

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

In re

ZOUNDS, INC.,

Debtor.

Chapter 11

Case No. 2:09-bk-06053-GBN

**PLAN OF REORGANIZATION**

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Dated: June \_\_\_, 2009

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**Exhibits to Plan:**

Exhibit A	Reorganized Certificate
Exhibit B	Reorganized By-Laws
Exhibit C	Avoidance Actions and Preserved Litigation Claims
Exhibit D	Assumed and Rejected Executory Contracts and Unexpired Leases
Exhibit E	Exit Financing Documents
Exhibit F	Unsecured Creditor Note

## INTRODUCTION

Zounds, Inc., the debtor-in-possession in this Chapter 11 case, proposes the following plan of reorganization for the resolution of its outstanding claims and equity interests.

**All holders of Claims against, and Equity Interests in, the Debtor are encouraged to read the Plan, the Disclosure Statement, and the related materials in their entirety.**

Subject to the restrictions on modifications set forth in Bankruptcy Code § 1127, Bankruptcy Rule 3019, and Section 12.01 of the Plan, the Debtor reserves the right to amend the Plan one or more times before its substantial consummation.

## ARTICLE 1. DEFINITIONS AND RULES OF INTERPRETATION

Except as otherwise specifically noted, all capitalized terms used in the Plan have the meanings ascribed to them in this Article 1. Any capitalized term used but not defined in the Plan retains the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules. Whenever the context requires, terms include the plural as well as the singular and the masculine gender as well as the feminine gender. “Including” is inclusive and not exclusive, as in “including, without limitation.”

As used in the Plan, the following terms have the following meanings:

**1.01. Administrative Claim.** A Claim for any cost or expense of administration of the Chapter 11 Case Allowed under Bankruptcy Code §§ 503(b), 507(b) or 546(c)(2) and entitled to priority under Bankruptcy Code § 507(a)(1), including: (a) fees payable under 28 U.S.C. § 1930; (b) actual and necessary costs and expenses incurred in the ordinary course of the Debtor’s business; (c) actual and necessary costs and expenses of preserving the Estate or administering the Chapter 11 Case; and (d) all Professional Fee Claims to the extent Allowed by Final Order under Bankruptcy Code §§ 330, 331, or 503.

**1.02. Administrative Claims Bar Date.** The first Business Day 30 days after the Confirmation Date.

**1.03. Allowed.** (a) A Claim that has been allowed by a Final Order or (b) with respect to any Claim against, or Equity Interest in, the Debtor: (i) (A) proof of which, request for payment of which, or application for allowance of which, was filed or deemed filed with the Bankruptcy Court on or before the Bar Date, the Administrative Claims Bar Date, the Professional Fee Bar Date, or the Rejection Damages Bar Date, as applicable, for filing proofs of claim or equity interest or requests for payment for Claims of that type against the Debtor or other applicable date established by order of the Bankruptcy Court, even if that date is after the Bar Date, the Administrative Claims Bar Date, the Professional Fee Bar Date, or the Rejection Damages Bar Date, as applicable; or (B) a Claim or Equity Interest that is allowed by the Debtor; (ii) listed as undisputed, liquidated, and non-contingent in the Schedules and as to which no objection to its allowance or motion to estimate for purposes of allowance has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court; and (iii) in each instance, a Claim or Equity Interest as to which no objection to its allowance or motion to estimate for purposes of allowance has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court or, as to which any such objection or motion has been interposed, to the extent allowed by a Final Order. The term “Allowed,” when used to modify a reference in the Plan to any Claim, Equity Interest, Class of Claims, or Class of Equity Interests, means a Claim or Equity Interest (or any Claim or Equity Interest in any Class) that is so allowed (*e.g.*, an “Allowed Secured Claim” is a Claim that has been allowed to the extent of the value, as determined by the Bankruptcy Court under Bankruptcy Code § 506(a), of any interest in property of an Estate securing such Claim).

**1.04. Avoidance Actions.** All statutory causes of action preserved for the Estate under Bankruptcy Code §§ 510, 542, 543, 544, 545, 547, 548, 549, 550, and 553 that the Debtor or the Estate may have against any Person including those listed in Exhibit C to the Plan. Failure to list an Avoidance Action in the Plan does not constitute the Debtor's or the Estate's waiver or release of that Avoidance Action.

**1.05. Bankruptcy Code.** Title 11 of the United States Code as of the Petition Date.

**1.06. Bankruptcy Court.** The United States District Court for the District of Arizona and, to the extent of any reference under 28 U.S.C. § 157, the bankruptcy unit of the District Court under 28 U.S.C. § 151.

**1.07. Bankruptcy Rules.** Collectively, the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. § 2075 and any Local Rules of the Bankruptcy Court applicable to the Chapter 11 Case.

**1.08. Ballot.** The form of ballot or ballots distributed with the Disclosure Statement to holders of Claims and Equity Interests entitled to vote on the Plan on which an acceptance or rejection of the Plan is indicated.

**1.09. Bar Date.** The date or dates fixed by the Bankruptcy Court by which Persons asserting a Claim against, or Equity Interest in, the Debtor (*except* Administrative Claims, Professional Fee Claims, and Rejection Damages Claims) are required to file a proof of claim or equity interest or a request for payment or be forever barred from asserting a Claim against or Equity Interest in the Debtor or its property, from voting on the Plan, and from sharing in distributions under the Plan.

**1.10. Benefit Plans.** All benefit plans of whatever type or nature that the Debtor provided to its employees, whether now in existence or previously terminated, including all 401(k) plans, medical insurance plans, accidental death and dismemberment plans, disability plans, tuition reimbursement plans, dental insurance plans, and life insurance plans, and any rights of employees to extended coverage arising from any Benefit Plan whether under the terms of the Benefit Plans, under COBRA, or under applicable law.

**1.11. Business Day.** Any day other than a Saturday, Sunday, or legal holiday (as defined in Bankruptcy Rule 9006).

**1.12. Cash.** Currency, checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks, money orders, negotiable instruments, and wire transfers of immediately available funds.

**1.13. Chapter 11 Case.** The case under Chapter 11 of the Bankruptcy Code in which the Debtor is the debtor-in-possession, pending before the Bankruptcy Court, Case No. 2:09-bk-06053-GBN.

**1.14. Class.** A category consisting of holders of Claims or Equity Interests substantially similar in nature to the Claims or Equity Interests of other holders placed in that category, as designated in Article 3 of the Plan.

**1.15. COBRA.** The Consolidated Omnibus Budget Reconciliation Act of 1986, as amended, and the regulations promulgated under that act.

**1.16. Collateral.** Any property or interest in property of the Estate subject to a Lien to secure the payment or performance of a Claim, the Lien not being subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

**1.17. Committee.** Any official committee of creditors or equity interest holders appointed in the Chapter 11 Case under Bankruptcy Code § 1102.

- 1.18. Confirmation Date.** The date the Bankruptcy Court enters the Confirmation Order.
- 1.19. Confirmation Hearing.** The hearing held by the Bankruptcy Court to consider confirmation of the Plan under Bankruptcy Code § 1129.
- 1.20. Confirmation Order.** The order of the Bankruptcy Court confirming the Plan in accordance with the Bankruptcy Code. The Confirmation Order need not necessarily be a Final Order.
- 1.21. Contingent Claim.** Any Claim for which a proof of claim has been filed with the Bankruptcy Court that: (a) was not filed in a fixed amount, or has not accrued and depends on a future event that has not occurred and may never occur; and (b) has not been Allowed on or before the Confirmation Date.
- 1.22. Cure.** The payment on the Effective Date of Cash or other property as a condition to the assumption or assumption and assignment by the Debtor of an executory contract or unexpired lease of nonresidential real property, in accordance with Bankruptcy Code § 365(b).
- 1.23. D&O Policy.** Any directors and officers liability insurance policy or any applicable errors and omissions policy applicable to the Debtor's directors and officers.
- 1.24. Debtor.** Zounds, Inc., a Delaware corporation, as debtor-in-possession in the Chapter 11 Case under Bankruptcy Code §§ 1107 and 1108.
- 1.25. Debt Security.** Any debt security, as defined by applicable law, issued by the Debtor including (a) the 10% Series B Convertible Notes due 2009, (b) the 10% Series C Convertible Notes due 2009, and (c) the 10% Secured Convertible Notes.
- 1.26. DIP Facility.** The debtor-in-possession financing facility between the DIP Lenders and the Debtor, as approved by the Bankruptcy Court under the DIP Financing Order.
- 1.27. DIP Financing Order.** Collectively, the *Interim Order (I) Authorizing Debtor (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 362(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Liens, Security Interests and Superpriority Claims and (III) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* and the *Final Order (I) Authorizing Debtor (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 362(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Liens, Security Interests and Superpriority Claims and (III) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364*, signed by the Bankruptcy Court on April 8, 2009 and April 29, 2009, respectively, approving and authorizing the terms of debtor-in-possession financing arrangements in the Chapter 11 Case in accordance with the DIP Loan Documents.
- 1.28. DIP Lenders.** The lenders under the DIP Loan Documents.
- 1.29. DIP Loan Documents.** All documents and instruments evidencing, setting forth the terms, and implementing the terms of the DIP Facility executed in the Chapter 11 Case and as approved by the DIP Financing Order.
- 1.30. Disallowed.** In reference to a Claim, a Claim or any portion of a Claim that has been disallowed, overruled, withdrawn, or expunged by Final Order.
- 1.31. Disclosure Statement.** The written disclosure statement relating to the Plan (including all exhibits and schedules) in the form approved by the Bankruptcy Court under Bankruptcy Code § 1125 and Bankruptcy Rule 3017.

**1.32. Disputed.** With respect to Claims or Equity Interests, any Claim or Equity Interest: (a) listed in the Schedules as unliquidated, disputed, or contingent, or as to which the Debtor or any other party-in-interest has (i) interposed a timely objection or request for estimation, or (ii) sought to equitably subordinate or otherwise limit recovery in accordance with the Bankruptcy Code and the Bankruptcy Rules, in each instance where such listing, objection, request for estimation, or action to limit recovery has not been withdrawn or determined by a Final Order; or (b) that is a Contingent Claim.

