

BECTON HENRY P JR

Form 4

May 03, 2005

FORM 4**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Check this box
if no longer
subject to
Section 16.
Form 4 or
Form 5
obligations
may continue.
See Instruction
1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF
SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934,
Section 17(a) of the Public Utility Holding Company Act of 1935 or Section
30(h) of the Investment Company Act of 1940

OMB APPROVAL

OMB
Number: 3235-0287
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(Print or Type Responses)

1. Name and Address of Reporting Person *
BECTON HENRY P JR

2. Issuer Name **and** Ticker or Trading
Symbol
BECTON DICKINSON & CO
[BDX]

5. Relationship of Reporting Person(s) to
Issuer

(Check all applicable)

(Last) (First) (Middle)

3. Date of Earliest Transaction
(Month/Day/Year)
04/29/2005

☒ Director ☐ 10% Owner
☐ Officer (give title below) ☐ Other (specify below)

C/O BECTON, DICKINSON AND
COMPANY, 1 BECTON DRIVE

(Street)

4. If Amendment, Date Original
Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check
Applicable Line)
☒ Form filed by One Reporting Person
☐ Form filed by More than One Reporting
Person

FRANKLIN LAKES, NJ 07417

(City) (State) (Zip)

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
Common Stock	04/29/2005		S	V Amount (A) or (D) Price 2,000 D \$ 57.4	119,800	I	See footnote ⁽¹⁾
Common Stock					109,215	I	See footnote ⁽²⁾
Common Stock					36,920 ⁽³⁾	I	By wife
Common Stock					120,815	I	See footnote ⁽⁴⁾
Common Stock					946,582	I	See footnote ⁽⁵⁾

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Common Stock	104,590	I	See footnote <u>(5)</u>
Common Stock	1,600 <u>(3)</u>	I	By daughter
Common Stock	32,000	I	See footnote <u>(6)</u>
Common Stock	5,212	D	
Common Stock	2,410 <u>(7)</u>	D	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1474
(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. P
				Code	V	(A)	(D)	
						Date Exercisable	Expiration Date	Title
								Amount or Number of Shares
Rights to Common Stock Under 1996 Directors Deferral Plan	<u>(8)</u>	04/29/2005		A	237.91	<u>(9)</u>	<u>(9)</u>	Common Stock 237.91 \$ 5

Reporting Owners

Reporting Owner Name / Address	Relationships
	Director 10% Owner Officer Other
BECTON HENRY P JR C/O BECTON, DICKINSON AND COMPANY	X

1 BECTON DRIVE
FRANKLIN LAKES, NJ 07417

Signatures

Patricia Walesiewicz, by power of attorney for Henry P.
Becton, Jr.

05/03/2005

__Signature of Reporting Person

Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).
- ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) Represents shares held in trust for sibling of which reporting person is a co-trustee.
- (2) By trusts for benefit of reporting person's children, with wife and independent advisor as co-trustees.
- (3) Beneficial ownership of these securities is expressly disclaimed.
- (4) Held in trust and/or limited liability company for benefit of reporting person.
- (5) Represents shares held in trust for parent of which reporting person has become a co-trustee.
- (6) Held in charitable remainder trust of which reporting person is a remainder beneficiary.
- (7) Represents restricted stock units awarded under the 2004 Employee and Director Equity-Based Compensation Plan, including units acquired through dividend reinvestment.
- (8) The securities convert to common stock on a one-for-one basis.
- (9) The securities are distributed following termination of the reporting person's service as a director, on the date or dates specified by the reporting person.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. eposited with the Trustee, which entitles the holder of record to a number of votes at meetings of holders of HEARx Common Stock as set forth in section 4.2 hereof.

1.2 Interpretation not Affected by Headings, etc. The division of this Agreement into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 Number, Gender, etc. Words importing the singular number only shall include the plural and vice versa. Words importing the use of any gender shall include all genders.

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1.4 Date for any Action. If any date on which any action is required to be taken under this Agreement is not a Business Day, such action shall be required to be taken on the next succeeding Business Day.

1.5 Withholding of Tax. All amounts required to be paid, deposited or delivered hereunder shall be paid, deposited or delivered after deduction of any amount required by applicable law to be deducted or withheld on account of tax and the deduction of such amounts and remittance to the applicable tax authorities shall, to the extent thereof, satisfy such requirement to pay, deposit or deliver hereunder.

ARTICLE II

PURPOSE OF AGREEMENT

2.1 Establishment of Trust. The purpose of this Agreement is to create the Trust for the benefit of the Holders, as herein provided. The Trustee will hold the Voting Share in order to enable the Trustee to exercise the Voting Rights and will hold the Exchange Right and the Automatic Exchange Rights in order to enable the Trustee to exercise such rights, in each case as trustee for and on behalf of the Holders as provided in this Agreement.

ARTICLE III

VOTING SHARE

3.1 Issue and Ownership of the Voting Share. In consideration of the payment of U.S.\$0.01 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Trustee hereby subscribes for and HEARx hereby issues to and deposits with the Trustee the Voting Share to be hereafter held of record by the Trustee as trustee for and on behalf of, and for the use and benefit of the Holders and in accordance with the provisions of this Agreement. During the term of the Trust and subject to the terms and conditions of this Agreement, the Trustee shall possess and be vested with full legal ownership of the Voting Share and shall be entitled to exercise all of the rights and powers of an owner with respect to the Voting Share, provided that the Trustee shall:

(a) hold the Voting Share and the legal title thereto as trustee solely for the use and benefit of the Holders in accordance with the provisions of this Agreement; and

(b) except as specifically authorized by this Agreement, have no power or authority to sell, transfer, vote or otherwise deal in or with the Voting Share and the Voting Share shall not be used or disposed of by the Trustee for any purpose other than the purposes for which this Trust is created and pursuant to this Agreement.

3.2 Legended Share Certificates. HEARx Canada shall cause each certificate representing Exchangeable Shares to bear an appropriate legend notifying the Holders of their right to instruct the Trustee with respect to the exercise of the Voting Rights. HEARx will cause the certificate representing the Voting Share to bear a legend stating that such Voting Share is non-transferrable except as set forth herein.

3.3 Safe Keeping of Certificate. The certificate representing the Voting Share shall at all times be held in safe keeping by the Trustee.

ARTICLE IV

VOTING RIGHTS

4.1 Voting Rights. The Trustee, as the holder of record of the Voting Share, shall be entitled to all of the Voting Rights, including the right to consent to or to vote in person or by proxy the Voting Share, on any matter, question or proposition whatsoever that may properly come before the stockholders of HEARx for their vote at a HEARx Meeting or in connection with a HEARx Consent. The Voting Rights shall be and remain vested in and exercised by the Trustee. Subject to section 6.15 hereof, the Trustee shall exercise the Voting Rights only on the basis of instructions received pursuant to this Article 4 from Holders entitled to

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instruct the Trustee as to the voting thereof at the time at which a HEARx Consent is sought or a HEARx Meeting is held. To the extent that no instructions are received from a Holder with respect to the Voting Rights to which such Holder is entitled to instruct the Trustee hereunder, the Trustee shall not exercise or permit the exercise of such Voting Rights.

4.2 Number of Votes. With respect to all meetings of stockholders of HEARx at which holders of HEARx Common Stock are entitled to vote (a HEARx Meeting) and with respect to all written consents sought from the holders of HEARx Common Stock (a HEARx Consent), each Holder shall be entitled to instruct the Trustee to cast and exercise, in the manner instructed, such number of votes comprised in the Voting Rights as is equal to the Current HEARx Common Stock Equivalent on the record date established by HEARx or by applicable law for such HEARx Meeting or HEARx Consent, as the case may be, for each Exchangeable Share owned of record by such Holder on such record date (the Holder Votes) in respect of each matter, question or proposition to be voted on at such HEARx Meeting or to be consented to in connection with such HEARx Consent.

4.3 Mailings to Shareholders. With respect to each HEARx Meeting and HEARx Consent, the Trustee shall mail or cause to be mailed (or otherwise communicate in the same manner as HEARx utilizes in communications to holders of HEARx Common Stock), to each of the Holders named in the List, on the same day as the initial mailing of notice (or other communication) with respect thereto is given by HEARx to its stockholders:

(a) a copy of such notice, together with any proxy or information statement and related materials to be provided to stockholders of HEARx;

(b) a statement that such Holder is entitled to instruct the Trustee as to the exercise of the Holder Votes with respect to such HEARx Meeting or HEARx Consent, as the case may be, or, pursuant to section 4.7 hereof, to attend such HEARx Meeting and to exercise personally the Holder Votes thereat;

(c) a statement as to the manner in which such instructions may be given to the Trustee, including an express indication that instructions may be given to the Trustee to give:

(i) a proxy to such Holder or his designee to exercise personally the Holder Votes; or

(ii) a proxy to a designated agent or other representative of the management of HEARx to exercise such Holder Votes;

(d) a statement that if no such instructions are received from the Holder, the Holder Votes to which such Holder is entitled will not be exercised;

(e) a form of direction whereby the Holder may so direct and instruct the Trustee as contemplated herein; and

(f) a statement of: (i) the time and date by which such instructions must be received by the Trustee in order to be binding upon it, which in the case of a HEARx Meeting shall not be earlier than the close of business on the second Business Day prior to such meeting; and (ii) the method for revoking or amending such instructions.

The materials referred to in this section 4.3 are to be provided to the Trustee by HEARx and the materials referred to in section 4.3(c), (e) and (f) shall be subject to, and shall be provided to the Trustee in sufficient time to permit, reasonable comment by the Trustee in a timely manner. For the purpose of determining Holder Votes to which a Holder is entitled in respect of any such HEARx Meeting or HEARx Consent, the number of Exchangeable Shares owned of record by the Holder shall be determined at the close of business on the record date established by HEARx or by applicable law for purposes of determining stockholders entitled to vote at such HEARx Meeting or to give written consent in connection with such HEARx Consent. HEARx shall notify the Trustee of any decision of the board of directors of HEARx with respect to the calling of any such HEARx Meeting or the seeking by HEARx of any such HEARx Consent and shall provide all necessary information and materials to the Trustee in each case promptly and in any event in sufficient time to enable the Trustee to perform its obligations contemplated by this section 4.3.

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4.4 Copies of Stockholder Information. HEARx shall deliver to the Trustee copies of all proxy materials (including notices of HEARx Meetings but excluding proxies to vote HEARx Common Stock), information statements, reports (including without limitation all interim and annual financial statements) and other written communications that are to be distributed by HEARx from time to time to holders of HEARx Common Stock in sufficient quantities and in sufficient time so as to enable the Trustee to send those materials to each Holder at the same time as such materials are first sent to holders of HEARx Common Stock. The Trustee shall mail or otherwise send to each Holder, at the expense of HEARx, copies of all such materials (and all materials specifically directed to the Holders or to the Trustee for the benefit of the Holders by HEARx) received by the Trustee from HEARx at the same time as such materials are first sent to holders of HEARx Common Stock. The Trustee shall make copies of all such materials available for inspection by any Holder at the Trustee's corporate trust office in the City of Montreal.

4.5 Other Materials. Immediately after receipt by HEARx of any material sent or given generally to the holders of HEARx Common Stock by or on behalf of a third party, including without limitation dissident proxy and information circulars (and related information and material) and tender and exchange offer circulars (and related information and material), HEARx shall use all commercially reasonable efforts to obtain and deliver to the Trustee copies thereof in sufficient quantities so as to enable the Trustee to forward such material (unless the same has been provided directly to Holders by such third party) to each Holder as soon as possible thereafter. As soon as practicable after receipt thereof, the Trustee shall mail or otherwise send to each Holder at the expense of HEARx, copies of all such materials received by the Trustee from HEARx. The Trustee shall also make copies of all such materials available for inspection by any Holder at the Trustee's corporate trust office in City of Montreal.

4.6 List of Persons Entitled to Vote. HEARx Canada shall, (a) prior to each annual, general and special HEARx Meeting or the seeking of any HEARx Consent, and (b) forthwith upon each request made at any time by the Trustee in writing, prepare or cause to be prepared a list (a List) of the names and addresses of the Holders arranged in alphabetical order and showing the number of Exchangeable Shares held of record by each such Holder, in each case at the close of business on the date specified by the Trustee in such request or, in the case of a List prepared in connection with a HEARx Meeting or a HEARx Consent, at the close of business on the record date established by HEARx or pursuant to applicable law for determining the holders of HEARx Common Stock entitled to receive notice of and/or to vote at such HEARx Meeting or to give consent in connection with such HEARx Consent. Each such List shall be delivered to the Trustee promptly after receipt by HEARx Canada of such request or the record date for such meeting or seeking of consent, as the case may be, and in any event within sufficient time as to enable the Trustee to perform its obligations under this Agreement. HEARx agrees to give HEARx Canada notice (with a copy to the Trustee) of the calling of any HEARx Meeting or the seeking of any HEARx Consent, together with the record dates therefor, sufficiently prior to the date of the calling of such meeting or seeking of such consent so as to enable HEARx Canada to perform its obligations under this section 4.6.

4.7 Entitlement to Direct Votes. Any Holder named in a List prepared in connection with a HEARx Meeting or a HEARx Consent shall be entitled (a) to instruct the Trustee in the manner described in section 4.3 hereof with respect to the exercise of the Holder Votes to which such Holder is entitled or (b) to attend such meeting and personally to exercise thereat or to exercise (with respect to any written consent), as the proxy of the Trustee, the Holder Votes to which such Holder is entitled pursuant to the procedure set forth in section 4.8 hereof.

4.8 Voting by Trustee, and Attendance of Trustee Representative, at Meeting.

(a) In connection with each HEARx Meeting and HEARx Consent, the Trustee shall exercise, either in person or by proxy, in accordance with the instructions received from a Holder pursuant to section 4.3 hereof, the Holder Votes to which such Holder is entitled to direct the vote (or any lesser number thereof as may be set forth in the instructions); provided, however, that such written instructions are received by the Trustee from the Holder prior to the time and date fixed by it for receipt of such instructions in the notice given by the Trustee to the Holder pursuant to section 4.3 hereof.

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(b) The Trustee shall cause such representatives as are empowered by it to sign and deliver, on behalf of the Trustee, proxies for Voting Rights and to attend each HEARx Meeting. Upon submission by a Holder (or its designee) of identification satisfactory to the Trustee's representatives, at the Holder's request, such Trustee representatives shall sign and deliver to such Holder (or its designee) a proxy to exercise personally the Holder Votes as to which such Holder is otherwise entitled hereunder to direct the vote, if such Holder either (i) has not previously given the Trustee instructions pursuant to section 4.3 hereof in respect of such meeting, or (ii) submits to the Trustee's representatives written revocation of any such previous instructions. At such meeting, the Holder exercising such Holder Votes as provided in the immediately preceding sentence shall have the same rights as the Trustee to speak at the meeting in respect of any matter, question or proposition, to vote by way of ballot at the meeting in respect of any matter, question or proposition and to vote at such meeting by way of a show of hands in respect of any matter, question or proposition.

4.9 Distribution of Written Materials. Any written materials to be distributed by the Trustee to the Holders pursuant to this Agreement shall be delivered or sent by mail (or otherwise communicated in the same manner as HEARx utilizes in communications to holders of HEARx Common Stock) to each Holder at its address as shown on the books of HEARx Canada or the transfer agent, as applicable. HEARx Canada shall provide or cause to be provided to the Trustee for this purpose on a timely basis and without charge or other expense:

(a) a current List; and

(b) upon request of the Trustee, mailing labels to enable the Trustee to carry out its duties under this Agreement.

4.10 Termination of Voting Rights. Except with respect to a HEARx Meeting or HEARx Consent for which the record date has occurred, all of the rights of a Holder with respect to the Holder Votes exercisable in respect of the Exchangeable Shares held by such Holder, including the right to instruct the Trustee as to the voting of or to vote personally such Holder Votes, shall be deemed to be surrendered by the Holder to HEARx and such Holder Votes and the Voting Rights represented thereby shall cease immediately upon the delivery by such Holder to the Trustee of the certificates representing such Exchangeable Shares in connection with the exercise by the Holder of the Exchange Right or the occurrence of the automatic exchange pursuant to the Automatic Exchange Rights (unless in either case HEARx shall not have delivered or caused to be delivered the requisite HEARx Common Stock issuable in exchange therefor to the Trustee for delivery to the Holders), or upon the redemption of Exchangeable Shares pursuant to Article 5 or Article 6 of the Exchangeable Share Provisions, or upon the effective date of the liquidation, dissolution or winding-up of HEARx Canada pursuant to Article 4 of the Exchangeable Share Provisions, or upon the purchase of Exchangeable Shares from the Holder thereof by HEARx Acquisition pursuant to the exercise by HEARx Acquisition of the Retraction Call Right, the Redemption Call Right or the Liquidation Call Right.

4.11 Issue of Additional HEARx Special Voting Stock. During the term of this Agreement, HEARx will not issue any shares of HEARx Special Voting Stock, other than the Voting Share.

ARTICLE V

EXCHANGE RIGHT AND AUTOMATIC EXCHANGE

5.1 Grant and Ownership of the Exchange Right. HEARx hereby grants to the Trustee as trustee for and on behalf of, and for the use and benefit of, the Holders (a) the right (the Exchange Right), upon the occurrence and during the continuance of an Insolvency Event or Default Event, to require HEARx (or HEARx Acquisition, as HEARx shall direct) to purchase from each Holder all or any part of the Exchangeable Shares held by such Holder and (b) the Automatic Exchange Rights, all in accordance with the provisions of this Agreement. HEARx hereby acknowledges receipt from the Trustee as trustee for and on behalf of the Holders of good and valuable consideration (and the adequacy thereof) for the grant of the Exchange Right and the Automatic Exchange Rights by HEARx to the Trustee for the benefit of the Holders. During the term of the Trust and subject to the terms and conditions of this Agreement, the Trustee shall

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possess and be vested with full legal ownership of the Exchange Right and the Automatic Exchange Rights and shall be entitled to exercise all of the rights and powers of an owner with respect to the Exchange Right and the Automatic Exchange Rights, provided that the Trustee shall:

(a) hold the Exchange Right and the Automatic Exchange Rights and the legal title thereto as trustee solely for the use and benefit of the Holders in accordance with the provisions of this Agreement; and

(b) except as specifically authorized by this Agreement, have no power or authority to exercise or otherwise deal in or with the Exchange Right or the Automatic Exchange Rights, and the Trustee shall not exercise any such rights for any purpose other than the purposes for which this Trust is created pursuant to this Agreement, and shall not assign such rights except to a successor trustee hereunder.

5.2 *Legended Share Certificates.* HEARx Canada shall cause each certificate for Exchangeable Shares to bear an appropriate legend notifying the Holders of:

(a) their right to instruct the Trustee with respect to the exercise of the Exchange Right in respect of the Exchangeable Shares held by a Holder; and

(b) the Automatic Exchange Rights.

5.3 *General Exercise of Exchange Right.* The Exchange Right shall be and remain vested in and exercisable by the Trustee. Subject to section 6.15 hereof, the Trustee shall exercise the Exchange Right only on the basis of instructions received pursuant to this Article 5 from Holders entitled to instruct the Trustee as to the exercise thereof. To the extent that no instructions are received from a Holder with respect to the Exchange Right, the Trustee shall not exercise or permit the exercise of the Exchange Right.

5.4 *Purchase Price.* The purchase price payable for each Exchangeable Share to be purchased by HEARx (or HEARx Acquisition, as HEARx shall direct) under the Exchange Right shall be an amount per share equal to (a) the Current Market Price multiplied by the Current HEARx Common Stock Equivalent, in each case determined on the last Business Day prior to the day of closing of the purchase and sale of such Exchangeable Share under the Exchange Right, which shall be satisfied in full in respect of the Exchangeable Shares in regard to which a Holder has exercised the Exchange Right by causing to be delivered to such Holder such whole number of shares of HEARx Common Stock as is equal to the product obtained by multiplying the number of such Exchangeable Shares by the Current HEARx Common Stock Equivalent, rounded down to the nearest whole number, plus (b) the aggregate of all dividends declared and unpaid on each such Exchangeable Share (provided that if the record date for any such declared and unpaid dividends occurs on or after the day of closing of such purchase and sale the purchase price shall not include such declared and unpaid dividends).

5.5 *Exercise Instructions.* Subject to the terms and conditions herein set forth, a Holder shall be entitled, upon the occurrence and during the continuance of an Insolvency Event or a Default Event, to instruct the Trustee to exercise the Exchange Right with respect to all or any part of the Exchangeable Shares registered in the name of such Holder on the books of HEARx Canada or the transfer agent, as applicable. To cause the exercise of the Exchange Right by the Trustee, the Holder shall deliver to the Trustee, in person or by certified or registered mail, at its corporate trust office in the City of Montreal or at such other place as the Trustee may from time to time designate by written notice to the Holders, the certificates representing the Exchangeable Shares that such Holder desires to have purchased, duly endorsed in blank, and accompanied by such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the CBCA and the by-laws of HEARx Canada and such additional documents and instruments as the Trustee may reasonably require together with (a) a duly completed form of notice of exercise of the Exchange Right, in the form attached hereto as *Schedule A*, or attached to the Exchangeable Share certificates, stating (i) that the Holder thereby instructs the Trustee to exercise the Exchange Right so as to require HEARx (or HEARx Acquisition, as HEARx shall direct) to purchase from the Holder the number of Exchangeable Shares specified therein, (ii) that such Holder has good title to and owns all such Exchangeable Shares free and clear of all Liens, (iii) the names in which the certificates representing HEARx Common Stock issuable in connection with the exercise of the Exchange Right are to be issued and (iv) the names and addresses of

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the persons to whom such new certificates should be delivered; and (b) payment (or evidence satisfactory to the Trustee, HEARx Canada and HEARx of payment) of the taxes (if any) payable as contemplated by section 5.8 of this Agreement. If only a part of the Exchangeable Shares represented by any certificate or certificates delivered to the Trustee are to be purchased under the Exchange Right, a new certificate for the balance of such Exchangeable Shares shall be issued to the holder at the expense of HEARx Canada.

5.6 Delivery of HEARx Common Stock: Effect of Exercise. Promptly after receipt of the certificates representing the Exchangeable Shares that the Holder desires to have purchased under the Exchange Right (together with such documents and instruments of transfer and a duly completed form of notice of exercise of the Exchange Right (and payment of taxes, if any, or evidence thereof in accordance with section 5.8)), duly endorsed for transfer to HEARx, the Trustee shall notify HEARx of its receipt of the same, by notice in the form of *Schedule B* hereto, which notice to HEARx shall constitute exercise of the Exchange Right by the Trustee on behalf of the Holder and HEARx shall immediately thereafter deliver or cause to be delivered to the Trustee, for delivery to the Holder of such Exchangeable Shares (or to such other persons, if any, properly designated by such Holder), the certificates for the number of shares of HEARx Common Stock issuable in connection with the exercise of the Exchange Right, which shares shall be duly issued as fully paid and non-assessable and shall be free and clear of any Liens, and cheques for the balance, if any, of the total purchase price therefor (or, if part of the purchase price consists of dividends payable in property, such property or property the same as or economically equivalent to such property). Immediately upon the giving of notice by the Trustee to HEARx of the exercise of the Exchange Right, as provided in this section 5.6, the closing of the transaction of purchase and sale contemplated by the Exchange Right shall be deemed to have occurred, and the Holder of such Exchangeable Shares shall be deemed to have transferred to HEARx (or to HEARx Acquisition, as the case may be) all of its right, title and interest in and to such Exchangeable Shares and in the related interest in the Trust Estate and shall cease to be a Holder and shall not be entitled to exercise any of the rights of a holder in respect thereof, other than the right to receive the purchase price therefor, unless the requisite number of shares of HEARx Common Stock (together with a cheque for the balance, if any, of the purchase price therefor or, if part of the purchase price consists of dividends payable in property, such property or property the same as or economically equivalent to such property) is not allotted, issued and delivered by HEARx to the Trustee for delivery to such Holder (or to other persons, if any, properly designated by such Holder) within five (5) Business Days of the date of the giving of such notice by the Trustee, in which case the rights of the Holder shall remain unaffected until such shares of HEARx Common Stock are so allotted, issued and delivered by HEARx and any such cheque or property is so delivered and paid. Concurrently with such Holder ceasing to hold Exchangeable Shares, the Holder shall be considered and deemed for all purposes to be the holder of the shares of HEARx Common Stock delivered to it pursuant to the Exchange Right. The Trustee shall deliver to HEARx Canada's transfer agent and registrar the certificates for the Exchangeable Shares so transferred to be cancelled and new certificates in the name of HEARx issued in respect thereof and shall deliver or cause to be delivered such Exchangeable Shares to HEARx (or to HEARx Acquisition, if HEARx Acquisition shall have purchased the Holder's Exchangeable Shares).

The Trustee shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any security deposited with it. The Trustee shall incur no liability with respect to the delivery or non-delivery of any certificate or certificates whether delivered by hand, mail or any other means.

5.7 Exercise of Exchange Right Subsequent to Retraction. In the event that a Holder has exercised its right under Article 5 of the Exchangeable Share Provisions to require HEARx Canada to redeem any or all of the Exchangeable Shares held by the Holder (the *Retracted Shares*) and is notified by HEARx Canada pursuant to section 5.6 of the Exchangeable Share Provisions that HEARx Canada is not permitted as a result of solvency requirements of applicable law to redeem all of such Retracted Shares, and provided that HEARx Acquisition shall not have exercised the Retraction Call Right with respect to the Retracted Shares, the retraction request shall constitute and shall be deemed to constitute notice from the Holder to the Trustee instructing the Trustee to exercise the Exchange Right with respect to those Retracted Shares that HEARx Canada is unable to redeem. In any such event, HEARx Canada hereby agrees with the Trustee and in favour of the Holder immediately to notify the Trustee of such prohibition against HEARx Canada redeeming all of the Retracted Shares and immediately to forward or cause to be forwarded to the Trustee all relevant

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materials delivered by the Holder to HEARx Canada or to the transfer agent of the Exchangeable Shares (including, without limitation, a copy of the retraction request delivered pursuant to section 5.1 of the Exchangeable Share Provisions) in connection with such proposed redemption of the Retracted Shares and the Trustee shall thereupon exercise the Exchange Right with respect to the Retracted Shares that HEARx Canada is not permitted to redeem and will require the purchase of such shares in accordance with the provisions of this Article. The Trustee shall deliver to HEARx Canada's transfer agent and registrar the certificates for the Exchangeable Shares so transferred to be cancelled and new certificates in the name of HEARx or HEARx Acquisition, as the case may be issued in respect thereof and shall deliver or cause to be delivered such Exchangeable Shares to HEARx or HEARx Acquisition, as the case may be.

5.8 Stamp or Other Transfer Taxes. Upon any sale of Exchangeable Shares pursuant to the Exchange Right or the Automatic Exchange Rights, the share certificate or certificates representing HEARx Common Stock to be delivered in connection with the payment of the purchase price therefor shall be issued in the name of the Holder of the Exchangeable Shares so sold or in such names as such Holder may otherwise direct in writing without charge to the holder of the Exchangeable Shares so sold, provided, however, that such Holder (a) shall pay (and neither HEARx, HEARx Acquisition, HEARx Canada nor the Trustee shall be required to pay) any documentary, stamp, transfer or other similar taxes that may be payable in respect of any transfer involved in the issuance or delivery of such shares to a person other than such Holder and (b) shall establish to the satisfaction of the Trustee, HEARx, and HEARx Canada that such taxes, if any, have been paid.

5.9 Notice of Insolvency Event or Default Event. Immediately upon the occurrence of an Insolvency Event or Default Event or any event that with the giving of notice or the passage of time or both would be an Insolvency Event or Default Event, HEARx Canada and HEARx shall give written notice thereof to the Trustee. As soon as practicable after receiving notice from HEARx Canada and HEARx or from any other person of the occurrence of an Insolvency Event or Default Event, the Trustee shall mail to each Holder, at the expense of HEARx, a notice of such Insolvency Event or Default Event, which notice shall contain a brief statement of the right of the Holders with respect to the Exchange Right.

5.10 Qualification of HEARx Common Stock. If any HEARx Common Stock (or other shares or securities into which HEARx Common Stock may be reclassified or changed as contemplated by section 11.4 hereof) to be issued and delivered hereunder require registration, or qualification with, approval of, or the filing of any document, including any prospectus or similar document or the taking of any proceeding with or the obtaining of any order, ruling or consent from any governmental or regulatory authority under any Canadian or United States federal, provincial or state securities or other law or regulation or pursuant to the rules and regulations of any securities or other regulatory authority or the fulfillment of any other United States or Canadian legal requirement before such shares (or such other shares or securities) may be issued by HEARx and delivered by HEARx at the direction of HEARx Canada or HEARx Acquisition, if applicable, to the holder of surrendered Exchangeable Shares or in order that such shares (or such other shares or securities) may be freely traded thereafter (other than any restrictions of general application on transfer by reason of a holder being a control person for purposes of Canadian provincial securities law or an affiliate of HEARx for purposes of United States federal or state securities law), HEARx will, in good faith, expeditiously take all such actions and do all such things as are necessary or desirable to cause such HEARx Common Stock (or such other shares or securities) to be and remain duly registered, qualified or approved under United States and/or Canadian law, as the case may be. HEARx will, in good faith, expeditiously take all such actions and do all such things as are reasonably necessary or desirable to cause all HEARx Common stock (or such other shares or securities) to be delivered hereunder to be listed, quoted or posted for trading on all stock exchanges and quotation systems on which outstanding HEARx Common Stock (or such other shares or securities) have been listed by HEARx and remain listed and are quoted or posted for trading at such time.

5.11 Reservation of HEARx Common Stock. HEARx hereby represents and warrants that it has irrevocably reserved for issuance out of its authorized and unissued capital stock such number of shares of HEARx Common Stock as is equal to the number of Exchangeable Shares outstanding at the date hereof and covenants that it will at all times keep available, free from pre-emptive and other rights, out of its authorized

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and unissued capital stock such number of shares of HEARx Common Stock (or other shares or securities into which HEARx Common Stock may be reclassified or changed) as is necessary to enable HEARx, HEARx Acquisition and HEARx Canada to perform their respective obligations pursuant to this Agreement, the Exchangeable Share Provisions and the Support Agreement.

5.12 Automatic Exchange on Liquidation of HEARx.

(a) HEARx shall give the Trustee written notice of each of the following events (a Liquidation Event) at the time set forth below:

(i) in the event of any determination by the Board of Directors of HEARx to institute voluntary liquidation, dissolution or winding-up proceedings with respect to HEARx or to effect any other distribution of assets of HEARx among its stockholders for the purpose of winding up its affairs, at least sixty (60) days prior to the proposed effective date of such liquidation, dissolution, winding-up or other distribution; and

(ii) immediately, upon the earlier of (A) receipt by HEARx of notice of and (B) HEARx otherwise becoming aware of, any threatened or instituted claim, suit, petition or other proceedings with respect to the involuntary liquidation, dissolution or winding up of HEARx or to effect any other distribution of assets of HEARx among its stockholders for the purpose of winding up its affairs, in each case when HEARx has failed to contest in good any such proceeding commenced in respect of HEARx within 60 days of becoming aware thereof.

(b) Immediately following receipt by the Trustee from HEARx of notice of any Liquidation Event, the Trustee shall give notice thereof to the Holders. Such notice shall include a brief description of the automatic exchange of Exchangeable Shares for HEARx Common Stock provided for in subsection 5.12(c) below.

