

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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	:	
In re:	:	Chapter 11
	:	
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors. <sup>1</sup>	:	Jointly Administered
	:	
	X	Related Docket Nos. 1534 & 1641

**CERTIFICATION OF COUNSEL IN SUPPORT OF ENTRY OF ORDER (I)  
APPROVING DISCLOSURE STATEMENT; (II) APPROVING BALLOT  
SOLICITATION AND TABULATION PROCEDURES, KEY DATES AND DEADLINES  
RELATED THERETO, FORMS OF BALLOTS, AND MANNER OF NOTICE; AND (III)  
FIXING DATE, TIME AND PLACE FOR CONFIRMATION HEARING AND  
DEADLINE FOR FILING OBJECTIONS THERETO**

The undersigned counsel for the debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors") hereby certifies as follows:

On June 22, 2012, the Debtors filed the Debtors' Motion for an Order (the "Disclosure Statement Approval Order") Under 11 U.S.C. §§ 105, 502, 1125, 1126 and 1128, Fed. R. Bankr. P. 2002, 3003, 3017, 3018, 3020 and 9007, Del. Bankr. L.R. 3017-1 (I) Approving Proposed Disclosure Statement; (II) Approving Key Dates and Deadlines Related to Ballot Solicitation and Tabulation Procedures, Forms of Ballots, and Manner of Notice; and (III) Fixing Date, Time and Place for Confirmation Hearing and Deadline for Filing Objections Thereto [Docket No. 1534].

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.



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On July 13, 2012, the Debtors filed the Notice of Filing of Disclosure Statement with Respect to the Second Amended Joint Chapter 11 Plan of Reorganization Of Syms Corp. and its Subsidiaries [Docket No. 1641] (as amended or modified, the "Disclosure Statement").

The Debtors sought approval of the Disclosure Statement at a hearing held on July 13, 2012 (the "Hearing"). At the Hearing, counsel for ASM Capital LP ("ASM Capital") raised certain concerns with respect to the Disclosure Statement, and counsel for the Debtors and the Official Committees agreed to revise the Disclosure Statement to resolve ASM Capital's concerns. Also at the Hearing, the Court approved the Disclosure Statement subject to submission and entry of a revised form of Disclosure Statement Approval Order (the "Revised Proposed Order") under certification of counsel.

The Revised Proposed Order (including the revisions to the Disclosure Statement agreed upon with counsel for ASM Capital) is attached hereto as Exhibit 1. For the Court's convenience, a blacklined copy of the Revised Proposed Order (including any exhibits with modifications) marked to show changes against the last version submitted to the Court is attached hereto as Exhibit 2.

The Debtors circulated the revised Disclosure Statement to counsel for ASM Capital. Counsel for ASM Capital confirmed that the revisions made to the Disclosure Statement were agreeable.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

WHEREFORE, the Debtors respectfully request that this Court enter the Revised Proposed Order attached hereto as Exhibit 1 at its earliest convenience.

Dated: Wilmington, Delaware  
July 13, 2012

/s/ Jason M. Liberi

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Counsel for Debtors and Debtors in Possession

**Exhibit 1**

**Revised Proposed Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)  
Debtors.<sup>1</sup> : Jointly Administered  
----- X **Related Docket Nos. 1364, 1534 & \_\_\_\_\_**

**ORDER (I) APPROVING DISCLOSURE STATEMENT; (II) APPROVING BALLOT SOLICITATION AND TABULATION PROCEDURES, KEY DATES AND DEADLINES RELATED THERETO, FORMS OF BALLOTS, AND MANNER OF NOTICE; AND (III) FIXING DATE, TIME AND PLACE FOR CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS THERETO**

A hearing having been held on July 13, 2012 (the "Hearing"), to consider the motion of the Debtors, dated June 22, 2012 (the "Motion"), pursuant to sections 105(a), 502, 1125, 1126 and 1128 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 3003, 3017, 3018, 3020 and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 3017-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Bankruptcy Rules") seeking an order (i) approving the form and content of the proposed Disclosure Statement with respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, filed on May 24, 2012 (as same may be amended or modified, the "Disclosure Statement"), (ii) approving the Ballot Solicitation and Tabulation Procedures and certain key dates and deadlines related thereto, a copy of which is annexed hereto as Exhibit A (the

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

"Solicitation Procedures"),<sup>2</sup> forms of ballots, and manner of notice, and (iii) fixing the date, time and place for the confirmation hearing on the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, co-proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders and filed on May 24, 2012 (as same may be amended or modified, the "Plan") and the deadline for filing objections to the Plan, as more fully set forth in the Motion; and it appearing from the affidavits of service on file with this Court and as described in the Motion that proper and timely notice of the Hearing has been given; and the Court finding that such notice was adequate and sufficient under the circumstances; and the appearances of all interested parties having been duly noted on the record of the Hearing; and each of the objections, if any, to the proposed Disclosure Statement or the Motion having been either (a) withdrawn or rendered moot by proposed modifications to the Disclosure Statement, or (b) overruled by the Court; and the Debtors having made the conforming additions, changes, corrections and deletions to the Disclosure Statement to conform the Disclosure Statement to the record of the Hearing and any agreements reached with the parties that had filed objections, a copy of which revised Disclosure Statement is annexed hereto as Exhibit B; and it appearing to the Court that it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and upon the Motion, the Disclosure Statement, the Solicitation Procedures and the record of the Hearing and all of the proceedings heretofore held herein; and after due deliberation thereon; and sufficient cause appearing therefore, it is hereby

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<sup>2</sup> Capitalized terms used in this order but not otherwise defined shall have the meanings ascribed to such terms in the Solicitation Procedures or the Plan (defined below).

**ORDERED, FOUND AND DETERMINED THAT:**

**I. Approval of Disclosure Statement**

1. Pursuant to Bankruptcy Rule 3017(b), (a) the Disclosure Statement (together with the exhibits filed by the Debtors leading up to the Disclosure Statement Hearing) is approved as containing adequate information regarding the Plan within the meaning of Bankruptcy Code section 1125(a), and (b) to the extent not withdrawn, settled, or otherwise resolved, all objections to the Disclosure Statement are overruled.

2. The Debtors are authorized to (i) make non-material changes to the Disclosure Statement, Plan and related documents (including the exhibits thereto) and (ii) revise the Disclosure Statement and related documents (including the exhibits thereto) to add further disclosure concerning events occurring at or after the Disclosure Statement Hearing, before distributing it in accordance with the terms of this Order; provided, however, that any such changes or revisions to the Disclosure Statement, Plan and related documents (including the exhibits thereto) shall require the consent of each of the Debtors, the Equity Committee, and the Creditors' Committee, which consent shall not be unreasonably withheld, and any disagreement with respect thereto shall be resolved by the Bankruptcy Court by hearing on shortened notice; provided, further, that any changes or revisions made to the Disclosure Statement, Plan and related documents (including the exhibits thereto) absent the consent of the Creditors' Committee shall be null and void. The Debtors shall file with the Court copies of any changed or revised pages blacklined to show the changes or revisions.

3. The Cure Procedures for executory contracts and unexpired leases outlined in the Motion and the form of Cure Notice attached as Exhibit C to the Motion are hereby approved. Cure Objections must be filed by August 21, 2012. Disputes regarding Cure

Amounts will be resolved either consensually by the parties or by the Court at the Confirmation Hearing (or at such later time as may be determined by the Debtors).

**II. Establishment of the Record Date, the Voting Deadline, and Certain Other Procedures and Key Dates**

**A) Voting Record Date**

4. Notwithstanding anything to the contrary in Bankruptcy Rule 3018(a), the Voting Record Date for determining (a) creditors and interest holders entitled to receive Solicitation Packages (as defined in the Solicitation Procedures) and other notices and (b) creditors and interest holders entitled to vote to accept or reject the Plan shall be July 13, 2012.

**B) Voting Deadline**

5. The last date and time by which ballots for accepting or rejecting the Plan must be received by the Voting Agent (defined below) in order to be counted shall be August 23, 2012, at 5:00 p.m. (prevailing Pacific time) (the "Voting Deadline"). In order to be counted, ballots must be returned to the Voting Agent on or prior to the Voting Deadline by (a) mail in the return envelope provided with each ballot or (b) overnight delivery at the claim or interest holder's expense or (c) by hand delivery to the Voting Agent. Ballots submitted by facsimile or electronic mail transmission shall not be counted.

**C) Voting Disallowance Deadline**

6. If the holder of a Claim receives a Solicitation Package and the Debtors object to such Claim after the Voting Record Date but before July 27, 2012 (the "Voting Disallowance Objection Deadline") the claim will be disallowed for voting purposes. The Debtors shall provide notice of the objection and disallowance of the claim for voting purposes to such holder. The notice will inform such holder of the rules applicable to Claims subject to a



pending objection and the procedures for seeking temporary allowance of claims for voting purposes as set forth in the Solicitation Procedures and this Order.

**C) Procedures for Temporary Allowance of Claims Pursuant to Rule 3018 for Voting Purposes**

7. The last date and time for filing and serving motions pursuant to Bankruptcy Rule 3018(a) ("Rule 3018(a) Motions") seeking temporary allowance of claims for the purpose of voting to accept or reject the Plan shall be August 17, 2012, at 4:00 p.m. (prevailing Eastern time) (the "Rule 3018(a) Motion Deadline"). Rule 3018(a) Motions must (a) be made in writing, (b) comply with the Bankruptcy Rules and the Local Bankruptcy Rules, (c) set forth the name of the party asserting the Rule 3018(a) Motion, (d) state with particularity the legal and factual bases for the Rule 3018(a) Motion, and (e) be filed with the Bankruptcy Court and served so as to be RECEIVED by the Notice Parties (defined below) no later than the Rule 3018(a) Motion Deadline.

8. Any party timely filing and serving a Rule 3018(a) Motion shall be provided a ballot and permitted to cast a provisional vote to accept or reject the Plan. If, and to the extent that, the Debtors and such party are unable to resolve the issues raised by the Rule 3018(a) Motion prior to the Voting Deadline, then at the Confirmation Hearing the Court will determine whether the provisional ballot should be counted as a vote on the Plan.

**D) Procedure With Respect to Amended and Duplicate Claims**

9. Notwithstanding anything to the contrary in the Solicitation Procedures or this Order, any holder of (a) duplicate or amended Claims or (b) Claims arising from the same transaction, shall be (x) provided with only one copy of the materials in the Solicitation Package and one Ballot and (y) permitted to vote only once for all amended or duplicate Claims or Claims arising out of the same transaction, regardless of whether the Debtors have objected to same.

**E) Solicitation Packages and Cure Notices Mailing Deadline**

10. The mailing deadline for the Voting Agent (as defined below) to mail Solicitation Packages and serve Cure Notices shall be July 20, 2012.

**F) Ballot Tabulation Report Deadline**

11. The Voting Agent (as defined below) shall file a Ballot Tabulation Report summarizing the results of voting on the Plan by August 28, 2012.

**III. Approval of the Confirmation Hearing Date and Time, Deadline and Procedures for Filing Objections and Replies Thereto and the Form and Manner of Notice of the Confirmation Hearing**

**A) Confirmation Hearing Date and Time**

12. The Confirmation Hearing shall be August 29, 2012, at 1:00 p.m. (prevailing Eastern time). The Debtors may continue the Confirmation Hearing by announcing such continuance in open court, in an agenda for such hearing, or by filing notice of the continuance. The Court shall also rule on any unresolved Rule 3018(a) Motions at the Confirmation Hearing.

**B) Deadline and Procedures for Filing Confirmation Objections**

13. Pursuant to Bankruptcy Rule 3020(b)(1), Confirmation Objections shall be filed and served by 4:00 p.m. (prevailing Eastern time) on August 21, 2012 (the "Confirmation Objection Deadline"). Confirmation Objections not timely filed and served in accordance with this Order shall not be considered.

14. Confirmation Objections, if any, must (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Bankruptcy Rules; (c) state the name and address of the objecting or responding party, and the nature and amount of any claim or interest asserted by such party against or in the Debtors, their estates, or their property; (d) state with particularity the basis and nature of any objection or response and the legal and factual bases therefor; (e)

reference with specificity the provisions of the Plan to which objection or response is made, including proposed language to be added to the Plan or existing language in the Plan to be modified or deleted to resolve such objection or response; (f) be filed, together with proof of service, with the Bankruptcy Court; and (g) be served so as to be actually received by the Confirmation Objection Deadline on the following parties (collectively, the "Notice Parties"): (i) Syms Corp. and Filene's Basement, LLC, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq.; (iii) counsel to the Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq. and Janine M. Cerbone, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Michael J. Merchant, Esq.; (iv) counsel to the Official Committee of Syms Corp. Equity Security Holders, Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq. and Seth Goldman, Esq. and Morris Nichols Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq.; and (v) the Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq. Confirmation Objections not timely filed and served in the manner set forth above shall not be considered and shall be deemed overruled.

**C) Replies to Confirmation Objections**

15. Parties-in-interest shall be allowed to file a reply or omnibus reply on or before August 27, 2012, at 4:00 p.m. (prevailing Eastern Time) to any confirmation objections that may be filed.

**D) Assumed Contract Cure Amount Objections**

16. Assumed Contract Cure Objections shall be filed and served by 4:00 p.m. (prevailing Eastern time) on August 21, 2012 (the "Assumed Contract Cure Amount Objection Deadline"). Assumed Contract Cure Amount Objections not timely filed and served in accordance with this Order shall not be considered.

17. Assumed Contract Cure Amount Objections, if any, must (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Bankruptcy Rules; (c) state the name and address of the objecting or responding party, and the nature and amount of any claim or interest asserted by such party against or in the Debtors, their estates, or their property; (d) state with particularity the basis and nature of any objection or response and the legal and factual bases therefor; (e) be filed, together with proof of service, with the Bankruptcy Court; and (f) be served so as to be actually received by the Assumed Contract Cure Amount Objection Deadline by the Notice Parties (as defined in paragraph 13).

**E) Form of Confirmation Hearing Notice**

18. The notice of the Confirmation Hearing and related matters, substantially in the form attached hereto as Exhibit C (the "Confirmation Hearing Notice"), is hereby approved.

**F) Manner of Notice by Publication**

19. In addition to including the Confirmation Hearing Notice in the Solicitation Packages, the Debtors shall supplement such notice by causing the Confirmation

Hearing Notice to be published in (i) the national edition of USA Today, (ii) the Boston Globe and (iii) Women's Wear Daily on or before July 23, 2012 (the "Publication Deadline"). The version of the Confirmation Hearing Notice published pursuant to this paragraph may be modified to conserve space and minimize cost to the estate. At a minimum, it must contain the information set forth in paragraph 31 of the Motion. The publication of the Confirmation Hearing Notice shall provide sufficient notice to persons who do not otherwise receive the Confirmation Hearing Notice by mail.

#### **IV. Approval of the Solicitation Procedures**

20. The Solicitation Procedures attached hereto as Exhibit A are good and sufficient and satisfy the requirements of the Bankruptcy Code and Bankruptcy Rules. The Solicitation Procedures are approved in the form and manner set forth on Exhibit A.

#### **V. Copies or Review of Documents**

21. Imaged copies of the complete Plan and the Disclosure Statement, including after the Exhibit Filing Date any omitted exhibits to the Plan, are publicly available on the Internet at the Bankruptcy Court's website, <http://www.deb.uscourts.gov> (registration is required) or at the Voting Agent's website, <http://www.kccllc.net/filenes> (free of charge). Copies of the Plan and the Disclosure Statement (including all exhibits and/or appendices thereto) also may be obtained by first-class mail from the Voting Agent at Kurtzman Carson Consultants LLC, Re: Syms Corp., et. al., 2335 Alaska Avenue, El Segundo, CA 90245, Attn: Voting Dept. (the "Voting Agent"), Telephone: (877) 606-7510. Copies of the Plan and the Disclosure Statement (including all exhibits and/or appendices thereto) may also be reviewed during regular business hours (8:00 a.m. to 4:00 p.m. weekdays, except legal holidays) at the Office of the Clerk, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801.

22. The Debtors shall use best efforts to file all Exhibits to the Plan that are not otherwise already attached to the Plan with the Court on or before August 13, 2012 (the "Plan Exhibit Filing Date").

## **VI. Rights Offering**

23. The rights offering procedures attached hereto as Exhibit D (the "Rights Offering Procedures"), the accredited investor questionnaire attached hereto as Exhibit E (the "Accredited Investor Questionnaire") and the form of subscription agreement attached hereto as Exhibit F (the "Form of Subscription Agreement") are hereby approved in the forms attached hereto.

24. The Debtors are authorized to implement a rights offering (the "Rights Offering") in accordance with the Rights Offering Procedures. The Debtors are further authorized to distribute the Accredited Investor questionnaire and the Form of Subscription Agreement in furtherance of the Rights Offering.

25. The Debtors are authorized to take or refrain from taking any action necessary or appropriate to implement the terms of and the relief granted in this Order without seeking further order of the Court.

26. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Wilmington, Delaware  
July \_\_, 2012

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Honorable Kevin J. Carey  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**Solicitation Procedures**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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	:	
In re:	:	Chapter 11
	:	
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors. <sup>1</sup>	:	Jointly Administered
	:	
-----	X	

**SYMS CORP. AND FILENE'S BASEMENT, LLC BALLOT  
SOLICITATION AND TABULATION PROCEDURES**

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.



**SYMS CORP. AND FILENE'S BASEMENT, LLC BALLOT  
SOLICITATION AND TABULATION PROCEDURES**

The following procedures (the "Solicitation Procedures") are adopted with respect to (a) the distribution of Ballots and solicitation materials with respect to the Plan, and (b) the return and tabulation of Ballots.

1. **Definitions:**

- (a) **"Ballot"** means a form of ballot approved by the Court in the Disclosure Statement and Solicitation Procedures Order.
- (b) **"Bar Date"** means March 1, 2012, the date set by the Bankruptcy Court as the last day for filing proofs of claim other than claims by Governmental Units (as that term is defined in the Bankruptcy Code).
- (c) **"Beneficial Owner(s)"** means any entity with a beneficial ownership interest in Syms shares held by a Nominee.
- (d) **"Court"** means the United States Bankruptcy Court for the District of Delaware.
- (e) **"Confirmation Hearing"** means the hearing on the confirmation of the Plan, as such hearing may be adjourned from time to time.
- (f) **"Confirmation Hearing Notice"** means a notice of (a) the approval of the Disclosure Statement and the Solicitation Procedures and the scheduling of the Confirmation Hearing, and (b) the procedure for holders of Claims to obtain a Solicitation Package in a form approved by the Court in the Disclosure Statement and Solicitation Procedures Order.
- (g) **"Creditors' Committee"** means the Official Committee of Unsecured Creditors appointed by the United States Trustee pursuant to Bankruptcy Code Section 1102.
- (h) **"Debtor(s)"** means any of Syms Corp., Filene's Basement, LLC, Syms Clothing, Inc., or Syms Advertising, Inc., as debtors and debtors-in-possession.

- (i) **"Disclosure Statement"** means the disclosure statement filed on May 24, 2012 with respect to the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries co-proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders, as same may be amended or modified.
- (j) **"Disclosure Statement and Solicitation Procedures Order"** means the order of the Court approving the Disclosure Statement and the Solicitation Procedures.
- (k) **"Effective Date"** means the date the Plan becomes effective.
- (l) **"Equity Committee"** means the Official Committee of Equity Security Holders of Syms Corp.
- (m) **"Mailing Deadline"** means July 20, 2012, the date by which the Voting Agent shall mail the Solicitation Packages.
- (n) **"Nominee"** means an entity, including brokers, banks, dealers or other agents or nominees, that is the record holder of Syms shares in which another entity holds the beneficial ownership interest.
- (o) **"Notice Parties"** means (i) Syms Corp. and Filene's Basement, LLC, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq.; (iii) counsel to the Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq. and Janine M. Cerbone, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Michael J. Merchant, Esq.; (iv) counsel to the Official Committee of Syms Corp. Equity Security Holders, Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq. and Seth Goldman, Esq. and Morris Nichols Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq.; and (v) the Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq.
- (p) **"Plan"** means the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, co-proposed jointly by the Debtors and the Official Committee of

Syms Corp. Equity Security Holders, dated May 24, 2012, as same may be amended or modified.

- (q) **"Plan Proponents"** means the Debtors together with the Equity Committee.
- (r) **"Record Owner"** means any entity with a registered ownership interest in Syms shares.
- (s) **"Schedules"** means the Schedules and Statements of Financial Affairs filed by the Debtors on December 22, 2011 [D.I. 438, 439, 440, 441].
- (t) **"Solicitation Package"** means, and will consist of, all of the following:
  - (i) Notice of the Confirmation Hearing and related matters, substantially in the form approved by the Court, setting forth the time fixed for filing acceptances and rejections to the Plan, the time fixed for filing objections to confirmation of the Plan, and the date and time of the Confirmation Hearing;
  - (ii) for entities entitled to vote on the Plan, parties on the Master Service List for these Bankruptcy cases, the United States Trustee, counsel to the Creditors' Committee and counsel to the Equity Committee, a CD-ROM containing the Disclosure Statement (with exhibits, including the Plan, the Disclosure Statement and Solicitation Procedures Order and these Solicitation Procedures); and
  - (iii) for entities entitled to vote on the Plan, appropriate Ballots, voting instructions, and pre-addressed, postage-paid, return envelopes.
- (u) **"Voting Agent"** means Kurtzman Carson Consultants, LLC, or such other firm that may be retained by the Debtors to act as the solicitation and tabulation agent with respect to the Plan.
- (v) **"Voting Deadline"** means 5:00 p.m. prevailing Pacific Time on August 23, 2012 or such other date that is established by the Court as the deadline for the return of Ballots on the Plan.

- (w) **"Voting Disallowance Objection Deadline"** means July 27, 2012 or such other date that is established by the Court as the deadline for the Debtors to object to the allowance of a claim for voting purposes.
- (x) **"Voting Record Date"** means July 13, 2012 or such other date that is established by the Court as the date on which the creditors and interest holders entitled to vote on the Plan is set.
- (y) **"3018(a) Motion"** means a motion filed in accordance with the Solicitation Procedures and the Disclosure Statement and Solicitation Procedures Order for the temporary allowance of a Claim or Interest for the purpose of accepting or rejecting the Plan pursuant to Federal Rule of Bankruptcy Procedure 3018(a).
- (z) **"3018(a) Motion Deadline"** means 4:00 p.m. prevailing Eastern Time on August 10, 2012, the deadline for the filing and service of all 3018(a) Motions, or such other date that is established by the Court as the deadline for filing and service of 3018(a) Motions.

Any capitalized term used herein but not otherwise defined shall have the meaning ascribed to such term in the Plan.

2. **Confirmation Hearing Notice:**

The Debtors will cause the Confirmation Hearing Notice to be published once in: (i) the national edition of USA Today, (ii) the Boston Globe and (iii) Women's Wear Daily (trade publication), on or about July 23, 2012.

3. **Distribution of Solicitation Packages:**

Creditors, interest holders, and parties-in-interest in these chapter 11 cases will receive Solicitation Packages containing different documents depending on their relationship to the Debtors and whether they are entitled to vote on the Plan. For ease of reference, a table indicating the different documents which may constitute the different Solicitation Packages and the parties the Debtors propose to receive each Solicitation Package follows:

Contents of Solicitation Package for Particular Parties					
	Syms and Filene's Classes 1-2 <sup>2</sup>	Syms' Classes 3, 4, 5 and 7 and Filene's Classes 3, 4, 5 and 6	Contingent, unliquidated or disputed claims	Core Service Parties <sup>3</sup>	Counter-parties to executory contracts
Confirmation Hearing Notice (Unimpaired – Non-Voting) ("Unimpaired Creditor Notice")	<b>X</b>				
Confirmation Hearing Notice (Generic)		<b>X</b>		<b>X</b>	<b>X</b>
Confirmation Hearing Notice (CUD – Non-Voting) ("CUD Notice")			<b>X</b>		
Ballot for the appropriate class		<b>X</b>			
Solicitation letters, if any, from the Debtors and any official Committee		<b>X</b>		<b>X</b>	
CD-ROM containing Disclosure Statement, the Plan, and the materials appended thereto, and Disclosure Statement and Solicitation Procedures Order		<b>X</b>		<b>X</b>	

- (a) **Scheduled Claims:** The Voting Agent will cause a Solicitation Package to be served upon each holder of a Claim listed in the Debtors' Schedules at the addresses stated therein other than holders of such Claims who have filed a proof of claim.
- (b) **Filed Claims:** The Voting Agent will cause a Solicitation Package to be served upon each holder of a Claim that has filed a proof of claim against any of the Debtors on or prior to the Bar Date that has not been withdrawn or disallowed or expunged by an order of the Court entered on or before the Voting Record Date. To the extent the proof of claim was filed by counsel on behalf of the claimant, the Voting Agent will cause the Solicitation Package to be served upon such counsel.
- (c) **Parties to Executory Contracts and Unexpired Leases:** The Voting Agent will cause a Solicitation Package to be served on each entity listed on the Schedules as a party to an executory contract or unexpired lease with the Debtors, irrespective

<sup>2</sup> Includes creditors holding allowed claims that are not classified and unimpaired under the Plan (e.g., Administrative Claims and Priority Tax Claims).

<sup>3</sup> In the above table, "Core Service Parties" refers to the following parties: Parties on the Master Service List; United States Trustee; counsel to the Creditors' Committee; and counsel to the Equity Committee.

of whether, pursuant to section 365(a) of the Bankruptcy Code, such contract is, in fact, an "executory contract" or such lease is, in fact, an "unexpired lease."

- (d) **Syms Shareholders:** The Voting Agent will cause a Solicitation Package to be served on each holder of record of Syms shares, with a reasonably sufficient number of Ballots and Solicitation Packages to be served on Nominees for distribution to the Beneficial Holders of the shares for whom such Nominee acts.
- (e) **Other Parties:** The Voting Agent will cause a Solicitation Package to be served upon the Office of the United States Trustee for the District of Delaware, counsel for the Creditors' Committee, counsel for the Equity Committee, and on each party that has filed a notice of appearance with the Court and has not withdrawn such notice of appearance as of the date the Court enters the Disclosure Statement and Solicitation Procedures Order.

#### 4. **Return of Ballots:**

- (a) **Holders that Are Entitled to Vote:** Except as provided herein (i) each holder of a Claim (1) for which a proof of claim was filed by the Bar Date, if required, (2) for which a Claim amount may be determined pursuant to Section 5(a) hereof as of the Voting Deadline, (3) which Claim is not treated as unimpaired under the Plan, (4) which Claim is not in a Class that is deemed to have rejected the Plan, (5) which Claim is not an Intercompany Claim or Superpriority Intercompany Claim, (6) which Claim is not subject to a pending objection or otherwise deemed contingent, unliquidated or disputed on the Voting Record Date and (7) if required, which Claim is the subject of a 3018(a) Motion filed by the 3018(a) Motion Deadline, and (ii) each holder of an Interest in Syms, whether a Record Owner or a Beneficial Owner – provided however that a Beneficial Owner and Nominee may not both vote with respect to the same Syms shares – is entitled to vote to accept or reject the Plan. For the avoidance of doubt, holders of Claims in Syms Classes 3, 4 and 5 and holders of Interests in Syms Class 7, and holders of Claims in Filene's Classes 3, 4, 5 and 6 are the impaired classes that are entitled to vote to accept or reject the Plan.
- (b) **Voting by Syms Shareholders:** The Debtors will transmit Solicitation Packages to Record Owners of Syms Class 7 Interests and Nominees as of the Voting Record Date. Nominees shall be provided with a sufficient quantity of Beneficial Owner ballots for distribution to their Beneficial Owners. In Order to facilitate the mailing of ballots to holders of Syms Class 7 Interests, any transfer agents are required to provide the voting agent with an electronic file, in a format acceptable to the Voting Agent, containing the names, addresses, and holdings of the respective Registered Owners and Nominees of the Syms shares as of the Voting Record Date or, if unable to provide an acceptable electronic file, two sets of pressure-sensitive labels and a list containing the same information. The Nominees are authorized and required to forward Solicitation Packages to the

Beneficial Holders for voting, and to provide the Beneficial Holders with a return envelop addressed to the Nominee for the return of the Beneficial Holders votes. The Nominees will then return the Master Ballots reflecting the votes of the Beneficial Holders to the Voting Agent.