**1.33. Distribution Record Date.** The date, established in the Confirmation Order, by which the identities of the holders of Claims and Equity Interests are determined for purposes of entitlement to receive distributions under the Plan.

**1.34. EBITDA.** Net income, less income or plus loss from discontinued operations and extraordinary items, plus income taxes, plus interest expense, plus depreciation and amortization, as determined in conformity with GAAP.

**1.35. Effective Date.** The first Business Day that is eleven days after the Confirmation Date and on which (a) no stay of the Confirmation Order is in effect and (b) all conditions to effectiveness set forth in Section 9.02 of the Plan have been satisfied or waived in accordance with the Plan.

**1.36. Equity Interest.** Any equity interest in the Debtor represented by any class or series of common or preferred stock issued before the Effective Date, and any warrants, options, or rights to purchase any common or preferred stock.

**1.37. Estate.** The estate for the Debtor created in the Chapter 11 Case under Bankruptcy Code § 541.

**1.38. Exchange Act.** The Securities Exchange Act of 1934, as amended, and its applicable regulations.

**1.39. Exit Financing Facility.** A post-Effective Date, senior secured working capital credit facility between Reorganized Zounds and the lenders indicated on the Exit Financing Documents containing terms in form and substance reasonably acceptable to Reorganized Zounds and those lenders.

**1.40. Exit Financing Documents.** The documents or term sheets setting forth the terms of the Exit Financing Facility, substantially in the form included as Exhibit E to the Plan.

**1.41. Final Order.** An order or judgment of the Bankruptcy Court: (a) as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired, or as to which any right to appeal, petition for certiorari, reargue, or rehear has been waived in writing in form and substance satisfactory to the Debtor; and (b) if an appeal, writ of certiorari, or reargument or rehearing has been sought, as to which the highest court to which the order was appealed, or certiorari, reargument or rehearing was sought, has determined or denied the appeal, writ of certiorari, reargument, or rehearing, and the time to take any further appeal, petition for writ of certiorari, or move for reargument or rehearing has expired; but the filing of a motion under Rule 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, with respect to the order does not prevent the order from being a Final Order.

**1.42. GAAP.** Generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

**1.43. General Unsecured Claim.** Any Claim against the Debtor existing as of the Petition Date not secured by an interest in property of the Estate, other than a Secured Claim, an Administrative Claim, a Priority Tax Claim, a Priority Claim, a Rejection Claim, a Notes Claim, or a Securities Claim.

**1.44. Gross Assets.** All property of the Estate as vested in Reorganized Zounds as of the Effective Date in accordance with Section 10.01 of the Plan.

**1.45. IRS.** The Internal Revenue Service.

**1.46. Lien.** A lien as defined in Bankruptcy Code § 101(37) that has been avoided in accordance with Bankruptcy Code §§ 544, 545, 546, 547, 548, or 549.

**1.47. Maximum Amount.** With respect to any Disputed Claim: (a) the amount to which Reorganized Zounds and the holder of the Disputed Claim agree; or (b) any amount the Bankruptcy Court estimates or determines under Bankruptcy Code § 502(c); or (c) absent any agreement, estimation, or determination, the amount set forth in the proof of claim filed by the holder of the Disputed Claim, or, if no amount is so set forth, the amount set forth in the Schedules for the Disputed Claim, or, if no amount is so set forth, the amount Reorganized Zounds estimates in its good faith discretion.

**1.48. Net Assets.** All assets of Reorganized Zounds (*i.e.*, Gross Assets) remaining after payments to Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Miscellaneous Secured Claims, and Allowed Secured Tax Claims.

**1.49. New Common Stock.** The common stock, \$0.0001 par value per share, to be authorized under the Reorganized Certificate to be filed with the Delaware Secretary of State as of the Effective Date.

**1.50. Petition Date.** March 30, 2009, the date on which the Debtor filed its voluntary petition commencing the Chapter 11 Case.

**1.51. Plan.** This plan of reorganization, either in its present form or as it may be amended, supplemented, or modified from time to time, including, except where the context otherwise requires, all its annexed exhibits and all Plan Documents.

**1.52. Plan Documents.** Collectively, the Reorganized Certificate, the Reorganized By-Laws, the Unsecured Creditor Note, and the Exit Financing Documents, copies of which are attached as exhibits to the Plan, and any other contracts, instruments, releases, and other agreements or documents to be executed in order to consummate the transactions contemplated under the Plan or otherwise necessary to effect and further evidence the terms and conditions of the Plan and the documents listed in this Section 1.52.

**1.53. Preserved Litigation Claims.** All rights, claims, torts, liens, actions, causes of action, avoiding powers, proceedings, debts, contracts, judgments, offsets, damages, and demands in law or in equity, including Avoidance Actions, whether known or unknown, contingent or otherwise, that the Debtor or the Estate (through a Committee or otherwise) has brought or may have against any Person, including those listed in Exhibit C to the Plan. Failure to list a Preserved Litigation Claim in the Plan does not constitute the Debtor's, the Estate's, or Reorganized Zounds's waiver or release of that Preserved Litigation Claim.

**1.54. Preserved Ordinary Course Administrative Claim.** Any Administrative Claim based on liabilities incurred by the Debtor in the purchase, lease, or use of goods and services in the ordinary course of its business, including Administrative Claims on account of services provided after the Petition Date to the Debtor by its employees, and Claims for unpaid rent or contract payments arising under a

rejected executory contract or unexpired lease of nonresidential real property after the Petition Date and before the effective date of the rejection of that contract or lease, but excluding Professional Fee Claims.

**1.55. Priority Claim.** Any Claim (or portion of a Claim) entitled to priority under Bankruptcy Code § 507(a) other than Priority Tax Claims and Administrative Claims.

**1.56. Priority Tax Claim.** Any Claim of a Governmental Unit entitled to priority under Bankruptcy Code § 507(a)(8).

**1.57. Professional.** A Person: (a) employed in the Chapter 11 Case in accordance with an order of the Bankruptcy Court under Bankruptcy Code §§ 327, 328, 363, or 1103 and to be compensated for services under Bankruptcy Code §§ 327, 328, 329, 330, and 331 or order of the Bankruptcy Court; or (b) for whom compensation and reimbursement has been Allowed by a Final Order under Bankruptcy Code § 503(b).

**1.58. Professional Fee Bar Date.** The first Business Day that is 60 days after the Confirmation Date.

**1.59. Professional Fee Claim.** An Administrative Claim for compensation and reimbursement of expenses of a Professional rendered or incurred before the Effective Date submitted in accordance with Bankruptcy Code §§ 328, 330, 331, or 503(b).

**1.60. Pro Rata.** A proportionate share, such that the ratio of the consideration distributed on account of an Allowed Claim in a Class to the amount of that Allowed Claim is the same as the ratio of the amount of the consideration distributed on account of all Allowed Claims in that Class to the amount of all Allowed Claims in that Class.

**1.61. Rejection Claims.** All Claims arising from the Debtor's rejection of an executory contract or unexpired lease either during the Chapter 11 Case or in connection with the Plan, including Claims for future rents under Bankruptcy Code § 502(b)(6) or future contract payments and unsecured Claims for unpaid rent or contract payments accruing before the Petition Date. Rejection Claims do not include Claims for unpaid rent or contract payments arising under a rejected executory contract or unexpired lease after the Petition Date and before the effective date of the rejection of that contract or lease—those Claims are Preserved Ordinary Course Administrative Claims.

**1.62. Rejection Claims Bar Date.** The first Business Day that is 30 days after the Confirmation Date.

**1.63. Reorganized By-Laws.** The Amended and Restated By-Laws of Reorganized Zounds, substantially in the form of Exhibit B to the Plan.

**1.64. Reorganized Certificate.** The Amended and Restated Certificate of Incorporation of Reorganized Zounds, substantially in the form included as Exhibit A to the Plan.

**1.65. Reorganized Zounds.** Zounds, Inc., on and after the Effective Date.

**1.66. Retiree Benefits.** Payments to any Person for the purpose of providing or reimbursing payments for retired employees of the Debtor and of any other entities as to which the Debtor is obligated to provide retiree benefits and the eligible spouses and eligible dependents of such retired employees, for medical, surgical, or hospital care benefits, or in the event of death of a retiree under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established by the Debtor before the Petition Date, as that plan, fund, or program was then in effect or as later amended.

**1.67. Schedules.** The schedules of assets and liabilities, the list of holders of interests, and the statements of financial affairs filed by the Debtor under Bankruptcy Code § 521 and Bankruptcy Rule 1007, as the schedules, list, and statements may have been or may be supplemented or amended from time to time.

**1.68. SEC.** The United States Securities and Exchange Commission.

**1.69. Secured Claim.** Any Claim (a) listed in the Schedules as a liquidated, noncontingent, and undisputed secured Claim, or (b) reflected in a proof of claim as a secured Claim, secured by a Lien on Collateral to the extent of the value of the Collateral, as determined in accordance with Bankruptcy Code § 506(a), or, if the Claim is subject to setoff under Bankruptcy Code § 553, net of the setoff.

**1.70. Secured Notes Claim.** Any Claim for the principal face amount and all accrued and unpaid interest of a Debt Security (a) listed in the Schedules as a liquidated, noncontingent, and undisputed secured Claim, or (b) reflected in a proof of claim as a secured Claim, secured by a Lien on Collateral to the extent of the value of the Collateral, as determined in accordance with Bankruptcy Code § 506(a), or, if the Claim is subject to setoff under Bankruptcy Code § 553, net of the setoff.