(c) In order that the Holders will be able to participate on a *pro rata* basis with the holders of HEARx Common Stock in the distribution of assets of HEARx in connection with a Liquidation Event, on the fifth Business Day prior to the effective date of any liquidation, winding up or dissolution giving rise to a Liquidation Event (the Liquidation Event Effective Date) all of the then outstanding Exchangeable Shares shall be automatically exchanged by the Holders directly with HEARx (or HEARx Acquisition, as HEARx shall direct) for HEARx Common Stock. To effect such automatic exchange, HEARx (or HEARx Acquisition, as the case may be) shall purchase and each Holder shall sell each Exchangeable Share outstanding on the fifth Business Day prior to the Liquidation Event Effective Date and held by Holders, for a purchase price per share equal to (a) the Current Market Price multiplied by the Current HEARx Common Share Equivalent on such fifth Business Day prior to the Liquidation Event Effective Date, which shall be satisfied in full in respect of the Exchangeable Shares held by each Holder by HEARx issuing to such Holder such whole number of shares of HEARx Common Stock as is equal to the product obtained by multiplying the number of such Exchangeable Shares by the Current HEARx Common Share Equivalent, plus (b) the aggregate of all dividends declared and unpaid on each such Exchangeable Share (provided that if the record date for any such declared and unpaid dividends occurs on or after the day of closing of such purchase and sale, the purchase price shall not include such additional amount equal to such declared and unpaid dividends). No certificates or scrip representing fractional HEARx Common Stock shall be delivered to Holders pursuant to the provisions hereof.

(d) On the fifth Business Day prior to the Liquidation Event Effective Date, the closing of the transaction of purchase and sale contemplated by the automatic exchange of Exchangeable Shares for shares of HEARx Common Stock shall be deemed to have occurred, and each Holder of Exchangeable Shares shall be deemed to have transferred to HEARx (or HEARx Acquisition, as HEARx shall direct) all of the Holder's right, title and interest in and to such Exchangeable Shares and the related interest in the Trust Estate and shall cease to be a Holder of such Exchangeable Shares and HEARx (or HEARx Acquisition, as the case may be) shall issue to the Holder the HEARx Common Stock issuable upon the automatic exchange of Exchangeable Shares for HEARx Common Stock and shall deliver to the Trustee

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for delivery to the Holder a cheque for the balance, if any, of the purchase price for such Exchangeable Shares (or, if any part of the purchase price consists of dividends payable in property, such property or property that is the same as or economically equivalent to such property). Concurrently with such Holder ceasing to be a holder of Exchangeable Shares, the Holder shall be considered and deemed for all purposes to be the holder of the HEARx Common Stock issued to it pursuant to the automatic exchange of Exchangeable Shares for HEARx Common Stock and the certificates held by the Holder previously representing the Exchangeable Shares exchanged by the Holder pursuant to such automatic exchange shall thereafter be deemed to represent the HEARx Common Stock issued to the Holder pursuant to such automatic exchange. Upon the request of a Holder and the surrender by the Holder of Exchangeable Share certificates deemed to represent HEARx Common Stock, duly endorsed in blank and accompanied by such instruments of transfer as HEARx may reasonably require, HEARx shall deliver or cause to be delivered to the Holder certificates representing the HEARx Common Stock of which the Holder is the holder. The Trustee shall cause the certificates for the Exchangeable Shares so transferred to be cancelled and new certificates in the name of HEARx (or HEARx Acquisition, as the case may be) issued in respect thereof.

5.13 Withholding Rights. HEARx, HEARx Acquisition, HEARx Canada and the Trustee shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Holder such amounts as HEARx, HEARx Acquisition, HEARx Canada or the Trustee is required or permitted to deduct and withhold with respect to the making of such payment under the United States Internal Revenue Code, as amended, the *Income Tax Act* (Canada), as amended, or any provision of state, local or provincial tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Exchangeable Shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. To the extent that the amount so required or permitted to be deducted or withheld from any payment to a holder exceeds the cash portion of the consideration otherwise payable to the holder, HEARx, HEARx Acquisition, HEARx Canada or the Trustee is hereby authorized to sell or otherwise dispose of at fair market value such portion of the consideration as is necessary to provide sufficient funds to HEARx, HEARx Acquisition, HEARx Canada or the Trustee, as the case may be, in order to enable it to comply with such deduction or withholding requirement and shall account to the relevant Holder for any balance of any such sale proceeds. HEARx represents and warrants that, based upon facts currently known to it, it has no current intention, as at the date of this Agreement, to deduct or withhold from any dividend paid to holders of Exchangeable Shares any amounts under the United States Revenue Code of 1986, as amended.

If upon the occurrence of an Insolvency Event, a Holder not resident in Canada instructs the Trustee to exercise the Exchange Right, HEARx shall provide (or shall cause to be provided) the Trustee, by certified cheque money order or bank draft, with sufficient funds to satisfy any withholding taxes applicable in connection with the sale of such Holder's Exchangeable Shares, otherwise such exchange shall not have occurred or be deemed to have occurred. The fair market value of a share of HEARx Common Stock at a particular date shall, for the purposes of calculating any applicable withholding taxes, be the Current Market Price or shall be determined by such other method of valuation which has been recommended or suggested by Canada Customs and Revenue Agency as providing a satisfactory assessment of such fair market value. Any determination of Current Market Price or other fair market value assessment shall be made by HEARx, who shall provide the Trustee and Holders of Exchangeable Shares with written notice of the same. Such determination shall be binding on the Trustee and Holders, who shall be able to rely on such determination without further verification of the same. Prior to making any distribution to Holders of Exchangeable Shares, HEARx, HEARx Acquisition or HEARx Canada, as the case may be, shall ensure that the Trustee has access to sufficient funds (by directly providing, if necessary, such funds to the Trustee) to enable the Trustee to comply with any applicable withholding taxes in connection with such distribution.

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ARTICLE VI

CONCERNING THE TRUSTEE

6.1 Powers and Duties of the Trustee. The rights, powers and authorities of the Trustee under this Agreement, in its capacity as trustee of the Trust, shall include:

- (a) receipt and depositing of the Voting Share from HEARx as trustee for and on behalf of the Holders in accordance with the provisions of this Agreement;
- (b) granting proxies and distributing materials to Holders as provided in this Agreement;
- (c) voting the Holder Votes in accordance with the provisions of this Agreement;
- (d) receiving the grant of the Exchange Right and the Automatic Exchange Rights from HEARx as trustee for and on behalf of the Holders in accordance with the provisions of this Agreement;
- (e) exercising the Exchange Right and enforcing the benefit of the Automatic Exchange Rights, in each case in accordance with the provisions of this Agreement and in connection therewith receiving from Holders Exchangeable Shares and other requisite documents and distributing to such Holders the HEARx Common Stock and cheques, if any, to which such Holders are entitled upon the exercise of the Exchange Right or pursuant to the Automatic Exchange Rights, as the case may be;
- (f) holding title to the Trust Estate;
- (g) investing any moneys forming, from time to time, a part of the Trust Estate as provided in this Agreement;
- (h) taking action on its own initiative or at the direction of a Holder or Holders to enforce the obligations of HEARx under this Agreement; and
- (i) taking such other actions and doing such other things as are specifically provided in this Agreement.

In the exercise of such rights, powers and authorities the Trustee shall have (and is granted) such incidental and additional rights, powers and authority not in conflict with any of the provisions of this Agreement as the Trustee, acting in good faith and in the reasonable exercise of its discretion, may deem necessary, appropriate or desirable to effect the purpose of the Trust. Any exercise of such discretionary rights, powers and authorities by the Trustee shall be final, conclusive and binding upon all persons. For greater certainty, the Trustee shall have only those duties as are set out specifically in this Agreement.

The Trustee in exercising its rights, powers, duties and authorities hereunder shall act honestly and in good faith with a view to the best interests of the Holders and shall exercise the care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

Notwithstanding any other provision of this Agreement, nothing in this Agreement shall obligate the Trustee to have knowledge of, comply with or otherwise act in accordance with laws or regulations of a jurisdiction other than the Province of Quebec and the laws of Canada applicable therein.

6.2 No Conflict of Interest. The Trustee represents to the other parties hereto that at the date of execution and delivery of this Agreement there exists no material conflict of interest in the role of the Trustee as a fiduciary hereunder and the role of the Trustee in any other capacity. The Trustee shall, within 30 days after it becomes aware that such a material conflict of interest exists, either eliminate such material conflict of interest or resign in the manner and with the effect specified in Article 9 hereof. If, notwithstanding the foregoing provisions of this section 6.2, the Trustee has such a material conflict of interest, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Trustee contravenes the foregoing provisions of this section 6.2, any interested party may apply to the Superior Court of Quebec for an order that the Trustee be replaced as trustee hereunder.

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6.3 Dealings with Transfer Agents, Registrars, etc. HEARx Canada and HEARx irrevocably authorize the Trustee, from time to time, to:

(a) consult, communicate and otherwise deal with the respective registrars and transfer agents, and with any such subsequent registrar or transfer agent, of the Exchangeable Shares and HEARx Common Stock; and

(b) requisition, from time to time: (i) from any such registrar or transfer agent any information readily available from the records maintained by it which the Trustee may reasonably require for the discharge of its duties and responsibilities under this Agreement; and (ii) from the transfer agent of HEARx Common Stock, and any subsequent transfer agent of such shares, the share certificates issuable upon the exercise from time to time of the Exchange Right and pursuant to the Automatic Exchange Rights in the manner specified in Article 5 hereof.

HEARx Canada and HEARx irrevocably authorize their respective registrars and transfer agents to comply with all such requests. HEARx covenants that it will supply its transfer agent with duly executed share certificates for the purpose of completing the exercise from time to time of the Exchange Right and the Automatic Exchange Rights, in each case pursuant to Article 5 hereof.

6.4 Books and Records. The Trustee shall keep available for inspection by HEARx, HEARx Acquisition and HEARx Canada, at the Trustee's corporate trust office in Montreal, Quebec, correct and complete books and records of account relating to the Trustee's actions under this Agreement, including without limitation all information relating to mailings and instructions to and from Holders and all transactions pursuant to the Voting Rights, the Exchange Right and the Automatic Exchange Rights for the term of this Agreement. On or before _____ and on or before _____ in every year thereafter, so long as the Voting Share is on deposit with the Trustee, the Trustee shall transmit to HEARx, HEARx Acquisition and HEARx Canada a brief report, dated as of the preceding _____, with respect to:

(a) the property and funds comprising the Trust Estate as of that date;

(b) the number of exercises of the Exchange Right, if any, and the aggregate number of Exchangeable Shares received by the Trustee on behalf of Holders in consideration of the issue and delivery of HEARx Common Stock in connection with the Exchange Right, during the calendar year ended on such date; and

(c) all other actions taken by the Trustee in the performance of its duties under this Agreement that it had not previously reported.

6.5 Income Tax Returns and Reports. The Trustee shall, to the extent necessary, prepare and file on behalf of the Trust applicable United States and Canadian income tax returns, if any, and any other returns or reports as may be required by applicable law or pursuant to the rules and regulations of any securities exchange or other trading system through which the Exchangeable Shares are traded and, in connection therewith, may obtain the advice and assistance of such experts as the Trustee may consider necessary or desirable. If requested by the Trustee, HEARx shall retain such experts for purposes of providing such advice and assistance.

6.6 Indemnification Prior to Certain Actions by Trustee. The Trustee shall exercise any or all of the rights, duties, powers or authorities vested in it by this Agreement at the request, order or direction of any Holder upon such Holder furnishing to the Trustee reasonable funding, security and indemnity against the costs, expenses and liabilities that may be incurred by the Trustee therein or thereby, provided that no Holder shall be obligated to furnish to the Trustee any such funding, security or indemnity in connection with the exercise by the Trustee of any of its rights, duties, powers and authorities with respect to (i) the Voting Share pursuant to Article 4 hereof, subject to section 6.15 hereof, (ii) the Exchange Right pursuant to Article 5 hereof, subject to section 6.15 hereof, and (iii) the Automatic Exchange Rights pursuant to Article 5 hereof.

None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the exercise of any of its rights, powers, duties or authorities unless funded and given security and indemnity as aforesaid.

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6.7 Actions by Holders. No Holder shall have the right to institute any action, suit or proceeding or to exercise any other remedy authorized by this Agreement for the purpose of enforcing any of its rights or for the execution of any trust or power hereunder unless the Holder has requested the Trustee to take or institute such action, suit or proceeding and furnished the Trustee with the funding, security and indemnity referred to in section 6.6 hereof and the Trustee has failed to act within a reasonable time thereafter. In such case, but not otherwise, the Holder shall be entitled to take proceedings in any court of competent jurisdiction such as the Trustee might have taken, it being understood and intended that no one or more Holders shall have any right in any manner whatsoever to affect, disturb or prejudice the rights hereby created by any such action, or to enforce any right hereunder or under the Voting Rights, the Exchange Right or the Automatic Exchange Rights except subject to the conditions and in the manner herein provided, and that all powers and trusts hereunder shall be exercised and all proceedings at law shall be instituted, had and maintained by the Trustee, except only as herein provided, and in any event for the benefit of all Holders.

6.8 Reliance upon Declarations. The Trustee shall not be considered to be in contravention of any of its rights, powers, duties and authorities hereunder if, when required, it acts and relies in good faith upon lists, mailing labels, notices, statutory declarations, certificates, opinions, reports or other papers or documents furnished pursuant to the provisions hereof or required by the Trustee to be furnished to it in the exercise of its rights, powers, duties and authorities hereunder and such lists, mailing labels, notices, statutory declarations, certificates, opinions, reports or other papers or documents comply with the provisions of this section and with any other applicable provisions of this Agreement.

6.9 Evidence and Authority to Trustee. HEARx, HEARx Acquisition and HEARx Canada shall furnish to the Trustee evidence of compliance with the conditions provided for in this Agreement relating to any action or step required or permitted to be taken by HEARx, HEARx Acquisition, HEARx Canada or the Trustee under this Agreement or as a result of any obligation imposed under this Agreement, including, without limitation, in respect of the Voting Rights, the Exchange Right or the Automatic Exchange Rights and the taking of any other action to be taken by the Trustee at the request of or on the application of HEARx, HEARx Acquisition or HEARx Canada forthwith if and when:

(a) such evidence is required by any other section of this Agreement to be furnished to the Trustee in accordance with the terms of this section 6.9; or

(b) the Trustee, in the exercise of its rights, powers, duties and authorities under this Agreement, gives HEARx, HEARx Acquisition and HEARx Canada, or any one or more of them written notice requiring it or them to furnish such evidence in relation to any particular action or obligation specified in such notice.

Such evidence shall consist of an Officer's Certificate or a statutory declaration or a certificate made by persons entitled to sign an Officer's Certificate stating that any such condition has been complied with in accordance with the terms of this Agreement.

Whenever such evidence relates to a matter other than the Voting Rights, the Exchange Right or the Automatic Exchange Rights, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, appraiser, valuer, engineer or other expert or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of HEARx, HEARx Acquisition or HEARx Canada it shall be in the form of an Officer's Certificate or a statutory declaration.

Each statutory declaration, certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this Agreement shall include a statement by the person giving the evidence:

(a) declaring that he has read and understands the provisions of this Agreement relating to the condition in question;

(b) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, statement or opinion; and

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(c) declaring that he has made such examination or investigation as he believes is necessary to enable him to make the statements or give the opinions contained or expressed therein.

6.10 Experts, Advisers and Agents.

The Trustee may:

(a) in relation to this Agreement act and rely in good faith on the opinion or advice of or information obtained from any solicitor, auditor, accountant, appraiser, valuer, engineer or other expert, whether retained by the Trustee, HEARx Acquisition, HEARx Canada, HEARx or otherwise, and may employ such assistants as may be necessary to the proper discharge of its powers and duties and determination of its rights hereunder and may pay proper and reasonable compensation for all such legal and other advice or assistance as aforesaid; and

(b) employ such agents and other assistants as it may reasonably require for the proper discharge of its powers and duties hereunder, and may pay proper and reasonable remuneration for all services performed for it in the discharge of the trusts hereof and compensation for all disbursements, costs and expenses made or incurred by it in the discharge of its duties hereunder and in the management of the Trust.

6.11 Investment of Moneys Held By Trustee. Unless otherwise provided in this Agreement, any moneys held by or on behalf of the Trustee that under the terms of this Agreement may or ought to be invested or which may be on deposit with the Trustee or that may be in the hands of the Trustee may be invested and reinvested in the name or under the control of the Trustee in securities in which, under the laws of Canada, trustees are authorized to invest trust moneys, provided that such securities are stated to mature within two (2) years after their purchase by the Trustee, and are invested in such specific securities as directed in writing by HEARx. Pending the receipt of any direction and investment of any moneys as hereinbefore provided, such moneys may be deposited in the name of the Trustee in an interest-bearing trust account of the Trustee.

6.12 Trustee Not Required to Give Security. The Trustee shall not be required to give any bond or security in respect of the execution of the trusts, rights, duties, powers and authorities of this Agreement.

6.13 Trustee Not Bound to Act. Except as in this Agreement otherwise specifically provided, the Trustee shall not be bound to act in accordance with any direction or request of HEARx, HEARx Acquisition, HEARx Canada or of the directors thereof until a duly authenticated copy of the instrument or resolution containing such direction or request shall have been delivered to the Trustee, and the Trustee shall be empowered to act and rely upon any such copy purporting to be authenticated and believed by the Trustee in good faith to be genuine.

6.14 Authority to Carry on Business. The Trustee represents to HEARx, HEARx Acquisition and HEARx Canada that at the date of execution and delivery by it of this Agreement it is authorized to perform its obligations pursuant to this Agreement under all applicable laws but if, notwithstanding the provisions of this section 6.14, it ceases to be so authorized, the validity and enforceability of this Agreement and the Voting Rights, the Exchange Right and the Automatic Exchange Rights shall not be affected in any manner whatsoever by reason only of such event but the Trustee shall, within thirty (30) days after ceasing to be so authorized, either become so authorized or resign in the manner and with the effect specified in Article 9 hereof.

6.15 Conflicting Claims. If conflicting claims or demands are made or asserted with respect to any interest of any Holder in any Exchangeable Shares, including any disagreement between the heirs, representatives, successors or assigns succeeding to all or any part of the interest of any Holder in any Exchangeable Shares resulting in conflicting claims or demands being made in connection with such interest, then the Trustee shall be entitled, at its sole discretion, to refuse to recognize or to comply with any such claim or demand. In so refusing, the Trustee may elect not to exercise any Voting Rights, Exchange Rights or Automatic Exchange Rights subject to such conflicting claims or demands and, in so doing, the Trustee shall not be or become liable to any person on account of such election or its failure or refusal to comply with any

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such conflicting claims or demands. The Trustee shall be entitled to continue to refrain from acting and to refuse to act until:

(a) the rights of all adverse claimants with respect to the Voting Rights, Exchange Rights or Automatic Exchange Rights subject to such conflicting claims or demands have been adjudicated by a final judgment of a court of competent jurisdiction; or

(b) all differences with respect to the Voting Rights, Exchange Right or Automatic Exchange Rights subject to such conflicting claims or demands have been conclusively settled by a valid written agreement binding on all such adverse claimants, and the Trustee shall have been furnished with an executed copy of such agreement.

If the Trustee elects to recognize any claim or comply with any demand made by any such adverse claimant, it may in its discretion require such claimant to furnish such surety bond or other security satisfactory to the Trustee as it shall deem appropriate fully to indemnify it as between all conflicting claims or demands.

6.16 Acceptance of Trust. The Trustee hereby accepts the Trust created and provided for by and in this Agreement and agrees to perform the same upon the terms and conditions herein set forth and to hold all rights, privileges and benefits conferred hereby and by law in trust for the various persons who shall from time to time be Holders, subject to all the terms and conditions herein set forth.

6.17 Notice to Trustee. The Trustee shall not be bound to give any notice or do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms of this Agreement; nor shall the Trustee be required to take notice of, be deemed to have actual or constructive notice or knowledge of any matter under this Agreement, or take any action in connection with any notice of any HEARx Meeting or the seeking of any HEARx Consent or any prohibition of HEARx Canada against redeeming any Retracted Shares as set out in section 5.6 of the Exchangeable Share Provisions or of any Insolvency Event, Default Event or Liquidation Event as set out in Article 5 of this Agreement, respectively (any one of which shall constitute a Notice Event), unless and until notified in writing of such Notice Event in accordance with this Agreement, which notice shall distinctly specify the particular Notice Event desired to be brought to the attention of the Trustee and in the absence of any such notice the Trustee may for all purposes of this Agreement conclusively assume that no such Notice Event has occurred.

6.18 Merger or Consolidation of Trustee. Any corporation into or which the Trustee may be merged or consolidated or amalgamated, or any corporation resulting therefrom to which the Trustee may be a party, or any corporation succeeding to the trust business of the Trustee shall be the successor to the Trustee under this Agreement without any further act on its part or any of the parties hereto, provided that such corporation would be eligible for appointment as a successor trustee under the provisions of this Agreement.

6.19 No Personal Liability. In the exercise of the powers, authorities or discretion conferred upon the Trustee under this Agreement, the Trustee is and shall be conclusively deemed to be acting as trustee of the Trust and shall not be subject to any personal liability for any of the liabilities, obligations, claims, demands, judgments, costs or expenses against or with respect to the Trust.

6.20 Incumbency Certificate. HEARx, HEARx Acquisition and HEARx Canada shall file with the Trustee a certificate of incumbency setting forth the names of the individuals authorized to give instructions, directions or other instruments to the Trustee (Authorized Persons), together with specimen signatures of such persons, and the Trustee shall be entitled to rely on the latest certificate of incumbency filed with it unless it receives notice, in accordance with Section 13.3, of a change in Authorized Persons with updated specimen signatures.

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ARTICLE VII

COMPENSATION

7.1 Fees and Expenses of the Trustee. HEARx and HEARx Canada jointly and severally agree to pay to the Trustee reasonable compensation for all of the services rendered by it under this Agreement and will reimburse the Trustee for all reasonable expenses and disbursements, including fees and expenses for attendance at any meeting of shareholders, if so requested by HEARx or HEARx Canada, fees and expenses of experts, advisors and agents retained pursuant to Section 6.10, the cost and expense of any suit or litigation of any character and any proceedings before any governmental agency reasonably incurred by the Trustee in connection with its rights and duties under this Agreement; provided that HEARx and HEARx Canada shall have no obligation to reimburse the Trustee for any expenses or disbursements paid, incurred or suffered by the Trustee in any suit or litigation in which the Trustee is determined to have acted fraudulently, in bad faith or with gross negligence or wilful misconduct.

ARTICLE VIII

INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1 Indemnification of the Trustee. HEARx, HEARx Acquisition and HEARx Canada jointly and severally agree to indemnify and hold harmless the Trustee and each of its directors, officers, employees and agents appointed and acting in accordance with this Agreement (collectively the Indemnified Parties) against all claims, losses, damages, costs, penalties, fines and reasonable expenses (including reasonable expenses of the Trustee's legal counsel) which, without fraud, gross negligence, willful misconduct or bad faith on the part of such Indemnified Party, may be paid, incurred or suffered by the Indemnified Party by reason of or as a result of the Trustee's acceptance or administration of the Trust, its compliance with its duties set forth in this Agreement, or any written or oral instructions delivered to the Trustee by HEARx, HEARx Acquisition or HEARx Canada pursuant hereto. In no case shall HEARx, HEARx Acquisition or HEARx Canada be liable under this indemnity for any claim against any of the Indemnified Parties unless HEARx, HEARx Acquisition and HEARx Canada shall be notified by the Trustee of the written assertion of a claim or of any action commenced against the Indemnified Parties, promptly after any of the Indemnified Parties shall have received any such written assertion of a claim or shall have been served with a summons or other legal process giving information as to the nature and basis of the claim. Subject to (ii), below, HEARx, HEARx Acquisition and HEARx Canada shall be entitled to participate at their own expense in the defense and, if HEARx, HEARx Acquisition or HEARx Canada so elect at any time after receipt of such notice, either of them may assume the defense of any suit brought to enforce any such claim. The Trustee shall have the right to employ separate counsel in any such suit and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of the Trustee unless: (i) the employment of such counsel has been authorized by HEARx, HEARx Acquisition or HEARx Canada or (ii) the named parties to any such suit include both the Trustee and HEARx, HEARx Acquisition or HEARx Canada and the Trustee shall have been advised by counsel acceptable to HEARx, HEARx Acquisition or HEARx Canada that there may be one or more legal defenses available to the Trustee that are different from or in addition to those available to HEARx, HEARx Acquisition or HEARx Canada and that an actual or potential conflict of interest exists (in which case HEARx, HEARx Acquisition and HEARx Canada shall not have the right to assume the defense of such suit on behalf of the Trustee but shall be liable to pay the reasonable fees and expenses of one counsel for the Trustee), or (iii) HEARx, HEARx Acquisition or HEARx Canada shall not have retained legal counsel on behalf of the Trustee within a reasonable time after it has given them notice of a written assertion of a claim or action against any Indemnified Party.

8.2 Limitation of Liability. The Trustee shall not be held liable for any loss that may occur by reason of depreciation of the value of any part of the Trust Estate or any loss incurred on any investment of funds pursuant to this Agreement, except to the extent that such loss is attributable to fraud, gross negligence, willful misconduct or bad faith on the part of the Trustee.

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ARTICLE IX

CHANGE OF TRUSTEE

9.1 Resignation. The Trustee, or any trustee hereafter appointed, may at any time resign by giving written notice of such resignation to HEARx, HEARx Acquisition and HEARx Canada specifying the date on which it desires to resign, provided that such notice shall never be given less than sixty (60) days before such desired resignation date unless HEARx, HEARx Acquisition and HEARx Canada otherwise agree and provided further that such resignation shall not take effect until the date of the appointment of a successor trustee and the acceptance of such appointment by the successor trustee. Upon receiving such notice of resignation, HEARx, HEARx Acquisition and HEARx Canada shall promptly appoint a successor trustee by written instrument in duplicate, one copy of which shall be delivered to the resigning trustee and one copy to the successor trustee. Failing acceptance by a successor trustee, a successor trustee may be appointed by an order of a Court of competent jurisdiction in the Province of Quebec upon application of one or more of the parties hereto.

9.2 Removal. The Trustee, or any trustee hereafter appointed, may be removed with or without cause, at any time on thirty (30) days prior notice by written instrument executed by HEARx and HEARx Canada, in duplicate, one copy of which shall be delivered to the trustee so removed and one copy to the successor trustee.

9.3 Successor Trustee. Any successor trustee appointed as provided under this Agreement shall execute, acknowledge and deliver to HEARx, HEARx Acquisition and HEARx Canada and to its predecessor trustee an instrument accepting such appointment. Thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor under this Agreement, with like effect as if originally named as trustee in this Agreement. However, on the written request of HEARx, HEARx Acquisition and HEARx Canada or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of this Agreement, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon the request of any such successor trustee, HEARx, HEARx Acquisition and HEARx Canada and such predecessor trustee shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers.

9.4 Notice of Successor Trustee. Upon acceptance of appointment by a successor trustee as provided herein, HEARx shall cause to be mailed notice of the succession of such trustee hereunder to each Holder specified in a List. If HEARx shall fail to cause such notice to be mailed within 10 days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of HEARx.

ARTICLE X

HEARX SUCCESSORS

10.1 Certain Requirements in Respect of Combination, etc. HEARx shall not enter into any transaction (whether by way of reconstruction, reorganization, consolidation, merger, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, property and assets would become the property of any other person or, in the case of a merger, of the continuing corporation resulting therefrom, unless:

(a) such other person or continuing corporation is a corporation (herein called the HEARx Successor) incorporated under the laws of any state of the United States or the laws of Canada or any province thereof; and

(b) HEARx Successor, by operation of law, becomes bound by the terms and provisions of this Agreement or, if not so bound, executes, prior to or contemporaneously with the consummation of such transaction an agreement supplemental hereto and such other instruments (if any) as are satisfactory to the Trustee acting reasonably to evidence the assumption by HEARx Successor of liability for all moneys

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payable and property deliverable hereunder and the covenant of such HEARx Successor to pay and deliver or cause to be delivered the same and its agreement to observe and perform all the covenants and obligations of HEARx under this Agreement.

10.2 Vesting of Powers in Successor. Whenever the conditions of section 10.1 hereof have been duly observed and performed, the Trustee, if required, by section 10.1 hereof, HEARx Successor, HEARx Acquisition and HEARx Canada shall execute and deliver the supplemental agreement provided for in Article 11 hereof and thereupon HEARx Successor shall possess and from time to time may exercise each and every right and power of HEARx under this Agreement in the name of HEARx or otherwise and any act or proceeding by any provision of this Agreement required to be done or performed by the board of directors of HEARx or any officers of HEARx may be done and performed with like force and effect by the directors or officers of such HEARx Successor.

10.3 Wholly-Owned Subsidiaries. Subject to paragraph 10.1 hereof, nothing herein shall be construed as preventing the amalgamation or merger of any wholly-owned subsidiary of HEARx with or into HEARx.

ARTICLE XI

AMENDMENTS AND SUPPLEMENTAL TRUST AGREEMENTS

11.1 Amendments, Modifications, etc. This Agreement may not be amended or modified except by an agreement in writing executed by HEARx, HEARx Acquisition, HEARx Canada and the Trustee and approved by the Holders in accordance with section 11.2 of the Exchangeable Share Provisions.

11.2 Ministerial Amendments. Notwithstanding the provisions of section 11.1 hereof, the parties to this Agreement may, in writing, at any time and from time to time, without the approval of the Holders, amend or modify this Agreement for the purposes of:

(a) adding to the covenants of any or all of the parties hereto for the protection of the Holders hereunder;

(b) making such amendments or modifications not inconsistent with this Agreement as may be necessary or desirable with respect to matters or questions that, in the opinion of the Board of Directors of each of HEARx, HEARx Acquisition and HEARx Canada and in the opinion of the Trustee, on the advice of counsel having in mind the best interests of the Holders as a whole, such amendments and modifications will not be prejudicial to the interests of the Holders as a whole; or

(c) making such changes or corrections required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error, provided that the Trustee and the Board of Directors of each of HEARx, HEARx Acquisition and HEARx Canada shall be of the opinion, on the advice of counsel, that such changes or corrections will not be prejudicial to the interests of the Holders as a whole.

11.3 Meeting to Consider Amendments. HEARx Canada, at the request of HEARx, shall call a meeting or meetings of the Holders for the purpose of considering any proposed amendment or modification requiring approval pursuant hereto. Any such meeting or meetings shall be called and held in accordance with the by-laws of HEARx Canada, the Exchangeable Share Provisions and all applicable laws.

11.4 Changes in Capital of HEARx and HEARx Canada. Notwithstanding section 11.1, at all times after the occurrence of any HEARx Common Stock Reorganization or Capital Reorganization (as such terms are respectively defined in the Exchangeable Share Provisions) or other change in either the HEARx Common Stock or the Exchangeable Shares or both, this Agreement shall forthwith be amended and modified as necessary in order that it shall apply with full force and effect, *mutatis mutandis*, to all new securities into which HEARx Common Stock or the Exchangeable Shares or both are so changed and the parties hereto shall execute and deliver a supplemental agreement giving effect to and evidencing such necessary amendments and modifications.

