compensation determined under fair value based method for all awards	(1,322)	(1,282)	(1,823)
Pro forma net loss	\$ (8,626)	\$ (17,977)	\$ (18,645)
Basic and diluted net loss per common share:			
As reported	\$ (0.20)	\$ (0.60)	\$ (1.18)
Pro forma	\$ (0.24)	\$ (0.65)	\$ (1.28)

The above pro forma disclosures are not likely to be representative of the effects on net income (loss) and basic and diluted net income (loss) per share in future years, because they do not take into consideration pro forma compensation expense related to grants made prior to 1996.

Computation of Earnings per Share:

Basic earnings per share (“EPS”) is computed by dividing net loss by the weighted average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur from common shares issuable through stock options, warrants and other convertible securities, if dilutive. The following table is a reconciliation of the numerator (net loss) and the denominator (number of shares) used in the

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

basic and diluted EPS calculations and sets forth potential shares of common stock that are not included in the diluted net loss per share calculation as their effect is antidilutive (in thousands, except for per share data):

	Year Ended December 31,		
	2002	2001	2000
Numerator—Basic and Diluted net loss	\$ (7,304)	\$ (16,729)	\$ (17,157)
Denominator—Basic and Diluted			
Weighted average common shares outstanding	35,776	27,853	14,674
Weighted average unvested common shares subject to repurchase	(30)	(55)	(80)
Total	35,746	27,798	14,594
Net loss per common share	\$ (0.20)	\$ (0.60)	\$ (1.18)
Antidilutive securities:			
Options to purchase common stock	2,838	3,426	2,915
Common stock subject to repurchase	17	42	67
Warrants	7	7	7
	2,862	3,475	2,989

Recent Accounting Pronouncements:

In April 2002, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards No. 145 (“SFAS 145”), *“Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Corrections,”* which is effective for fiscal years beginning after May 15, 2002. Under SFAS 145, gains and losses from the extinguishment of debt should be classified as extraordinary items only if they meet the criteria of Accounting Principles Board Opinion No. 30. SFAS also addresses financial accounting and reporting for capital leases that are modified in such a way as to give rise to a new agreement classified as an operating lease. The Company believes that the adoption of SFAS 145 will not have a material impact on the consolidated financial position or results of operations of the Company.

In June 2002, the FASB issued Statement of Financial Accounting Standards No. 146 (“SFAS 146”), *“Accounting for Costs Associated with Exit or Disposal Activities,”* which is effective for exit or disposal activities initiated after December 31, 2002. SFAS 146 nullifies Emerging Issues Task Force Issue No. 94-3, *“Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring).”* Under SFAS 146, a liability is required to be recognized for a cost associated with an exit or disposal activity when the liability is incurred. SFAS 146 applies to costs associated with an exit activity that does not involve an entity newly acquired in a business combination or with a retirement or disposal activity covered by FASB Statements No. 143 and 144. The Company believes that the adoption of SFAS 146 will not have a material impact on the consolidated financial position or results of operations of the Company.

In November 2002, the FASB issued FASB Interpretation No. 45 (“FIN 45”), *“Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others.”* FIN 45 requires that a liability be recorded in the guarantor’s

balance sheet upon issuance of a guarantee. In addition, FIN 45 requires disclosures about the guarantees that an entity has issued, including a reconciliation of changes in the entity's product warranty liabilities. The initial recognition and initial measurement provisions of FIN 45 are applicable on a prospective basis to guarantees issued or modified after December 31, 2002, irrespective of the guarantor's fiscal year-end. The disclosure requirements of FIN 45 are effective for financial statements of

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

interim or annual periods ending after December 15, 2002. The Company believes that the adoption of FIN 45 will not have a material impact on the consolidated financial position or results of operations of the Company.

In December 2002, the FASB issued Statement of Financial Accounting Standards No. 148 (“SFAS 148”), “Accounting for Stock-Based Compensation, Transition and Disclosure.” SFAS 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. SFAS 148 also requires that disclosures of the pro forma effect of using the fair value method of accounting for stock-based employee compensation be displayed more prominently and in a tabular format. Additionally, SFAS 148 requires disclosure of the pro forma effect in interim financial statements. The transition and annual disclosure requirements of SFAS 148 are effective for fiscal years ended after December 15, 2002. The interim disclosure requirements are effective for interim periods beginning after December 15, 2002. The Company believes that the adoption of SFAS 148 will not have a material impact on the consolidated financial position or results of operations of the Company.

3. Balance Sheet Detail*Investments:*

As of December 31, 2002, there were no short-term investments.

As of December 31, 2001, short-term investments consisted of the following (in thousands):

	December 31, 2001			Maturity Dates
	Amortized Cost	Unrealized Gains	Estimated Fair Value	
Commercial paper	\$ 10,594	\$ 180	\$ 10,774	05/2002–08/2002

Realized gains on sales of short-term investments in 2002 and 2001 were \$48,000 and \$46,000, respectively.

Inventories:

Inventories are comprised of the following (in thousands):

	December 31,	
	2002	2001
Raw materials	\$ 282	\$ 227
Work-in-process	197	340
Finished goods	197	89
	\$ 676	\$ 656

Property and Equipment:

Property and equipment consist of the following (in thousands):

December 31,

	2002	2001
Furniture and fixtures	\$ 151	\$ 412
Machinery and equipment	2,751	2,737
Leasehold improvements	1,140	1,140
Software	340	340
	-----	-----
	4,382	4,629
Less accumulated depreciation and amortization	(3,779)	(3,316)
	-----	-----
	\$ 603	\$ 1,313
	=====	=====

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Other Accrued Liabilities:

Other accrued liabilities comprise (in thousands):

	December 31,	
	2002	2001
Professional fees	\$ 66	\$ 499
Clinical trials	360	550
Deferred revenue	377	377
Warranty	85	840
Other	83	442
	<u>\$ 971</u>	<u>\$ 2,708</u>

4. Bank Borrowings

Symphonix had a Loan Agreement with a bank providing for borrowings of up to \$2,000,000 and the issuance of letters of credit up to \$250,000. The principal amount was repaid over four years. Borrowings under the agreement bore interest at the bank's prime rate plus 0.75% and were collateralized by substantially all of Symphonix's assets. Symphonix was required to maintain certain levels of cash and stockholders' equity and to comply with certain other financial covenants.

During 2002, Symphonix paid off its remaining balance under the Loan Agreement and at December 31, 2002, has no borrowings outstanding, outstanding letters of credit in the amount of \$10,000 and no amounts available for future borrowings under the Loan Agreement.

5. Commitments

As of December 31, 2002, Symphonix had no facility lease commitments. In the future, Symphonix plans to lease office space on a month-to-month basis.

Rent expense for the years ended December 31, 2002, 2001 and 2000 was \$666,000, \$635,000, and \$674,000, respectively.

6. Product Warranty

The Company generally warrants its products for a specific period of time against material defects. The Company provides for the estimated future costs of warranty obligations in costs of goods sold when the related revenue is recognized. The accrued warranty costs represents the best estimate at the time of sale of the total costs that the Company expects to incur to repair or replace product parts, which fail while still under warranty. The amount of accrued estimated warranty costs are primarily based on historical experience as to product failures as well as current information on repair costs. On a quarterly basis, the Company reviews the accrued balances and updates the historical warranty cost trends. The following table reflects the change in the Company's warranty accrual during each of the three years in the period ended December 31, 2002:

(Dollars in thousands)	Year Ended December 31,		
	2002	2001	2000

Warranty accrual, beginning of year	\$ 840	\$ 1,119	\$ 248
Charged to costs and expenses	-	-	1,248
Actual warranty expenditures	(755)	(279)	(377)
	<hr/>	<hr/>	<hr/>
Warranty accrual, end of year	\$ 85	\$ 840	\$ 1,119
	<hr/>	<hr/>	<hr/>

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Stockholders' Equity

Private Placement:

In November 1999, Symphonix consummated a \$5,000,000 private placement of 1,000,000 shares of Symphonix' s common stock to Siemens at a purchase price of \$5.00 per share in connection with a Marketing and Distribution Agreement. In September 2000 in accordance with the Marketing and Distribution Agreement, Siemens purchased an additional 1,026,062 shares of Symphonix' s common stock at a purchase price of \$4.87 per share resulting in gross proceeds of \$5,000,000. The number of shares and purchase price were determined by dividing \$5,000,000 by the average of the closing sales prices of Symphonix' s common stock as reported by the NASDAQ National Market for the forty (40) trading days immediately preceding the public announcement of the FDA grant of premarket approval of Symphonix' s Vibrant P, Model 302 and Vibrant D, Model 304 Soundbridges. In conjunction with this agreement and in the event of a change in control, Symphonix has the right to terminate the agreement by paying a) \$1.0 million or 2 times Siemen' s prior 12 months revenue of Symphonix' s products if terminated during the first or second year of the contract, b) \$1.0 million or 1.5 times Siemen' s revenue of Symphonix' s products if terminated during the third year of the contract, or c) \$2.0 million or 1 times Siemen' s revenue of Symphonix' s products if terminated during the fourth or fifth year of the contract. The purchase price for the private placement exceeded the fair market value of Symphonix' s common stock as reported on the NASDAQ National Market on the date of issuance. The difference between the purchase price and the fair market value of Symphonix' s common stock has been recorded as deferred revenue and is being amortized to revenue on a straight-line basis over the term of the agreement.

In November 2000, Symphonix consummated a \$26,000,000 private placement through a transaction led by APAX Partners ("APAX") and J.P. Morgan Capital, LP ("J.P. Morgan"). The shares of common stock issued in the financing were priced at \$4.064 per share, which was determined as 80% of the average of the closing price of Symphonix' s common stock for the thirty-three (33) day period ending on September 18, 2000. Accordingly, a total of 6,397,632 shares of common stock was issued to the investors at the closing of the financing.

The terms of the private placement detailed in the Common Stock Purchase Agreement provided for a purchase price adjustment that allowed the investors to calculate, one time prior to November 10, 2002, an adjusted per share purchase price equal to the average closing market price of Symphonix common stock as reported on the NASDAQ National Market for the thirty-three (33) consecutive trading days immediately preceding the date of adjustment. Those investors participating in the adjustment would receive additional shares of common stock, for no additional consideration, equal to the difference between the number of shares which each investor could have purchased based on the adjusted per share purchase price at the investor' s original investment amount and the number of shares originally purchased.

On June 25, 2001, certain investors notified Symphonix that they were exercising their purchase price adjustment pursuant to the Common Stock Purchase Agreement. All investors agreed to participate in the adjustment, and on July 12, 2001, Symphonix subsequently issued, for no additional consideration, an additional 14,336,020 shares to the investors based on an adjusted per share purchase price of approximately \$1.254.

So long as J.P. Morgan and APAX each hold at least 1,203,315 shares of common stock, Symphonix has agreed that its board of directors will nominate one individual designated by each of J.P. Morgan and APAX to the slate of nominees recommended by the board of directors to the stockholders at each annual meeting of the stockholders.

Warrants:

During 1997, Symphonix issued warrants in connection with obtaining its equipment lease line of credit to purchase up to 26,889 shares of common stock at \$1.38 per share and up to 6,722 shares of common stock at

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

\$5.50 per share. In June 2000, the warrant to purchase 26,889 shares of common stock was net exercised resulting in 17,493 shares of common stock being issued by Symphonix. The remaining warrants are exercisable until October 2004. The fair value of these warrants determined using the Black-Scholes option pricing model was not material, and accordingly, no value was ascribed to them for financial reporting purposes.

Notes Receivable:

In 1997 and 1996, Symphonix issued a total of 545,000 shares of its common stock to key employees in exchange for full recourse promissory notes totaling \$484,000. The 1997 and 1996 promissory notes bear annual interest ranging from 6.36% to 6.84% and are payable in the years 2001 and 2002. The related shares are pledged as collateral for the notes. In 2000, Symphonix received \$181,000 as payments on the promissory notes and notes totaling \$107,000 were forfeited resulting in Symphonix recovering 134,000 shares of its common stock. In 2002, notes totaling \$80,000 were forfeited resulting in Symphonix recovering 44,000 shares of its common stock. The total amount outstanding at December 31, 2002 is \$95,000.

During June 1999, Symphonix issued notes receivable to a key employee in the amount of \$370,000. The note bore annual interest at 5.19%, was collateralized by 1,025,582 shares of Symphonix' s common stock and was repaid in July 2000. Additionally in August 1999, a key employee exercised 100,000 options to purchase common stock in exchange for a full recourse note receivable in the amount of \$225,000 and a restricted stock agreement. The note bears annual interest at 5.96% and is due upon the earlier of August 2004, 30 days following the sale of the common stock which is equal in value to the principal amount of the note or 12 months following the date of termination of employment with Symphonix. The restricted stock agreement grants Symphonix repurchase rights which lapse upon attainment of full vesting, which is scheduled to occur in August 2004. At December 31, 2002 and 2001, 16,680 and 41,675 shares of common stock are subject to repurchase by Symphonix, respectively. The related shares are pledged as collateral for the note.

Deferred Compensation:

The difference between the exercise price and the deemed fair market value of Symphonix' s common stock at the date of issuance of certain stock options, totaling \$2.3 million, has been recorded as deferred compensation as a component of stockholders' equity. Of this amount, zero, \$34,000, and \$295,000 has been amortized to expense in 2002, 2001 and 2000, respectively. During 2002, 2001 and 2000, Symphonix reversed none, none and \$411,000, respectively, of unrecognized deferred compensation relating to employees that have terminated employment with Symphonix.

1997 Employee Stock Purchase Plan:

Symphonix adopted the 1997 Employee Stock Purchase Plan (the "Purchase Plan") under which 275,000 shares of common stock were initially reserved for issuance. During 2000 and 2002, an additional 200,000 shares and 1,000,000 shares were reserved for issuance, respectively.

Eligible employees may purchase a limited number of common stock at 85% of the market value at certain plan-defined dates. Shares purchased under the Purchase Plan are as follows:

2002	277,714
2001	217,765
2000	83,863

Upon shareholder ratification of the plan to dissolve and liquidate the Company, the 1997 Employee Stock Purchase Plan will be terminated.

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1994 Stock Option Plan:

The 1994 Stock Option Plan (the “1994 Plan”) provides for grants of incentive stock options to employees (including officers and employee directors) and nonstatutory stock options to employees (including officers and employee directors) and consultants of Symphonix. The 1994 Plan is administered by a committee appointed by the Board of Directors which identifies optionees and determines the terms of options granted, including the exercise price, number of shares subject to the option and the exercisability thereof.

The terms of options granted under the 1994 Plan generally may not exceed ten years. The term of all incentive stock options granted to an optionee who, at the time of grant, owns stock representing more than 10% of the voting power of all classes of stock of Symphonix or a parent or subsidiary of Symphonix (a “Ten Percent Stockholder”), may not exceed five years. Generally, options granted under the 1994 Plan vest become exercisable starting one year after the date of grant, with 25% of the shares subject to the option becoming exercisable at that time and an additional 1/48th of such shares becoming exercisable each month thereafter. Other option grants become exercisable at 1/48th each month immediately after grant. Certain holders of options granted under the 1994 Plan may exercise their unvested options prior to complete vesting of shares, subject to such holder’s entering a restricted stock purchase agreement granting Symphonix an option to repurchase, in the event of a termination of the optionee’s employment or consulting relationship, any unvested shares at a price per share equal to the original exercise price per share for the option. The exercise price of incentive stock options granted under the 1994 Plan must be at least equal to the fair market value of the shares on the date of grant. The exercise price of nonstatutory stock options granted under the 1994 Plan is determined by the Board of Directors with specific criteria. The exercise price of any incentive stock option granted to a Ten Percent Stockholder must equal at least 110% of the fair market value of the common stock on the date of grant.

2002 Nonstatutory Stock Option Plan:

The 2002 Nonstatutory Stock Option Plan (the “2002 Plan”) provides for grants of nonstatutory stock options to employees (including officers and employee directors) and consultants of Symphonix. The 2002 Plan is administered by a committee appointed by the Board of Directors which identifies optionees and determines the terms of options granted, including the exercise price, number of shares subject to the option and the exercisability thereof.

The terms of options granted under the 2002 Plan generally may not exceed ten years. Generally, options granted under the 2002 Plan become exercisable starting one year after the date of grant, with 25% of the shares subject to the option becoming exercisable at that time and an additional 1/48th of such shares becoming exercisable each month thereafter. Other option grants become exercisable at 1/48th each month immediately after grant. Certain holders of options granted under the 2002 Plan may exercise their unvested options prior to complete vesting of shares, subject to such holder’s entering a restricted stock purchase agreement granting Symphonix an option to repurchase, in the event of a termination of the optionee’s employment or consulting relationship, any unvested shares at a price per share equal to the original exercise price per share for the option. The exercise price of incentive stock options granted under the 2002 Plan must be at least equal to the fair market value of the shares on the date of grant.

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Activity under the 1994 and 2002 Plans is as follows (in thousands, except per share data):

	Shares Available For Grant	Options Outstanding	
		Number of Shares	Exercise Price
Balance, December 31, 1999	538	1,704	\$ 0.14- \$4.13
Additional options reserved	1,000	-	
Options granted	(1,562)	1,562	\$ 1.88- \$5.88
Options exercised	-	(77)	\$ 0.14- \$4.13
Shares repurchased	134	-	\$ 0.80
Options canceled	274	(274)	\$ 0.73- \$5.06
Balance, December 31, 2000	384	2,915	\$ 0.14- \$5.88
Additional options reserved	1,000	-	
Options granted	(2,003)	2,003	\$ 0.76- \$1.56
Options exercised	-	(172)	\$ 0.14- \$2.63
Options canceled	1,320	(1,320)	\$ 0.55- \$5.88
Balance, December 31, 2001	701	3,426	\$ 0.14- \$5.88
Additional options reserved	1,750	-	
Options granted	(2,513)	2,513	\$ 0.12- \$0.32
Options exercised	-	(18)	\$ 0.12
Options canceled	3,083	(3,083)	\$ 0.12- \$5.88
Balance, December 31, 2002	3,021	2,838	\$ 0.12- \$4.66

The options outstanding and currently exercisable by exercise price at December 31, 2002 are as follows:

Exercise Price	Options outstanding			Options currently exercisable	
	Number Outstanding	Weighted Average Remaining Contractual Life (years)	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$0.12- \$4.66	2,838	8.13	\$ 1.36	1,193	\$ 1.96

At December 31, 2001 and 2000, outstanding options to purchase 853,000 and 2,915,000 shares were exercisable at weighted average exercise prices of \$2.30 and \$2.76 per share, respectively.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions:

	2002	2001	2000
Expected dividend yield	0.0%	0.0%	0.0%
Risk-free interest rate	3.60%	4.19%	6.08%
Expected volatility	277.9%	154.0%	121.1%
Expected life (in years)	5.0	5.0	5.0

The weighted average grant date fair values of employee stock options granted during 2002, 2001, and 2000 were \$0.18, \$0.86, and \$2.71 per share, respectively.