**1.71. Secured Tax Claim.** Any Claim of any governmental unit or associated political subdivision, including principal taxes and accrued and unpaid interest under applicable law from the Petition Date, that is secured by a Lien on property of the Estate by operation of applicable law including every Claim for unpaid real, personal property, or *ad valorem* taxes.

**1.72. Securities Act.** The Securities Act of 1933, as amended, and its applicable regulations.

**1.73. Securities Claim.** Any Claim by any Person other than the Debtor or Reorganized Zounds: (a) arising from the rescission of a purchase or sale of an Equity Interest or Debt Security; or (b) for damages arising from the purchase or sale of an Equity Interest or Debt Security; or (c) that asserts equitable or contractual rights of reimbursement, contribution, or indemnification arising from such a Claim; including any Claim that has been or may be asserted by any Person other than the Debtor or Reorganized Zounds against the Debtor or one or more of its officers or directors.

**1.74. Settled Notes Claim.** The Allowed Claim of a holder of a Notes Claim—with a corresponding security interest that is either unperfected as of the Petition Date or subject to avoidance as a preference under Bankruptcy Code § 547 as described in the Disclosure Statement—that elects on a Ballot to settle the avoidance of its purported security interest, accept an Allowed Claim in Class 5, and accept the Plan.

**1.75. Unsecured Creditor Note.** A promissory note made on the Effective Date by Reorganized Zounds, payable to the Unsecured Creditor Trust, in the principal amount of \$1,000,000, bearing no interest, payable in quarterly installments to the extent of Reorganized Zounds's EBITDA above \$500,000, not to exceed \$50,000 in any one quarter, until either the note is paid in full or until five years from the Effective Date, whichever occurs first.

**1.76. Unsecured Creditor Trust.** A grantor trust created as of the Effective Date, the trustee of which is the Unsecured Creditor Trustee and the beneficial interests of which are to be distributed to holders of Allowed Unsecured Claims in Class 6.

**1.77. Unsecured Creditor Trustee.** The individual designated by the Committee no later than ten days before the Confirmation Hearing to serve as the trustee of the Unsecured Creditor Trust.

**1.78. Unsecured Notes Claim.** An unsecured Claim for the principal face amount and all accrued and unpaid interest of a Debt Security.

**ARTICLE 2.**  
**TREATMENT OF UNCLASSIFIED CLAIMS**

**2.01. Unclassified Claims.** As provided in Bankruptcy Code § 1123(a)(1), Administrative Claims and Priority Tax Claims are not classified for purposes of voting on, or receiving distributions under, the Plan. Holders of Administrative Claims and Priority Tax Claims are not entitled to vote on the Plan but, rather, are treated separately in accordance with Sections 2.02 and 2.04 of the Plan and under Bankruptcy Code § 1129(a)(9)(A).

**2.02. Allowed Administrative Claims.**

**a. Generally.** Each Allowed Administrative Claim (other than a Preserved Ordinary Course Administrative Claim or Professional Fee Claim) will be paid in full in Cash (or otherwise satisfied in accordance with its terms) on the latest of: (a) the Effective Date, or as soon after that date as practicable; (b) any date the Bankruptcy Court may fix, or as soon after that date as practicable; (c) 30 days after the Claim is Allowed; and (d) any date on which the holder of the Claim and the Debtor or Reorganized Zounds agree.

**b. Requests for Payment.** All requests for payment of an Administrative Claim (other than a Preserved Ordinary Course Administrative Claim or Professional Fee Claim) must be served on Reorganized Zounds and filed with the Bankruptcy Court no later than the Administrative Claims Bar Date. Any holder of an Administrative Claim (other than a Preserved Ordinary Course Administrative Claim or Professional Fee Claim) that fails to file and serve its request by the Administrative Claims Bar Date will be forever barred from asserting its Administrative Claim against the Debtor or Reorganized Zounds.

**2.03. Preserved Ordinary Course Administrative Claims.** Each Allowed Preserved Ordinary Course Administrative Claim will be paid in full in Cash at Reorganized Zounds's election either: (a) in accordance with the terms and conditions under which the Claim arose; or (b) in the ordinary course of Reorganized Zounds's business. Payments will be made without further action by the holder of the Preserved Ordinary Course Administrative Claim.

**2.04. Allowed Priority Tax Claims.** Any Allowed Priority Tax Claim will be paid in full in Cash on the later of the Effective Date (or as soon after that date as practicable) and 30 days after the Claim is Allowed, but the Debtor or Reorganized Zounds may elect to pay any Allowed Priority Tax Claim through regular installment payments in Cash of a total value, as of the Effective Date, equal to the Allowed amount of the Claim, over a period ending not later than five years after the Petition Date, and in a manner not less favorable than the most favored General Unsecured Claim provided for by the Plan. If the Debtor or Reorganized Zounds so elect, the installment payments will be made in equal quarterly installments of principal plus interest, at a rate determined under applicable nonbankruptcy law, on the unpaid portion of the Allowed Priority Tax Claim accruing from the Effective Date. The first payment will be made on the latest of: (a) the Effective Date, or as soon after that date as practicable; (b) 30 days after the Claim is Allowed, or as soon after than date as practicable; and (c) another date on which the holder of the Claim and the Debtor or Reorganized Zounds agree. Reorganized Zounds retains the right to prepay any Allowed Priority Tax Claim, or any remaining balance of such a Claim, in full or in part, at any time on or after the Effective Date without premium or penalty.

**2.05. Professional Fee Claims.** Each Allowed Professional Fee Claim will be paid in full in Cash: (a) no later than three days after the Professional Fee Claim is Allowed; (b) on any other terms the holder of an Allowed Professional Fee Claim and the Debtor or Reorganized Zounds may agree; or (c) in accordance with the terms of any applicable administrative procedures order entered by the Bankruptcy Court. Each Person seeking an award by the Bankruptcy Court of Professional Fees must file with the Bankruptcy

Court and serve on Reorganized Zounds its final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Confirmation Date by the Professional Fee Bar Date.

**2.06. Post-Confirmation Date Professional Fees.** All claims of Professionals for services rendered or expenses incurred after the Confirmation Date in connection with the Chapter 11 Case and the Plan including those relating to consummation of the Plan, any appeal of the Confirmation Order, the preparation, filing, and review of Professional Fee Claims, the prosecution of Avoidance Actions and Preserved Litigation Claims, and the resolution of Disputed Claims, will be paid by Reorganized Zounds on receipt of an invoice, or on other terms on which Reorganized Zounds and the Professional agree, without the need for further Bankruptcy Court authorization or entry of a Final Order. Reorganized Zounds has ten days after receiving a Professional's invoice to object to any item contained in that invoice. If Reorganized Zounds and any Professional cannot agree on the amount of post-Confirmation Date fees and expenses to be paid to the Professional, the Bankruptcy Court will determine that amount.

**2.07. Claims of DIP Lenders.** On the Effective Date, all the Debtor's obligations to the DIP Lenders under the DIP Facility and the DIP Loan Documents will be fully and finally satisfied with proceeds of the Exit Financing Facility.

### ARTICLE 3.

#### CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

**3.01. Class 1—Priority Claims.** Class 1 consists of all Priority Claims other than Priority Tax Claims.

**a. Impairment and Voting.** Class 1 is unimpaired by the Plan. All holders of Allowed Priority Claims are deemed to have accepted the Plan and will not be solicited to vote on the Plan.

**b. Treatment.** Each holder of an Allowed Priority Claim other than a Priority Tax Claim will receive Cash in an amount equal to its Allowed Priority Claim on the later of: (i) the Effective Date, or as soon after that date as practicable; and (ii) 30 days after the Priority Claim is Allowed; unless, before the later of these two dates, the holder of the Claim and Reorganized Zounds agree in writing to a different date.

**3.02. Class 2—Secured Tax Claims.** Class 2 consists of all Secured Tax Claims. Each holder of a Secured Tax Claim is considered to be in its own separate subclass within Class 2, and each such subclass is deemed to be a separate Class for purposes of the Plan.

**a. Impairment and Voting.** Class 2 is unimpaired by the Plan. All holders of Allowed Secured Tax Claims are deemed to have accepted the Plan and will not be solicited to vote on the Plan.

**b. Treatment.** Each holder of an Allowed Secured Tax Claim will receive Cash in an amount equal to its Allowed Secured Tax Claim on the latest of: (i) the Effective Date, or as soon after that date as practicable; (ii) any date the Bankruptcy Court may fix, or as soon after that date as practicable; (iii) 30 days after the Secured Tax Claim is Allowed; and (iv) the date on which the Secured Tax Claim is scheduled to be paid in the ordinary course of business under applicable law or regulation; unless, before the latest of the above dates, the holder of the Claim and Reorganized Zounds agree in writing to a different date. Each holder of an Allowed Secured Tax Claim retains all Liens on applicable property of the Estate arising under applicable law until that holder's Allowed Secured Tax Claim is paid in full under this Section 3.02.b. If any portion of any Allowed Secured Tax Claim is not paid in accordance with this Section 3.02.b and Reorganized Zounds does not make that payment within ten days after notice of non-payment is received from the holder of the Claim, the holder may proceed with applicable state law remedies for collection of all amounts owing but not paid in accordance with this Section 3.02.b.

**3.03. Class 3—Miscellaneous Secured Claims.** Class 3 consists of all Secured Claims other than the Secured Tax Claims in Class 2 and the Secured Notes Claims in Class 4. Each holder of a Miscellaneous Secured Claim is considered to be in its own separate subclass within Class 3, and each such subclass is deemed to be a separate Class for purposes of the Plan.

**a. Impairment and Voting.** Class 3 is unimpaired by the Plan. All holders of Allowed Miscellaneous Secured Claims are deemed to have accepted the Plan and will not be solicited to vote on the Plan.