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11.5 Execution of Supplemental Trust Agreements. Notwithstanding section 11.1, from time to time HEARx Canada, HEARx Acquisition and HEARx (when authorized by a resolution of their respective boards of directors) and the Trustee may, subject to the provisions hereof, and they shall, when so directed by these presents, execute and deliver by their proper officers, agreements or other instruments supplemental hereto, which thereafter shall form part hereof, for any one or more of the following purposes:

(a) evidencing the succession of HEARx Successors to HEARx and the covenants of and obligations assumed by each such HEARx Successor in accordance with the provisions of Article 10 and the succession of any successor trustee in accordance with the provisions of Article 9;

(b) making any additions to, deletions from or alterations of the provisions of this Agreement or the Voting Rights, the Exchange Right or the Automatic Exchange Rights that, in the opinion of counsel to the Trustee are necessary or advisable in order to incorporate, reflect or comply with any legislation the provisions of which apply to HEARx, HEARx Acquisition, HEARx Canada, the Trustee or this Agreement; and

(c) for any other purposes not inconsistent with the provisions of this Agreement including, without limitation, to make or evidence any amendment or modification to this Agreement as contemplated hereby, provided that, in the opinion of the Trustee, on the advice of counsel, the rights of the Trustee and the Holders as a whole will not be prejudiced thereby.

ARTICLE XII

TERMINATION

12.1 Term. The Trust created by this Agreement shall continue until the earliest to occur of the following events:

(a) no outstanding Exchangeable Shares are held by any Holder;

(b) HEARx Canada, HEARx Acquisition and HEARx each elect in writing to terminate the Trust and such termination is approved by the Holders of the Exchangeable Shares in accordance with Section 11.2 of the Exchangeable Share Provisions; and

(c) 21 years after the death of the last survivor of the descendants of His Majesty King George VI of the United Kingdom of Great Britain and Northern Ireland living on the date of the creation of the Trust.

12.2 Survival. The provisions of Article VII and VIII hereof shall survive any termination of the Trust pursuant to section 12.1 or the resignation or removal of the Trustee pursuant to Article IX.

ARTICLE XIII

GENERAL

13.1 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby and this Agreement shall be carried out as nearly as possible in accordance with its original terms and conditions; provided, however, that if the provision or provisions so held to be invalid, in the reasonable judgment of the parties, is or are so fundamental to the intent of the parties and the operation of this Agreement that the enforcement of the other provisions hereof, in the absence of such invalid provision or provisions, would damage irreparably the intent of the parties in entering into this Agreement, the parties shall agree (i) to terminate this Agreement, or (ii) to amend or otherwise modify this Agreement so as to carry out the intent and purposes hereof and the transactions contemplated hereby.

13.2 Enurement. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns and to the benefit of the Holders.

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13.3 Notices to Parties. All notices and other communications between the parties hereunder shall be in writing and shall be deemed to have been given if delivered personally or by confirmed telecopy to the parties at the following addresses (or at such other address for such party as shall be specified in like notice):

(a) if to HEARx, HEARx Acquisition or HEARx Canada at:
1250 Northway Parkway
West Palm Beach, Florida 33407
Attention: President
Fax: 561.688.8893

(b) if to the Trustee at:

Attention:

Fax:

Any notice or other communication given personally shall be deemed to have been given and received upon delivery thereof and if given by telecopy shall be deemed to have been given and received on the date of receipt thereof unless such day is not a Business Day in which case it shall be deemed to have been given and received upon the immediately following Business Day.

13.4 Notice to Holders. Any and all notices to be given and any documents to be sent to any Holders may be given or sent to the address of such Holder shown on the register of Holders in any manner permitted by the by-laws of HEARx Canada from time to time in force in respect of notices to shareholders and shall be deemed to be received (if given or sent in such manner) at the time specified in such by-laws, the provisions of which by-laws shall apply *mutatis mutandis* to notices or documents as aforesaid sent to such Holders.

13.5 Risk of Payments by Post. Whenever payments are to be made or documents are to be sent to any Holder by the Trustee, HEARx, HEARx Acquisition or HEARx Canada, or by such Holder to the Trustee, HEARx, HEARx Acquisition or HEARx Canada, the making of such payment or sending of such document sent through the post shall be at the risk of the maker of such payments or the sender of such documents.

13.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

13.7 Jurisdiction. This Agreement shall be construed and enforced in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein.

13.8 Attornment. HEARx and HEARx Acquisition agree that any action or proceeding arising out of or relating to this Agreement may be instituted in the courts of Quebec, waive any objection which they may have now or hereafter to the venue of any such action or proceeding, irrevocably submit to the jurisdiction of the said court in any such action or proceeding, agree to be bound by any judgment of the said courts and agree not to seek, and hereby waive, any review of the merits of any such judgment by the courts of any other jurisdiction and hereby appoint HEARx Canada at its registered office in the Province of Ontario as their attorney for service of process.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

HEARX LTD.

Per:

Title

HEARX ACQUISITION ULC

Per:

Title

HEARX CANADA INC.

Per:

Title

Per:

Per:

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SCHEDULE A

NOTICE OF EXERCISE OF EXCHANGE RIGHT

TO:

RE: **Voting and Exchange Trust Agreement between HEARx (HEARx), HEARx Acquisition ULC (HEARx Acquisition), HEARx Canada, Inc. (HEARx Canada), and COMPUTERSHARE TRUST COMPANY OF CANADA as Trustee (the Trust Agreement)**.

The undersigned holder of Exchangeable Shares instructs COMPUTERSHARE TRUST COMPANY OF CANADA (the Trustee) to exercise the Exchange Right in accordance with Section 5.5 of the Trust Agreement so as to require HEARx to purchase or to cause HEARx Acquisition to purchase from the undersigned Exchangeable Shares and to issue and deliver or to cause HEARx Acquisition to deliver certificates representing shares of HEARx Common Stock as follows:

Name in full:

(Please state full names in which certificates are to be issued)

Address in full:

Number of

Exchangeable Shares:

The undersigned hereby represents and warrants as follows:

(i) the undersigned has good title to and owns all such Exchangeable Shares to be acquired by HEARx free and clear of all Liens.

(ii) the undersigned shall pay any documentary, stamp, transfer or other taxes that may be payable in respect of any transfer involved in the issuance or delivery of shares.

All capitalized terms not defined herein shall have the meanings ascribed to them in the Voting Trust Agreement.

DATED this day of , 2001.

Name:

Signature:

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SCHEDULE B

NOTICE OF EXERCISE OF EXCHANGE RIGHT

TO: **HEARx (HEARx)**

This notice is given pursuant to Section 5.6 of the Voting and Exchange Trust Agreement (the "Trust Agreement") between HEARx, HEARx Acquisition ULC, HEARx Canada Inc. and COMPUTERSHARE TRUST COMPANY OF CANADA as Trustee (the "Trust Agreement"). All capitalized words and expressions used in this notice that are defined in the Trust Agreement have the meanings ascribed to such words and expressions in such Trust Agreement.

The Trustee hereby notifies HEARx that it is exercising the Exchange Right on behalf of the Holder of the Exchangeable Shares referred to in the notice received from such Holder, a copy of which is attached hereto (the "Holder Notice"). Please deliver or direct HEARX Acquisition ULC to deliver the HEARx Common Stock deliverable in connection with the exercise of the Exchange Right in accordance with the instructions set forth in the attached Holder Notice.

By:

Name

Title:

Date:

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ANNEX D

SUPPORT AGREEMENT

THIS MEMORANDUM OF AGREEMENT made as of the day of , 2001.

B E T W E E N:

HEARX LTD., a corporation incorporated under the laws of the State of Delaware

(hereinafter called "HEARx")

and

HEARx Acquisition ULC, an unlimited company organized under the laws of the Province of Nova Scotia

(hereinafter called "HEARx Acquisition")

and

HEARx Canada Inc., a corporation incorporated under the laws of Canada

(hereinafter called "HEARx Canada")

WHEREAS pursuant to a Merger Agreement dated as of July , 2001, by and between HEARx and Helix Hearing Care of America Corp. ("Helix"), a corporation incorporated under the laws of Canada, the parties thereto agreed that on the Effective Date (as defined in the Merger Agreement), HEARx, HEARx Acquisition and HEARx Canada would execute and deliver a Support Agreement containing the terms and conditions set forth in *Schedule M* to the Merger Agreement;

AND WHEREAS pursuant to an arrangement (the "Arrangement") effected by articles of arrangement to be filed pursuant to the *Canada Business Corporations Act* (the "CBCA"), all of the issued and outstanding common shares in the capital of Helix are to be exchanged for either common stock in the capital of HEARx ("HEARx Common Stock") or exchangeable non-voting shares in the capital of HEARx Canada (the "Exchangeable Shares");

AND WHEREAS the aforesaid articles of arrangement set forth the rights, privileges, restrictions and conditions (collectively the "Exchangeable Share Provisions") attaching to the Exchangeable Shares;

AND WHEREAS the parties hereto desire to make appropriate provisions and to establish a procedure whereby HEARx will take certain actions and make certain payments and deliveries necessary to ensure that HEARx Acquisition and HEARx Canada will be able to make certain payments and to deliver or cause HEARx Acquisition to deliver shares of HEARx Common Stock in satisfaction of the obligations of HEARx Canada under the Exchangeable Share Provisions with respect to the payment and satisfaction of dividends, Liquidation Amounts, Retraction Prices and Redemption Prices, all in accordance with the Exchangeable Share Provisions;

NOW THEREFORE in consideration of the respective covenants in this agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

1.1 Defined Terms. Each term denoted herein by initial capital letters and not otherwise defined herein shall have the meaning ascribed thereto in the Exchangeable Share Provisions, unless the context requires otherwise.

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1.2 Interpretation not Affected by Headings, etc. The division of this agreement into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this agreement.

1.3 Number, Gender, etc. Words importing the singular number only shall include the plural and vice versa. Words importing the use of any gender shall include all genders.

1.4 Date for any Action. If any date on which any action is required to be taken under this agreement is not a Business Day, such action shall be required to be taken on the next succeeding Business Day.

ARTICLE II

COVENANTS OF HEARX AND HEARX ACQUISITION

2.1 Covenants of HEARx Regarding Exchangeable Shares. So long as any Exchangeable Shares are outstanding, HEARx or HEARx Acquisition, as the context requires, shall:

(a) not declare or pay any dividend on HEARx Common Stock unless: (i) HEARx Canada shall have sufficient assets, funds and other property (including, where applicable, shares of HEARx Common Stock or other securities of HEARx) available to enable the due declaration and the due and punctual payment in accordance with applicable law, of a dividend on the Exchangeable Shares in accordance with the Exchangeable Share Provisions; and (ii) HEARx Canada shall simultaneously declare or pay, as the case may be, a dividend on the Exchangeable Shares in accordance with the Exchangeable Share Provisions;

(b) cause HEARx Canada to declare simultaneously with the declaration of any dividend on shares of HEARx Common Stock a dividend on the Exchangeable Shares and, when such dividend is paid on HEARx Common Stock, cause HEARx Canada to pay simultaneously therewith such dividend on the Exchangeable Shares, in each case in accordance with the Exchangeable Share Provisions;

(c) advise HEARx Canada sufficiently in advance of the declaration by HEARx of any dividend on shares of HEARx Common Stock and take all such other actions as are necessary, in cooperation with HEARx Canada, to ensure that the declaration date, record date and payment date for any dividend on the Exchangeable Shares shall be the same as the declaration date, record date, and payment date for the corresponding dividend on shares of HEARx Common Stock and such dates in respect of dividends on the Exchangeable Shares shall be in accordance with any requirement of the Exchangeable Share Provisions and the stock exchange(s) (if any) on which the Exchangeable Shares may be listed;

(d) ensure that the record date for any dividend declared on shares of HEARx Common Stock, HEARx Common Stock Reorganization, Rights Offering, Special Distribution or Capital Reorganization is not less than ten (10) Business Days after the declaration date for such dividend or effective date of such HEARx Common Stock Reorganization, Rights Offering, Special Distribution or Capital Reorganization;

(e) take all such actions and do all such things as are necessary or desirable to enable and permit HEARx Canada, in accordance with applicable law, to pay and otherwise perform its obligations with respect to the satisfaction of the Liquidation Amount in respect of each issued and outstanding Exchangeable Share upon the liquidation, dissolution or winding-up of HEARx Canada, including without limitation all such actions and all such things as are necessary or desirable to enable and permit HEARx Canada to cause to be delivered shares of HEARx Common Stock to the holders of Exchangeable Shares in satisfaction of the Liquidation Amount for each such Exchangeable Share, in accordance with the provisions of Article 4 of the Exchangeable Share Provisions;

(f) take all such actions and do all such things as are necessary or desirable to enable and permit HEARx Canada, in accordance with applicable law, to pay and otherwise perform its obligations with respect to the satisfaction of the Retraction Price and the Redemption Price, including without limitation all such actions and all such things as are necessary or desirable to enable and permit HEARx Canada to

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cause to be delivered shares of HEARx Common Stock to the holders of Exchangeable Shares, upon the retraction or redemption of the Exchangeable Shares in accordance with the provisions of Article 5 or Article 6 of the Exchangeable Share Provisions, as the case may be;

(g) not exercise its vote as a shareholder of HEARx Canada to initiate, consent to or approve the voluntary liquidation, dissolution or winding-up of HEARx Canada nor take any action that is designed to, or omit to take any action that would result in, the liquidation, dissolution or winding-up of HEARx Canada; and

(h) not exercise its vote as a shareholder of HEARx Canada to authorize the continuance or other transfer of the corporate existence of HEARx Canada to any jurisdiction outside Canada.

2.2 Ownership of HEARx Acquisition Shares. HEARx hereby represents and warrants that, so long as there are any Exchangeable Shares outstanding, it shall remain the direct or indirect beneficial holder of all of the issued and outstanding shares of HEARx Acquisition.

2.3 Segregation of Funds. HEARx will cause HEARx Canada to deposit a sufficient amount of funds in a separate account and segregate a sufficient amount of such assets and other property as is necessary to enable HEARx Canada to pay or otherwise satisfy the applicable dividends, Liquidation Amount, Retraction Price or Redemption Price, in each case for the benefit of holders from time to time of the Exchangeable Shares, and will cause HEARx Canada to use such funds, assets and other property so segregated exclusively for the payment of dividends and the payment or other satisfaction of the Liquidation Amount, the Retraction Price or the Redemption Price, as applicable, in each case in accordance with the Exchangeable Share Provisions.

2.4 Reservation of Shares of HEARx Common Stock. HEARx hereby represents and warrants that it has irrevocably reserved for issuance out of its authorized and unissued capital stock such number of shares of HEARx Common Stock as is equal to the number of Exchangeable Shares outstanding immediately following the Effective Date and covenants that at all times in the future while any Exchangeable Shares are outstanding it will keep reserved and available, free from pre-emptive and other rights, out of its authorized and unissued capital stock such number of shares of HEARx Common Stock (or other shares or securities into which HEARx Common Stock may be reclassified or changed) as is necessary to enable HEARx, HEARx Acquisition and HEARx Canada to perform their respective obligations pursuant to this Agreement, the Exchangeable Share Provisions and the Voting and Exchange Trust Agreement.

2.5 Notification of Certain Events. In order to assist HEARx to comply with its obligations hereunder, HEARx Canada will give, or cause the Transfer Agent to give, HEARx and HEARx Acquisition notice of each of the following events at the time set forth below:

(a) in the event of any determination by the Board of Directors of HEARx Canada to institute voluntary liquidation, dissolution or winding up proceedings with respect to HEARx Canada or to effect any other distribution of the assets of HEARx Canada among its shareholders for the purpose of winding up its affairs at least sixty (60) days prior to the proposed effective date of such liquidation, dissolution, winding up or other distribution;

(b) immediately, upon the earlier of (i) receipt by HEARx Canada of notice of, and (ii) HEARx Canada otherwise becoming aware of, any threatened or instituted claim, suit, petition or other proceedings with respect to the involuntary liquidation, dissolution or winding up of HEARx Canada or to effect any other distribution of the assets of HEARx Canada among its shareholders for the purpose of winding up its affairs;

(c) immediately, upon receipt by the Transfer Agent of a Retraction Request;

(d) at least one hundred and thirty (130) days prior to any accelerated redemption date determined by the Board of Directors of HEARx Canada in accordance with the Exchangeable Share Provisions; and

(e) as soon as practicable upon the issuance by HEARx Canada of any Exchangeable Shares or rights to acquire Exchangeable Shares.

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2.6 Delivery of HEARx Common Stock. In furtherance of its obligations under subsections 2.1(e) and (f) hereof, upon notice of any event that requires HEARx Canada to cause to be delivered HEARx Common Stock to any holder of Exchangeable Shares, HEARx shall forthwith deliver or cause to be delivered the requisite shares of HEARx Common Stock to or to the order of the former holder of the surrendered Exchangeable Shares, as HEARx Canada shall direct. All such shares of HEARx Common Stock shall be duly issued as fully paid and non-assessable and shall be free and clear of any Liens. In consideration of the delivery of each such shares of HEARx Common Stock, HEARx Canada shall issue to HEARx, or as HEARx shall direct, such number of common shares of HEARx Canada as is equal to the fair value of such HEARx Common Stock.

2.7 Qualification of HEARx Common Stock. If any HEARx Common Stock (or other shares or securities into which HEARx Common Stock may be reclassified or changed as contemplated by section 2.12 hereof) to be issued and delivered hereunder require registration, or qualification with, approval of, or the filing of any document, including any prospectus or similar document or the taking of any proceeding with or the obtaining of any order, ruling or consent from any governmental or regulatory authority under any Canadian or United States federal, provincial or state securities or other law or regulation or pursuant to the rules and regulations of any securities or other regulatory authority or the fulfillment of any other United States or Canadian legal requirement before such shares (or such other shares or securities) may be issued by HEARx and delivered by HEARx at the direction of HEARx Canada or HEARx Acquisition, if applicable, to the holder of surrendered Exchangeable Shares or in order that such shares (or such other shares or securities) may be freely traded thereafter (other than any restrictions of general application on transfer by reason of a holder being a control person for purposes of Canadian provincial securities law or an affiliate of HEARx for purposes of United States federal or state securities law), HEARx will, in good faith, expeditiously take all such actions and do all such things as are necessary or desirable to cause such HEARx Common Stock (or such other shares or securities) to be and remain duly registered, qualified or approved under United States and/or Canadian law, as the case may be. HEARx will, in good faith, expeditiously take all such actions and do all such things as are reasonably necessary or desirable to cause all HEARx Common stock (or such other shares or securities) to be delivered hereunder to be listed, quoted or posted for trading on all stock exchanges and quotation systems on which outstanding HEARx Common Stock (or such other shares or securities) have been listed by HEARx and remain listed and are quoted or posted for trading at such time.

2.8 Tender Offers, etc. In the event that a tender offer, share exchange offer, issuer bid, take-over bid or similar transaction with respect to HEARx Common Stock (an Offer) is proposed by HEARx or is proposed to HEARx or its stockholders and is recommended by the Board of Directors of HEARx, or is otherwise effected or to be effected with the consent or approval of the Board of Directors of HEARx, HEARx will use all commercially reasonable efforts expeditiously and in good faith to take all such actions and do all such things as are necessary or desirable to enable and permit holders of Exchangeable Shares to participate in such Offer to the same extent and on an economically equivalent basis as the holders of HEARx Common Stock, without discrimination. Without limiting the generality of the foregoing, HEARx will use all commercially reasonable efforts expeditiously and in good faith to ensure that holders of Exchangeable Shares may participate in all such Offers without being required to retract Exchangeable Shares as against HEARx Canada (or, if so required, to ensure that any such retraction shall be effective only upon, and shall be conditional upon, the closing of the Offer and only to the extent necessary to tender or deposit to the Offer).

2.9 Ownership of Outstanding Shares. HEARx covenants and agrees in favour of HEARx Canada that, as long as any outstanding Exchangeable Shares are owned by any person or entity other than HEARx or any of its Affiliates, HEARx will be and remain the direct or indirect beneficial owner of all issued and outstanding shares in the capital of HEARx Canada (other than Exchangeable Shares and Class A Special Shares of HEARx Canada) and all outstanding securities of HEARx Canada carrying or otherwise entitled to voting rights in any circumstances (other than Exchangeable Shares), unless HEARx shall have obtained the prior approval of HEARx Canada and the holders of the Exchangeable Shares given in accordance with section 8.2 of the Exchangeable Share Provisions.

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2.10 HEARx Not To Vote Exchangeable Shares. HEARx covenants and agrees that it will appoint or cause to be appointed proxyholders with respect to all Exchangeable Shares held by HEARx and its Affiliates for the sole purpose of attending each meeting of holders of Exchangeable Shares in order to be counted as part of the quorum for each such meeting. HEARx further covenants and agrees that it will not, and will cause its Affiliates not to, exercise any voting rights that may be exercisable by holders of Exchangeable Shares from time to time pursuant to the Exchangeable Share Provisions or pursuant to the provisions of the CBCA with respect to any Exchangeable Shares held by it or by its Affiliates in respect of any matter considered at any meeting of holders of Exchangeable Shares, including without limitation any approval to be given by holders of Exchangeable Shares pursuant to section 8.2 of the Exchangeable Share Provision.

2.11 Purchases. For greater certainty, nothing contained in this Agreement, including without limitation, the obligations of HEARx contained in section 2.8 hereof, shall limit the ability of HEARx or HEARx Canada to make a Rule 106-18 Purchase of HEARx Common Stock pursuant to Rule 10b-18 of the U.S. Securities Exchange Act of 1934, as amended, or any successor provisions thereof.

2.12 Due Performance. On and after the Effective Date, HEARx shall, and shall cause HEARx Acquisition to duly and timely perform all of their respective obligations provided for in the Plan of Arrangement, including any obligations that may arise upon the exercise of HEARx's or HEARx Acquisition's rights under the Exchangeable Share Provisions.

2.13 Economic Equivalence. HEARx hereby acknowledges that it will be bound by any determination of economic equivalence made by the Board of Directors of HEARx Canada pursuant to section 9.1 of the Exchangeable Share Provisions, where applicable.

2.14 Stock Exchange Listing. HEARx covenants and agrees in favour of HEARx Canada that, as long as any outstanding Exchangeable Shares are owned by any person or entity other than HEARx or any of its affiliates, HEARx will use its reasonable efforts to maintain a listing for such Exchangeable Shares on a Canadian stock exchange.

ARTICLE III

HEARx SUCCESSORS

3.1 Certain Requirements in Respect of Combination, etc. HEARx shall not enter into any transaction (whether by way of reconstruction, reorganization, consolidation, merger, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, property and assets would become the property of any other person or, in the case of a merger, of the continuing corporation resulting therefrom, unless:

(a) such other person or continuing corporation is a corporation (herein called the HEARx Successor) incorporated under the laws of any state of the United States or the laws of Canada or any province thereof; and

(b) HEARx Successor, by operation of law, becomes bound by the terms and provisions of this Agreement or, if not so bound, executes, prior to or contemporaneously with the consummation of such transaction an agreement supplemental hereto and such other instruments (if any) to evidence the assumption by HEARx Successor of liability for all moneys payable and property deliverable hereunder and the covenant of such HEARx Successor to pay and deliver or cause to be delivered the same and its agreement to observe and perform all the covenants and obligations of HEARx under this Agreement.

3.2 Vesting of Powers in Successor. Whenever the conditions of section 3.1 hereof have been duly observed and performed, HEARx Successor, HEARx Acquisition and HEARx Canada shall execute and deliver a supplemental agreement and thereupon HEARx Successor shall possess and from time to time may exercise each and every right and power of HEARx under this Agreement in the name of HEARx or otherwise and any act or proceeding by any provision of this Agreement required to be done or performed by the board of directors of HEARx or any officers of HEARx may be done and performed with like force and effect by the directors or officers of such HEARx Successor.

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3.3 Wholly-Owned Subsidiaries. Subject to paragraph 3.1 hereof, nothing herein shall be construed as preventing the amalgamation or merger of any wholly-owned subsidiary of HEARx with or into HEARx.

ARTICLE IV

GENERAL

4.1 Term. This Agreement shall come into force and be effective as of the date hereof and shall terminate and be of no further force and effect at such time as there are no Exchangeable Shares (or securities or rights convertible into or exchangeable for or carrying rights to acquire Exchangeable Shares) held by any party other than HEARx and its Affiliates.

4.2 Changes in Capital of HEARx and HEARx Canada. Notwithstanding the provisions of section 4.4 hereof, at all times after the occurrence of any event effected pursuant to section 2.8 hereof as a result of which either shares of HEARx Common Stock or the Exchangeable Shares or both are in any way changed, this agreement shall forthwith be amended and modified as necessary in order that it shall apply with full force and effect, *mutatis mutandis*, to all new securities into which shares of HEARx Common Stock or the Exchangeable Shares or both are so changed and the parties hereto shall execute and deliver an agreement in writing giving effect to and evidencing such necessary amendments and modifications.

4.3 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this agreement shall not in any way be affected or impaired thereby and this agreement shall be carried out as nearly as possible in accordance with its original terms and conditions.

4.4 Amendments, Modifications, etc. This Agreement may not be amended or modified except by an agreement in writing executed by HEARx, HEARx Acquisition and HEARx Canada and approved by the holders of the Exchangeable Shares in accordance with section 10.2 of the Exchangeable Share Provisions.

4.5 Ministerial Amendments. Notwithstanding the provisions of section 4.4, the parties to this Agreement may without the approval of the holders of the Exchangeable Shares, at any time and from time to time, amend or modify this agreement in writing for the purposes of:

(a) adding to the covenants of either or both parties for the protection of the holders of the Exchangeable Shares;

(b) making such amendments or modifications not inconsistent with this agreement as may be necessary or desirable with respect to matters or questions which, in the opinion of the Board of Directors of each of HEARx Canada, HEARx Acquisition and HEARx, it may be expedient to make, provided that each such board of directors shall be of the opinion that such amendments or modifications will not be prejudicial to the interests of the holders of the Exchangeable Shares; or

(c) making such changes or corrections which, on the advice of counsel to HEARx Canada, HEARx Acquisition and HEARx, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error herein, provided that the boards of directors of each of HEARx Canada, HEARx Acquisition and HEARx shall be of the opinion that such changes or corrections will not be prejudicial to the interests of the holders of the Exchangeable Shares.

4.6 Meeting to Consider Amendments. HEARx Canada, at the request of HEARx Acquisition or HEARx, shall call a meeting or meetings of the holders of the Exchangeable Shares for the purpose of considering any proposed amendment or modification requiring approval pursuant to section 4.4 hereof. Any such meeting or meetings shall be called and held in accordance with the by-laws of HEARx Canada, the Exchangeable Share Provisions and applicable law.

4.7 Waivers Only in Writing. No waiver of any of the provisions of this Agreement otherwise permitted hereunder shall be effective unless made in writing and signed by both of the parties hereto.

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4.8 Enurement. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

4.9 HEARx Successors. HEARx shall not enter into any transaction (whether by way of reconstruction, reorganization, consolidation, merger, transfer, sale, lease or otherwise) whereby all or substantially all its undertaking, property and assets would become the property of any other person or in the case of a merger, of the continuing corporation resulting therefrom, unless:

(a) such other person or continuing corporation is a corporation (the HEARx Successor) incorporated under the laws of any state of the United States or the laws of Canada or any province thereof; and

(b) the HEARx Successor, by operation of law, becomes, without more, bound by the terms and provisions of this Agreement or, if not so bound, executes, prior to or contemporaneously with the consummation of such transaction, an agreement to be bound by the provisions hereof as if it were an original party hereto and to observe and perform all of the covenants and obligations of HEARx pursuant to this Agreement.

Nothing herein shall be construed as preventing the amalgamation or merger of any wholly-owned subsidiary of HEARx with or into HEARx.

4.10 Notices to Parties. All notices and other communications between the parties shall be in writing and shall be deemed to have been given if delivered personally or by confirmed telecopy to the parties at the following addresses (or at such other address for either such party as shall be specified in like notice):

(a) if to HEARx, HEARx Acquisition or HEARx Canada at:

1250 Northway Parkway

West Palm Beach, Florida 333407

Attention: President

Fax: 561.688.8893

Any notice or other communication given personally shall be deemed to have been given and received upon delivery thereof and if given by telecopy shall be deemed to have been given and received on the date of confirmed receipt thereof unless such day is not a Business Day in which case it shall be deemed to have been given and received upon the immediately following Business Day.

4.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

4.12 Jurisdiction. This Agreement shall be construed and enforced in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein.

4.13 Attornment. HEARx and HEARx Acquisition agree that any action or proceeding arising out of or relating to this agreement may be instituted in the courts of Quebec, waive any objection which they may have now or hereafter to the venue of any such action or proceeding, irrevocably submit to the jurisdiction of the said courts in any such action or proceeding, agree to be bound by any judgment of the said courts and not to seek, and hereby waive, any review of the merits of any such judgment by the courts of any other jurisdiction and hereby appoint HEARx Canada at its registered office as their attorney for service of process.

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IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the date first above written.

HEARx LTD.

Per: _____
Title

HEARX ACQUISITION ULC

Per: _____
Title

HEARX CANADA INC.

Per: _____
Title

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ANNEX E

STOCKHOLDERS AGREEMENT

STOCKHOLDERS AGREEMENT, dated as of July 27, 2001, among HEARx LTD., a Delaware corporation (**HEARx**), and the stockholders named in Exhibit A hereto (each a **Stockholder**).

RECITALS

A. Simultaneously herewith, HEARx is entering into an Merger Agreement, dated as of the date hereof (as amended from time to time, the **Merger Agreement**), with Helix Hearing Care of America Corp., a Canadian corporation (**Helix**), which contemplates, among other things, that all Helix's outstanding common shares (the **Helix Common Shares**) shall be exchanged for common stock, \$.10 par value of HEARx (**HEARx Common Stock**) or exchangeable shares (**Exchangeable Shares**) of a direct or indirect subsidiary of HEARx (**HEARx Canada Inc.**) on the basis described in *Schedule B* to the Merger Agreement (the **Arrangement**).

B. As of the date hereof, each Stockholder directly or indirectly owns (either beneficially or of record) the number of shares of the Helix Common Shares set forth opposite such Stockholder's name on Exhibit A hereto (all such shares set forth on Exhibit A together with any shares of Helix Common Shares as well as all shares and other securities which such Helix Common Shares may be converted into, exchanged for or otherwise changed into hereafter acquired directly or indirectly by any Stockholder prior to the termination of this Agreement, the **Shares**).

C. As a condition to the willingness of HEARx to enter into the Merger Agreement, HEARx has requested that each Stockholder agree, and in order to induce HEARx to enter into the Merger Agreement, each Stockholder has agreed, severally and not jointly, to enter into this Agreement.

Capitalized terms used but not defined herein shall have the meanings set forth in the Merger Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

VOTING AGREEMENT

Section 1.1. *Voting Agreement*

Each Stockholder hereby agrees that, at any meeting of the stockholders of Helix, however called, or in connection with any written consent of the holders of shares of the Helix Common Shares, each such Stockholder shall vote, cause to be voted and cause all acts and things to be done to vote his or her Shares (a) in favour of the approval and adoption of the Merger Agreement, the Arrangement and all the transactions contemplated by the Merger Agreement and this Agreement and any other actions required in furtherance thereof and hereof and (b) against any Acquisition Proposal and any actions in furtherance thereof.