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The fair value of each Purchase Plan share is estimated on the date of issuance using the Black-Scholes option pricing model with the following weighted average assumptions:

	2002	2001	2000
Expected dividend yield	0.0%	0.0%	0.0%
Risk-free interest rate	3.00%	2.49%	5.82%
Expected volatility	277.9%	154.0%	124.0%
Expected life (in years)	0.5	0.5	0.5

The weighted average grant date fair value of the Purchase Plan shares issued during 2002, 2001 and 2000 were \$0.26, \$0.31 and \$2.39 per share, respectively.

8. Income Taxes

Based on the available objective evidence, management believes it is more likely than not that the net deferred tax assets are not fully realizable. Accordingly, the Company has provided a full valuation allowance against its net deferred tax assets at December 31, 2002.

Deferred tax assets consist of the following (in thousands):

	2002	2001
Net operating loss carryforward	\$ 31,233	\$ 27,751
Depreciation	371	358
Capitalized start-up costs	—	319
Research and development credits	2,420	2,336
Reserves	589	1,377
Capitalized research and development	923	689
	<u>35,536</u>	<u>32,830</u>
Valuation allowance	(35,536)	(32,830)
	<u>\$ —</u>	<u>\$ —</u>

As of December 31, 2002, the Company has a net operating loss carryforward of approximately \$84.5 million for federal purposes and \$42.7 million for state tax purposes. If not utilized, these carryforwards will begin to expire from 2009 through 2022 and 2002 through 2013 respectively.

The Company has research credit carryforwards of approximately \$1.6 million and \$1.2 million for federal and state income tax purposes, respectively. If not utilized, the federal carryforward will expire in various amounts beginning in 2013. The California credit can be carried forward indefinitely.

The Tax Reform Act of 1986 limits the use of net operating loss and tax credit carryforwards in certain situations where changes occur in the stock ownership of a company. In the event the Company has had a change in ownership, utilization of the carryforwards could be restricted.

9. Employee Benefit Plan

During 1996, Symphonix established a Retirement Savings and Investment Plan (the "Plan") under which employees may defer a portion of their salary up to the maximum allowed under IRS rules. Symphonix has the discretion to make contributions to the Plan. As of December 31, 2002, no Company contributions have been made to the Plan. Also as of December 31, 2002, the Plan was terminated.

SYMPHONIX DEVICES, INC.**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)****10. Related Party Transactions**

As of January 1, 2001, Siemens, a holder of 2,026,062 shares of Symphonix' s common stock was granted full distribution rights to the European market for a 5 year period in connection with the acceleration of provisions within the Marketing and Distribution Agreement signed in November 1999. For the year ended December 31, 2002, 2001 and 2000 Siemens accounted for 40.8%, 48.3% and 42.6%, respectively, of Symphonix' s revenues and as of December 31, 2002 and 2001 Siemens accounted for 90.3% and 60.0% of Symphonix' s accounts receivable. For the years ended December 31, 2002, 2001 and 2000, Symphonix paid Siemens \$184,000, \$188,000 and \$279,000, respectively, under a related supply agreement.

11. Industry Segments

Symphonix operates in one business segment: the design, manufacture, and sale of implantable and semi-implantable hearing devices. Currently, Symphonix markets its products to customers in the United States and Europe.

One customer accounted for 40.8%, 48.3% and 42.6% of Symphonix' s revenue during 2002, 2001 and 2000, respectively.

	Revenues			Long-lived Assets		
	2002	2001	2000	2002	2001	2000
Europe	\$ 1,077	\$ 1,353	\$ 1,086	\$ —	\$ —	\$ 13
United States	606	667	161	603	1,313	1,383
	<u>\$ 1,683</u>	<u>\$ 2,020</u>	<u>\$ 1,247</u>	<u>\$ 603</u>	<u>\$ 1,313</u>	<u>\$ 1,396</u>

12. Subsequent Events

On March 20, 2003, the Company entered into a purchase agreement with MED-EL GmbH (“MED-EL”) whereby MED-EL will purchase the inventory, property and equipment, intellectual property and assume the product warranty of the Company for \$2.5 million. The closing of the purchase agreement is contingent upon the shareholders of the Company approving the proposed plan of liquidation and dissolution of the Company.

On March 20, 2003, the Company entered into an agreement with Siemens whereby Siemens and the Company agree to terminate the Marketing and Distribution Agreement between the Company and Siemens with no consideration due to either party. The agreement also provides for the assignment of the OEM Purchase Agreement between the Company and Siemens to MED-EL with no consideration due to either party. The agreement is contingent upon the closing of the purchase agreement between the Company and MED-EL.

SYMPHONIX DEVICES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

13. Selected Quarterly Financial Data (Unaudited)

The following table sets forth selected unaudited financial information for Symphonix for the eight quarters in the period ended December 31, 2002. This information has been prepared on the same basis as the audited financial statements and, in the opinion of management, contains all adjustments necessary for a fair presentation thereof.

	Quarter Ended			
	03/31	06/30	09/30	12/31
	(In thousands, except per share amounts)			
2002:				
Revenues	\$ 480	\$ 513	\$ 404	\$ 286
Operating loss	(2,355)	(1,871)	(1,907)	(1,509)
Net loss	(2,111)	(1,762)	(1,876)	(1,555)
Basic and diluted net loss per common share	\$ (0.06)	\$ (0.05)	\$ (0.05)	\$ (0.04)
Basic and diluted weighted average shares outstanding	35,595	35,730	35,803	35,853
2001:				
Revenues	\$ 576	\$ 435	\$ 535	\$ 474
Operating loss	(5,106)	(5,228)	(4,030)	(3,158)
Net loss	(4,853)	(5,067)	(3,788)	(3,021)
Basic and diluted net loss per common share	\$ (0.23)	\$ (0.24)	\$ (0.11)	\$ (0.09)
Basic and diluted weighted average shares outstanding	20,974	21,061	33,399	35,537

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

There have been no disagreements with the independent accountants on accounting and financial disclosure.

On January 22, 2001, PricewaterhouseCoopers LLP resigned as the independent accountant of Symphonix Devices, Inc. The reports of PricewaterhouseCoopers LLP on the financial statement for the past two fiscal years contained no adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principle. In connection with its audits for the two most recent fiscal years and through January 22, 2001, there have been no disagreements with PricewaterhouseCoopers LLP on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of PricewaterhouseCoopers LLP would have caused them to make reference thereto in their reports on the financial statements for such years. During the two most recent fiscal years and through January 22, 2001, there have been no reportable events (as defined in Regulation S-K Item 304 (a) (1) (v)).

On February 9, 2001, the Registrant engaged KPMG LLP as its new independent accountants to audit its financial statements as of and for the year ended December 31, 2000. During the years ended December 31, 1999 and 2000 and between January 1, 2001 and February 9, 2001 the Registrant did not consult with KPMG LLP regarding the application of accounting principles to a specified transaction either completed or proposed; the Registrant did not consult with KPMG LLP regarding the type of audit opinion that might be rendered on the Registrants' financial statements; and there was not any written or oral advice provided to the Registrant prior to KPMG LLP' s retention as the Registrant' s independent accountant.

On April 2, 2001, the Registrant dismissed KPMG LLP as its independent accountants. The Registrant' s Audit Committee and Board of Directors participated in and approved the decision to change the independent accountants. The report of KPMG LLP on the financial statements for fiscal year 2000 contained no adverse opinion or disclaimer of opinion nor was it qualified or modified as to uncertainty, audit scope or accounting principle. In connection with its audit for the 2000 fiscal year and through April 2, 2001, there were no disagreements with KPMG LLP on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of KPMG LLP would have caused them to make reference thereto in their report on the financial statements for such year. During the 2000 fiscal year and through April 2, 2001, there were no reportable events (as defined in Regulation S-K Item 304 (a) (1) (v)).

The Registrant engaged PricewaterhouseCoopers LLP as its new independent accountants on April 9, 2001. Prior to that date, PricewaterhouseCoopers LLP audited Symphonix' s financial statements from inception through December 31, 1999. PricewaterhouseCoopers LLP was the Registrant' s independent accountants until January 22, 2001, at which time PricewaterhouseCoopers LLP resigned. From January 22, 2001 to April 9, 2001, the Registrant had not consulted with PricewaterhouseCoopers LLP regarding either (i) the application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on the Registrant' s financial statements, and neither a written report was provided to the Registrant or oral advice was provided that PricewaterhouseCoopers LLP concluded was an important factor considered by the Registrant in reaching a decision as to an accounting, auditing or financial reporting issue; or (ii) any matter that was either the subject of a disagreement, as that term is defined in Item 304(a)(1)(iv) of Regulation S-K and the related instructions to Item 304 of Regulation S-K, or a reportable event, as that term is defined in Item 304(a)(1)(v) of Regulation S-K.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The following table sets forth certain information of each director and officer of Symphonix:

<u>Name</u>	<u>Principal Occupation During the Last Five Years</u>	<u>Age</u>	<u>Director Since</u>
Deborah A. Arthur, Vice President, Clinical Affairs	Deborah A. Arthur has served as Vice President of Clinical and Regulatory Affairs of Symphonix since February 2001 and served as VP of Clinical Affairs since August 1998. From 1990 to August 1998, Ms. Arthur was employed by the Ear Nose and Throat Division of Smith & Nephew, Inc., a leading supplier of ear, nose and throat medical devices. At Smith & Nephew, Ms. Arthur served in a variety of management positions in clinical affairs, regulatory affairs and quality assurance, including from June 1993 to July 1996 as Group Manager of Regulatory and Clinical Affairs, from July 1996 to January 1998 as Group Manager of Regulatory and Clinical Affairs and Quality Assurance, and from January 1998 to August 1998, as Director of Regulatory and Clinical Affairs and Quality Assurance. Ms. Arthur holds a BS degree in speech and hearing science from East Tennessee State University and an MA degree in audiology from the University of Tennessee.	52	–
Geoffrey R. Ball, Vice President, Chief Technology Officer and Director	Geoffrey R. Ball co-founded the Company and has served as Vice President and Chief Technical Officer and a director since May 1994. From 1987 to March 1994, Mr. Ball was a biomedical engineer in the hearing research laboratory at the Veterans Hospital in Palo Alto, California, affiliated with Stanford University. Mr. Ball holds an M.S. degree from the University of Southern California and a B.S. degree from the University of Oregon.	39	1994
B.J. Cassin, Director	B.J. Cassin has served as a director of the Company since July 1994. Mr. Cassin has been a private venture capital investor since 1979. Previously, he co-founded Xidex Corporation, a manufacturer of data storage media, and served as Vice President of Marketing. Mr. Cassin is a director of Cerus Corporation, a medical device company (of which he is Chairman) and PDF Solutions, a technology integration company. Mr. Cassin holds an A.B. degree from Holy Cross College.	69	1994

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<u>Name</u>	<u>Principal Occupation During the Last Five Years</u>	<u>Age</u>	<u>Director Since</u>
Kirk B. Davis, President, Chief Executive Officer and Director	Kirk B. Davis has been President and Chief Executive Officer of the Company since August 1999. Mr. Davis was with Abbott Laboratories, Inc. from 1987 and most recently, from March 1998, served as Vice President and General Manager, Critical Care Products. From 1996 to 1998, he served as General Manager of Abbott's UK operation and from 1994 to 1998 he served as divisional Vice President and Regional Director, Europe for Abbott. Mr. Davis has a BS degree from Stanford University and an MBA degree from the J.L. Kellogg Graduate School of Management at Northwestern University.	45	1999
Martin Friedman, Director	Martin Friedman has served as a director of the Company since November 2000. Mr. Friedman joined J.P. Morgan Partners in 2000, where he focuses exclusively on investment opportunities in the healthcare sector. Prior to joining J.P. Morgan Partners, Mr. Friedman spent eight years in J.P. Morgan's Healthcare Investment Banking group working with medical device, pharmaceutical and healthcare services clients. Prior to joining J.P. Morgan, Mr. Friedman worked at Morgan Stanley in both New York and Tokyo. Mr. Friedman earned a B.A. from Columbia College and an M.B.A. from Columbia Business School.	39	2000
Terence J. Griffin, Vice President, Finance and Chief Financial Officer	Terence J. Griffin has served as Vice President of Finance and Chief Financial Officer of Symphonix since April 2000. From March 1999 to March 2000, Mr. Griffin was the CFO for Zangle, a web-based information site targeting parents of school age children. Prior to that, from August 1993 to February 1999, Mr. Griffin served as CFO of Insync Systems, Inc., a provider of subsystems to the semiconductor industry and now owned by US Filter/Vivendi SA. From September 1986 to July 1993, Mr. Griffin served in a number of senior level financial management positions with Diasonics, a medical imaging and device manufacturer formerly NYSE traded and now owned by General Electric. Mr. Griffin began his career with Arthur Andersen & Co. and holds a BA in Accounting from Loyola Marymount University.	40	–

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<u>Name</u>	<u>Principal Occupation During the Last Five Years</u>	<u>Age</u>	<u>Director Since</u>
Adele C. Oliva, Director	<i>Adele C. Oliva</i> has served as a director of the Company since November 2000. Ms. Oliva has been a venture capitalist with APAX Partners, L.P. since 1997, focusing on investments in the health care industry. Prior to joining APAX Partners, L.P., Ms Oliva worked at Baxter Healthcare, where she held positions in marketing and business development in the CardioVascular and I.V. Systems Divisions. Ms Oliva is a graduate of Saint Joseph' s University and has an M.B.A. from Cornell University.	37	2000
Roger Radke, Director	<i>Roger Radke, PhD</i> , has served as a director of the Company since August 2000. He is currently the Chairman and Managing Director of Siemens Audiologische Technik GmbH, the leading company in the hearing instruments market. Mr. Radke has over 10 years experience in the medical industry in Europe and the United States with Siemens Medical Engineering Group. He holds a PhD degree from the University of Münster, Germany.	40	2000

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires the Company' s executive officers and directors, and persons who own more than ten percent of a registered class of the Company' s equity securities to file reports of ownership and changes in ownership with the Securities and Exchange Commission ("SEC") and the national Association of Securities Dealers, Inc. Executive officers, directors and greater than ten percent stockholders are required by SEC regulation to furnish the Company with copies of all Section 16(a) forms they file. Based solely on its review of the copies of such forms received by it, or written representations from reporting persons, the Company believes that, during the fiscal year ended December 31, 2002, all such forms were filed on a timely basis.

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ITEM 11. EXECUTIVE COMPENSATION

The following Summary Compensation Table sets forth certain information regarding the compensation of our Chief Executive Officer and the four next most highly compensated executive officers in the fiscal year ended December 31, 2002 for services rendered in all capacities to us for the fiscal years indicated.

Name and Principal Position	Fiscal Year	Annual Compensation		Long-Term Compensation Awards
		Salary	Bonus	Number of Securities Underlying Options
Kirk B. Davis President and Chief Executive Officer	2002	\$302,077	\$ 64,130	400,000
	2001	291,500	119,545	140,000
	2000	281,061	41,855	650,000
Terence J. Griffin Vice President of Finance and Chief Financial Officer	2002	192,585	34,819	150,000
	2001	181,172	35,256	150,000
	2000	134,307		220,000
Geoffrey R. Ball Vice President and Chief Technical Officer	2002	155,769	24,300	150,000
	2001	150,000	37,102	100,000
	2000	143,808	19,466	70,000
Deborah Arthur Vice President of Clinical Affairs	2002	165,769	26,400	150,000
	2001	160,000	38,526	100,000
	2000	154,389	47,665	70,000
Dennis S. Roy Vice President of Marketing	2002	181,346	58,536	100,000
	2001	93,039		230,000

OPTION GRANTS IN LAST FISCAL YEAR

The following table provides information relating to stock options awarded to each of the named executive officers during the fiscal year ended December 31, 2002. All such options were awarded under the Company's 1994 Stock Option Plan.

Name	Individual Grants				Potential Realizable Value at Assumed Rates of Stock Price Appreciation for Options Term	
	Number of Securities Underlying Options Granted (#)	Percent of Total Options Granted to Employees in Fiscal 2002 (%)	Exercise Price Per Share (\$)	Expiration Date	5% (\$)	10% (\$)
Kirk Davis	400,000	15.92%	\$ 0.12	03/04/12	\$30,187	\$76,500
Terence J. Griffin	150,000	5.97%	0.12	03/04/12	11,320	28,687
Geoffrey R. Ball	150,000	5.97%	0.12	03/04/12	11,320	28,687
Deborah Arthur	150,000	5.97%	0.12	03/04/12	11,320	28,687
Dennis S. Roy	100,000	3.98%	0.12	03/04/12	7,547	19,125

The percent of total options granted in fiscal 2002 is based on an aggregate of 2,513,000 options granted by the Company in the year ended December 31, 2002 to employees of the Company, including the named executive officers. The options are immediately exercisable, conditioned upon the optionee entering into a restricted stock purchase agreement with the Company with respect to any unvested shares. The options vest or are released from the repurchase option of the Company at the rate of one forty-eighth ($\frac{1}{48}$) of the total number of shares subject to each option at the end of each full month beginning on the grant date for each option.

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The amounts disclosed in the column captioned “Exercise Price Per Share” represent the closing price of the underlying shares of Common Stock on the dates the respective options were granted.