**b. Treatment.** Each holder of an Allowed Miscellaneous Secured Claim will receive Cash in an amount equal to its Allowed Miscellaneous Secured Claim on the latest of: (i) the Effective Date, or as soon after that date as practicable; (ii) any date the Bankruptcy Court may fix, or as soon after that date as practicable; (iii) 30 days after the Miscellaneous Secured Claim is Allowed; and (iv) the date on which the Miscellaneous Secured Claim is scheduled to be paid in the ordinary course of business under applicable law or regulation; unless, before the latest of the above dates, the holder of the Claim and Reorganized Zounds agree in writing to a different date. Each holder of an Allowed Miscellaneous Secured Claim retains all Liens on applicable property of the Estate arising under applicable law until that holder's Allowed Miscellaneous Secured Claim is paid in full under this Section 3.03.b. If any portion of any Allowed Miscellaneous Secured Claim is not paid in accordance with this Section 3.03.b and Reorganized Zounds does not make that payment within ten days after notice of non-payment is received from the holder of the Claim, the holder may proceed with applicable state law remedies for collection of all amounts owing but not paid in accordance with this Section 3.03.b.

**3.04. Class 4—Secured Notes Claims.** Class 4 consists of all Secured Notes Claims—*i.e.*, all Notes Claims with a corresponding Lien on Collateral. Each holder of a Secured Notes Claim is considered to be in its own separate subclass within Class 4, and each such subclass is deemed to be a separate Class for purposes of the Plan.

**a. Impairment and Voting.** Class 4 is impaired by the Plan. All holders of Allowed Secured Notes Claims are entitled to vote and will be solicited to vote on the Plan.

**b. Treatment.**

(i) *Election of Treatment.* Each holder of a Disputed Secured Notes Claim may elect on a Ballot to be treated as a Settled Notes Claim in Class 5. If a holder of a Disputed Secured Notes Claim does not so elect, it will be treated as a Disputed Claim in Class 4, subject to an Avoidance Action brought against that holder either before or after the Effective Date. If the holder of a Disputed Secured Notes Claim does not elect to be the holder of a Settled Notes Claim and that holder's Lien is avoided, the Disputed Secured Notes Claim will become a Disputed Unsecured Claim entitled only to the treatment accorded to Allowed Claims in Class 6. If the holder of a Disputed Secured Notes Claim does not elect to be the holder of a Settled Notes Claim but prevails in any Avoidance Action such that the holder's Lien is not avoided, that holder will have an Allowed Secured Notes Claim and will receive the treatment accorded to Allowed Secured Notes Claims in Class 4.

(ii) *Nature of Distributions.* Each holder of an Allowed Secured Notes Claim will receive a Pro Rata portion of 100% of the New Common Stock, subject to dilution by: (A) 5% by the New Common Stock issued to holders of Settled Notes Claims in Class 5; (B) any stock authorized and issued under any incentive plan or similar program for members of Reorganized Zounds's senior management as the board of directors of Reorganized Zounds may approve after the Effective Date; and (C) any future stock offerings as the board of directors of Reorganized Zounds may approve after the Effective Date in accordance with the Reorganized Certificate.

(iii) *Timing of Distributions.* Reorganized Zounds will issue shares of New Common Stock to holders of Allowed Secured Notes Claims, beginning on the later of (A) the Effective Date, or as soon after that date as practicable and (B) 30 days after the Secured Notes Claim is Allowed.

(iv) *Entitlement to Distributions.* Only holders of Allowed Secured Notes Claims as of the Distribution Record Date will be entitled to receive distributions under the Plan.

**c. Cancellation of Notes.** As of the Effective Date, all Debt Securities, and all agreements, instruments, and other documents evidencing the Debt Securities and the rights of the holders of Debt Securities, will be automatically canceled and extinguished (all without further action by any Person) and all obligations of any Person, including the Debtor, under such instruments and agreements will be deemed fully and finally discharged.

**3.05. Class 5—Settled Notes Claims.** Class 5 consists of all Settled Notes Claims.

**a. Impairment and Voting.** Class 5 is impaired by the Plan. All holders of Settled Notes Claims are entitled to vote and will be solicited to vote on the Plan.

**b. Treatment.**

(i) *Nature of Distributions.* Each holder of a Settled Notes Claim will receive, in full and final satisfaction of its Allowed Unsecured Notes Claim a Pro Rata portion of 5% of the New Common Stock, subject to dilution by any shares issued under a stock incentive plan or similar program for members of Reorganized Zounds's senior management and any future stock offerings, each as the board of directors of Reorganized Zounds may approve after the Effective Date in accordance with the Reorganized Certificate.

(ii) *Timing of Distributions.* Reorganized Zounds will issue shares of New Common Stock to holders of Settled Notes Claims beginning on the later of (A) the Effective Date, or as soon after that date as practicable and (B) 30 days after the Unsecured Notes Claim is Allowed.

(iii) *Entitlement to Distributions.* Only holders of Settled Notes Claims as of the Distribution Record Date will be entitled to receive distributions under the Plan.

**c. Cancellation of Notes.** As of the Effective Date, all Debt Securities, and all agreements, instruments, and other documents evidencing the Debt Securities and the rights of the holders of Debt Securities, will be automatically canceled and extinguished (all without further action by any Person) and all obligations of any Person, including the Debtor, under such instruments and agreements will be deemed fully and finally discharged.

**3.06. Class 6—Unsecured Claims.** Class 6 consists of all General Unsecured Claims, all Unsecured Notes Claims, and all Rejection Claims.

**a. Impairment and Voting.** Class 6 is impaired by the Plan. All holders of Allowed Unsecured Claims are entitled to vote and will be solicited to vote on the Plan.

**b. Treatment.**

(i) *Nature of Distributions.* Each holder of an Allowed Unsecured Claim will receive, in full and final satisfaction of its Allowed Unsecured Claim a Pro Rata portion of the beneficial interests in the Unsecured Creditor Trust, which will be vested with the Avoidance Actions and will be the payee under the Unsecured Creditor Note.

(ii) *Timing of Distributions.* Reorganized Zounds will (subject to the provisions of Section 4.08.b of the Plan) begin making distributions on account of the Avoidance Actions and the Unsecured Creditor Note to the Unsecured Creditor Trust beginning on the Effective Date.

**c. Cancellation of Notes.** As of the Effective Date, all Debt Securities, and all agreements, instruments, and other documents evidencing the Debt Securities and the rights of the holders of Debt Securities, will be automatically canceled and extinguished (all without further action by any Person) and all obligations of any Person, including the Debtor, under such instruments and agreements will be deemed fully and finally discharged.

**3.07. Class 7—Securities Claims.** Class 7 consists of all Securities Claims not including Notes Claims.

**a. Impairment and Voting.** Class 7 is impaired by the Plan. All holders of Securities Claims are deemed to reject the Plan and will not be solicited to vote on the Plan.

**b. Treatment.** Under Bankruptcy Code § 510(b), each Securities Claim is mandatorily subordinated to all other Claims. Accordingly, the holders of Securities Claims will not receive or retain any rights, property, or distributions on account of their Securities Claims under the Plan.

**3.08. Class 8—Equity Interests.** Class 8 consists of all Equity Interests.

**a. Impairment and Voting.** Class 8 is impaired by the Plan. All holders of Equity Interests are deemed to reject the Plan and will not be solicited to vote on the Plan.

**b. Treatment.** As of the Effective Date, all Equity Interests will be canceled and extinguished without further action under any applicable agreement, law, regulation, order, or rule. The holders of Equity Interests will not receive or retain any rights, property, or distributions on account of their Equity Interests under the Plan.

## **ARTICLE 4. IMPLEMENTATION**

### **4.01. Plan Funding.**

**a. Effective Date Payments.** Funds needed to make Cash payments on the Effective Date on account of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Miscellaneous Secured Claims, and Allowed Secured Tax Claims under the Plan will come from the Gross Assets and borrowing under the Exit Financing Facility.

**b. Exit Financing Facility.** On or before the Effective Date, the Debtor or Reorganized Zounds will execute the Exit Financing Documents, which must have been approved in either the Confirmation Order or by a separate Final Order of the Bankruptcy Court. The Exit Financing Facility, among other things, will be effective on the Effective Date, be a senior secured facility, and contain terms in form and substance acceptable to the Debtor.

**4.02. Issuance of Securities.** Reorganized Zounds will issue for distribution under the Plan the New Common Stock.

**a. Authorization.** The Reorganized Certificate authorizes the issuance of 50,000,000 shares of New Common Stock and 5,000,000 shares of preferred stock. On the Effective Date, or as soon after as practicable, Reorganized Zounds will issue approximately 10,000,000 shares of such New Common Stock on account of Allowed Secured Notes Claims and Allowed Settled Notes Claims, which will represent 100% of the then-outstanding equity in Reorganized Zounds, subject to dilution by authorized

shares of New Common Stock issued under any stock incentive plan or similar program for members of Reorganized Zounds's senior management as the board of directors of Reorganized Zounds may approve after the Effective Date. All shares of New Common Stock to be issued under the Plan will, at issuance, be duly authorized, validly issued, fully paid, and non-assessable.

**b. Par Value.** The New Common Stock will have a par value of \$0.0001 per share.

**c. Rights.** The New Common Stock will have those rights with respect to dividends, liquidation, voting, and other matters set forth in the Reorganized Certificate and as provided under applicable law including the right to one vote per share.

**d. Section 1145 Exemption.** In accordance with Bankruptcy Code § 1145, the issuance of the New Common Stock under the Plan is exempt from the registration requirements of Section 5 of the Securities Act and any state or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealer in such securities and is deemed to be a public offer of such securities.

**4.03. Certificate of Incorporation and By-Laws.** As of the Effective Date and without any further action by the shareholders or directors of the Debtor or Reorganized Zounds, the Debtor's certificate of incorporation and by-laws will be amended and restated substantially in the forms of the Reorganized Certificate and the Reorganized By-Laws. The Reorganized Certificate and the Reorganized By-Laws will prohibit (to the extent required by Bankruptcy Code § 1123(a) and (b)) the issuance of non-voting equity securities. After the Effective Date, Reorganized Zounds may amend its certificate of incorporation and by-laws as permitted by applicable law.