Section 1.2. *Irrevocable Proxy*

Each Stockholder hereby irrevocably constitutes and appoints Paul A. Brown and Stephen J. Hansbrough, and each or either of them, as his or her attorney and proxy with full power of substitution, to vote and otherwise act (by written consent or otherwise) with respect to the Shares which such Stockholder is entitled to vote at any meeting of stockholders of Helix (whether annual or special and whether or not an adjourned or postponed meeting) or consent in lieu of any such meeting or otherwise, on, and only on, the matters described in Section 1.1 hereof and to execute and deliver any and all consents, instruments or other agreements or documents in order to take any and all such actions in connection with or in furtherance of the obligations of

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such Stockholder set forth in this Agreement and each of the transactions contemplated by this Agreement or the Merger Agreement. THIS PROXY AND POWER OF ATTORNEY ARE IRREVOCABLE, SUBJECT TO SECTION 4.4, AND COUPLED WITH AN INTEREST. Each Stockholder hereby revokes all other proxies and powers of attorney with respect to such Stockholder's Shares that it may have heretofore appointed or granted, and no subsequent proxy or power of attorney shall be given or written consent executed (and if given or executed, shall not be effective) by such Stockholder with respect thereto. All authority herein conferred or agreed to be conferred shall survive the death or incapacity of a Stockholder and any obligation of such Stockholder under this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of such Stockholder.

ARTICLE II

AGREEMENT TO EXCHANGE

Section 2.1 *Agreement to Exchange*

Each Stockholder hereby agrees that such Stockholder shall exchange all of the Shares then beneficially owned by such Stockholder to HEARx Canada Inc. in exchange for HEARx Common Stock or Exchangeable Shares of HEARx Canada Inc.. Each Stockholder hereby agrees to permit HEARx to publish and disclose in the Arrangement Circular and the Registration/ Proxy Statement (including all documents and schedules filed with the SEC), their respective identity and ownership of Helix Common Shares and the nature of their respective commitments, arrangements and understandings under this Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.1 *Representations and Warranties of the Stockholder*

Each Stockholder represents and warrants to HEARx as follows:

(a) Such Stockholder has all requisite power, authority and legal capacity to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by such Stockholder and, assuming its due authorization, execution and delivery by HEARx, constitutes a legal, valid and binding obligation of such Stockholder, enforceable against such Stockholder in accordance with its terms.

(b) The execution and delivery of this Agreement by such Stockholder does not, and the performance of this Agreement by such Stockholder will not, (i) conflict with or violate any statutes, laws, ordinances, rules or regulations or (ii) conflict with or violate any contract or other instrument to which the Stockholder is a party or by which such Stockholder is bound, including, without limitation, any voting agreement, stockholders agreement or voting trust.

(c) The execution and delivery of this Agreement by such Stockholder does not, and the performance of this Agreement by such Stockholder will not, require such Stockholder to obtain any consent, approval, order, authorization or permit of, or to make any filing with or notification to, any governmental entity or any other person, except as may be required by The Toronto Stock Exchange.

(d) There is no suit, action, investigation or proceeding pending or, to the knowledge of such Stockholder, threatened against such Stockholder at law or in equity before or by any governmental entity that could reasonably be expected to impair the ability of such Stockholder to perform its obligations hereunder, and there is no judgment, decree, injunction, rule, order or writ of any governmental entity to which such Stockholder is or its assets are subject that could reasonably be expected to impair the ability of such Stockholder to perform its obligations hereunder.

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(e) Each Stockholder owns beneficially and of record the shares of Helix Common Shares set forth opposite such Stockholder's name on Exhibit A hereto (with respect to such Stockholder, the Existing Shares). The Existing Shares constitute all the shares of Helix Common Shares owned beneficially and of record by such Stockholder. Such Stockholder has sole voting power, sole power of disposition, sole power to demand appraisal rights and all other stockholder rights with respect to all of its Existing Shares, with no restrictions, other than restrictions on disposition pursuant to applicable securities laws, on such Stockholder's rights of voting or disposition pertaining thereto. Such Stockholder has good and valid title to all Existing Shares, free and clear of all claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever (Liens) (other than any Liens created hereby and Liens existing pursuant to an Escrow Agreement dated July 3, 1997 between Helix, The Montreal Trust Company of Canada and certain of the Stockholders and pursuant to a Loan Agreement (and related Securities Pledge Agreements) between Helix and SCC Canada, Inc. as agent for Toronto Dominion Bank and Sirrom Capital Corporation dated August 6, 1998) and, when delivered by such Stockholder to HEARx Canada Inc. in accordance with the Arrangement, good, marketable and valid title in and to such Existing Shares will be transferred to HEARx Canada Inc. free and clear of all Liens.

Section 3.2 *Survival*

Notwithstanding anything otherwise provided for herein, each Stockholder's representations and warranties contained in this Article III shall be true and correct as of the Effective Date.

ARTICLE IV

COVENANTS OF THE STOCKHOLDER

Section 4.1 *No Shop Provision*

(a) Each Stockholder shall immediately cease any discussions or negotiations relating to an Acquisition Proposal, other than with respect to the Arrangement, with any parties conducted heretofore.

(b) Each Stockholder shall not, directly or indirectly, (i) solicit, initiate or encourage (including by way of furnishing information or assistance), or take any other action to facilitate, any inquiries, any expression of interest or the making of any proposal which constitutes an Acquisition Proposal or (ii) participate in any discussions or negotiations regarding any Acquisition Proposal.

(c) Each Stockholder shall not take any steps, directly or indirectly, that may in any way adversely affect, and will use reasonable best efforts to complete successfully, the Arrangement and all the transactions contemplated by the Merger Agreement and this Agreement.

(d) Anything in this Section 4.1 to the contrary notwithstanding, nothing in this Section 4.1 shall limit in any way a Stockholder who is a director or officer of Helix from exercising any of his rights or performing any of his duties as a director or officer of Helix, including as provided in Section 2.2 of the Merger Agreement.

Section 4.2 *Restriction on Transfer*

Until and unless this Agreement has been terminated, each Stockholder shall not, except as expressly provided for in this Agreement, (a) sell, exchange, pledge, encumber or otherwise transfer or dispose of, or agree to sell, exchange, pledge, encumber or otherwise transfer or dispose of, any of its Shares (which for avoidance of doubt shall not include any option to purchase Helix Common Shares exercisable for Shares pursuant to the terms of such option), or any interest therein, (b) deposit its Shares into a voting trust or enter into a voting agreement or arrangement with respect to such Shares or grant any proxy with respect thereto, or (c) enter into any agreement, arrangement, understanding, or undertaking to do any of the foregoing. Notwithstanding the foregoing, Luc Parent may, upon prior written notice to HEARx, sell from time to time up to an aggregate of 200,000 Shares during the period from the date hereof through the Effective Date and the Shares so sold shall no longer be subject to this Agreement.

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Section 4.3 Waiver of Dissenters Rights

Each Stockholder hereby waives, and covenants and agrees that such Stockholder will not exercise, any right of dissent provided under Section 190 of the *Canada Business Corporations Act* or the Interim Order or otherwise in connection with the Arrangement, or any other corporate transaction considered at the meetings of stockholders of Helix in connection therewith.

Section 4.4 Termination

The covenants and agreements contained herein with respect to the Shares shall terminate upon the termination of the Merger Agreement in accordance with its terms.

Section 4.5 Assist in Obtaining Approvals

Each Stockholder shall take all reasonable steps necessary to assist HEARx, HEARx Canada Inc. and Helix in obtaining all regulatory and governmental, and any other third party, consents or approvals, that may be necessary for the Arrangement and all the transactions contemplated by the Merger Agreement and by this Agreement and to cooperate in the defense of any suit, action, inquiry, investigation or other proceeding that may have an adverse effect on the ability of HEARx, HEARx Canada Inc. and Helix to complete the Arrangement.

ARTICLE V

MISCELLANEOUS

Section 5.1 Severability

If any term or other provision of this Agreement is or is deemed to be invalid, illegal or incapable of being enforced by any applicable rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner so that the terms of this Agreement remain as originally contemplated to the fullest extent possible.

Section 5.2 Entire Agreement

This Agreement constitutes the entire understanding between HEARx and each Stockholder with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, between HEARx and each Stockholder with respect to the subject matter hereof.

Section 5.3 Counterparts

This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same instrument.

Section 5.4 Assignment

This Agreement shall not be assigned by operation of law or otherwise without the prior written consent of the other parties hereto, provided that HEARx may assign its rights hereunder to any direct or indirect wholly owned subsidiary of HEARx.

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Section 5.5 *Amendments*

This Agreement may not be amended, supplemented, waived or otherwise modified or terminated, except upon the execution and delivery of a written agreement executed by the parties hereto.

Section 5.6 *Notices*

All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly received if so given) by delivery in person, facsimile transmission, registered or certified mail (postage prepaid, return receipt requested), or courier service providing proof of delivery to the respective parties at the following addresses (or to such other address for a party as shall be specified in a notice given in accordance with this Section 5.6).

(a) if to HEARx, to:

HEARx LTD.
1250 Northpoint Parkway
West Palm Beach, FL 33407
Fax No.: (561) 688-8893
Attention: President

with copies to:

Bryan Cave LLP

700 13th Street, N.W.
Washington, DC 20005
Fax No.: (202) 508-6200
Attention: LaDawn Naegle

and to

Meighen Demers LLP

Suite 1100, Box 11
Merrill Lynch Canada Tower
200 King Street West
Toronto, Canada M5H 3T4
Attention: Richard S. Sutin
Fax No.: (416) 977-5239

(b) if to the Stockholders, to

Helix Hearing Care of America Corp.
7100, Jean-Talon East
Suite 610
Montreal, QC H1M 3S3
Fax No.: (514) 353-0029
Attention: President

with copies to:

Fraser Milner Casgrain LLP

Edgar Filing: BECTON HENRY P JR - Form 4

1, Place Ville Marie
39th Floor
Montreal, QC H3B 4M7
Fax No.: (514) 878-8800
(514) 866-2241
Attention: Paul F. Dingle
Charles R. Spector

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and to:

Fasken Martineau DuMoulin LLP

The Stock Exchange Tower
P.O. Box 242, 34th Floor
800 Victoria Square
Montreal, Quebec H4Z 1E9
Fax No.: (514) 397-7600
Attention: Gilles Leclerc

Section 5.7 No Third Party Beneficiaries

This Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person or entity not a party hereto.

Section 5.8 Specific Performance

Each of the parties hereto acknowledges that a breach by it of any agreement contained in this Agreement will cause the other party to sustain damage for which it would not have an adequate remedy at law for money damages, and therefore each of the parties hereto agrees that in the event of any such breach the aggrieved party shall be entitled to the remedy of specific performance of such agreement and injunctive and other equitable relief in addition to any other remedy to which it may be entitled, at law or in equity.

Section 5.9 Remedies Cumulative

All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other right, power or remedy by such party.

Section 5.10 No Waiver

The failure of any party hereto to exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon strict compliance by any other party hereto with its obligations hereunder, and any custom or practice of the parties at variance with the terms hereof, shall not constitute a waiver by such party of its rights to exercise any such or other right, power or remedy or to demand such compliance.

Section 5.11 Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Quebec.

Section 5.12 Waiver of Jury Trial

EACH OF HEARx AND THE STOCKHOLDER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF HEARx OR THE STOCKHOLDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT THEREOF.

Section 5.13 Headings

The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

[Signatures appear on next page.]

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

HEARX LTD.:

By: /s/ PAUL A. BROWN

Name:

Title:

STOCKHOLDERS:

3319725 CANADA, INC.

By: /s/ STEVE FORGET

Name: Steve Forget

Title: President

LES PARTENAIRES DE MONTREAL S.E.C.

By: /s/ PIERRE BOURGIE

Name:

Title:

DUVAL HOLDINGS INC.

By: /s/ DUKE RODRIGUEZ

Name: Duke Rodriguez

Title: President

GESTION FREMICAN INC.

By: /s/ MICHEL LABADIE

Name: M. Labadie

Title: President

/s/ STEVE FORGET

Name: Steve Forget

/s/ MARTIN COUSINEAU

Name: Martin Cousineau

/s/ RICHARD DOUCET

Name: Richard Doucet

/s/ LUC PARENT

Name: Luc Parent

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STOCKHOLDER S AGREEMENT

Exhibit A

Name	Shares
3319725 Canada, Inc.	10,350,000
Les Partenaires de Montreal s.e.c.	4,200,000
Duval Holdings Inc.	3,200,000
Steve Forget	491,464
Martin Cousineau	223,396
Richard Doucet	433,564
Luc Parent	622,500
Gestion Fremican Inc.	2,075,000

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ANNEX F

Special Resolution for Helix Stockholders on Arrangement

FORM OF ARRANGEMENT RESOLUTION

SPECIAL RESOLUTION OF THE HELIX STOCKHOLDERS

BE IT RESOLVED THAT:

1. The arrangement under Section 192 of the *Canada Business Corporations Act* involving Helix Hearing Care of America Corp. (Helix), as more particularly described and set forth in the joint proxy statement/ prospectus accompanying the notice of this meeting (as the arrangement may be modified or amended) is hereby authorized, approved and adopted.
2. The plan of arrangement involving Helix, the full text of which is set out as Annex K to the joint proxy statement/prospectus accompanying the notice of this meeting (as the arrangement may be contemplated thereby or may have been amended) is hereby approved and adopted.
3. Notwithstanding that this resolution has been passed (and the arrangement adopted) by the stockholders of Helix or that the arrangement has been approved by the Superior Court of Justice of Québec, the directors of Helix are hereby authorized and empowered (i) to amend the merger agreement, or the arrangement to the extent permitted by the merger agreement, and (ii) not to proceed with the arrangement without further approval of the stockholders of Helix, but only if the merger agreement is terminated in accordance with Section its terms.
4. Any one officer or director of Helix is hereby authorized and directed for and on behalf of Helix to execute and to deliver articles of arrangement and such other documents as are necessary or desirable to the Director under the *Canada Business Corporations Act* in accordance with the merger agreement for filing.
5. Any one officer or director of Helix is hereby authorized and directed for and on behalf of Helix to execute or cause to be executed and to deliver or cause to be delivered, all such other documents and instruments and perform or cause to be performed all such other acts and things as in such person's opinion may be necessary or desirable to give full effect to the foregoing resolution and the matters authorized thereby, such determination to be conclusively evidenced by the expedition and delivery of such document, agreement or instrument or the doing of any such act or thing.

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ANNEX G

July 27, 2001

Board of Directors

HEARx Ltd.
1250 Northpoint Parkway
West Palm Beach, FL 33407

Members of the Board:

You have requested our opinion as to the fairness, from a financial point of view, to the shareholders of the common stock, par value \$0.10 (the Common Stock) of HEARx Ltd. (HEARx or the Company) of the consideration to be paid by HEARx to the shareholders of HELIX HEARING CARE OF AMERICA CORP. (Helix) in connection with the proposed acquisition (the Merger) of Helix by a newly formed wholly owned subsidiary of the Company (HEARx Canada Inc.) pursuant and subject to the Merger Agreement between the Company and Helix dated as of July 27, 2001 (the Agreement). As a result of the Merger, Helix will be acquired by HEARx Canada Inc. and each common share of Helix shall be exchanged for either (i) 0.3537 shares of HEARx Common Stock or (ii) 0.3537 exchangeable shares of HEARx Canada Inc. (Exchangeable Shares). The Exchangeable Shares will be exchangeable on a one-for-one basis for HEARx Common Stock. The terms and conditions of the Merger are more fully set forth in the Agreement.

In connection with the opinion set forth below, we have, among other things:

1. reviewed the financial terms and conditions of the Merger as set forth in the Agreement;
2. reviewed the audited financial statements for Helix and the Company for fiscal years 1999 and 2000;
3. reviewed the annual reports to shareholders for Helix and the Company for fiscal years 1999 and 2000;
4. reviewed financial projections for Helix on a stand-alone and consolidated basis with the Company;
5. discussed with members of the senior management of Helix and the Company certain information relating to the Merger and such other matters as we deemed relevant to our analysis;
6. reviewed certain other publicly available information on Helix and the Company; and
7. reviewed other Helix and Company financial and operating information provided by Helix and the Company.

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Board of Directors

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We have assumed and relied upon the accuracy and completeness of all information provided or otherwise made available to us by the Company, Helix or any other party and have not attempted to verify independently any of such information. We have not made or obtained an independent appraisal of the assets or liabilities (contingent or otherwise) of the Company or Helix. With respect to financial projections and other information provided to or otherwise reviewed by or discussed with us, we have assumed that such forecasts and other information and data have been reasonably prepared in good faith on bases reflecting the best currently available estimates and judgments of management, and we have relied upon each party to advise us promptly if any information previously provided became inaccurate or was required to be updated during the period of our review.

For purposes of our opinion, we have not attempted to determine a value for the Common Stock but instead we have assumed that its current price value fairly reflects its value and that the Exchangeable Shares will have the same value as the underlying HEARx Common Stock into which they are exchangeable.

Our opinion is based upon market, economic, financial and other circumstances and conditions existing and disclosed to us as of July 27, 2001, and any material change in such circumstances and conditions would require a reevaluation of this opinion, which we are under no obligation to undertake.

We express no opinion as to the underlying business decision to effect the merger, the structure or tax consequences of the Merger or the availability or advisability of any alternatives to the Merger. We did not structure the Merger or negotiate the final terms of the Merger. This letter does not express any opinion as to the likely trading range of the Company stock following the Merger, which may vary depending on numerous factors that generally impact the price of securities or on the financial performance and condition of the Company at that time. Our opinion is limited to the fairness, from a financial point of view, of the Merger to the Shareholders. We express no opinion with respect to any other reasons, legal, business, or otherwise, that may support the decision of the Board of Directors to approve the Merger.

In conducting our investigation and analyses and in arriving at our opinion expressed herein, we have taken into account such accepted financial and investment banking procedures and considerations as we have deemed relevant, including the review of (i) historical and projected revenues, operating earnings, net income and capitalization of Helix and the Company and certain other publicly held companies in businesses we believe to be comparable to Helix and the Company; (ii) the current and projected financial position and results of operations of Helix and the Company; (iii) the historical market prices and trading activity of the common stock of Helix and the Company; (iv) financial and operating information concerning selected business combinations which we deemed comparable in whole or in part; and (v) the general condition of the securities markets.

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Board of Directors

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In arriving at this opinion, Raymond James did not attribute any particular weight to any analysis or factor considered by it, but rather made qualitative judgments as to the significance and relevance of each analysis and factor. Accordingly, Raymond James believes that its analyses must be considered as a whole and that selecting portions of its analyses, without considering all analyses, would create an incomplete view of the process underlying this opinion.

Raymond James & Associates, Inc. (Raymond James) is actively engaged in the investment banking business and regularly undertakes the valuation of investment securities in connection with public offerings, private placements, business combinations and similar transactions. Raymond James will receive a fee upon the delivery of this opinion. In addition, the Company has agreed to indemnify us against certain liabilities arising out of our engagement.

In the ordinary course of our business, Raymond James may trade in the securities of Helix or the Company for our own account or for the accounts of our customers and, accordingly, may at any time hold a long or short position in such securities.

It is understood that this letter is for the information of the Board of Directors of the Company in evaluating the proposed Merger and does not constitute a recommendation to any shareholder of the Company regarding how said shareholder should vote on the proposed Merger. This opinion is not to be quoted or referred to, in whole or in part, without our prior written consent, which will not be unreasonably withheld.

Based upon and subject to the foregoing, it is our opinion that, as of July 27, 2001, the consideration to be paid by the Company to the shareholders of Helix pursuant to the Agreement is fair, from a financial point of view, to the holders of the Company's Common Stock.

Very truly yours,

RAYMOND JAMES & ASSOCIATES, INC.

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ANNEX H

July 11, 2001

PRIVATE AND CONFIDENTIAL

The Board of Directors of Helix Hearing Care of America Inc.

7100 Jean-Talon East
Montreal, Quebec
H1M 3S3

Dear Sirs:

We understand that Helix Hearing Care of America Inc. (*Helix*) has entered into a Merger Agreement (the *Agreement*) with HEARx Ltd. (*HEARx*) envisaging a combination of the businesses and operations of Helix and HEARx to be effected pursuant to a plan of arrangement (the *Plan*) under the *Canada Business Corporations Act* and involving Helix, its shareholders and HEARx (such merger is hereinafter referred to as the *Transaction*).

The Agreement provides that each shareholder of Helix (save for those who exercise the right of dissent stipulated under the *Canada Business Corporations Act* to be paid the fair market value) will exchange each of its common shares in Helix for, at its option, either 0.3537 common shares in HEARx or 0.3537 exchangeable shares of a direct or indirect subsidiary of HEARx. After the exchange, the shares of Helix, will be transferred into a newly formed wholly-owned subsidiary of HEARx.

The terms and conditions of the Agreement, including information concerning Helix and HEARx, and proforma information describing the combined entity to be formed pursuant to the Transaction will be included in the joint proxy statement (the *Proxy*) to be mailed to all the shareholders of Helix. The Board of Directors of Helix (the *Board*) will provide its recommendation to Helix's shareholders regarding the Transaction in the Proxy.

ENGAGEMENT

The Board originally contacted Ernst & Young Corporate Finance Inc. (*EYCF*) on or about April 9, 2001, with respect to the preparation of an opinion as to the fairness, from a financial point of view, of the Transaction to shareholders of Helix (the *Opinion*). EYCF was formally retained on May 7, 2001 to prepare the Opinion which is set out herein.

The Opinion has been provided for the exclusive use of the Board and is not to be published or communicated to other persons, without our prior written consent. However, we consent to a reference to our Opinion and a copy of this letter being included in the Joint Proxy Statement/ Prospectus.

EYCF CREDENTIALS AND INDEPENDENCE

Ernst & Young LLP is one of North America's largest public accounting and professional services firms, and through its affiliated company, EYCF, provides corporate finance advisory services related to mergers and acquisitions, divestitures, valuations and strategic finance. The opinion expressed herein is the opinion of EYCF and the form and content hereof have been approved by a committee of senior practitioners of EYCF, who have not been involved in the development of the Opinion and each of whom is experienced in merger, acquisition, divestiture and valuation matters.

Except for the services rendered under the terms of this engagement, EYCF has not provided financial advisory services or like services to Helix or any parties related thereto in the last two years. There are no understanding or agreements between EYCF and Helix or with persons with whom said corporation has ties, with respect to future business dealings. In the future, EYCF could, in the course of its normal activities, provide professional services to Helix or to persons with whom it has ties. Moreover, in the ordinary course of business, employees or partners of EYCF or Ernst & Young LLP could, at any time, hold securities of Helix or HEARx.

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Under the terms of the engagement letter, the remuneration of EYCF does not depend, in whole or in part, on the conclusions of the Opinion nor on the success of the Transaction.

We also confirm that to the best of our knowledge, EYCF is independent of Helix for purposes of providing the Opinion.

SCOPE OF REVIEW

In the course of preparing this Opinion, EYCF reviewed, considered, analyzed and relied upon the following documents:

- a) The draft Agreement dated as of July 9, 2001 and schedules thereto;
- b) The draft Support Agreement dated as of July 6, 2001 and the draft Voting and Exchange Trust Agreement made as of May 15, 2001;
- c) The draft stockholders agreement dated as of July 9, 2001;
- d) The initial letter of intent dated March 5, 2001 and the revised letter of intent dated May 22, 2001;
- e) A draft financing commitment letter dated May 3, 2001 from Siemens Hearing Instruments Inc. and addressed to Helix and HEARx;
- f) The press release dated May 23, 2001 announcing the Transaction;
- g) The press release dated June 25, 2001 announcing the proposed financing from Siemens Hearing Instruments Inc.;
- h) The annual reports, including the audited financial statements, annual information forms for Helix for the four-year period ended in 2000 and similar documents for the five consecutive fiscal years ended December 31, 2000 of HEARx;
- i) The interim reports for the first quarter of fiscal 2001 for Helix and HEARx;
- j) The fiscal 2001 budgets prepared by the management of Helix and HEARx;
- k) An information memorandum on Helix prepared by Montreal Partners (Spring 2000);
- l) The forecasts prepared by the management of Helix and HEARx for the five-year period ending in 2006 on the basis that the Transaction does not take place;
- m) Other financial information, operating information and future plans relating to the expected performance of Helix and HEARx and their respective major business units and investments;
- n) Certain confidential information, documents and discussions with the management of Helix and HEARx regarding, among other things, their respective assets, liabilities, operations, investments and business prospects;
- o) The description of the combined entity;
- p) The forecasts for the combined entity prepared by the management of Helix and HEARx for the five-year period ending in 2006;
- q) Material contracts or agreements for both Helix and HEARx;
- r) Tax information prepared by Helix's advisors regarding the tax implications of the Transaction;
- s) Public information relating to the business, operations, financial performance and stock trading history of Helix, HEARx and other selected public companies that we considered relevant for purposes hereof;

- t) Press releases of both Helix and HEARx for the past two years;

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- u) Data with respect to other transactions of a comparable nature that we considered relevant for purposes hereof;
- v) Analysts' reports for the industry;
- w) Such other information, investigations and analyses as we considered appropriate in the circumstances.

Moreover, we have discussed with the management of Helix and HEARx, among others, the Transaction and the expected combination benefits, cost reductions and incremental revenue opportunities and market position enhancements that are expected to result from the Transaction. We also held discussions with the management of Helix and HEARx regarding the results of their financial, business and legal due diligence reviews.

EYCF was granted full access to Helix's senior management and was not denied access by Helix and HEARx to any requested information, and to the best of its knowledge, was not denied access to any information which might be material to the Opinion.

RESTRICTIONS AND ASSUMPTIONS

We understand that the Board will use the Opinion to advise its shareholders as to the fairness of the Transaction. The Opinion may not be used for any other purposes. We cannot be held liable for any losses sustained by Helix, its shareholders or any other person should the Opinion be circulated, distributed, published, reproduced or used contrary to the provisions of this paragraph. Our opinion is not, and should not be construed as, a valuation of Helix or HEARx or any of their respective assets. Moreover, our opinion does not constitute advice or recommendation to vote for or against the Transaction.

We have relied upon, and have assumed the completeness, accuracy and fair presentation of all financial and other information, data, advice, opinions and representations obtained by us from public sources or provided to us by Helix or HEARx's management or advisors or otherwise pursuant to our engagement. The Opinion is conditional upon such completeness, accuracy and fair presentation. Subject to the exercise of professional judgment and except as expressly described herein, we have not attempted to verify independently the accuracy or completeness of any such information, data, advice, opinions or representations.

The senior management of Helix have represented to us, in a letter delivered as at the date hereof, amongst other things, that the information, data, advice, opinions, representations and other materials (the "Information") provided to us by or on behalf of Helix are complete and accurate at the date the Information was provided to us and that since the date of the Information (i) there has been no material change, financial or otherwise, in Helix, or its assets, liabilities (contingent or otherwise), business or operations, and (ii) there has been no change of any material fact which is of a nature as to render the Information untrue or misleading in any material respect. In addition, the management of Helix have represented to us that they have no reason to believe there are any inaccuracies in information they have provided to us with respect to the business, operations and financial position of HEARx. No similar letter of representation has been provided to us by HEARx.

The Opinion is rendered on the basis of securities markets, economic and general business and financial conditions prevailing as at the date hereof and the condition and prospects, financial and otherwise, of Helix and HEARx as they were reflected in the information or the materials concerning Helix and HEARx reviewed by us and as they were represented to us in our discussions with the management of both Helix and HEARx. In our analyses and in connection with the preparation of the Opinion, we made numerous assumptions with respect to industry performance, general business, market and economic conditions and other matters, many of which are beyond the control of any party involved in the Transaction. While EYCF believes that assumptions used are appropriate in the circumstances, some or all of the assumptions may prove to be incorrect.

We have assumed that no documents in draft form reviewed by us will be finalized with substantial changes.

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We believe that our analysis must be considered as a whole and that selecting portions of our analysis or the factors considered by us, without considering all factors and analyses together, could create a misleading view of the process underlying the Opinion. The preparation of the Opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. Any attempt to do so could lead to undue emphasis on particular factors or elements of the analysis.

We reserve the right (with no obligation on our part) to review our Opinion as described in this report and, should we deem it necessary, to revise it in light of any information that existed as of the date of this report which might become known to us at a later date.

APPROACH

In considering the fairness of the Transaction, from a financial point of view, to the shareholders of Helix, EYCF performed a variety of financial and comparative analyses, including:

1. Comparing the historic and current market prices and volume for the shares of both Helix and HEARx. From this analysis we, among other things, took the following factors into account:
 - a. Activity on Helix's shares is very low (average monthly volume approximates less than 1% of outstanding shares). Therefore, if a large block of shares was sold on the market it could have a depressing effect on the quoted market price;
 - b. Based on HEARx's historical trading volume, the shareholders should have a more liquid market available to them to dispose of their shares after the Transaction;
2. Comparing the proposed exchange ratio to the relative value of Helix and HEARx implied by our analysis of value for both corporations as stand-alone entities. For this analysis, we have used the following methods and criteria: discounted cash flow, multiple of revenue, capitalization of operating earnings (before corporate expenses) and net tangible assets;
 - a. The application of the discounted cash flow method requires that estimation be made regarding the future cash flows of each corporation as stand-alone entities. Management of each corporation prepared these future cash flows. We analysed and discussed with management of each corporation these projections and their underlying assumptions. The discounted cash flow approach also required that assumptions be made regarding the discount rate and terminal value. In determining the appropriate discount rates and terminal value, we took into account the risk related to achieving the financial forecasts, the general conditions in the industry, the general economic conditions and rates of return available on other type of investments as well as the growth potential at the end of the projections' period;
 - b. For the analysis based on a multiple of revenue and the capitalization of operating earnings (before corporate expenses), we reviewed the current and projected results for the next fiscal year and considered, among other things, trading multiples of comparable public companies, implied multiples from comparable transactions, general economic conditions and rates of return available on other types of investments;
 - c. Finally, for all analyses, we performed sensitivity analysis on certain key assumptions;
3. Comparing the value of Helix as a stand-alone entity before the Transaction with the value of the new combined entity belonging to Helix's shareholders after the Transaction:
 - a. The value of the new combined entity belonging to Helix's shareholders after the Transaction was derived from applying the proposed percentage ownership for Helix's shareholders to the value of the new combined entity. The value was based on the result of the application of the discounted cash flow method. Management of both corporations prepared together the future cash flows used in our discounted cash flow analysis. We analysed and discussed with management of each corporation these projections and their underlying assumptions. In determining the appropriate

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discount rates and terminal value, we took into account the factors mentioned previously in the context of the combined entity;

- b. The value of Helix was based on the result of the application of the discounted cash flow method as well as Helix's recent equity financings and prices that potential purchasers could be willing to pay for Helix. The discounted cash flow analysis was performed based on the financial forecasts prepared by management for Helix on a stand-alone basis;

- 4. Considering any other factors or analyses which we judged, based upon our experience, to be relevant in the circumstances.

In arriving at our Opinion, we have not attributed any particular weight to any specific analysis or factor considered by us, but rather have made a qualitative judgment based upon our experience in rendering such opinions and on the circumstances of the Transaction as well as the information, taken as a whole, concerning Helix, HEARx and the possible combined entity that was reviewed by us.

OPINION

Based on the proposed exchange ratio and on the current quoted market prices for the Helix Shares and the HEARX Shares, the Transaction results in an erosion of value for the holders of Helix's Shares. Accordingly, for holders of Helix shares who want to dispose of a small block of their shares, the Transaction may not be fair, from a financial point of view, if the market value of the HEARX shares, following the consummation of the Transaction, does not recover.