With respect to the amounts disclosed in the column captioned “Potential Realizable Value at Assumed Rates of Stock Price Appreciation for Option Term,” the 5% and 10% assumed annual rates of compounded stock price appreciation are mandated by rules of the Securities and Exchange Commission and do not represent our estimate or projection of our future Common Stock prices. The potential realizable values are calculated by assuming that the exercise price per share was the closing price of Common Stock at the time of grant, that the Common Stock appreciates at the indicated rate for the entire term of the option and that the option is exercised at the exercise price and sold on the last day of the option term at the appreciated price.

AGGREGATE OPTION EXERCISES IN LAST FISCAL YEAR AND FISCAL YEAR-END OPTION VALUES

The following table sets forth certain information regarding the exercise of stock options by the named executive officers during the fiscal year ended December 31, 2002 and the value of stock options held as of December 31, 2002 by the named executive officers.

Name	Shares Acquired on Exercise (#)	Value Realized (\$)	Securities Underlying Unexercised Options at December 31, 2002 (#)		Value of Unexercised In-The- Money Options at December 31, 2002 (\$)(1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Kirk B. Davis	—	—	708,744	781,256	\$ —	\$ —
Terence J. Griffin	—	—	177,614	308,845	—	—
Geoffrey R. Ball	—	—	91,363	228,637	—	—
Deborah Arthur	—	—	178,029	236,971	—	—
Dennis S. Roy	—	—	0	0	—	—

(1) The value of “In-the-Money” stock options is based on \$0.06 per share, the closing price on December 31, 2002, less the exercise price, multiplied by the aggregate number of shares underlying the option.

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ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

As of March 27, 2003, 35,886,442 shares of Symphonix' s Common Stock were issued and outstanding and held of record by approximately 5,150 stockholders. No shares of Symphonix' s Preferred Stock were outstanding as of March 27, 2003.

The following table sets forth certain information with respect to beneficial ownership of our common stock as of March 27, 2003:

<u>Beneficial Owner</u>	<u>Common Stock Beneficially Owned</u>	<u>Approximate Percentage Owned(1)</u>
Siemens Audiologische Technik GmbH c/o Siemens Corporation 1301 Avenue of the Americas New York, NY 10014	2,026,062	5.65%
Roger Radke(1) Siemens Audiologische Technik GmbH Gebbertstr. 125 D91058 Erlangen, Germany	2,086,062	5.81%
Kirk B. Davis(2)	1,291,659	3.49%
Terence J. Griffin(3)	370,000	1.02%
Deborah Arthur(4)	265,000	*
Geoffrey R. Ball(5)	170,000	*
B.J. Cassin(6)	119,526	*
Martin Friedman(7)	60,000	*
Adele C. Oliva(8)	60,000	*
Dennis S. Roy(9)	0	*
All directors and executive officers as a group (9 persons)(10)	5,122,247	13.149%

* Less than 1%

- (1) Includes 2,026,062 shares held by Siemens Audiologische Technik GmbH. Mr. Radke, a director of the company, is managing director of Siemens Audiologische Technik GmbH and disclaims beneficial ownership over these shares. Also includes options to purchase up to 60,000 shares exercisable within 60 days after March 27, 2003.
- (2) Includes options to purchase up to 1,190,000 shares exercisable within 60 days after March 27, 2003.
- (3) Consists of options to purchase up to 370,000 shares exercisable within 60 days after March 27, 2003.
- (4) Consists of options to purchase up to 265,000 shares exercisable within 20 days after March 20, 2003. Deborah Arthur' s employment with Symphonix was terminated as of March 20, 2003.
- (5) Consists of options to purchase up to 170,000 shares exercisable within 60 days after March 27, 2003.
- (6) Share number includes 15,913 shares held for the benefit of Cassin Family Trust. Mr. Cassin, one of our directors, holds voting and dispositive power over the shares held by Cassin Family Trust. Also includes 910 shares held by Mr. Cassin and options directly owned by Mr. Cassin to purchase up to 102,703 shares exercisable within 60 days after March 27, 2003.
- (7) Consists of options to purchase up to 60,000 shares exercisable within 60 days after March 27, 2003.
- (8) Consists of options to purchase up to 60,000 shares exercisable within 60 days after March 27, 2003.
- (9) Dennis S. Roy' s employment with Symphonix was terminated as of November 2002; however, he remains one of our four most highly compensated executive officers (other than our Chief Executive Officer) who were serving as executive officers at the end of our last completed fiscal year.
- (10) Includes options to purchase up to 2,977,703 shares exercisable within 60 days after March 27, 2003.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

In November 1999, Siemens purchased 1,000,000 shares of Symphonix common stock for \$5,000,000 in a first closing pursuant to a private placement consummated in connection with a marketing and distribution agreement entered into with Symphonix. In September 2000 in accordance with the marketing and distribution agreement, Siemens purchased an additional 1,026,062 shares of Symphonix' s common stock at a purchase price of \$4.87 per share resulting in gross proceeds of \$5,000,000.

As of December 31, 2002, Siemens owed Symphonix \$158,000 under the marketing and distribution agreement. For the year ended December 31, 2002, Siemens paid Symphonix \$773,000 under the marketing and distribution agreement, and Symphonix paid Siemens \$184,000 under the supply agreement. For the year ended December 31, 2002, Siemens accounted for 40.8% of Symphonix' s revenues and as of December 31, 2002 Siemens accounted for 90.3% of Symphonix' s accounts receivable. The nature and terms of the original and revised marketing and distribution agreements, as well as a related supply agreement, with Siemens are as follows:

Symphonix entered into the marketing and distribution agreement in February 1999 and entered into the supply agreement in June 1999.

Under the marketing and distribution agreement, Symphonix agreed to conduct collaborative marketing efforts, and Siemens has exclusive distribution rights in Europe for existing Symphonix products and any future product introductions.

The marketing and distribution agreement has a term ending on December 1, 2004 and is subject to automatic annual renewals thereafter unless terminated by either party with at least 12 months' notice. If Symphonix does not renew the marketing and distribution agreement, it is obligated to pay Siemens the equivalent of Siemens' revenues with Symphonix products in Europe during the preceding twelve months.

The marketing and distribution agreement may also be terminated at any time if Symphonix is acquired at the option of: (i) Symphonix, with three month' s notice and payment to Siemens of \$2 million or 100% of Siemens' revenue in Europe with Symphonix products during the 12 months preceding the acquisition if the agreement is terminated between December 1, 2002 and December 1, 2004; or (ii) Siemens, if Symphonix is acquired by a manufacturer of acoustic hearing aids.

The marketing and distribution agreement may also be terminated at the option of either party in the event of a material breach that is not cured within 30 days of notice of breach, or upon the insolvency or bankruptcy of the other party.

Under the terms of the supply agreement, Siemens agreed to supply integrated circuits and software for use in Symphonix' s Soundbridge products.

The supply agreement has a term ending on September 30, 2004 and is subject to automatic annual renewals thereafter unless terminated by either party with at least three months' notice. The supply agreement may also be terminated at any time in the event of a material breach that is not cured within 30 days of notice of breach.

On March 20, 2003, Symphonix entered into an agreement with Siemens whereby Siemens and Symphonix agree to terminate the marketing and distribution agreement with no consideration due to either party. The agreement also provides for the assignment of the supply agreement to MED-EL with no consideration due to either party. The agreement is contingent upon the closing of the purchase agreement between Symphonix and MED-EL.

Kirk B. Davis, our Chief Executive Officer, exercised an option to purchase 100,000 shares of our common stock in August 1999 in exchange for a full recourse promissory note in the amount of \$225,000. The annual interest rate on the note is 5.96%, and it is due upon the earlier of (i) August 2004, (ii) 30 days following a sale of our common stock by Mr. Davis which is equal to the principal amount of the note and (iii) 12 months following the date of Mr. Davis' termination.

PART IV

ITEM 14. CONTROLS AND PROCEDURES

- (a) Evaluation of Disclosure Controls and Procedures. Within the 90 days prior to the date of this annual report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Exchange Act Rule 240.13a-14. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our current disclosure controls and procedures are effective in timely alerting them to material information relating to us and our subsidiaries required to be included in our periodic SEC filings.
- (b) Changes in Internal Controls. There have been no significant changes in our internal controls or in other factors that could significantly affect internal controls subsequent to the date we carried out this evaluation.

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

- (a) The following documents are filed in Part II of this Annual Report on Form 10-K.

1. *Financial Statements*

	<u>Page No.</u>
Report of Independent Accountants	14
Report of Independent Auditors	15
Consolidated Balance Sheets at December 31, 2002 and 2001	16
Consolidated Statements of Operations for the years ended December 31, 2002, 2001 and 2000	17
Consolidated Statements of Cash Flows for the years ended December 31, 2002, 2001 and 2000	18
Consolidated Statements of Stockholders' Equity for the years ended December 31, 2002, 2001 and 2000	19
Consolidated Statements of Comprehensive Loss for the years ended December 31, 2002, 2001 and 2000	20
Notes to Consolidated Financial Statements	21

2. *Financial Statement Schedules*. The following consolidated financial statement schedule of Symphonix Devices, Inc. for the year ended December 31, 2002 is filed as part of this Report and should be read in conjunction with the consolidated financial statements:

<u>Description</u>	<u>Page No.</u>
Schedule II-Valuation and Qualifying Accounts	46

Schedules not listed above have been omitted because they are not applicable or are not required to be set forth therein is included in the consolidated financial statements or notes thereto.

- (b) *Reports on Form 8-K*

On November 13, 2002, the Board of Directors of Symphonix Devices, Inc. deemed advisable the dissolution of the company and approved a plan of complete liquidation and dissolution for which Symphonix will seek stockholder approval. Symphonix expects to liquidate all assets, including its intellectual property.

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(c) Exhibits.

<u>Exhibit</u>	<u>Description</u>
3.1*	Certificate of Incorporation of Symphonix Devices, Inc., a Delaware corporation, as currently in effect.
3.2*	Bylaws of the Registrant, as currently in effect.
3.3*	Certificate of Amendment of the Certificate of Incorporation of the Registrant, amending Exhibit 3.1.
4.1*	Specimen Common Stock Certificate.
10.1*	Form of Indemnification Agreement between the Registrant and each of its directors and officers.
10.2*	1994 Stock Option Plan and forms of Stock Option Agreements thereunder.
10.3*	1998 Employee Stock Purchase Plan.
10.4*	Restated Investors Rights Agreement dated June 11, 1997 between the Registrant and certain holders of the Registrant's securities.
10.5*	Master Equipment Lease Agreement between the Registrant and Lighthouse Capital Partners dated December 2, 1994.
10.6*	Assignment by the Registrant to VibRx, Inc. dated March 14, 1997.
10.7*	Registrant's Series D Preferred Stock Purchase Agreement dated June 11, 1997.
10.8*	Net Lease Agreement between Realtec Properties I, L.P., a California limited partnership, and the Registrant dated July 28, 1994; letter agreements dated July 28, 1994 and August 17, 1994 and First Amendment dated April 17, 1997.
10.9*	Lease between Silicon Valley Properties, L.L.C., a Delaware limited liability partnership, and the Registrant dated October 27, 1997.
10.10*	Form of Option Vesting Agreement between the Registrant and its officers.
10.11*	License Agreement dated June 1, 1995 between Baptist Medical Center of Oklahoma, Inc. and the Registrant.
10.12*	Loan and Security Agreement dated December 30, 1997 between the Registrant and Silicon Valley Bank.
10.13(1)	Loan Modification Agreement dated December 24, 1998 between the Registrant and Silicon Valley Bank.
10.14(1)	Premium Contribution Plan Effective November 1, 1998, as Amended and Restated on January 1, 1999.
10.15(1)	Form of Distribution Agreement.
10.16**(2)	Joint Development and Supply Agreement dated January 16, 1998 between the Registrant and Topholm & Westermann Aps and the subsequent Amendment thereto effective November 30, 1998.
10.17(3)	Loan and Security Agreement with an attached Non-Recourse Secured Promissory Note dated June 29, 1999 between the Registrant and Harry S. Robbins.
10.18(4)	OEM and Supply Agreement dated June 4, 1999 between the Registrant and Siemens Audiologische Technik GmbH ("Siemens").
10.19(5)	Marketing and Distribution Agreement dated November 2, 1999 between the Registrant and Siemens.
10.20(5)	Common Stock Purchase Agreement dated December 1, 1999 between the Registrant and Siemens.
10.21(6)	Common Stock Purchase Agreement dated September 18, 2000 between Symphonix and certain investors, including exhibits.
10.22(7)	Lease between Airport IV, a Joint Venture, and the Registrant dated January 23, 2003.
10.23	Retention Bonus and Release Agreement between Symphonix and Terrence J. Griffin dated March 5, 2003.
10.24	Termination Agreement between Symphonix and Siemens dated March 20, 2003.
10.25	Severance and Release Agreement between Symphonix and Kirk B. Davis dated April 21, 2003.

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<u>Exhibit</u>	<u>Description</u>
21.2	List of Subsidiaries of the Registrant.
23.1	Consent of PricewaterhouseCoopers LLP, independent accountants.
23.3(8)	Consent of KPMG LLP, independent auditors.
24.1(8)	Power of Attorney.
99.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
*	Filed as an Exhibit to the Registrant' s Registration Statement on Form S-1 (File No. 333-40339) and incorporated herein by reference.
**	Confidential treatment requested.
(1)	Filed as an exhibit to the Registrant' s Annual Report on Form 10-K for the fiscal year ended December 31, 1998.
(2)	Filed as exhibits to the Registrant' s report on Form 10-Q for the fiscal quarter ending March 31, 1999, and incorporated herein by reference.
(3)	Filed as an exhibit to the Registrant' s report on Form 10-Q for the quarter ending June 30, 1999 and incorporated herein by reference.
(4)	Filed as an exhibit to the Registrant' s report on Form 10-Q for the fiscal quarter ended September 30, 1999 and incorporated herein by reference.
(5)	Filed as an exhibit to the Registrant' s report on Form 8-K filed with the Securities and Exchange Commission on December 20, 1999 and incorporated herein by reference.
(6)	Filed as an exhibit to the Registrant' s report on Form 8-K filed with the Securities and Exchange Commission on November 2, 2000 and incorporated herein by reference.
(7)	Month-to-month lease used for primary facility commencing on January 27, 2003.
(8)	Filed as an exhibit to the Registrant' s report on Form 10-K for the fiscal year ended December 31, 2002.

SCHEDULE II-VALUATION AND QUALIFYING ACCOUNTS
(In thousands)

	Balance at beginning of period	Additions	Deductions	Balance at end of period
Allowance for doubtful accounts:				
Year ended December 31, 2002	\$ 27	\$ -	\$ 27	\$ -
Year ended December 31, 2001	7	20	-	27
Year ended December 31, 2000	\$ 55	\$ -	\$ 48	\$ 7

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized, in the City of San Jose, State of California, on the 24th day of April, 2003.

SYMPHONIX DEVICES, INC.

By: /s/ KIRK B. DAVIS
Kirk B. Davis
Chairman, President, Chief Executive Officer and
Director

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u> /s/ KIRK B. DAVIS </u> Kirk B. Davis	President, Chief Executive Officer and Director (Principal Executive Officer)	April 24, 2003
<u> /s/ TERENCE J. GRIFFIN </u> Terence J. Griffin	Vice President, Finance and Chief Financial Officer (Principal Financial and Accounting Officer)	April 24, 2003
<u> /s/ GEOFFREY R. BALL* </u> Geoffrey R. Ball	Vice President, Chief Technology Officer and Director	April 24, 2003
<u> /s/ B. J. CASSIN* </u> B. J. Cassin	Director	April 24, 2003
<u> /s/ MARTIN FRIEDMAN* </u> Martin Friedman	Director	April 24, 2003
<u> /s/ ADELE OLIVA* </u> Adele Oliva	Director	April 24, 2003
<u> /s/ ROGER RADKE* </u> Roger Radke	Director	April 24, 2003

*By: /s/ KIRK B. DAVIS
Kirk B. Davis,
Attorney-in-fact

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO RULES 13a-14, 13a-15, 15d-14 and 15d-15,
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kirk B. Davis, certify that:

- (a) I have reviewed this annual report on Form 10-K of Symphonix Devices, Inc.;
- (b) Based on my knowledge, this annual 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 annual report;
- (c) Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
- (d) The registrant' s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a. designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within these entities, particularly during the period in which this annual report is being prepared;
 - b. evaluated the effectiveness of the registrant' s disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
 - c. presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
- (e) The registrant' s other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant' s auditors and the audit committee of registrant' s board of directors (or persons performing the equivalent function):
 - a. all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant' s ability to record, process, summarize and report financial data and have identified for the registrant' s auditors any material weaknesses in internal controls; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant' s internal controls; and
- (f) The registrant' s other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: April 24, 2003

By: /s/ KIRK B. DAVIS

Name: Kirk B. Davis

Title: President and Chief Executive Officer

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I, Terence J. Griffin, certify that:

- (a) I have reviewed this annual report on Form 10-K of Symphonix Devices, Inc.;
- (b) Based on my knowledge, this annual 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 annual report;
- (c) Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
- (d) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a. designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within these entities, particularly during the period in which this annual report is being prepared;
 - b. evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
 - c. presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
- (e) The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - d. all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - e. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
- (f) The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: April 24, 2003

By: /s/ TERENCE J. GRIFFIN

Name: Terence J. Griffin

Title: Vice President Finance and Chief Financial
Officer

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Description</u>
3.1*	Certificate of Incorporation of Symphonix Devices, Inc., a Delaware corporation, as currently in effect.
3.2*	Bylaws of the Registrant, as currently in effect.
3.3*	Certificate of Amendment of the Certificate of Incorporation of the Registrant, amending Exhibit 3.1.
4.1*	Specimen Common Stock Certificate.
10.1*	Form of Indemnification Agreement between the Registrant and each of its directors and officers.
10.2*	1994 Stock Option Plan and forms of Stock Option Agreements thereunder.
10.3*	1998 Employee Stock Purchase Plan.
10.4*	Restated Investors Rights Agreement dated June 11, 1997 between the Registrant and certain holders of the Registrant' s securities.
10.5*	Master Equipment Lease Agreement between the Registrant and Lighthouse Capital Partners dated December 2, 1994.
10.6*	Assignment by the Registrant to VibRx, Inc. dated March 14, 1997.
10.7*	Registrant' s Series D Preferred Stock Purchase Agreement dated June 11, 1997.
10.8*	Net Lease Agreement between Realtec Properties I, L.P., a California limited partnership, and the Registrant dated July 28, 1994; letter agreements dated July 28, 1994 and August 17, 1994 and First Amendment dated April 17, 1997.
10.9*	Lease between Silicon Valley Properties, L.L.C., a Delaware limited liability partnership, and the Registrant dated October 27, 1997.
10.10*	Form of Option Vesting Agreement between the Registrant and its officers.
10.11*	License Agreement dated June 1, 1995 between Baptist Medical Center of Oklahoma, Inc. and the Registrant.
10.12*	Loan and Security Agreement dated December 30, 1997 between the Registrant and Silicon Valley Bank.
10.13(1)	Loan Modification Agreement dated December 24, 1998 between the Registrant and Silicon Valley Bank.
10.14(1)	Premium Contribution Plan Effective November 1, 1998, as Amended and Restated on January 1, 1999.
10.15(1)	Form of Distribution Agreement.
10.16**(2)	Joint Development and Supply Agreement dated January 16, 1998 between the Registrant and Topholm & Westermann Aps and the subsequent Amendment thereto effective November 30, 1998.
10.17(3)	Loan and Security Agreement with an attached Non-Recourse Secured Promissory Note dated June 29, 1999 between the Registrant and Harry S. Robbins.
10.18(4)	OEM and Supply Agreement dated June 4, 1999 between the Registrant and Siemens Audiologische Technik GmbH ("Siemens").
10.19(5)	Marketing and Distribution Agreement dated November 2, 1999 between the Registrant and Siemens.
10.20(5)	Common Stock Purchase Agreement dated December 1, 1999 between the Registrant and Siemens.