**4.04. Cancellation of Instruments and Agreements.** On the Effective Date, all agreements, instruments, and other documents relating to any Equity Interests will automatically terminate such that all obligations under all such agreements, instruments, and other documents will be deemed fully and finally waived, released, canceled, extinguished, and discharged.

**4.05. Effectiveness of Instruments and Agreements.** On the Effective Date, all instruments, agreements, and documents issued, entered into, delivered, or filed under the Plan, including the Plan Documents, and any instrument, agreement, or document entered into, delivered, or filed in connection with any of the foregoing, will be deemed to be effective, binding, and enforceable in accordance with their respective terms.

**4.06. No Corporate Action Required.** As of the Effective Date: (a) the adoption, execution, delivery, and implementation of all contracts, leases, instruments, releases, and other agreements related to or contemplated by the Plan; and (b) the other matters provided for under, or in furtherance of, the Plan involving corporate action required of the Debtor, will be deemed to have occurred and become effective as provided in the Plan, and will be deemed authorized and approved in all respects without further order of the Bankruptcy Court or any further action by the Debtor's shareholders or directors.

#### **4.07. Directors and Officers.**

**a. Initial Board of Directors.** The initial board of directors of Reorganized Zounds as of the Effective Date will comprise five directors: Michael Stewart (Chair); Gordon Marchand; Samuel Thomasson; and two individuals designated by Michael Stewart and Derwood Chase by no later than ten days before the Confirmation Hearing.

**b. Initial Officers.** The initial officers of Reorganized Zounds as of the Effective Date will be the same individuals then occupying officer positions immediately before the Effective Date.

**c. Indemnification and Insurance.** Reorganized Zounds will provide all its directors and officers with indemnification rights and a D&O Policy, and will compensate its directors and officers, in accordance with practices customary for entities of its type.

**4.08. Unsecured Creditor Trust.** On the Effective Date, the Unsecured Creditor Trust will be formed, the proceeds of the Avoidance Actions will vest in the Unsecured Creditor Trust, the Unsecured Creditor Note will be made payable to the Unsecured Creditor Trust, and the Unsecured Creditor Trustee will begin serving for the benefit of all holders of Allowed Claims in Class 6, which will become the beneficiaries of the Unsecured Creditor Trust.

**a. Unsecured Creditor Trustee.** The Unsecured Creditor Trustee may make distributions to the beneficiaries of the Unsecured Creditor Trust strictly in accordance with the terms of the Plan and must use his best efforts to liquidate all trust assets, make timely distributions, and not unduly prolong the existence of the Unsecured Creditor Trust.

**b. Disputed Claims.** The Unsecured Creditor Trustee must manage distributions from proceeds of the Avoidance Actions and the Unsecured Creditor Note so as to reserve sufficient Cash to make appropriate distribution on account of any Disputed Unsecured Claim that would have been entitled to distribution if that Disputed Unsecured Claim were an Allowed Unsecured Claim on the Effective Date in the Maximum Amount. If and when any Disputed Unsecured Claim becomes an Allowed Unsecured Claim, Cash from Avoidance Action proceeds and payments under the Unsecured Creditor Note sufficient to make appropriate distribution under the Plan on account of that Claim will be made from such reserves. If a Disputed Unsecured Claim becomes a Disallowed Unsecured Claim, all reserved distributions attributable to that Disputed Unsecured Claim will become available for Pro Rata distribution to all Allowed Unsecured Claims as beneficiaries of the Unsecured Creditor Trust.

**4.09. Operation Pending Effective Date.** Until the Effective Date, the Debtor will continue to operate its business subject to all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules.

## **ARTICLE 5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**5.01. Assumption or Rejection of Executory Contracts and Unexpired Leases.** All executory contracts and unexpired leases between the Debtor and any Person are dealt with as follows:

**a. Assumption of Executory Contracts and Unexpired Leases.** All executory contracts and unexpired leases set forth on the schedule of assumed executory contracts and unexpired leases filed with the Bankruptcy Court as part of Exhibit D to the Plan will be deemed assumed by Reorganized Zounds or assumed and assigned (as indicated on Exhibit D to the Plan) as of the Effective Date, except for any executory contract or unexpired lease: (i) that has been rejected in accordance with a Final Order entered before the Confirmation Date; or (ii) as to which a motion to reject has been filed with the Bankruptcy Court before the Confirmation Date.

**b. Rejection of Executory Contracts and Unexpired Leases.** All executory contracts and unexpired leases either (i) set forth on the schedule of rejected executory contracts and unexpired leases filed with the Bankruptcy Court as part of Exhibit D to the Plan or (ii) existing but not listed on Exhibit D to the Plan will be deemed rejected as of the Effective Date, except for any executory contract or unexpired lease that has been assumed or rejected in accordance with a Final Order entered on or before the Confirmation Date.

**5.02. Approval of Assumption or Rejection.** Entry of the Confirmation Order constitutes: (a) the approval under Bankruptcy Code § 365 of the assumption or assumption and assignment of the executory

contracts and unexpired leases assumed or assumed and assigned under the Plan or otherwise during the Chapter 11 Case; and (b) the approval under Bankruptcy Code § 365 of the rejection of the executory contracts and unexpired leases rejected under the Plan or otherwise during the Chapter 11 Case. Notwithstanding anything contained in this Section 5.02 to the contrary, the Debtor retains the right to add or change the treatment (assumed or rejected) of any executory contract or unexpired lease on Exhibit D to the Plan, thus changing the treatment of the contract or lease under the Plan, at any time within 30 days after the Effective Date.

**5.03. Cure of Defaults.** On the Effective Date or as soon after that date as practicable, Reorganized Zounds will Cure any defaults under any executory contract or unexpired lease assumed or assumed and assigned under the Plan. Reorganized Zounds will not, and need not as a condition to assuming or assuming and assigning any executory contract or unexpired lease under the Plan, Cure any default that need not be cured in accordance with Bankruptcy Code § 365(b).

**5.04. Rejection Claims Bar Date.** All Rejection Claims arising from the rejection of any executory contract or unexpired lease under the Plan are required to be filed with the Bankruptcy Court no later than the Rejection Claims Bar Date. Any such Claim not filed within that time will be forever barred. With respect to any executory contract or unexpired lease rejected by the Debtor before the Confirmation Date, the deadline for filing a Rejection Claim remains the deadline set forth in the order of the Bankruptcy Court authorizing that rejection. If such an order did not contain such a deadline, the deadline for filing a Rejection Claim arising from that rejection is the Rejection Claims Bar Date.

**5.05. Indemnification Obligations.** Any obligation of the Debtor to indemnify any Person serving as a fiduciary of any employee benefit plan or employee benefit program of the Debtor, under charter, by-laws, contract, or applicable state law is deemed to be an executory contract and assumed by Reorganized Zounds as of the Confirmation Date (but subject to the occurrence of the Effective Date). Any obligation of the Debtor to indemnify, reimburse, or limit the liability of any Person, including but not limited to any officer or director of the Debtor, or any agent, professional, financial advisor, or underwriter of any securities issued by the Debtor related to any acts or omissions occurring before the Petition Date is rejected and canceled under the Plan as of the Confirmation Date (but subject to the occurrence of the Effective Date), and any Claim resulting from this rejection and cancellation in favor of any Person must be filed no later than 60 days after the Confirmation Date. Notwithstanding any of the foregoing, nothing contained in the Plan affects, impairs, or prejudices the rights of any Person covered by any applicable D&O Policy with respect to any such policy. Moreover, Reorganized Zounds will maintain in force for three years following the Effective Date appropriate D&O Policies covering pre-Effective Date directors and officers of the Debtor and containing substantially the same provisions and limits of coverage as the policies that were in force on the Petition Date. Reorganized Zounds will be responsible for paying the deductible or retention amounts under the D&O Policies for that three-year period.

#### **5.06. Benefit Plans.**

**a. Generally.** On the Effective Date, all Benefit Plans will be either assumed or rejected and terminated as of the Confirmation Date as indicated on Exhibit D to the Plan, if not earlier terminated or assumed by the Debtor before the Confirmation Date. Any such terminations will be completed according to the terms and conditions of each Benefit Plan and effected in conformity with all statutory and regulatory requirements including any applicable notice provisions. Any undistributed, vested benefits of the terminated Benefit Plans will be distributed to the participants as provided by statute, the applicable regulations, and the Benefit Plans' provisions.

**b. Regulatory Approvals.** In order to ensure that the Benefit Plans' terminations comply with the terms of the Benefit Plans, applicable statutes, and regulations, the Debtor will obtain any necessary approvals of the relevant regulatory agencies, such as the Pension Benefit Guaranty Corporation, the IRS,

and the U.S. Department of Labor, in respect of such terminations. The Bankruptcy Court will retain jurisdiction to hear and determine any disputes relating to the termination of any Benefit Plans.

**c. Retirees.** If any Claim of a retiree against the Debtor gives the Debtor an indemnification claim under an agreement between the Debtor and any Person, the Debtor will, if necessary or appropriate, assign the indemnification claim to the retiree. Notwithstanding anything in this Section 5.06 or elsewhere in the Plan to the contrary, Reorganized Zounds will continue to honor all obligations of the Debtor owed to any retiree under any Benefit Plan as of the Confirmation Date solely to the extent, and for the duration of the period, the Debtor is contractually or legally obligated to provide those benefits, subject to any rights of the Debtor or Reorganized Zounds under applicable law.

## **ARTICLE 6.**

### **CONFIRMATION WITHOUT ACCEPTANCE FROM ALL IMPAIRED CLASSES**

**6.01. Impaired Classes.** Classes 4, 5, and 6 are impaired under the Plan and entitled to vote to accept or reject the Plan. Classes 1 through 3 are unimpaired under the Plan and are deemed to have accepted the Plan without voting. Classes 7 and 8 receive no distribution under the Plan and are deemed to have rejected the Plan without voting.