Subject to the previous comments, it is our opinion that, as of the date hereof, the transaction is fair, from a financial point of view, to the shareholders of Helix. We base our opinion that the Transaction is fair, from a financial point of view, on a variety of factors, including, amongst others, our assessment of the inherent value of Helix, HEARX and of the new combined entity as well as their respective profitability and prospects for growth.

Yours very truly,

ERNST & YOUNG CORPORATE FINANCE INC.

Denis Labrèche, CA, CBV

Nathalie Ladouceur, CA, CBV

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ANNEX I

February 1, 2002

Board of Directors

Helix Hearing Care of America Corp.
7100 Jean-Talon East, Suite 610
Montreal, QC
H1M 3S3

Members of the Board of Directors:

It is our understanding that HEARx LTD. (HEARx or the Acquiror) and Helix Hearing Care of America Corp. (Helix or the Company) have agreed to combine businesses through an arrangement (the Arrangement) under Canadian law (the Merger). When the arrangement is completed, Helix will become an indirect subsidiary of HEARx. Helix stockholders, other than stockholders who exercise and perfect their dissent rights will, subject to certain conditions, have the option to receive as consideration for each share of Helix common stock (the Company Shares) (a) 0.3537 shares of HEARx common stock (the Acquiror Shares), or (b) 0.3537 exchangeable shares of HEARx Canada Inc. (Exchangeable Shares) (the Exchange Ratio), a newly formed Canadian subsidiary of HEARx. Helix stockholders who are not Canadian residents for Canadian tax purposes will not be entitled to receive Exchangeable Shares. Each Exchangeable Share may be exchanged by the holder for one share of HEARx common stock. The Exchangeable Shares will be subject to mandatory exchange on and after the fifth anniversary of the effective date of the Arrangement, subject to earlier mandatory exchange in certain circumstances.

You have asked us whether, in our opinion, the Exchange Ratio is fair from a financial point of view to the holders of the Company Shares.

In arriving at the opinion set forth below, we have, among other things:

- (1) Reviewed certain publicly available business and financial information relating to the Company and the Acquiror that we deemed to be relevant;
- (2) Reviewed certain information, including financial forecasts, relating to the business, earnings, cash flow, assets, liabilities and prospects of the Company and the Acquiror, furnished to us by the Company and the Acquiror, respectively;
- (3) Conducted discussions with members of senior management and representatives of the Company and the Acquiror concerning the matters described in clauses 1 and 2 above, as well as their respective business and prospects before and after giving effect to the Merger;
- (4) Reviewed the trading volumes, market prices and valuation multiples for the Company Shares and the Acquiror Shares and compared them with those of certain publicly traded companies that we deemed to be relevant;
- (5) Compared the proposed financial terms of the Merger with the financial terms of certain other transactions that we deemed to be relevant;
- (6) Reviewed the potential pro forma impact of the Merger;
- (7) Reviewed the Amended and Restated Merger Agreement (the Agreement) dated November 6, 2001; and
- (8) Reviewed the HEARx Amendment No. 1 to the Form S-4 Registration Statement.

In preparing our opinion, we have assumed and relied on the accuracy and completeness of all information supplied or otherwise made available to us, discussed with or reviewed by or for us, or publicly available, and we have not assumed any responsibility for independently verifying such information or undertaken independent evaluation or appraisal of any of the assets or liabilities of the Company or the Acquiror. In addition, we have not assumed any obligation to conduct, nor have we conducted, any physical

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inspection of the properties or facilities of the Company or the Acquiror. With respect to the financial forecast information furnished to or discussed with us by the Company or the Acquiror, we have assumed that they have been reasonably prepared and reflect the best currently available estimates and judgement of the Company or the Acquiror's management as to the expected future financial performance of the Company or the Acquiror, as the case may be. We have also assumed that the final form of the Agreement will be substantially similar to the last draft reviewed by us.

Our opinion is necessarily based upon market, economic and other conditions as they exist and can be evaluated on, and on the information made available to us as of, the date hereof. We have assumed that in the course of obtaining the necessary regulatory or other consents or approvals (contractual or otherwise) for the Merger, no restrictions including any divestiture requirements or amendments or modifications, will be imposed that will have a material adverse effect on the contemplated benefits of the Merger. In the event that there is any material change in any fact or matter affecting the opinion after the date hereof, we reserve the right to change, modify or withdraw the opinion.

In connection with the preparation of this opinion, we have not been authorized by the Company or the Board of Directors to solicit, nor have we solicited, third-party indications of interest for the acquisition of all or any part of the Company.

The Company has agreed to indemnify us for certain liabilities arising out of our engagement. In the ordinary course of our business, we may actively trade the Company Shares, as well as the Acquiror Shares for our own account and for the accounts of customers and, accordingly, may at any time hold a long or short position in such securities.

In arriving at this opinion, we did not attribute any particular weight to any analysis or factor considered by it, but rather, we made qualitative judgements as to the significance and relevance of each analysis and factor. Accordingly, we believe that its analyses must be considered as a whole and that selecting portions of its analyses, without considering all analyses, would create an incomplete view of the process underlying this opinion.

This opinion is for the use and benefit of the Board of Directors of the Company. Our opinion does not address the merits of the underlying decision by the Company to engage in the Merger and does not constitute a recommendation to any shareholder as to how such shareholder should vote on the proposed Merger.

We are not expressing any opinion herein as to the prices at which the Acquiror Shares or the Exchangeable Shares will trade following the consummation of the Merger.

On the basis of and subject to the foregoing, we are of the opinion that, as of the date hereof, the Exchange Ratio is fair from a financial point of view to the holders of the Company Shares.

Very truly yours,

YORKTON SECURITIES INC.

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ANNEX J

Canada Business Corporation Act § 190 Dissenters Rights

SECTION 190 OF THE CANADA BUSINESS CORPORATION ACT (CBCA)

Please note that the right provided in the interim order to Helix stockholders to dissent from the arrangement resolution differs from the dissent right set out in Section 190 of the Canada Business Corporations Act in one respect. In order for a Helix stockholder to exercise its dissent right, the Helix stockholder must provide a notice of dissent to the Corporation prior to 5:00 p.m. on the business day preceding the meeting. This differs from the CBCA dissent right set out below, which requires that a shareholder wishing to exercise the dissent right in respect of a proposed resolution must provide a notice of dissent at or before the meeting at which the resolution is to be voted on.

Canada Business Corporations Act

R.S.C. 1985, c. C-44 as amended

Part XV Fundamental Changes

190.

(1) Right to dissent Subject to sections 191 and 241, a holder of shares of any class of a corporation may dissent if the corporation is subject to an order under paragraph 192(4)(d) that affects the holder or if the corporation resolves to :

a) amend its articles under section 173 or 174 to add, change or remove any provisions restricting or constraining the issue, transfer or ownership of shares of that class;

b) amend its articles under section 173 to add, change or remove any restriction on the business or businesses that the corporation may carry on;

c) amalgamate otherwise than under section 184;

d) be continued under section 188; or

e) sell, lease or exchange all or substantially all its property under subsection 189(3).

(2) Further right A holder of shares of any class or series of shares entitled to vote under section 176 may dissent if the corporation resolves to amend its articles in a manner described in that section.

(3) Payment for shares In addition to any other right he may have, but subject to subsection (26), a shareholder who complies with this section is entitled, when the action approved by the resolution from which he dissents or an order made under subsection 192(4) becomes effective, to be paid by the corporation the fair value of the shares held by him in respect of which he dissents, determined as of the close of business on the day before the resolution was adopted or the order was made.

(4) No partial dissent A dissenting shareholder may only claim under this section with respect to all the shares of a class held by him on behalf of any one beneficial owner and registered in the name of the dissenting shareholder.

(5) Objection A dissenting shareholder shall send to the corporation, at or before any meeting of shareholders at which a resolution referred to in subsection (1) or (2) is to be voted on, a written objection to the resolution, unless the corporation did not give notice to the shareholder of the purpose of the meeting and of his right to dissent.

(6) Notice of resolution The corporation shall, within ten days after the shareholders adopt the resolution, send to each shareholder who has filed the objection referred to in subsection (5) notice that the resolution has been adopted, but such notice is not required to be sent to any shareholder who voted for the resolution or who has withdrawn his objection.

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(7) Demand for payment A dissenting shareholder shall, within twenty days after he receives a notice under subsection (6) or, if he does not receive such notice, within twenty days after he learns that the resolution has been adopted, send to the corporation a written notice containing

a) his name and address;

b) the number and class of shares in respect of which he dissents; and

c) a demand for payment of the fair value of such shares.

(8) Share certificate A dissenting shareholder shall, within thirty days after sending a notice under subsection (7), send the certificates representing the shares in respect of which he dissents to the corporation or its transfer agent.

(9) Forfeiture A dissenting shareholder who fails to comply with subsection (8) has no right to make a claim under this section.

(10) Endorsing certificate A corporation or its transfer agent shall endorse on any share certificate received under subsection (8) a notice that the holder is a dissenting shareholder under this section and shall forthwith return the share certificates to the dissenting shareholder.

(11) Suspension of rights On sending a notice under subsection (7), a dissenting shareholder ceases to have any rights as a shareholder other than the right to be paid the fair value of his shares as determined under this section except where

a) the dissenting shareholder withdraws his notice before the corporation makes an offer under subsection (12),

b) the corporation fails to make an offer in accordance with subsection (12) and the dissenting shareholder withdraws his notice, or

c) the directors revoke a resolution to amend the articles under subsection 173(2) or 174(5), terminate an amalgamation agreement under subsection 183(6) or an application for continuance under subsection 188(6), or abandon a sale, lease or exchange under subsection 189(9),

in which case his rights as a shareholder are reinstated as of the date he sent the notice referred to in subsection (7).

(12) Offer to pay A corporation shall, not later than seven days after the later of the day on which the action approved by the resolution is effective or the day the corporation received the notice referred to in subsection (7), send to each dissenting shareholder who has sent such notice

a) a written offer to pay for his shares in an amount considered by the directors of the corporation to be the fair value thereof, accompanied by a statement showing how the fair value was determined; or

b) if subsection (26) applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.

(13) Same terms Every offer made under subsection (12) for shares of the same class or series shall be on the same terms.

(14) Payment Subject to subsection (26), a corporation shall pay for the shares of a dissenting shareholder within ten days after an offer made under subsection (12) has been accepted, but any such offer lapses if the corporation does not receive an acceptance thereof within thirty days after the offer has been made.

(15) Corporation may apply to court Where a corporation fails to make an offer under subsection (12), or if a dissenting shareholder fails to accept an offer, the corporation may, within fifty days after the action approved by the resolution is effective or within such further period as a court may allow, apply to a court to fix a fair value for the shares of any dissenting shareholder.

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(16) Shareholder application to court If a corporation fails to apply to a court under subsection (15), a dissenting shareholder may apply to a court for the same purpose within a further period of twenty days or within such further period as a court may allow.

(17) Venue An application under subsection (15) or (16) shall be made to a court having jurisdiction in the place where the corporation has its registered office or in the province where the dissenting shareholder resides if the corporation carries on business in that province.

(18) No security for costs A dissenting shareholder is not required to give security for costs in an application made under subsection (15) or (16).

(19) Parties On an application to a court under subsection (15) or (16),

a) all dissenting shareholders whose shares have not been purchased by the corporation shall be joined as parties and are bound by the decision of the court; and

b) the corporation shall notify each affected dissenting shareholder of the date, place and consequences of the application and of his right to appear and be heard in person or by counsel.

(20) Powers of court On an application to a court under subsection (15) or (16), the court may determine whether any other person is a dissenting shareholder who should be joined as a party, and the court shall then fix a fair value for the shares of all dissenting shareholders.

(21) Appraisers A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the shares of the dissenting shareholders.

(22) Final order The final order of a court shall be rendered against the corporation in favour of each dissenting shareholder and for the amount of his shares as fixed by the court.

(23) Interest A court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective until the date of payment.

(24) Notice that subsection (26) applies If subsection (26) applies, the corporation shall, within ten days after the pronouncement of an order under subsection (22), notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

(25) Effect where subsection (26) applies If subsection (26) applies, a dissenting shareholder, by written notice delivered to the corporation within thirty days after receiving a notice under subsection (24), may

a) withdraw his notice of dissent, in which case the corporation is deemed to consent to the withdrawal and the shareholder is reinstated to his full rights as a shareholder; or

b) retain a status as a claimant against the corporation, to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to its shareholders.

(26) Limitation A corporation shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that

a) the corporation is or would after the payment be unable to pay its liabilities as they become due; or

b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

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ANNEX K

PLAN OF ARRANGEMENT INCLUDING EXCHANGEABLE SHARE PROVISIONS

PLAN OF ARRANGEMENT

**UNDER SECTION 192
OF THE CANADA BUSINESS CORPORATIONS ACT**

1. INTERPRETATION

1.1 Definitions

In this Plan of Arrangement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

Affiliate of any Person means any other Person directly or indirectly controlling, controlled by, or under common control of, that Person. For the purposes of this definition, control (including, with correlative meanings, the terms controlled by and under common control of), as applied to any Person, means the possession by another Person, directly or indirectly, of the power to direct or cause the direction of the management and policies of that first mentioned Person, whether through the ownership of voting securities, by contract or otherwise.

Arrangement means the arrangement under section 192 of the CBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with Section 6.1 hereof, the Merger Agreement or at the direction of the Court.

Arrangement Resolution means the special resolution of the holders of Helix Shares approving the Arrangement.

Articles of Arrangement means the articles of arrangement of Helix in respect of the Arrangement required by the CBCA to be sent to the Director after the Final Order is made.

Business Day means any day other than a Saturday, a Sunday or a day when banks are not open for business in either New York, New York or Montreal, Québec.

Call Rights means collectively the Liquidation Call Right, the Redemption Call Right and the Retraction Call Right.

CBCA means the *Canada Business Corporations Act*, as amended from time to time.

Certificate means the certificate of arrangement giving effect to the Arrangement, issued pursuant to subsection 192(7) of the CBCA after the Articles of Arrangement have been filed.

Circular means the notice of the Helix Meeting and accompanying management proxy circular sent to holders of Helix Shares in connection with the Helix Meeting.

Court means the Superior Court of the Province of Quebec, district of Montreal.

Current Market Price means, in respect of a share of HEARx Common Stock on any date, the closing sale price of a share of HEARx Common Stock on such date (or, if no trades of any HEARx Common Stock occurred on such date, on the last trading day prior thereto on which such trades occurred) reported on The American Stock Exchange or, if shares of HEARx Common Stock are not then quoted on The American Stock Exchange, on such other stock exchange or automated quotation system on which shares of HEARx Common Stock are listed or quoted, as the case may be, as may be selected by the Board of Directors for such purpose; provided, however, that if in the opinion of the Board of Directors the public distribution or trading activity of HEARx Common Stock during such period does not create a market that reflects

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the fair market value of HEARx Common Stock, then the Current Market Price of a share of HEARx Common Stock shall be determined by the Board of Directors based upon the advice of such qualified independent financial advisors as the Board of Directors may deem to be appropriate, and provided further that any such selection, opinion or determination by the Board of Directors shall be conclusive and binding.

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Depository means Computershare Trust Company of Canada at its offices set out in the Letter of Transmittal and Election Form.

Director means the Director appointed under section 260 of the CBCA.

Dissent Procedures has the meaning set out in section 3.1.

Dissent Rights has the meaning set out in section 3.1.

Dissenting Shareholder means a holder of Helix Shares who dissents in respect of the Arrangement in strict compliance with the Dissent Procedures.

Dividend Amount has the meaning set out in section 5.1(a).

Effective Date means the date shown on the Certificate.

Effective Time means 12:01 a.m. (Montreal time) on the Effective Date.

Election has the meaning set out in section 2.3(a).

Election Deadline means 5:00 p.m. (local time) at the place of deposit on the date which is two Business Days prior to the date of the Helix Meeting.

Exchange Ratio is equal to 0.3537 shares of HEARx Common Stock or Exchangeable Shares for each Helix Share.

Exchangeable Shares means the non-voting exchangeable shares of HCI having the rights privileges, restrictions and conditions set forth in Annex A.

Exchangeable Share Rights Agreement means the rights agreement, as amended from time to time, between HCI and the Depository.

Exchangeable Share Purchase Rights means the exchangeable share purchase rights issued pursuant to the Exchangeable Share Rights Agreement.

Exchangeable Shares Consideration is the number of Exchangeable Shares at the Exchange Ratio to which a holder of Helix Shares electing to receive Exchangeable Shares is entitled, together with a corresponding number of Exchangeable Share Purchase Rights.

Exchangeable Share Provisions means the rights, privileges, restrictions and conditions attaching to the Exchangeable Shares substantially as set forth in Annex A.

Final Order means the final order of the Court approving the Arrangement as same may be amended from time to time.

HCI means HEARx Canada Inc., a corporation incorporated under the CBCA, and any successor corporation.

HEARx means HEARx Ltd., a corporation organized and existing under the laws of the State of Delaware, and any successor corporation.

HEARx Acquisition means HEARx Acquisition ULC, an unlimited company organized under the laws of the Province of Nova Scotia.

HEARx Common Stock means the common stock of HEARx, with a par value of U.S.\$0.10 per share and having one vote per share, and any other securities into which such shares may be changed.

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HEARx Elected Share means any Helix Share and associated rights that the holder shall have elected, in a duly completed Letter of Transmittal and Election Form deposited with the Depositary no later than the Election Deadline, to transfer to HEARx Acquisition under the Arrangement for that fraction of HEARx Common Stock equal to the Exchange Ratio.

HEARx Purchase Rights means the preferred stock purchase rights issued pursuant to the HEARx Rights Agreement.

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HEARx Rights Agreement means the Rights Agreement as amended, supplemented and/or restated from time to time, between HEARx and the Bank of New York.

HEARx Stock Consideration is the number of shares of HEARx Common Stock at the Exchange Ratio to which a holder of Helix Shares electing to receive HEARx Common Stock is entitled, together with a corresponding number of HEARx Purchase Rights.

HEARx Parties means HEARx, HEARx Acquisition and HCI, collectively.

HEARx Special Shares means the one share of the Special Voting Preferred Stock of HEARx with a par value of U.S.\$1.00 and having voting rights at meetings of holders of shares of HEARx Common Stock equal to the number of Exchangeable Shares outstanding from time to time, (other than Exchangeable Shares held by HEARx or its Affiliates) to be issued to, and voted by the Trustee pursuant to the Voting and Exchange Trust Agreement.

Helix means Helix Hearing Care of America Corp., a corporation existing under the laws of Canada.

Helix Convertible Securities has the meaning ascribed thereto in the Merger Agreement.

Helix Meeting means the special meeting of the holders of Helix Shares (including any adjournment thereof) convened as provided by the Interim Order to consider, and if deemed advisable, approve the Arrangement.

Helix Option means an option to purchase Helix Shares granted under the Helix Stock Option Plans, and being outstanding and unexercised on the Effective Date.

Helix Shares means the outstanding common shares in the capital of Helix.

Helix Stock Option Plans means the Helix Employee Stock Option Plan and the Restated Helix Employee Stock Option Plan, as amended.

Interim Order means the interim order of the Court made in connection with the process for obtaining shareholder approval of the Arrangement and related matters, as the same may be amended by the Court from time to time.

IT means the *Income Tax Act* (Canada) and the Regulations thereto, as the same may be amended from time to time.

Letter of Transmittal and Election Form means the letter of transmittal and election form for use by holders of Helix Shares, in the form accompanying the Circular.

Liquidation Amount has the meaning ascribed thereto in the Exchangeable Share Provisions.

Liquidation Call Purchase Price has the meaning ascribed thereto in section 5.1(a).

Liquidation Call Right has the meaning ascribed thereto in section 5.1(a).

Liquidation Date has the meaning ascribed thereto in the Exchangeable Share Provisions.

Merger Agreement means the Amended and Restated Merger Agreement made as of November 6, 2001, among HEARx and Helix, as may be further amended, supplemented and/or restated in accordance therewith prior to the Effective Date, providing for, among other things, the Arrangement.

Original Execution Date means July 27, 2001.

Plan of Arrangement means this Plan of Arrangement including the attachments and exhibits hereto and any agreement or instrument supplementary or ancillary hereto and any amendments or variations hereto made in accordance with section 6.1 hereof or at the direction of the

Court.

Person includes any individual, firm, partnership, joint venture, venture capital fund, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, unincorporated association or organization, government body, syndicate or other entity, whether or not having legal status.

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Redemption Call Purchase Price has the meaning set out in section 5.2(a).

Redemption Call Right has the meaning set out in section 5.2(a).

Redemption Date has the meaning set out in the Exchangeable Share Provisions.

Retraction Call Right has the meaning set out in Exchangeable Share Provisions.

Support Agreement means the Support Agreement made among HCI, HEARx Acquisition and HEARx substantially in the form of Schedule M to the Merger Agreement.

Transfer Agent has the meaning set out in section 5.1(b).

Trustee means Computershare Trust Company of Canada, a corporation organized and existing under the laws of Canada and any successor trustee appointed under the Voting and Exchange Trust Agreement.

Voting and Exchange Trust Agreement means the Voting and Exchange Trust Agreement made among HCI, HEARx Acquisition, HEARx and the Trustee, substantially in the form and content of Schedule L to the Merger Agreement.

1.2 Sections and Headings

The division of this Plan of Arrangement into sections and the insertion of headings are for reference purposes only and shall not affect the interpretation of this Plan of Arrangement. Unless otherwise indicated, any reference in this Plan of Arrangement to a section or an exhibit refers to the specified section of or exhibit to this Plan of Arrangement.

1.3 Currency

Except as expressly set forth otherwise, all sums of money referred to herein are expressed in lawful money of the United States of America.

1.4 Number, Gender and Persons

In this Plan of Arrangement, unless the context otherwise requires, words importing the singular number include the plural and *vice versa* and words importing any gender include all genders.

2. ARRANGEMENT

2.1 Binding Effect

This Plan of Arrangement will become effective at the Effective Time and will thereafter be binding on (i) Helix, (ii) HEARx, (iii) HEARx Acquisition, (iv) HCI, (v) all holders of Helix Shares, (vi) all holders of Exchangeable Shares, and (vii) all holders of rights to purchase or of securities exchangeable for or convertible into Helix Shares, including all holders of Helix Options.

2.2 Exchange of Securities

Commencing at the Effective Time on the Effective Date, the following shall occur and be deemed to occur in the following order and without any further act or formality:

- (a) Each holder of the Helix Shares, other than Dissenting Shareholders who have exercised their right of dissent in accordance with the Interim Order and are ultimately entitled to be paid the fair value of their Helix Shares and other than HEARx, will exchange all of the holder's Helix Shares in consideration for, at the election of the holders of the Helix Shares and subject to section (b) below:

- (i) the HEARx Stock Consideration; or
- (ii) the Exchangeable Shares Consideration.

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Notwithstanding the election made by a holder of Helix Shares, HEARx may, at its discretion, require that certain holders of Helix Shares receive the HEARx Stock Consideration or the Exchangeable Shares Consideration.

- (b) A holder of Helix Shares shall make the election in section (a) above by mailing to the Depositary, prior to the Election Deadline, a duly completed Letter of Transmittal and Election Form in the form provided by Helix. Notwithstanding any provision contained in this Plan of Arrangement to the contrary, holders of Helix Shares who are not resident in Canada for the purposes of the ITA shall not be entitled to elect to receive Exchangeable Shares and any such election shall be deemed to be an election to receive the HEARx Stock Consideration.
- (c) Upon the transfer of shares referred to in section (a) above: (A) each holder of Helix Shares shall cease to be such a holder, shall have its name removed from the register of holders of Helix Shares and shall be entitled to become a holder of the number of fully paid Exchangeable Shares and/or shares of HEARx Common Stock to which it is entitled as a result of the transfer of shares referred to in section (a) and such holder's name shall be added to the register of holders of such securities accordingly; and (B) HCI shall become the legal and beneficial owner of all of the Helix Shares so transferred.
- (d) Holders of Helix Shares who are residents of Canada for the purposes of the ITA and who have elected to receive Exchangeable Shares under section (a)(ii) above shall be entitled to make an income tax election pursuant to Section 85 of the ITA (and, if applicable, analogous provisions of provincial income tax legislation) with respect to the transfer of their Helix Shares to HCI referred to in section (a) by providing three signed copies of the necessary tax election forms to HCI within 90 days following the Effective Date, duly completed with the details of the number of shares transferred and the applicable agreed amounts for the purposes of such tax elections. Thereafter, subject to the tax election forms complying with the provisions of the ITA (and, if applicable, analogous provisions of provincial income tax legislation), the forms will be signed by HCI and two signed copies will be returned to such holders of Helix Shares for filing with the Canada Customs and Revenue Agency and the applicable provincial tax authorities.
- (e) Prior to the Effective Time, HEARx shall cause HCI to authorize and issue the Exchangeable Shares pursuant to the agreements and instruments described below, with such changes as HEARx and Helix may deem appropriate, provided that such changes do not materially alter the economic equivalency of an Exchangeable Share and a share of HEARx Common Stock:
 - (i) HEARx shall cause HCI to include the Exchangeable Share Provisions in HCI's Articles of Incorporation;
 - (ii) HEARx shall cause the HEARx Special Share to be duly authorized;
 - (iii) HEARx shall deposit the HEARx Special Share with the Trustee and shall execute, and cause HCI and HEARx Acquisition, to execute, the Voting and Exchange Trust Agreement; and
 - (iv) HEARx shall, and shall cause HCI and HEARx Acquisition to, execute the Support Agreement.
- (f) Each Helix Option other than Helix Options held by a holder who has exercised its right of dissent in accordance with the Interim Order and is ultimately entitled to be paid the fair value of its Helix Options will, at the Effective Time, and without any further action on the part of any holder thereof, be exchanged for substantially identical options issued by HEARx to purchase that number of shares of HEARx Common Stock determined by multiplying the number of shares of Helix Shares subject to such Helix Option at the Effective Time by the Exchange Ratio, at an exercise price per share of HEARx Common Stock equal to the exercise price per share of such Helix Option immediately prior to the Effective Time (as adjusted for conversion from Canadian dollars to US dollars as of the Effective Time) divided by the Exchange Ratio. If the foregoing calculation results in an exchanged Helix Option being exercisable for a fraction of a share of HEARx Common Stock, then the number

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of shares of HEARx Common Stock subject to such option shall be rounded down to the nearest whole number of shares and the total exercise price for the option will be reduced by the exercise price for the fractional share. Such options, whether or not then exercisable or vested, will continue to have, and be subject to, the same vesting schedule and will otherwise be on substantially the same terms and conditions as the original Helix Options to which they relate; provided, however, that any Helix Option which is an employee stock option shall be exchanged for a HEARx Option with a term of ten years from the original issuance date of the Helix Option.

- (g) As of the Effective Time, in accordance with the respective terms thereof, all outstanding Helix Convertible Securities (other than Helix Options and Helix Convertible Securities held by HEARx) shall be exercisable into Exchangeable Shares or, in the case of holders of Helix Convertible Securities who are not resident in Canada for purposes of the ITA, HEARx Common Stock based on the Exchange Ratio.
- (h) The Exchange Ratio shall be adjusted to reflect fully the effect of any share split, reverse split, share dividend (including any dividend or distribution of securities convertible into HEARx Common Stock), reorganization, recapitalization, or other like change with respect to the HEARx Common Stock occurring after the Original Execution Date and prior to the Effective Time.

2.3 Letter of Transmittal and Election Form

- (a) Election. In accordance with the terms hereof, each holder of Helix Shares will be entitled to elect to receive either Exchangeable Shares or HEARx Common Stock in exchange for its Helix Shares (an **Election**). Each Letter of Transmittal and Election Form shall provide for the ratification, by each person who elects to receive Exchangeable Shares, of the grant and transfer to HEARx Acquisition of the Call Rights. Holders of Helix Shares who hold such shares as nominees, trustees or in other representative capacities may submit separate Letters of Transmittal and Election Forms in respect of Helix Shares held by separate beneficial owners.
- (b) Timely Elections, Etc. Elections shall be made by holders of Helix Shares by mailing to the Depositary a Letter of Transmittal and Election Form. To be effective, a Letter of Transmittal and Election Form must be properly completed, signed and submitted to the Depositary prior to the date that is two (2) days prior to the date of the Helix Meeting. Helix will have the discretion, which it may delegate in whole or in part to the Depositary, to determine whether Letters of Transmittal and Election Forms have been properly completed, signed and submitted or revoked and to disregard immaterial defects in Letters of Transmittal and Election Forms. The decision of Helix (or the Depositary) in such matters shall be conclusive and binding. Neither Helix nor the Depositary will be under any obligation to notify any person of any defect in a Letter of Transmittal and Election Form submitted to the Depositary.
- (c) Deemed Non-Election. For the purposes hereof, a holder of Helix Shares who does not submit a Letter of Transmittal and Election Form within such time limits as may be established by Helix, the Depositary or the Court or who has otherwise failed to make a proper Election shall be deemed not to have made an Election, and shall receive Exchangeable Shares, unless such holder is not a resident of Canada for the purposes of the ITA, in which case such holder shall receive HEARx Common Stock. If Helix or the Depositary shall determine that any purported Election was not properly made, such purported Election shall be deemed to be of no force and effect.

3. RIGHTS OF DISSENT

3.1 Rights of Dissent

Holders of Helix Shares may exercise rights of dissent (**Dissent Rights**) with respect to such shares pursuant to and in the manner set forth in section 190 of the CBCA and this section 3.1 (the **Dissent Procedures**) in connection with the Arrangement, provided that, notwithstanding subsection 190(5) of the CBCA, the written objection to the Arrangement Resolution referred to in subsection 190(5) of the CBCA

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must be received by Helix not later than 5:00 p.m. (Montreal time) on the Business Day preceding the Helix Meeting. Holders of Helix Shares who duly exercise such rights of dissent and who:

- (a) are ultimately entitled to be paid fair value for their Helix Shares shall be deemed to have transferred such Helix Shares to Helix immediately prior to the Effective Time, without any further act or formality and free and clear of all liens, claims and encumbrances and such shares shall be cancelled as of the Effective Time; or
- (b) are ultimately not entitled, for any reason, to be paid fair value for their Helix Shares shall be deemed to have participated in the Arrangement on the same basis as a non-dissenting holder of Helix Shares which are not HEARx Elected Shares and shall receive Exchangeable Shares of HCI on the basis determined in accordance with section 2.2,

but in no case shall HEARx, HEARx Acquisition, Helix or any other Person be required to recognize such holders as holders of Helix Shares after the Effective Time, and the names of such holders of Helix Shares shall be deleted from the registers of holders of Helix Shares at the Effective Time. Each of Helix and the HEARx Parties shall cause any payments to be made to the Dissenting Shareholders to be made by Helix using Helix's assets. The HEARx Parties will not directly or indirectly provide any funds for the purposes of making payments to Dissenting Shareholders.