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<u>Exhibit</u>	<u>Description</u>
10.21(6)	Common Stock Purchase Agreement dated September 18, 2000 between Symphonix and certain investors, including exhibits.
10.22(7)	Lease between Airport IV, a Joint Venture, and the Registrant dated January 23, 2003.
10.23	Retention Bonun and Release Agreement between Symphonix and Terrence J. Griffin dated March 5, 2003.
10.24	Termination Agreement between Symphonix and Siemens dated March 20,2003.
10.25	Severance and Release Agreement between Symphonix and Kirk B. Davis dated April 21, 2003.
21.2	List of Subsidiaries of the Registrant.
23.1	Consent of PricewaterhouseCoopers LLP, independent accountants.
23.3(8)	Consent of KPMG LLP, independent auditors.
24.1(8)	Power of Attorney.
99.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
*	Filed as an Exhibit to the Registrant' s Registration Statement on Form S-1 (File No. 333-40339) and incorporated herein by reference.
**	Confidential treatment requested.
(1)	Filed as an exhibit to the Registrant' s Annual Report on Form 10-K for the fiscal year ended December 31, 1998.
(2)	Filed as exhibits to the Registrant' s report on Form 10-Q for the fiscal quarter ending March 31, 1999, and incorporated herein by reference.
(3)	Filed as an exhibit to the Registrant' s report on Form 10-Q for the quarter ending June 30, 1999 and incorporated herein by reference.
(4)	Filed as an exhibit to the Registrant' s report on Form 10-Q for the fiscal quarter ended September 30, 1999 and incorporated herein by reference.
(5)	Filed as an exhibit to the Registrant' s report on Form 8-K filed with the Securities and Exchange Commission on December 20, 1999 and incorporated herein by reference.
(6)	Filed as an exhibit to the Registrant' s report on Form 8-K filed with the Securities and Exchange Commission on November 2, 2000 and incorporated herein by reference.
(7)	Month-to-month lease used for primary facility commencing on January 27, 2003.
(8)	Filed as an exhibit to the Registrant' s report on Form 10-K for the fiscal year ended December 31, 2002.

BORELLI INVESTMENT COMPANY

1770 Technology Drive, San Jose, CA 95110-1308 (408) 453-4700 Fax (408) 453-5636

[Logo]

FULL SERVICE LEASE-GROSS

1. BASIC LEASE PROVISIONS. (“Basic Lease Provisions”)

1.1 Parties: This Lease, dated for reference purposes only, January 23, 2003, is made by and between, Airport IV, a Joint Venture (herein called “Lessor”) and Symphonix Devices, Inc., a Delaware Corporation doing business under the same name (herein called “Lessee”).

1.2 Premises: Suites #311 and #312 consisting of approximately 2,244 rentable square feet, more or loss, as defined in paragraph 2 and as shown as Exhibit ‘A’ hereto (the “Premises”).

1.3 Building: Commonly described as being located at 1735 North First Street in the city of San Jose, County of Santa Clara, State of California, as more particularly described in Exhibit ‘A’ hereto, and as defined in paragraph 2.

1.4 Use: General office use and related legal uses, subject to paragraph 6.

1.5 Term: Two (2) months and five (5) days commencing on January 27, 2003 (“Commencement Date”) and ending March 31, 2003 as defined in paragraph 3.

1.6 Base Rent: Payable on the first day of each month in accordance with paragraph 4.1 herein shall as follows: 1/27/03 to 3/31/03 \$3,927.00 per month

1.7 Base Rent Increase: N/A

1.8 Rent Paid Upon Execution: \$8,487.00 for two (2) months and five (5) days rent.

1.9 Security Deposit: \$3,927.00 pursuant to the terms and conditions of paragraph 5 herein.

1.10 Lessee’s Share of Operating Expenses Increase: (3.5%) as defined in paragraph 4.2.

2. PREMISES, PARKING AND COMMON AREAS.

2.1 Premises: The Premises are a portion of a building, herein sometimes referred to as the “Building” identified in paragraph 1.3 of the Basic Lease Provisions. “Building” shall include adjacent parking structures used in connection therewith. The Premises, the Building, the Common Areas, the land upon which the same are located, along with all other buildings and

Initials

/s/ TG

/s/ RNB

improvements thereon or thereunder, are herein collectively referred to as the "Office Building Project". Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all of the conditions set forth herein, the real property referred to in the Basic Lease Provisions, paragraph 1.2, as the "Premises", including rights to the Common Areas as hereinafter specified.

2.2 Vehicle Parking: So long as Lessee is not in default, and subject to the rules and regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use nine (9) parking spaces in the Office Building Project.

(a) if Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.3 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Office Building Project" that are provided and designated by Lessor from time to time for the general non-exclusive use of Lessor, Lessee and of other lessees of the Office Building Project and their respective employees, suppliers, shippers, customers and invitees, including, but not limited to common entrances, lobbies, corridors, stairways and stairwells, public restrooms, elevators, escalators, parking areas to the extent not otherwise prohibited by this Lease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls.

2.4 Common Areas - Rules and Regulations. Lessee agrees to abide by and conform to the rules and regulations attached hereto as Exhibit 'B' with respect to the Office Building Project and Common Areas, and to cause its employees, suppliers, shippers, customers and invitees to so abide and conform. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right from time to time, to modify, amend and enforce said rules and regulations. Lessor shall not be responsible to Lessee for the non-compliance with said rules and regulations by other lessee' s, (their agents, employees and invitees of the Office Building Project.

2.5 Common Areas - Changes. Lessor shall have the right, in Lessor' s sole discretion, from time to time:

(a) To make changes to the Building interior and exterior and Common Areas, including, without limitation, changes in the location, size, shape, number, and appearance thereof, including but not limited to the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways; provided, however, Lessor shall at all time provide the parking facilities required by applicable law;

Initials

/s/ TG

/s/ RNB

(b) To close temporarily any of the Common Areas for maintenance purposes so long a reasonable access to the Premises remains available;

(c) To designate other land and improvements outside the boundaries of the Office Building Project to be a part of the Common Areas, provided that such other land and improvements have a reasonable and functional relationship to the Office Building Project;

(d) To add additional buildings and improvements to the Common Areas;

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

(f) To do and perform such other act and make such other changes in, to or with respect to the Common Areas and Office Building Project as Lessor may, in the exercise of sound business judgment deem to be appropriate.

3. TERM.

3.1 Term. The term and Commencement Date of this Lease shall be as specified in paragraph 1.5 of the Basic Lease Provisions.

3.2 Delay in Possession. Notwithstanding said Commencement Date, if for any reason Lessor cannot deliver possession of the Premises to Lessee on said date and subject to paragraph 3.2(b), Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Lessee hereunder or extend the term hereof; but, in such case, Lessee shall not be obligated to pay rent or perform any other obligation of Lessee under the terms of this Lease, except as may be otherwise provided in this Lease, until possession of the Premises is tendered to Lessee, as hereinafter defined; provided, however, that if Lessor shall not have delivered possession of the Premises within sixty (60) days following said Commencement Date, as the same may be extended under the terms of a Work Letter executed by Lessor and Lessee, Lessee may, at Lessee's option by notice in writing to Lessor, within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder, provided however that as to Lessee's obligations, Lessee first reimburses Lessor for all costs incurred for Non-Standard improvements and as to Lessor's obligations, Lessor shall return any money previously deposited by Lessee (less any offsets due Lessor for Non-Standard Improvements); and provided further that if such written notice by Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force and effect.

(a) **Possession Tendered - Defined.** Possession of the Premises shall be deemed tendered to Lessee ("Tender of Possession") when (1) the improvements to be provided by Lessor under this Lease are substantially completed, (2) the Building utilities are ready for use in the Premises, and (3) Lessee has reasonable access to the Premises.

Initials

/s/ TG

/s/ RNB

(b) **Delays Caused by Lessee.** There shall be no abatement of rent, and the sixty (60) day period following the Commencement Date before which Lessee' s right to cancel this Lease accrues under paragraph 3.2, shall be deemed extended to the extent of any delays caused by acts or omissions of Lessee, Lessee' s agents, employees and contractors.

3.3 Early Possession. If Lessee occupies the Premises prior to said Commencement Date, such occupancy shall be subject to all provisions of this Lease, such occupancy shall not change the termination date, and Lessee shall pay rent for such occupancy.

3.4 Uncertain Commencement. In the event commencement of the Lease term is defined as the completion of the improvements, Lessee and Lessor shall execute an amendment to this Lease establishing the date of Tender of Possession (as defined in paragraph 3.2(a)) or the actual taking of possession by Lessee, whichever first occurs, as the Commencement Date.

3.5 Lessee Compliance. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.3). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Commencement Date, including the payment of Rent, notwithstanding Lessor' s election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Commencement Date, the Commencement Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. RENT.

4.1 Base Rent. Subject to adjustment as provided in paragraph 1.7, and except as may be otherwise expressly provided in this Lease, Lessee shall pay to Lessor the Base Rent for the Premises set forth in paragraph 1.6 of the Basic Lease Provisions, without offset or deduction. Lessee shall pay Lessor upon execution hereof the advance Base Rent described in paragraph 1.8 of the Basic Lease provisions. Rent for any period during the term hereof which is for less than one month shall be prorated based upon the actual number of days of the calendar month involved. Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing.

4.2 Operating Expense Increase. Lessee shall pay to Lessor during the term hereof, in addition to Base Rent, Lessee' s Share, as hereinafter defined, of the amount by which individual operating expense categories, as hereinafter defined, for each Comparison Year exceeds the amount of individual operating expense categories for the Base Year, such excess being hereinafter referred to as the "Operating Expense Increase", in accordance with the following provisions:

(a) "Lessee' s Share" is defined, for purposes of this Lease, as set forth in paragraph 1.10, which percentage has been determined by dividing the approximate square footage of the Premises by the total approximate square footage of the rentable space contained in the Office Building Project. It is understood and agreed that the square footage figures set forth in the Basic

Initials

/s/ TG

/s/ RNB

Lease Provisions are approximations, which Lessor and Lessee agree are reasonable and shall not be subject to revision except in connection with an actual changes in the size of the Premises or a change in the space available for lease in the Office Building Project.

(b) "Base Year" is defined as the calendar year in which the Lease Term commences.

(c) "Comparison Year" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first twelve (12) months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(d) "Operating Expenses" is defined, for purposes of this Lease, to include all costs, if any, incurred by Lessor in the exercise of its reasonable discretion, for:

(i) The operation, repair, maintenance, and replacement, in neat, clean, safe, good order and condition, of the Office Building Project, including but not limited to, the following:

(aa) The Common Areas, including their surfaces, covering, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, telecommunication and other equipment used in common by, or for the benefit of Lessee's or occupants of the Office Building Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(ii) Trash disposal, janitorial and security services;

(iii) Any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of water, sewer, gas, electricity, and other publicly mandated services to the Office Building Project;

Initials

/s/ TG

/s/ RNB

(v) Labor, salaries and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Office Building Project and accounting and a management fee attributable to the operation of the Office Building Project.

(e) Operating Expenses shall not include any expenses paid by any lessee directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

(f) Lessee' s Share of Operating Expense Increase shall be payable by Lessee within ten (10) days after a reasonable detailed statement of actual expenses is presented to Lessee by Lessor. At Lessor' s option, however, an amount may be estimated by Lessor from time to time in advance of Lessee' s Share of the Operating Expense Increase for any Comparison Year, and the same shall be payable monthly or quarterly, as Lessor shall designate, during each Comparison Year of the Lease term, on the some day as the Base Rent is due hereunder. In the event that Lessee pays Lessor' s estimate of Lessee' s Share of Operating Expense Increase as aforesaid, Lessor shall deliver to Lessee within ninety (90) days after the expiration of each Comparison Year a reasonably detailed statement showing Lessee' s Share of the actual Operating Expense increase incurred during such year. If Lessee' s payments under this paragraph (f) during said Comparison Year exceed Lessee' s Share as indicated on said statement, Lessee shall be entitled to credit the amount of such overpayment against Lessee' s Share of Operating Expense Increase next falling due. If Lessee' s payments under this paragraph during said Comparison Year were less than Lessee' s Share as indicated on said statement, Lessee shall pay to Lessor the amount of the deficiency within ten (10) days after delivery by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.

4.3 Capital Expense Increase. Lessee shall pay to Lessor during the term hereof, in addition to base rent, Lessee' s share, as defined in paragraph 4.2(a), of the amount by which the cost of any capital improvement (such cost or allocable portion thereof to be amortized over such reasonable period as Lessor shall determine in accordance with generally accepted accounting principles), for each comparison year that exceeds the amount of capital expenses for the base year, such excess being hereafter referred to as "Capital Expense Increase". Sums representing Capital Expense Increase shall be paid in the same manner and in conjunction with Operating Expense Increase as set forth in paragraph 4.2(f). Capital Expense Increase shall constitute a separate expense category from Operating Expense Increase. Capital Improvements shall not include the cost of any Capital Improvements relating only to a single tenant in the Office Building Project.

4.4 Insurance Premium Increase. Lessee shall pay to Lessor during the term hereof, in addition to base rent, Lessee' s share, as defined in paragraph 4.2(a), of the amount by which the cost of any premium for insurance carried by Lessor pursuant to paragraph 8.1(b), for each comparison year that exceeds the amount of insurance premium for the base year, such excess being hereafter referred to as "Insurance Premium Increase". Sums representing Insurance Premium

Initials

/s/ TG

/s/ RNB

Increase shall be paid in the same manner and in conjunction with Operating Expense Increase as set forth in paragraph 4.2(f). Insurance Premium Increase shall constitute a separate expense category from Operating Expense Increase.

4.5 Real Property Tax Increase. Lessee shall pay to Lessor during the term hereof, in addition to base rent, Lessee's share, as defined in paragraph 4.2(a), of the amount by which the cost of any real property tax as defined in paragraph 10, for each comparison year that exceeds the amount of real property tax for the base year, such excess being hereafter referred to as "Real Property Tax Increase". Sums representing Real Property Tax Increase shall be paid in the same manner and in conjunction with Operating Expense Increase as set forth in paragraph 4.2(f). Real Property Tax Increase shall constitute a separate expense category from Operating Expense Increase.

5. SECURITY DEPOSIT. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor, including late charges, or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of said Security Deposit, Lessee shall within ten (10) days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Use (Paragraph 1.4) be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on said change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within fourteen (14) days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within thirty (30) days after the Premises have been vacated pursuant to Paragraph 7.2(b) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. Lessee understands and agrees that the Security Deposit is not prepaid rent and, specifically, that such Security Deposit may not be applied by Lessee as rent for the last month of the term of this Lease.

Initials

/s/ TG

/s/ RNB

6. USE.

6.1 Use. The Premises shall be used and occupied only for the Use specified in Paragraph 1.4, or any other legal use, which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to neighboring properties. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Use, so long as the same will not impair the structural integrity of the Improvements on the Premises or the mechanical or electrical systems therein, or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within five (5) business days after such request give written notification of same, which notice shall include an explanation of Lessors objections to the change in use.

6.2 Compliance.

(a) Lessor warrants to Lessee that the Premises, in the state existing on the date that the Lease term commences, but without regard to alterations or improvements made by Lessee or the use for which Lessee will occupy the Premises, does not violate any covenants or restrictions of record in effect on such Lease term Commencement Date. In the event it is determined that this warranty has been violated, than it shall be the obligation of the Lessor, after written notice from Lessee, to promptly, at Lessees sole cost and expense, rectify any such violation. In the event Lessee does not give to Lessor written notice of the violation of this warranty within six (6) months from the date that the Lease term commences, the correction of same shall be the obligation of the Lessee at Lessee' s sole cost. The warranty contained in this paragraph 6.2(a) shall be of no force or effect if, prior to the date of this Lease, Lessee was an owner or occupant of the Premises and, in such event, Lessee shall correct any such violation at Lessee' s sole cost.

(b) Except as provided in paragraph 6.2(a) Lessee shall, at Lessee' s expense, promptly comply with all applicable statutes (including Americans with Disabilities Act and O.S.H.A.), ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements of any fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect, whether or not they reflect a change in policy from that now existing, during the term or any part of the term hereof, relating in any manner to the Premises and the occupation and use by Lessee of the Premises. Lessee shall conduct its business in a lawful manner and shall not use or permit the use of the Premises or the Common Area in any manner that will tend to create waste or a nuisance or shall tend to disturb other occupants of the Office Building Project.