**6.02. Use of § 1129(b).** If any Class under the Plan is determined to be impaired under Bankruptcy Code § 1124 and is then deemed to have rejected the Plan or votes to reject the Plan in accordance with Bankruptcy Code § 1126, the Debtor may use the provisions of Bankruptcy Code § 1129(b) to satisfy the requirements for Confirmation of the Plan.

## **ARTICLE 7.**

### **DETERMINATION OF CLAIMS**

**7.01. Objections to Claims.** Notwithstanding the occurrence of the Effective Date, and except as to any Claim that has been Allowed before the Effective Date, Reorganized Zounds may object to the allowance of any Claim against the Debtor or seek estimation of any Claim on any grounds permitted by the Bankruptcy Code. All objections to Claims must be brought by filing the appropriate pleading in the Bankruptcy Court before the first Business Day that is 180 days after the Effective Date, but the Bankruptcy Court may approve a later date on Reorganized Zounds's motion filed (but not necessarily heard) before the first Business Day that is 180 days after the Effective Date.

**7.02. Distributions on Allowance or Disallowance of Disputed Claims.** No distributions will be made to any holder of a Claim unless and until the Claim becomes an Allowed Claim. If a Claim is not an Allowed Claim as of the Effective Date, distributions on account of that Claim will commence only when the Claim becomes an Allowed Claim after the Effective Date or as otherwise specifically provided in the Plan. If a Disputed Claim becomes an Allowed Claim, Reorganized Zounds will make a distribution in accordance with the terms of the Plan applicable to Claims of the Class in which that Claim resides.

**7.03. Contingent Claims.** Until a Contingent Claim becomes an Allowed Claim or is Disallowed, the Claim will be treated as a Disputed Claim for all purposes under the Plan. The holder of a Contingent Claim will be entitled to a distribution under the Plan only when the Contingent Claim becomes an Allowed Claim. Any Contingent Claim for reimbursement or contribution held by a Person that may be liable with the Debtor on a Claim of a Creditor is Disallowed as of the Effective Date if: (a) that Creditor's Claim is Disallowed; (b) the Claim for reimbursement or contribution is contingent as of the Effective Date; or (c) that Person asserts a right of subrogation to the rights of the Creditor under Bankruptcy Code § 509.

**ARTICLE 8.**  
**AVOIDANCE ACTIONS, PRESERVED LITIGATION CLAIMS**

**8.01. Retention and Reservation.** All Avoidance Actions and Preserved Litigation Claims are retained and reserved for Reorganized Zounds, which is designated as the Estate’s representative under Bankruptcy Code § 1123(b)(3)(B) for purposes of the Avoidance Actions and Preserved Litigation Claims.

**8.02. Prosecution.** Reorganized Zounds will have the authority to prosecute, defend, compromise, settle, and otherwise deal with any Avoidance Actions and Preserved Litigation Claims, and will do so in its capacity as a representative of the Estate in accordance with Bankruptcy Code § 1123(b)(3)(B). Reorganized Zounds will pay the fees and costs associated with litigating the Avoidance Actions and the Preserved Litigation Claims. Reorganized Zounds will have sole discretion to determine in its business judgment which Avoidance Actions and Preserved Litigation Claims to pursue, which to settle, and the terms and conditions of those settlements.

**ARTICLE 9.**  
**CONDITIONS PRECEDENT**

**9.01. Conditions to Confirmation.** The following are conditions precedent to confirmation of the Plan:

**a. Approval of Disclosure Statement.** The Bankruptcy Court enters a Final Order approving the Disclosure Statement.

**b. Form of Confirmation Order.** The Bankruptcy Court enters the Confirmation Order in form and substance reasonably acceptable to the Debtor. If the Debtor is unable to reach an agreement with any party regarding the form and substance of the Confirmation Order, the Bankruptcy Court will resolve all such disputes.

**c. Substance of Confirmation Order.** The Confirmation Order contains the following:

- (i) The provisions of the Confirmation Order are non-severable and mutually dependent;
- (ii) Approval of the assumption, rejection, or assumption and assignment of all executory contracts and unexpired leases under the Plan;
- (iii) Approval of the Plan Documents;
- (iv) All executory contracts or unexpired leases assumed and assigned by the Debtor during the Chapter 11 Case or under the Plan remain in full force and effect for the benefit of Reorganized Zounds or any assignees of such contracts or leases, as the case may be, notwithstanding any provision in any such contract or lease (including those described in Bankruptcy Code § 365(b)(2) and (f)) that prohibits, restricts, or conditions such assignment or transfer or that enables, permits, or requires termination of such contract or lease;
- (v) The Debtor is released and discharged from all obligations arising under all executory contracts and unexpired leases rejected by the Debtor during the Chapter 11 Case or under the Plan;
- (vi) Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of either Debtor or Reorganized Zounds;
- (vii) Except as expressly provided in the Plan, the Debtor is discharged as of the Confirmation Date from all Claims and any “debt” (as defined in Bankruptcy Code § 101(12)) that arise

on or before the confirmation Date, and the Debtor's liability in respect of such Claims and debts is extinguished completely, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or unfixed, matured or unmatured, disputed or undisputed, legal or equitable, or known or unknown, or that arise from any agreement of the Debtor that has either been assumed or rejected in the Chapter 11 Case or under the Plan, or obligation of the Debtor incurred before the Confirmation Date, or from the Debtor's conduct before the Confirmation, or that otherwise arise before the Confirmation Date including any interest on such debts, whether accrued before or after the Petition Date;

(viii) In accordance with Bankruptcy Code § 1123(b)(3)(B), Reorganized Zounds is appointed as the representative and agent of the Estate to prosecute, compromise, or abandon any Avoidance Actions and Preserved Litigation Claims in accordance with the Plan; and

(ix) Retention of jurisdiction of the Bankruptcy Court to the fullest extent permissible by applicable law, and at least to the extent contemplated by Article 11 of the Plan.

**9.02. Conditions to Effectiveness.** The following are conditions precedent to the occurrence of the Effective Date:

a. The Confirmation Date occurs;

b. No request for revocation of the Confirmation Order under Bankruptcy Code § 1144 is pending;

c. Reorganized Zounds has sufficient Cash (from all applicable sources) on the Effective Date to make distributions to holders of Allowed Claims required by the Plan to be made on the Effective Date; and

d. Each of the Plan Documents and to be issued, entered into, delivered, or filed under the Plan are issued, entered into, delivered, or filed and are effective.

**9.03. Waiver of Conditions.** The Debtor may waive any condition to confirmation or the Effective Date, in whole or in part, at any time without notice, an order of the Bankruptcy Court, or any further action other than proceeding to confirmation and consummation of the Plan.

## **ARTICLE 10. TITLE TO PROPERTY; THIRD PARTY RIGHTS AND RELEASES**

**10.01. Vesting of Assets.** Except as provided in the Plan, the Confirmation Order, or the Plan Documents, all property of the Estate will vest in Reorganized Zounds on the Effective Date free and clear of all Liens and Claims of all kinds existing before the Effective Date. From and after the Effective Date, Reorganized Zounds may operate its business and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code, including the employment of, and payment to, Professionals except as otherwise provided in the Plan or the Confirmation Order.

**10.02. Discharge.** Except as provided in the Plan or the Confirmation Order, the rights granted under the Plan and the treatment of Claims and Equity Interests under the Plan are in exchange for and in complete satisfaction, discharge, and release of, all Claims including any interest accrued on General Unsecured Claims from the Petition Date. Except as provided in the Plan or the Confirmation Order, confirmation of the Plan discharges the Debtor and Reorganized Zounds from all Claims or other debts that arose before the Confirmation Date, and all debts of the kind specified in Bankruptcy Code §§ 502(g), 502(h) or 502(i), whether or not: (a) a proof of claim based on such debt is filed or deemed filed under Bankruptcy

Code § 501; (b) a Claim based on such debt is Allowed under Bankruptcy Code § 502; or (c) the holder of a Claim based on such debt has accepted the Plan. Without limiting the foregoing, the discharge granted under the Plan is granted to the fullest extent allowed under Bankruptcy Code §§ 1141(a), 1141(b), 1141(c), and 1141(d)(1).

**10.03. Injunction.** Except as provided in the Plan or the Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim or other debt or liability that is unclassified by the Plan or that is classified by Article 3 of the Plan or that is subject to a distribution under the Plan, or an Equity Interest or other right of an equity security holder that is subject to a distribution under the Plan are permanently enjoined from taking any of the following actions on account of any such Claims, debts, liabilities, Equity Related Claims, or Equity Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against any property to be distributed under the Plan; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against any property to be distributed under the Plan; (c) creating, perfecting, or enforcing any Lien or encumbrance against any property to be distributed under the Plan; and (d) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code. Nothing in this Section 10.03 or elsewhere in the Plan is to be construed or is to have the effect of extinguishing, prohibiting, or otherwise limiting, the right of any holder of a Claim to assert a right to setoff or recoupment arising in connection with that Claim as part of the resolution and treatment of that Claim under the Plan. Nothing in this Section 10.03 or elsewhere in the Plan is to be construed or is to have the effect of extinguishing, prohibiting, or otherwise limiting, the right of the Estate (through Reorganized Zounds as its representative or otherwise) or Reorganized Zounds to assert and prevail on any Avoidance Action or Preserved Litigation Claim. Nothing in this Section 10.03 or elsewhere in the Plan enjoins or otherwise precludes (or may be construed to enjoin or otherwise preclude) any party in interest from enforcing the terms of the Plan and the Confirmation Order.

**10.04. Exculpation.** None of the Debtor, Reorganized Zounds, any Committee, or any of their respective members, officers, directors, employees, advisors, professionals, or agents have or will incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence, and, in all respects, the Debtor, Reorganized Zounds, any Committee, and each of their respective members, officers, directors, employees, advisors, professionals, and agents are entitled to rely on the advice of counsel with respect to their duties and responsibilities under the Plan.