- (c) **Authority to Complete and Execute Ballots:** If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer or employee of a corporation, or any other entity acting in a fiduciary or representative capacity, such person must indicate such capacity when signing. The authority of the signatory of each Ballot to complete and execute the Ballot shall be presumed, but each such signatory shall certify, by executing the Ballot, that he or she has such authority and shall provide evidence of such authority upon request of the Voting Agent.
- (d) **Place to Send Completed Ballots:** All Ballots should be returned by mail, hand delivery or overnight courier to the Voting Agent. Ballots relating to Claims against the Debtors should be sent to the Voting Agent at the below address.

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department

Master Ballots and Record Owner Ballots relating to Syms Class 7 Common Stock Interests should be returned by mail, hand delivery or overnight courier to the Voting Agent at the below address. Beneficial Owner Ballots should be sent by Beneficial Owners directly to their Nominee, so the Nominee may cast a Master Ballot reflecting the votes of Beneficial Owners.

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
599 Lexington Avenue, 39<sup>th</sup> Floor  
New York, NY 10022  
Attn.: Voting Department

- (e) **Deadline for Receiving Completed Ballots:** All Ballots must be *actually received* by the Voting Agent by 5:00 p.m. Pacific Time on the Voting Deadline. Such Ballots may be received by the Voting Agent at the address set forth on the return envelope. The Voting Agent will not accept Ballots submitted by telecopy, facsimile or other electronic means, including email. The Voting Agent will date and time-stamp all Ballots when received. In addition, the Voting Agent will create an electronic image of all such Ballots received and will retain an electronic copy of such Ballots for a period of one (1) year following the Voting Deadline, unless otherwise instructed by the Debtors, in writing, or otherwise ordered by the Court. The Debtors, in their sole discretion, shall have the ability to extend in writing the Voting Deadline.

5. **Tabulation of Ballots:**

- (a) **Determination of Amount of Claims Voted.** With respect to the tabulation of Ballots for all Claims and Interests entitled to vote on the Plan, solely for voting purposes (not for distribution purposes), the amount to be used to tabulate acceptance or rejection of the Plan will be as described below.

i. **Syms Class 3 – Syms Convenience Claims** The amount to be used to tabulate acceptance or rejection of the Plan shall be, in the following order of priority (provided that no Convenience Claim shall exceed \$10,000):

(A) If, prior to the Voting Deadline, (i) the Court enters an order fully or partially allowing a Convenience Claim, whether for all purposes or for voting purposes only, or (ii) the Debtors and the holder of the Convenience Claim agree to fully or partially allow such Claim for voting purposes only and no objection to such allowance is received by the Debtors within seven (7) days after service by first-class mail of notice of such agreement to the Master Service List, the amount allowed thereunder.

(B) The liquidated amount specified in a proof of claim timely filed on or prior to the Bar Date, so long as such Convenience Claim has not been disallowed or expunged by the Court and is not the subject of an objection pending as of the Voting Record Date.

(C) The Convenience Claim amount listed in the Schedules as liquidated, undisputed and noncontingent.

(D) If a Convenience Claim is recorded in the Schedules or on a proof of claim filed on or prior to the Bar Date and such Claim is unliquidated, contingent and/or disputed, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(E) If the holder of a liquidated, noncontingent, undisputed Syms Claim in a different class that is not subject to an objection elects to seek treatment as a member of the Syms Convenience Class and reduce its claim to no more than \$10,000, then such reduced amount.

(F) If a proof of claim for a Convenience Claim is the subject of a pending objection or is otherwise deemed contingent, unliquidated or



disputed as of the Voting Record Date, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

ii. **Syms Class 4 – Syms General Unsecured Claims.** The amount to be used to tabulate acceptance or rejection of the Plan shall be, in the following order of priority:

(A) If, prior to the Voting Deadline, (i) the Court enters an order fully or partially allowing a General Unsecured Claim, whether for all purposes or for voting purposes only, or (ii) the Debtors and the holder of the Unsecured Claim agree to fully or partially allow such Claim for voting purposes only and no objection to such allowance is received by the Debtors within seven (7) days after service by first-class mail of notice of such agreement to the Master Service List, the amount allowed thereunder.

(B) The liquidated amount specified in a proof of claim timely filed on or prior to the Bar Date, so long as such General Unsecured Claim has not been disallowed or expunged by the Court and is not the subject of an objection pending as of the Voting Record Date.

(C) The General Unsecured Claim amount listed in the Schedules as liquidated, undisputed and noncontingent.

(D) If a General Unsecured Claim is recorded in the Schedules or on a proof of claim filed on or prior to the Bar Date and such Claim is unliquidated, contingent and/or disputed, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(E) If a proof of claim for a General Unsecured Claim is the subject of a pending objection or is otherwise deemed contingent, unliquidated or disputed as of the Voting Record Date, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

iii. **Syms Class 5 – Syms Pension Plan Claims.** The amount to be used to tabulate acceptance or rejection of the Plan shall be, in the following order of priority:

(A) If, prior to the Voting Deadline, (i) the Court enters an order fully or partially allowing a Pension Plan Claim, whether for all purposes or for voting purposes only, or (ii) the Debtors and the holder of the Pension Plan agree to fully or partially allow such Claim for voting purposes only and no objection to such allowance is received by the Debtors within seven (7) days after service by first-class mail of notice of such agreement to the Master Service List, the amount allowed thereunder.

(B) The liquidated amount specified in a proof of claim timely filed on or prior to the Bar Date, so long as such Pension Plan Claim has not been disallowed or expunged by the Court and is not the subject of an objection pending as of the Voting Record Date.

(C) The Pension Plan Claim amount listed in the Schedules as liquidated, undisputed and noncontingent.

(D) If a Pension Plan Claim is recorded in the Schedules or on a proof of claim filed on or prior to the Bar Date and such Claim is unliquidated, contingent and/or disputed, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(E) If a proof of claim for a Pension Plan Claim is the subject of a pending objection or is otherwise deemed contingent, unliquidated or disputed as of the Voting Record Date, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

iv. **Syms Class 7 – Interests in Syms:** Each holder of an Interest in Syms shall be entitled to one (1) vote for each Syms share owned, fractional shares will be disregarded for voting purposes. Beneficial Holders and Nominees may not both cast votes with respect to the same Syms shares.

v. **Filene's Class 3 – Filene's Convenience Claims.** The amount to be used to tabulate acceptance or rejection of the Plan shall be, in the following order of priority:

(F) If, prior to the Voting Deadline, (i) the Court enters an order fully or partially allowing a Convenience Claim, whether for all purposes or for voting purposes only, or (ii) the Debtors and the holder of the Convenience Claim agree to fully or partially allow such Claim for voting purposes only and no objection to such allowance is received by the Debtors within seven (7) days after service by first-class mail of notice of such agreement to the Master Service List, the amount allowed thereunder.

(G) The liquidated amount specified in a proof of claim timely filed on or prior to the Bar Date, so long as such Convenience Claim has not been disallowed or expunged by the Court and is not the subject of an objection pending as of the Voting Record Date.

(H) The Convenience Claim amount listed in the Schedules as liquidated, undisputed and noncontingent.

(I) If a Convenience Claim is recorded in the Schedules or on a proof of claim filed on or prior to the Bar Date and such Claim is unliquidated, contingent and/or disputed, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(J) If a proof of claim for a Filene's Convenience Claim is the subject of a pending objection or is otherwise deemed contingent, unliquidated or disputed as of the Voting Record Date, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

vi. **Filene's Class 4 – Filene's General Unsecured (Short-Term) Claims.** The amount to be used to tabulate acceptance or rejection of the Plan shall be, in the following order of priority:

(A) If, prior to the Voting Deadline, (i) the Court enters an order fully or partially allowing a Filene's General Unsecured (Short-Term) Claim, whether for all purposes or for voting purposes only, or (ii) the Debtors

and the holder of the Unsecured Claim agree to fully or partially allow such Claim for voting purposes only and no objection to such allowance is received by the Debtors within seven (7) days after service by first-class mail of notice of such agreement to the Master Service List, the amount allowed thereunder.

(B) The liquidated amount specified in a proof of claim timely filed on or prior to the Bar Date, so long as such Filene's General Unsecured (Short-Term) Claim has not been disallowed or expunged by the Court and is not the subject of an objection pending as of the Voting Record Date.

(C) The Filene's General Unsecured (Short-Term) Claim amount listed in the Schedules as liquidated, undisputed and noncontingent.

(D) If a Filene's General Unsecured (Short-Term) Claim is recorded in the Schedules or on a proof of claim filed on or prior to the Bar Date and such Claim is unliquidated, contingent and/or disputed, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(E) If a proof of claim for a Filene's General Unsecured (Short-Term) Claim is the subject of a pending objection or is otherwise deemed contingent, unliquidated or disputed as of the Voting Record Date, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

**vii. Filene's Class 5 – Filene's General Unsecured (Long-Term) Claims.** The amount to be used to tabulate acceptance or rejection of the Plan shall be, in the following order of priority:

(A) If, prior to the Voting Deadline, (i) the Court enters an order fully or partially allowing a Filene's General Unsecured (Long-Term) Claim, whether for all purposes or for voting purposes only, or (ii) the Debtors and the holder of the Unsecured Claim agree to fully or partially allow such Claim for voting purposes only and no objection to such allowance is received by the Debtors within seven (7) days after service by first-class mail of notice of such agreement to the Master Service List, the amount allowed thereunder.

(B) The liquidated amount specified in a proof of claim timely filed on or prior to the Bar Date, so long as such Filene's General Unsecured (Long-Term) Claim has not been disallowed or expunged by the Court and is not the subject of an objection pending as of the Voting Record Date.

(C) The Filene's General Unsecured (Long-Term) Claim amount listed in the Schedules as liquidated, undisputed and noncontingent.

(D) If a Filene's General Unsecured (Long-Term) Claim is recorded in the Schedules or on a proof of claim filed on or prior to the Bar Date and such Claim is unliquidated, contingent and/or disputed, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(E) If a proof of claim for a Filene's General Unsecured (Long-Term) Claim is the subject of a pending objection or is otherwise deemed contingent, unliquidated or disputed as of the Voting Record Date, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

viii. **Filene's Class 6 – Filene's Pension Plan Claims.** The amount to be used to tabulate acceptance or rejection of the Plan shall be, in the following order of priority:

(A) If, prior to the Voting Deadline, (i) the Court enters an order fully or partially allowing a Pension Plan Claim, whether for all purposes or for voting purposes only, or (ii) the Debtors and the holder of the Pension Plan agree to fully or partially allow such Claim for voting purposes only and no objection to such allowance is received by the Debtors within seven (7) days after service by first-class mail of notice of such agreement to the Master Service List, the amount allowed thereunder.

(B) The liquidated amount specified in a proof of claim timely filed on or prior to the Bar Date, so long as such Pension Plan Claim has not been disallowed or expunged by the Court and is not the subject of an objection pending as of the Voting Record Date.

(C) The Pension Plan Claim amount listed in the Schedules as liquidated, undisputed and noncontingent.

(D) If a Pension Plan Claim is recorded in the Schedules or on a proof of claim filed on or prior to the Bar Date and such Claim is unliquidated, contingent and/or disputed, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

(E) If a proof of claim for a Pension Plan Claim is the subject of a pending objection or is otherwise deemed contingent, unliquidated or disputed as of the Voting Record Date, the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline as forth below in Section 7.

- (b) **Ballots Excluded:** A Ballot will not be counted if any of the following applies to such Ballot:
- (i) The holder submitting the Ballot is not entitled to vote, pursuant to Section 4(a) hereof.
  - (ii) The Ballot is not **actually received** by the Voting Agent in the manner set forth in Section 4(d) and (e) hereof by the Voting Deadline unless the Debtors shall have granted in writing an extension of the Voting Deadline with respect to such Ballot.
  - (iii) The Ballot is returned to the Voting Agent, indicating acceptance or rejection of the Plan but is unsigned.
  - (iv) The Ballot is postmarked prior to the Voting Deadline but is received after the Voting Deadline.
  - (v) The Ballot is illegible or contains insufficient information to discern the identification of the holder of the Claim.
  - (vi) The Ballot is transmitted to the Voting Agent by telecopy, facsimile or other electronic means, including email.
  - (vii) The Ballot is submitted in a form that is not the appropriate Ballot for such holder.

- (viii) The Ballot is not completed.
- (ix) The Ballot is submitted on account of a duplicate Claim or amended Claim or Claims against multiple Debtors arising from the same transaction.
- (c) **General Solicitation Procedures and Standard Assumptions:** In addition, the following solicitation procedures and standard assumptions will be used in tabulating Ballots:
  - (i) A holder may not split his, her, or its vote, except as provided pursuant to Section 5(c)(ii). Accordingly, except as provided in Section 5(c)(ii) hereof, (1) each holder shall have a single vote within a particular class, (2) the full amount of all such holder's Claims or Interests (calculated in accordance with these procedures) within a particular class shall be deemed to have been voted either to accept or reject a Plan, and (3) any Ballot that partially rejects and partially accepts the Plan shall not be counted.
  - (ii) A Nominee casting a Master Ballot may split the votes cast on the Master Ballot to reflect the Ballots transmitted from the Beneficial Holders to the Nominee. Beneficial Holders may not split their votes, and if any Beneficial Holder attempts to split its votes, the Nominee should contact the Voting Agent immediately.
  - (iii) The Voting Agent may, in its sole and absolute discretion, contact voters to cure any defects in the Ballots, provided, however, under no circumstances shall the Voting Agent have any obligation to contact voters to cure defects in the Ballots.
  - (iv) Any voter that delivers a valid Ballot may withdraw his, her, or its vote by delivering a written notice of withdrawal to the Voting Agent before the Voting Deadline. To be valid, the notice of withdrawal must (1) be signed by the party who signed the Ballot to be revoked, and (2) be received by the Voting Agent before the Voting Deadline. The Debtors may contest the validity of any withdrawals.
  - (v) If multiple Ballots are received from different holders purporting to hold the same Claim, the latest-dated Ballot that is received prior to the Voting Deadline will be the Ballot that is counted.

- (vi) If multiple Ballots are received from a holder of a Claim and someone purporting to be his, her, or its counsel or agent, the Ballot received from the holder of the Claim will be the Ballot that is counted, and the vote of the purported counsel or agent will not be counted.
- (vii) There shall be a rebuttable presumption that any holder who submits a properly completed superseding Ballot or withdrawal of Ballot on or before the Voting Deadline has sufficient cause, within the meaning of Bankruptcy Rule 3018(a), to change or withdraw such holder's acceptance or rejection of the Plan.
- (viii) A Ballot that is completed, but on which the holder did not vote to accept or reject the Plan, or voted to both accept and reject the Plan, shall not be counted as a vote to accept or reject the Plan.
- (ix) If no votes to accept or reject the Plan are received with respect to a particular class, such class will be deemed to have accepted the Plan.
- (x) If multiple Ballots are received from a holder of a Claim or Interest for the same Claim or Interest, the latest-dated Ballot that is received prior to the Voting Deadline shall be the Ballot that is counted as a vote to accept or reject the Plan.



**6. Special Notice Provisions for Holders of Interests in Syms**

The Debtors will transmit Solicitation Packages to Record Owners of Syms Class 7 Interests and Nominees as of the Voting Record Date. Nominees shall be provided with a sufficient quantity of Beneficial Owner ballots for distribution to their Beneficial Owners. In Order to facilitate the mailing of ballots to holders of Syms Class 7 Interests, any transfer agents are required to provide the voting agent with an electronic file, in a format acceptable to the Voting Agent, containing the names, addresses, and holdings of the respective Registered Owners and Nominees of the Syms Class 7 Interests as of the Voting Record Date or, if unable to provide an acceptable electronic file, two sets of pressure-sensitive labels and a list containing the same information.

The Nominees are authorized and required to forward Solicitation Packages to the Beneficial Holders for voting, and to provide the Beneficial Holders with a return envelop addressed to the Nominee for the return of the Beneficial Holders votes. The Nominees will then return the Master Ballots reflecting the votes of the Beneficial Holders to the Voting Agent.

Nominees are entitled to seek reimbursement from the Debtors for their reasonable, actual, and necessary out-of-pocket expenses incurred in performing the tasks described above upon written request by such entities (subject to the Bankruptcy Court's jurisdiction to resolve any disputes over any request for such reimbursement).

**7. 3018(a) Motions:**

Pursuant to the Solicitation Procedures, holders of Syms and Filene's general unsecured claims who timely file a proof of claim by the Bar Date, and whose Claims are contingent, disputed or unliquidated, or any holders of Claims whose Claim is the subject of an objection pending on the Voting Record Date, will not be entitled to vote to accept or reject the Plan unless they file and serve a 3018(a) Motion by the 3018(a) Motion Deadline in accordance with the Disclosure Statement and Solicitation Procedures Order. To the extent that these Claimants timely file and serve a 3018(a) Motion, they only will be able to cast a provisional vote to accept or reject the Plan in accordance with the Disclosure Statement and Solicitation Procedures Order.

**8. Third-Party Releases:**

Article XII.H of the Plan contains certain third-party releases, exculpation provisions, and injunction language (collectively, the "Third Party Releases"), as follows:

As of the Effective Date, all Persons who directly or indirectly have been a Holder, are a Holder, or may become a Holder of a Claim or Interest and (a) who vote to accept the Plan as set forth on the relevant Ballot and do not mark their Ballot to indicate their refusal to grant the releases

provided in this paragraph, (b) are Holders in Filene's Classes 4A or 5A, or (c) whose Claim or Interest is deemed Unimpaired under the Plan (the "Third Party Releasers"), shall be deemed, by virtue of their receipt of Distributions and/or other treatment contemplated under the Plan, to have unconditionally, irrevocably and forever released and covenanted with Reorganized Syms, Reorganized Filene's and the Released Parties not to (y) sue or otherwise seek recovery from Reorganized Syms, Reorganized Filene's or any Released Party on account of any Claim or Interest in any way related to the Debtors or their business and affairs, including but not limited to any Claim or Interest based upon tort, breach of contract, violations of federal or state securities laws or otherwise, based upon any act, occurrence, or failure to act from the beginning of time through the Effective Date or (z) assert against Reorganized Syms, Reorganized Filene's or any Released Party any claim, obligation, right, cause of action or liability that any Holder of a Claim or Interest may be entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, agreement or occurrence from the beginning of time through the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, provided, however, (i) none of the Released Parties shall be released from any Claim primarily based on any act or omission that constitutes gross negligence or willful misconduct as determined by a court of competent jurisdiction, and (ii) the foregoing release shall not apply to obligations arising under the Plan, and (iii) the foregoing release shall not apply or be construed to prohibit a party in interest from seeking to enforce the terms of the Plan.

**EXHIBIT B**

**Disclosure Statement**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

-----	x
	:
In re:	: Chapter 11
	:
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	: Case No. 11-13511 (KJC)
	:
Debtors.	: Jointly Administered
	:
-----	x

**DISCLOSURE STATEMENT WITH RESPECT TO THE SECOND AMENDED JOINT  
CHAPTER 11 PLAN OF REORGANIZATION OF SYMS CORP. AND ITS SUBSIDIARIES**

Mark S. Chehi (ID No. 2855)  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
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(302) 651-3000  
(302) 651-2000

– and –

Jay M. Goffman  
Mark A. McDermott  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036-6522

Counsel for Debtors and Debtors in Possession

Dated: July 13, 2012  
Wilmington, Delaware

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE DEBTORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION, AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL HOLDERS OF CLAIMS AND INTERESTS WHO ARE ELIGIBLE TO VOTE ON THE PLAN ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS AND SCHEDULES ANNEXED TO THE PLAN AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE TO PROVIDE HOLDERS OF CLAIMS AND INTERESTS WITH "ADEQUATE INFORMATION" AS DEFINED IN THE BANKRUPTCY CODE SO THAT THEY CAN MAKE AN INFORMED JUDGMENT ABOUT THE PLAN AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW.

THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), ANY STATE SECURITIES COMMISSION OR ANY SECURITIES EXCHANGE OR ASSOCIATION, NOR HAS THE SEC, ANY STATE SECURITIES COMMISSION OR ANY SECURITIES EXCHANGE OR ASSOCIATION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING SECURITIES OR CLAIMS OF SYMS CORP., FILENE'S BASEMENT, LLC OR ANY OF THE OTHER DEBTORS AND DEBTORS IN POSSESSION IN THESE CASES, SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER APPLICABLE EVIDENTIARY RULES. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, SYMS CORP., FILENE'S BASEMENT, LLC OR ANY OF THE OTHER DEBTORS AND DEBTORS IN POSSESSION IN THESE CASES.

EXCEPT AS OTHERWISE PROVIDED HEREIN, CAPITALIZED TERMS NOT OTHERWISE DEFINED IN THIS DISCLOSURE STATEMENT HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN. UNLESS OTHERWISE NOTED, ALL DOLLAR AMOUNTS PROVIDED IN THIS DISCLOSURE STATEMENT AND THE PLAN ARE GIVEN IN UNITED STATES DOLLARS.

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, EACH HOLDER IS HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON,

AND CANNOT BE RELIED UPON, BY ANY HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER UNDER THE TAX CODE, (B) SUCH DISCUSSION IS INCLUDED HEREBY BY THE DEBTORS IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN AND (C) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

### **SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This Disclosure Statement contains certain forward-looking statements prepared by the Debtors and the Official Committee of Syms Corp. Equity Security Holders (the "Equity Committee"), all of which are based on various estimates and assumptions. Such forward-looking statements are subject to inherent uncertainties and to a wide variety of significant business, economic, and competitive risks, including, among others, those summarized herein. *See Section VIII — "Certain Risk Factors To Be Considered."* When used in this Disclosure Statement, the words "anticipate," "believe," "estimate," "will," "may," "intend," and "expect" and similar expressions generally identify forward-looking statements. Although the Debtors and the Equity Committee believe that the plans, intentions, and expectations reflected in the forward-looking statements are reasonable, they cannot be sure that they will be achieved. These statements are only predictions and are not guarantees of future performance or results. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated by a forward-looking statement. All forward-looking statements attributable to the Debtors, the Equity Committee or persons acting on their behalf are expressly qualified in their entirety by the cautionary statements set forth in this Disclosure Statement. Forward-looking statements speak only as of the date on which they are made. Except as required by law, the Debtors and the Equity Committee expressly disclaim any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.

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Other Exhibits to the Plan will be contained in a separate Plan Supplement, which will be filed with the Bankruptcy Court on or before August 13, 2012, six (6) business days before to the deadline established by the Bankruptcy Court for filing and serving objections to confirmation of the Plan. The Plan Supplement will be available for inspection in the office of the Clerk of the Bankruptcy Court during normal court hours and at the Debtors' internet site at <http://www.kccllc.net/filenes>. Additional copies of the Plan Supplement may be obtained upon request to the Debtors' Claims Agent at the following address:

Filene's Claims Processing Center  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

## **I. INTRODUCTION**

On November 2, 2011 (the "Petition Date"), Syms Corp. ("Syms"), Filene's Basement, LLC ("Filene's"), Syms Advertising Inc. ("Advertising") and Syms Clothing, Inc. ("Clothing" and together with Syms, Filene's and Advertising, the "Debtors") each commenced a case in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). As described further below, since the Petition Date, the Debtors have permanently ceased their retail operations; liquidated their retail inventory pursuant to store closing sales; terminated substantially all their employees; and disposed of many of their real property leases under which they were tenants. The assets of the Debtors' estates now include cash from the store closing sales; 17 parcels of real estate owned by Syms; a residential condominium in Secaucus, New Jersey; interests in four long-term ground leases; intellectual property owned by Filene's; and various estate claims and causes of action.

### **A. Structure of Plan/Treatment of Creditors**

Concurrently herewith, the Debtors have filed their second amended joint chapter 11 plan of reorganization, a copy of which is attached hereto as Exhibit A (the "Plan"). The Plan is being proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders (the "Equity Committee"). The Plan is comprised of two separate reorganization plans, one for each of Syms and Filene's. The Debtors believe that Syms is solvent due to the significant value of its real estate holdings. Accordingly, Syms anticipates paying all its creditors in full, including creditors to whom Syms provided guarantees of certain of Filene's liabilities. Reorganized Syms will manage, lease and dispose of its real estate assets over time, in a non-distressed, commercially reasonable manner, in order to maximize the value of these assets for the benefit of its creditors and its shareholders.

On the other hand, the Debtors and the Equity Committee believe that Filene's is insolvent, and therefore, the Filene's creditors are only entitled to a distribution equal to a fraction of their claims. The Official Committee of Unsecured Creditors (the "Creditors' Committee") disputes that Filene's is insolvent, and believes that the Filene's estate holds various claims against the Syms' estate, as described further below, and that recovery on these claims would bring sufficient value into the Filene's estate to enable Filene's to pay its creditors in full. In the alternative, the Creditors' Committee asserts that the Filene's and Syms estates should be substantively consolidated such that the Filene's and Syms' assets combined should be used to pay all creditors of both estates. The Debtors and the Equity Committee do not believe that there is a basis for either of the Creditors' Committee's assertions.

However, in resolution of such claims, Syms has agreed that Filene's creditors will share in a portion of the proceeds of Syms' assets, thereby affording Filene's creditors a significantly greater recovery than they would have received without succeeding in proving such claims. In particular, Filene's trade creditors and employees will be paid in full over time from proceeds of the disposition of Syms owned real estate. Holders of lease rejection claims will be paid 75% of the allowed amount of their claims over time, also from proceeds from the disposition of Syms owned real estate. As an alternative to the foregoing, Filene's creditors will have the option of accepting distributions from Filene's assets only, which will result in an estimated recovery of between 0% and 2%, while preserving whatever individual claims they may have against Syms. Filene's will be reorganized as a wholly-owned subsidiary of reorganized Syms for the principal purpose of exploring the sale or joint venture opportunities with respect to Filene's intellectual property. The Debtors do not believe that Advertising or Clothing have any assets or liabilities. The Debtors therefore have not proposed a plan for either of these entities.

## **B. Redemption of Majority Shareholder's Shares**

Ms. Marcy Syms, the Laura Merns Living Trust, dated February 14, 2003, and the Marcy Syms Revocable Living Trust, dated January 12, 1990 (collectively, the "Majority Shareholder") owns approximately 54.4% of all outstanding shares of Syms common stock. Since early in these Chapter 11 cases, the Equity Committee has expressed a desire for minority shareholders of Syms to obtain operational control of Syms from the Majority Shareholder so they could pursue the development and disposition of Syms owned real estate. After significant discussions between the Equity Committee and the Majority Shareholder, and to resolve various differences between the parties and pave the way for a consensual restructuring, the Majority Shareholder has agreed to sell all its shares – 7,857,794 shares in all – to reorganized Syms for \$2.49 per share, or \$19,565,590 in the aggregate, subject to an agreed reduction in resolution of certain claims described below. That agreement is memorialized in that certain Equity Commitment Agreement, a copy of which is attached hereto as Exhibit H.