6.3 Condition of Premises.

(a) Lessor shall deliver the Premises to Lessee in a clean condition on the Lease Commencement Date (unless Lessee is already in possession) and Lessor warrants to Lessee that the plumbing, lighting, air conditioning, and heating system in the Premises shall be in good operating condition. In the event that it is determined that this warranty has been violated, then it

Initials

/s/ TG

/s/ RNB

shall be the obligation of Lessor, after receipt of written notice from Lessee setting forth with specificity the nature of the violation, to promptly, at Lessors sole cost, rectify such violation.

(b) Except as otherwise provided in this Lease, Lessee hereby accepts the Premises and the Office Building Project in their condition existing as of the Lease Commencement Date or the date that Lessee takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any easements, covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that it has satisfied itself by its own independent, investigation that the Premises are suitable for its intended use, and that neither Lessor nor Lessors agent or agents has made any representation or warranty as to the present or future suitability of the Premises, Common Area or Office Building Project for the conduct of Lessee' s business.

6.4 Waste; Nuisance. Lessee shall not use the premises in any manner that will constitute waste, nuisance, or unreasonable annoyance (including, without limitation, unreasonable noise, the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Premises) to other tenants in the Building or occupants of neighboring properties. Lessee shall not use the Premises for vehicle repair, sleeping, washing clothes, cooking, or the preparation, manufacturing or mixing of anything that might emit any odor or objectionable noises or lights into the Building or onto neighboring properties.

7. MAINTENANCE, REPAIRS, ALTERATIONS AND COMMON AREA SERVICES

7.1 Lessor' s Obligations. Lessor shall keep the Office Building Project, including the Premises, interior and exterior walls, roof and Common Areas, whether used exclusively for the premises or in common with other Premises, in good condition and repair, provided, however, Lessor shall not be obligated to paint, repair or replace wall coverings, or to repair or replace any improvements that are not ordinarily a part of the Building. Except as provided in paragraph 9.5, there shall be no abatement of rent or liability of Lessee on account of any injury or interference with Lessee' s business with respect to any improvements, alterations or repairs made by Lessor to the office Building Project or any part thereof. Lessee expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Lessor' s expense or to terminate this Lease because of Lessor' s failure to keep the Premises in good order, condition and repair.

7.2 Lessee' s Obligations.

(a) Notwithstanding Lessor' s obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to cases beyond normal wear and tear. Lessee shall be responsible for the cost of

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/s/ TG

/s/ RNB

painting, repairing or replacing wall coverings, and to repair or replace any Premises improvements that are not ordinarily a part of the Building. Lessor may, at its option, upon reasonable notice, elect to have Lessor perform any particular such maintenance or repair costs at Lessee' s cost of which are otherwise Lessee' s responsibility hereunder.

(b) On the last of the term hereof, or on any sooner termination, Lessee shall surrender the Premises to Lessor in same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by Lessee. Lessee shall repair all penetrations and damage (including markings) to walls and stains in carpet. Lessee shall repair any damage to the Premises occasioned by the installation or removal of Lessee' s trade fixtures, alterations, furnishings and equipment. Except as otherwise stated in this Lease, Lessee shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, air conditioning, window coverings, wall coverings, carpets, wall paneling, ceilings and plumbing on the Premises in good operating condition.

7.3 Alterations and Additions.

(a) Lessee shall not, without Lessor' s prior written consent make any alterations, improvements, additions, Utility Installations or repairs in, on or about the Premises, or the Office Building Project. As used in this paragraph 7.3 the term "Utility Installation" shall mean carpeting, window and wall coverings, power panels, electrical distribution systems, lighting fixtures, air conditioning, plumbing, and telephone and telecommunication wiring and equipment. At the expiration of the term, Lessor may elect ownership or require the removal of any or all of said alterations, improvements, additions or Utility Installations, and the restoration of the Premises and the Office Building Project to their prior condition, at Lessee' s expense. Should Lessor permit Lessee to make its own alterations, improvement, additions or Utility Installations, Lessee shall use only such contractor as has been expressly approved by Lessor, and Lessor may require Lessee to provide Lessor, at Lessee' s sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Lessor against any liability for mechanic' s and materialmen' s liens and to insure completion of the work. Should Lessee make any alterations, improvements, additions or Utility Installations without the prior approval of Lessor, or use a contractor not expressly approved by Lessor, Lessor may, at any time during the term of this Lease, require that Lessee remove any part or all of the same.

(b) Any alterations, improvements, additions or Utility Installations in or about the Premises or the Office Building Project that Lessee shall desire to make shall be presented to Lessor in written form, with proposed detailed plans. If Lessor shall give its consent to Lessee' s making such alteration, improvements, addition to Utility Installation, the consent shall be deemed conditioned upon Lessee acquiring a permit to do so from the applicable governmental agencies, furnishing a copy thereof to Lessor prior to the commencement of the work, and compliance by Lessee with all conditions of said permit in a prompt and expeditious manner.

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/s/ TG

/s/ RNB

(c) Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee or for use in the Premises, which claims are or may be secured by any mechanic' s or materialmen' s lien against the Premises, the Building or the Office Building Project, or any interest therein.

(d) Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in the Premises by Lessee, and Lessor shall have the right to post notices of non-responsibility in or on the Premises or the Building as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises, the Building or the Office Building Project, upon the condition that if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested lien, claim or demand indemnifying Lessor against liability for the same and holding the Premises, the Building and the Office Building Project free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor' s reasonable attorneys' fees and costs in participating in such action if Lessor shall decide it is in Lessor' s best interest so to do.

(e) All alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Lessee), which may be made to the Premises by Lessee, including but not limited to, floor coverings, panelings, doors, drapes, built-ins, moldings, sound attenuation, and lighting and telephone or communication systems, conduit, wiring and outlets, shall be made and done in a good and workmanlike manner and of good and sufficient quality and materials and shall be the property of Lessor and remain upon and be surrendered with the Premises at the expiration of the Lease term, unless Lessor requires their removal pursuant to paragraph 7.3(a). Provided Lessee is not in default, notwithstanding the provisions of this paragraph 7.3(e), Lessee' s personal property and equipment, other than that which is affixed to the Premises so that it cannot be removed without material change to the Premises or the Building, and other than utility installations, shall remain the property of Lessee and may be removed by Lessee subject to the provisions of paragraph 7.2.

(f) Lessee shall provide Lessor with as-built plans and specifications for any alterations, improvements, additions or Utility Installations.

7.4 Utility Additions. Lessor reserves the right to install new or additional utility facilities throughout the Office Building Project for the benefit of Lessor or Lessee, or any other lessee of the Office Building Project, including, but not by way of limitation, such utilities as plumbing, electrical systems, communication systems, and fire protection and detection systems, so long as such installations do not unreasonably interfere with Lessee' s use of the Premises.

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/s/ TG

/s/ RNB

8. INSURANCE; INDEMNITY.

8.1 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability Policy of Insurance protecting Lessee, Lessor and Borelli Investment Company against claims for bodily injury, personal injury and property damage based upon or arising out of the Ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$2,000,000 per occurrence with an "Additional Insured-Managers or Lessors of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. The Policy shall not contain any insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only. Lessor and Borelli Investment Company shall be named as additional insureds on such insurance contracts.

(b) **Carried by Lessor.** All insurance maintained by Lessor shall be for the sole benefit of Lessor and under Lessor's sole control.

(i) **Property Insurance.** Lessor agrees to maintain property insurance insuring the Building against damage or destruction due to risks including fire, vandalism and malicious mischief in an amount not less than the replacement cost thereof in the form and with deductibles and endorsements as selected by Lessor. At its election, Lessor may instead obtain "All Risk" coverage, and may also obtain earthquake, pollution, and/or flood insurance in amounts selected by Lessor.

(ii) **Optional Insurance.** Lessor, at Lessor's option, may also carry insurance against loss of rent, in an amount equal to the amount of Base Rent and Additional Rent that Lessor could be required to abate to all Building tenants in the event of condemnation, damage or destruction for a period of twelve (12) months. Lessor may also carry such other insurance as Landlord may deem prudent or advisable, including, without limitation, liability insurance in such amounts and on such terms as Lessor shall determine. Lessor shall not be obligated to insure any furniture, machinery, goods, inventory or supplies which Tenant may keep or maintain in the Premises, or any leasehold improvements, additions or alterations within the Premises.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

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/s/ TG

/s/ RNB

8.2 Lessee' s Property/Business Interruption Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee' s personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee' s property, business operations or obligations under this Lease.

8.3 Insurance Policies. Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-, V, as set forth in the most current issue of "Best' s Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything, which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to Lessor. Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.4 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

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/s/ TG

/s/ RNB

8.5 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.6 Exemption of Lessor from Liability. Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9. DAMAGE OR DESTRUCTION.

9.1 Definitions.

(a) "Premises Damage" shall mean if the Premises are damaged or destroyed to any extent.

(b) "Premises Building Partial Damage" shall mean if the Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is less than fifty percent (50%) of the then Replacement Cost of the building.

(c) "Premises Building Total Destruction" shall mean if the Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is fifty percent (50%) or more of the then Replacement Cost of the Building.

(d) "Office Building Project Buildings" shall mean all of the buildings on the Office Building Project site.

(e) "Office Building Project Buildings Total Destruction" shall mean if the Office Building Project Buildings are damaged or destroyed to the extent that the cost of repair is fifty percent (50%) or more of the then Replacement Cost of the Office Building Project Buildings.

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/s/ TG

/s/ RNB

(f) "Insured Loss" shall mean damage or destruction, which was caused by an event required to be covered by the insurance described in paragraph 8. The fact that an Insured Loss has a deductible amount shall not make the loss an uninsured loss.

(g) "Replacement Cost" shall mean the amount of money necessary to be spent in order to repair or rebuild the damaged area to the condition that existed immediately prior to the damage occurring, excluding all improvements made by lessee' s, other than those installed by Lessor at Lessee' s expense.

9.2 Premises Damage; Premises Building Partial Damage.

(a) **Insured Loss:** Subject to the provisions of paragraphs 9.4 and 9.5, if at anytime during the term of this Lease there is damage which is an Insured Loss and which falls into the classification of either Premises Damage or Premises Building Partial Damage, then Lessor shall, as soon as reasonably possible and to the extent the required materials and labor are readily available through usual commercial channels, at Lessor' s expense repair such damage (but not Lessee' s fixtures, equipment or tenant improvements originally paid for by Lessee) to its condition existing at the time of the damage, and this Lease shall continue in full force and effect.

(b) **Uninsured Loss:** Subject to the provisions of paragraphs 9.4 and 9.5, if at any time during the term of this Lease there is damage which is not an Insured Loss and which fall within the classification of Premises Damage or Premises Building Partial Damage, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee' s expense), which damage prevents Lessee from making any substantial use of the Premises, Lessor may at Lessor' s option either (i) repair such damage as soon as reasonably possible at Lessor' s expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after the date of the occurrence of such damage of Lessor' s intention to cancel and terminate this Lease as of the date of the occurrence of such damage, in which event this Lease shall terminate as of the date of the occurrence of such damage.

9.3 Premises Building Total Destruction; Office Building Project Buildings Total Destruction. Subject to the provisions of paragraphs 9.4 and 9.5, if at anytime during the term of this Lease there is damage, whether or not it is an Insured Loss, which falls into the classification of either (i) Premises Building Total Destruction, or (ii) Office Building Project Buildings Total Destruction, then Lessor may at Lessor' s option either (i) repair such damage or destruction as soon as reasonably possible at Lessor' s expense (to the extent the required materials are readily available through usual commercial channels) to its conditions existing at the time of the damage, but not Lessee' s fixtures, equipment or tenant improvements, and this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after the date of occurrence of such damage of Lessor' s intention to cancel and terminate this Lease, in which case this Lease shall terminate as of the date of the occurrence of such damage.

9.4 Damage Near End of Term.

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/s/ TG

/s/ RNB

(a) Subject to paragraph 9.4(b), if at anytime during the last twelve (12) months of the term of this Lease there is substantial damage to the Premises, Lessor may at Lessor' s option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Lessee of Lessor' s election to do so within 30 days after the date of occurrence of such damage.

(b) Notwithstanding paragraph 9.4(a), in the event that Lessee has an option to extend or renew this Lease, and the time within which said option may be exercised has not yet expired. Lessee shall exercise such option, if it is to be exercised at all, no later than twenty (20) days after the occurrence of an Insured Loss falling within the classification of Premises Damage during the last twelve (12) months of the term of this Lease. If Lessee duly exercises such option during said twenty (20) day period, Lessor shall at Lessees expense, repair such damage, but not Lessee' s fixtures, equipment or tenant improvements, as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option during said twenty (20) day period, then Lessor may at Lessor' s option terminate and cancel this Lease as of the expiration of said twenty (20) day period, notwithstanding any term or provision in the grant of option to the contrary.

9.5 Abatement of Rent; Lessee' s Remedies.

(a) In the event Lessor repairs or restores the Building or Premises pursuant to the provisions of this paragraph 9, and any part of the Premises are not usable (including loss of use due to loss of access or essential services), the rent payable hereunder (including Lessee' s Share of Operating Expense Increase) for the period during which such damage, repair or restoration continues shall be abated, provided (i) the damage was not the result of the negligence of Lessee, and (ii) such abatement shall only be to the extent the operation and profitability of Lessee' s business as operated from the Premises is adversely affected. Except for said abatement of rent, if any, Lessee shall have no claim against Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises or the Building under the provisions of this Paragraph 9 and shall not commence such repair or restoration within ninety (90) days after such occurrence, or if Lessor shall not complete the restoration and repair within six (6) months after such occurrence, Lessee may at Lessee' s option cancel and terminate this Lease by giving Lessor written notice of Lessee' s election to do so at any time prior to the commencement or completion, respectively, of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

(c) Lessee agrees to cooperate with Lessor in connection with any such restoration and repair, including but not limited to the approval and/or execution of plans and specifications required.

9.6 Termination - Advance Payments. Upon termination of this Lease pursuant to this paragraph 9, an equitable adjustment shall be made concerning advance rent and any advance

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/s/ TG

/s/ RNB

payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee' s security deposit as has not theretofore been applied by Lessor.

9.7 Waiver. Lessor and Lessee waive the provisions of any statute, which relates to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

10. REAL PROPERTY TAXES.

10.1 Payment of Taxes. Lessor shall pay the real property tax, as defined in paragraph 10.3, applicable to the Office Building Project subject to reimbursement by Lessee of Lessee' s Share of such taxes in accordance with the provisions of paragraph 4.5, except as otherwise provided in paragraph 10.2.

10.2 Additional Improvements. Lessee shall not be responsible for paying any increase in real property tax specified in the tax assessor' s records and work sheets as being caused by additional improvements placed upon the Office Building Project by other lessee' s or by Lessor for the exclusive enjoyment of any other lessee. Lessee shall, however, pay to Lessor at the time that Operating Expenses are payable under paragraph 4.2 the entirety of any increase in real property tax if assessed solely by reason of additional improvements placed upon the Premises by Lessee or at Lessee' s request.

10.3 Definition of "Real Property Tax." As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Office Building Project or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, regional, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Lessor in the Office Building Project or in any portion thereof, as against Lessor' s right to rent or other income therefrom, and as against Lessor' s business of leasing the Office Building Project. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax", or (ii) the nature of which was hereinbefore included within the definition of "real property tax", or (iii) which is imposed for a service or right not charged prior to June 1, 1978, or, if previously charged, has been increased since June 1, 1978, or (iv) which is imposed as a result of a change in ownership, as defined by applicable local statutes for property tax purposes, of the Office Building Project or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such changes of ownership, or (v) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereof.

10.4 Assessment. If the improvements or property, the taxes for which are to be paid separately by Lessee under paragraph 10.2 or 10.5 are not separately assessed, Lessee' s portion of that tax shall be equitably determined by Lessor from the respective valuations assigned in the

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/s/ TG

/s/ RNB

assessor's work sheets or such other information (which may include the cost of construction) as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 Personal Property Taxes.

(a) Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere.

(b) If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay to Lessor the taxes attributable to Lessee within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. UTILITIES.

11.1 Services Provided by Lessor. Lessor shall provide heating, ventilation, air conditioning, and janitorial service as reasonably required, reasonable amounts of electricity for normal lighting and office machines during the days/hours set forth in subparagraph 11.3, water for reasonable and normal drinking and lavatory use, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. In the event the cost of electricity for any single month(s) during the term of the Lease exceeds the cost of electricity for the same month of the year 2002 by fifteen percent (15%), then such cost of electricity exceeding the fifteen percent (15%) shall be paid by Lessee (calculated pursuant to Paragraph 4.2(a)) in conjunction with and in the same manner as Base Rent.

11.2 Services Exclusive to Lessee. Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premise or to Lessee, together with any taxes thereon. If any such services are not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges jointly metered with other premises in the Building.

11.3 Hours of Service. Said services and utilities shall be provided Monday through Friday, 7:00 a.m. to 7:00 p.m. "Standard Usage" is four (4) watts per square foot (based on "rentable square footage) per hour excluding general building H.V.A.C. during hours of service. All usage of services and utilities on days or hours other than Monday through Friday, 7:00 a.m. to 7:00 p.m. shall be defined as "After Hours Usage". Lessee agrees to pay Lessor, as additional rent, the sum of \$25.00 per hour billed in increments of one (1) hour for all after hour standard usage of services and utilities. Charges for such after hour usages shall be reflected in the monthly statement to Lessee and shall be paid each month in conjunction with base rent pursuant to paragraph 4.1.

11.4 Excess Usage by Lessee. Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra

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/s/ TG

/s/ RNB

burden upon the utilities or services, including but not limited to security services, over Standard Usage for the Office Building Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee' s expense supplemental equipment and/or separate metering applicable to Lessee' s excess usage or loading. It is agreed and understood that all costs (including, without limitation, costs incurred in determining excess usage) incident to excess usage shall be paid by Lessee.

11.5 Interruptions. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor' s reasonable control or in cooperation with governmental request or directions.