**10.05. Preserved Litigation Claims and Disputed Claims Resolution.** Notwithstanding anything to the contrary in the Plan, any non-Debtor party to a Preserved Litigation Claim or a Disputed Claim that has obtained or obtains relief from the automatic stay or from the injunction provisions contained in Section 10.03 of the Plan to pursue resolution of their Claim in a forum other than the Bankruptcy Court will not be deemed to have violated any provision of the Plan by seeking a resolution as to Allowance, Disallowance, or amount of the Claim in the other forum, but the classification and distributions on account of the Claim, once liquidated and Allowed or Disallowed, remain solely and exclusively subject to the Bankruptcy Court's continuing jurisdiction under Article 11 of the Plan and the terms and conditions of the Plan.

**10.06. Preservation of Insurance.** The discharge and release from Claims as provided in the Plan, except as necessary to be consistent with the Plan, do not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtor or any other Person.

**ARTICLE 11.**  
**RETENTION OF JURISDICTION**

**11.01. Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain as much jurisdiction over the Chapter 11 Cases after the Effective Date as legally permissible including jurisdiction to:

**a.** Allow, disallow, determine, liquidate, classify, estimate, or establish the amount, priority, or secured or unsecured status of any Claim, and resolve any request for payment of any Administrative Claim and any objection to the Allowance or priority of any Claim;

**b.** Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized under the Bankruptcy Code or the Plan;

**c.** Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtor is a party and to hear, determine and, if necessary, liquidate any Claims arising from, or Cure related to, assumption or rejection;

**d.** Ensure that distributions required under the Plan are accomplished in accordance with the Plan;

**e.** Decide or resolve any motions, adversary proceedings, contested matters, and any other matters and grant or deny any applications or motions involving the Debtor that may be pending on the Effective Date;

**f.** Enter any necessary or appropriate orders to implement or consummate the Plan's provisions and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

**g.** Resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan, or any Person's obligations incurred in connection with the Plan;

**h.** Hear and determine any motion or application to modify the Plan before or after the Effective Date under Bankruptcy Code § 1127 or modify the Disclosure Statement or any contract, instrument, release, or other agreement or document issued, entered into, filed, or delivered in connection with the Plan or the Disclosure Statement; or hear or determine any motion or application to remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document issued, entered into, filed or delivered in connection with the Plan or the Disclosure Statement, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code;

**i.** Issue injunctions, enter and implement other orders, or take any other necessary or appropriate actions to restrain any entity's interference with consummation or enforcement of the Plan;

**j.** Enter and implement any necessary or appropriate orders if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

**k.** Determine any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document issued, entered into, filed, or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

**l.** Issue a final decree and enter an order closing the Chapter 11 Case; and

m. Adjudicate the Disputed Claims, the Avoidance Actions, and the Preserved Litigation Claims and any other cause of action or claims of the Debtor or the Estate.

**ARTICLE 12.  
AMENDMENT AND WITHDRAWAL OF PLAN**

**12.01. Amendment of Plan.** At any time before the Confirmation Date, the Debtor may alter, amend, or modify the Plan under Bankruptcy Code § 1127(a) as long as doing so does not materially and adversely affect the treatment and rights of the holders of Claims and Equity Interests under the Plan. After the Confirmation Date but before substantial consummation of the Plan as defined in Bankruptcy Code § 1101(2), the Debtor or Reorganized Zounds may, under Bankruptcy Code § 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, the Plan Documents, or the Confirmation Order, and any matters necessary to carry out the purposes and effects of the Plan as long as such proceedings do not materially and adversely affect the treatment of holders of Claims or Equity Interests under the Plan. The Debtor must serve prior notice of such proceedings in accordance with the Bankruptcy Rules or applicable order of the Bankruptcy Court.

**12.02. Revocation or Withdrawal of Plan.** The Debtor reserves the right to revoke or withdraw the Plan at any time before the Confirmation Date. If withdrawn or revoked, the Plan is void and nothing contained in the Plan may be deemed a waiver of any Claims by or against the Debtor or any other Person in any further proceedings involving the Debtor or an admission of any sort, and the Plan and any transaction contemplated by the Plan may not be admitted into evidence in any proceeding.

**ARTICLE 13.  
MISCELLANEOUS**

**13.01. Effecting Documents; Further Transactions; Timing.** The Debtor, Reorganized Zounds, and all other parties to the Plan Documents are authorized and directed as of the Effective Date, and without further order of the Bankruptcy Court, to execute, deliver, file, or record all Plan Documents and other contracts, instruments, releases, and other agreements or documents, and to take all actions necessary or appropriate to effect and further evidence the terms of the Plan. All transactions required to occur on the Effective Date under the terms of the Plan are deemed to have occurred simultaneously.

**13.02. Exemption From Transfer Taxes.** In accordance with Bankruptcy Code § 1146(a): (a) the issuance, distribution, transfer, and exchange of assets or property of the Estate; (b) the execution, assignment, modification, or recording of any lease or sublease; and (c) the execution, delivery, or recording of a deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, the Confirmation Order, or any transaction contemplated above, or any transactions arising out of, contemplated by, or in any way related to, the foregoing are not subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, or real estate transfer tax, or other similar tax or governmental assessment and the appropriate state or local government officials or agents are directed to forego the collection of any such tax or assessment and to accept for filing or recordation any of the foregoing instruments or other documents without the payment of any such tax or assessment.

**13.03. Binding Effect.** The Plan is binding on, and inures to the benefit of, the Debtor and the holders of all Claims and Equity Interests and their respective successors and assigns.

**13.04. Governing Law.** Except to the extent that the Bankruptcy Code or other federal law is applicable or as provided in any document entered into in connection with the Plan, the rights, duties and obligations of the Debtor and any other Person arising under the Plan are governed by, and construed and enforced in

accordance with, the internal laws of the State of Arizona, without giving effect to Arizona's choice of law provisions.

**13.05. Modification of Treatment of Claims.** Reorganized Zounds reserves the right to modify the treatment of any Allowed Claim in any manner adverse only to the holder of that Claim at any time after the Effective Date on that holder's prior written consent.

**13.06. Setoffs and Recoupment.** The Debtor and Reorganized Zounds may, but are not required to, set off or recoup against any Claim or Equity Interest and the payments or other distributions to be made under the Plan in respect of such Claim, Claims of any nature that arose before the Petition Date that the Debtor may have against the holder of such Claim or Equity Interest to the extent such Claims may be set off or recouped under applicable law, but neither the failure to do so nor the fact of any Claim or Equity Interest under the Plan becoming Allowed constitutes a waiver or release by the Debtor or Reorganized Zounds of any such claim that it may have against such holder.

**13.07. Notices.** Any notice required or permitted to be provided under the Plan must be in writing and served by one of the following: (a) certified mail, return receipt requested, postage prepaid; (b) hand delivery; (c) reputable overnight courier service, freight prepaid; (d) e-mail; or (e) fax; addressed as follows:

To the Debtors or Reorganized Zounds:	Zounds, Inc. 4405 E. Baseline Rd., Suite 114 Phoenix, AZ 85042 Attn: Sam Thomasson E-mail: sam.thomasson@zoundshearing.com
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Copy to:	Squire, Sanders & Dempsey, L.L.P. 40 North Central Avenue, Suite 2700 Phoenix, Arizona 85004 Attn: Jordan A. Kroop, Esq. E-mail: jkroop@ssd.com
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**13.08. Delivery of Notices.** If personally delivered, notice is deemed delivered on actual receipt; if faxed or e-mailed in accordance with the Plan, notice is deemed delivered noon of the first Business Day following transmission; if sent by overnight courier in accordance with the Plan, notice is deemed delivered noon of the first Business Day following deposit with such courier; and if sent by U.S. mail in accordance with the Plan, notice is deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service; or, if the addressee fails or refuses to accept delivery, as of the date of that failure or refusal. Any party to the Plan may change its address for the purposes of the Plan by giving notice of the change.

**13.09. Termination of Committees.** All Committees appointed in the Chapter 11 Case terminate on the Effective Date and have no further authority, duties, objections, or responsibilities in respect of the Chapter 11 Case after the Effective Date, except with respect to preparing, reviewing, filing, and objecting to, Professionals' applications for compensation and reimbursement of expenses.

**13.10. Severability.** If the Bankruptcy Court finds the Plan or any provision of the Plan to be invalid, illegal or unenforceable, or if the Bankruptcy Court cannot confirm the Plan under Bankruptcy Code § 1129, the Bankruptcy Court, at the Debtor's request, may retain the power to alter and interpret the Plan or any such provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the provision held to be invalid or unenforceable, and such provision will then

become applicable as altered or interpreted. The Confirmation Order constitutes a judicial determination and provides that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable.

**13.11. Plan Documents.** Notwithstanding anything to the contrary contained in the Plan, including any reference in the Plan to documents in the forms annexed to the Plan as exhibits, the Debtor may revise any Plan Document by filing the revised Plan Document with the Bankruptcy Court at least ten days before the deadline for voting on the Plan, or with the written consent of all parties in interest that are entitled to vote on the Plan and are materially and adversely affected by the revision.

**13.12. Inconsistency.** If any inconsistency between the Plan and the Disclosure Statement exists, the Plan governs. If any inconsistency between the Plan and any Plan Document exists, the Plan Document governs.

**13.13. Subordination.** The distributions under the Plan take into account the relative priority of each Claim in connection with any contractual subordination provisions relating to such Claim. Accordingly, distributions under the Plan are not and may not be subject to levy, garnishment, attachment, or other legal process by any holder of a Claim or Equity Interest purporting to be entitled to the benefits of such contractual subordination, and all such holders are deemed to have waived all contractual subordination rights they otherwise may have had.