Syms will purchase the Majority Shareholder's shares on the Plan effective date. However, reorganized Syms will pay for the shares over time. In particular, as described immediately below, Syms will raise new funds from a rights offering. After payment of exit and other costs, any proceeds remaining from the rights offering, plus proceeds of real estate dispositions, will be split between creditors and the Majority Shareholder, with creditors receiving 60% and the Majority Shareholder receiving 40%, until the Majority Shareholder is paid \$10,725,761. The balance of Syms' payment obligation to the Majority Shareholder, in the amount of \$7,065,907, will be paid after reorganized Syms has satisfied all its obligations to creditors under the Plan.

On the Effective Date, reorganized Syms' board of directors will be comprised of three designees of the Equity Committee (two of whom may be designated by the Backstop Parties), one designee of the Creditors' Committee, and one independent director agreeable to both the Equity Committee and the Creditors' Committee. The Plan contains detailed provisions regarding the use of reorganized Syms' cash, along with provisions for control of the disposition of Syms owned real estate to vest in the Creditors' Committee's board designee if certain disposition milestones are not met. The Board of directors will engage appropriate real estate professionals to manage Reorganized Syms or contract with an established real estate asset manager or operator to provide the real estate expertise necessary for Reorganized Syms. Any director, officer, or trustee disclosures required for confirmation of the Plan shall be made prior to the hearing to consider confirmation of the Plan.

With respect to that certain split-dollar life insurance policy on Marcy Syms, Syms and reorganized Syms shall be released from any future obligation (whether to Marcy Syms, any third party or otherwise) to pay premiums and shall release any interest in the insurance policy in return for a credit of approximately \$1.774 million against the amounts to be paid to the Majority Shareholder pursuant to the share purchase transaction. The approximately \$1.774 million has already been netted out of the initial distributions payable to the Majority Shareholder.

## **C. Rights Offering**

Under the Plan, Syms will offer to sell to existing shareholders, other than the Majority Shareholder, who qualify as "accredited investors" under the securities laws, the right to purchase a total of 10,040,160 new shares at a price equal to \$2.49 per share, or approximately \$25 million in the aggregate. The funds from the rights offering will be used, first, to pay certain administrative costs and other amounts necessary for Syms and Filene's to exit Chapter 11, with the balance utilized to pay creditors and to reduce Syms' obligation to pay the Majority Shareholder for its shares as described above.

As a result of the rights offering, the total number of Syms common shares will increase by 2,182,367 shares, from the 14,448,188 shares currently outstanding to 16,630,555 shares. Because of this increase, the percentage ownership in Syms held by existing shareholders other than the Majority Shareholder will likely change. That percentage currently is approximately 45.3%. The extent to which any individual shareholder's percentage ownership may change will depend on, among other things, the level of participation in the rights offering. For example, an individual shareholder that does not purchase shares in the rights offering, and thus does not maintain such shareholder's pro rata ownership, will be diluted by 13.1%.

Certain members of the Equity Committee and their affiliates have agreed to purchase new shares made available in the rights offering that are not subscribed for by other shareholders. These members include DS Advisors LLC, Esopus Creek Value Series Fund LP-Series "A," and Marcato Capital Management LLC (collectively, the "Backstop Parties"). The "backstop" purchase obligation of these parties is memorialized in the Equity Commitment Agreement, a copy of which is attached hereto as Exhibit H. If no shareholders other than the Backstop Parties participate in the rights offering, the Backstop Parties will own 60.4% of reorganized Syms, in the aggregate.

The Backstop Parties have been represented by counsel separate from the Equity Committee and abstained from decisions on the Equity Commitment Agreement and rights offering made by the Equity Committee. The legal fees of counsel to the Backstop Parties will be paid by the Debtors under the Equity Commitment Agreement. No other fee or compensation of any kind is being paid to the Backstop Parties for the commitment to backstop the \$25 million rights offering.

#### **D. Estimates of Share Value/Go-Forward Business Plan**

The value of reorganized Syms' shares ultimately will depend on a number of factors, all of which are difficult to predict. The Debtors' business advisors have estimated that Syms owned real estate has an aggregate net realizable value of approximately \$147 million. Based on this estimate, and taking into account the increased number of shares under the Plan, the Debtors estimate that shares in reorganized Syms are worth between \$1.50 and \$2.00 per share. This range assumes (i) that the ultimate amount of claims allowed in these Chapter 11 cases will be between \$100 million and \$110 million; (ii) that Syms' most valuable parcel of real estate, the so-called "Trinity Property" located in lower Manhattan, is sold as-is, without being further developed; and (iii) that the expected proceeds to be realized from real estate sales should be discounted by 10% to account for the time value of money. As of the date of this Disclosure Statement, the Debtors believe that total claims will be closer to the \$110 million end of the range.

The estimated share value described above could vary significantly for a number of reasons, including if the total amount of claims that ultimately is allowed falls outside the range described above; if anticipated real estate values are not achieved; or if real estate dispositions do not occur as and when expected. In this regard, the Equity Committee and its advisors believe that the value of Syms owned real estate could be significantly greater than the \$147 million aggregate figure estimated by the Debtors' advisors. As described below, the Equity Committee's business plan contemplates the near-term disposition of 13 parcels of Syms owned real estate, followed by the medium-term disposition of three additional parcels after they have been leased up and stabilized, followed by the long-term development and disposition of the Trinity Property.

Various development scenarios have been analyzed that contemplate the development and future sale of the Trinity Property as either a mixed use residential apartment property or a mixed use condominium. Using a range of assumptions based on current market conditions, the construction and

sale of the asset over a four- to five-year period has the potential to generate incremental gross proceeds estimated to range from \$0 to \$120 million (where the low end of the range represents a sale of the development site in today's market), as compared to the range suggested by the valuations of the Debtors' professionals. Notwithstanding the risks associated with development, this could result in incremental values of between \$0 and \$7.22 per share, on an undiscounted basis, based on the pro forma share count of 16,630,555. The range of gross incremental value realizable from the Trinity Property does not take into account several factors that could impact shareholder value, including (but not limited to) a deterioration in market conditions; availability of construction financing; potential taxation of future sale proceeds; obligations of reorganized Syms that would be required to be repaid from sale proceeds; and additional carrying costs that could be incurred due to delays in entitlement or development approvals.

Moreover, the Equity Committee's plans for Syms owned real estate, including its estimates of possible future value, contemplate very significant development costs for the Trinity Property. Moreover, the Equity Committee's expectations for future shareholder value depend largely on the Trinity Property, as the other properties owned by Syms likely will be necessary to pay creditor claims. The hoped-for values cannot be achieved without the ability to obtain the financing necessary to fund these development costs. There is no assurance that reorganized Syms will be able to obtain such financing and realize these values. Moreover, the anticipated values are not expected to be achieved for at least three to five years. There is no assurance that the commercial real estate market will support such values three to five years in the future. Accordingly, there can be no guarantee of the ultimate value of the Trinity Property or any other parcels of real estate and hence, no guarantee regarding the value to Syms shareholders.

\* \* \*

The Debtors have prepared this Disclosure Statement pursuant to Bankruptcy Code section 1125 for use in the solicitation of votes on the Plan. Certain of the information has been prepared by the Equity Committee with the assistance of its business advisors, including the business plan for disposition of Syms owned real estate, including the Trinity Property and related estimates of value. As noted above, the Plan, while denominated a "joint" Plan, constitutes two separate plans for purposes of voting and distribution: one plan for Syms, and a separate plan for Filene's. This introduction provides a brief overview of each of these two plans. However, it affords a general overview only, which is qualified in its entirety by, and should be read in conjunction with, the more detailed discussions, information, financial statements and notes appearing elsewhere in this Disclosure Statement and the Plan. All capitalized terms not defined in this Disclosure Statement have the meanings ascribed to such terms in the Plan.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THE CHAPTER 11 CASES AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTORS BELIEVE THAT SUCH SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE FULL TEXT OF SUCH DOCUMENTS. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS AND THE EQUITY COMMITTEE DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING FINANCIAL INFORMATION, IS WITHOUT ANY INACCURACY OR OMISSION.

**THE DEBTORS, THE EQUITY COMMITTEE AND THE CREDITORS' COMMITTEE BELIEVE THAT THE PLAN WILL ENABLE THE DEBTORS TO ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST**

**INTERESTS OF THE DEBTORS AND THE HOLDERS OF ALL CLAIMS AND INTERESTS. ACCORDINGLY, THE DEBTORS, THE EQUITY COMMITTEE AND THE CREDITORS' COMMITTEE URGE HOLDERS OF CLAIMS AND INTERESTS TO VOTE TO ACCEPT THE PLAN. FOR FURTHER INFORMATION AND INSTRUCTIONS ON VOTING TO ACCEPT OR REJECT THE PLAN, SEE SECTION III OF THE DISCLOSURE STATEMENT, ENTITLED "PLAN VOTING, CONFIRMATION AND OBJECTION PROCEDURES."**

## **II. OVERVIEW OF THE PLAN**

The table below summarizes the classification and treatment of prepetition and postpetition claims against and interests in each of Syms and Filene's. The table below also contains an estimate of the recoveries that the Debtors believe will ultimately be available to each class of claims and interests under each separate plan proposed for Syms and Filene's, respectively. These estimates are based upon a number of assumptions, which may or may not prove to be accurate.

### **1. Plan for Syms**

<b>Description and Amount of Claims and Interests</b>	<b>Summary of Treatment</b>
<b>Unclassified Claims Against Syms</b>	
Administrative Claims	Administrative Claims include pre-petition claims held by providers of goods for the value of any such goods shipped to Syms within 20 days of the Petition Date in the ordinary course of business, along with post-petition claims held by persons who provided goods and services to Syms after the Petition Date, including landlords for unpaid post-petition rent, utility providers, and professionals. Under the Plan, each Administrative Claim either will be paid in full in cash on the Effective Date of the Plan or as soon thereafter as such claim is allowed, or will receive such other less favorable treatment as to which the holder of such claim and Syms have agreed upon in writing. <b>Estimated Amount: \$21.854 million</b> <b>Estimated Recovery: 100%</b>
Superpriority Intercompany Claims	Superpriority Intercompany Claims are intercompany claims arising from and after the Petition Date, with priority as an administrative expense of the kind specified in section 503(b) and superpriority of the kind specified in section 507(b) of the Bankruptcy Code. Pursuant to the Plan settlement described below, the holders of such claims shall not receive or retain any property under the Plan on account of such claims, and the claims shall be deemed cancelled and extinguished. <b>Estimated Amount: \$2.155 million</b> <b>Estimated Recovery: Settled</b>
Priority Tax Claims	Priority Tax Claims are any claims owed by Syms to governmental units for taxes that are entitled to priority under the Bankruptcy Code. Syms received authority to pay all such claims at the inception of its Chapter 11 case. Accordingly, Syms does not believe there are any remaining Priority Tax Claims. To the

Description and Amount of Claims and Interests	Summary of Treatment
	<p>extent any such Claims exist, under the Plan, such claims will be paid in full in cash upon the Plan Effective Date or as soon thereafter as they are allowed, or will receive such less favorable terms as Syms and the holder of any such claim agree upon in writing.</p> <p><b>Estimated Amount: \$0</b>  <b>Estimated Recovery: 100%</b></p>
<b>Classified Claims Against Syms</b>	
Syms Class 1: Secured Claims (Unimpaired)	<p>Secured Claims are claims secured by a lien on collateral or that are subject to a right of setoff. Syms has already received authority to pay in full the secured claim of Syms' primary secured creditor, Bank of America, N.A., from proceeds of the Syms store closing sales, and made such payment in November 2011. Under the Plan, any holder of a Secured Claim shall either be paid in full in cash, shall receive the collateral securing its claim, or shall receive such less favorable treatment as Syms and the holder of such claim agree upon in writing.</p> <p><b>Estimated Amount: \$0</b>  <b>Estimated Recovery: 100%</b></p>
Syms Class 2: Non-Tax Priority Claims (Unimpaired)	<p>A Non-Tax Priority Claim is a pre-petition claim entitled to priority under the Bankruptcy Code other than an Administrative Claim or a Priority Tax Claim. Such claims include claims by employees for unpaid wages and similar amounts, along with the claims of customers for deposits and similar matters. Under the Plan, each holder of a Non-Tax Priority Claim either shall be entitled to be paid in full in cash upon the Plan Effective Date or on the distribution date immediately following the date on which the claim becomes allowed, or shall receive such other less favorable treatment as to which such holder and Syms shall have agreed upon in writing.</p> <p><b>Estimated Amount: \$1.518 million</b>  <b>Estimated Recovery: 100%</b></p>
Syms Class 3: Convenience Claims (Impaired)	<p>A Syms Convenience Claim is a pre-petition claim against Syms that is not entitled to priority under the Bankruptcy Code and is not secured by a lien on collateral, but that is (i) allowed in an amount equal to or less than \$10,000 or (ii) in an amount that is greater than \$10,000, but which the holder thereof elects on its ballot to be allowed in an amount no greater than \$10,000. Under the Plan, each holder of a Convenience Claim that is allowed shall be paid in cash 100% of the allowed amount of the claim as net proceeds from real estate or other assets become available consistent with the terms of the Plan, with any amounts not paid by October 1, 2015 accruing interest at a rate of 7% per year, which interest shall be paid in kind and compounded annually.</p> <p><b>Estimated Amount: \$1.899 million</b>  <b>Estimated Recovery: 100%</b></p>
Syms Class 4: Syms General	A Syms General Unsecured Claim is a pre-petition claim that is

Description and Amount of Claims and Interests	Summary of Treatment
Unsecured Claims (Impaired)	<p>not entitled to priority under the Bankruptcy Code, is not secured by a lien on collateral, and does not otherwise qualify as a Convenience Claim. Such claims include claims for unpaid trade payables, lease rejection damages, employee severance claims, and other unsecured claims, including claims on account of written Syms guarantees of Filene's leases and trade claims. Under the Plan, each holder of a Syms General Unsecured Claim that is allowed shall be paid in cash 100% of the allowed amount of the claim as net proceeds from real estate or other assets become available consistent with the terms of the Plan, with any amounts not paid by October 1, 2015 accruing interest at a rate of 7% per year, which interest shall be paid in kind and compounded annually. Alternatively, any such holder shall receive such other less favorable treatment as to which such holder and Syms shall have agreed upon in writing. Syms anticipates paying these claims within one year of the Plan Effective Date. For more information regarding the treatment of Syms General Unsecured Claims, refer to Section VII.C.2(c)(iii) herein and Section VII.C.4 of the Plan.</p> <p><b>Estimated Amount: \$53.896 million</b>  <b>Estimated Recovery: 100%</b></p>
Syms Class 5: Union Pension Plan Claims (Impaired)	<p>A Syms Union Pension Plan Claim is an obligation owed to Local 1102 for pension withdrawal liability arising under the Syms Pension Plan. Under the Plan, each holder of a Syms Union Pension Plan Claim that is allowed shall receive quarterly distributions from cash reserves established by the Plan until paid in full.</p> <p><b>Estimated Amount: \$6.409 million</b>  <b>Estimated Recovery: 100%</b></p>
Syms Class 6: Intercompany Claims (Unimpaired)	<p>A Syms Intercompany Claim is a claim against Syms held by another Debtor, including any claim reflected on the books and records of such other Debtor and any derivative claim asserted by or on behalf of another Debtor against Syms and which is not a Syms Superpriority Intercompany Claim. Pursuant to the Plan settlement described below, the holders of Syms Intercompany Claims shall not receive or retain any property under the Plan on account of such claims. On the Plan Effective Date, all Syms Intercompany Claims shall be deemed offset, cancelled and extinguished.</p> <p><b>Estimated Amount: See section 1.2 below</b>  <b>Estimated Recovery: Settled</b></p>



Description and Amount of Claims and Interests	Summary of Treatment
Syms Class 7: Interests (Impaired)	<p>Each holder of stock in Syms other than the Majority Shareholder shall retain such stock under the Plan. As described above, the Majority Shareholder will sell its shares to Syms for \$2.49 per share. A portion of the funds necessary for Syms to pay this amount will be raised by Syms under the Plan in the rights offering by offering to shareholders who are "accredited investors" as defined by the securities laws, other than the Majority Shareholder, the right to purchase their pro rata share of reorganized Syms shares at \$2.49 per share. As described above, the Debtors estimate that the estimated value to Syms minority shareholders is between <b>\$1.50 and \$2.00 per share</b>. This estimate reflects the dilution of those shareholders that do not participate in the rights offering. It also assumes (i) that the aggregate net realizable value of Syms owned real estate is approximately \$147 million; (ii) that a discount rate of 10% is applied to this value; and (iii) that total claims that ultimately will be allowed and paid under the Plan are between \$100 million and \$110 million (the Debtors believe total claims will be closer to \$110 million). As noted above, however, the Equity Committee's business plan contemplates the stabilization or development of certain real estate, including the Trinity Property, that, if successfully implemented, could result in the aggregate net realizable value of Syms owned real estate being higher than the Debtors' estimates, which could result in estimated incremental share values between <b>\$0.00 and 7.22 per share</b>.</p>

2. Plan for Filene's

Description and Amount of Claims and Interests	Summary of Treatment
<b>Unclassified Claims Against Filene's</b>	
Administrative Claims	<p>Administrative Claims include pre-petition claims held by providers of goods for the value of any such goods shipped to Filene's within 20 days of the Petition Date in the ordinary course of business, plus post-petition claims held by persons who provided goods and services to Filene's after the Petition Date, including landlords for unpaid post-petition rent, utility providers, and professionals. Under the Plan, each Administrative Claim either will be paid in full in cash on the Effective Date of the Plan or as soon thereafter as such claim is allowed, or will receive such other less favorable treatment as to which the holder of such claim and Filene's have agreed upon in writing.</p> <p><b>Estimated Amount: \$8.068 million</b>  <b>Estimated Recovery: 100%</b></p>
Superpriority Intercompany Claims	<p>Superpriority Intercompany Claims are Intercompany Claims arising from and after the Petition Date, with priority as an administrative expense of the kind specified in section 503(b) and</p>

Description and Amount of Claims and Interests	Summary of Treatment
	<p>superpriority of the kind specified in section 507(b) of the Bankruptcy Code. Pursuant to the Plan settlement, the holders of such claims shall not receive or retain any property under the Plan on account of such claims and the claims shall be deemed cancelled and extinguished.</p> <p><b>Estimated Amount: \$0</b>  <b>Estimated Recovery: Settled</b></p>
Priority Tax Claims	<p>Priority Tax Claims are any claims owed by Filene's to governmental units for taxes that are entitled to priority under the Bankruptcy Code. Any such claims that are allowed will be paid in full in cash upon the Plan Effective Date or as soon thereafter as they are allowed, or will receive such less favorable terms as Filene's and the holder of any such claim agree upon in writing.</p> <p><b>Estimated Amount: \$1.355 million</b>  <b>Estimated Recovery: 100%</b></p>
<b>Classified Claims Against Filene's</b>	
Filene's Class 1: Secured Claims (Unimpaired)	<p>Secured Claims are claims secured by a lien on collateral or that are subject to a right of setoff. Filene's already received authority to pay in full the secured claim of Filene's primary secured creditor, Bank of America, N.A., from proceeds of Filene's store closing sales, and made such payment in November 2011. Under the Plan, any holder of a Secured Claim shall either be paid in full in cash, shall receive the collateral securing its claim, or shall receive such less favorable treatment as Filene's and the holder of such claim agree upon in writing.</p> <p><b>Estimated Amount: \$0</b>  <b>Estimated Recovery: 100%</b></p>
Filene's Class 2: Non-Tax Priority Claims (Unimpaired)	<p>A Non-Tax Priority Claim is a pre-petition claim entitled to priority under the Bankruptcy Code other than an Administrative Claim or a Priority Tax Claim. Such claims include claims by employees for unpaid wages and similar amounts, along with claims of customers for deposits and similar matters. Under the Plan, each holder of a Non-Tax Priority Claim either shall be entitled to be paid in full in cash upon the Plan Effective Date or on the distribution date immediately following the date on which the claim becomes allowed, or shall receive such other less favorable treatment as to which such holder and Filene's shall have agreed upon in writing.</p> <p><b>Estimated Amount: \$581,000</b>  <b>Estimated Recovery: 100%</b></p>
Filene's Class 3: Convenience Claims (Impaired)	<p>A Filene's Convenience Claim is a pre-petition claim against Filene's that is not entitled to priority under the Bankruptcy Code and is not secured by a lien on collateral, but that is (i) allowed in an amount equal to or less than \$10,000 or (ii) in an amount that is greater than \$10,000, but which the holder thereof elects on its ballot to be allowed in an amount no greater than \$10,000. Under the Plan, each holder of a Convenience Claim that is allowed shall</p>

Description and Amount of Claims and Interests	Summary of Treatment
	<p>be paid in cash 100% of the allowed amount of the claim as net proceeds from real estate or other assets become available consistent with the terms of the Plan, with any amounts not paid by October 1, 2015 accruing interest at a rate of 7% per year, which interest shall be paid in kind and compounded annually.</p> <p><b>Estimated Amount: \$1.613 million</b>  <b>Estimated Recovery: 100%</b></p>
<p>Filene's Class 4 A and B: Filene's General Unsecured (Short-Term) Claims (Impaired)</p>	<p>A Filene's General Unsecured (Short-Term) Claim is a pre-petition claim against Filene's that is not entitled to priority under the Bankruptcy Code, is not secured by a lien on collateral, is not guaranteed by Syms, and does not otherwise qualify as a Filene's Convenience Claim. Such claims include claims primarily for unpaid trade payables and employee severance claims. Under the Plan, each holder of a Filene's General Unsecured (Short-Term) Claim that is allowed shall have the option of (a) being paid in full in cash over time 100% of the allowed amount of the claim, with any amounts not paid by October 1, 2015 accruing interest at a rate of 7% per year, which interest shall be paid in kind and compounded annually, or receiving such other less favorable treatment as to which such holder and Filene's shall have agreed upon in writing, or (b) being paid its pro rata share of the liquidation value of Filene's assets, in cash upon the Plan Effective Date or as soon thereafter as such claims are allowed, while preserving any direct claim it believes it has against Syms. Filene's anticipates paying those holders who elect to be paid over time within two years of the Plan Effective Date.</p> <p><b>Estimated Amount: \$8.755 million</b>  <b>Estimated Recovery: 100% (for those electing to be paid over time) and between 0% and 2% for those electing to be paid their pro rata share of the liquidation value of Filene's assets.</b></p>
<p>Filene's Class 5 A and B: Filene's General Unsecured (Long-Term) Claims (Impaired)</p>	<p>A Filene's General Unsecured (Long-Term) Claim is a pre-petition claim against Filene's that is not entitled to priority under the Bankruptcy Code, is not secured by a lien on collateral, is not guaranteed by Syms, and does not otherwise qualify as either a Filene's Convenience Claim or Filene's General Unsecured (Short-Term) Claim. Such claims include claims primarily for rejection of executory contracts and unexpired leases. Under the Plan, each holder of a Filene's General Unsecured (Long-Term) Claim that is allowed shall have the option of (a) being paid 75% of the allowed amount of its claim in cash over time, with any amounts not paid by October 1, 2015 accruing interest at a rate of 7% per year, which interest shall be paid in kind and compounded annually, or receiving such other less favorable treatment as to which such holder and Filene's shall have agreed upon in writing, or (b) being paid its pro rata share of the liquidation value of Filene's assets, in cash upon the Plan Effective Date or as soon thereafter as such claims are allowed, while preserving any direct claim it believes it has against Syms. Filene's anticipates paying those holders who</p>

Description and Amount of Claims and Interests	Summary of Treatment
	<p>elect to be paid 75% of the allowed value of their claim within two years of the Plan Effective Date.</p> <p><b>Estimated Amount: \$36.877 million</b></p> <p><b>Estimated Recovery: 75% (for those electing to be paid over time) and between 0% and 2% for those electing to be paid their pro rata share of the liquidation value of Filene's assets.</b></p>
Filene's Class 6: Union Pension Plan Claims (Impaired)	<p>A Filene's Union Pension Plan Claim is an obligation owed to Local 1102 for pension withdrawal liability. Under the Plan, each holder of a Filene's Union Pension Plan Claim that is allowed shall receive quarterly distributions from cash reserves established by the Plan until paid in full.</p> <p><b>Estimated Amount: \$6.409 million</b></p> <p><b>Estimated Recovery: 100%</b></p>
Filene's Class 7: Intercompany Claims (Impaired)	<p>A Filene's Intercompany Claim is a claim against Filene's held by another Debtor, including but not limited to a claim reflected on the books and records of such other Debtor and any derivative claim asserted by or on behalf of another Debtor against Filene's and which is not a Filene's Superpriority Intercompany Claim. Pursuant to the Plan settlement described below, the holders of Filene's Intercompany Claims shall not receive or retain any property under the Plan on account of such claims. On the Plan Effective Date, all Filene's Intercompany Claims shall be deemed offset, cancelled and extinguished.</p> <p><b>Estimated Amount: \$33.0 million</b></p> <p><b>Estimated Recovery: Settled</b></p>
Filene's Class 8: Interests (Unimpaired)	<p>Filene's interests consist of limited liability company membership interests in Filene's, which are owned exclusively by Syms. Syms shall retain its interests in Filene's.</p> <p><b>Estimated Recovery: 0%</b></p>

ALTHOUGH THE DEBTORS BELIEVE THAT THE ESTIMATED RECOVERIES ARE REASONABLE, THERE IS NO ASSURANCE THAT THE ACTUAL AMOUNTS OF ALLOWED CLAIMS IN EACH CLASS WILL NOT MATERIALLY EXCEED THE ESTIMATED AGGREGATE AMOUNTS SHOWN IN THE TABLE ABOVE. The actual recoveries under the Plan will depend upon a variety of factors, including whether, and in what amount and with what priority, contingent claims against the Debtors become non-contingent and fixed; and whether, and to what extent, disputed claims are resolved in favor of the Debtors. Accordingly, no representation can be or is being made with respect to whether each estimated recovery amount shown in the table above will be realized.

**In the view of the Debtors, the Equity Committee, and the Creditors' Committee, the Plan provides holders of claims and interests with the best recovery possible. The Debtors, the Equity Committee, and the Creditors' Committee believe that the Plan is in the best interests of creditors and shareholders and should be approved. Therefore, the Debtors, the Equity Committee, and the Creditors' Committee recommend that all persons entitled to vote on the Plan, vote to accept the Plan.**

### **III. PLAN VOTING, CONFIRMATION AND RELATED PROCEDURES**

#### **A. General Disclaimer**

This Disclosure Statement is being transmitted to holders of claims against and interests in the Debtors that are entitled to vote on the Plan. The primary purpose of this Disclosure Statement is to provide adequate information so that holders who are entitled to vote on the Plan can make a reasonably informed decision with respect to the Plan before they decide to vote to accept or reject the Plan. A secondary purpose of this Disclosure Statement is to provide Syms shareholders, other than the Majority Shareholder, who are "accredited investors" as defined by the securities laws, with certain information that will help them decide whether to purchase new Syms shares in the Rights Offering.

The Bankruptcy Court has approved this Disclosure Statement as containing "adequate information," which means information of a kind and in sufficient and adequate detail to enable voting creditors and shareholders to make an informed judgment with respect to acceptance or rejection of the Plan. HOWEVER, THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT REPRESENT AN APPROVAL OF THE INFORMATION CONTAINED HEREIN FOR PURPOSES OF THE DEBTORS' DISCLOSURE OBLIGATIONS UNDER APPLICABLE SECURITIES LAWS IN CONNECTION WITH THE RIGHTS OFFERING.