12. ASSIGNMENT AND SUBLETTING.

12.1 Lessor' s Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, sublet, transfer, mortgage or encumber all or any part of Lessee' s interest in this Lease or in the Premises without Lessor' s prior written consent. A change in the control of Lessee whether by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise, shall require Lessor' s prior written consent. Any such assignment, sublet, transfer, mortgage, encumbrance or change in control of Lessee is hereafter collectively referred to as "**Assignment or Subletting**".

(b) An Assignment or Subletting without written consent shall, at Lessor' s option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved Assignment or Subletting as a noncurable Breach, Lessor may either (i) terminate this Lease, or (ii) upon thirty (30) days written notice, increase the monthly Base Rent to one hundred ten percent (110%) of the current market rent for new leases. Further, in the event of such Breach and rental adjustment, all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to One Hundred Ten Percent (110%) of the estimated future market rent(s).

(c) Lessor and Lessee hereby acknowledge that Lessor' s disapproval of any proposed Assignment or Subletting pursuant to Paragraph 12 shall be deemed reasonably withheld if based upon any reasonable factor, specifically, without limitation, any or all of the following factors:

(i) The proposed Assignment or Subletting would result in more than two subleases of portions of the Premises being in effect at any one time during the Term;

(ii) The net effective rent payable by the Assignee or Sublessee (adjusted on a rentable square foot basis) is less than the net effective rent then being quoted by Lessor for new leases in the Building for comparable size space for a comparable period of time;

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/s/ TG

/s/ RNB

(iii) The proposed Assignee or Sublessee is an existing tenant of the Project or is negotiating with Lessor (or has negotiated with Lessor in the last six (6) months) for space in the Project;

(iv) The proposed Assignee or Sublessee is a governmental entity;

(v) The portion of the Premises to be assigned or sublet is irregular in shape with inadequate means of ingress and egress;

(vi) The use of the Premises by the Assignee or Sublessee;

(aa) Is not permitted by the use provisions hereof; or

(bb) Violates any exclusive use granted by Lessee to another tenant in the Building;

(vii) The Assignment or Subletting would likely result in a significant increase in the use of parking areas or Common Areas by the Assignee' s or Sublessee' s employees or visitors, and/or significantly increase the demand upon utilities and services to be provided by Lessor to the Premises;

(viii) The Assignee or Sublessee does not have the financial capacity to fulfill the obligations imposed by the Assignment or Subletting; or

(ix) The Assignee or Sublessee is not in Lessee' s reasonable opinion of reputable or good character or consistent with Lessor' s desired tenant mix.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor' s consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such Assignee or Sublessee of the obligations of Lessee under this Lease; (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee' s obligations from any person other than Lessee pending approval or disapproval of an Assignment. Neither a delay in the approval or disapproval of such Assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor' s right to exercise its remedies for Lessee' s Default or Breach.

(c) Lessor' s consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

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/s/ TG

/s/ RNB

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee' s obligations under this Lease, including any Assignee or Sublessee, without first exhausting Lessor' s remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an Assignment or Subletting shall be in writing, accompanied by information relevant to Lessor' s determination as to the financial and operational responsibility and appropriateness of the proposed Assignee or Sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$1,000 or ten percent (10%) of the current monthly Base Rent applicable to the portion of the Premises which is the subject of the proposed Assignment or Sublease, whichever is greater, as consideration for Lessor' s considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

(f) Any Assignee of, or Sublessee under, this Lease shall, by reason of accepting such Assignment or entering into such Sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said Assignment or Sublease, other than such obligations as are contrary to or inconsistent with provisions of an Assignment or Sublease to which Lessor has specifically consented to in writing.

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Subject to paragraph 12.4, Lessee hereby assigns and transfers to Lessor all of Lessee' s interest in all Rent payable on any Sublease, and Lessor may collect such Rent and apply same toward Lessee' s obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee' s obligations, Lessee may collect said Rent. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the Sublessee for any failure of Lessee to perform and comply with any of Lessee' s obligations to such Sublessee. Lessee hereby irrevocably authorizes and directs any such Sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee' s obligations under this Lease, to pay to Lessor all Rent due and to become due under the Sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require Sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the Sublessor under such Sublease from the time of the exercise of said option to the expiration of such Sublease;

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/s/ TG

/s/ RNB

provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such Sublessee to such Sublessor or for any prior Defaults or Breaches by such Sublessor.

(c) Any matter requiring the consent of the Sublessor under a Sublease shall also require the consent of Lessor.

(d) No Subleases shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessee and/or Sublessee shall be responsible for paying all costs associated with Subletting and not be entitled to credit such associated costs against rent (or other consideration) payable on any Sublease. It is expressly understood and agreed that all rent (or other consideration) payable on any Sublease shall be paid to Lessor without offset or credit.

12.4 Additional Terms and Conditions Applicable to Assignment and Subletting. It is the intent of the parties hereto that the Lease shall confer upon Lessee only the right to use and occupy the premises and to exercise such other rights as are conferred upon Lessee by this Lease. The parties agree that this Lease is not intended to have a bonus or enhanced value to Lessee, nor to serve as a vehicle whereby Lessee may profit by a future assignment or sublet of this Lease of a right to use or occupy the Premises as a result of any favorable terms contained herein or any favorable changes in the market for commercial lease space. It is the intent of the parties that any such bonus or enhanced value that may attach to this Lease shall be and remain the exclusive property of the Lessor. In order to carry out this intent, in the event Lessee seeks to assign or transfer its interest in this Lease of Premises, Lessor shall have the following options, which may be exercised at its sole election, without limiting Lessor in the exercise of any other right or remedy at law or equity or under this Lease, which Lessor may have by reason of such proposed assignment or sublet.

(a) Lessor may terminate this lease and release Lessee from any further rental obligations thereunder by sending Lessee written notice of such termination within forty-five (45) days after notice of intent to assign or sublet is deemed given by Lessee, provided, however, that Lessee may withdraw its notice of intent by written notice to Lessor at any time within ten (10) days after receipt by Lessee of Lessor's notice of termination, in which event this Lease shall continue in full force and effect. If Lessor elects to terminate this Lease and if Lessee does not withdraw its notice of intent, Lessee shall surrender the Premises pursuant to the terms of this Lease within sixty (60) days after notice of intent to transfer is deemed given by Lessee and on such date as designed by Lessor.

(b) Lessor may within forty-five (45) days after notice of intent to assign or sublet is deemed given by Lessee, acquire the interest in this Lease and the Premises that Lessee proposed to assign or sublet, on the same terms and conditions as the proposed assignment or sublet.

(c) Lessor may consent to proposed assignment or sublet, provided that as a condition to such consent, Lessor shall have the right to require that any and all rent and bonus rent paid by the assignee tenant or subtenant, including, without limitation, any rent in excess of the

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/s/ TG

/s/ RNB

rentals to be paid under this Lease shall be paid directly to Lessor. For the purpose of this paragraph, the term “rent” shall include any consideration of any kind received, or to be received from the assignee, tenant or subtenant including such sums that are related to Lessee’s interest in the Lease or in the Premises, including, without limitation, expense reimbursements or advances, the value of services performed, key money, bonus money and/or payments for Lessee’s personal property in excess of the book value of such property. The term “personal property” as used in this paragraph shall include, without limitation, assets, fixtures, inventories, accounts, good will, equipment, furniture, general intangibles, and any [capitol] stock or other equity ownership interest of Lessee.

13. DEFAULTS; BREACH; REMEDIES.

13.1 Default; Breach. A “Default” is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or rules under this Lease. A “Breach” is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period;

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, and/or Security Deposit or where the coverage of the property insurance described in Paragraph 8.1 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent, Operating Expense, Capital Expense, Insurance, Real Property Tax, or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice to Lessee.

(c) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) a Tenancy Statement, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 40 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of three (3) days following written notice to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the attached rules adopted hereunder including, without limitation, Vehicle Parking (Paragraph 2.2), Security Deposit (Paragraph 5), Use (Paragraph 6), Maintenance and Alterations (Paragraphs 7.2, 7.3 and 7.4), Utilities (Paragraph 11), Assignment and Subletting (Paragraph 12), Lessor’s Access (Paragraph 32), Hazardous Substances (Paragraph 49), where such Default continues for a period of three (3) days after written notice.

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/s/ TG

/s/ RNB

(e) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. Sec. 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in his Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty; (iii) a Guarantees becoming insolvent or the subject of a bankruptcy filing; (iv) a Guarantor's refusal to honor the guaranty; or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within sixty (60) days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

(h) In the event Lessee has one or more additional leases for other premises in the Office Building Project then is acknowledged and agreed that a default under such additional lease(s) shall also constitute a default under this lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations within ten (10) days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefore. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy, which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee; (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by

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/s/ RNB

which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) 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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue this Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an inducement Provision shall

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/s/ TG

/s/ RNB

be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges, which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within five (5) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a one-time late charge equal to six percent (6%) of each such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default of Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Best Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Returned Check Charges. Lessee hereby acknowledges and agrees that a service charge of \$50.00 will be assessed and charged to Lessee for each check which is returned because of insufficient funds.

13.6 Notice to Pay Rent Charge. Lessee hereby acknowledges and agrees that a charge of \$75.00 will be assessed and charged to Lessee for each Three Day Notice to Pay Rent or Quit (or other termination notice based on Default) served on Lessee.

14. CONDEMNATION. If the Premises or any portion thereof or the Office Building Project are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which, are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date of the condemning authority takes title or possession, whichever first occurs; provided that if so much of the Premises or the Office Building Project are taken by such condemnation as would substantially and adversely affect the operation and profitability of Lessee's business conducted from the Premises, Lessee shall have the option, to be exercised only in writing within thirty (30) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession), to terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent and Lessee's Share of Operating Expense Increase shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises, Common Areas taken shall be excluded from the Common Areas usable by Lessee and no reduction of rent shall occur with respect thereto or by reason thereof. Lessor shall have the option in its sole discretion to terminate this Lease as of

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/s/ TG

/s/ RNB

the taking of possession by the condemning authority, by giving written notice to Lessee of such election within thirty (30) days after receipt of notice of a taking by condemnation of any part of the Premises or the Office Building Project. Any award for the taking of all or any part of the Premises or the Office Building Project under the power of eminent domain or any diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any separate award for loss of or damage to Lessee's trade fixtures, removable personal property and unamortized tenant improvements that have been paid for by Lessee. For that purpose the cost of such improvements shall be amortized over the original term of this Lease excluding any options. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of severance damages received by Lessor in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall pay any amount in excess of such severance damages required to complete such repair.

15. ESTOPPEL CERTIFICATE.

(a) Each party (as "responding party") shall at any time upon not less than ten (10) days' prior written notice from the other party ("requesting party") execute, acknowledge and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the requesting party, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by and prospective purchaser or encumbrancer of the Office Building Project or of the business of Lessee.

(b) At the requesting party's option, the failure to deliver such statement within such time shall be a material default of this Lease by the party who is to respond, without any further notice to such party, or it shall be conclusive upon such party that (i) this Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) there are not uncured defaults in the requesting party's performance, and (iii) if Lessor is the requesting party, not more than one month's rent has been paid in advance.

(c) If Lessor desires to finance, refinance, or sell the Office Building Project, or any part thereof, Lessee hereby agrees to deliver to any lender or purchaser designated by Lessor such financial statements of Lessee as may be reasonably required by such lender or purchaser. Such statements shall include the past three (3) years' financial statements of Lessee. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

16. LESSORS LIABILITY. The term "Lessor" as used herein shall mean only the owner or owners, at the time in question, of the fee title or a Lessee's interest in a ground lease of the Office Building Project, in the event of any transfer of such title or interest, Lessor herein named (and in case of any subsequent transfers then the grantor) shall be relieved from and after the date of

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/s/ TG

/s/ RNB

such transfer of all liability as respects Lessor's obligations thereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Lessor shall, subject as aforesaid, be binding on Lessor's successors said assigns, only during their respective periods of ownership.

17. 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.

18. INTEREST ON PAST DUE OBLIGATIONS. Except as expressly herein provided, any amount due to Lessor not paid when due shall bear interest at the maximum rate then allowable by law or judgments from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this Lease; provided, however, that interest shall not be payable on late charges incurred by Lessee.

19. TIME OF ESSENCE. Time is of the essence with respect to the obligations to be performed under this Lease.

20. ADDITIONAL RENT. All monetary obligations of Lessee to Lessor under the terms of this Lease, including but not limited to Lessee's Share of Operating Expense Increase, Capital Expense Increase, Insurance Premium Increase, Real Property Tax Increase, late charges, Three-Day Notice charges (Paragraph 13.6), returned check charges, attorney's fees and any other expenses payable by Lessee hereunder shall be deemed to be rent.

20.1 Credits to Lessee's Account. Lessor shall promptly credit Lessee's account for all payments received from Lessee. Such payments shall be first credited to those sums due under this Lease Agreement, including but not limited to, Base Rent, Operating Expense Increase, Capital Expense Increase, Insurance Premium Increase, Real Property Tax Increase, late charges, 3-Day Notice charges (Paragraph 13.6), returned check fees and attorney's fees, which were incurred earliest in time (oldest chargeable items). Nothing in this paragraph (including Lessor's acceptance of a partial payment on account balance) shall be construed nor constitute a waiver by Lessor of any provision hereof or of any subsequent breach by Lessee of the same or any other provision.

21. INCORPORATION OF PRIOR AGREEMENTS; AMENDMENTS. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Lessee hereby acknowledged that neither Borelli Investment Company nor any cooperating broker on this transaction nor the Lessor or any employee or agents of any of said persons has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of the Premises or the Office Building Project and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act and the Americans with Disabilities Act, the legal use and adaptability of the Premises

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/s/ TG

/s/ RNB

and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease.

22. NOTICES. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified or registered mail, and shall be deemed sufficiently given if delivered or addressed to Lessee or to Lessor at the address noted below or adjacent to the signature of the respective parties, as the case may be. Mailed notices shall be deemed given upon actual receipt at the address required, or forty-eight hours following deposit in the mail, postage prepaid, whichever first occurs. Either party may by notice to the other specify a different address for notice purposes except that upon Lessee' s taking possessing of the Premises, Lessee' s address for notice purposes shall be _____. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee.

23. WAIVERS. No waiver by Lessor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor' s consent to or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor' s consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor' s knowledge of such preceding breach at the time of acceptance of such rent.

24. RECORDING. Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a 'short form' memorandum of this Lease for recording purposes.

25. HOLDING OVER. If Lessee, with Lessor' s consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy as defined by Section 1945 of the California Civil Code with all of the provisions of this Lease pertaining to the obligations of Lessee, except that the rent payable shall be one hundred ten percent (110%) of the rent payable immediately preceding the termination date of this Lease, and all Options, if any, granted under the terms of this Lease shall be deemed terminated and be of nor further effect during said tenancy.

26. BROKERAGE COMMISSIONS. Lessee represents and warrants that Lessee has dealt with no broker or agent other than: None. Lessee agrees to indemnify and hold the Lessor harmless from and against any claims by any other broker, agent or other person/entity claiming a commission or other form of compensation by virtue of having dealt with Lessee with regard to this leasing transaction. The provisions of this paragraph shall survive the termination of this Lease.

27. CUMULATIVE DAMAGES. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

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/s/ TG

/s/ RNB

28. COVENANTS AND CONDITIONS. Each provision of this Lease performable by Lessee shall be deemed both a covenant and condition.

29. BINDING EFFECT; CHOICE OF LAW. Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of paragraph 16, this Lease shall bind the parties, their personal representative, successors and assigns. This Lease shall be governed by the laws of the State where the Office Building Project is located and any litigation concerning this Lease between the parties hereto shall be initiated in the county in which the Office Building Project is located.

30. SUBORDINATION.

(a) This Lease, and any Option or right of first refusal granted hereby, at Lessor' s option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Office Building Project and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee' s right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease and any Options granted hereby prior to the lien of its mortgage, deed of trust or ground lease, and shall be given written notice thereof to Lessee, this Lease and such Options shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease or such Options are dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Lessee agrees to execute any documents required to effectuate an attornment, a subordination, or to make this Lease or any Option granted, herein prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Lessee's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Lessee hereunder without further notice to Lessee or, at Lessor' s option, Lessor shall execute such documents on behalf of Lessee as Lessee' s attorney-in-fact. Lessee does hereby make, constitute and irrevocably appoint Lessor as Lessee' s attorney-in-fact and in Lessee' s name, place and stead, to execute such documents in accordance with this paragraph 30(b).

31. ATTORNEYS' FEES.

31.1 If either party or R.N. Borelli, Inc., dba Borelli Investment Company brings (or defends) an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, trial or appeal thereon, shall be entitled to their reasonable attorneys' fees to be paid by the losing party as fixed by the court in the same or a separate suit and whether or not such action is pursued to decision or judgment.

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/s/ TG

/s/ RNB

31.2 The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred in good faith.

31.3 In addition to the charges authorized in Section 13.6, Lessor shall be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notice of default and consultations in connection therewith and any other legal services necessitated by Lessee default, whether or not a legal action is subsequently commenced in connection with such default.

31.4 Jury Trial Waiver. Lessor and Lessee hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Lessor against Lessee or Lessee against Lessor on any matter whatsoever arising out of, or in any way connected with, this lease, the relationship of Lessor and Lessee, Lessee' s use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

32. LESSOR' S ACCESS.

32.1 Lessor and Lessor' s agents shall have the right to enter the Premises at reasonable times (Monday through Friday, during normal business hours, following twenty-four (24) hours telephonic notice by Lessor or Lessor' s agents) for the purpose of inspecting the same, performing any services required of Lessor, showing the same to prospective purchasers, lenders, or lessees, taking such safety measures, erecting such scaffolding or other necessary structures, making such alterations, repairs, improvements or additions to the Premises or the Office Building Project as Lessor may reasonably deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee' s use of the Premises. Lessor may at any time place on or about the Premises or the Building any ordinary "For Sale" signs and Lessor may at any time during the last six (6) months of the term hereof place on or about the Premises any ordinary "For Lease" signs.

32.2 All activities of Lessor pursuant to this paragraph shall be without abatement of rent, nor shall Lessor have any liability to Lessee for the same.