4. CERTIFICATES AND FRACTIONAL SHARES

4.1 Issuance of Certificates Representing Exchangeable Shares

At or promptly after the Effective Time, HCI shall deposit with the Depositary, for the benefit of the holders of Helix Shares who will receive Exchangeable Shares in connection with the Arrangement, certificates representing the Exchangeable Shares issued pursuant to section 2.2 upon the transfer and exchange of Helix Shares. Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented one or more Helix Shares that were exchanged for one or more Exchangeable Shares under the Arrangement, together with such other documents and instruments as would have been required to effect the transfer of the shares formerly represented by such certificate under the CBCA and the by-laws of Helix and such additional documents and instruments as the Depositary may reasonably require, the holder of such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, a certificate representing that number (rounded down to the nearest whole number) of Exchangeable Shares which such holder has the right to receive (together with any dividends or distributions with respect thereto pursuant to section 4.3) and the certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Helix Shares that is not registered in the transfer records of Helix, a certificate representing the proper number of Exchangeable Shares may be issued to the transferee if the certificate representing such Helix Shares is presented to the Depositary, accompanied by all documents required to evidence and effect such transfer. Until surrendered as contemplated by this section 4.1, each certificate which immediately prior to the Effective Time represented Helix Shares that were exchanged for Exchangeable Shares shall be deemed at all times after the Effective Time to represent only the right to receive upon such surrender (i) the certificate representing Exchangeable Shares as contemplated by this section 4.1, and (ii) any dividends or distributions with a record date after the Effective Time theretofore paid or payable with respect to Exchangeable Shares as contemplated by section 4.3.

4.2 Issuance of Certificates representing HEARx Common Stock

At or promptly after the Effective Time, HEARx Acquisition shall deposit with the Depositary, for the benefit of the holders of Helix Shares who have elected in a duly completed Letter of Transmittal and Election Form deposited with the Depositary no later than the Election Deadline to receive HEARx Common Stock in connection with the Arrangement, certificates representing the HEARx Common Stock issued pursuant to section 2.2 upon the transfer and exchange of Helix Shares. Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Helix Shares that were exchanged for HEARx Common Stock, together with such other documents and instruments as would have been required to effect the transfer of the shares formerly represented by such certificate under the CBCA and

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the by-laws of Helix and such additional documents and instruments as the Depositary may reasonably require, the holder of such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, a certificate representing that number (rounded down to the nearest whole number) of HEARx Common Stock which such holder has the right to receive (together with any dividends or distributions with respect thereto pursuant to section 4.3), and the certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Helix Shares which is not registered in the transfer records of Helix, a certificate representing the proper number of HEARx Common Stock may be issued to the transferee if the certificate representing such Helix Shares is presented to the Depositary, accompanied by all documents required to evidence and effect such transfer. Until surrendered as contemplated by this section 4.2, each certificate which immediately prior to the Effective Time represented one or more outstanding Helix Shares that were transferred and exchanged for HEARx Common Stock shall be deemed at all times after the Effective Time to represent only the right to receive upon such surrender (i) the certificate representing HEARx Common Stock as contemplated by this section 4.2, and (ii) any dividends or distributions with a record date after the Effective Time theretofore paid or payable with respect to HEARx Common Stock as contemplated by section 4.3.

4.3 Distributions with Respect to Unsurrendered Certificates

No dividends or other distributions declared or made after the Effective Time with respect to Exchangeable Shares or HEARx Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered certificate which immediately prior to the Effective Time represented outstanding Helix Shares that were transferred and exchanged pursuant to section 2.2 unless and until the holder of record of such certificate shall surrender such certificate in accordance with section 4.1 or 4.2. Subject to applicable law, at the time of such surrender of any such certificate, there shall be paid to the record holder of the certificates representing Helix Shares, without interest, (i) the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to whole Exchangeable Shares or HEARx Common Stock, as the case may be, to which such holder is entitled and (ii) on the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to surrender and a payment date subsequent to surrender payable with respect to whole Exchangeable Shares or HEARx Common Stock, as the case may be.

4.4 Fractional Shares

No fractional Exchangeable Share and no fractional shares of HEARx Common Stock shall be issued pursuant to the Arrangement. Any holder of Helix Shares who would otherwise be entitled to receive a fraction of an Exchangeable Share or fraction of a share of HEARx Common Stock, as the case may be, shall, upon surrender of the certificate or certificates representing Helix Shares, receive a certificate adjusted to the next lower whole number of Exchangeable Shares or shares of HEARx Common Stock, as the case may be.

4.5 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Helix Shares that were transferred and exchanged pursuant to section 2.2 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, one or more certificates representing one or more Exchangeable Shares or HEARx Common Stock (and any dividends or distributions with respect thereto pursuant to section 4.3) in accordance with the foregoing provisions of this Article 4. When authorizing such payment in exchange for any lost, stolen or destroyed certificate, the Person to whom certificates representing Exchangeable Shares or HEARx Common Stock are to be issued shall, as a condition precedent to the issuance thereof, give a bond satisfactory to HCI, HEARx and their respective transfer agents in such sum as HCI or HEARx may direct or otherwise indemnify HCI and HEARx in a manner satisfactory to HCI and HEARx against any claim that may be made against HCI or HEARx with respect to the certificate alleged to have been lost, stolen or destroyed.

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4.6 Extinguishment of Rights

Any certificate which immediately prior to the Effective Time represented outstanding Helix Shares that were transferred and exchanged pursuant to section 2.2 and not deposited, with all other instruments required by section 4.1 or 4.2, on or prior to the fifth anniversary of the Effective Date shall cease to represent a claim or interest of any kind or nature as a shareholder of HCI or HEARx. On such date, the Exchangeable Shares or HEARx Common Stock to which the former registered holder of the certificate referred to in the preceding sentence was ultimately entitled shall be deemed to have been surrendered to HCI or HEARx, as the case may be, together with all entitlements to dividends, distributions and interest thereon held for such former registered holder.

4.7 Withholding Rights

HEARx, HEARx Acquisition, HCI and the Depositary shall be entitled to deduct and withhold from any amounts required to be paid, deposited or delivered under this Plan of Arrangement such amounts as HEARx, HEARx Acquisition, HCI or the Depositary are required to deduct and withhold with respect to such amounts under the ITA, the United States Internal Revenue Code of 1986 or any provision of provincial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. To the extent that the amount so required to be deducted or withheld from any payment to a holder exceeds the cash portion of the consideration otherwise payable to the holder, HEARx, HEARx Acquisition, HCI or the Depositary is hereby authorized to sell, transfer or otherwise dispose of at fair market value such portion of the consideration as is necessary to provide sufficient funds to HEARx, HEARx Acquisition, HCI or the Depositary, as the case may be, to enable it to comply with such deduction or withholding requirement and shall account to the relevant Holder for any balance of any such sale proceeds. HCI represents and warrants that, based upon facts currently known to it, it has no current intention, as at the date hereof, to deduct or withhold from any dividend paid to holders of Exchangeable Shares any amounts under the United States Internal Revenue Code of 1986, as amended.

5. CERTAIN RIGHTS OF HEARX ACQUISITION TO ACQUIRE EXCHANGEABLE SHARES

5.1 HEARx Acquisition Liquidation Call Right

- (a) HEARx Acquisition shall have the overriding right (the **Liquidation Call Right**), in the event of and notwithstanding the proposed liquidation, dissolution or winding-up of HCI or any other distribution of the assets of HCI among its shareholders for the purpose of winding up its affairs pursuant to Article 5 of the Exchangeable Share Provisions, to purchase from all but not less than all of the holders of Exchangeable Shares (other than HEARx or any holder of Exchangeable Shares which is a subsidiary of HEARx) on the effective date of such liquidation, dissolution, winding-up or other distribution (the **Liquidation Date**) all but not less than all of the Exchangeable Shares held by each such holder on payment by HEARx Acquisition of an amount per Exchangeable Share (the **Liquidation Call Purchase Price**) equal to the Current Market Price of a share of HEARx Common Stock on the last Business Day prior to the Liquidation Date which shall be satisfied in full by HEARx Acquisition causing to be delivered to such holder one share of HEARx Common Stock, plus, to the extent not paid by HCI, an additional amount equivalent to the full amount of all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the Liquidation Date (as used in this section, the **Dividend Amount**). In the event of the exercise of the Liquidation Call Right by HEARx Acquisition, each holder shall be obligated to sell all the Exchangeable Shares held by the Holder to HEARx Acquisition on the Liquidation Date on payment by HEARx Acquisition to the holder of the Liquidation Call Purchase Price for each such share, and HCI shall have no obligation to pay any Liquidation Amount to the holders of such Exchangeable Shares so purchased by HEARx Acquisition.

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- (b) To exercise the Liquidation Call Right, HEARx Acquisition must notify HCI's transfer agent (the **Transfer Agent**), as agent for the holders of Exchangeable Shares, and HCI of HEARx Acquisition's intention to exercise such right at least 45 days before the Liquidation Date in the case of a voluntary liquidation, dissolution or winding-up of HCI or any other voluntary distribution of the assets of HCI among its shareholders for the purpose of winding up its affairs and at least five Business Days before the Liquidation Date in the case of an involuntary liquidation, dissolution or winding-up of HCI or any other involuntary distribution of the assets of HCI among its shareholders for purposes of winding up its affairs. The Transfer Agent will notify the holders of Exchangeable Shares as to whether or not HEARx Acquisition has exercised the Liquidation Call Right forthwith after the earlier of (i) receipt of notice by the Transfer Agent from HEARx Acquisition of its intention to exercise such right and (ii) the expiry of the period during which the same may be exercised by HEARx Acquisition. If HEARx Acquisition exercises the Liquidation Call Right, then on the Liquidation Date, HEARx Acquisition will purchase and the holders will sell all of the Exchangeable Shares then outstanding for a price per share equal to the Liquidation Call Purchase Price.
- (c) For the purposes of completing the purchase of the Exchangeable Shares pursuant to the Liquidation Call Right, HEARx Acquisition shall deposit with the Transfer Agent, on or before the Liquidation Date, certificates representing the aggregate number of HEARx Common Stock deliverable by HEARx Acquisition and a cheque or cheques of HEARx Acquisition payable at par at any branch of the bankers of HEARx Acquisition representing the aggregate Dividend Amount, if any, in payment of the total Liquidation Call Purchase Price, less any amounts withheld pursuant to section 4.7 hereof. Provided that HEARx Acquisition has complied with the immediately preceding sentence, on and after the Liquidation Date the rights of each holder of Exchangeable Shares will be limited to receiving, without interest, such holder's proportionate part of the total Liquidation Call Purchase Price payable by HEARx Acquisition upon presentation and surrender by the holder of certificates representing the Exchangeable Shares held by such holder and the holder shall on and after the Liquidation Date be considered and deemed for all purposes to be the holder of the HEARx Common Stock to which it is entitled. Upon surrender to the Transfer Agent of a certificate or certificates representing Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the laws applicable to HCI and the by-laws of HCI and such additional documents and instruments as the Transfer Agent may reasonably require, the holder of such surrendered certificate or certificates shall be entitled to receive in exchange therefor, and the Transfer Agent on behalf of HEARx Acquisition shall deliver to such holder, certificates representing the HEARx Common Stock to which the holder is entitled and a cheque or cheques of HEARx Acquisition payable at par at any branch of the bankers of HEARx Acquisition in payment of any Dividend Amount less any amounts withheld pursuant to section 4.7 hereof. If HEARx Acquisition does not exercise the Liquidation Call Right in the manner described above, on the Liquidation Date the holders of the Exchangeable Shares will be entitled to receive in exchange therefor the Liquidation Amount otherwise payable by HCI in connection with the liquidation, dissolution or winding-up of HCI pursuant to Article 5 of the Exchangeable Share Provisions.

5.2 HEARx Acquisition Redemption Call Right

- (a) HEARx Acquisition shall have the overriding right (the **Redemption Call Right**), notwithstanding the proposed redemption of the Exchangeable Shares by HCI pursuant to Article 7 of the Exchangeable Share Provisions, to purchase from all but not less than all of the holders of Exchangeable Shares (other than HEARx or any holder of Exchangeable Shares which is an affiliate of HEARx) on the Redemption Date all but not less than all of the Exchangeable Shares held by each such holder on payment by HEARx Acquisition to each holder of an amount per Exchangeable Share (the **Redemption Call Purchase Price**) equal to the Current Market Price of a share of HEARx Common Stock on the last Business Day prior to the Redemption Date, which shall be satisfied in full by HEARx Acquisition causing to be delivered to such holder one share of

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HEARx Common Stock, plus to the extent not paid by HCI, an additional amount equivalent to the full amount of all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the Redemption Date (as used in this section, the Dividend Amount). In the event of the exercise of the Redemption Call Right by HEARx Acquisition, each holder shall be obligated to sell all the Exchangeable Shares held by the holder to HEARx Acquisition on the Redemption Date on payment by HEARx Acquisition to the holder of the Redemption Call Purchase Price for each such Exchangeable Share, and HCI shall have no obligation to redeem such Exchangeable Shares so purchased by HEARx Acquisition.

- (b) To exercise the Redemption Call Right, HEARx Acquisition must notify the Transfer Agent, as agent for the holders of Exchangeable Shares, and HCI of HEARx Acquisition's intention to exercise such right at least 60 days before the Redemption Date. The Transfer Agent will notify the holders of the Exchangeable Shares as to whether or not HEARx Acquisition has exercised the Redemption Call Right forthwith after the earlier of (i) receipt of notice by the Transfer Agent from HEARx Acquisition of its intention to exercise such right and (ii) the expiry of the period during which the same may be exercised by HEARx Acquisition. If HEARx Acquisition exercises the Redemption Call Right, on the Redemption Date HEARx Acquisition will purchase and the holders will sell all of the Exchangeable Shares then outstanding for a price per share equal to the Redemption Call Purchase Price.
- (c) For the purposes of completing the purchase of the Exchangeable Shares pursuant to the Redemption Call Right, HEARx Acquisition shall deposit with the Transfer Agent, on or before the Redemption Date, certificates representing the aggregate number of HEARx Common Stock deliverable by HEARx Acquisition upon exercise of such right and a cheque or cheques of HEARx Acquisition payable at par at any branch of the bankers of HEARx Acquisition representing the aggregate Dividend Amount, if any, in payment of the total Redemption Call Purchase Price, less any amounts withheld pursuant to section 4.7 hereof. Provided that HEARx Acquisition has complied with the immediately preceding sentence, on and after the Redemption Date the rights of each holder of Exchangeable Shares will be limited to receiving such holder's proportionate part of the total Redemption Call Purchase Price payable by HEARx Acquisition upon presentation and surrender by the holder of certificates representing the Exchangeable Shares held by such holder and the holder shall on and after the Redemption Date be considered and deemed for all purposes to be the holder of the HEARx Common Stock to which it is entitled. Upon surrender to the Transfer Agent of a certificate or certificates representing Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the laws applicable to HCI and the by-laws of HCI and such additional documents and instruments as the Transfer Agent may reasonably require, the holder of such surrendered certificate or certificates shall be entitled to receive in exchange therefor, and the Transfer Agent on behalf of HEARx Acquisition shall deliver to such holder, certificates representing the HEARx Common Stock to which the holder is entitled and a cheque or cheques of HEARx Acquisition payable at par at any branch of the bankers of HEARx Acquisition in payment of any Dividend Amount, less any amounts withheld pursuant to section 4.7 hereof. If HEARx Acquisition does not exercise the Redemption Call Right in the manner described above, on the Redemption Date the holders of the Exchangeable Shares will be entitled to receive in exchange therefor the redemption price otherwise payable by HCI in connection with the redemption of the Exchangeable Shares pursuant to Article 7 of the Exchangeable Share Provisions.

6. AMENDMENTS

6.1 Amendments to Plan of Arrangement

- (a) Helix reserves the right to amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Date, provided that each such amendment, modification and/or supplement must be (i) set out in writing, (ii) approved by HEARx, (iii) filed with the

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Court and, if made following the Helix Meeting, approved by the Court, and (iv) communicated to holders of Helix Shares and, Helix Options if and as required by the Court.

- (b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by Helix at any time prior to the Helix Meeting (provided that HEARx shall have consented thereto) with or without any other prior notice or communication (except as may be required under the Interim Order), and if so proposed and accepted by the Persons voting at the Helix Meeting, shall become part of this Plan of Arrangement for all purposes.
- (c) Any amendment, modification or supplement to this Plan of Arrangement that is approved by the Court following the Helix Meeting shall be effective only if (i) it is consented to by each of Helix and HEARx, and (ii) if required by the Court, it is consented to by holders of the Helix Shares, voting together as a single class in the manner directed by the Court.

Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by HEARx, provided that it concerns a matter which, in the reasonable opinion of HEARx, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of any holder of Exchangeable Shares or HEARx Common Stock.

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ANNEX A

HEARx Canada Inc. (HCI)

SHARE PROVISIONS

PROVISIONS ATTACHING TO THE EXCHANGEABLE SHARES

The Exchangeable Shares in the capital of HCI, a corporation incorporated under the CBCA, shall have the following rights, privileges, restrictions and conditions.

ARTICLE I

Interpretation

1.1 For the purposes of these share provisions:

Affiliate of any Person means any other Person directly or indirectly controlling, controlled by, or under common control of, that Person. For the purposes of this definition, control (including, with correlative meanings, the terms controlled by and under common control of), as applied to any Person, means the possession by another Person, directly or indirectly, of the power to direct or cause the direction of the management and policies of that first mentioned Person, whether through the ownership of voting securities, by contract or otherwise.

Board of Directors means the board of directors of HCI.

Business Day means any day other than a Saturday, a Sunday or a day when banks are not open for business in either New York, New York or Montreal, Québec.

CBCA means the *Canada Business Corporations Act*, as amended from time to time.

Capital Reorganization has the meaning ascribed thereto in section 11.4 of these share provisions.

Common Shares means the common shares of HCI having the rights, privileges, restrictions and conditions set forth herein.

Class A Special Shares means the Class A Special Shares of HCI having the rights, privileges, restrictions and conditions set forth herein.

Current HEARx Common Stock Equivalent means, on any date, the equivalent as at such date of one share of HEARx Common Stock as at the Effective Date, expressed to four decimal places, (the Current HEARx Common Stock Equivalent as of the Effective Date being 1.0000 subject to adjustment in accordance with the Merger Agreement) determined by applying on a cumulative basis the following adjustments, to the extent applicable by reason of any transactions occurring in respect of HEARx Common Stock between the Effective Date and such date:

- (a) if HEARx shall (A) subdivide, redivide, convert or otherwise amend its then outstanding shares of HEARx Common Stock into a greater number of shares of HEARx Common Stock, unless HCI is permitted under applicable law without a vote of its shareholders to make, and shall simultaneously make, the same or an economically equivalent change to the rights of the holders of Exchangeable Shares, (B) combine, consolidate, convert or otherwise amend its then outstanding shares of HEARx Common Stock into a lesser number of shares of HEARx Common Stock, unless HCI is permitted under applicable law without a vote of its shareholders to make, and shall simultaneously make, the same or an economically equivalent change to the rights of the holders of Exchangeable Shares, or (C) issue shares of HEARx Common Stock (or securities exchangeable or convertible into HEARx Common Stock, but excluding any securities issued in a Rights Offering, other than pursuant to the HEARx Shareholders Rights Plan, or in a Special Distribution) to the holders of all or substantially all of its then outstanding shares of HEARx Common Stock by way of stock dividend or other distribution (other than to holders of HEARx Common Stock who exercise an

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option to receive stock dividends in lieu of receiving cash dividends), unless HCI is permitted under applicable law without a vote of its shareholders to issue or distribute, and shall simultaneously issue and distribute, equivalent numbers of shares of HEARx Common Stock or other securities (adjusted if necessary in accordance with the Current HEARx Common Stock Equivalent), or the economic equivalent on a per share basis, to the holders of the Exchangeable Shares (any of such events being herein called the **HEARx Common Stock Reorganization**), the Current HEARx Common Stock Equivalent shall be adjusted effective immediately after the record date at which the holders of HEARx Common Stock are determined for the purpose of the HEARx Common Stock Reorganization by multiplying the Current HEARx Common Stock Equivalent in effect on such record date by the quotient obtained when:

- (i) the number of shares of HEARx Common Stock outstanding after the completion of such HEARx Common Stock Reorganization (but before giving effect to the issue or cancellation of any shares of HEARx Common Stock issued or cancelled after such record date otherwise than as part of such HEARx Common Stock Reorganization) including, in the case where securities exchangeable or convertible into HEARx Common Stock are distributed, the number of shares of HEARx Common Stock that would have been outstanding had such securities been exchanged for or converted into HEARx Common Stock on such record date,

is divided by

- (ii) the number of shares of HEARx Common Stock outstanding on such record date before giving effect to the HEARx Common Stock Reorganization;
- (b) if at any time HEARx shall fix a record date for the issuance of rights, options or warrants to the holders of all or substantially all of the shares of HEARx Common Stock entitling them to subscribe for or to purchase shares of HEARx Common Stock (or securities of HEARx convertible into shares of HEARx Common Stock) at a price per share of HEARx Common Stock (or having a conversion price per HEARx Common Stock) less than the Current Market Price on such record date, unless HCI is permitted under applicable law without a vote of its shareholders to issue, and shall simultaneously issue, equivalent numbers of such rights, options or warrants, adjusted if necessary in accordance with the Current HEARx Common Stock Equivalent at such record date, or the economic equivalent thereof on a per share basis, to the holders of Exchangeable Shares (any such event being herein referred to as a **Rights Offering**), then the Current HEARx Common Stock Equivalent then in effect shall be adjusted immediately after such record date by multiplying the Current HEARx Common Stock Equivalent in effect on such record date by the quotient obtained when:

- (i) the sum of the number of shares of HEARx Common Stock outstanding on such record date and the number of additional shares of HEARx Common Stock offered for subscription or purchase under the Rights Offering (or the number of shares of HEARx Common Stock into which the securities so offered are convertible)

is divided by

- (ii) the sum of the number of shares of HEARx Common Stock outstanding on such record date and the number determined by dividing the aggregate price of the total number of additional shares of HEARx Common Stock offered for subscription or purchase under the Rights Offering (or the aggregate conversion price of the convertible securities so offered) by the Current Market Price on such record date.

Any shares of HEARx Common Stock owned by or held for the account of HEARx shall be deemed not to be outstanding for the purpose of any such computation. If such rights, options or warrants are not so issued or if, at the date of expiry of the rights, options or warrants subject to the Rights Offering, less than all the rights, options or warrants have been exercised, then the Current HEARx Common Stock Equivalent shall be readjusted effective immediately after the date of expiry (or determination by the Board of Directors of HEARx that the issue will not take place) to the Current HEARx Common Stock Equivalent that would

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have been in effect if such record date had not been fixed or to the Current HEARx Common Stock Equivalent that would then be in effect on the date of expiry if the only rights, options or warrants issued had been those that were exercised, as the case may be;

- (c) if HEARx shall fix a record date for the making of a distribution (including a distribution by way of stock dividend) to the holders of all or substantially all its outstanding shares of HEARx Common Stock of
 - (i) shares of HEARx of any class other than HEARx Common Stock (excluding shares convertible into HEARx Common Stock referred to in (a)(C) above),
 - (ii) rights, options or warrants (excluding a Rights Offering),
 - (iii) evidences of its indebtedness (excluding indebtedness convertible into HEARx Common Stock referred to in (a)(C) above) or
 - (iv) any other assets (other than any of the distributions referred to in (i), (ii) or (iii), dividends paid in the ordinary course, a Rights Offering or a HEARx Common Stock Reorganization)

unless HCI is permitted under applicable law without a vote of its shareholders to distribute, and shall simultaneously distribute, the same number of shares, rights, options or warrants, evidences of indebtedness or other assets, as the case may be, adjusted if necessary in accordance with the Current HEARx Common Stock Equivalent, as at such record date, or the economic equivalent thereof on a per share basis, to the holders of Exchangeable Shares (any such event being herein referred to as a **Special Distribution**) then, in each such case, the Current HEARx Common Stock Equivalent shall be adjusted effective immediately after the record date at which the holders of HEARx Common Stock are determined for the purposes of the Special Distribution by multiplying the Current HEARx Common Stock Equivalent in effect on such record date by the quotient obtained when:

- (A) the product obtained when the number of shares of HEARx Common Stock outstanding on the record date is multiplied by the Current Market Price on such date,
is divided by
- (B) the difference obtained when the amount by which the aggregate fair market value (as determined by the Board of Directors, which determination shall be conclusive) of the shares, rights, options, warrants, evidences of indebtedness or assets, as the case may be, distributed in the Special Distribution exceeds the fair market value (as determined by the Board of Directors, which determination shall be conclusive) of the consideration, if any, received therefore by HEARx, is subtracted from the product obtained when the number of shares of HEARx Common Stock outstanding on the record date is multiplied by the Current Market Price on such date, provided that no such adjustment shall be made if the result of such adjustment would be to decrease the Current HEARx Common Stock Equivalent in effect immediately before such record date. Any share of HEARx Common Stock owned by or held for the account of HEARx shall be deemed not to be outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed. To the extent that such distribution is not so made, the Current HEARx Common Stock Equivalent shall be readjusted effective immediately to the Current HEARx Common Stock Equivalent which would then be in effect based upon such shares or rights, options or warrants or evidences of indebtedness or assets actually distributed.

Notwithstanding any of the foregoing definition of Current HEARx Common Stock Equivalent, in no event may any one distribution, issuance of securities or other event be deemed to be more than one of a HEARx Common Stock Reorganization, Rights Offering or Special Distribution.

Current Market Price means, in respect of a share of HEARx Common Stock on any date, the closing sale price of a share of HEARx Common Stock on such date (or, if no trades of any HEARx Common Stock occurred on such date, on the last trading day prior thereto on which such trades occurred) reported on The American Stock Exchange or, if shares of HEARx Common Stock are not then quoted on The American

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Stock Exchange, on such other stock exchange or automated quotation system on which shares of HEARx Common Stock are listed or quoted, as the case may be, as may be selected by the Board of Directors for such purpose; provided, however, that if in the opinion of the Board of Directors the public distribution or trading activity of HEARx Common Stock during such period does not create a market that reflects the fair market value of HEARx Common Stock, then the Current Market Price of a share of HEARx Common Stock shall be determined by the Board of Directors based upon the advice of such qualified independent financial advisors as the Board of Directors may deem to be appropriate, and provided further that any such selection, opinion or determination by the Board of Directors shall be conclusive and binding.

Effective Date has the meaning ascribed thereto in the Plan of Arrangement.

Exchangeable Shares means the non-voting Exchangeable Shares of HCI having the rights, privileges, restrictions and conditions set forth herein.

HEARx means HEARx Ltd., a corporation organized and existing under the laws of the State of Delaware, and any successor corporation.

HEARx Common Stock means the common stock of HEARx, with a par value of U.S.\$0.10 per share and having one vote per share, and any other securities into which such shares may be changed.

HEARx Common Stock Reorganization has the meaning ascribed thereto in the definition of Current HEARx Common Stock Equivalent in section 1.1 of these share provisions.

HEARx Dividend Declaration Date means the date on which the board of directors of HEARx declares any dividend on the HEARx Common Stock.

HEARx Special Share means the one share of the Special Voting Preferred Stock of HEARx with a par value of U.S.\$1.00 and having voting rights at meetings of holders of shares of HEARx Common Stock equal to the number of Exchangeable Shares outstanding from time to time (other than Exchangeable Shares held by HEARx or its Affiliates) to be issued to, and voted by, the Trustee pursuant to the Voting and Exchange Trust Agreement.

HEARx Shareholders Rights Plan means the Amended and Restated Rights Agreement dated as of December 14, 1999, as amended and restated as of , 2002, as further amended from time to time, between HEARx and The Bank of New York.

Helix means Helix Hearing Care of America Corp., a corporation existing under the laws of Canada.

Lien means a mortgage, lien, pledge, charge or encumbrance of any kind or character.

Liquidation Amount has the meaning ascribed thereto in section 5.1 of these share provisions.

Liquidation Call Right has the meaning ascribed thereto in the Plan of Arrangement.

Liquidation Date has the meaning ascribed thereto in section 5.1 of these share provisions.

NSULG means HEARx Acquisition ULC, a corporation existing under the laws of the Province of Nova Scotia.

NSULC Call Notice has the meaning ascribed thereto in section 6.3 of these share provisions.

Person includes any individual, firm, partnership, joint venture, venture capital fund, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, unincorporated association or organization, government body, syndicate or other entity, whether or not having legal status.

Plan of Arrangement means the plan of arrangement relating to the arrangement of Helix under section 192 of the CBCA, to which plan these share provisions are attached.

Redemption Call Right has the meaning ascribed thereto in the Plan of Arrangement.

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Redemption Date means the date determined by the Board of Directors for the redemption of Exchangeable Shares pursuant to Article VII of these share provisions at any time after the earlier of: (i) the fifth (5th) anniversary of the Effective Date; and (ii) the date on which the *Income Tax Act* (Canada) is amended to permit holders of Exchangeable Shares who are Canadian residents and who hold their Exchangeable Shares as capital property for the purpose of the *Income Tax Act* (Canada) to dispose of Exchangeable Shares to NSULC pursuant to the Redemption Call Right in exchange for HEARx Common Stock on a tax-deferred basis.

Redemption Price has the meaning ascribed thereto in section 7.1 of these share provisions.

Retraction Call Right has the meaning ascribed thereto in section 6.1 of these share provisions.

Retraction Date has the meaning ascribed thereto in section 6.1 of these share provisions.

Retraction Period means the period (including the beginning and ending dates) from the Effective Date to the Redemption Date.

Retraction Price has the meaning ascribed thereto in section 6.1 of these share provisions.

Retraction Request has the meaning ascribed thereto in section 6.1 of these share provisions.

Retracted Shares has the meaning ascribed thereto in section 6.1 of these share provisions.

Rights Offering has the meaning ascribed thereto in the definition of "Current HEARx Common Stock Equivalent" in section 1.1 of these share provisions.

Special Distribution has the meaning ascribed thereto in the definition of "Current HEARx Common Stock Equivalent" in section 1.1 of these share provisions.

Support Agreement means the Support Agreement between HEARx, NSULC and HCI, made as of _____, 2002.

Transfer Agent means Computershare Trust Company of Canada or such other person as may from time to time be the registrar and transfer agent for the Exchangeable Shares.

Trustee means Computershare Trust Company of Canada, a corporation organized and existing under the laws of Canada and any successor trustee appointed under the Voting and Exchange Trust Agreement.

Voting and Exchange Trust Agreement means the Voting and Exchange Trust Agreement between HCI, NSULC, HEARx and the Trustee, made as of _____, 2002.

1.2 All amounts required to be paid, deposited or delivered hereunder shall be paid, deposited or delivered after deduction of any amount required by applicable law to be deducted or withheld on account of tax and the deduction of such amounts and remittance to the applicable tax authorities shall, to the extent thereof, satisfy such requirement to pay, deposit or deliver hereunder.

ARTICLE II

Ranking of Exchangeable Shares

2.1 The Exchangeable Shares shall rank senior to the Class A Special Shares, Common Shares and any other shares ranking junior to the Exchangeable Shares, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of HCI, whether voluntary or involuntary, or any other distribution of the assets of HCI among its shareholders for the purpose of winding-up its affairs.