WHEN, AND IF, CONFIRMED BY THE BANKRUPTCY COURT, THE PLAN WILL BIND ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS, WHETHER OR NOT SUCH HOLDERS ARE ENTITLED TO VOTE OR DID VOTE ON THE PLAN AND WHETHER OR NOT SUCH HOLDERS RECEIVE OR RETAIN ANY DISTRIBUTIONS OR PROPERTY UNDER THE PLAN. THUS, YOU ARE ENCOURAGED TO READ THE PLAN AND THIS DISCLOSURE STATEMENT CAREFULLY.

THIS DISCLOSURE STATEMENT IS THE ONLY DOCUMENT THAT THE COURT HAS APPROVED TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. No solicitation of votes may be made except after the distribution of this Disclosure Statement, and no person has been authorized to distribute any information concerning the Debtors other than the information contained herein.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS, BY ITS NATURE, FORWARD LOOKING AND CONTAINS ESTIMATES AND ASSUMPTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. Unless otherwise specifically and expressly stated herein, this Disclosure Statement does not reflect any events that may occur after the date of this Disclosure Statement, even if those events may have a material impact on the information contained in this Disclosure Statement. The Debtors do not expect to distribute any amendments or supplements to this Disclosure Statement to reflect any occurrences that happen after the date hereof. Therefore, the delivery of this Disclosure Statement shall not under any circumstance imply that the information contained in it remains correct or complete as of any time subsequent to the date hereof.

**THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTING FIRM**

**AND HAS NOT BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.**

**B. Holders of Claims and Interests Entitled to Vote**

Under the Bankruptcy Code, only holders of allowed claims or interests in classes of claims or interests that are (a) impaired and (b) placed in a class that will receive a distribution under a plan may vote to accept or reject the plan. In this case, Syms Class 3 Convenience Claims, Syms Class 4 General Unsecured Claims, Syms Class 5 Pension Plan Claims, Syms Class 7 Interests, Filene's Class 3 Convenience Claims, Filene's Class 4 A and B General Unsecured (Short-Term) Claims, Filene's Class 5 A and B General Unsecured (Long-Term) Claims and Filene's Class 6 Pension Plan Claims are entitled to vote on the Plan.

Classes of claims or equity interests in which the holders thereof are unimpaired under a chapter 11 plan are deemed to have accepted the plan and are not entitled to vote to accept or reject the plan. In this case, Syms Classes 1 and 2 and Filene's Classes 1, 2 and 8 are unimpaired, and holders of claims and interests in such classes are conclusively presumed to accept the Plan. Thus, such holders are not entitled to cast a vote on the Plan.

Classes of claims or interests that receive no distribution on account of their claims or interests are deemed to have rejected the plan and are not entitled to vote to accept or reject the plan. In this case, pursuant to the settlement of various intercompany matters described below, the holders of claims in Syms Class 6 (consisting entirely of intercompany claims against Syms) and Filene's Class 7 (consisting entirely of intercompany claims against Filene's) shall not retain or receive any property under the Plan. However, because each of these claims and interests are held exclusively by the Debtors, as plan co-proponents, each such class is deemed to have accepted the Plan.

**C. Solicitation Package**

Accompanying this Disclosure Statement are copies of (1) the Plan, a copy of which is attached hereto as Exhibit A; (2) the Bankruptcy Court's order, a copy of which is attached hereto as Exhibit B (the "Disclosure Statement and Solicitation Procedures Order") that approves this Disclosure Statement, sets forth the time for submitting ballots to accept or reject the Plan, and sets forth the date, time and place of the hearing to consider confirmation of the Plan and the time for filing objections to confirmation of the Plan; and (3) for those entitled to vote on the Plan, one or more ballots (and return envelopes) to be used in voting to accept or reject the Plan.

The Disclosure Statement and Solicitation Procedures Order also explains how the Debtors will tabulate the ballots that are cast on the Plan, including assumptions and procedures for tabulating ballots that are not completed fully or correctly. You should read the Disclosure Statement and Solicitation Procedures Order and the instructions attached to the ballot you have received in this package in connection with this section of the Disclosure Statement.

## **D. Voting Procedures, Ballots, and Voting Deadline**

### **1. In General**

After carefully reviewing the Plan, this Disclosure Statement and the detailed instructions accompanying your ballot, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed ballot. You must complete and sign your original ballot (copies will not be accepted) and return it in the envelope provided. Each ballot has been coded to reflect the class of claims or interests it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded ballot or ballots sent to you with this Disclosure Statement.

**IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN **AUGUST 23, 2012** AT 5:00 P.M. (PACIFIC TIME) (THE "VOTING DEADLINE") BY KURTZMAN CARSON CONSULTANTS, LLC (THE "VOTING AGENT") AT THE ADDRESS BELOW.**

**THE BALLOT IS THE ONLY REQUIRED ITEM TO BE SENT TO THE VOTING AGENT. PLEASE DO NOT SEND EVIDENCE OF YOUR CLAIM AMOUNT OR ANY CERTIFICATES WITH YOUR BALLOT.**

If you have any questions about (i) the procedure for voting your claim or interest or with respect to the packet of materials that you have received or (ii) the amount of your claim or interest, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any appendix or exhibit to the Plan or Disclosure Statement, please contact:

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department  
Email: [FilenesInfo@kccllc.com](mailto:FilenesInfo@kccllc.com)  
Telephone: (877) 606-7510

### **2. Withdrawal of Ballots; Revocation; Changes to Vote**

Any holder of a claim or interest who votes to accept or reject the Plan is entitled to withdraw its ballot at any time before the Voting Deadline. To do so, you must deliver a written notice of withdrawal to the Voting Agent. To be valid, a notice of withdrawal must (i) contain a description of the claim(s) or interests to which it relates and the total amount of such claim(s) or interests, (ii) be signed by the same person who signed the original ballot, (iii) contain a certification that the person withdrawing the ballot owns the claim(s) or interests and possesses the right to withdraw the vote sought to be withdrawn and (iv) be received by the Voting Agent before the Voting Deadline at the address set forth above. The Debtors expressly reserve the absolute right to contest whether any ballot has been validly withdrawn. Unless the Bankruptcy Court orders otherwise, if a notice of withdrawal is not timely received by the Voting Agent, it will not be considered valid to withdraw a previously cast ballot.

Any party who submits a ballot before the Voting Deadline is entitled to change such vote. To do so, you must submit a new, properly completed ballot for acceptance or rejection of the Plan. If a party

submits more than one properly completed ballot before the Voting Deadline, the Voting Agent will only count the ballot that bears the latest date for purposes of counting the ballot towards acceptance or rejection of the Plan.

### 3. Waivers of Defects and Other Irregularities

Unless otherwise directed by the Bankruptcy Court, the Voting Agent and the Debtors will determine whether the ballots cast on the Plan are valid, in the correct form and were timely received. Their determination will be final and binding. The Debtors reserve the right to reject any and all ballots that are not submitted in proper form, the acceptance of which would, in the opinion of the Debtors or their counsel, be unlawful. The Debtors further reserve the right to waive any defects or irregularities or conditions of delivery as to any particular ballot in order to allow such ballot to be counted.

Unless waived, any defects or irregularities in connection with deliveries of ballots must be cured within such time as the Debtors (or the Bankruptcy Court) determine. The Debtors and the Voting Agent are not obligated to notify any voting party that its ballot was deemed defective or that it was disregarded in the tabulation of votes, and the Debtors and the Voting Agent will not incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not therefore been cured or waived) will be invalidated.

### E. Rights Offering

Syms is offering its existing "accredited investor" shareholders, other than the Majority Shareholder, the opportunity to subscribe for and purchase up to an aggregate of 10,040,160 new shares of common stock (the "Offered Shares") at a purchase price of \$2.49 per share (the "Rights Offering").

In order for the Rights Offering to be exempt from the registration requirements under the Securities Act of 1933, as amended (the "Securities Act"), it arguably must comply with Rule 506 of Regulation D, promulgated under Section 4(2) of the Securities Act. Pursuant to Rule 506, only current Syms shareholders who qualify as "accredited investors" under Regulation D may participate in the Rights Offering. To identify such accredited investors, the Subscription Agent separately has mailed Accredited Investor Questionnaires to each broker, dealer, agent, bank or other entity (each, a "Record Holder") that holds book-entry positions in Syms stock as of July 10, 2012, either for itself or for beneficial owners of Syms stock as of July 10, 2012 (collectively "Beneficial Owners").

To be deemed an accredited investor eligible to participate in the Rights Offering, a Beneficial Owner must complete the Accredited Investor Questionnaire certifying such Beneficial Owner's status as an accredited investor and, if the Beneficial Owner is not the Record Holder, return the properly executed Accredited Investor Questionnaire to the Record Holder **so as to be actually received** by such deadline as the Record Holder may establish. The Record Holder shall certify on the Accredited Investor Questionnaire the amount of shares of Syms stock it holds for the benefit of the Beneficial Owner and return the completed Accredited Investor Questionnaire to the Voting Agent **so as to be actually received** by the Voting Agent before 5:00 p.m. (Eastern Time) on **August 2, 2012**. Completed Accredited Investor Questionnaires may be transmitted electronically by Record Holders to the Voting Agent by facsimile to (212) 702-0864 or by electronic mail to symsinfo@kccllc.com, so long as such electronic transmissions are actually received by the deadline. Any Record Holder that elects to electronically transmit its completed Accredited Investor Questionnaires to the Voting Agent must also



deliver the hard-copy original Accredited Investor Questionnaires to the Voting Agent no later than **August 9, 2012**.

Any Beneficial Owner that does not validly certify that it is an accredited investor on the Accredited Investor Questionnaire and return the same to the Voting Agent by **August 2, 2012**, shall not be entitled to participate in the Rights Offering. Any Accredited Investor Questionnaire that is timely returned to the Voting Agent but does not indicate whether the relevant Beneficial Owner is or is not an accredited investor will not be deemed to have been validly executed, and the applicable Beneficial Owner will not be entitled to participate in the Rights Offering. Any Beneficial Owner that fails to submit a duly executed Accredited Investor Questionnaire to the Voting Agent by **August 2, 2012** will not be entitled to participate in the Rights Offering.

Once the eligible accredited investors are identified, the Voting Agent will send agreements to participate in the Rights Offering ("Subscription Agreements") to the eligible accredited investors by no later than **August 6, 2012**. The Subscription Agreements are the contracts by which such eligible accredited investors will agree to subscribe for and purchase the Offered Shares from Syms. Each eligible accredited investor who wishes to subscribe for shares in the Rights Offering must sign a Subscription Agreement indicating the number of shares it wishes to purchase and return it to the Voting Agent by no later than **August 21, 2012**. Those who return their Subscription Agreements and who Syms determines are eligible accredited investors are referred to as "Eligible Holders."

Eligible Holders initially may subscribe for up to a maximum of their pro rata share of the Offered Shares (the "Initial Shares"). The pro rata share for each Eligible Holder will be determined by multiplying (a) the total number of Offered Shares by (b) the quotient obtained by dividing (i) the number of shares of Syms common stock held by that Eligible Holder by (ii) the total number of shares of Syms common stock held by all the Eligible Holders, rounded down to the nearest whole share.

Eligible Holders interested in subscribing for additional shares may also indicate on their Subscription Agreement that they would like to subscribe for Unsubscribed Shares. The number of aggregate Unsubscribed Shares will be the number of Offered Shares minus the number of Initial Shares subscribed for by all Eligible Holders. Each Eligible Holder may receive up to its pro rata portion of the Unsubscribed Shares. The pro rata portion of Unsubscribed Shares that electing Eligible Holders may subscribe for will be determined by multiplying (a) the aggregate number of Unsubscribed Shares by (b) the quotient obtained by dividing (i) the number of shares of Syms common stock held by that Eligible Holder by (ii) the total number of shares of Syms common stock held by all the Eligible Holders, rounded down to the nearest whole share.

Once the subscription deadline has passed, Syms will calculate and inform each Eligible Holder who subscribed for Unsubscribed Shares how many of the Unsubscribed Shares will be allotted to each. Each Eligible Holder that is not a Backstop Party must then promptly, and not later than **August 29, 2012**, remit payment for their respective allotted Unsubscribed Shares. Backstop Parties must deposit into escrow payment for Unsubscribed Shares by **August 27, 2012**.

#### **F. Confirmation Hearing and Deadline for Objections to Confirmation**

The Bankruptcy Court will hold a hearing to determine whether to confirm the Plan on [\_\_\_\_\_, 2012 at \_\_\_\_\_ (Eastern Time)] before the Honorable Kevin J. Carey, United States Bankruptcy Judge for the District of Delaware, in the United States Bankruptcy Court for the District of Delaware, Courtroom 5, 824 N. Market Street, Wilmington, Delaware 19801. The Debtors may continue the confirmation hearing by announcing such continuance in open court, in an agenda for such hearing, or

by filing a notice of the continuance. Any holder of a claim or interest has a right to attend the confirmation hearing.

The Disclosure Statement and Solicitation Procedures Order provides that objections, if any, to confirmation of the Plan must be filed with the clerk of the Bankruptcy Court and served so that they are RECEIVED on or before [\_\_\_\_\_, 2012, at \_\_\_\_\_ (Eastern Time)] by the following parties:

- (i) Syms Corp., et al, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.;
- (ii) Counsel to the Debtors: Skadden, Arps, Slate, Meagher & Flom LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Jason M. Liberi, Esq.; and Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq. and Suzanne D.T. Lovett, Esq.;
- (iii) Counsel to the Official Committee of Unsecured Creditors: Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq., and Janine M. Cerbone, Esq.; and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Paul N. Heath, Esq., and Michael J. Merchant, Esq.;
- (iv) Counsel to the Official Committee of Syms Corp. Equity Security Holders: Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq., Seth Goldman, Esq. and Bradley R. Schneider, Esq.; and Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq., Gregory W. Werkheiser, Esq., and Matthew B. Harvey, Esq.; and
- (v) The Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq.

#### **IV. GENERAL INFORMATION ABOUT THE DEBTORS**

##### **A. Business Overview**

###### **1. Syms**

Syms was founded in 1959. The company and the number of its retail stores grew over the years until, as of the Petition Date, it operated twenty off-price retail stores under the Syms brand name and five co-branded stores with Filene's. As of the Petition Date, Syms employed approximately 910 employees. Syms stores were located throughout the Northeast, Middle Atlantic, Midwest, Southwest and Southeast regions of the United States. Seventeen of the Syms stores operated in properties owned by Syms, and the other six Syms stores operated in properties that Syms leased from third-party landlords. Syms owns its corporate headquarters facility in Secaucus, New Jersey, which also housed a distribution/warehouse

facility until it was closed in December 2011. A list of the owned properties is attached to this Disclosure Statement as Exhibit C (the "Syms Owned Real Estate"). Syms is also a lessee under four separate ground leases underlying some of its owned properties.

Prior to the Petition Date, the Syms stores were known primarily for their men's tailored clothing, although they offered a broad range of first quality, in-season merchandise, bearing nationally recognized designer or brand-name labels, as well as shoes and accessories, for men, women and children at prices substantially lower than those generally found in department and specialty stores. Syms stores had as their tagline "An Educated Consumer Is Our Best Customer,"<sup>TM</sup> one of the best known and longest lasting taglines in retail. In addition, Syms currently operates as a commercial landlord, managing tenants under 25 leases in its properties located in Florida, Georgia, New York, New Jersey, Pennsylvania and Michigan.

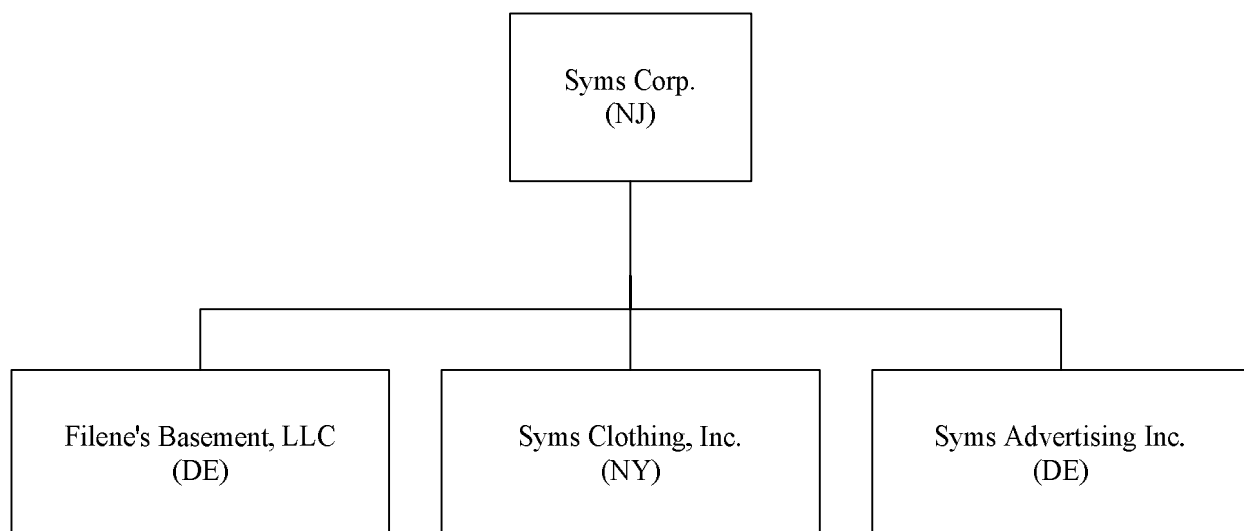
## 2. Filene's

On June 18, 2009, a subsidiary of Syms – SYL, LLC – bought a substantial part of the operating assets of Filene's Basement, Inc. after the latter had declared bankruptcy. These assets included real property leases, inventory, equipment and other assets. After SYL, LLC bought these assets, it changed its name to Filene's Basement, LLC. Filene's Basement, LLC is one of the Debtors in these Chapter 11 cases. As of the Petition Date, Filene's owned and operated twenty-one Filene's stores and employed approximately 1,500 employees. The stores were located throughout the Northeast, Middle Atlantic, Midwest and Southeast regions of the United States. All of the Filene's premises were leased. Filene's also leased and operated a 457,000 square foot distribution facility in Auburn, Massachusetts (the "Auburn Warehouse") and an off -site storage location in Landover, Maryland.

Like Syms stores, the Filene's stores offered a broad range of first quality, in-season merchandise bearing nationally recognized designer or brand-name labels at discounted prices for men, women and children. The Filene's stores were known for their selection of women's ready-to-wear clothing. Some of the Filene's stores also carried a selection of fine jewelry. The Filene's stores were known for their tagline "Where Bargains Were Born,"<sup>TM</sup> which demonstrates the brand's long-standing position as an original off-price store. The Filene's stores were also known for their "Running of the Brides"<sup>TM</sup> events, which focused on bridal gowns and related apparel and were unique to Filene's.

## **B. Prepetition Corporate and Capital Structure**

As noted above, there are four Debtors in these cases. The Debtors' corporate organization chart is below.



Syms remains a publicly-held New Jersey corporation. Prior to the Petition Date, Syms' common stock was listed on The NASDAQ Stock Market under the symbol "SYMS." As of the Petition Date, approximately 14.5 million shares of Syms' common stock were outstanding. Since the Petition Date, the price of Syms' common stock has ranged between \$6.46 and \$12.80 per share. Ms. Marcy Syms, the Chair of Syms and its majority shareholder, exercises voting control over approximately 54.4% of the Syms common stock.

Prior to the Petition Date, Syms and Filene's were joint borrowers under a secured \$75 million revolving credit facility pursuant to a credit agreement, dated as of August 27, 2009 (as amended) with Bank of America, N.A. ("BoA") as administrative and collateral agent (the "Credit Agreement"). Syms' and Filene's obligations under the Credit Agreement were secured by liens on their respective inventory and other personal property and two parcels of Syms Owned Real Estate located in Paramus, New Jersey and Secaucus, New Jersey. At the time of the chapter 11 filings, the Debtors owed approximately \$31.3 million to Bank of America under the Credit Agreement, which included amounts owing for letters of credit. As described below, all amounts owed to Bank of America have been paid in full from the proceeds of the Debtors' store liquidation sales.

### **C. Events Leading to the Chapter 11 Cases**

The Debtors experienced significant operational losses prior to the Petition Date. For instance, for the fiscal year ended February 26, 2011, the Debtors' combined losses before income taxes as reported in Syms' Form 10-K was \$51.7 million. For the three months ending October 29, 2011, the Debtors had combined losses of \$65.95 million as reported in Syms' Form 10-Q for the third quarter.

The Debtors' poor economic condition was attributable to numerous factors. The prolonged recession led to a lack of consumer confidence. Consumers' disposable income had been reduced and, as a result, consumers were buying less often and buying fewer items, including the type of merchandise sold in Syms and Filene's stores. Moreover, many of the Filene's customers who were lost as a result of the Filene's Basement, Inc. bankruptcy filing did not return to shop at Filene's after the acquisition. Furthermore, the retail apparel business is highly competitive. Syms and Filene's stores faced increasing competition from discount stores, specialty apparel stores, department stores, manufacturer-owned factory outlet stores and other retail outlets, many of which are units of large national or regional chains that have

substantially greater resources and buying power than the Debtors. The Debtors also faced increasing competition from e-commerce sites.

Additionally, the Debtors did not obtain the economic benefits they had expected from the acquisition of Filene's Basement, Inc.'s assets in June 2009. When the Filene's Basement, Inc. assets were acquired, Syms hoped to achieve significant synergies and cost savings, so that each of Syms and Filene's could grow and be profitable. In particular, Syms wanted to spread corporate overhead over a larger store base while maintaining the separate identity – and longstanding history – of each of the companies and their respective stores, brand names and customer bases. The benefits of the acquisition did not materialize to the degree expected.

In light of the foregoing, in March 2011, the Debtors retained both Rothschild Inc. ("Rothschild") and Alvarez & Marsal Private Equity Performance Improvement, LLC ("A&M"). Rothschild was retained to initiate a process of identifying and evaluating strategic alternatives. A&M was retained to assist the Debtors with working capital and liquidity management, provide additional expertise to the Debtors in developing and implementing performance-enhancing initiatives, and, if, and as appropriate, depending on the scope of the strategic alternatives process, provide due diligence support to the Debtors when third parties indicated interest as part of the strategic alternatives process. A&M instituted inventory planning and allocation practices, eliminated non-performing categories of inventory, negotiated with sources of credit to establish more attractive credit lines, and recommended that certain of the Debtors' underperforming stores be closed.

Rothschild, at the direction of the Board of Directors of Syms, contacted numerous strategic, financial, and real estate buyers to gauge their interest in pursuing one or more transactions with the Debtors. The Debtors placed no restrictions on the types of proposals or transactions that they would consider. The process was exceptionally comprehensive and spanned six months, from May through October 2011. In July 2011, the Debtors also hired Cushman & Wakefield Securities, Inc. and Cushman & Wakefield, Inc. (together, "Cushman"), nationally known real estate firms, to assist the Debtors in evaluating options with respect to the Syms Owned Real Estate. Although the Debtors received indications of interest from various strategic, financial, real estate and liquidation firms, the Debtors ultimately determined with the assistance of their advisors that such indications were unacceptable and did not constitute viable bids for an out-of-court, going concern transaction.

Given the Debtors' decreased liquidity, reduced access to trade terms, and inability to replenish inventory on a timely basis or at the level required to sustain their operations, and in light of their ongoing business losses and the deterioration of the Syms and Filene's retail operations and the lack of any viable, strategic transaction alternatives, the Debtors concluded that they were unable to reorganize their operations on a stand-alone basis, and that their only viable option for maximizing stakeholder value was an orderly wind-down of their retail operations, followed by dispositions of the Syms Owned Real Estate. Accordingly, on November 2, 2011, the Debtors commenced their Chapter 11 cases and sought to immediately conduct store closing sales at all their retail locations.

## **V. THE CHAPTER 11 CASES**

### **A. General**

On the Petition Date, the Debtors filed various motions with the Bankruptcy Court requesting permission to continue operating various aspects of their business as the Debtors wound down their retail operations. The Debtors were granted authority to continue honoring their obligations to their employees

and customers; to continue paying their tax obligations in the ordinary course; and to continue operating their existing cash management system in the ordinary course. The Debtors are represented in the Chapter 11 cases by Skadden, Arps, Slate, Meagher & Flom LLP and Young Conaway Stargatt & Taylor, LLP as legal counsel. The Debtors also have retained A&M, Cushman and Rothschild to assist them in these Chapter 11 cases.

The Office of the United States Trustee thereafter appointed two statutory committees in these Chapter 11 cases (together, the "Committees"): the Creditors' Committee, charged with a fiduciary duty to represent the interests of all the Debtors' creditors, and the Equity Committee, charged with a fiduciary duty to represent the interests of all Syms shareholders. The members of the Creditors' Committee are (i) PVH Corp., (ii) Rabina Properties, LLC, (iii) Rosenthal & Rosenthal, Inc., and (iv) Vornado Realty Trust; the members of the Equity Committee are (i) DS Fund I, LLC, (ii) Esopus Creek Value Series Fund LP – Series "L", (iii) Franklin Value Investors Trust, Franklin Balance Sheet Investment Fund, (iv) Kahn Brothers Group, Inc., and (v) Marcato Capital Management, LLC.

Each of the Committees has retained restructuring advisors to assist them in these Chapter 11 cases. In particular, the Creditors' Committee has retained legal counsel, a financial advisor, and a real estate advisor as follows: (i) Hahn & Hessen LLP, (ii) Richards, Layton & Finger, P.A., (iii) Loughlin Management Partners & Company, Inc., and (iv) Abacus Advisors Group LLC. The Equity Committee has retained: (i) Munger, Tolles & Olson LLP, (ii) Morris, Nichols, Arsht & Tunnell LLP, (iii) PricewaterhouseCoopers LLP, (iv) Houlihan Lokey Capital, Inc., and (v) Retail Consulting Services, Inc., d/b/a RCS Real Estate Advisors.

## **B. Significant Events During the Chapter 11 Cases**

### **1. Store Closing Sales**

Immediately upon filing their Chapter 11 petitions, the Debtors sought Bankruptcy Court approval to conduct going-out-of-business sales with the assistance of a liquidation agent. On November 16, 2011, the Bankruptcy Court entered an order that authorized the Debtors to enter into an agency agreement with a joint venture between Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC as liquidation agent to commence the store closing sales at the Debtors' then remaining thirty-nine store locations. The Bankruptcy Court further authorized the Debtors to assume an agency agreement that they had entered into prior to filing the Chapter 11 cases with respect to five Filene's retail locations and to continue store closing sales that had been commenced at those locations.

The commencement of these Chapter 11 cases and the store closing sales were timed to coincide with the holiday shopping season so that the Debtors could have the benefit of, among other things, the "Black Friday" shopping weekend after the Thanksgiving holiday. The Debtors sold virtually all their inventory and much of their furniture, fixtures and equipment during the store closing process. The sales concluded across their various locations in the last days of December 2011. As of December 31, 2011, the Debtors had ceased retail operations at all of their stores and vacated all their leased retail store and distribution center locations.

Pursuant to the agency agreement with the liquidators, the Debtors received an initial, guaranteed payment of approximately \$44.25 million. The Debtors used \$33.2 million from this payment to pay in full all amounts accrued and owed to the Debtors' secured lender, Bank of America. Upon conclusion of the store closing process, the Debtors and the liquidators audited and reconciled the results of the store closing sales. The Debtors received additional payments in accordance with the agency agreement of

\$8.8 million. Thus, the total amount that the Debtors received under the agency agreement in connection with their store closing sales totaled \$53.1 million.