**13.14. Withholding and Reporting Requirements.** In connection with the Plan and all instruments issued in connection with the Plan, the Debtor or Reorganized Zounds, as the case may be, must comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions under the Plan remain subject to any such withholding and reporting requirements. The Debtor and Reorganized Zounds, as the case may be, may take all actions necessary to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, each holder of an Allowed Claim or Allowed Equity Interest that has received a distribution under the Plan has sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding, and other tax obligation on account of such distribution.

**13.15. Post-Effective Date Fees; Final Decree.** Reorganized Zounds will be responsible for paying any post-Effective Date fees under 28 U.S.C. § 1930(a)(6) and filing post-confirmation reports until the Bankruptcy Court enters a final decree, which will be as soon as practicable after distributions under the Plan have commenced. Notice of application for a final decree need be given only to those holders of Claims and Equity Interests and other parties that, after the Effective Date, specifically request such notice.

**13.16. De Minimis Distributions.** No distributions of less than \$10 will be made on account of any Claim or Equity Interest. If the holder of an Allowed Claim or Allowed Equity Interest does not receive a distribution owing to the provisions of this Section 13.16 on the Effective Date or any subsequent date, the Allowed Claim or Allowed Equity Interest remains eligible for distributions on the first date set for distributions when such distribution exceeds \$10.



**Exhibit A**  
**Reorganized Certificate**

[To Come]

**Exhibit B**

**Reorganized By-Laws**

[To Come]

**Exhibit C**

**Avoidance Actions and Preserved Litigation Claims**

[To Come]

**Exhibit D**

**Assumed and Rejected Executory Contracts and Unexpired Leases**

[To Come]

**Exhibit E**  
**Exit Financing Documents**

**ZOUNDS, INC.**

**EXIT FINANCING FACILITY  
SUMMARY OF TERMS AND CONDITIONS**

**Borrower:** Zounds, Inc., a Delaware corporation (the “**Borrower**”), as a reorganized debtor under a plan of reorganization (the “**Plan**”) confirmed under Chapter 11 of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), by the United States Bankruptcy Court for the District of Arizona (the “**Bankruptcy Court**”) in Chapter 11 Case No. 2:09-bk-06053-GBN (the “**Case**”).

**Lenders:** Derwood Chase (and such affiliated entities that Derwood Chase may designate) and J. Michael Stewart, or their respective designees (collectively, the “**Lenders**”).

**Term Loan:** The Loan and Security Agreement among the Borrower and the Lenders will be effective as of the Effective Date of the Plan (the “**Loan Agreement**”) under which the Lenders will make available to Borrower a multiple advance term loan of up to [\$5,500,000] (the “**Loan**”) which consists of two tranches; a term loan which will refinance the existing DIP loan (“**Term Loan A**”) and an advancing term loan under which the Lenders will from time to time advance an aggregate amount of up to [\$5,500,000] less the initial principal amount of Term Loan A (“**Term Loan B**”).

On the Effective Date of the Plan,

- (a) the Lenders will refinance the existing principal, accrued and unpaid interest, and fees and expenses due under the existing DIP facility under Term Loan A; and
- (b) the Lenders will fund up to \$2,000,000 of the Loan (the “Initial Draw”) under Term Loan B. The remaining amount under Term Loan B will be funded in periodic draws of at least \$500,000 which may not be more frequent than once per month.

After the Initial Draw, the Lenders are not required to fund any draw under Term Loan B unless (a) the Borrower is in compliance with all Covenants (defined below), and (b) the Borrower is not otherwise in default under the Loan Agreement.

The Lenders’ commitment to fund under the Loan Agreement shall be suspended while any default exists under the Loan Agreement and shall terminate upon the acceleration of the Loan or upon the Lenders’ election to terminate such commitment upon the occurrence of a default under the Loan Agreement.

**Term:** The amounts due under Term Loan A will be due and payable on the earlier of (a) seven years after the date of the Initial Draw, and (b) the date the Lenders’ commit to fund Term Loan B under the Loan Agreement is terminated (other than by the occurrence of the Term Loan B Maturity Date) (the “*Term Loan A Maturity Date*”).

The amounts due under Term Loan B will be due and payable on the earlier of (a) three years after the date of the Initial Draw, and (b) the date the Lenders’ commit to fund under the Loan Agreement is terminated (the “*Term Loan B Maturity Date*”).

“*Maturity Date*” means the Term Loan A Maturity Date or the Term Loan B Maturity Date, as applicable.

**Use of Proceeds:** The proceeds of (a) Term Loan A will be used to refinance the DIP loan, and (b) Term Loan B will be used to fund certain cash payments under the Plan and for the Borrower’s working capital requirements during the term of the Loan.

**Interest Rate:** Interest shall be computed and accrue monthly on the outstanding principal amount of the Loan at a fixed annual rate of twelve percent (12%).

**Default Rate:** While a default exists, interest shall be computed and accrue monthly on the outstanding principal amount of the Loan at a fixed annual rate of eighteen percent (18%).

**Payments:** All accrued interest will be added to the principal amount of the Loan as of the last day of each month. All outstanding principal and all accrued interest will be due and payable on the Maturity Date.

**Prepayment:** The Loan may be prepaid, in whole or in part, at any time without premium and without penalty. Payments shall be applied first to Term Loan A until paid in full and then to Term Loan B and shall, in each case, be applied first to accrued and unpaid interest, then to expenses, and then to the outstanding principal.

**Collateral:** All principal, interest, and other amounts due under the Loan Agreement (and related documents) will be secured by a perfected first priority lien on all of Borrower’s assets, subject only to third-party liens specifically identified and permitted in the Loan Agreement.

<b>Representations and Warranties:</b>	The Loan Agreement will contain representations and warranties customary for loans and transactions of this type and others as the Lenders may reasonably require, including without limitation, (i) due organization, valid existence and good standing; (ii) due authorization/enforceability; (iii) correctness of specified financial statements and no material adverse change; (iv) binding effect and enforceability of loan documents; (v) no liens or encumbrances other than as disclosed to Lenders; (vi) compliance with environmental laws; (vii) no material litigation; and (viii) payment of taxes.
<b>Covenants:</b>	The Loan Agreement will contain covenants customary for loans and transactions of this type and others as the Lenders may reasonably require, including without limitation, limitation on debt, liens, investments, mergers and acquisitions, asset sales, change of control, affiliate transactions, distributions, and capital expenditures.
<b>Financial Reporting:</b>	<p>Weekly financial reports on cash flow and expenses due each Tuesday for the immediately preceding week.</p> <p>Monthly company prepared financial statements (income statement, balance sheet, and statement of cash flows) and report regarding store openings and closings due on the 15<sup>th</sup> day of each month for the immediately preceding month.</p> <p>Annual audited financial statements prepared by a certified public accounting firm acceptable to Lenders.</p>
<b>Financial Covenants:</b>	<p>Cash flow covenant based on threshold levels acceptable to Borrower and Lenders.</p> <p>Covenant requiring both minimum and establishing maximum store openings, in each case, acceptable to Borrower and Lenders.</p>
<b>Conversion:</b>	<p>The amounts due under Term Loan A are convertible at any time into the common stock of the Borrower at a conversion rate of \$0.25 per share.</p> <p>The amounts due under Term Loan B are convertible at any time into the common stock of the Borrower at a conversion rate of \$0.31 per share.</p>
<b>Conditions Precedent for Initial Draw:</b>	The Loan Agreement will contain conditions precedent customary for facilities and transactions of this type and others as the Lenders may require, including (a) the execution and delivery of appropriate legal documentation, satisfactory in form and substance to the Borrower and the Lenders; and (b) the Plan is confirmed, the confirmation order is final, and the Effective Date of such Plan has occurred.

**Conditions for All Draws:** The Lenders shall not be obligated to fund any draw under the Loan Agreement unless each of the following is true as of the date of such draw (a) no default exists under the Loan Agreement, (b) all representations and warranties under the Loan Agreement are true and correct as if made on such date (other than those which were specifically made as of a certain date), (c) no material adverse change has occurred since the date of the Initial Draw in the Borrower's condition, financial or otherwise, operations, properties, assets or prospects, and (d) no material litigation has been threatened or is pending as of such date.

**Events of Default:** The Loan Agreement will contain events of default customary for facilities and transactions of this type and others as the Lenders may reasonably require, including, without limitation, (a) any violation in any affirmative or negative covenant beyond customary grace periods, (b) any of the security interest or liens granted by the collateral documents ceases to be a valid, binding and enforceable first priority security interest, (c) any default related to other material indebtedness by the Borrower which has continued beyond the grace period or for a period of time sufficient to permit the acceleration of such indebtedness, (d) any bankruptcy, insolvency, attachment, receivership or similar proceeding shall be instituted by or against the Borrower, or (e) any judgments for the payment of money in excess of \$250,000 in the aggregate shall be rendered against the Borrower unless the same shall be contested in good faith, and the Borrower establishes reserves satisfactory to Lenders.

**Remedies:** On the occurrence and continuance of any default, the Lenders shall have all remedies available at law or in equity, under the UCC, and the remedies set out in the Loan Agreement, including any of the following actions: (a) declare the principal of and accrued interest on the outstanding borrowings to be immediately due and payable; (b) terminate any further commitment to lend; or (c) foreclose any liens on the assets of the Borrower.

**Expenses:** The Borrower shall pay (a) all reasonable out-of-pocket expenses of the Lenders associated with the Loan Agreement and the preparation, execution, delivery and administration of the loan documentation and any amendment or waiver with respect thereto (including the reasonable fees, disbursements and other charges of outside counsel) and, (b) all out-of-pocket expenses of the Lenders (including the fees, disbursements and other charges of outside counsel and consultants) in connection with the enforcement of the loan documentation.

Other reasonable expenses of the Lenders, including but not limited to: legal fees, appraisals, title insurance, environmental reports, surveys, any and all UCC and litigation searches and filing fees, or any other expenses incurred by Lenders in connection with this transaction, whether or not the transaction closes.

**Governing Law:** Arizona, except as governed by the Bankruptcy Code.

**Exhibit F**

**Unsecured Creditor Note**

[To Come]