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ARTICLE III

Dividends

3.1 A holder of an Exchangeable Share shall be entitled to receive and the Board of Directors shall, subject to applicable law, declare a dividend on each Exchangeable Share (a) in the case of a cash dividend declared on the HEARx Common Stock, in an amount in cash for each Exchangeable Share equal to the cash dividend declared on the HEARx Common Stock multiplied by the Current HEARx Common Stock Equivalent on the HEARx Dividend Declaration Date (as determined by the Board of Directors in accordance with section 11.1) or (b) in the case of a stock dividend declared on the HEARx Common Stock to be paid in shares of HEARx Common Stock, in such whole number of Exchangeable Shares for each of the Exchangeable Shares held by each holder as is equal to the number of whole shares of HEARx Common Stock to be paid as a dividend on the equivalent number of shares of HEARx Common Stock multiplied by the Current HEARx Common Stock Equivalent on the HEARx Dividend Declaration Date or (c) in the case of a dividend declared on the shares of HEARx Common Stock to be paid in property other than cash or HEARx Common Stock (including without limitation other securities of HEARx (unless HCI has given notice that it will redeem the Exchangeable Shares on the Redemption Date pursuant to ARTICLE VII hereof or NSULC has exercised the overriding Redemption Call Right), in such type and amount of property for each Exchangeable Share as is the same as or economically equivalent (as determined by the Board of Directors in accordance with section 11.1) to the amount to be paid as a dividend on such number of shares of HEARx Common Stock as is equal to the Current HEARx Common Stock Equivalent on the HEARx Dividend Declaration Date. Such dividends shall be paid out of money, assets or property of HCI properly applicable to the payment of dividends, or out of authorized but unissued Exchangeable Shares. To the extent that HCI complies with this section 3.1, any HEARx dividend contemplated by this section 3.1 shall in no event be deemed to be a HEARx Common Stock Reorganization, Rights Offering or Special Distribution.

3.2 Cheques of HCI payable at par at any branch of the bankers of HCI shall be issued in respect of any cash dividends contemplated by subsection 3.1(a) hereof or in respect of any cash amount payable in lieu of a fractional Exchangeable Share in connection with any stock dividends contemplated by subsection 3.1(b) hereof and the sending of such a cheque to each holder of an Exchangeable Share shall satisfy the cash dividend represented thereby unless the cheque is not paid on presentation. Certificates registered in the name of the registered holder of Exchangeable Shares shall be issued or transferred in respect of any stock dividends contemplated by subsection 3.1(b) hereof and the sending of such a certificate to each holder of an Exchangeable Share shall satisfy the stock dividend represented thereby. Such other type and amount of property in respect of any dividends contemplated by subsection 3.1(c) hereof shall be issued, distributed or transferred by HCI in such manner as it shall determine and the issuance, distribution or transfer thereof by HCI to each holder of an Exchangeable Share shall satisfy the dividend represented thereby. No holder of an Exchangeable Share shall be entitled to recover by action or other legal process against HCI any dividend that is represented by a cheque that has not been duly presented to HCI's bankers for payment or that otherwise remains unclaimed for a period of six years from the date on which such dividend was payable.

3.3 The record date for the determination of the holders of Exchangeable Shares entitled to receive payment of, and the payment date for, any dividend declared on the Exchangeable Shares under section 3.1 hereof shall be the same dates as the record date and payment date, respectively, for the corresponding dividend declared on the shares of HEARx Common Stock.

3.4 If on any payment date for any dividends declared on the Exchangeable Shares under section 3.1 hereof the dividends are not paid in full on all of the Exchangeable Shares then outstanding, any such dividends that remain unpaid shall be paid on a subsequent date or dates determined by the Board of Directors on which HCI shall have sufficient moneys, assets or property properly applicable to the payment of such dividends.

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ARTICLE IV

Certain Restrictions

4.1 So long as any of the Exchangeable Shares not owned by HEARx or its Affiliates are outstanding, HCI shall not at any time without, but may at any time with, the approval of the holders of the Exchangeable Shares given as specified in section 10.2 of these share provisions:

- (a) pay any dividends on the Class A Special Shares, the Common Shares or any other shares ranking junior to the Exchangeable Shares, other than stock dividends payable in Class A Special Shares, Common Shares or any such other shares ranking junior to the Exchangeable Shares, as the case may be;
- (b) redeem or purchase or make any capital distribution in respect of Class A Special Shares, Common Shares or any other shares ranking junior to the Exchangeable Shares;
- (c) redeem or purchase any other shares of HCI ranking equally with the Exchangeable Shares with respect to the payment of dividends or on any liquidation distribution; or
- (d) issue any Exchangeable Shares or any other shares of HCI ranking equally with, or superior to the Exchangeable Shares other than:
 - (i) by way of stock dividends to the holders of such Exchangeable Shares; (ii) otherwise *pro rata* to the holders of Exchangeable Shares; (iii) as contemplated by the Support Agreement; (iv) pursuant to a shareholders right plan adopted by HCI; or (v) pursuant to any agreements or rights in existence at the Effective Date;

provided that the restrictions in subsections 4.1(a), 4.1(b), 4.1(c) and 4.1(d) shall not apply if all dividends on the outstanding Exchangeable Shares corresponding to dividends declared to date on the HEARx Common Stock shall have been declared on the Exchangeable Shares and, if paid to holders of HEARx Common Stock, paid in full.

ARTICLE V

Distribution on Liquidation

5.1 In the event of the liquidation, dissolution or winding-up of HCI or any other distribution of the assets of HCI among its shareholders for the purpose of winding up its affairs, a holder of Exchangeable Shares shall be entitled, subject to applicable law and subject to the exercise by NSULC of the Liquidation Call Right, to receive from the assets of HCI in respect of each Exchangeable Share held by such holder on the effective date (the **Liquidation Date**) of such liquidation, dissolution or winding-up, before any distribution of any part of the assets of HCI among the holders of the Class A Special Shares, the Common Shares or any other shares ranking junior to the Exchangeable Shares, an amount per share equal to: (a) the Current Market Price multiplied by the Current HEARx Common Stock Equivalent, in each case determined on the Liquidation Date, which shall be satisfied in full by HCI causing to be delivered to such holder such number of shares of HEARx Common Stock as is equal to the Current HEARx Common Stock Equivalent, plus (b) the aggregate of all declared and unpaid dividends on each such Exchangeable Share up to the Liquidation Date (collectively the **Liquidation Amount**), without interest.

5.2 On or promptly after the Liquidation Date, and subject to the exercise by NSULC of the Liquidation Call Right, HCI shall cause to be delivered to the holders of the Exchangeable Shares the Liquidation Amount for each such Exchangeable Share upon presentation and surrender of the certificates representing such Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the CBCA and the Articles of Incorporation and the by-laws of HCI and such additional documents and instruments as the Transfer Agent may reasonably require, at the registered office of HCI or at any office of the Transfer Agent as may be specified by HCI by notice to the holders of the Exchangeable Shares. Payment of the total Liquidation Amount for all of the Exchangeable Shares held by a holder thereof shall be made by delivery to each such holder, at the address of the holder recorded in the securities register of HCI for the Exchangeable Shares or by holding for pick-up by

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the holder at the registered office of HCI or at any office of the Transfer Agent as may be specified by HCI by notice to the holders of Exchangeable Shares, on behalf of HCI of certificates representing the shares of HEARx Common Stock to be delivered in payment thereof (which shares shall be duly issued as fully paid and non-assessable and shall be free and clear of any Liens) and a cheque of HCI payable at any branch of the bankers of HCI in respect of all declared and unpaid dividends comprising part of the total Liquidation Amount for all outstanding Exchangeable Shares without interest. On and after the Liquidation Date, the holders of the Exchangeable Shares shall cease to be holders of such Exchangeable Shares and shall not be entitled to exercise any of the rights of holders in respect thereof, other than the right to receive the total Liquidation Amount in respect of their Exchangeable Shares, unless payment of the total Liquidation Amount for such Exchangeable Shares shall not be made upon presentation and surrender of share certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected until the total Liquidation Amount for their Exchangeable Shares has been paid in the manner hereinbefore provided. HCI shall have the right at any time on or after the Liquidation Date to deposit or cause to be deposited the total Liquidation Amount in respect of the Exchangeable Shares represented by certificates that have not at the Liquidation Date been surrendered by the holders thereof in a custodial account with any chartered bank or trust company in Canada. Upon such deposit being made, the rights of the holders of such Exchangeable Shares after such deposit shall be limited to receiving the total Liquidation Amount (without interest) for such Exchangeable Shares so deposited, against presentation and surrender of the said certificates held by them, respectively, in accordance with the foregoing provisions. Upon such payment or deposit of the total Liquidation Amount, the holders of the Exchangeable Shares shall thereafter be considered and deemed for all purposes to be holders of the HEARx Common Stock delivered to them or the custodian on their behalf.

5.3 After HCI has satisfied its obligations to pay the holders of the Exchangeable Shares the Liquidation Amount per Exchangeable Share pursuant to section 5.1 of these share provisions, such holders shall not be entitled to share in any further distribution of the assets of HCI or have any other rights as holders of Exchangeable Shares.

ARTICLE VI

Retraction of Exchangeable Shares by Holder

6.1 A holder of Exchangeable Shares shall be entitled during any Retraction Period, subject to the exercise by NSULC of the Retraction Call Right and otherwise upon compliance with the provisions of this ARTICLE VI, to require HCI to redeem any or all of the Exchangeable Shares registered in the name of such holder (the **Retracted Shares**) for an amount for each Retracted Share equal to (a) the Current Market Price multiplied by the Current HEARx Common Stock Equivalent, in each case determined on the Retraction Date, which shall be satisfied in full in respect of a Retracted Share by HCI causing to be delivered to such holder such number of shares of HEARx Common Stock as is equal to the Current HEARx Common Stock Equivalent, plus (b) the aggregate of all dividends declared and unpaid on each Retracted Share up to the Retraction Date (collectively the **Retraction Price**), provided that if the record date for any such declared and unpaid dividend occurs on or after the Retraction Date the Retraction Price shall not include such declared and unpaid dividends). To effect such redemption, the holder shall present and surrender at the registered office of HCI or at any office of the Transfer Agent as may be specified by HCI by notice to the holders of Exchangeable Shares, the certificate or certificates representing the Exchangeable Shares which the holder desires to have HCI redeem, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the CBCA and the Articles of Incorporation and the by-laws of HCI and such additional documents and instruments as the Transfer Agent may reasonably require, and together with a duly executed statement (the **Retraction Request**) in the form of Schedule A hereto or in such other form as may be acceptable (in their sole discretion) to HCI, the Transfer Agent, NSULC and HEARx:

- (a) specifying that the holder desires to have the Retracted Shares represented by such certificate or certificates redeemed by HCI;

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(b) stating the Business Day on which the holder desires to have HCI redeem the Retracted Shares (the **Retraction Date**), provided that the Retraction Date shall not be less than six Business Days after the date on which the Retraction Request is received by HCI and further provided that, in the event that no such Business Day is specified by the holder in the Retraction Request, the Retraction Date shall be deemed to be the sixth Business Day after the date on which the Retraction Request is received by HCI; and

(c) acknowledging the overriding right (the **Retraction Call Right**) of NSULC to purchase all but not less than all the Retracted Shares directly from the holder and that the Retraction Request shall be deemed to be a revocable offer by the holder to sell the Retracted Shares to NSULC in accordance with the Retraction Call Right.

6.2 Subject to the exercise by NSULC of the Retraction Call Right, upon receipt by HCI or the Transfer Agent in the manner specified in section 6.1 hereof of a certificate or certificates representing the number of Exchangeable Shares which the holder desires to have HCI redeem, together with such other documents and instruments as may be required pursuant to section 6.1 and a Retraction Request, and provided that the Retraction Request is not revoked by the holder in the manner specified in section 6.7, HCI shall redeem the Retracted Shares effective at the close of business on the Retraction Date and shall cause to be delivered to such holder the total Retraction Price with respect of all such Retracted Shares. If only a part of the Exchangeable Shares represented by any certificate is redeemed (or purchased by NSULC pursuant to the Retraction Call Right), a new certificate for the balance of such Exchangeable Shares shall be issued to the holder at the expense of HCI.

6.3 Upon receipt by HCI or the Transfer Agent of a Retraction Request, HCI or the Transfer Agent shall immediately notify HEARx and NSULC thereof. In order to exercise the Retraction Call Right, NSULC must notify HCI or the Transfer Agent of its determination to do so (the **NSULC Call Notice**) within 5 Business Days of notification to HCI or the Transfer Agent by NSULC of the receipt by HCI or the Transfer Agent of the Retraction Request. If NSULC does not notify HCI or the Transfer Agent within such 5 Business Day period, HCI or the Transfer Agent will notify the holder as soon as possible thereafter that NSULC will not exercise the Retraction Call Right. If NSULC delivers the NSULC Call Notice within such 5 Business Day period, and provided that the Retraction Request is not revoked by the holder in the manner specified in section 6.7, the Retraction Request shall thereupon be considered only to be an offer by the holder to sell the Retracted Shares to NSULC, in accordance with the Retraction Call Right. In such event, HCI shall not redeem the Retracted Shares and NSULC shall purchase from such holder and such holder shall sell to NSULC on the Retraction Date the Retracted Shares for an amount equal to the Retraction Price per share. For greater certainty, it is hereby confirmed that such holder shall also continue to be entitled to receive from HCI on the designated payment date therefor, the full amount of all declared but unpaid dividends on those Retracted Shares held by such holder on any dividend record date which occurred prior to the Retraction Date and, to the extent such amount is not paid by HCI on the designated date for payment, such amount shall be paid by NSULC on such date for and on behalf of HCI. For the purposes of completing a purchase pursuant to the Retraction Call Right, NSULC shall deposit with the Transfer Agent, on or before the Retraction Date, certificates representing HEARx Common Stock. If required by the preceding provisions, NSULC shall also deposit with the Transfer Agent, on or before the date for payment thereof a cheque or cheques of NSULC payable at par at any branch of the bankers of NSULC representing the aggregate unpaid dividend amount. Provided that NSULC has complied with the second preceding sentence, the closing of the purchase and sale of the Retracted Shares pursuant to the Retraction Call Right shall be deemed to have occurred as at the close of business on the Retraction Date and, for greater certainty, no redemption by HCI of such Retracted Shares shall take place on the Retraction Date. In the event that NSULC does not deliver a NSULC Call Notice within such 5 Business Day period, and provided that the Retraction Request is not revoked by the holder in the manner specified in section 6.7, HCI shall redeem the Retracted Shares on the Retraction Date and in the manner otherwise contemplated in this ARTICLE VI.

6.4 If a Retraction Request is received by the Transfer Agent pursuant to section 6.1 and NSULC has not exercised the Retraction Call Right, HCI shall deliver or cause the Transfer Agent to deliver to the holder of the Retracted Shares, at the address of the holder recorded in the securities register of HCI for the

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Exchangeable Shares or at the address specified in the holder's Retraction Request or by holding for pick-up by the holder at the registered office of HCI or at any office of the Transfer Agent as may be specified by HCI by Notice to the holders of Exchangeable Shares, certificates representing the shares of HEARx Common Stock to be delivered to the holder in payment of the total Retraction Price for all of the Retracted Shares (or the portion thereof payable in HEARx Common Stock, as the case may be) (which shares shall be duly issued as fully paid and non assessable and shall be free and clear of any Liens) registered in the name of the holder or in such other name as the holder may request, if applicable and on or before the payment date therefor, and a cheque of HCI payable at par at any branch of the bankers of HCI in payment of the remaining portion, if any, of the total Retraction Price (or, if any part of the Retraction Price consists of dividends payable in property, such property or property that is the same as or economically equivalent to such property), and such delivery of such certificates and cheque (and property, if any) on behalf of HCI by the Transfer Agent shall be deemed to be payment of and shall satisfy and discharge all liability for the total Retraction Price for all of the Retracted Shares, to the extent that the same is represented by such share certificates and cheque (and property, if any), unless such cheque is not paid on due presentation.

6.5 On and after the close of business on the Retraction Date, the holder of the Retracted Shares shall cease to be a holder of such Retracted Shares and shall not be entitled to exercise any of the rights of a holder in respect thereof, other than the right to receive the total Retraction Price for all of the Retracted Shares, unless upon presentation and surrender of certificates in accordance with the foregoing provisions, payment of the total Retraction Price for all of the Retracted Shares shall not be made, in which case the rights of such holders shall remain unaffected until the total Retraction Price has been paid in the manner hereinbefore provided. On and after the close of business on the Retraction Date, provided that presentation and surrender of certificates and payment of the total Retraction Price for all of the Retracted Shares has been made in accordance with the foregoing provisions, the holder of the Retracted Shares so redeemed by HCI or purchased by NSULC shall thereafter be considered and deemed for all purposes to be a holder of the shares of HEARx Common Stock delivered to it.

6.6 Notwithstanding any other provision of this ARTICLE VI, HCI shall not be obligated to redeem Retracted Shares specified by a holder in a Retraction Request to the extent that such redemption of Retracted Shares would be contrary to solvency requirements or other provisions of applicable law. If HCI believes that on any Retraction Date it would not be permitted by any of such provisions to redeem the Retracted Shares tendered for redemption on such date, and provided that NSULC shall not have exercised the Retraction Call Right with respect to the Retracted Shares, HCI shall be obligated to redeem Retracted Shares specified by holders in Retraction Requests only to the extent of the maximum number that may be so redeemed (rounded down to a whole number of shares) as would not be contrary to such provisions on a *pro rata* basis and shall notify the relevant holders at least five (5) Business Days prior to the Retraction Date as to the number of Retracted Shares which will not be redeemed by HCI. In any case in which the redemption by HCI of Retracted Shares would be contrary to solvency requirements or other provisions of applicable law and provided the Retraction Request is not revoked by the holder in the manner specified in section 6.7, HCI shall redeem Retracted Shares in accordance with section 6.2 of these share provisions on a *pro rata* basis and HCI shall issue to each holder of Retracted Shares a new certificate, at the expense of HCI, representing the Retracted Shares not redeemed by HCI pursuant to section 6.2 hereof. Provided that the Retraction Request is not revoked by the holder in the manner specified in section 6.7, the holder of any such Retracted Shares not redeemed by HCI pursuant to section 6.2 of these share provisions as a result of solvency requirements of applicable law shall be deemed by giving the Retraction Request to require NSULC to purchase such Retracted Shares from such holder pursuant to the Exchange Right (as defined in the Voting and Exchange Trust Agreement) on the Retraction Date or as soon as practicable thereafter on payment by NSULC to such holder of the Retraction Price for each such Retracted Share, all as more specifically provided in the Voting and Exchange Trust Agreement.

6.7 A holder of Retracted Shares may, by notice in writing given by the holder to HCI before the close of business on the Business Day immediately preceding the Retraction Date, withdraw its Retraction Request, in which event such Retraction Request shall be null and void and, for greater certainty, the revocable offer

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constituted by the Retraction Request to sell the Retracted Shares to NSULC shall be deemed to have been revoked.

6.8 Subject to the Support Agreement, the Voting and Exchange Trust Agreement and to the rights of holders of Exchangeable Shares (other than HEARx or its subsidiaries or affiliates), in the event NSULC acquires Exchangeable Shares pursuant to the Retraction Call Right or the Redemption Call Right, NSULC shall be entitled to exchange such Exchangeable Shares for Common Shares on terms approved by the Board of Directors.

ARTICLE VII

Redemption of Exchangeable Shares

7.1 Subject to applicable law and provided NSULC has not exercised the Redemption Call Right, HCI shall on the Redemption Date redeem all but not less than all of the then outstanding Exchangeable Shares for an amount per share equal to: (a) the Current Market Price multiplied by the Current HEARx Common Stock Equivalent, in each case determined on the Redemption Date, which shall be satisfied in full in respect of an Exchangeable Share by HCI causing to be delivered to such a holder such number of shares of HEARx Common Stock as is equal to the Current HEARx Common Stock Equivalent, plus (b) the aggregate of all declared and unpaid dividends thereon up to the Redemption Date (collectively the **Redemption Price** , provided that if the record date for any such declared and unpaid dividends occurs on or after the Redemption Date, the Redemption Price shall not include such declared and unpaid dividends).

7.2 In any case of a redemption of Exchangeable Shares under this ARTICLE VII, HCI shall, at least 60 days before the Redemption Date, send or cause to be sent to each holder of Exchangeable Shares a notice in writing of the redemption by HCI or the purchase by NSULC under the Redemption Call Right, as the case may be, of the Exchangeable Shares held by such holder.

7.3 On or after the Redemption Date and subject to the exercise by NSULC of the Redemption Call Right, HCI shall cause to be delivered to the holders of the Exchangeable Shares the Redemption Price for each such Exchangeable Share upon presentation and surrender at the registered office of HCI or at any office of the Transfer Agent as may be specified by HCI in such notice of the certificates representing such Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the CBCA and the Articles of Incorporation and the by-laws of HCI and such additional documents and instruments as the Transfer Agent may reasonably require. Payment of the total Redemption Price for all of the Exchangeable Shares held by a holder shall be made by delivery to such holder, at the address of the holder recorded in the securities register of HCI or by holding for pick up by the holder at the registered office of HCI or at any office of the Transfer Agent as may be specified by HCI in such notice, on behalf of HCI of certificates representing the shares of HEARx Common Stock to be delivered to the holder in payment of the Redemption Price for all of the Exchangeable Shares held by such holder (or the portion thereof payable in HEARx Common Stock, as the case may be) (which shares shall be duly issued as fully paid and non-assessable and shall be free and clear of any Liens) and a cheque of HCI payable at any branch of the bankers of HCI in respect of all declared and unpaid dividends comprising part of the total Redemption Price for all of the Exchangeable Shares held by such holder (or, if any of such dividends are payable in property, such property). On and after the Redemption Date, the holders of the Exchangeable Shares called for redemption shall cease to be holders of such Exchangeable Shares and shall not be entitled to exercise any of the rights of holders in respect thereof, other than the right to receive the total Redemption Price for their Exchangeable Shares, unless payment of the total Redemption Price for such Exchangeable Shares shall not be made upon presentation and surrender of certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected until the total Redemption Price for such shares has been paid in the manner hereinafter provided. HCI shall have the right at any time after the sending of notice of its intention to redeem the Exchangeable Shares as aforesaid to deposit or cause to be deposited the total Redemption Price of the Exchangeable Shares so called for redemption, or of such of the said Exchangeable Shares represented by certificates that have not at the date of such deposit been surrendered by the holders thereof in connection with such redemption, in a custodial account with any

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chartered bank or trust company in Canada named in such notice. Upon the later of such deposit being made and the Redemption Date, the Exchangeable Shares in respect whereof such deposit shall have been made shall be redeemed and the rights of the holders thereof after such deposit or Redemption Date, as the case may be, shall be limited to receiving the total Redemption Price for such Exchangeable Shares so deposited, against presentation and surrender of the said certificates held by them, respectively, in accordance with the foregoing provisions. Upon such payment or deposit of the total Redemption Price, the holders of the Exchangeable Shares shall thereafter be considered and deemed for all purposes to be holders of the HEARx Common Stock delivered to them or the custodian on their behalf.

ARTICLE VIII

Purchase for Cancellation

8.1 Subject to applicable law and notwithstanding section 8.2, HCI may at any time and from time to time purchase for cancellation all or any part of the outstanding Exchangeable Shares by private agreement with any holder of Exchangeable Shares, for consideration consisting of HEARx Common Stock.

8.2 Subject to applicable law and the Articles of Incorporation of HCI, HCI may at any time and from time to time purchase for cancellation all or any part of the outstanding Exchangeable Shares at any price by tender to all the holders of record of Exchangeable Shares then outstanding. For greater certainty, it is hereby confirmed that, notwithstanding the purchase for cancellation of Exchangeable Shares pursuant to this ARTICLE VIII, holders whose Exchangeable Shares are subject to purchase shall continue to be entitled to all declared but unpaid dividends thereon for which the record date has occurred prior to the date of purchase. If in response to an invitation for tenders under the provisions of this section 8.1, more Exchangeable Shares are tendered at a price or prices acceptable to HCI than HCI is prepared to purchase, the Exchangeable Shares to be purchased by HCI shall be purchased as nearly as may be pro rata according to the number of shares tendered by each holder who submits a tender to HCI, provided that when shares are tendered at different prices, the pro rating shall be effected (disregarding fractions) only with respect to the shares tendered at the price at which more shares were tendered at lower prices. If only part of the Exchangeable Shares represented by any certificate shall be purchased, a new certificate for the balance of such shares shall be issued at the expense of HCI.

ARTICLE IX

Voting Rights

9.1 Except as required by applicable law and the provisions of section 4.1, 10.1 and 12.2 hereof, the holders of the Exchangeable Shares shall not be entitled as such to receive notice of or to attend any meeting of the shareholders of HCI or to vote at any such meeting.

9.2 The holders of Exchangeable Shares shall be entitled to vote separately as a class in any voluntary liquidation, dissolution or winding-up of HCI.

ARTICLE X

Amendment and Approval

10.1 The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares may only be added to, changed or removed with the approval of the holders of the Exchangeable Shares given as hereinafter specified.

10.2 Any approval given by the holders of the Exchangeable Shares to add to, change or remove any right, privilege, restriction or condition attaching to the Exchangeable Shares or any other matter requiring the approval or consent of the holders of the Exchangeable Shares shall be deemed to have been sufficiently given if it shall have been given in accordance with applicable law subject to a minimum requirement that such approval be evidenced by resolution passed by not less than two-thirds of the votes cast on such a resolution by

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those shareholders entitled to vote the Exchangeable Shares at a meeting of holders of Exchangeable Shares duly called and held at which the holders of at least 20% of the outstanding Exchangeable Shares at that time (whether or not such holders are entitled to vote their Exchangeable Shares) are present or represented by proxy. If at any such meeting the holders of at least 20% of the outstanding Exchangeable Shares at that time are not present or represented by proxy within one half hour after the time appointed for such meeting, then the meeting shall be adjourned to such date not less than 10 days thereafter and to such time and place as may be designated by the Chairman of such meeting. At such adjourned meeting the holders of Exchangeable Shares present or represented by proxy thereat may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of not less than two-thirds of the votes cast on such resolution at such meeting shall constitute the approval or consent of the holders of the Exchangeable Shares.

ARTICLE XI

Economic Equivalence; Changes Relating to HEARx

11.1 The Board of Directors shall determine, in good faith and in its sole discretion (with the assistance of such reputable and qualified independent financial advisors and/or other experts as the Board of Directors may require) economic equivalence for the purposes of any provision herein that requires such a determination and each such determination shall be conclusive and binding on HEARx and the holders of Exchangeable Shares, where applicable.

11.2 Each holder of an Exchangeable Share acknowledges that HEARx will not, without the prior approval of HCI and the prior approval of the holders of the Exchangeable Shares given in accordance with section 10.2 of these share provisions:

- (a) issue or distribute HEARx Common Stock (or securities exchangeable for or convertible into or carrying rights to acquire HEARx Common Stock) to the holders of all or substantially all of the then outstanding HEARx Common Stock by way of stock dividend or other distribution, other than an issue of HEARx Common Stock (or securities exchangeable for or convertible into or carrying rights to acquire HEARx Common Stock) to holders of HEARx Common Stock who exercise an option to receive dividends in HEARx Common Stock (or securities exchangeable for or convertible into or carrying rights to acquire HEARx Common Stock) in lieu of receiving cash dividends;
- (b) issue or distribute rights, options or warrants to the holders of all or substantially all of the then outstanding HEARx Common Stock entitling them to subscribe for or to purchase HEARx Common Stock (or securities exchangeable for or convertible into or carrying rights to acquire HEARx Common Stock); or
- (c) issue or distribute to the holders of all or substantially all of the then outstanding HEARx Common Stock:
 - (i) shares or securities of HEARx of any class other than HEARx Common Stock (other than shares convertible into or exchangeable for or carrying rights to acquire HEARx Common Stock);
 - (ii) rights, options or warrants other than those referred to in section 11.2(b) above;
 - (iii) evidences of indebtedness of HEARx; or
 - (iv) assets of HEARx,

unless the economic equivalent on a per share basis of such rights, options, securities, shares, evidences of indebtedness or other assets is issued or distributed simultaneously to holders of the Exchangeable Shares.

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11.3 Each holder of an Exchangeable Share acknowledges that HEARx will not without the prior approval of HCI and the prior approval of the holders of the Exchangeable Shares given in accordance with section 10.2 of these share provisions:

- (a) subdivide, redivide or change the then outstanding HEARx Common Stock into a greater number of HEARx Common Stock;
- (b) reduce, combine, consolidate or change the then outstanding HEARx Common Stock into a lesser number of HEARx Common Stock; or
- (c) reclassify or otherwise change the HEARx Common Stock or effect an amalgamation, merger, reorganization or other transaction affecting the HEARx Common Stock,

unless the same or an economically equivalent change shall simultaneously be made to, or in, the rights of the holders of the Exchangeable Shares. The aforesaid provisions shall not be changed without the approval of the holders of the Exchangeable Shares given in accordance with section 10.2 of these provisions.

11.4 If at any time there is a capital reorganization of HEARx or a consolidation, merger, arrangement or amalgamation (statutory or otherwise) of HEARx with or into another entity (any such event being called a **Capital Reorganization**) that is not provided for in the definitions of HEARx Common Stock Reorganization, Rights Offering or Special Distribution, any holder of Exchangeable Shares whose Exchangeable Shares have not been exchanged for shares of HEARx Common Stock in accordance with the provisions hereof or the provisions of the Plan of Arrangement or of the Voting and Exchange Trust Agreement prior to the record date for such Capital Reorganization shall be entitled to receive and shall accept, upon any such exchange occurring pursuant to the provisions hereof or thereof at any time after the record date for such Capital Reorganization in lieu of the shares of HEARx Common Stock that he would otherwise have been entitled to receive pursuant to the provisions hereof, the number of shares or other securities of HEARx or of the body corporate resulting, surviving or continuing from the Capital Reorganization, or other property, that such holder would have been entitled to receive as a result of such Capital Reorganization if, on the record date, he had been the registered holder of the number of shares of HEARx Common Stock to which he was then entitled upon any exchange of his Exchangeable Shares into HEARx Common Stock in accordance with the provisions hereof, subject to adjustment thereafter in the same manner, as nearly as may be possible, as is provided for in the definition of Current HEARx Common Stock Equivalent; provided that no such Capital Reorganization shall be carried into effect unless all necessary steps shall have been taken so that each holder of Exchangeable Shares shall thereafter be entitled to receive, upon any exchange of his Exchangeable Shares pursuant to the provisions hereof, such number of shares or other securities of HEARx or of the body corporate resulting, surviving or continuing from the Capital Reorganization, or other property.

11.5 In the case of a reclassification of, or other change in, the outstanding shares of HEARx Common Stock other than a HEARx Common Stock Reorganization, Rights Offering, Special Distribution or a Capital Reorganization, such changes shall be made in the rights attaching to the Exchangeable Shares, without any action on the part of HCI or the holders of the Exchangeable Shares to the extent permitted by applicable law, effective immediately following the record date for such reclassification or other change, to the extent necessary to ensure that holders of Exchangeable Shares shall be entitled to receive, upon the occurrence at any time after such record date of any event whereby they would receive HEARx Common Stock pursuant to the previous provisions hereof or the provisions of the Plan of Arrangement or the Voting and Exchange Trust Agreement, such shares, securities or rights as they would have received if their Exchangeable Shares had been exchanged for HEARx Common Stock pursuant to the provisions hereof or thereof immediately prior to such record date, subject to adjustment thereafter in the same manner, as nearly as may be possible, as is provided for in the definition Current HEARx Common Stock Equivalent.

11.6 No certificates or scrip representing fractional HEARx Common Stock shall be delivered to holders of Exchangeable Shares pursuant to the provisions hereof.