## 2. Real Estate Matters

As of the Petition Date, the Debtors were lessees under twenty-four commercial real estate leases. The Debtors, with the assistance of the Committees, developed a process for marketing those leases in an effort to sell them or to terminate one or more of them with the agreement of their landlords in order to minimize costs and claims under such leases. On December 16, 2011, the Bankruptcy Court entered an order that approved the Debtors' proposed procedures for the disposition of their leases. Hilco Real Estate, LLC was retained to assist the Debtors, and conducted an extensive lease marketing process.

The Debtors obtained limited interest in their leases, and ultimately Syms negotiated the sale of only one of its leases, for the store located at 2220 Broadway, New York, NY. The lease was sold to DSW Inc. ("DSW") for approximately \$495,000. As part of the lease transfer, Syms agreed to grant DSW an allowed administrative claim of \$1.6 million as a tenant improvement allowance. The Debtors otherwise negotiated consensual terminations of three of their leases with their respective landlords. With the exception of their long-term ground leases, the Debtors rejected all of their remaining leases and vacated such leased premises as of December 31, 2011.

Under the Bankruptcy Code, when a debtor rejects a real estate lease, the rejection is considered a breach that gives rise to a claim for breach by the landlord against the debtor. However, the Bankruptcy Code imposes certain caps on the maximum amount of breach claims that a landlord may assert. Filene's estimates that lease rejection claims against it total approximately \$51.4 million. Syms estimates that lease rejection claims against it total approximately \$4.6 million. However, Syms provided full and partial guarantees to certain of Filene's landlords; the claims against Syms on account of such guarantees are estimated at approximately \$14.6 million. The Debtors, with the significant pre-petition assistance of Cushman and later, the Equity Committee, negotiated a consensual termination of Syms' lease of its store located at 530 Fifth Avenue in New York City. That agreement avoided a potential rejection claim against Syms of approximately \$8.4 million, and resulted in the return of over \$2.3 million that would have been paid to the landlord to terminate the lease, as well as an additional payment to Syms by the landlord of approximately \$400,000.

As of May 8, 2012, the Debtors had moved to assume all four of their long-term ground leases, and on May 24, 2012, the Bankruptcy Court entered orders authorizing the assumption of two of the Debtors' ground leases for properties located in Elmsford, New York. The Debtors currently are engaged in negotiations regarding certain amounts that allegedly must be paid before the ground lease for their Secaucus, New Jersey property can be assumed. The Debtors also have been engaged in negotiations and litigation regarding various issues relating to the ground lease for their Fairfield, Connecticut property. As of the date hereof, the Debtors have not received Court approval to assume the ground leases for their Secaucus, New Jersey and Fairfield, Connecticut properties.

As described herein, Cushman and Rothschild have worked together on the Debtors' behalf to consider various alternatives for maximizing the value of the Syms Owned Real Estate. To that end, Cushman commenced a comprehensive, nationwide process to identify one or more buyers and/or tenants of one or more parcels of the Syms Owned Real Estate. Cushman and Rothschild have also considered various options for financing one or more parcels of the Syms Owned Real Estate. As of the date of this Disclosure Statement, the Debtors have received several expressions of interest in various parcels, and obtained Bankruptcy Court approval to enter into a lease of Syms' Southfield, Michigan location.

### 3. Intellectual Property Matters

As of the Petition Date, Filene's owned certain intellectual property assets consisting of, among other things, (i) all of the Debtors' worldwide trademarks, including more than forty (40) registered United States trademarks as well as foreign and state registered marks; (ii) seventy (70) internet domain names including [www.syms.com](http://www.syms.com) and [www.filenesbasement.com](http://www.filenesbasement.com); (iii) a perpetual, royalty-free license agreement with Macy's for the Filene's Basement trademark; and (iv) all of the Debtors' customer information databases, which primarily consist of close to two million names, addresses and/or email addresses of customers who joined one of the Debtors' two customer loyalty programs, the *Syms Educated Consumer* program and the *Filene's Basement Fan Club* (collectively, the "IP Assets"). In addition to the retail name marks, the Syms-related IP Assets include, among others, house brands such as *Stanley Blacker* and *Maine Bay*. The Filene's IP Assets include, among others, trademarks and intellectual property related to their well-known *Running of the Brides* event.

The Debtors retained Hilco IP Services LLC d/b/a Hilco Streambank as their intellectual property disposition consultant to market the IP Assets. In consultation with the Committees and with the assistance of their professionals, the Debtors also proposed a set of procedures for the auction and sale of the IP Assets and requested the appointment of a consumer privacy ombudsman to ensure the protection of any consumer-related personally identifiable information included amongst the IP Assets. On April 9, 2012, the Bankruptcy Court entered an order approving the IP bidding procedures. On April 10, 2012, the Office of the United States Trustee appointed Todd B. Ruback as the consumer privacy ombudsman. As of the date hereof, the Debtors have received several expressions of interest in the IP Assets, but have not yet entered into a definitive sale agreement.

### 4. Employee-Related Matters

As noted above, at the inception of these Chapter 11 cases, the Debtors obtained Bankruptcy Court authority to honor certain of their obligations to their employees in the ordinary course of business, including salaries, wages, and related benefits. Upon conclusion of the store closing sales in December 2011, all store-level employees were terminated. The Debtors continue to employ a small group of corporate employees who are assisting the Debtors in the wind-down of their operations.

As a result of these employee terminations and the Debtors' cessation of their retail operations, the Debtors incurred significant obligations to their former employees that the Debtors unfortunately could not honor in the ordinary course due to restrictions imposed by the Bankruptcy Code. In particular, Syms is obligated on approximately \$2.4 million in severance obligations to its former employees, and Filene's is obligated on approximately \$2.5 million in such obligations to its former employees. A union representing certain of the Debtors' employees asserted that the Debtors owe an additional \$1.3 million in post-petition severance claims under the Worker Adjustment and Retraining Notification Act ("WARN"). The union filed an unfair labor practice charge against the Debtors in connection with this matter. The charge was dismissed, and a subsequent appeal of the dismissal was denied by the National Labor Relations Board. The Debtors dispute the union's claims.

Finally, Syms has certain obligations in connection with various pension plans. In particular, Syms has underfunded pension liabilities of approximately \$2.3 million, and it further has received demands for approximately \$7.0 million on account of its withdrawal from two of its multi-employer pension plans. These pension-related obligations and the severance obligations summarized above largely constitute general unsecured claims against Syms that will be paid in accordance with the Plan. Certain portions of the severance obligations and related obligations to the Debtors' former employees will constitute administrative claims or priority claims that will be paid in accordance with the Plan. An



amount to be determined of the UFCW Unions and Participating Employers Pension Fund Claim may be entitled to administrative priority and will be paid in accordance with the Plan. The claim for the asserted WARN violation would, if allowed, constitute a post-petition, administrative claim and would be entitled to be paid in full under the Plan.

## **VI. OVERVIEW OF CLAIMS, ASSETS, PLAN SETTLEMENT AND REORGANIZED SYMS' BUSINESS PLAN FOR ITS OWNED REAL ESTATE**

### **A. Overview of Claims and Assets**

On December 22, 2011, each of the Debtors filed with the Bankruptcy Court separate schedules of assets and liabilities and statements of financial affairs as required by the Bankruptcy Code. Only two of the Debtors – Syms and Filene's – listed assets and liabilities. The other two Debtors, Advertising and Clothing, are mere shell entities with no assets or liabilities. The schedules and statements for each of Syms and Filene's were prepared based on their books and records and, therefore, do not necessarily reflect the actual values of their assets or the amounts of claims that ultimately will be allowed in these Chapter 11 cases.

On January 18, 2012, the Bankruptcy Court entered an order establishing March 1, 2012 as the bar date for creditors to file their claims with the Bankruptcy Court. The order also established May 4, 2012 as the bar date for governmental units to file their claims with the Bankruptcy Court. As of the bar dates, approximately 1,352 claims were filed against Syms in the aggregate asserted amount of approximately \$117.5 million, and approximately 1,409 claims were filed against Filene's in the aggregate asserted amount of approximately \$116 million. The Debtors are in the process of reviewing and reconciling claims, have filed several objections to numerous claims, and anticipate filing additional objections over the course of the next several months.

The total amount of claims asserted to date is in excess of the amounts that the Debtors believe ultimately will be allowed. In the experience of the Debtors' restructuring advisors, claims filed by creditors typically vastly exceed the amounts reflected on a debtor's books and records and the amounts which eventually are allowed and paid. As noted in the "Overview of the Plan" section of this Disclosure Statement above, the Debtors believe that total general unsecured claims against Syms are roughly \$58.4 million including convenience class claims, and that total general unsecured claims against Filene's are roughly \$42.7 million, including convenience class claims and excluding any intercompany claims.

The general unsecured claims which Syms estimates it is liable for can be broken down into three main groups. First, general unsecured claims against Syms include trade claims against it of approximately \$17.6 million and claims of Filene's trade creditors that Syms has guaranteed in the approximate amount of \$3.9 million. Second, as noted above, Syms estimates that it has total exposure to landlords on account of rejection of Syms leases and rejection of Filene's leases that Syms has guaranteed, in whole or in part, in the amount of approximately \$20.3 million. Third, Syms estimates that it has total under-funded liability and withdrawal liability with respect to its pension plans of approximately \$14.3 million, plus unpaid severance obligations to its employees in the total amount of approximately \$2.3 million. Additionally, Syms created a disputed claims reserve of \$4.4 million as a contingency.

In the case of Filene's, general unsecured claims also can be broken down into three main groups. First, Filene's estimates that it has total trade claims (*i.e.*, "short-term claims") against it of approximately \$3.5 million. Second, as noted above, Filene's estimates that it has total exposure to landlords on account of rejection of unguaranteed Filene's leases (*i.e.*, "long-term claims") in the amount of approximately

\$36.8 million. Filene's exposure on rejected lease claims is far greater than Syms' exposure because Filene's leased all its locations, whereas Syms leased only a few of its locations. Third, Filene's estimates that it has unpaid severance obligations to its employees in the total amount of approximately \$2.4 million. Filene's also created a disputed claims reserve of \$4.4 million as a contingency.

As noted above, Syms' primary assets include cash from the store liquidation sales and the Syms Owned Real Estate. Filene's primary assets include cash from the store liquidation sales and the IP Assets, including the Syms trademark. Both Debtors also retain the right to bring certain lawsuits against third parties, which could result in settlements of judgments in favor of the Debtors. Syms currently is holding approximately \$1.3 million in cash, and Filene's currently is holding approximately \$6.9 million in cash. These amounts are net of the amount that Syms and Filene's paid in November 2011 to Bank of America in satisfaction of obligations under their prepetition secured credit facility. These amounts also reflect cash balances held by each entity at the inception of the Chapter 11 cases and other cash amounts and reserves, net of post-petition operating expenses.

As noted above, the Syms Owned Real Estate includes 17 parcels of commercial real estate located throughout the United States, certain of which Syms leases to third-party commercial tenants, as well as a residential condominium in Secaucus, New Jersey. In certain instances, Syms is a tenant under a long-term ground lease for certain of the Syms Owned Real Estate, rather than an owner of the fee interest in the property. Attached hereto as Exhibit C is a chart that summarizes basic information about each parcel of Syms Owned Real Estate, including its location, size, and, where applicable, certain tenant information. Syms, with the assistance of Cushman, has estimated that the aggregate net realizable value of the Syms Owned Real Estate from a commercially reasonable disposition process is approximately \$147 million.

## **B. Resolution of Intercompany Matters**

As noted above, Syms' assets, listed on its books and records, including the Syms Owned Real Estate, are sufficient to pay all its creditors, including Filene's creditors that Syms guaranteed, in full while affording a dividend to its shareholders. There has been a dispute, however, between Syms and the Equity Committee, on the one hand, and the Creditors' Committee, on the other hand, regarding whether Filene's creditors also should be paid in full. In particular, while the Filene's estate currently has limited liquid assets available for its unsecured creditors, the Creditors' Committee has asserted that (i) Filene's has significant claims against Syms that, once liquidated and paid from the proceeds of the disposition of Syms Owned Real Estate, will allow Filene's creditors, as well as Syms' creditors, to be paid in full, and (ii) aside from such claims, Filene's bankruptcy estate should be substantively consolidated with the Syms bankruptcy estate, the result of which would be that Filene's creditors would share in the proceeds of the disposition of Syms Owned Real Estate and all creditors would likely be paid in full.

### **1. Asserted Intercompany Claims**

The Creditors' Committee has raised three main issues respecting intercompany claims. The first relates to the secured claim of the Debtors' pre-petition lender, BoA. As of the Petition Date, BoA was owed approximately \$33.2 million. As noted above, this amount was paid in full from proceeds of the store closing sales. The issue between Syms and the Equity Committee, on the one hand, and the Creditors' Committee, on the other hand, is whether this secured debt should be deemed repaid solely by Syms, or proportionally by both Syms and Filene's based on their allocable share of the store liquidation proceeds. The Creditors' Committee acknowledges that Syms and Filene's were joint obligors on the BoA debt under the terms of the Credit Agreement. However, the Creditors' Committee points out that the

liability to BoA was carried exclusively on Syms' books and records prior to the Petition Date, and BoA advanced all funds under the credit facility to Syms. Syms would then advance some of the funds received from BoA to Filene's and record the advance in the intercompany account between Syms and Filene's. All funding to Filene's was booked as an intercompany advance. Filene's balance sheet shows that it owes no secured debt. Accordingly, the Creditors' Committee's position has been and is that based on the accounting records and their course of conduct, as between Syms and Filene's, Syms borrowed the entire amount owed to BoA and then either lent on an unsecured basis or invested as capital into Filene's its share of the proceeds of the BoA debt.

Further, the Creditors' Committee asserts that pursuant to the terms of the BoA Credit Agreement, Syms waived its right to step into BoA's shoes to seek reimbursement or contribution from Filene's while Filene's is insolvent. Under the circumstances, the Creditors' Committee therefore advocates that Syms should bear the entire burden of the debt. In particular, Filene's has a post-petition claim against Syms for its share of the store disposition proceeds used to pay off the BoA debt. This position, if adopted, would result in Filene's having another approximately \$15 million in store disposition proceeds available for Filene's general unsecured creditors, thereby significantly enhancing their recovery. The Creditors' Committee further argues that even if it were unsuccessful if it litigated this theory, the Debtors nonetheless treated Filene's unfairly by allocating the entire BoA debt based on the value of Syms' and Filene's inventory.

Syms and the Equity Committee, on the other hand, dispute these various contentions. As both Syms and Filene's were joint obligors on the BoA debt, each of Syms and Filene's is therefore responsible for the total debt. The Debtors allocated the repayment of the BoA loan based on each entity's share of the store liquidation proceeds, which assets were collateral for the BoA loan. Syms and the Equity Committee believe this is consistent with the fact that the Bank BoA loan was a revolving credit facility, and that the available borrowing base was a function of both Syms' and Filene's available inventory. Indeed, Syms and Filene's entered into the BoA facility for Filene's benefit at the time that Syms acquired Filene's operating assets in 2009. Prior to that time, Syms had no need for a revolving facility from BoA.

Second, the Creditors' Committee asserts that Syms owes Filene's significant royalty payments on account of Filene's ownership of Syms' trademarks and tradenames. In support of its assertion, the Creditors' Committee has pointed to a license agreement between the two entities, originally entered into in 1986, that contemplated Syms' payment of a royalty fee equal to a percentage of net merchandise sales. The license agreement provides that it continues in perpetuity until terminated on 270 days prior written notice. The Creditors' Committee has seen no evidence that the license agreement was properly terminated nor that Syms ever made the required payments to Filene's dating back to 1986. Furthermore, because SYL, Inc. – which is Filene's prior to its name change – was at all times under the dominion and control of Syms, the Creditors' Committee contends that the applicable statute of limitations will be tolled under the adverse domination doctrine, and Syms will be liable to Filene's for the full amount owed for the entire 26-year period of delinquency.

The Creditors' Committee's theory is grounded in breach of contract and argues that the unambiguous terms of the license agreement speak for themselves and preclude the Debtors from introducing any external evidence to the contrary. If the parties wanted to terminate the license agreement, they should have done so in accordance with its terms, which they failed to do. Based on this assertion, the Creditors' Committee believes that Syms owes Filene's approximately \$287.1 million in royalties under the license agreement, of which at least \$15.5 million is attributable to the period since Syms acquired Filene's in 2009, although it is only seeking a recovery in an amount sufficient to satisfy Filene's creditors in full.

Syms and the Equity Committee dispute these contentions and believe they are utterly without merit. As noted above, the entity that is currently named "Filene's" previously was known as SYL, Inc. That entity was formed in 1986 in connection with certain tax planning strategies that Syms was undertaking at the time. In particular, SYL, Inc. was formed as a wholly-owned subsidiary of Syms with a single purpose: to hold the Syms trademarks and trade names. SYL, Inc. and Syms simultaneously entered into the license agreement, the purpose of which was to afford various tax benefits. This arrangement remained in place until December 2003. It was discontinued at that time, however, as a result of challenges brought by various state taxing authorities, not only against Syms but also against numerous other companies that had implemented such intercompany arrangements.

Syms and the Equity Committee assert that, since 2003, Syms and SYL, Inc. have not observed any aspect of this arrangement: no royalties were paid, and no tax benefits were realized. SYL, Inc. converted to SYL, LLC on December 15, 2003, by filing a certificate of conversion and a certificate of formation with the Delaware Secretary of State. The Debtors and the Equity Committee believe that SYL, Inc., and subsequently SYL, LLC, had no assets or operations other than this intellectual property until June 2009, when SYL, LLC was utilized as the vehicle for acquiring Filene's operating assets. At that time, SYL, LLC converted Filene's Basement, Inc. to a limited liability company and renamed it Filene's Basement, LLC. While the intellectual property was left in Filene's, Filene's did not use it; no royalties were paid; and no tax benefits were realized by Syms.

Based upon the foregoing, Syms and the Equity Committee dispute the Creditors' Committee's assertions that Syms became obligated, beginning in June 2009 when it acquired Filene's, to start paying royalties to Filene's, and that Filene's bankruptcy estate has a claim against Syms for unpaid royalties. Because the arrangement between Syms and Filene's was discontinued almost six years before Filene's was acquired, in the view of Syms and the Equity Committee, the Creditors' Committee cannot now credibly create a claim for millions of dollars in asserted, unpaid royalties.

Third, the Creditors' Committee asserts that certain claims that Syms has against Filene's should be equitably subordinated or recharacterized as equity. If the Creditors' Committee were to succeed in these assertions, then remaining Filene's creditors would be entitled to a proportionally greater recovery. The Creditors' Committee's assertions relate to a \$33 million prepetition, general unsecured, intercompany claim that Syms has asserted against Filene's, plus subrogation claims of approximately \$18.4 million that Syms would be entitled to assert under guarantees of certain Filene's trade claims and leases. The Creditors' Committee asserts that because there is no contemporaneous evidence that Syms intended to make an arms-length, third-party loan to Filene's at the time of each advance; because Syms and Filene's never documented these matters as loans or claims; because Filene's did not make payments on them; because no interest was charged; because Filene's had limited ability to repay them; and because the intercompany obligations had no attributes of a debt obligation, then these amounts should be deemed capital contributions rather than loans.

Syms and the Equity Committee, on the other hand, assert that Syms afforded significant financial support to Filene's for which Syms should be given appropriate credit. This support was recorded contemporaneously as intercompany accounts payable and receivable entries in the Debtors' books and records. This support allowed Filene's to operate and pay its creditors for much of the time that it was owned by Syms and, accordingly, benefited Filene's and its creditors. Indeed, the amount of the \$33 million pre-petition intercompany claim is roughly equivalent to the amount of Filene's cumulative losses based on the books and records maintained by Syms during the period of time that Syms owned it. At a minimum, therefore, it is only equitable that this claim be available to offset whatever other claims the Creditors' Committee asserts.

Finally, the Creditors' Committee also argues that Filene's has various chapter 5 avoidance claims against Syms based upon certain avoidable pre-Petition Date transfers between Filene's and Syms pursuant to which Filene's did not receive reasonably equivalent value. Syms and the Equity Committee dispute these contentions.

## 2. Asserted Substantive Consolidation

In addition to, and as an alternative to, the foregoing, the Creditors' Committee has asserted, among other theories, that it believes that Syms and Filene's historically operated as a single entity; that the Debtors cannot meaningfully distinguish Syms creditors from Filene's creditors; that the two entities commingled their operations and assets; that all creditors effectively dealt with Syms and Filene's as a single entity; that intercompany claims and accounts between the Debtors should be ignored; and hence, that all creditors should be allowed to be paid from all assets of both Syms and Filene's, including the Syms Owned Real Estate. These assertions are based on a doctrine in bankruptcy known as "substantive consolidation" under which a bankruptcy court has the power to disregard the separate forms of affiliated legal entities; to pool the assets of, and claims against, the consolidated bankruptcy estates; to disregard any and all intercompany claims; and to satisfy all creditors' claims from the common fund.

There are no statutorily-prescribed standards for determining whether two legal entities operated as one or whether their bankruptcy estates should be substantively consolidated. Instead, the propriety of doing so must be determined on a case-by-case basis based on all the particularized facts and circumstances of the estates in question. The two, judicially-created standards for determining whether separate estates should be substantively consolidated are easily stated, but difficult to apply in practice: whether separate entities so disregarded their separateness that creditors relied on the breakdown of entity borders and treated them as one legal entity, or whether the entities' assets and liabilities are so hopelessly scrambled that separating them is prohibitive and hurts all stakeholders.

The Creditors' Committee has asserted that several aspects of the Debtors' historic operations support its belief that Syms and Filene's effectively operated as a single legal entity and hence, that all creditors should be paid in full, including that Syms hoped to achieve operational synergies when it acquired Filene's in 2009; that Syms and Filene's integrated certain of their operations in pursuit of such synergies; that certain aspects of the Debtors' merchandising, purchasing, warehousing, distribution and sales practices allegedly were integrated to the point where one could not differentiate the product lines and families of merchandise between Syms and Filene's; that Syms and Filene's had a single credit facility based on a common borrowing base and a common cash management system; and that the Debtors had co-branded stores and used both Syms' and Filene's logos on checks, purchase orders, corporate letterhead, promotional materials, and employee nameplates.

Syms and the Equity Committee, however, believe that Syms and Filene's operated as distinct legal entities and that their estates, therefore, should not be substantively consolidated. Syms and Filene's had separate stores, separate websites, and separate advertisements and promotions; the Debtors' pre-petition revolving lender treated them as two separate entities by requiring both of them to become borrowers under the lending facility; vendors invoiced Syms and Filene's separately based on their historic business dealings prior to the acquisition of Filene's assets, with such vendors being paid from accounts owned by Syms and Filene's, respectively; many other Filene's vendors and landlords dealt with Syms and Filene's as separate entities, as evidenced by some Filene's vendors and landlords negotiating for Syms guarantees, whereas others negotiated that term away in favor of enhanced economics; and the Debtors' unions viewed Syms and Filene's as separate employers by negotiating separate collective bargaining agreements to govern relationships with Syms' and Filene's separate pools of employees.

### 3. Proposed Settlement

Syms acknowledges that litigation over these matters likely would be expensive and protracted, thereby delaying the Debtors' exit from Chapter 11 and reducing recoveries for Syms shareholders. Syms also acknowledges that the results of litigation over these matters is not free from doubt. Syms and the Equity Committee, on the one hand, and the Creditors' Committee, on the other hand, each have various factual and legal strengths and weaknesses to their various positions. Accordingly, in order to avoid the expense and delay of protracted litigation over these matters and avoid the risk to Syms shareholders of adverse judicial rulings that order the Syms and Filene's estates to be substantively consolidated or that otherwise could result in enhanced recoveries to Filene's creditors to the detriment of Syms shareholders, the Debtors propose a compromise and settlement as follows.

Under this proposed plan settlement, Syms creditors would be paid in full. Filene's general unsecured creditors, however, would be broken into two separate groups: Filene's General Unsecured (Short-Term) Creditors and Filene's General Unsecured (Long-Term) Creditors. As described above, the former group includes claims primarily for unpaid trade payables and employee severance claims in the estimated amount of approximately \$8.775 million, whereas the latter group includes non-guaranteed claims by Filene's landlords for lease rejection claims in the estimated amount of approximately \$36.877 million. Under the proposed settlement, Syms would ensure that the former group is paid in full, whereas the latter group is paid 75 cents on the dollar.

The reason for this distinction is that holders of trade claims and employees for severance and related claims arguably may have stronger arguments that, from their perspective, Syms and Filene's appeared to have operated as a unitary enterprise and hence, that their bankruptcy estates should be substantively consolidated. Syms by no means believes this to be the case, but given the risks and costs of litigation, and given the relatively small amount of claims in this group in relation to the potential costs of such litigation, Syms concluded to simply pay such claims in full rather than dissipate value on litigation expense.

In Syms' view, however, which the Creditors' Committee disputes, the Filene's landlords in the latter group have a weaker legal position than the holders of trade claims and employees for severance and related claims. This is because, in Syms' view, each of those landlords is a sophisticated real estate enterprise who had contractual relationships in place with the Filene's business at the time it was acquired by Syms. Some of those landlords chose to keep those contractual arrangements in place unaltered, whereas others chose to negotiate guarantees from Syms or other enhanced economics in lieu of such guarantees. In contrast, employees and certain trade vendors arguably may not have appreciated the distinction between the two entities after the acquisition. Notwithstanding the foregoing, Syms acknowledges the risks and significant expenses of litigation, including the potential delays occasioned by litigation. In light of these risks, Syms is prepared to ensure, through the Plan, that Filene's landlords will receive 75 cents on the dollar in full and final compromise of their claims.

Under section 1123(b)(3)(A) of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules, a settlement should be approved if it represents a reasonable compromise that is in the collective best interests of all constituencies in light of the risks of continued litigation. The settlement need not afford the best possible recovery to any particular constituency, but instead need only represent a recovery that falls within a reasonable range of litigation possibilities. The Debtors believe that the foregoing settlement, which does not allow either Syms shareholders or creditors of Filene's to receive all that they would like to receive, falls within a reasonable range of litigation outcomes and is in the collective best interest of all stakeholders in light of the costs, delay, and risks of litigation. Moreover, the proposed

settlement terms and treatment of creditors (including Filene's creditors) facilitates plan feasibility through its implementation of deferred payments to creditors of Reorganized Syms.

**C. Settlement With Local 1102 Retirement Trust, Filene's Local 1102 Union and Syms Local 1102 Union**

Local 1102 Retirement Trust filed a Claim against Syms asserting priority status in the amount of \$6,408,848 on account of alleged multi-employer pension plan withdrawal liability arising under the Employee Retirement Income Security Act of 1974. Syms disputes the asserted Claim and its asserted priority status. Filene's Local 1102 Union represents former Filene's employees who were covered by the Filene's Local 1102 collective bargaining agreement. Filene's Local 1102 Union filed certain Claims in the Chapter 11 cases. Syms Local 1102 Union represents former Syms employees who were covered by the Syms Local 1102 CBA. Syms Local 1102 Union filed certain Claims in the Chapter 11 cases. The Debtors, Local 1102 Retirement Trust, Filene's Local 1102 Union and Syms Local 1102 Union have reached a global settlement of certain matters as follows:

1. (a) On the Plan Effective Date, Syms will pay to Local 1102 Retirement Trust the amount of \$203,232, representing one minimum funding payment due April 21, 2012, plus interest accruing at a rate of 3.25% per year from April 21, 2012.