32.3 Lessor shall have the right to retain keys to the Premises and to unlock all doors in or upon the Premises other than to files, vaults and safes, and in the case of an emergency to enter the Premises by any reasonably appropriate means, and any such entry shall not be deemed a forceable or unlawful entry or detainer of the Premises or an eviction. Lessee waives any charges for damages or injuries or interference with Lessee' s property or business in connection therewith.

33. AUCTIONS. Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, an auction upon the premises or the Common Areas without first having obtained Lessor' s prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to

Initials

/s/ TG

/s/ RNB

grant such consent. The holding of any auction on the Premises or Common Areas in violation of this paragraph shall constitute a material default of this Lease.

34. SIGNS. Lessee shall not place any sign upon the Premises or the Office Building Project without Lessor's prior written consent. Under no circumstances shall Lessee place a sign on any roof of the Office Building Project.

35. MERGER. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such subtenancies.

36. CONSENTS. Except for paragraphs 33 (auctions) and 34 (signs) hereof, wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld or delayed.

37. GUARANTOR. In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Lessor under this Lease.

38. OPTIONS.

38.1 Definition. "Option" shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor, (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

38.2 Options Personal to Original Lessee. Each option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

38.3 Multiple Options. In the event that Lessor has any multiple options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

38.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured; (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee); (iii) during the time Lessee is in Breach of this Lease; or (iv) in the event that Lessee has been given three (3) or more notices of separate Default, whether or not the Defaults are cured, during the twelve (12) month period immediately preceding the exercise of the Option; (v) becoming a "debtor" as defined in II U.S.C. Sec. 101 during the term of this Lease.

Initials

/s/ TG

/s/ RNB

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee' s inability to exercise an Option because of the provisions of paragraph 38.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee' s due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of thirty (30) days after such Rent becomes due (without any necessity of Lessor to give notice thereof), (ii) Lessor gives to Lessee three (3) or more notices of separate Default during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

39. SECURITY MEASURES - LESSOR' S RESERVATIONS.

39.1 Lessee hereby acknowledges that Lessor shall have no obligation whatsoever to provide guard service or other security measures for the Project in the Common Areas;

39.2 Lessee shall not:

(a) Use a representation (photographic or otherwise) of the Building or the Office Building Project or their name(s) in connection with Lessee' s business;

(b) Suffer or permit anyone, except in emergency, to go upon the roof of the Building.

40. EASEMENTS.

40.1 Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications that Lessor deems necessary to desirable and to cause the recordation of Parcel Maps and restrictions, so long as well easements, rights, dedications, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material default of this Lease by Lessee without the need for further notice to Lessee.

40.2 The obstruction of Lessee' s view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third patties, shall in no way affect this Lease or impose any liability upon Lessor.

41. PERFORMANCE UNDER PROTEST. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

Initials

/s/ TG

/s/ RNB

42. AUTHORITY. If Lessee is a corporation, trust, or general or limited partnership, Lessee, and each individual executing this Lease on behalf of such entity represent and warrant that such individual is duly authorized to execute and deliver this Lease on behalf of said entity. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days after execution of this Lease, deliver to Lessor evidence of such authority satisfactory to Lessor.

43. CONFLICT. Any conflict between the printed provisions, Exhibits or Addendum of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

44. NO OFFER. Preparation of this Lease by Lessor or Lessor' s agent and submission of same to Lessee shall not be deemed an offer to Lessee to lease. This Lease shall become binding upon Lessor and Lessee only when fully executed by both parties.

45. LENDER MODIFICATIONS. Lessee agrees to make such reasonable modifications to this Lease as may be reasonably required by an institutional lender in connection with the obtaining of normal financing or refinancing of the Office Building Project.

46. MULTIPLE PARTIES. If more than one person or entity is named as either Lessor or Lessee herein, except as otherwise expressly provided herein, the obligations of the Lessor or Lessee herein shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee, respectively.

47. [Deleted]

48. ATTACHMENTS. Attached hereto are the following documents ("Exhibits"), which are incorporated and become part of this Lease:

(a) Floor Plan;

(b) Rules and Regulations.

49. HAZARDOUS SUBSTANCES.

49.1 Reportable Uses Require Consent.

(a) The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances

Initials

/s/ TG

/s/ RNB

without the express prior written consent of Lessor and timely compliance (at Lessee' s expense) with all applicable laws, covenants, or restrictions of record, building codes, regulations and ordinances ("Applicable Requirements"). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Use as specified in paragraph 1.4 so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee' s expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties), Lessee' s obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration to termination of this Lease. No termination, cancellation or release agreement entered

Initials

/s/ TG

/s/ RNB

into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost remediation, which existed as a result of Hazardous Substances on the Premises prior to the Commencement Date or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Commencement Date, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) above) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibility.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within ten (10) days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

Initials

/s/ TG

/s/ RNB

EXHIBIT "A"

[Diagram of Premises]

1735 North First Street, Suite 311 and 312
Approximately 2,244 Sq. Ft.
(not to scale)

Initials

/s/ TG

/s/ RNB

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EXHIBIT "B"

**RULES AND REGULATIONS FOR
STANDARD OFFICE LEASE**

GENERAL RULES

1. Lessee shall not suffer or permit the obstruction of any Common Areas, including driveways, walkways and stairways.
2. Lessor reserves the right to refuse access to any persons Lessor in good faith judges to be a threat to the safety, reputation, or property of the Office Building Project and its occupants.
3. Lessee shall not make or permit any noise or odors that annoy or interfere with other Lessee' s or persons having business within the Office Building Project.
4. Lessee shall not keep animals or birds within the Office Building Project, and shall not bring bicycles, motorcycles or other vehicles into areas not designated as authorized for same.
5. Lessee shall not make, suffer or permit litter except in appropriate receptacles for that purpose.
6. Lessee shall not alter any lock or install new or additional locks or bolts.
7. Lessee shall be responsible for the inappropriate use of any toilet rooms, plumbing or other utilities. No foreign substances of any kind are to be inserted therein.
8. Lessee shall not deface the walls, partitions or other surfaces of the Premises or Office Building Project.
9. Lessee shall not suffer or permit any thing in or around the Premises or Building that causes excessive vibration or floor loading in any part of the office Building Project.
10. Furniture, significant freight and equipment shall be moved into or out of the building only with the Lessor' s knowledge and consent, and subject to such reasonable limitations, techniques and timing, as may be designated by Lessor. Lessee shall be responsible for any damage to the Office Building Project arising from any such activity.
11. Lessee shall not employ any service or contractor for services or work to be performed in the Building, except as approved by Lessor.
12. Lessor reserves the right to close and lock the Building on Saturdays, Sundays and legal holidays, and on other days between the hours of 5:00 p.m. and 8:00 a.m. of the following day.

Initials

/s/ TG

/s/ RNB

If Lessee uses the Premises during such period, Lessee shall be responsible for securely locking any doors it may have opened for entry.

13. Lessee shall return all keys at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.

14. No window coverings, shades or awnings shall be installed or used by Lessee.

15. No Lessee, employee or invitee shall go upon the roof of the Building.

16. Lessee shall not suffer or portrait smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by Lessor or by applicable governmental agencies as non-smoking areas.

17. Lessee shall not use any method of heating or air conditioning other than as provided by Lessor.

18. Lessee shall not install, maintain or operate any vending machines upon the Premises without Lessor' s written consent.

19. The premises shall not be used for lodging or manufacturing, cooking or food preparation.

20. Lessee shall comply with all safety, fire protection and evacuation regulations established by Lessor or any applicable governmental agency.

21. Lessor reserves the right to waive any one of these rules or regulations, and/or as to any particular Lessee, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Lessee.

22. Lessee assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required.

23. Lessor reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Office Building Project and its occupants. Lessee agrees to abide by these and such rules and regulations.

PARKING RULES

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles."

Initials

/s/ TG

/s/ RNB

2. Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee' s employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

3. Parking stickers or identification devices shall be the property of Lessor and be returned to Lessor by the holder thereof upon termination of the holders parking privileges. Lessee will pay such replacement charge as is reasonably established by Lessor for the loss of such devices.

4. Lessor reserves the right to refuse the sale of monthly identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws and/or agreements.

5. Lessor reserves the right to relocate all or a part of parking spaces from floor to floor, within one floor, and/or to reasonably adjacent offsite location(s), and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances and regulations.

6. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.

7. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Lessor will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.

8. Validation, if established, will be permissible only by such method or methods as Lessor and/or its licensee may establish at rates generally applicable to visitor parking.

9. The maintenance, washing, waxing or cleaning of vehicles in the parking structure or Common Areas is prohibited.

10. Lessee shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.

11. Lessor reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the property operation of the parking area. Should it become necessary to designate parking stalls based on Lessee' s use of the parking area, Lessor reserves the right (at Lessor' s sole discretion) to designate certain parking stalls for a particular Lessee' s usage with all costs incident to each designation payable by Lessee.

12. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.

Initials

/s/ TG

/s/ RNB

RETENTION BONUS AND RELEASE AGREEMENT

This Retention Bonus Agreement (this “**Agreement**”) is entered into as of March 5, 2003, by and between Terence J. Griffin (the “**Employee**”) and Symphonix Devices, Inc., a Delaware corporation (the “**Company**” and together with Employee, the “**Parties**”).

WHEREAS, the Company’s Board of Directors has approved a Plan of Complete Liquidation and Dissolution, subject to stockholder approval, and the Company has terminated all but five of its employees to wind down its operations;

WHEREAS, Employee is currently employed by the Company and desires to continue his employment with the Company until he achieves the milestones listed on Exhibit A (the “**Milestones**”); and

WHEREAS, to induce Employee to remain with the Company until Employee achieves the Milestones, the Company desires to grant to Employee certain rights to receive a bonus payment based on the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties hereby agree as follows:

1. Bonus Payment. The Company agrees to pay Employee \$20,084, less applicable withholding (the “**Bonus Payment**”), provided that: (i) Employee executes (and does not revoke) the Release, a form of which is attached hereto as Exhibit B, after the termination of Employee’s employment with the Company and (ii) Employee’s employment with the Company terminates under either of the following conditions: (x) Employee has achieved the Milestones, or (y) Employee’s employment is terminated by the Company other than for Cause (as defined below). The Bonus Payment will be made to Employee within three (3) business days of the Effective Date (as defined in the Release).

2. Definitions. As used herein, “**Cause**” means, with respect to Employee, (i) an act of material fraud towards, or misappropriation of funds of the Company; or (ii) gross negligence or willful misconduct in the scope of Employee’s employment by, or services to the Company, or the repeated failure of Employee to perform substantially his or her duties and responsibilities to the reasonable satisfaction of the Company; or (iii) Employee’s material breach of any fiduciary duty, or any duty of confidentiality with respect to the Company proprietary or confidential information, including, but not limited to, the material breach of any written proprietary information agreement by and between Employee and the Company; or (iv) a conviction of, or plea of nolo contendere to, a crime which constitutes a felony. Notwithstanding the foregoing, Employee may not be terminated for Cause under subsections (i), (ii), or (iii) above without (i) notice to Employee setting forth the reasons for the Company’s intention to terminate for Cause, and (ii) an opportunity for Employee to cure such actions within fifteen (15) days of written receipt of such notice.

3. Tax Consequences. The Company makes no representations or warranties with respect to the tax consequences of the payments provided to Employee or made on his behalf under the terms of this Agreement. Employee agrees and understands that Employee is responsible for payment, if any, of local, state and/or federal taxes on the payments made hereunder by the

Company and any penalties or assessments thereon. Employee further agrees to indemnify and hold the Company harmless from any claims, demands, deficiencies, penalties, interest, assessments, executions, judgments, or recoveries by any government agency against the Company for any amounts claimed due on account of: (a) Employee' s failure to pay or the Company' s failure to withhold, or Employee' s delayed payment of, federal or state taxes; or (b) damages sustained by the Company by reason of any such claims, including attorneys' fees and costs.

4. No Representations. Employee represents that Employee has been advised to consult with an attorney and has had an opportunity to do so, and Employee has carefully read and understands the scope and effect of the provisions of this Agreement. Employee has not relied upon any representations or statements made by the Company which are not specifically set forth in this Agreement.

5. Severability. In the event that any provision or any portion of any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision or portion of provision.

6. Entire Agreement. This Agreement and the Release represent the entire agreement and understanding between the Parties solely with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the Parties solely with respect to the subject matter hereof, and are not intended to confer upon any other person any rights or remedies hereunder.

7. Amendment. Subject to applicable law, this Agreement may be amended at any time by execution of an instrument in writing signed by or on behalf of each of the Parties.

8. Governing Law. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions.

9. Counterparts. This Agreement may be executed in counterparts and by facsimile, and each counterpart and facsimile shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

10. Assignment. Neither of the Parties may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party, except that the Company may assign its rights hereunder in connection with an acquisition, merger, or consolidation of the Company (or transfer of all or substantially all of its assets). Subject to the preceding sentence, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Dated: 3-5-03

SYMPHONIX DEVICES, INC.

By /s/ KIRK B. DAVIS

Kirk B. Davis, Chief Executive Officer

Dated: 3-5-03

EMPLOYEE

By /s/ TERENCE J. GRIFFIN

Terence J. Griffin

EXHIBIT A
MILESTONES

Complete audit and Form 10-K Annual Report

Complete proxy

Complete meetings with asset sale prospects

Complete due diligence with purchaser

Complete purchase agreement with purchaser

Complete sale of miscellaneous fixed assets

Complete move from Zanker Rd. facility

Complete tax returns

Complete stockholder meeting

Complete transition to trustee

Complete final asset transfer to purchaser

Manage stockholder communication

A-1

EXHIBIT B

RELEASE

This Release (the “**Release**”) is made by and between Symphonix Devices, Inc., a Delaware corporation (the “**Company**”) and Terence J. Griffin (“**Employee**”).

NOW THEREFORE, in consideration of the mutual promises made herein, the Company and Employee (jointly referred to as “**the Parties**”) hereby agree as follows:

1. Consideration. The Company agrees to pay Employee the Bonus Payment (as defined in the Retention Bonus Agreement between the Company and the Employee), less applicable withholding within three (3) business days of the Effective Date (as defined below) of this Release.

2. Payment of Salary. Employee acknowledges and represents that the Company has paid all salary, wages, bonuses, accrued vacation, housing allowances, relocation costs, interest, severance, outplacement costs, fees, stock, stock options, vesting, commissions and any and all other benefits and compensation due to Employee.

3. Release of Claims. Employee agrees that the foregoing consideration represents settlement in full of all outstanding obligations owed to Employee by the Company and its current and former: officers, directors, employees, agents, investors, attorneys, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns (the “**Releasees**”). Employee hereby and forever releases the Releasees from, and agrees not to sue concerning, or in any manner to institute, prosecute or pursue, any claim, complaint, charge, duty, obligation or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that Employee may possess against any of the Releasees arising from any omissions, acts or facts that have occurred up until and including the Effective Date of this Release including, without limitation,

a. any and all claims relating to or arising out of Employee’ s employment relationship with the Company and the termination of that relationship;

b. any and all claims relating to, or arising from, Employee’ s right to purchase, or actual purchase of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law, and securities fraud under any state or federal law;

c. any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; harassment; retaliation; breach of contract, both express and implied; breach of a covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; conversion; workers’ compensation and disability benefits;

d. any and all claims for violation of any federal, state or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990; the Fair Labor Standards Act; the Fair Credit Reporting Act; the Age Discrimination in Employment Act of 1967; the Employee Retirement Income Security Act of 1974; the Worker Adjustment and Restraining Notification Act; the Family and Medical Leave Act; the California Family Rights Act; the California Fair Employment and Housing Act, and the California Labor Code;

e. any and all claims for violation of the federal, or any state, constitution;

f. any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

g. any and all claims for attorneys' fees and costs.

Employee acknowledges and agrees that any breach by him of this paragraph or of his obligations under paragraphs 5 and 6 hereof or of any provision of the Proprietary Information and Inventions Agreement by and between Employee and the Company (the "**Confidentiality Agreement**"), shall constitute a material breach of this Release, and shall entitle the Company immediately to recover the consideration provided to Employee by this Release, except as provided by law. Except as provided by law, Employee shall also be responsible to the Company for all costs, attorneys' fees and any and all damages incurred by the Company in: (a) enforcing his obligations under this paragraph, paragraphs 5 and 6 and the Confidentiality Agreement, including the bringing of any action to recover the consideration, and (b) defending against a claim brought or pursued by Employee in violation of the terms of this Release.

Employee agrees that the release set forth in this section shall be and remain in effect in all respects as a complete general release as to the matters released. This release does not extend to any obligations incurred under this Release.

4. Acknowledgment of Waiver of Claims under ADEA. Employee acknowledges that Employee is waiving and releasing any rights Employee may have under the Age Discrimination in Employment Act of 1967 ("ADEA") and that this waiver and release is knowing and voluntary. Employee agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Release. Employee acknowledges that the consideration given for this waiver and release is in addition to anything of value to which Employee was already entitled. Employee further acknowledges that Employee has been advised by this writing that: (a) Employee should consult with an attorney prior to executing this Release; (b) Employee has twenty-one (21) days within which to consider this Release; (c) Employee has seven (7) days following the execution of this Release by the Parties to revoke the Release; (d) this Release shall not be effective until after the revocation period has expired; and (e) nothing in this Release prevents or precludes Employee from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs from doing so, unless specifically authorized by federal law.

5. California Civil Code Section 1542. Employee represents that Employee is not

aware of any claims against any of the Releasees. Employee acknowledges that Employee has been advised to consult with legal counsel and is familiar with the provisions of California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Employee, being aware of said code section, agrees to expressly waive any rights Employee may have thereunder, as well as under any other statute or common law principles of similar effect.

6. No Future Lawsuits. Employee represents that Employee does not intend to bring any claims on behalf of Employee or on behalf of any other person or entity against the Company or any other person or entity referred to herein.

7. No Admission of Liability. Employee understands and acknowledges that this Release constitutes a compromise and settlement of any and all potential disputed claims. No action taken by the Company hereto, either previously or in connection with this Release, shall be deemed or construed to be: (a) an admission of the truth or falsity of any potential claims; or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to Employee or to any third party.

8. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Release. Employee represents and warrants that Employee has the capacity to act on his own behalf and on behalf of all who might claim through him to bind them to the terms and conditions of this Release. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

9. No Representations. Employee represents that Employee has been advised to consult with an attorney and has had an opportunity to do so, and Employee has carefully read and understands the scope and effect of the provisions of this Release. Employee has not relied upon any representations or statements made by the Company which are not specifically set forth in this Release.

10. Severability. In the event that any provision or any portion of any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Release shall continue in full force and effect without said provision or portion of provision.

11. No Oral Modification. This Release may only be amended in writing signed by Employee and the Company's Chief Executive Officer.

12. Governing Law. This Release shall be governed by the laws of the State of California, without regard for choice of law provisions.

13. Effective Date. This Release will become effective after it has been signed by both Parties and after seven days have passed since Employee signed the Release (the “**Effective Date**”). Each party has seven days after that party signs the Release to revoke it.

14. Counterparts. This Release may be executed in counterparts and by facsimile, and each counterpart and facsimile shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

15. Voluntary Execution of Agreement. This Release is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that:

- (a) They have read this Release;
- (b) They have been represented in the preparation, negotiation, and execution of this Release by legal counsel of their own choice or have elected not to retain legal counsel;
- (c) They understand the terms and consequences of this Release and of the releases it contains; and
- (d) They are fully aware of the legal and binding effect of this Release.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Release on the respective dates set forth below.

SYMPHONIX DEVICES, INC.

Dated: _____

By _____
Kirk B. Davis, Chief Executive Officer

EMPLOYEE

Dated: _____

Terence J. Griffin

TERMINATION AGREEMENT

TERMINATION AGREEMENT (“Agreement”), dated as of March 20, 2003 (the “Effective Date”), between **SYMPHONIX DEVICES, INC.** (“SYMPHONIX”), and **SIEMENS AUDIOLOGISCHE TECHNIK GMBH** (“SAT”), hereinafter jointly referred to as “the Parties”.

WHEREAS, the Parties have entered into a Marketing and Distribution Agreement (“MDA”) as of November 2, 1999. Under certain conditions, in the event of non-renewal or termination according to clause 14 and/or 15 of the MDA, certain payments to SAT would have to be made by SYMPHONIX;

WHEREAS, due SYMPHONIX is contemplating a transaction with Med El which would involve the transfer of substantially all of the assets of SYMPHONIX to, and the assumption of specified liabilities of SYMPHONIX by, Med El (such assignment and assumption, the “Symphonix-Med El Transaction”);

WHEREAS, Siemens and Med El are contemplating a transaction in which Siemens shall assign certain assets to Med El, and Med El shall assume certain liabilities of Siemens, related to the MDA (such assignment and assumption, the “Siemens-Med El Transaction,” and collectively with the Symphonix-Med El Transaction, the “Transactions”);

WHEREAS, the Parties wish to terminate the MDA effective immediately upon the consummation of both of the Transactions; and

WHEREAS, the Parties have entered into an OEM and Supply Agreement (“OSA”) as of June 4, 1999 and desire to assign Symphonix’ s rights and obligations under the OSA to Med El upon the consummation of both the Transactions.

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I**TERMINATION OF MDA**

SECTION 1.1 Termination. Subject to Section 1.2, the MDA shall be terminated immediately on the Effective Date as defined in the Assignment and Assumption Agreement governing the Siemens-Med El Transaction without any further obligation of Symphonix to make payments in accordance with clause 14 and /or 15 of the MDA with regard to the termination of

the MDA as set out in this clause, and without any further obligations of Siemens under the MDA.

SECTION 1.2 Survival of Rights. All rights related to SYMPHONIX PRODUCTS as defined in the MDA delivered to SAT under the MDA before termination according to Section 1.1 hereinabove shall survive termination. SAT shall be entitled to assign all rights that survive termination according to this Section 1.2 to Med-El.

SECTION 1.3 OEM and Supply Agreement. SAT hereby consents to the assignment of the OSA to Med El (the "Assignment") immediately upon consummation of the Symphonix- Med El Transaction. Symphonix shall, even after assignment, be liable for any and all obligations that have accrued prior to the assignment.

ARTICLE 2

MISCELLANEOUS PROVISIONS

SECTION 2.1. Severability. If any term or provision of this Agreement or the application thereof to any party hereto or set of circumstances shall, in any jurisdiction and to any extent, be finally held to be invalid or unenforceable, such term or provision shall only be ineffective as to such jurisdiction, and only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable any other terms or provisions of this Agreement under any other circumstances, and the parties shall negotiate in good faith a substitute provision which comes as close as possible to the invalidated or unenforceable term or provision, and puts the parties in a position as nearly comparable as possible to the position they would have been in but for the finding of invalidity or unenforceability, while remaining valid and enforceable.

SECTION 2.2. Arbitration. Any differences or disputes arising from this Agreement or from agreements regarding its performance shall be settled by an amicable effort on the part of both parties to the Agreement. An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the parties to the Agreement so notifies the other party in writing.

If an attempt at settlement has failed, the disputes shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris (Rules) by three arbitrators appointed in accordance with the Rules. The place of arbitration shall be Zurich, Switzerland. The procedural law of this place shall apply where the Rules are silent. The arbitral award shall be substantiated in writing. The arbitral tribunal shall decide on the matter of costs of the arbitration.

SECTION 2.3. Governing Law. The interpretation and construction of this Agreement shall be governed by and be construed in accordance with the substantive law of Switzerland, Canton Zurich, without regard to the conflicts of laws principles thereof. The application of the United Nations Convention for the International Sale of Goods of April 11, 1980, shall be excluded.

SECTION 2.4. Effectiveness; Termination. Notwithstanding the execution hereof in advance of the consummation of the Transactions, this Agreement is intended to take effect as of the consummation of the Transactions. In the event the consummation of the Transactions does not occur within one year of the date hereof, this Agreement shall be of no further force or effect.

IN WITNESS WHEREOF, SYMPHONIX and SAT have caused this Agreement to be duly executed as of the date first above written.

SYMPHONIX DEVICES, INC.

By: /s/ KIRK DAVIS

Name: Kirk Davis

Title: Pres. & CEO

Siemens Audiologische Technik GmbH

By: /s/ R. RADKE

Name: R. Radke

Title: Group President

By: /s/ FRIEDRICH

Name: Friedrich

Title: Managing Director

SEVERANCE AND RELEASE AGREEMENT

This Severance and Release Agreement (the “**Agreement**”) is made by and between Symphonix Devices, Inc. (the “**Company**”) and Kirk B. Davis (“**Employee**”).

WHEREAS, Employee is the Company’s Chief Executive Officer and is entitled to certain severance benefits pursuant to his offer letter agreement dated July 29, 1999 (the “**Offer Letter**”);

WHEREAS, in connection with exercising an option to purchase 100,000 shares of the Company’s common stock, Employee borrowed \$225,000 from the Company pursuant to a Promissory Note dated August 6, 1999 (the “**Note**”), which Note is secured by such shares pursuant to a Security Agreement dated August 6, 1999 by and between the Company and Employee (the “**Security Agreement**”);

WHEREAS, Employee owes the Company approximately \$275,000 in principal and interest pursuant to the Note as of the date of this Agreement;

WHEREAS, the Company’s Board of Directors has approved a Plan of Complete Liquidation and Dissolution, subject to stockholder approval, and the Company has terminated all but five of its employees to wind down its operations;

WHEREAS, Employee and the Company desire to clarify and agree upon the final terms of Employee’s severance, the repayment of the Note and the termination of the Security Agreement;

WHEREAS, in consideration for the certainty regarding Employee’s severance arrangements provided by this Agreement Employee agrees to enter into the Release attached hereto as Exhibit A; and

WHEREAS, this Agreement will supercede Section 5 of the Offer Letter entitled “Severance Agreement”;

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties hereby agree as follows:

1. Consideration.

a. Severance Payment of Base Salary. The Company agrees to pay Employee \$302,500, less applicable withholding (the “**Salary Payment**”), provided that Employee executes the Release, a form of which is attached hereto as Exhibit A, immediately after Employee’s employment with the Company terminates (the “**Termination Date**”). The Salary Payment will be made to Employee in twelve (12) equal monthly installments.

b. Severance Payment of Bonus. The Company agrees to pay Employee \$129,319 upon the one-year anniversary of the Termination Date, less the

amount of principal and interest due under the Note at such time, and less applicable withholding (the “**Bonus Payment**”), provided that Employee executes the Release immediately after the Termination Date.

c. Continuation of Benefits. The Company will continue to provide to Employee health, dental, disability and life insurance with benefits substantially similar to those extended to Employee as of the date of this Agreement until the one-year anniversary of the Termination Date.

2. Tax Consequences. The Company makes no representations or warranties with respect to the tax consequences of the payments provided to Employee or made on his behalf under the terms of this Agreement. Employee agrees and understands that Employee is responsible for payment, if any, of local, state and/or federal taxes on the payments made hereunder by the Company and any penalties or assessments thereon. Employee further agrees to indemnify and hold the Company harmless from any claims, demands, deficiencies, penalties, interest, assessments, executions, judgments, or recoveries by any government agency against the Company for any amounts claimed due on account of: (a) Employee’s failure to pay or the Company’s failure to withhold, or Employee’s delayed payment of, federal or state taxes; or (b) damages sustained by the Company by reason of any such claims, including attorneys’ fees and costs.

3. No Representations. Employee represents that Employee has been advised to consult with an attorney and has had an opportunity to do so, and Employee has carefully read and understands the scope and effect of the provisions of this Agreement. Employee has not relied upon any representations or statements made by the Company which are not specifically set forth in this Agreement.

4. Severability. In the event that any provision or any portion of any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision or portion of provision.

5. Entire Agreement. This Agreement, the Note, the Security Agreement and the Release represent the entire agreement and understanding between the Parties solely with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof and thereof, including Section 5 of the Offer Letter entitled “Severance Agreement.” This Agreement is not intended to confer upon any other person any rights or remedies hereunder.

6. Amendment. Subject to applicable law, this Agreement may be amended at any time by execution of an instrument in writing signed by or on behalf of each of the Parties.

7. Governing Law. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions.

8. Counterparts. This Agreement may be executed in counterparts and by facsimile, and each counterpart and facsimile shall have the same force and effect as an original and shall

constitute an effective, binding agreement on the part of each of the undersigned.

9. Assignment. Neither of the Parties may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party, except that the Company may assign its rights hereunder in connection with an acquisition, merger, or consolidation of the Company (or transfer of all or substantially all of its assets). Subject to the preceding sentence, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Dated: 4/21/03

SYMPHONIX DEVICES, INC.

By /s/ TERENCE J. GRIFFIN

Terence J. Griffin, Chief Financial Officer

Dated: 4/21/03

EMPLOYEE

/s/ KIRK B. DAVIS

Kirk B. Davis

EXHIBIT A

RELEASE

This Release (the “**Release**”) is made by and between Symphonix Devices, Inc., a Delaware corporation (the “**Company**”) and Kirk B. Davis (“**Employee**”).

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties hereby agree as follows:

1. Consideration. The Company agrees to pay Employee the Severance Payment (as defined in the Severance and Release Agreement between the Company and the Employee) less applicable withholding within three (3) business days of the Effective Date of this Release.
2. Payment of Salary. Employee acknowledges and represents that the Company has paid all salary, wages, bonuses, accrued vacation, housing allowances, relocation costs, interest, severance, outplacement costs, fees, stock, stock options, vesting, commissions and any and all other benefits and compensation due to Employee.
3. Release of Claims. Employee agrees that the foregoing consideration represents settlement in full of all outstanding obligations owed to Employee by the Company and its current and former: officers, directors, employees, agents, investors, attorneys, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns (the “**Releasees**”). Employee hereby and forever releases the Releasees from, and agrees not to sue concerning, or in any manner to institute, prosecute or pursue, any claim, complaint, charge, duty, obligation or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that Employee may possess against any of the Releasees arising from any omissions, acts or facts that have occurred up until and including the Effective Date of this Release including, without limitation,
 - a. any and all claims relating to or arising out of Employee’s employment relationship with the Company and the termination of that relationship;
 - b. any and all claims relating to, or arising from, Employee’s right to purchase, or actual purchase of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law, and securities fraud under any state or federal law;
 - c. any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; harassment; retaliation; breach of contract, both express and implied; breach of a covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal

injury; assault; battery; invasion of privacy; false imprisonment; conversion; workers' compensation and disability benefits;

d. any and all claims for violation of any federal, state or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990; the Fair Labor Standards Act; the Fair Credit Reporting Act; the Age Discrimination in Employment Act of 1967; the Employee Retirement Income Security Act of 1974; the Worker Adjustment and Restraining Notification Act; the Family and Medical Leave Act; the California Family Rights Act; the California Fair Employment and Housing Act, and the California Labor Code;

e. any and all claims for violation of the federal, or any state, constitution;

f. any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

g. any and all claims for attorneys' fees and costs.

Employee acknowledges and agrees that any breach by him of this paragraph or of his obligations under paragraphs 5 and 6 hereof or of any provision of the Confidentiality Agreement between the Parties shall constitute a material breach of this Release, and shall entitle the Company immediately to recover the consideration provided to Employee by this Release, except as provided by law. Except as provided by law, Employee shall also be responsible to the Company for all costs, attorneys' fees and any and all damages incurred by the Company in: (a) enforcing his obligations under this paragraph, paragraphs 5 and 6 and the Confidentiality Agreement, including the bringing of any action to recover the consideration, and (b) defending against a claim brought or pursued by Employee in violation of the terms of this Release.

Employee agrees that the release set forth in this section shall be and remain in effect in all respects as a complete general release as to the matters released. This release does not extend to any obligations incurred under this Release.

4. Acknowledgment of Waiver of Claims under ADEA. Employee acknowledges that he is waiving and releasing any rights he may have under the Age Discrimination in Employment Act of 1967 ("ADEA") and that this waiver and release is knowing and voluntary. Employee agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Release. Employee acknowledges that the consideration given for this waiver and release is in addition to anything of value to which Employee was already entitled. Employee further acknowledges that he has been advised by this writing that: (a) he should consult with an attorney prior to executing this Release; (b) he has twenty-one (21) days within which to consider this Release; (c) he has seven (7) days following the execution of this Release by the Parties to revoke the Release; (d) this Release shall not be effective until after the revocation period has expired; and (e) nothing in this Release prevents or precludes Employee from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it

impose any condition precedent, penalties or costs from doing so, unless specifically authorized by federal law.

5. California Civil Code Section 1542. Employee represents that he is not aware of any claims against any of the Releasees. Employee acknowledges that he has been advised to consult with legal counsel and is familiar with the provisions of California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Employee, being aware of said code section, agrees to expressly waive any rights he may have thereunder, as well as under any other statute or common law principles of similar effect.

6. No Future Lawsuits. Employee represents that he does not intend to bring any claims on behalf of Employee or on behalf of any other person or entity against the Company or any other person or entity referred to herein.

7. No Admission of Liability. Employee understands and acknowledges that this Release constitutes a compromise and settlement of any and all potential disputed claims. No action taken by the Company hereto, either previously or in connection with this Release, shall be deemed or construed to be: (a) an admission of the truth or falsity of any potential claims; or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to Employee or to any third party.

8. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Release. Employee represents and warrants that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind them to the terms and conditions of this Release. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

9. No Representations. Employee represents that he has been advised to consult with an attorney and has had an opportunity to do so, and Employee has carefully read and understands the scope and effect of the provisions of this Release. Employee has not relied upon any representations or statements made by the Company which are not specifically set forth in this Release.

10. Severability. In the event that any provision or any portion of any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Release shall continue in full force and effect without said provision or portion of provision.

11. No Oral Modification. This Release may only be amended in writing signed by Employee and the Company's Chief Financial Officer.

12. Governing Law. This Release shall be governed by the laws of the State of California, without regard for choice of law provisions.

13. Effective Date. This Release will become effective after it has been signed by both Parties and after seven days have passed since Employee signed the Release (the "**Effective Date**"). Each party has seven days after that party signs the Release to revoke it.

14. Counterparts. This Release may be executed in counterparts and by facsimile, and each counterpart and facsimile shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

15. Voluntary Execution of Agreement. This Release is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that:

(a) They have read this Release;

(b) They have been represented in the preparation, negotiation, and execution of this Release by legal counsel of their own choice or have elected not to retain legal counsel;

(c) They understand the terms and consequences of this Release and of the releases it contains; and

(d) They are fully aware of the legal and binding effect of this Release.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Release on the respective dates set forth below.

SYMPHONIX DEVICES, INC.

Dated: _____

By _____
Terence J. Griffin, Chief Financial Officer

EMPLOYEE

Dated: _____

Kirk B. Davis

LIST OF SUBSIDIARIES

Symphonix Devices Ltd.
Symphonix Devices AG
Symphonix Devices GmbH

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-67176 and No. 333-50306) and Form S-8 (No. 333-90917, No. 333-73424, No. 333-57405, No. 33-88194 and No. 333-91918) of Symphonix Devices, Inc. of our report dated January 24, 2003, except as to Note 12, which is as of March 20, 2003 relating to the consolidated financial statements and financial statement schedule, which appears in this Form 10-K/A.

/s/ PricewaterhouseCoopers LLP

San Jose, California

April 24, 2003

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

I, Kirk B. Davis, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the annual report of Symphonix Devices, Inc. on Form 10-K for the year ended December 31, 2002 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such annual report on Form 10-K for the period ended December 31, 2002 fairly presents in all material respects the financial condition and results of operations of Symphonix Devices, Inc.

By: /s/ KIRK B. DAVIS
Name: Kirk B. Davis
Title: President and Chief Executive Officer
Date: April 24, 2003

I, Terence J. Griffin, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the annual report of Symphonix Devices, Inc. on Form 10-K for the year ended December 31, 2002 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such annual report on Form 10-K for the period ended December 31, 2002 fairly presents in all material respects the financial condition and results of operations of Symphonix Devices, Inc.

By: /s/ TERENCE J. GRIFFIN
Name: Terence J. Griffin
Title: Vice President Finance and Chief
 Financial Officer
Date: April 24, 2003