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ARTICLE XII

Actions by HCI Under Supporting Agreements

12.1 HCI will take all such actions and do all such things as shall be necessary or advisable to perform and comply with and to ensure performance and compliance by HEARx and NSULC with all provisions of the Support Agreement and the Voting and Exchange Trust Agreement applicable to HCI, NSULC and HEARx, respectively, in accordance with the terms thereof including, without limitation, taking all such actions and doing all such things as shall be necessary or advisable to enforce to the fullest extent possible for the direct benefit of HCI and the holders of Exchangeable Shares all rights and benefits in favour of HCI under or pursuant to such agreements.

12.2 HCI shall not propose, agree to or otherwise give effect to any amendment to, or waiver or forgiveness of its rights or obligations under, the Support Agreement and the Voting and Exchange Trust Agreement without the approval of the holders of the Exchangeable Shares given in accordance with section 10.2 of these share provisions other than such amendments, waivers and/or forgiveness as may be necessary or advisable for the purposes of:

- (a) adding to the covenants of the other party or parties to such agreement for the protection of HCI or the holders of Exchangeable Shares; or
- (b) making such provisions or modifications not inconsistent with such agreements as may be necessary or desirable with respect to matters or questions arising thereunder which, in the opinion of the Board of Directors, it may be expedient to make, provided that the Board of Directors shall be of the opinion, after consultation with counsel, that such provisions and modifications will not be prejudicial to the interests of the holders of the Exchangeable Shares; or
- (c) making such changes in or corrections to such agreements which, on the advice of counsel to HCI, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained therein, provided that the Board of Directors shall be of the opinion, after consultation with counsel, that such changes or corrections will not be prejudicial to the interests of the holders of the Exchangeable Shares.

ARTICLE XIII

Legend

13.1 The certificates evidencing the Exchangeable Shares shall contain or have affixed thereto a legend, in form and on terms approved by the Board of Directors, with respect to the Support Agreement, the provisions of the Plan of Arrangement relating to the Retraction Call Right, the Liquidation Call Right, the Redemption Call Right and the Voting and Exchange Trust Agreement (including the provisions with respect to the voting rights, exchange rights and automatic exchange rights thereunder).

13.2 Each holder of an Exchangeable Share, whether of record or beneficial, by virtue of becoming and being such a holder shall be deemed to acknowledge each of the Liquidation Call Right, the Retraction Call Right and the Redemption Call Right, in each case, in favor of NSULC, and the overriding nature thereof in connection with the liquidation, dissolution or winding-up of HCI or the retraction or redemption of Exchangeable Shares, as the case may be, and to be bound thereby in favor of NSULC as therein provided.

13.3 HCI, NSULC, HEARx and the Transfer Agent shall be entitled to deduct and withhold from any dividend or consideration otherwise payable to any holder of Exchangeable Shares such amounts as HCI, NSULC, HEARx or the Transfer Agent is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada), the United States *Internal Revenue Code of 1986* or any provision of provincial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the Exchangeable Shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. To the extent that the amounts so

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required or permitted to be deducted or withheld from any payment to a holder exceeds a cash portion of the consideration otherwise payable to the holder, HCI, NSULC, HEARx and the Transfer Agent are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to HCI, NSULC, HEARx and the Transfer Agent, as the case may be, to enable it to comply with such deduction or withholding requirement and HCI, NSULC, HEARx or the Transfer Agent shall notify the holder thereof and remit any unapplied balance of the net proceeds of such sale.

ARTICLE XIV

Notices

14.1 Any notice, request or other communication to be given to HCI by a holder of Exchangeable Shares shall be in writing and shall be valid and effective if given by mail (postage paid) or by telecopy or by delivery to the registered office of HCI and addressed to the attention of the President. Any such notice, request or other communication, if given by mail, telecopy or delivery, shall only be deemed to have been given and received upon actual receipt thereof by HCI.

14.2 Any presentation and surrender by a holder of Exchangeable Shares to HCI or the Transfer Agent of certificates representing Exchangeable Shares in connection with the liquidation, dissolution or winding up of HCI or the retraction or redemption of Exchangeable Shares shall be made by registered mail (postage prepaid) or by delivery to the registered office of HCI or to such office of the Transfer Agent as may be specified by HCI, in each case addressed to the attention of the President of HCI. Any such presentation and surrender of certificates shall only be deemed to have been made and to be effective upon actual receipt thereof by HCI or the Transfer Agent, as the case may be. Any such presentation and surrender of certificates made by registered mail shall be at the sole risk of the holder mailing the same.

14.3 Any notice, request or other communication to be given to a holder of Exchangeable Shares by or on behalf of HCI or NSULC shall be in writing and shall be valid and effective if given by mail (postage prepaid) or by delivery to the address of the holder recorded in the securities register of HCI or, in the event of the address of any such holder not being so recorded, then at the last known address of such holder. Any such notice, request or other communication, if given by mail, shall be deemed to have been given and received on the fifth Business Day following the date of mailing and, if given by delivery, shall be deemed to have been given and received on the date of delivery. Accidental failure or omission to give any notice, request or other communication to one or more holders of Exchangeable Shares shall not invalidate or otherwise alter or affect any action or proceeding to be taken by HCI or NSULC pursuant thereto.

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SCHEDULE A

NOTICE OF RETRACTION

TO: HEARx Ltd. (HEARx), HEARx Acquisition ULC (NSULC) and HEARx Canada Inc. (HCI)

This notice is given pursuant to ARTICLE VI of the provisions attaching to the Exchangeable Shares of HCI represented by this certificate (the **Share Provisions**). All capitalized words and expressions used in this notice that are defined in the Share Provisions have the meanings ascribed to such words and expressions in such Share Provisions.

The undersigned hereby notifies HCI that, subject to the Retraction Call Right referred to below, the undersigned desires to have HCI redeem, in accordance with ARTICLE VI of the Share Provisions, all shares represented by this certificate, or _____ share(s) only. The Retraction Date shall be _____.

The undersigned acknowledges the Retraction Call Right of NSULC to purchase all but not less than all the Retracted Shares from the undersigned and that this notice is and shall be deemed to be a revocable offer (subject as hereinafter provided) by the undersigned to sell the Retracted Shares to NSULC in accordance with the Retraction Call Right on the Retraction Date for the Retraction Price and on the other terms and conditions set out in Section 6.3 of the Share Provisions. If NSULC determines not to exercise the Retraction Call Right, HCI will notify the undersigned of such fact as soon as possible. If this notice is not effective pursuant to section 6.1 of the Share Provisions, whether as a result of the postponement of a Retraction Period or otherwise, this notice of retraction, and the offer contained in this notice may be revoked by the undersigned by a further notice in writing addressed to HCI, NSULC and HEARx at any time before the close of business on the Business Day immediately preceding the Retraction Date, specifically referencing this Notice of Retraction and delivered to the Transfer Agent.

The undersigned acknowledges that if, as a result of solvency provisions of applicable law or otherwise, HCI fails to redeem all Retracted Shares and NSULC has not exercised the Retraction Call Right with respect to the Retracted Shares, the undersigned will be deemed to have exercised the Exchange Right (as defined in the Voting and Exchange Trust Agreement) so as to require NSULC to purchase the unredeemed Retracted Shares.

The undersigned hereby represents and warrants to HCI, NSULC and HEARx that the undersigned has good title to, and owns, the share(s) represented by this certificate to be acquired by HCI, NSULC or HEARx, as the case may be, free and clear of all Liens.

(Date)

(Signature of Shareholder)
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(Guarantee of Signature)

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- o Please check box if the securities and any cheque(s) resulting from the retraction or purchase of the Retracted Shares are to be held for pick-up by the shareholder at the principal transfer office of the Transfer Agent in Montreal, failing which the securities and any cheque(s) will be mailed to the last address of the shareholder as it appears on the register of holders of Exchangeable Shares.

NOTE: This panel must be completed and this certificate, together with such additional documents as the Transfer Agent may require, must be deposited with the Transfer Agent at its principal transfer office in Montreal. The securities and any cheque(s) resulting from the retraction or purchase of the Retracted Shares will be issued and registered in, and made payable to, respectively, the name of the shareholder as it appears on the register of HCI and the securities and cheque(s) resulting from such retraction or purchase will be delivered to such shareholder as indicated above, unless the form appearing immediately below is duly completed.

Name of Person in Whose Name Securities or Cheque(s) Are to Be Registered, Issued or Delivered	Date
(please print)	
Street Address or P.O. Box	Signature of Shareholder
City-Province	Signature Guaranteed by

NOTE: If the notice of retraction is for less than all of the share(s) represented by this certificate, a certificate representing the remaining shares of HCI will be issued and registered in the name of the shareholder as it appears on the register of HCI, unless the Share Transfer Power on the share certificate is duly completed in respect of such shares.

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ANNEX B

HEARx Canada Inc. (HCI)

SHARE PROVISIONS

PROVISIONS ATTACHING TO THE CLASS A SPECIAL SHARES

The Class A Special Shares of HCI shall have attached thereto the following rights, privileges, restrictions and conditions:

ARTICLE I

Ranking of Class A Special Shares

1.1 The Class A Special Shares shall rank senior to the Common Shares and junior to the Exchangeable Shares and any other shares of HCI with respect to the payment of dividends and the repayment of capital.

ARTICLE II

Dividends

2.1 The holders of the Class A Special Shares shall be entitled, subject to the rights, privileges, restrictions and conditions attaching to any other class of shares of HCI, to receive any dividend declared by HCI.

ARTICLE III

Distribution on Liquidation

3.1 In the event of the liquidation, dissolution or winding-up of HCI, whether voluntary or involuntary, the holders of the Class A Special Shares shall be entitled to receive in respect of each such share, after distribution to the holders of Exchangeable Shares but before any distribution of any part of the assets of HCI among the holders of any other class of shares of HCI ranking junior to the Class A Special Shares, an amount equal to the Redemption Price as defined in section 4.2.

ARTICLE IV

Redemption of Class A Special Shares

4.1 Subject to applicable law, HCI shall, at its option, be entitled to redeem at any time or times all or any part of the Class A Special Shares registered in the name of any holder of any such Class A Special Shares on the books of HCI with or without the consent of such holder by giving notice in writing to such holder specifying:

- (a) that HCI desires to redeem all or any part of the Class A Special Shares registered in the name of such holder;
- (b) if part only of the Class A Special Shares registered in the name of such holder is to be redeemed, the number thereof to be so redeemed;
- (c) the business day (in this paragraph referred to as the Redemption Date) on which HCI desires to redeem such Class A Special Shares. Such notice shall specify the Redemption Date which shall not be less than thirty (30) days after the date on which the notice is given by HCI or such shorter period of time as HCI and the holder of any such Class A Special Shares may agree; and
- (d) the place of redemption.

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4.2 HCI shall, on the Redemption Date, redeem such Class A Special Shares by paying to such holder an amount equal to one dollar (\$1.00) for each Class A Special Share (the **Redemption Amount**) plus all dividends declared thereon and unpaid as of such date and no more (together, the **Redemption Price**) on presentation and surrender of the certificate(s) for the Class A Special Shares so called for redemption at such place as may be specified in such notice. The certificate(s) for such Class A Special Shares shall thereupon be cancelled and the Class A Special Shares represented thereby shall thereupon be redeemed. Such payment shall be made by delivery to such holder of a cheque payable in the amount of or at the option of HCI, a demand note with a principal amount equal to the aggregate Redemption Price for the Class A Special Shares to be redeemed. From and after the redemption date the holder thereof shall not be entitled to exercise any of the rights of holders of Class A Special Shares in respect thereof unless payment of the said Redemption Price, is not made on the redemption date, or on presentation and surrender of the certificate(s) for the Class A Special Shares so called for redemption, whichever is later in which case the rights of the holder of the said Class A Special Shares shall remain unaffected until payment in full of the Redemption Price.

4.3 Where at any time some but not all of such Class A Special Shares are to be redeemed the Class A Special Shares to be redeemed shall be selected by lot in such manner as the Board of Directors determines, or as nearly as may be in proportion to the number of Class A Special Shares registered in the name of each holder, or in such other manner as the Board of Directors determines.

ARTICLE V

Retraction of Class A Special Shares

5.1 Subject to the CBCA, a holder of any Class A Special Shares shall be entitled to require HCI to redeem at any time or times any Class A Special Shares registered in the name of such holder on the books of HCI by tendering to HCI at its registered office a share certificate or certificates representing the Class A Special Shares which the holder desires to have HCI redeem together with a request in writing specifying (in this paragraph referred to as a **redemption demand**):

- (i) that the holder desires to have the Class A Special Shares represented by such certificate redeemed by HCI; and
- (ii) the business day (in this paragraph referred to as the **Redemption Date**) on which the holder desires to have HCI redeem such Class A Special Shares. The Redemption Demand shall specify the Redemption Date which shall not be less than thirty (30) days after the date on which the Redemption Demand is tendered to HCI or such other date as the holder and HCI may agree.

5.2 HCI shall, on such Redemption Date, subject to section 5.3 below, redeem all Class A Special Shares required to be redeemed by paying to such holder an amount equal to the aggregate Redemption Price therefor on presentation and surrender of the certificate(s) for the Class A Special Shares to be so redeemed at the registered office of HCI. The certificate(s) for such Class A Special Shares shall thereupon be cancelled and the Class A Special Shares represented thereby shall thereupon be redeemed. Such payment shall be made by delivery to such holder of a cheque in the amount of or, at the option of HCI, a demand note with a principal amount equal to the aggregate Redemption Price for the Class A Special Shares to be redeemed. From and after the Redemption Date, such Class A Special Shares shall cease to be entitled to dividends and the holder thereof shall not be entitled to exercise any of the rights of holders of Class A Special Shares in respect thereof unless payment of the said Redemption Price is not made on the Retraction Date, in which case the rights of the holder of the said Class A Special Shares shall remain unaffected until payment in full of the Redemption Price.

5.3 If less than all Class A Special Shares represented by a certificate are redeemed, the holder shall be entitled to receive, at the expense of HCI, a new certificate representing the Class A Special Shares which have not been redeemed.

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ARTICLE VI

Voting Rights

6.1 Except as required by applicable law, the holders of the Class A Special Shares shall not be entitled to receive notice of, or to attend any meeting of the shareholders of HCI or to vote at any such meeting.

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ANNEX C

HEARx Canada Inc. (HCI)

SHARE PROVISIONS

PROVISIONS ATTACHING TO THE COMMON SHARES

The Common Shares of HCI shall have attached thereto the following rights, privileges, restrictions and conditions:

ARTICLE I

Ranking of Common Shares

1.1 The Common Shares shall rank junior to the Exchangeable Shares, the Class A Special Shares and any other shares of HCI with respect to the payment of dividends and the repayment of capital.

ARTICLE II

Dividends

2.1 The holders of the Common Shares shall be entitled, subject to the rights, privileges, restrictions and conditions attaching to any other class of shares of HCI, to receive any dividend declared by HCI.

ARTICLE III

Distribution on Liquidation

3.1 The holders of the Common Shares shall be entitled, subject to the rights, privileges, restrictions and conditions attaching to any other class of shares of HCI, to receive the remaining property of HCI on a liquidation, dissolution or winding-up of HCI, whether voluntary or involuntary.

ARTICLE IV

Voting Rights

4.1 Each holder of Common Shares shall be entitled to receive notice of and to attend all meetings of shareholders of HCI and to vote thereat, except meetings at which only holders of a specified class of shares (other than Common Shares) or specified series of shares are entitled to vote. At all meetings of which notice must be given to the holders of the Common Shares, each holder of Common Shares shall be entitled to one vote in respect of each Common Share held by him or her.

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Table of Contents**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 20. *Indemnification of Directors and Officers******Indemnification of Directors and Officers***

The Delaware General Corporation Law permits the indemnification by a Delaware corporation of its directors, officers, employees and other agents against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than derivative actions which are by or in the right of the corporation) if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard of care is applicable in the case of derivative actions, except that indemnification only extends to expenses (including attorneys' fees) incurred in connection with defense or settlement of such an action and requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation.

As permitted by Delaware law, the certificate of incorporation of HEARx provides that no director will be personally liable to HEARx or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of duty of loyalty to HEARx or to its stockholders, (b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware General Corporation Law, or (d) for any transaction from which the director derived an improper personal benefit.

The certificate of incorporation of HEARx further provides that we must indemnify our directors and executive officers and may indemnify our other officers and employees and agents to the fullest extent permitted by Delaware law. We believe that indemnification under our certificate of incorporation covers negligence and gross negligence on the part of indemnified parties.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable.

Item 21. *Exhibits and Financial Statement Schedules***(a) Exhibits**

Exhibit No.	Description
2.1	The Amended and Restated Merger Agreement, dated November 6, 2001, between HEARx and Helix Hearing Care of America Corp. (included as Annex A to the joint proxy statement/prospectus).
*2.2	Interim Order issued by the Superior Court of Quebec and Notice of Application (included as Annex B to the joint proxy statement/prospectus).
2.3	Plan of Arrangement, including exchangeable share provisions (included as Annex K to this joint proxy statement/prospectus).
3.1	Restated Certificate of Incorporation of HEARx Ltd., including certain certificates of designations, preference and rights of certain preferred stock of the Company. [3] Filed as an exhibit to the Company's Current Report on Form 8-K, filed May 17, 1996, as the exhibit number indicated in brackets, and incorporated herein by reference.
3.2	Amendment to Restated Certificate of Incorporation. [3.1A]. Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the period ended June 28, 1996, as the exhibit number indicated in brackets, and incorporated herein by reference.

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Exhibit No.	Description
3.3	Certificate of Designations, Preferences and Rights of the Company's 1997 Convertible Preferred Stock. [3]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed March 26, 1997, as the exhibit number indicated in brackets, and incorporated herein by reference.
3.4	Amended and Restated By-Laws of HEARx Ltd. [3.4]. Filed as an exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1999, as the exhibit number indicated in brackets, and incorporated herein by reference.
3.5	Certificate of Designations, Preferences and Rights of the Company's 1998 Convertible Preferred Stock. [3]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed August 27, 1998, as the exhibit number indicated in brackets, and incorporated herein by reference.
3.6	Amendment to Restated Certificate of Incorporation including one for ten reverse stock split and reduction of authorized shares. [3.5]. Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the period ending July 2, 1999, as the exhibit number indicated in brackets, and incorporated herein by reference.
3.7	Certificate of Designation of the Company's 1999 Series H Junior Participating Preferred Stock. [4]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed December 17, 1999, as the exhibit number indicated in brackets, and incorporated herein by reference.
3.8	Certificate of Designations, Preferences and Rights of the Company's 2000 Series I Convertible Preferred Stock. [3]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed May 9, 2000, as the exhibit number indicated in brackets, and incorporated herein by reference.
3.9	Form of Amendment to Restated Certificate of Incorporation including increase in authorized shares and change of name.***
3.10	Form of Certificate of Designations, Preferences and Rights of the Company's Special Voting Preferred Stock.***
3.11	Certificate of Designations, Preferences and Rights of the Company's Series J Preferred Stock. [4.1] Filed as an Exhibit to the Company's Current Report on Form 8-K, filed December 26, 2001, as the exhibit number indicated in brackets, and incorporated herein by reference.
4.1	Securities Purchase Agreement, dated March 17, 1997, between HEARx Ltd. and each of the purchasers set forth on the signature pages thereto. [4.1]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed May 17, 1996, as the exhibit number indicated in brackets, and incorporated herein by reference.
4.2	Registration Rights Agreement, dated March 17, 1997, between HEARx Ltd. and each of the purchasers set forth on the signature pages thereto. [4.2]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed on March 26, 1997, as the exhibit number indicated in brackets, and incorporated herein by reference.
4.3	Form of Placement Agent Warrant (to purchase up to 850,000 shares of Common Stock at an exercise price equal to \$5.00 per share). [4.3]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed on March 26, 1997, as the exhibit number indicated in brackets, and incorporated herein by reference.
4.5	Specimen of Certificate representing Common Stock. [4.1]. Filed as an exhibit to the Company's Registration Statement on Form S-18 (Registration No. 33-17041-NY), filed September 4, 1987, as the exhibit number indicated in brackets, and incorporated herein by reference.
4.6	Securities Purchase Agreement, dated August 27, 1998, between HEARx Ltd. and each purchaser set forth on the signature pages thereto. [4.1]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed August 27, 1998, as the exhibit number indicated in brackets, and incorporated herein by reference.
4.7	Registration Rights Agreement, dated August 27, 1998, between HEARx Ltd. and each purchaser set forth on the signature pages thereto. [4.2]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed August 27, 1998, as the exhibit number indicated in brackets, and incorporated herein by reference.

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Exhibit No.	Description
4.8	Form of Placement Agent Warrant (to purchase up to 1,125,000 shares of Common Stock at an exercise price equal to \$1.80 per share). [4.3]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed August 27, 1998, as the exhibit number indicated in brackets, and incorporated herein by reference.
4.9	Rights Agreement, dated December 14, 1999, between HEARx and the Rights Agent, which includes the Certificate of Designations, Preferences and Rights of the Company's 1999 Series H Junior Participating Preferred Stock. [4]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed December 17, 1999, as the exhibit number indicated in brackets, and incorporated herein by reference.
4.9.1	Form of Amended and Restated Rights Agreement, between HEARx and the Rights Agent, which includes an amendment to the Certificate of Designations, Preferences and Rights of the Company's 1999 Series H Junior Participating Preferred Stock.
4.10	Securities Purchase Agreement, dated May 9, 2000, between HEARx Ltd. and each of the purchasers set forth on the signature pages thereto. [4.1]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed May 9, 2000, as the exhibit number indicated in brackets, and incorporated herein by reference.
4.11	Registration Rights Agreement, dated May 9, 2000, between HEARx Ltd. and each of the purchasers set forth on the signature pages thereto. [4.2]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed May 9, 2000, as the exhibit number indicated in brackets, and incorporated herein by reference.
4.12	Form of Placement Agent Warrant (to purchase up to 203,390 shares of Common Stock at an exercise price equal to \$4.46 per share). [4.3]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed May 9, 2000, as the exhibit number indicated in brackets, and incorporated herein by reference.
5.1	Opinion of Bryan Cave LLP regarding the legality of the securities being registered.
8.1	Opinion of Bryan Cave LLP as to tax matters.
8.2	Opinion of Fraser Milner Casgrain LLP as to tax matters.
9.1	Form of Voting and Exchange Trust Agreement among HEARx Ltd., HEARx Canada Inc., HEARx Acquisition ULC and Computer Share Trust Company of Canada (included as Annex C to the joint proxy statement/prospectus).
10.1	Form of Consulting Agreement, dated January 1, 1987, as of June 1, 1986, by and between HEARx Ltd. and each of the members of the Company's Scientific Advisory Board. [10.1]. Filed as an exhibit to the Company's Registration Statement on Form S-18 (Registration No. 33-17041-NY), filed September 4, 1987, as the exhibit number indicated in brackets, and incorporated herein by reference.
10.2	HEARx Ltd. 1987 Stock Option Plan. [10.11].# Filed as an exhibit to the Company's Registration Statement on Form S-18 (Registration No. 33-17041-NY), filed September 4, 1987, as the exhibit number indicated in brackets, and incorporated herein by reference.
10.3	(a) HEARx Ltd. Stock Option Plan for Non-Employee Directors and (b) Form of Option Agreement. [10.35] [10.48].# Filed as an exhibit to Post-Effective Amendment No. 1 to the Company's Registration Statement on Form S-18, filed on October 16, 1987, as the exhibit number indicated in brackets, and incorporated herein by reference.
10.4	1995 Flexible Employee Stock Plan [4].# Filed as an exhibit to the Company's 1995 Proxy Statement, filed on May 15, 1995, as the exhibit number indicated in brackets, and incorporated herein by reference.
10.5	Executive Employment Agreement, dated December 14, 1999, with Dr. Paul A. Brown. [10.10]. Filed as an exhibit to the Company's Annual Report on Form 10-K, filed March 28, 2000, as the exhibit number indicated in brackets, and incorporated herein by reference.
10.6	Executive Employment Agreement, dated December 14, 1999, with Stephen J. Hansbrough. [10.11]. Filed as an exhibit to the Company's Annual Report on Form 10-K, filed March 28, 2000, as the exhibit number indicated in brackets, and incorporated herein by reference.

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Exhibit No.	Description
10.7	Letter of Intent dated April 23, 2001 by and between HEARx Ltd. and Siemens Hearing Instruments, Inc. [10.1]. Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the period ended March 31, 2001, as the exhibit number indicated in brackets, and incorporated herein by reference.
10.8	Stockholders Agreement, dated July 27, 2001, between HEARx Ltd. and each stockholder set forth on the signature pages thereto (included as Annex E to the joint proxy statement/ prospectus).
10.9	Form of HearUSA 2002 Flexible Stock Plan.***#
10.10	Credit Agreement, dated December 7, 2001, between HEARx Ltd. and Siemens Hearing Instruments, Inc. [10.1]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed December 26, 2001, as the exhibit number indicated in brackets, and incorporated by reference herein.
10.11	Security Agreement, dated December 7, 2001, between HEARx Ltd. and Siemens Hearing Instruments, Inc. [10.2]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed December 26, 2001, as the exhibit number indicated in brackets, and incorporated by reference herein.
10.12	Supply Agreement, dated December 7, 2001, between HEARx Ltd. and Siemens Hearing Instruments, Inc. [10.3]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed December 26, 2001, as the exhibit number indicated in brackets, and incorporated by reference herein.**
10.13	Exchange and Redemption Agreement, dated December 4, 2001, between HEARx Ltd. and Advantage Fund II Ltd. [10.1]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed December 26, 2001, as the exhibit number indicated in brackets, and incorporated by reference herein.
10.14	Escrow Agreement, dated December 13, 2001, by and among HEARx Ltd., Advantage Fund II Ltd. and American Stock Transfer & Trust Company, as Escrow Agent. [10.2]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed December 26, 2001, as the exhibit number indicated in brackets, and incorporated by reference herein.
10.15	Registration Rights Agreement, dated December 13, 2001, between HEARx Ltd. and Advantage Fund II Ltd. [10.3]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed December 26, 2001, as the exhibit number indicated in brackets, and incorporated by reference herein.
10.16	Release, dated December 13, 2001, between HEARx Ltd. and Advantage Fund II Ltd. [10.4]. Filed as an exhibit to the Company's Current Report on Form 8-K, filed December 26, 2001, as the exhibit number indicated in brackets, and incorporated by reference herein.
10.17	Subscription Agreement, dated January 14, 2002, between HEARx Ltd. and Helix Hearing Care of America Corp.***
10.18	Credit Agreement dated as of April 30, 2002, among HEARx Ltd., Helix Hearing Care of America, Corp. and each of its direct and indirect subsidiaries.
10.19	Form of Master Security Agreement Collateral Assignment and Equity Pledge among HEARx Ltd., Helix Hearing Care of America Corp. and each of its direct and indirect subsidiaries, and Cousineau, Doucet, Parent, Forget Audioprothesistes s.e.n.c.
10.20	Form of Owners' Equity Pledge and Security Agreement among HEARx Ltd., Steve Forget and Cousineau, Doucet, Parent, Forget Audioprothesistes s.e.n.c.
10.21	Form of Stock Purchase Agreement dated March 29, 2002 by and between HEARx Ltd. and each purchaser named therein. [10.1] Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the period ended March 30, 2002, as the exhibit number indicated in brackets, and incorporated herein by reference.
10.22	Form of Warrant to purchase Common Stock issued in connection with March 29, 2002 private placement. [10.2] Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the period ended March 30, 2002, as the exhibit number indicated in brackets, and incorporated herein by reference.
21	List of subsidiaries. [21] Filed as an exhibit to the Company's Annual Report on Form 10-K, filed March 29, 2002, as the exhibit number indicated in brackets, and incorporated herein by reference.

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Exhibit No.	Description
23.1	Consent of Bryan Cave LLP (included in Exhibit 5.1 and Exhibit 8.1).
23.2	Consent of Fraser Milner Casgrain LLP (included in Exhibit 8.2).
23.3	Consent of BDO Seidman, LLP.
23.4	Consent of Deloitte & Touche LLP.
23.5	Consent of Raymond James & Associates, Inc.
23.6	Consent of Ernst & Young Corporate Finance Inc.
23.7	Consent of Yorkton Securities Inc.
24.1	Power of Attorney (included on signature page).***
99.1	Form of Proxy Card for HEARx Ltd.***
99.2	Form of Proxy Card for Helix Hearing Care of America Corp.***
99.3	Form of Support Agreement among HEARx Ltd., HEARx Canada Inc. and HEARx Acquisition ULC (included as Annex D to the joint proxy statement/ prospectus).

* To be filed by amendment.

** HEARx Ltd. has requested confidential treatment for certain portions of this exhibit.

*** Previously filed.

Denotes compensatory plan or arrangement for Company Officer or Director.

(b) Financial Statement Schedules**Schedule II Valuation and Qualifying Accounts**

	Balance at Beginning of Period	Additions	Deductions	Balance at End of Period
December 29, 2001				
Allowance for doubtful accounts	\$212,657	\$125,206	\$(152,049)(1)	\$185,814
Allowance for sales returns	\$772,976		\$(272,196)	\$500,780
December 29, 2000				
Allowance for doubtful accounts	\$535,609	\$377,500	\$(700,452)(1)	\$212,657
Allowance for sales returns	\$497,412	\$275,564		\$772,976
December 31, 1999				
Allowance for doubtful accounts	\$588,509	\$568,135	\$(621,035)(1)	\$535,609
Allowance for sales returns	\$300,708	\$196,704		\$497,412

(1) Uncollectible accounts written off, net of recoveries.

(c) Reports, Opinions or Appraisals

The fairness opinions of Raymond James Associates, Inc., Ernst & Young Corporate Finance Inc. and Yorkton Securities Inc. are included in the joint proxy statement/prospectus as Appendices G, H and I.

Item 22. Undertakings

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(a) HEARx hereby undertakes as follows:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individu-

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ally or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) If the registrant is a foreign private issuer, to file a post-effective amendment to the registration statement to include any financial statements required by Item 8.A. of Form 20-F at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Act need not be furnished, *provided*, that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to registration statements on Form F-3, a post-effective amendment need not be filed to include financial statements and information required by Section 10(a)(3) of the Act of Rule 3-19 of this chapter if such financial statements and information are contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in Form F-3.

(b) The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(c) The registrant undertakes that every prospectus: (i) that is filed pursuant to paragraph (b) immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Act and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective

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amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(d) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11, or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(e) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

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Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 4 to this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of West Palm Beach, State of Florida, on the 6th day of May, 2002.

HEARx Ltd.

By /s/ PAUL A. BROWN

Name: Paul A. Brown, M.D.

Title: Chairman and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 4 to this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Name	Title	Date
/s/ PAUL A. BROWN	Chairman of the Board, Chief Executive Officer and Director	May 6, 2002
Paul A. Brown, M.D.		
/s/ STEPHEN J. HANSBROUGH	President, Chief Operating Officer and Director	May 6, 2002
Stephen J. Hansbrough		
/s/ JAMES W. PEKLENK	Vice President-Finance and Chief Financial Officer (principal accounting officer)	May 6, 2002
James W. Peklenk		
*	Director	May 6, 2002
Joseph L. Gitterman, III		
*	Director	May 6, 2002
David J. McLachlan		
*	Director	May 6, 2002
Thomas W. Archibald		
*By: /s/ PAUL A. BROWN		
Paul A. Brown, (Attorney-in-Fact)		