(b) On November 15, 2012 Syms will pay Local 1102 Retirement Trust \$406,464, representing (i) one minimum funding payment due July 1, 2012, plus interest accruing at a rate of 3.25% per year from July 1, 2012, and (ii) one minimum funding payment due November 1, 2012, plus interest accruing at a rate of 3.25% per year from November 1, 2012.

(c) Syms will thereafter make quarterly payments to Local 1102 Retirement Trust in the amount of \$203,232, beginning February 1, 2013 and on the first of every third month thereafter, until Local 1102 Retirement Trust's entire \$6,408,848 claim is paid in full.

2. Claims filed by Filene's Local 1102 Union and Syms Local 1102 Union will be administered and treated in accordance with the provisions of the Plan and Confirmation Order.

3. On the Effective Date, the Filene's Local 1102 collective bargaining agreement and the Syms Local 1102 collective bargaining agreement will be deemed voluntarily terminated by agreement of the Debtors, Filene's Local 1102 Union, Syms Local 1102 Union and Local 1102 Retirement Trust. The Debtors shall have no other or further obligations under the Filene's Local 1102 collective bargaining agreement and the Syms Local 1102 collective bargaining agreement; excluding, however, any Claims and obligations arising prior to the Effective Date and previously asserted by Filene's Local 1102 Union, Syms Local 1102 Union or their respective constituents.

**D. Share Purchase Transaction/Rights Offering**

As noted above, the Plan contemplates a transaction involving the Majority Shareholder. The Majority Shareholder owns 7,857,794 shares of Syms common stock that will be the subject of this transaction. Such shares represent approximately 54.4% of all outstanding shares of Syms common stock. Since early in these Chapter 11 cases, the Equity Committee has expressed a desire for the Majority Shareholder to give up control of Syms and for Reorganized Syms to pursue a plan to develop Syms Owned Real Estate. After significant discussions between the Equity Committee and the Majority Shareholder, and to resolve various differences between the parties and pave the way for a consensual

restructuring, the Majority Shareholder agreed to sell the foregoing shares to reorganized Syms for \$2.49 per share, or \$19,565,907.06 in the aggregate. That agreement is memorialized in that certain Equity Commitment Agreement, a copy of which is attached hereto as Exhibit H.

As described above, Syms will obtain a portion of the funds necessary to purchase the Majority Shareholder's shares by offering to sell to existing minority shareholders of Syms, who qualify as "accredited investors" under the securities laws, the right to purchase 10,040,160 new shares (the "Offered Shares") at \$2.49 per share, or approximately \$25 million in the aggregate (the "Rights Offering"). To ensure that the Rights Offering will result in approximately \$25 million of proceeds, certain members of the Equity Committee and their affiliates have agreed to purchase those new shares not subscribed for by other shareholders (the "Unsubscribed Shares"). This obligation is also memorialized in the Equity Commitment Agreement. Accordingly, if the Plan is confirmed and the Equity Commitment Agreement is consummated, the Majority Shareholder will no longer have any ownership in Syms; all ownership in Syms will instead be in the hands of Syms existing, minority shareholders.

The Backstop Parties have been represented by counsel separate from the Equity Committee and abstained from decisions on the Equity Commitment Agreement and Rights Offering made by the Equity Committee. The legal fees of counsel to the Backstop Parties will be paid by the Debtors under the Equity Commitment Agreement. No other fee or compensation of any kind is being paid to the Backstop Parties for the commitment to backstop the \$25 million Rights Offering. The Rights Offering permits Eligible Holders (defined above) to subscribe for up to their pro rata share of both the initial offering of shares and to subscribe for up to their pro rata share of any Unsubscribed Shares.

The funds from the Rights Offering will be used, first, to pay certain administrative expenses, priority claims and other amounts necessary for Syms and Filene's to exit Chapter 11, with the balance allocated 60% to creditors and 40% to the Majority Shareholder, until the amount of \$10,725,761 (which amount is net of the reimbursement which would otherwise be paid to the Estates under the split dollar settlement) has been paid in full to the Majority Shareholder. Holders of Allowed Syms General Unsecured Claims shall then be paid in full. Next, Holders of Allowed Filene's General Unsecured (Short-Term) Claims shall be paid in full. Holders of Allowed Filene's General Unsecured (Long-Term) Claims shall then be paid until 75% of such Claims are paid. Finally, the Majority Shareholder shall be paid in the aggregate amount of \$7,065,907, which amount represents the remaining payment due to the Majority Shareholder for the purchase of the Majority Shareholder's shares, less the reimbursement to the Estates related to the split-dollar life-insurance policy.

#### **E. Overview of Reorganized Syms' Business Plan: Disposition of Syms Owned Real Estate**

As described above, prior to the Petition Date, Syms had begun considering different alternatives with respect to the Syms Owned Real Estate. In particular, Syms, with the assistance of Rothschild, attempted to find one or more transaction partners with respect to both its retail and real estate assets, as well as considered other possible alternatives for the Syms Owned Real Estate other than liquidation. Syms' efforts to consider various alternatives for the Syms Owned Real Estate continued post-petition with the assistance of Cushman and Rothschild and with the input of the Creditors' Committee, the Equity Committee and their respective advisors. This included consideration of the possibility of either reorganizing as a real estate holding company that would hold, manage, and lease the Syms Owned Real Estate on a long term basis for the benefit of Syms shareholders or, alternatively, reorganizing as a real estate investment trust.



There were many factors that Syms considered as part of this evaluative process. For instance, the Debtors have significant net operating loss tax assets ("NOLs") of approximately \$101.1 million that could be of value in certain reorganization scenarios. However, as discussed in Section IX.A of this Disclosure Statement, the value of the NOLs could be significantly limited in certain other reorganization scenarios. Moreover, while it is possible that the value of the Syms Owned Real Estate could appreciate in value if held and managed long-term, there are carrying costs to do so, as well as execution and other risks, including the risk that values will not increase as anticipated; that the costs of developing the real estate and locating tenants, which are significant, could be greater than anticipated; and that hoped-for rent and income levels will not be achieved.

The Debtors also considered the fact that many of the parcels of Syms Owned Real Estate are located in disparate locations; that efforts to reorganize around a core group of such parcels arguably could be focused only on those parcels located in and around the New York City metropolitan area; and that the Syms Owned Real Estate collectively is comprised of relatively few locations as to which Syms may be able to achieve operational efficiencies and synergies in managing them. Based upon all the foregoing considerations, the Debtors ultimately determined, with the assistance of Cushman and Rothschild, that the value of the Syms Owned Real Estate will be maximized by selling the entire portfolio over time, in a non-distressed, commercially reasonable manner.

Under the Plan, the disposition of Syms Owned Real Estate will be controlled by Syms then-current majority shareholders. Accordingly, given the diverse asset opportunities within the real estate portfolio, a business plan has been developed by the Equity Committee with the assistance of its advisors to optimize the value of each property utilizing a combination of strategies, including the near-term marketing of selected non-core properties on an "as-is" basis, the stabilization of select assets with upside potential, and a longer-term development of the Trinity Property. A schedule classifying the Syms owned real estate is attached hereto as Exhibit D, and the objectives and timing assumptions associated with each strategy are described below. **All discussions of strategies with respect to the marketing, value-enhancement, development or disposition of the Syms Owned Real Estate has been prepared based on current expectations and is subject to change by the Board of Directors of Reorganized Syms in its own judgment or as circumstances dictate consistent with the terms of the Plan.**

1. Marketing of 13 Non-Core Properties on an "As-Is" Basis

Thirteen of the 17 properties comprising the Syms Owned Real Estate are intended to be marketed for sale on an "as-is" basis, requiring minimal capital outlay. The sale process is estimated to continue for approximately 12 months post-emergence. Cushman estimates that net sales proceeds (after deduction of carrying costs and selling commissions) will be approximately \$55-\$65 million. Proceeds will be used, if necessary under the terms of the Plan, to fund the budget for the ongoing operations of Reorganized Syms, and the net proceeds shall be used to make distributions to holders of Allowed Convenience Claims, Allowed Syms General Unsecured Claims, Allowed Filene's General Unsecured (Short Term) Claims, Allowed Filene's General Unsecured (Long Term) Claims, and payments to the Majority Shareholder. A schedule classifying the Syms Owned Real Estate is contained in Exhibit D.

2. Lease Up and Sale of Three Value-Enhancement Properties on a Stabilized Basis

The value of the 3 properties located in the New York metropolitan region other than the Trinity Property is expected to be enhanced through a marketing strategy that targets a lease-up and sale/refinance strategy over the first 24-30 months following the Plan Effective Date. These are the properties located in Paramus, New Jersey; Elmsford, New York; and Westbury, New York. Upon

stabilization, each property is expected to be individually marketed for monetization (with options including a full sale, partial sale, or financing) shortly thereafter. The New York metropolitan market is recovering from the recession of 2008-2010. These assets are considered to be irreplaceable locations in dominant retail corridors and are positioned well for a value-enhancement strategy. Near-term prospects appear to be favorable, with a major tenant showing interest in leasing one of these properties in its entirety.

Costs associated with leasing these properties (including capital improvements and repairs, tenant improvements and leasing commissions) are expected to enhance the property values on a risk-adjusted basis, which, if realized, would be accretive to the value of the Plan on an undiscounted basis. However, there can be no assurance that the Company will be successful in finding tenants willing to lease the entire buildings. It is possible that one or more buildings may need to be renovated and subdivided to attract tenants, which could impact profitability. In addition, market conditions could change due to unforeseen economic events, which could impact demand and the terms of tenant leases. The profitability associated with holding these three properties could be negatively impacted as a result of unforeseen circumstances in addition to those described above. If these properties are successfully monetized on a leased basis, the expected net proceeds generated from the sales or financing are projected to be sufficient to satisfy the Plan distribution obligations to the Holders of Allowed Syms Convenience Claims, Allowed Filene's Convenience Claims, Allowed Syms General Unsecured Claims, Filene's General Unsecured (Short-Term) Claims, and Filene's General Unsecured (Long-Term) Claims, and to complete the payment obligations owed under the Majority Shareholder Share Redemption Transaction in accordance with the Plan.

As discussed further below, the Plan provides for hiring a seasoned executive from a local New York metropolitan real estate company to provide asset management services to Reorganized Syms. The responsibilities of this executive will primarily consist of the day-to-day management of the properties, including managing the stabilization and marketing processes described above for the 3 value-enhancement properties.

### 3. Redevelopment of the Trinity Property (New York)

While the near-term priority of reorganized Syms will be the marketing of the 13 non-core properties and the repositioning/leasing-up of the three New York metropolitan properties, there could be considerable upside associated with exploiting the development potential of the Trinity Property. The 11,470 square foot plot of land under this building allows for an as-of-right floor-area ratio of 15, along with approximately 16,500 square feet of owned air rights and an adjacent smaller building that would permit the construction of a new mixed use structure of approximately 220,000 square feet, considerably in excess of the size of the current improvements.

The lower Manhattan residential market continues to benefit from the strengthening of the local economy and real estate sub-markets, and, importantly, will directly benefit from demand associated with the ongoing redevelopment efforts in the Financial District, particularly the development of the new World Trade Center complex, which is located two blocks north of the Trinity Property. It is expected that thousands of new jobs will be created from these development efforts, and this will create considerable new demand for residential properties nearby. It is anticipated that value realizable from the Trinity Property can be considerably enhanced by pursuing entitlement and approvals over the coming 24 months, which will better position the site to benefit from these very favorable trends.

The creation of a joint venture partnership with a local "best in class" developer will also be pursued over the next 24 months, with full redevelopment of the Trinity Property likely to commence

shortly thereafter. Assuming real estate market conditions remain favorable, the site is expected to be developed into a mixed-use residential property within an estimated 48 month timeframe, although this timeframe could vary based on a variety of factors. It is anticipated that the Trinity Property will be an excellent candidate for vertical development, given the combination of water/city views and unique sight lines, significant lot size, favorable zoning, limited new construction in the area, and improving economic conditions. Depending on market demand, the Trinity Property could potentially be developed into either a condominium or residential apartment rental building with a commercial development located within the base of the building to maximize the development potential.

Under the terms of the Plan, Reorganized Syms will have the right to (a) transfer the Trinity Property into a Trinity Joint Venture, (b) conduct a JV Interest Sale, and/or (c) authorize the Trinity Joint Venture to incur a Trinity Mortgage subject in each case to compliance with the following terms and conditions in the event that the creditors in Syms Classes 3 and 4 and Filene's Classes 3, 4, and 5, or the Majority Shareholder have not been paid their full Distributions under the Plan or would not be paid their full Distributions under the Plan following the Trinity Joint Venture, JV Interest Sale, or Trinity Mortgage:

- (a) all proceeds realized from the JV Interest Sale (net of transaction related expenses) shall be distributed, unless the Trustee of the Golden Preferred Trust agrees otherwise, as follows: not less than 60% of the balance of net proceeds will be included as Excess Cash and shall be distributed in accordance with the Plan Waterfall, and the remaining 40% or lesser amount of the balance of such net proceeds shall be invested in full in the Trinity Joint Venture;
- (b) the funds received from any Trinity Mortgage shall be distributed, unless the Trustee of the Golden Preferred Trust agrees otherwise, as follows: first, the Trinity Carry Reserve Amount to the extent that an amount equal to the Trinity Carry Cost Reserve Amount was not distributed as Excess Cash from a JV Interest Sale, which funds shall become Excess Cash and shall be distributed in accordance with the Plan Waterfall; and thereafter the balance of borrowed funds shall remain in the Trinity Joint Venture and will be limited to be used for pre-construction costs, direct development and construction costs, corporate overhead and carry costs for the Trinity Property, and taxes, licenses and fees for the Trinity Property, as applicable, to be determined at the Board of Directors discretion;
- (c) in the event of a change in control of the majority of the Board of Directors of the Reorganized Company to either the unsecured creditors or the Majority Shareholder pursuant to the terms of the Plan, the Reorganized Company's interest in the Trinity Joint Venture (the "Company's Trinity Interest") shall be freely assignable to (i) accredited institutional investors which could include a Public Real Estate Company, (ii) privately-owned companies and individuals who are experienced real estate investors, in each case in good credit standing and with sufficient liquidity and experience to perform its duties under the partnership or joint venture agreement; provided, however, that the Reorganized Company shall have the right to agree with its joint venture partner in the Trinity Joint Venture to provide such joint venture partner

thirty (30) days written notice (the "Assignment Notice Period") of a bona fide purchase offer for the Company's Trinity Interest that is acceptable to the Reorganized Company, and on or prior to the expiration of the Assignment Notice Period, such joint venture partner in the Trinity Joint Venture shall provide notice of its election to exercise a right of first refusal to purchase the Company's Trinity Interest on terms that are the same or not less favorable to the Reorganized Company as those terms set forth in the Purchase Offer. The Confirmation Order shall provide that the Bankruptcy Court shall retain jurisdiction over any sale of the Company's Trinity Interest;

- (d) the interest may be otherwise assigned subject to the approval of the Venture's General Partner, which shall not be unreasonably withheld;
- (e) a change in control to either unsecured creditors or the Majority Shareholder of the Reorganized Company pursuant to the terms of the Plan shall not constitute a default under the terms of the Trinity Joint Venture or the Trinity Mortgage; and
- (f) prior to a change in control of the majority of the Board of Directors of the Reorganized Company to either the unsecured creditors or the Majority Shareholder pursuant to the terms of the Plan, the Reorganized Company may only sell or otherwise dispose of a majority interest in the Trinity Joint Venture to a non-insider if (x) there has been (or will be as a result of such sale) a General Unsecured Claim Satisfaction and to the extent a General Unsecured Claim Satisfaction has occurred, the Majority Shareholder has received full payment of their Plan Distributions, or (y) the Trustee of the Golden Preferred Trust or to the extent the General Unsecured Claim Satisfaction has occurred, the Majority Shareholder consents.

#### 4. Corporate Structure and Management

Upon emergence from Chapter 11, Reorganized Syms is expected to be a public corporation, incorporated under Delaware law, exclusively focused on the repositioning and development of its real estate assets. To execute the value-enhancement and development strategies previously outlined, Reorganized Syms will seek to employ or retain an experienced professional management team to provide oversight, asset management and decision making in connection with the following objectives:

- i) the disposition of any remaining non-core properties without additional capital outlays;
- ii) the repositioning/value-enhancement and future monetization efforts relating to the 3 value-enhancement properties (Paramus, New Jersey; Elmsford, New York; and Westbury, New York);
- iii) the development of the Trinity Property.

In addition, the management team retained by Reorganized Syms would be responsible for the day-to-day management of all the Syms Owned Real Estate, maintaining compliance with corporate reporting requirements, preparation of budgets and annual business plans, and advisory services to the

Board of Directors on any matters related to the Syms Owned Real Estate. Filene's will be reorganized as a wholly-owned subsidiary of Reorganized Syms for the principal purpose of exploring the sale or joint venture opportunities with respect to the IP Assets. Advertising and Clothing shall be merged into Reorganized Syms.

## 5. Business Plan Forecast

The Equity Committee, with the assistance of its financial advisors, has developed a long-term business plan designed to optimize the value of the Syms Owned Real Estate and provide agreed upon distributions to all stakeholders in a timely fashion. A two-year forecast showing the projected cash flows associated with the business plan is set forth in Exhibit E. Key assumptions reflected in this forecast are described below.

### (a) Real Estate Assumptions

**Thirteen Non-Core Properties:** The forecast contemplates the sale of the 13 non-core properties within the next 12 months at values equal to either (i) the latest estimate of vacant sale proceeds provided by Cushman or, in certain cases (ii) the current high offer received to date; in each case net of carrying expenses and selling costs.

**Three Value-Enhancement Properties:** The forecast contemplates the stabilization and future sale of the 3 value-enhancement properties within a timeframe of approximately 24-30 months. Expected costs associated with the lease-up of the 3 properties include carrying expenses, tenant improvement expenses, and leasing commissions. As part of the Plan, it is contemplated that a real estate expense reserve not to exceed \$9.0 million in the aggregate will be funded as part of the budget with proceeds from, among other things, the Rights Offering and the sale of the non-core properties. Once the value-enhancement properties have tenants in place, it is expected that rental income will provide sufficient positive cash flow to offset costs associated with carrying these properties through the anticipated sale dates.

**Trinity Property:** The forecast contemplates the development of the Trinity Property over a longer term horizon which extends beyond the two-year forecast provided in Exhibit E. Costs associated with the Trinity Property within the two-year forecast include \$1.7 million of annual carrying costs, \$1.1 million associated with legal, architectural and other pre-development costs and \$0.8 million of expenditures related to ongoing façade repairs at the property, which are expected to be completed by the end of 2012. **The forecast also assumes equity proceeds of approximately \$6.0 million will be received by the Reorganized Company upon the sale of a minority equity interest in early 2014 to a joint venture partner as permitted under the Plan and as determined by the Board of Directors of Reorganized Syms. The Plan provides a reserve for taxes, insurance, repairs, and other similar expenses and improvements for the Trinity Property, not to exceed \$3.0 million in the aggregate.**

### (b) Corporate Overhead and Other Expenses

The forecast includes annual minimum catch-up contributions required to maintain the previously "frozen" Syms' single-employer pension plan, which is being assumed by Reorganized Syms under the Plan. The forecast also includes quarterly payments relating to the settlement with Local 1102 Retirement Trust, Filene's Local 1102 Union and Syms Local 1102 Union. It is anticipated that these costs will be covered by a pension reserve of \$3.8 million funded under the budget with proceeds from, among other

things, cash on hand, the Rights Offering and the sale of the non-core properties to cover payments required over the first 24 months following the Effective Date. The annual minimum contribution payments for the single-employer pension plan provided for in the forecast are based on estimates provided by third-party pension consultants and are subject to change depending on the future performance of the underlying investments.

Corporate overhead expenses (including board member and officer salaries) necessary to run the business of approximately \$2.4 million per year, totaling approximately \$5.0 million over the first 24 months following the Effective Date, are also included in the forecast. The forecast assumes that Reorganized Syms is publicly-traded on the OTC/pink sheets, and therefore includes audit and other expenses associated with maintaining regulatory compliance. The Plan provides for an operating reserve of \$5.0 million to fund corporate overhead expenses for the first 24 months following the Effective Date. The operating reserve will be funded under the budget with proceeds from, among other things, cash on hand, the Rights Offering and the sale of the non-core properties.

#### (c) Creditor Repayments

Based on the real estate assumptions and projected overhead expenses required to operate Reorganized Syms over the first 24 months following the Effective Date, it is expected that sufficient excess cash from dispositions of the real estate will be generated from the \$25 million Rights Offering and the sale of the 16 properties (*i.e.*, other than the Trinity Property) to pay all distributions under the Plan to Holders of Allowed Syms General Unsecured Claims, Filene's General Unsecured (Short-Term) Claims, and Filene's General Unsecured (Long-Term) Claims, and to complete the payment obligations owed under the Share Purchase Transaction in accordance with the Plan prior to the development of the Trinity Property.

#### (d) Sources and Uses

Attached as Exhibit F to this Disclosure Statement is a sources and uses statement that summarizes the sources, uses, and amounts of cash as of the Effective Date of the Plan. The Debtors have estimated the Effective Date of the Plan to be September 15, 2012 though, as noted in the Risk Factors to this Disclosure Statement, there is no assurance that the Plan will become effective by that date.

### **F. Assessment of Plan Value**

Based on the range of estimated proceeds realizable from the property portfolio under the strategies outlined previously, which assume no material changes to the health and liquidity of the commercial retail real estate markets, it is contemplated that Reorganized Syms will pay all distributions under the Plan to Holders of Allowed Syms General Unsecured Claims, Filene's General Unsecured (Short-Term) Claims, and Filene's General Unsecured (Long-Term) Claims, and complete the payment obligations owed under the Share Redemption Transaction in accordance with the Plan prior to the development of the Trinity Property.

Shareholders of Reorganized Syms are unlikely to receive significant distributions from the sale of the 13 non-core properties or the 3 value-enhancement properties; therefore, the return to shareholders under the Plan is heavily dependent on the ultimate net proceeds generated from the sale of the Trinity Property. The business plan contemplates the development of this property over a long-term period. It is important to note that this development is subject to a high level of risk, as the success of the project will

be contingent upon a number of factors, many of which cannot be predicted with high levels of accuracy. Some of the important factors that will influence the success of the development project include (but are not limited to):

- Ability to partner with a "best-in-class" development partner;
- Availability of funding (primarily construction and development loans) under attractive terms;
- Health of the real estate market in Manhattan and general economic conditions;
- Success of the current municipal efforts to revitalize the Financial District, which will directly impact and shape commercial and residential real estate demand in the area;
- Changes in municipal and state regulations, zoning and/or codes;
- Demand for residential housing options in Lower Manhattan;
- Additional supply of housing in the form of new construction; and
- Changes in tax policies as it relates to real estate development.

Various development scenarios have been analyzed that contemplate the development and future sale of the Trinity Property as either a single-use residential property (that could take various forms, *i.e.*, condominium or rental with the potential for floors dedicated to a hotel) or a multi-use residential and commercial property. Using a range of assumptions based on current market conditions, the estimated incremental value that could be achieved for stakeholders who are willing to roll their interest into a venture to create a mixed-use rental or condominium building, which can be realized through construction and sale of the asset over a four- to five-year period, could range from \$0 to \$120 million, resulting in an incremental value of between \$0.00 and \$7.22 per share where the low end of the range represents a vacant use of the asset in today's market. This range is illustrative in nature; actual value realized by shareholders will be dependent on the following factors:

- Joint venture partnership interests, which could range from 10% - 49% depending on the agreement and structure of the partnership;
- Terms of construction and development loans, which could range from 50 - 100% on a loan-to-cost basis;
- Taxes payable upon future sale of the property, which would depend on existence of NOLs at the time of sale as well as the ultimate use of the developed space;
- Remaining obligations of Reorganized Syms, including, potentially, the single-employer pension plan assumed and funded by Reorganized Syms; and
- Additional carrying costs due to delays in entitlement or development approvals.

Based on the level of risk involved and the high degree of uncertainty surrounding the ultimate development strategy, it is impossible to provide an accurate assessment of plan value beyond the ranges provided above.

## **VII. DETAILED SUMMARY OF THE PLAN**

THIS SECTION PROVIDES A DETAILED SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT, AND TO THE EXHIBITS ATTACHED THERETO. THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN WILL CONTROL THE TREATMENT OF CREDITORS AND EQUITY SECURITY HOLDERS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS AND OTHER PARTIES IN INTEREST.

### **A. Purpose and Effect of the Plan**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor is authorized to reorganize its business for the benefit of its creditors and shareholders. As a general matter, a plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by a bankruptcy court makes such plan binding upon a debtor and any creditor of or equity security holder in such debtor, whether or not such creditor or equity security holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

Under the Plan, claims against, and interests in, the Debtors are divided into classes according to their relative seniority and other criteria. If the Plan is confirmed by the Bankruptcy Court and becomes effective, the claims and interests of the various classes will be treated in accordance with the Plan provisions for each such class. On the date that the Plan becomes effective, known as the "Effective Date," and at certain times thereafter, distributions will be made to each Debtor's creditors and Syms' shareholders as provided in the Plan. At the beginning of this Disclosure Statement is a table that summarizes the classification and treatment of claims and interests against the Debtors. What follows below is a more detailed description of the classes of claims against the Debtors created under the Plan, the treatment of those classes under the Plan, and the property to be distributed under the Plan.

### **B. Plan Waterfall**

Excess Cash will be distributed in accordance with the Provisions Governing Distributions in Article VIII of the Plan and subject to the following waterfall (the "Plan Waterfall"):

1. Excess Cash shall be distributed in the following allocations: first, to payment of Allowed Senior Claims, as and when Allowed, to the extent not previously reserved for and, second (i) 60% of the first available distributable Excess Cash to Holders of Allowed Convenience Class Claims, then to Holders of Allowed Syms General Unsecured Claims, and (ii) 40% of the first available distributable Excess Cash to the Majority Shareholder until the Initial Majority Shareholder Payment in the amount of \$10,725,761 (which is net of the Split Dollar Payment in the amount of \$1,774,359) has been paid in full; then
2. Any remaining Excess Cash shall be paid to Holders of Allowed Syms General Unsecured Claims until such Claims are paid in full; then



3. Any remaining Excess Cash shall be paid to Holders of Allowed Filene's General Unsecured (Short-Term) Claims until such Claims are paid in full; then
4. Any remaining Excess Cash shall be paid to Holders of Allowed Filene's General Unsecured (Long-Term) Claims until 75% of such Claims are paid; then
5. Any remaining Excess Cash shall be paid to the Majority Shareholder until the Majority Shareholder has received, exclusive of the Initial Majority Shareholder Payment, the Subsequent Majority Shareholder Payment in the aggregate amount of \$7,065,907, which amount represents the remaining payment due to the Majority Shareholder for the purchase of the Majority Shareholder's shares, less the reimbursement to the Estates related to the Split-Dollar Policy; then
6. Any remaining Excess Cash shall be retained by Reorganized Syms and distributed or otherwise utilized as directed by the Reorganized Company's Board of Directors.

**C. Classification and Treatment of Claims and Interests**

1. Treatment of Unclassified Claims Against Syms and Filene's

(a) Administrative Claims

An Administrative Claim means a claim arising under Bankruptcy Code section 507(a)(2) for costs and expenses of administration of the Chapter 11 Cases under Bankruptcy Code sections 503(b), 507(b), or 1114(e)(2), including: (a) any actual and necessary costs and expenses, incurred after the Petition Date, of preserving the estates and operating the businesses of the Debtors (such as wages, salaries and commissions for services and payments for inventory, leased equipment and premises) and claims of governmental units for taxes (including tax audit claims related to tax years commencing after the Petition Date, but excluding claims relating to tax periods, or portions thereof, ending on or before the Petition Date); and (b) all other claims entitled to administrative claim status pursuant to a final order of the Bankruptcy Court, but excluding Priority Tax Claims, Non-Tax Priority Claims and Professional Fee Claims.

As explained above, on January 18, 2012, the Bankruptcy Court issued an order setting an Initial Administrative Bar Date of 5:00 p.m. (Eastern) on March 1, 2012, for all Administrative Claims first arising on or before December 31, 2011 (Dkt. 674).

Pursuant to the Plan, on, or as soon as reasonably practicable after the later of, (i) the Initial Distribution Date or (ii) the Distribution Date immediately following the date on which an Administrative Claim becomes an Allowed Administrative Claim, each Holder of such Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim, or (b) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing; provided, however, that Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases may

be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto.

The Debtors have estimated that the aggregate amount of Allowed Administrative Claims payable under the Plan will be approximately \$21.854 million for Syms and \$8.068 million for Filene's.

(b) Superpriority Intercompany Claims

Superpriority Intercompany Claims are claims by any Debtor against another Debtor that arose on account of goods, services or other value provided after the Petition Date. Pursuant to the Plan Settlement, the Holders of Superpriority Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Superpriority Intercompany Claims shall be deemed offset, cancelled and extinguished.

The present net amount owed between Syms and Filene's is that Filene's holds a claim against Syms in the amount of approximately \$2.155 million.

(c) Priority Tax Claims

A Priority Tax Claim means a claim of a governmental unit of the kind specified in Bankruptcy Code sections 502(i) or 507(a)(8).

Under the Plan, except to the extent that an Allowed Priority Tax Claim has been paid prior to the Initial Distribution Date, on, or as soon as reasonably practicable after the later of, (i) the Initial Distribution Date or (ii) the Distribution Date immediately following the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing.

The Debtors have estimated that the aggregate amount of Allowed Priority Tax Claims payable under the Plan will be approximately \$0 at Syms and \$1.355 million at Filene's.

## 2. Classification and Treatment of Claims and Interests

### (a) Secured Claims

#### (i) Syms Class 1 Secured Claims – Unimpaired

Syms Secured Claims are claims secured by a lien on collateral or that are subject to a right of setoff. Syms received authority to pay in full the secured claim of Syms' primary secured creditor, Bank of America, from proceeds of Syms' store closing sales. Syms believes that there may be certain other secured claims arising out of its workers' compensation program. Under the Plan, on, or as soon as reasonably practicable after, the later of (a) the Initial Distribution Date, or (b) the Distribution Date immediately following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for, such Allowed Secured Claim, (i) Cash equal to the value of its Allowed Secured Claim, (ii) the Collateral securing the Secured Claim, or (iii) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing. Any Holder of a Secured Claim shall retain its right of setoff or Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold (or deemed abandoned) by Syms free and clear of such right of setoff or Lien) to the same extent and with the same priority as such right of setoff or Lien as of the Petition Date until such time as (A) the Holder of such Secured Claim (i) has been paid Cash equal to the value of its Allowed Secured Claim, (ii) has received a return of the Collateral securing the Secured Claim, or (iii) has been afforded such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing; or (B) such purported right of setoff or Lien has been determined by an order of the Bankruptcy Court to be invalid or otherwise avoidable.

#### (ii) Filene's Class 1 Secured Claims – Unimpaired

Filene's Secured Claims are claims secured by a lien on collateral or that are subject to a right of setoff. Filene's received authority to pay in full the secured claim of Filene's primary secured creditor, Bank of America, from proceeds of Filene's store closing sales. Filene's believes that there may be certain Secured Claims arising out of its workers' compensation program. Under the Plan, on, or as soon as reasonably practicable after, the later of (a) the Initial Distribution Date, or (b) the Distribution Date immediately following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for, such Allowed Secured Claim, (i) Cash equal to the value of its Allowed Secured Claim, (ii) the Collateral securing the Secured Claim, or (iii) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing. Any Holder of a Secured Claim shall retain its right of setoff or Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold (or deemed abandoned) by the Debtors free and clear of such right of setoff or Lien) to the same extent and with the same priority as such right of setoff or Lien as of the Petition Date until such time as (A) the Holder of such Secured Claim (i) has been paid Cash equal to the amount of its Allowed Secured Claim, (ii) has received a return of the Collateral securing the Secured Claim, or (iii) has been afforded such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing; or (B) such purported right of setoff or Lien has been determined by an order of the Bankruptcy Court to be invalid or otherwise avoidable.

(b) Non-Tax Priority Claims

(i) Syms Class 2 Non-Tax Priority Claims – Unimpaired

A Syms Non-Tax Priority Claim is a pre-petition claim that is entitled to priority under the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim. Such claims include claims by employees for unpaid wages and similar amounts, along with the claims of Syms' customers for deposits and similar matters. Under the Plan, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date, or (ii) the Distribution Date immediately following the date on which a Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim, each Holder of an Allowed Non-Tax Priority Claim shall be entitled to receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Non-Tax Priority Claim, Cash in an amount equal to its Allowed Non-Tax Priority Claim.

(ii) Filene's Class 2 Non-Tax Priority Claims – Unimpaired

A Filene's Non-Tax Priority Claim is a pre-petition claim that is entitled to priority under the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim. Such claims include claims by Filene's employees for unpaid wages and similar amounts, along with claims of Filene's customers for deposits and similar matters. Under the Plan, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date, or (ii) the Distribution Date immediately following the date on which a Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim, each Holder of an Allowed Non-Tax Priority Claim shall be entitled to receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Non-Tax Priority Claim, Cash in an amount equal to its Allowed Non-Tax Priority Claim.

(c) Unsecured Claims

(i) Syms Class 3 Convenience Class – Impaired

Syms Class 3 consists of Syms Convenience Class Claims and is an impaired class of claims. A convenience class claim is any allowed unsecured claim against Syms in an amount which is less than \$10,000, or is a greater amount but the holder of such claim elects to reduce such claim to \$10,000 in order to be treated in this class. After all Allowed Senior Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash becomes available, each Holder of an Allowed Syms Convenience Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Syms Convenience Claim becomes an Allowed Syms Convenience Claim (1) one or more cash payments from 60% of the first available distributable Excess Cash until the Initial Majority Shareholder Payment is made in full from the other 40% of the first available distributable Excess Cash, and then cash payments aggregating not more than 100% of the Allowed amount of its Allowed Syms Convenience Claim, or (2) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Syms G Convenience Claim. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Syms Convenience Claims from and after October 1, 2015.

(ii) Filene's Class 3 Convenience Claims – Impaired

Filene's Class 3 consists of Filene's Convenience Class Claims and is an impaired class of claims. A convenience class claim is any allowed unsecured claim against Filene's in an amount which is less than \$10,000, or is a greater amount but the holder of such claim elects to reduce such claim to \$10,000 in order to be treated in this class. After all Allowed Senior Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash becomes available, each Holder of an Allowed Filene's Convenience Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's Convenience Claim becomes an Allowed Filene's Convenience Claim (1) one or more cash payments from 60% of the first available distributable Excess Cash until the Initial Majority Shareholder Payment is made in full from the other 40% of the first available distributable Excess Cash, and then cash payments aggregating not more than 100% of the Allowed amount of its Allowed Filene's Convenience Claim, or (2) such other less favorable treatment as to which such Holder and Filene's shall have agreed upon in writing, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's Convenience Claim. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Syms Convenience Claims from and after October 1, 2015.

(iii) Syms Class 4 General Unsecured Claims – Impaired

Syms Class 4 consists of Syms General Unsecured Claims. After all Allowed Senior Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash becomes available, each Holder of an Allowed Syms General Unsecured Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Syms General Unsecured Claim becomes an Allowed Syms General Unsecured Claim (1) one or more cash payments from 60% of the first available distributable Excess Cash until the Initial Majority Shareholder Payment is made in full from the other 40% of the first available distributable Excess Cash, and then cash payments aggregating not more than 100% of the Allowed amount of its Allowed Syms General Unsecured Claim, or (2) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Syms General Unsecured Claim. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Syms General Unsecured Claims from and after October 1, 2015. Interest shall be paid in kind and compounded annually.

The Plan Proponents, with the Creditors' Committee's consent, reserve the right to modify the Plan to include interest paid to the Syms Unsecured Creditors in an amount required under the Bankruptcy Code, if it is determined to be necessary under applicable confirmation standards.

For the avoidance of a doubt, Syms Class 4 does not include Syms Class 5 Syms Union Pension Plan Claims.

(iv) Filene's Class 4 A and B: Filene's General Unsecured (Short-Term) Claims – Impaired

Filene's Class 4 A and B consists of Filene's General Unsecured (Short-Term) Claims. Each Holder in Filene's Class 4 A and B shall receive the treatment specified in Class 4A unless the Holder elects to opt-out and receive the treatment specified in Class 4B.

Class 4A: After all Allowed Senior Claims, Allowed Convenience Claims, Allowed Syms Class 4 General Unsecured Claims and the Initial Majority Shareholder Payment have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash become available, each Holder of an Allowed Filene's General Unsecured (Short-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Short-Term) Claim becomes an Allowed Filene's General Unsecured (Short-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Short-Term) Claim and its Individual Filene's Creditor Claims (1) one or more cash payments from the Excess Cash aggregating not more than 100% of the Allowed amount of its Allowed Filene's General Unsecured (Short-Term) Claim, or (2) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Filene's General Unsecured (Short-Term) Claims from and after October 1, 2015. Interest shall be paid in kind and compounded annually.

Class 4B: Holders of Filene's General Unsecured (Short-Term) Claims will have the option to indicate on their respective Ballots their refusal to grant the releases provided in Section XII.G. ("Opt-Out"), provided, however, such Holder of an Allowed Filene's General Unsecured (Short-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Short-Term) Claim becomes an Allowed Filene's General Unsecured (Short-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Short-Term) Claim, a payment equal to a Pro Rata distribution to Holders of Allowed Filene's General Unsecured (Short-Term) Claims from the Filene's General Unsecured Creditor Liquidation Value, and retention of any Claims of the Holder against Syms to the extent timely asserted and subject to any defenses or counterclaims of Syms.

For the avoidance of a doubt, Filene's Class 4 A and B does not include Filene's Class 6 Filene's Union Pension Plan Claims.

(v) Filene's Class 5 A and B: Filene's General Unsecured  
(Long-Term) Claims – Impaired

Filene's Class 5 A and B consists of Filene's General Unsecured (Long-Term) Claims. Each Holder in Filene's Class 5 A and B shall receive the treatment specified in Class 5A unless the Holder elects to opt-out and receive the treatment specified in Class 5B.

Class 5A: After all Allowed Senior Claims, Allowed Convenience Claims, Allowed Syms Class 4 General Unsecured Claims, the Initial Majority Shareholder Payment and Allowed Filene's Class 4 A and B General Unsecured (Short-Term) Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash become available, each Holder of an Allowed Filene's General Unsecured (Long-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Long-Term) Claim becomes an Allowed Filene's General Unsecured (Long-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Long-Term) Claim and its Individual Filene's Creditor Claims (1) one or more cash payments from the Excess Cash aggregating not more than 75% of the Allowed amount of its Allowed Filene's General Unsecured (Long-Term) Claim, or (2) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan

Distribution to Holders of Allowed Filene's General Unsecured (Long-Term) Claims from and after October 1, 2015. Interest shall be paid in kind and compounded annually.

Class 5B: Holders of Filene's General Unsecured (Long-Term) Claims will have the ability to Opt-Out, provided, however, such Holder of an Allowed Filene's General Unsecured (Long-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Long-Term) Claim becomes an Allowed Filene's General Unsecured (Long-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Long-Term) Claim, a payment equal to a Pro Rata distribution to Holders of Allowed Filene's General Unsecured (Long-Term) Claims from the Filene's General Unsecured Creditor Liquidation Value, and retention of any Claims of the Holder against Syms to the extent timely asserted and subject to any defenses or counterclaims of Syms.

For the avoidance of a doubt, Filene's Class 5 A and B does not include Filene's Class 6 Filene's Union Pension Plan Claims.

If there has not been a General Unsecured Claim Satisfaction by October 1, 2016, then, effective on such date, (A) the terms of the two Equity Committee Directors then in office who are youngest in age shall automatically terminate, the term of the Independent Director shall automatically terminate, and the persons formerly holding such directorships shall cease to be directors, all without the need for any action by the Board of Directors or the stockholders of the Corporation, (B) immediately following such termination of directorships and the resultant automatic reduction in the size of the Board of Directors to two (2) directors (the one Equity Committee Director and the Series A Director), the size of the Board of Directors shall automatically be increased so that the Board of Directors is comprised of a total of nine (9) authorized directorships with the seven (7) directorships created thereby to be filled (and thereby elected) solely by the Trustee of the Golden Preferred Trust, voting as a separate class to the exclusion of the holders of Common Stock and any other Preferred Stock. Thereafter, upon the occurrence of a General Unsecured Claim Satisfaction after October 1, 2016, Reorganized Syms shall immediately redeem the Series A Preferred Stock, the terms of all directors elected by the Trustee of the Golden Preferred Trust shall automatically terminate, the persons holding such directorships immediately prior to such termination shall cease to be directors and the size of the Board of Directors shall be automatically reduced to one (1) authorized directorship. Subject to the rights of the Majority Shareholder described below, following the redemption of the Series A Preferred Stock (whether before or after October 1, 2016), (a) all directors shall be elected exclusively by the holders of Common Stock, and (b) the total number of directors comprising the Board of Directors may be fixed from time to time solely by resolution of the Board of Directors, and vacancies and newly created directorships may be filled solely by a majority of the directors then in office, even if less than a quorum.

(vi) Syms Class 5: Syms Union Pension Plan Claims –

Impaired

Syms Class 5 consists of Syms Union Pension Plan Claims. Pursuant to the Plan, the Holders of Syms Union Pension Plan Claims will receive quarterly Distributions from the Pension Plan Reserve for the Allowed amount of such Syms Union Pension Plan Claims, as set forth in Article VII.G.3. below, in accordance with Syms' contractual or legal obligations under the Union Pension Plans and the settlement of any Claims under the Plan.

(vii) Filene's Class 6: Filene's Union Pension Plan Claims – Impaired

Filene's Class 6 consists of Filene's Union Pension Plan Claims. Pursuant to the Plan, the Holders of Filene's Union Pension Plan Claims will receive quarterly Distributions from the Pension Plan Reserve for the Allowed amount of such Pension Plan Claims, as set forth in Article VII.G.3. below, in accordance with Syms' contractual or legal obligations under the Union Pension Plans and the settlement of any Claims under the Plan.

(viii) Syms Class 6 Intercompany Claims – Impaired

Syms Class 6 consists of Intercompany Claims against Syms and is an impaired class of claims. Syms Intercompany Claims include but are limited to claims by a Debtor against Syms which claims are reflected on the books and records of such Debtor, are derivative claims asserted by or on behalf of such Debtor, or are asserted by a Debtor on account of a guarantee. Pursuant to the Plan Settlement, the Holders of Syms Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Syms Intercompany Claims shall be deemed offset, cancelled and extinguished.

(ix) Filene's Class 7 Intercompany Claims – Impaired

Filene's Class 7 consists of Filene's Intercompany Claims. Pursuant to the Plan Settlement, the Holders of Filene's Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Filene's Intercompany Claims shall be deemed cancelled and extinguished.

(d) Interests

(i) Syms Class 7 Interests – Impaired

Syms Class 7 consists of all Interests in Syms. All Interests in Syms are Allowed Interests and each Holder of an Interest in Syms, other than the Majority Shareholder, shall (A) retain its Interest, except as otherwise provided in the Plan, and (B) if the Holder is an Eligible Holder, shall receive Subscription Rights to participate in the Rights Offering on the terms and conditions of the Rights Offering Procedures; provided, however, that the Majority Shareholder shall not receive any Subscription Rights in the Rights Offering.

(ii) Filene's Class 8 Interests – Unimpaired

Filene's Class 8 consists of all equity interests in Filene's. Syms is the only holder of Filene's Class 8 interests. On the Effective Date, each Holder of Interests in Filene's shall retain its Interests.

3. Special Provision Regarding Unimpaired Claims

Except as otherwise provided in the Plan, the Confirmation Order, any other order of the Court, or any document or agreement enforceable pursuant to the terms of the Plan, nothing shall affect the



rights and defenses, both legal and equitable, of the Debtors with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupment against Unimpaired Claims.

#### 4. Allowed Claims

Notwithstanding any provision in the Plan to the contrary, Distributions shall be made only to Holders of Allowed Claims. No Holder of a Disputed Claim shall receive any Distribution on account thereof until (and then only to the extent that) its Disputed Claim becomes an Allowed Claim. The Debtors may, in their discretion, withhold Distributions otherwise due hereunder to any Claimholder until the Claims Objection Deadline to enable a timely objection thereto to be filed. Any Holder of a Claim that becomes an Allowed Claim after the Effective Date will receive its Distribution in accordance with the terms and provisions of the Plan.

#### 5. Pension Plan Obligations

Following confirmation of the Plan, the Debtors shall maintain the Syms Pension Plan and make all contributions required under applicable minimum funding rules: provided, however, that the Debtors may terminate the Syms Pension Plan from and after January 1, 2017. Prior to January 1, 2017, the Reorganized Company shall not accelerate the Distributions to Holders of Allowed Claims in Syms Class 5 and Filene's Class 6 as provided in the Plan. In the event that the Debtors terminate the Pension Plan, the Debtors intend that any such termination shall be a standard termination pursuant to Section 4041(c) of the Employer Retirement Income Security Act of 1974, as amended.

No provision of, or proceeding within, the Debtors' bankruptcy proceedings, Confirmation Order or Plan shall in any way be construed to discharge, release, limit, or relieve the Debtors or any other party, in any capacity, from any liability or responsibility with respect to the Syms Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Syms Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility, if any, by any provision of, or proceeding within, the Debtors' bankruptcy proceedings, Confirmation Order or Plan; provided, however, that nothing contained in the Plan shall be deemed to constitute a waiver of any rights or protections that the Debtors may have under 11 U.S.C. section 362. Any and all obligations under the Syms Pension Plan shall be made by Reorganized Syms from the Pension Reserve.

#### 6. Special Provisions Regarding Insured Claims

Distributions under the Plan to each Holder of an Insured Claim shall be in accordance with the treatment provided under the Plan for Syms General Unsecured Claims and Filene's General Unsecured (Short-Term) Claims; provided, however, that the amount of any such Claim shall be determined as follows:

- (a) to the extent a Holder has an Allowed Insured Claim, all or a portion of which is within the applicable deductible or self-insured retention under the relevant insurance policy of the Debtors, then such amount shall be paid following the allowance of the Allowed Insured Claim, in the ordinary course of the Debtor's business and consistent with the Debtor's insurance policies and past practices;

(b) to the extent a Holder has an Allowed Insured Claim, a portion of which exceeds the applicable deductible or self-insured retention under the relevant insurance policy of the Debtors, then the amount of such Allowed Insured Claim that (i) exceeds the applicable deductible or self-insured retention but (ii) is less than or equal to the limits of coverage under the relevant insurance policy of the Debtors (the "Insurer Covered Amount") shall not be Allowed as a Syms General Unsecured Claim or a Filene's General Unsecured (Short-Term) Claim; and

(c) to the extent a Holder has an Allowed Insured Claim, a portion of which exceeds the limits of coverage under the relevant insurance policy of the Debtors, then such Holder shall have an Allowed Syms General Unsecured Claim or Allowed Filene's General Unsecured (Short-Term) Claim in the amount by which such Allowed Insured Claim exceeds the limits of coverage under the Debtors' relevant insurance policy;

provided, further, that:

(d) the Insurer Covered Amount shall not be recoverable from the Debtors, and shall only be recoverable from the applicable insurer; and

(e) an Allowed Insured Claim shall not be valid or enforceable against the Debtors' insurers unless and until, among other things, the applicable deductible or self-insured retention has been satisfied in accordance with subsection (a) above and the underlying insurance policy or policies.

Nothing in this section shall constitute a waiver of any causes of action the Debtors or the Reorganized Company may hold against any Person, including the Debtors' or the Reorganized Company's insurance carriers, or a waiver of any rights, claims or defenses the insurers may have. Nothing in this section is intended to, shall, or shall be deemed to preclude any holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any distribution such holder may receive under the Plan or to preclude any insurer from contesting or asserting defenses to the claims of such holders. The Debtors and the Reorganized Company do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled and the insurers expressly reserve their rights to contest or assert defenses to any such assertion by the Debtors or the Reorganized Company. Nothing in the Disclosure Statement, Plan or Confirmation Order shall be construed as, or is, a determination as to coverage in connection with any Insured Claim under any applicable insurance policy.

## 7. Special Provisions Regarding Workers' Compensation Claims and Obligations

As of the Effective Date, the Debtors and the Reorganized Company shall continue to honor in the ordinary course of business their obligations under the terms and conditions of (1) all applicable workers' compensation laws in states in which the Debtors and the Reorganized Company operate and (2) the Debtors' and the Reorganized Company's written contracts, agreements, policies, programs and plans for workers' compensation and workers' compensation insurance; provided, however, that nothing in the Plan shall limit, diminish or otherwise alter the Debtors' or Reorganized Company's defenses, causes of action or other rights under applicable non-bankruptcy law with respect to any such contracts, agreements, policies, programs and plans; provided, further, that nothing in the Plan shall be deemed to impose any obligations on the Debtors or the Reorganized Company in addition to those arising under applicable state law.

All Proofs of Claim on account of workers' compensation shall be deemed withdrawn automatically and without any further notice to or action, order or approval of the Bankruptcy Court.

**D. Acceptance or Rejection of the Plan**

1. Impaired Classes Entitled to Vote

Only Holders of Syms Class 3 Syms Convenience Claims, Syms Class 4 Syms General Unsecured Claims, Syms Class 5 Syms Union Pension Claims, Syms Class 7 Syms Interests, Filene's Class 3 Filene's Convenience Claims, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claims, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claims, and Filene's Class 6 Filene's Union Pension Claims are entitled to vote to accept or reject the Plan.

2. Acceptance by an Impaired Class

In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), (i) an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan and (ii) an Impaired Class of Interests shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds of the Allowed Interests in such Class that have timely and properly voted to accept or reject the Plan.

3. Presumed Acceptances/Rejections

Syms Classes 1 and 2 and Filene's Classes 1, 2, and 8 are Unimpaired by the Plan. Under Bankruptcy Code section 1126(f), Holders of Claims in such Classes are conclusively presumed to accept the Plan, and the votes of such Holders will not be solicited. Under Bankruptcy Code section 1126(g), Holders of Syms Class 6 Claims and Holders of Filene's Class 7 Claims are not entitled to receive any recovery under the Plan but have proposed the Plan and therefore shall be deemed to have accepted the Plan.

**E. Corporate Action**

1. Continued Corporate Existence of Reorganized Syms and Reorganized Filene's

Subject to the transactions contemplated by the Plan, Reorganized Syms shall continue to exist after the Effective Date as a separate entity, with all the powers of a corporation under applicable law and Reorganized Filene's shall continue to exist as a wholly owned LLC subsidiary of Reorganized Syms for the principal purpose of exploring the sale or the joint venture opportunities with respect to Filene's intellectual property. On and after the Effective Date, the Reorganized Company may operate its businesses and may use, acquire and dispose of property and compromise or settle any Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Reorganized Syms shall be reorganized and reincorporated as a Delaware corporation as of the Effective Date pursuant to its certificate of incorporation and bylaws or other organizational documents as set forth

in Plan Exhibit C, without prejudice to any right to terminate such existence (whether by merger, dissolution or otherwise) under applicable law after the Effective Date, provided that without the consent of the Trustee of the Golden Preferred Trust, Reorganized Syms shall not merge or consolidate prior to such time as the General Unsecured Claim satisfaction has occurred. Among other things, Reorganized Syms' certificate of incorporation shall comply with section 1123(a)(6) of the Bankruptcy Code.

## 2. Governance and Management of the Reorganized Company

The Reorganized Syms Board of Directors shall be comprised of five (5) members as of the Effective Date. Three (3) Equity Committee Directors shall be appointed by the Equity Committee as of the Effective Date, of which two (2) of the three (3) shall be designated by the Backstop Parties if there are Unsubscribed Shares in the Rights Offering. One (1) director shall be the Independent Director and one (1) director shall be the Creditors' Committee Director. The Board of Directors will be "staggered" with the Independent Director and the Creditors' Committee Director constituting "Class I" and the Equity Committee Directors constituting "Class II." All directors will have terms of two years, with the Class I directors first standing for election at the first annual meeting following the Effective Date, and the Class II directors first standing for election at the second annual meeting following the Effective Date. No actions of the Board of Directors shall be valid without the presence of at least four of the five directors, except if the Trustee of the Golden Preferred Trust or the Majority Shareholder come to control the election of a majority of the seats on the Board of Directors as provided in the Plan and in the Corporate Organization Documents of Reorganized Syms. In the event there is a vacancy of an Equity Committee Director seat, the remaining Equity Committee Directors shall have the right to appoint a replacement. In the event there is a vacancy of the Creditors' Committee Director seat, the Trustee of the Golden Preferred Trust shall have the right to appoint a replacement. In the event there is a vacancy of the Independent Director seat, the Creditors' Committee Director and the Equity Committee Directors will mutually agree on a replacement who meets the requirements to serve as the Independent Director. The Creditors' Committee Director and the Independent Director shall automatically cease to be directors when there has been a General Unsecured Claim Satisfaction. There are certain actions that may not be taken without the affirmative vote of the Trustee of the Golden Preferred Trust. For example, without the affirmative vote of the Trustee of the Golden Preferred Trust, Reorganized Syms shall not directly or indirectly amend, alter or repeal any provision of the Certificate of Incorporation or the Bylaws, and without the affirmative vote of the Majority Shareholder, Reorganized Syms shall not directly or indirectly amend, alter or repeal any provision of the Certificate of Incorporation or the Bylaws if such amendment would amend, alter or repeal any rights, privileges or terms applicable to the Preferred Stock held by the Majority Shareholder. In addition, certain actions require the affirmative vote of the Series A Director.

Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, the initial board of directors and the officers of the Reorganized Company will be identified in the Plan Supplement. The compensation to be disbursed to the directors, executives and officers serving as of the Effective Date also will be disclosed in the Budget.

## 3. Ms. Marcy Syms' Covenant Not to Interfere

In consideration of the benefits received by the Majority Shareholder under the Plan, Ms. Marcy Syms covenants not to and shall not directly or indirectly interfere with or participate in any disposition of property or operations of the Reorganized Company except as specifically provided for in the Plan. The Reorganized Company shall have the right to offset any damages incurred as a result of a breach of this covenant by Ms. Marcy Syms against the Subsequent Majority Shareholder Payment. Nothing in the Plan

contained shall be deemed to limit any rights of the Majority Shareholder to enforce any remedies available under the Plan, or at law or equity, in the event of a default or breach under the Plan.

#### 4. Merger of Advertising and Clothing into Reorganized Syms

On the Effective Date, or as soon thereafter as is practicable, Advertising and Clothing shall be merged with and into Reorganized Syms in accordance with applicable governing law. The officers, directors and managers of Advertising and Clothing shall be deemed to have resigned upon the Effective Date, or as soon thereafter as the Merger may be effected in accordance with applicable law; provided, however, that such resignations shall not relieve such officers, directors and managers from all remaining responsibilities with respect to such entities in accordance with applicable law. If necessary or appropriate, Reorganized Syms shall cause certificates of merger to be filed for Advertising and Clothing and shall take all other actions necessary or appropriate to effect the Merger under applicable law.

#### 5. No Further Corporate Action

Except as otherwise provided in the Plan, each of the matters provided for under the Plan involving the corporate or limited liability company structure of the Debtors or corporate or limited liability company action to be taken by or required of the Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan, and shall be authorized and approved in all respects without any requirement of further action by any Person, including but not limited to, Holders of Claims against or Interests in the Debtors, or directors or officers of the Debtors.

#### 6. Effectuating Documents; Further Transactions

The Debtors' officers and directors, as appropriate, shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

### **F. Vesting of Estate Assets**

On the Effective Date, and except as otherwise set forth in the Plan, all property of the Estates, including the Syms Owned Real Estate and all Causes of Action and Avoidance Actions identified on Exhibit A to the Plan, to be filed in the Plan Supplement, shall vest in Reorganized Syms free and clear of all Claims, Liens, charges, encumbrances, rights, and Interests of creditors and equity security holders; provided, however, that any and all rights to the "Syms" name shall be transferred to Ms. Marcy Syms on the Effective Date and Ms. Syms shall not sell or otherwise transfer, dispose of or use the "Syms" name for any commercial purpose including any transaction resulting in Ms. Syms receiving, directly or indirectly, any profit or any financial or other benefit, without the consent of, and the payment of all gross proceeds to, the Reorganized Company. Any documents necessary to effect this conditional transfer shall be included in the Plan Supplement. The Reorganized Company shall not use for commercial purposes any images of Ms. Marcy Syms or her family members, absent their express consent, and the Reorganized Company shall transfer to her for no consideration, taped commercials in the Debtors' possession which contain images of Ms. Marcy Syms or her family members, which commercials she agrees not to sell, transfer, dispose of or use for any commercial purposes. No transfer of the taped commercials shall

constitute the transfer of any rights or interests, or in any way limit the use of, intellectual property of the Debtors and the Reorganized Company. All other trade names, marks and intellectual property of the Debtors shall remain the property of the Reorganized Company and subject to the direction of the Reorganized Company's Board of Directors, other than Filene's Intellectual Property, which shall revert in Reorganized Filene's free and clear of all Claims, Liens, charges, encumbrances, rights, and interests of creditors and shall revert subject to the direction of the Reorganized Company's Board of Directors by virtue of the Reorganized Company acting as the sole member of Reorganized Filene's; provided, however, that 100% of any Cash realized or received by Filene's after the Effective Date shall constitute Net Proceeds to be used in accordance with the Plan by Reorganized Syms.

As of the Effective Date, the Reorganized Company shall operate its business and use, acquire and dispose of its property, including by operating, leasing and disposing of the Syms Owned Real Estate, without supervision of the Bankruptcy Court, and free of any restrictions imposed by the Bankruptcy Code or the Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order.

#### **G. Sources of Distributions and Uses of Net Proceeds of Syms Owned Real Estate**

Distributions in accordance with the terms of the Plan shall be made from, among other things, (i) Cash on hand as of the Effective Date, (ii) proceeds of the Rights Offering, (iii) Net Proceeds and/or (iv) proceeds from any post-Effective Date financings or capital raises as may be authorized by the Board of Directors of the Reorganized Company.

##### **1. Syms Owned Real Estate Disposition and Development**

If not sold prior to the Effective Date, with the consent of the Equity Committee and the Creditors' Committee, Reorganized Syms will seek to sell the 13 Near Term Properties promptly in a commercially reasonable manner. The three Medium Term Properties will be leased and sold over a longer period of time in an effort to maximize their values. The Trinity Property will be developed or sold over an extended period of time as determined by the Board of Directors.

If, by October 1, 2013, the Allowed Syms and Filene's Class 3 (Convenience Claims) and the Allowed Syms Unsecured Creditors in Syms Class 4 General Unsecured Claims are not paid in full, the Creditors' Committee Director, acting through a one director committee of the Board of Directors, shall control the sale, by auction or otherwise, of any unsold Near Term Properties which shall be done in a commercially reasonable manner consistent with maximizing the value of the Near Term Properties and the Net Proceeds of such sale shall fund the Operating Reserve to the extent not previously fully funded, and the excess shall be treated as Excess Cash for distribution under the Plan Waterfall.

If, by October 1, 2014, the Allowed Filene's Class 4 A and B General Unsecured (Short-Term) Claims and Allowed Filene's Class 5 A and B General Unsecured (Long-Term) Claims are not paid in full, the Creditors' Committee Director, acting through a one director committee of the Board of Directors, shall control the sale, by auction or otherwise, of any Medium Term Properties, and any Near Term Properties that remain unsold, which shall be done in a commercially reasonable manner consistent with maximizing the value of the Medium Term Properties and, if applicable, Near Term Properties, and the Net Proceeds of such sale shall fund the Operating Reserves to the extent not previously fully funded and the excess shall be treated as Excess Cash for distribution purposes under the Plan Waterfall; provided, however, that such October 1, 2014 deadline may be extended to April 1, 2015 if the Trustee of the Golden Preferred Trust consents or, even without the consent of the Trustee of the Golden Preferred

Trust, the Independent Director concludes that Reorganized Syms is proceeding in good faith to lease and sell the unsold Near Term Property(ies) and Medium Term Property(ies) such that additional time is appropriate because Reorganized Syms still has a reasonable prospect of leasing and selling the Near Term Property(ies) or Medium Term Property(ies) with any extension period.

#### **H. Cancellation of Existing Securities and Agreements**

Except as otherwise provided in the Plan, and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article V of the Plan, all promissory notes, share certificates, other instruments evidencing any Claims or Interests and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire Syms Class 7 Interests, shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule, and the obligations of the Debtors under the notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be discharged. The holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan. The foregoing shall not apply to a Claim or Interest that is Unimpaired under the Plan or to Syms Class 7 Interests.

#### **I. Issuance of New Shares; Redemption of Majority Shareholder Shares**

Pursuant to and in accordance with the Equity Commitment Agreement, the Accredited Investor Procedures, and the Rights Offering Procedures, on the Effective Date, Reorganized Syms shall (i) issue 10,040,160 new shares to the Eligible Holders and the Backstop Parties, collectively, and (ii) purchase 7,857,794 shares from the Majority Shareholder. Syms' purchase of the Majority Shareholder Interests shall occur substantially contemporaneously with the issuance of the new shares to the Eligible Holders and Backstop Parties.

The issuance of the Subscription Rights under the Rights Offering Procedures and related documents and the distribution thereof under the Plan, and the distribution and exercise of the Subscription Rights, shall be exempt from registration under applicable securities laws pursuant to section 1145(a) of the Bankruptcy Code and/or section 4(2) of the Securities Act, and/or any other applicable exemptions. All documents, agreements, and instruments entered into and delivered on or as of the Effective Date contemplated by or in furtherance of the Plan shall become, and the Equity Commitment Agreement shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any entity (other than as expressly required by such applicable agreement).

The Majority Shareholder shall receive the Initial Majority Shareholder Payment in the form of cash payments from 40% of the first available distributable Excess Cash until the Majority Shareholder has received payment in full of the Initial Majority Shareholder Payment. After there has been a General Unsecured Claim Satisfaction, the Subsequent Majority Shareholder Payment shall be paid from any remaining Excess Cash, in the total amount of \$7,065,907. Provided that there has been a General Unsecured Claim Satisfaction, the Subsequent Majority Shareholder Payment shall be made no later than October 1, 2016. If the Subsequent Majority Shareholder Payment is not made on or before October 1, 2016, the Majority Shareholder may pursue collection remedies and proceed to judgment, so long as

execution on the judgment is not effected until all Allowed General Unsecured Claims are paid in full. No distributions, dividends or redemptions shall be made by the Reorganized Company until after the Initial Majority Shareholder Payment and the Subsequent Majority Shareholder Payment are made in full. Ms. Syms and the Trusts shall be entitled to pursue any remedies available at law or equity as a creditor of the Reorganized Company, including for actions taken in violation of the terms of the Plan and the failure to pay distributions under the Plan to Ms. Syms and the Trusts in accordance with or by the deadlines set in the Plan. The Certificate of Incorporation shall provide a preferred series share, which share shall be pledged as security and held in escrow, entitling the Majority Shareholder to control a majority of the Board of Directors if the Initial Majority Shareholder Payment and the Subsequent Majority Shareholder Payment are not made by October 16, 2016, provided that and conditioned upon the General Unsecured Claim Satisfaction having occurred.

Reorganized Syms shall provide at least the information rights for the time period required, each as set forth in its Bylaws contained in Plan Exhibit C to permit a market maker to quote the Offered Shares and Syms Interests on the OTC Pink tier of the OTC Markets Group quotation service or an equivalent successor electronic quotation system that (a) displays quotes from broker-dealers for over-the-counter securities and (b) does not maintain regulatory filing requirements.

## **J. Capital Raising and Use of Cash Proceeds**

Following the Effective Date, the Reorganized Company may issue new debt or equity capital in accordance with applicable law, as and to the extent authorized by the Board of Directors of Reorganized Syms and consistent with the Plan.

The Reorganized Company shall be permitted to incur debt, grant liens and lease and sell all or any portion of any asset without any restrictions (except in connection with any transaction with any insider or affiliate of the Reorganized Company or any directors, which must be approved by the consent of the Board of Directors including the Creditors' Committee Director) other than:

(1) So long as Plan obligations are unpaid under the Plan Waterfall, and unless otherwise required to be used to fund the Operating Reserves, 100% of net cash proceeds from each transaction, including the incurrence of any debt, lien or other obligation (net of transaction expenses and, in the case of financings, reasonable interest reserves through a date no later than September 30, 2016) received by the Reorganized Company, shall be treated as Excess Cash and used to fund distributions under the Plan Waterfall.

(2) For the avoidance of doubt, with respect to the Trinity Property, the Reorganized Company shall have the right to (a) transfer the Trinity Property into a Trinity Joint Venture, (b) conduct a JV Interest Sale, and/or (c) authorize the Trinity Joint Venture to incur a Trinity Mortgage subject in each case to compliance with the following terms and conditions in the event that the creditors in Syms Classes 3 and 4 and Filene's Classes 3, 4, and 5, or Ms. Marcy Syms and the Trusts have not been paid their full Distributions under the Plan or would not be paid their full Distributions under the Plan following the Trinity Joint Venture, JV Interest Sale, or Trinity Mortgage:

(a) all proceeds realized from the JV Interest Sale (net of transaction related expenses) shall be distributed, unless the Trustee of the Golden Preferred Trust agrees otherwise, as follows: not less than 60% of the balance of net proceeds will be included as Excess Cash and shall be distributed in accordance with the



Plan Waterfall, and the remaining 40% or lesser amount of the balance of such net proceeds shall be invested in full in the Trinity Joint Venture;

(b) the funds received from any Trinity Mortgage shall be distributed, unless the Trustee of the Golden Preferred Trust agrees otherwise, as follows: first, the Trinity Carry Reserve Amount to the extent that an amount equal to the Trinity Carry Cost Reserve Amount was not distributed as Excess Cash from a JV Interest Sale, which funds shall become Excess Cash and shall be distributed in accordance with the Plan Waterfall; and thereafter the balance of borrowed funds shall remain in the Trinity Joint Venture and will be limited to be used for in pre-construction costs, direct development and construction costs, corporate overhead and carry costs for the Trinity Property, and taxes, licenses and fees for the Trinity Property, as applicable, to be determined at the Board of Directors discretion;

(c) in the event of a change in control of the majority of the Board of Directors of the Reorganized Company to either the unsecured creditors or Marcy Syms and the Trusts pursuant to the terms of the Plan, the Reorganized Company's interest in the Trinity Joint Venture (the "Company's Trinity Interest") shall be freely assignable to (i) accredited institutional investors which could include a Public Real Estate Company, (ii) privately-owned companies and individuals who are experienced real estate investors, in each case in good credit standing and with sufficient liquidity and experience to perform its duties under the partnership or joint venture agreement; provided, however, that the Reorganized Company shall have the right to agree with its joint venture partner in the Trinity Joint Venture to provide such joint venture partner thirty (30) days written notice (the "Assignment Notice Period") of a bona fide purchase offer for the Company's Trinity Interest that is acceptable to the Reorganized Company, and on or prior to the expiration of the Assignment Notice Period, such joint venture partner in the Trinity Joint Venture shall provide notice of its election to exercise a right of first refusal to purchase the Company's Trinity Interest on terms that are the same or not less favorable to the Reorganized Company as those terms set forth in the Purchase Offer. The Confirmation Order shall provide that the Bankruptcy Court shall retain jurisdiction over any sale of the Company's Trinity Interest;

(d) the interest may be otherwise assigned subject to the approval of the Venture's General Partner, which shall not be unreasonably withheld;

(e) a change in control to either unsecured creditors or Marcy Syms and the Trusts of the Reorganized Company pursuant to the terms of the Plan shall not constitute a default under the terms of the Trinity Joint Venture or the Trinity Mortgage; and

(f) prior to a change in control of the majority of the Board of Directors of the Reorganized Company to either the unsecured creditors or Marcy Syms and the Trusts pursuant to the terms of the Plan, the Reorganized Company may only sell or otherwise dispose of a majority interest in the Trinity Joint Venture to a non-insider if (x) there has been (or will be as a result of such sale) a General Unsecured Claim Satisfaction and to the extent a General Unsecured Claim

Satisfaction has occurred, Marcy Syms and the Trusts have received full payment of their Plan Distributions, or (y) the Trustee of the Golden Preferred Trust or to the extent the General Unsecured Claim Satisfaction has occurred, Marcy Syms consents.

**K. Funding of Reserves**

**(a) Professional Fee Reserve**

On or before the Effective Date, the Debtors shall fund the Professional Fee Reserve in the amount of the aggregate Professional Fee Estimate. The Debtors shall (i) segregate and shall not commingle the Cash held therein and (ii) pay each Allowed Professional Fee Claim from the Professional Fee Reserve upon entry of a Final Order allowing such Claim. In the event that Cash remains in the Professional Fee Reserve after payment of all Allowed Professional Fee Claims, such residual Cash shall be utilized to make distributions to Holders of Claims and Interests as provided for in the Plan.

**(b) Administrative Claims Reserve**

On or before the Effective Date, the Debtors shall fund the Administrative Claims Reserve in an amount equal to an estimate of all Allowed Administrative Claims. The Debtors shall (i) segregate and shall not commingle the Cash held therein and (ii) pay each Allowed Administrative Claim, upon entry of a Final Order allowing such Claim or on such other date provided in the Plan. In the event that Cash remains in the Administrative Claims Reserve after payment of all Allowed Administrative Claims, such residual Cash shall be used to make distributions to Holders of Claims and Interests as provided for in the Plan.

**(c) Operating Reserves**

The Equity Committee has prepared the Budget attached to the Plan as Exhibit F and provided the Budget to the Creditors' Committee. The only limitation such Budget shall have on the Board of Directors shall be the Operating Reserves total in the aggregate and by Sub-Category Expense Reserve. The Board of Directors shall not be bound or limited by any line item references within individual Sub-Category Expense Reserves; provided, however, that (a) no funds in the Operating Reserves may be used in connection with any insider or affiliate transaction absent the consent of the Board of Directors, including the Creditors' Committee Director (b) any fees or other compensation payable to Directors as reflected in the Budget shall not be increased absent the consent of the Board of Directors and of the Trustee of the Golden Preferred Trust, and (c) absent the consent of the Trustee of the Golden Preferred Trust, the aggregate cap for any Sub-Category Expense Reserve may not be increased and the amounts reserved in each of the Sub-Category Expense Reserves may not be used to fund any expenses designated to be paid from another Sub-Category Expense Reserve, except that, (i) by majority vote of the Board of Directors, amounts in the Corporate Overhead Reserve may be reallocated to the Carry Cost/Repair/TI Reserve and (ii) by majority vote of the Board of Directors, and with the consent of the Independent Director, amounts in the Corporate Overhead Reserve may be reallocated to the Trinity Carry Reserve.

The Budget shall be funded utilizing agreed upon cash reserve amounts to fund working capital and operations of the Reorganized Company for the two year period commencing on the Effective Date (projected to be October 1, 2012 to September 30, 2014) with the Discretionary Reserve Fund and the Emergency Reserve Fund and the following four Sub-Category Expense Reserves: (w) a Corporate

Overhead Reserve of \$5.0 million in the aggregate, (x) a \$3,829,088 Pension Fund Reserve (of which \$2.0 million shall fund the minimum annual payments due under the Syms Pension Plan and \$1,829,088 shall fund the minimum quarterly payments due to Local 1102 for the allowed amount of the Claims for pension withdrawal liability), (y) a Carry Cost/Repair/TI Reserve of \$9.0 million in the aggregate, and (z) a Trinity Carry Reserve of \$3.0 million in the aggregate.

(1) The Operating Reserves shall be funded for the two year period commencing on the Effective Date as follows: (m) \$5 million in cash on the Effective Date to the extent available after payment of Exit Costs and, to be allocated to each Sub-Category Expense Reserve in an amount to be determined by the Board of Directors, and (n) from the future proceeds realized by the Reorganized Company in the one year following the Effective Date from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash; provided however, that the amount allocated in the second year of the Budget for the Corporate Overhead Reserve and the Pension Reserve shall be funded in the last quarter of the first year, unless the Board of Directors determines that the delay of such funding would provide the Reorganized Company with inadequate liquidity to operate in accordance with the Budget and maximizing value.

(2) For the third year period after the Effective Date (projected to be October 1, 2014 to September 30, 2015), the aggregate caps for each Sub-Category Expense Reserve shall be increased to cover projected expenses to be incurred during that year in amounts not to exceed the following, less any remaining unused funds in such Sub-Category Expense Reserves as of the end of the two year period: (w) \$1,250,000 for the Corporate Overhead Reserve, (x) the projected amount of the minimum annual payment due under the Syms Pension Plan during such third year for the Pension Reserve and a \$812,928 reserve to fund the minimum quarterly payments to be paid to Local 1102 for the allowed amount of the Claims for pension withdrawal liability during such third year, and (y) the amount of Carry Costs projected to be incurred, plus 20%, of the Carry Costs projected for any unsold Near Term Properties or Medium Term Properties for the Carry Cost/Repair/TI Reserve.

(3) For the fourth year period after the Effective Date (projected to be October 1, 2015 to September 30, 2016), the aggregate caps for each Sub-Category Expense Reserve shall be increased to cover projected expenses to be incurred during that year in amounts not to exceed the following, less any remaining unused funds in such Sub-Category Expense Reserves as of the end of the two year period: (w) \$750,000 for the Corporate Overhead Reserve, (x) the projected amount of the minimum annual payment due under the Syms Pension Plan during such fourth year for the Pension Reserve and \$812,928 to fund the minimum quarterly payments to be paid to Local 1102 for the allowed amount of the Claims for pension withdrawal liability during such fourth year, and (y) the amount of Carry Costs projected to be incurred, plus 20% of the Carry Costs projected, for any unsold Near Term Properties or Medium Term Properties for the Carry Cost/Repair/TI Reserve.

(4) On the two year anniversary of the Effective Date, the Board of Directors shall review and revise the Sub-Category Reserve amounts set forth above for the third and fourth year periods after the Plan Effective Date, provided that any increase in the aggregate amount of the cap increases for the Sub-Category Reserves shall not exceed the amounts set forth above in Section VII.G.3(2) and (3) without the consent of the Trustee of the Golden Preferred Trust, except that, (i) by majority vote of the Board of Directors, amounts in the Corporate Overhead Reserve may be reallocated to the Carry Cost/Repair/TI Reserve and (ii) by majority vote of the Board, and with the consent of the Independent Director, amounts in the Corporate Overhead Reserve may be reallocated to the Trinity Carry Reserve. At the end of the two year period commencing on the Effective Date, the Operating Reserves for the third and fourth years periods after the Effective Date shall be funded from proceeds realized by the

Reorganized Company from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash.

(5) At the end of the two year period commencing on the Effective Date, the sum of \$500,000, to be funded from Net Proceeds realized by the Reorganized Company from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash, shall be set aside in the Emergency Fund Reserve to be used, by the Reorganized Company with the consent of the Creditors' Committee Director, for operating and other expenses. The Creditors' Committee Director may at any time reduce the amount of funds in the Emergency Fund Reserve and make such reduced funds Excess Cash. If distributing the Emergency Fund Reserve would effect a General Unsecured Claim Satisfaction, the amounts necessary for the Emergency Fund Reserve shall instead be treated as Excess Cash and used for Plan distributions.

(6) At the end of the two year period commencing on the Plan Effective Date, the sum of \$500,000, to be funded from proceeds realized by the Reorganized Company from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash (as defined below), shall be set aside in the Discretionary Fund Reserve that shall be allocated and used for operating and other expenses of Reorganized Syms as determined by a majority vote of the Board, and with the consent of the Independent Director.

(7) After the Reorganized Company has sold all of the Near Term Properties and Medium Term Properties, any unused funds remaining in the Carry Cost/Repair/TI Reserve shall become Excess Cash and shall be distributed in accordance with the Plan Waterfall.

#### **L. Exemption From Certain Transfer Taxes**

Pursuant to Bankruptcy Code section 1146(a), any transfers from any of the Debtors to any Person, including any transfers of Syms Owned Real Estate after Confirmation in the United States, shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### **M. Preservation and Settlement of Certain Causes of Action and Avoidance Actions**

##### **1. Preservation of Certain Causes of Action and Avoidance Actions.**

In accordance with Bankruptcy Code section 1123(b)(3), except as agreed to by the Plan Proponents and the Creditors' Committee and identified on Exhibit A to the Plan, to be included with the Plan Supplement, all Causes of Action and Avoidance Actions shall be released as of the Effective Date. The Debtors shall retain all of the Causes of Action and Avoidance Actions identified on Plan Exhibit A to be filed in the Plan Supplement and all such Causes of Action and Avoidance Actions shall vest in the Reorganized Company on the Effective Date. The Reorganized Company may investigate, enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Causes of Action and Avoidance Actions identified in Plan Exhibit A. The failure of the Debtors to list a claim, right, cause of action, suit or proceeding in Plan Exhibit A shall constitute a waiver and release by the Debtors and their Estates of such claim, right of action, suit or proceeding.

2. Settlement of Certain Causes of Action and Avoidance Actions.

At any time after the Confirmation Date but before the Effective Date, notwithstanding anything in the Plan to the contrary, the Reorganized Company may settle some or all of the Causes of Action and Avoidance Actions identified in Plan Exhibit A pursuant to Bankruptcy Rule 9019 with the approval of the Court and upon notice to the Creditors' Committee and the Equity Committee; after the Effective Date, the Reorganized Company, will determine whether to bring, settle, release, compromise, enforce or abandon such rights (or decline to do any of the foregoing).

**N. Effectuating Documents; Further Transactions**

The Debtors shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, that are not inconsistent with the other terms and conditions of the Plan.

**O. Provisions Governing Distributions**

1. Distributions for Claims Allowed as of the Effective Date

Except as otherwise set forth in the Plan, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as Cash becomes available therefore and Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of the Plan, and on such day as selected by the Reorganized Company; provided, however, that the Excess Cash shall be used to make Distributions, in accordance with the Plan Waterfall, on not less than a quarterly basis if the distributable amount of Excess Cash is no less than the Minimum Distribution Threshold or is the last distribution to a Class. Once there has been a General Unsecured Claim Satisfaction, Excess Cash shall be distributed to the Majority Shareholder in satisfaction of the Subsequent Majority Shareholder Payment not less than a quarterly basis if the distributable amount of Excess Cash is no less than \$10,000.

Notwithstanding any other provision of the Plan to the contrary, no Distribution shall be made on account of any Allowed Claim or portion thereof that has been satisfied after the Petition Date pursuant to an order of the Bankruptcy Court.

2. Reorganized Syms as Disbursing Agent

Subject to the terms and provisions of the Plan, Reorganized Syms shall make all Distributions required under the Plan with respect to the Debtors' Estates, provided, however, that Reorganized Syms may employ a third-party disbursing agent, in the discretion of the Board of Directors, upon the filing of a notice with the Court. Reorganized Syms shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court or required by the Bankruptcy Code or the Bankruptcy Rules. Reorganized Syms shall be authorized and directed to rely upon the Debtors' books and records and the Debtors' representatives and professionals in determining Claims not entitled to a Distribution under the Plan in accordance with the terms of the Plan.

### 3. Delivery of Distributions and Undeliverable or Unclaimed Distributions

#### (a) Delivery of Distributions in General

Distributions to Holders of Allowed Claims shall be made by Reorganized Syms (a) at the addresses set forth on the Proofs of Claim filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is filed or if the Debtors have been notified of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Debtors after the date of any related Proof of Claim, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Debtors have not received a written notice of a change of address, (d) at the addresses set forth in the other records of the Debtors at the time of the Distribution or (e) in the case of the Holder of a Claim that is governed by an agreement and is administered by an agent or servicer, at the addresses contained in the official records of such agent or servicer. In making Distributions under the Plan, Reorganized Syms may rely upon the accuracy of the claims register maintained by the Claims Agent in the Chapter 11 Cases, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

#### (b) Undeliverable and Unclaimed Distributions

If the Distribution to any Holder of an Allowed Claim or Allowed Interest is returned to Reorganized Syms as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such Holder unless and until Reorganized Syms is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest. Amounts in respect of undeliverable Distributions shall be returned to Reorganized Syms until such Distributions are claimed. Reorganized Syms shall segregate and, deposit in a segregated account (the "Unclaimed Distribution Reserve") undeliverable and unclaimed Distributions for the benefit of all such similarly situated Persons or Governmental Units until such time as a Distribution becomes deliverable or is claimed.

Any Holder of an Allowed Claim or Allowed Interest that does not assert a Claim or Interest pursuant to the Plan for an undeliverable or unclaimed Distribution within six (6) months after the last Distribution Date shall be deemed to have forfeited its Claim or Interest for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim or Interest for an undeliverable or unclaimed Distribution against the Debtors and their Estates, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its and their property. In such cases, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall be distributed in accordance with the terms of the Plan. Nothing contained in the Plan shall require Reorganized Syms to attempt to locate any Holder of an Allowed Claim or Allowed Interest.

### 4. Prepayment

Except as otherwise provided in the Plan or the Confirmation Order, Reorganized Syms shall have the right to prepay, without penalty, all or any portion of an Allowed Claim.

## 5. Means of Cash Payment

Cash payments made pursuant to the Plan shall be in U.S. dollars and shall be made at the option and in the sole discretion of Reorganized Syms by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by Reorganized Syms. In the case of foreign creditors, Cash payments may be made, at the option of Reorganized Syms, in such funds and by such means as are necessary or customary in a particular jurisdiction.

## 6. Interest on Disputed Claims

Unless otherwise specifically provided for in the Plan or the Confirmation Order, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date such Disputed Claim becomes an Allowed Claim; provided, however, that interest shall accrue at the rate of 7.0% per annum on any unpaid Disputed Claim that becomes an Allowed Claim from and after October 1, 2015 until Distribution is made on such Claim.

## 7. Withholding and Reporting Requirements

In accordance with Bankruptcy Code section 346 and in connection with the Plan and all Distributions thereunder, Reorganized Syms shall, to the extent applicable, comply with all withholding and reporting requirements imposed by any U.S. federal, state, local, or non-U.S. taxing authority. Reorganized Syms shall be authorized to take any and all actions necessary and appropriate to comply with such requirements. All Distributions hereunder may be subject to the withholding and reporting requirements. As a condition of making any Distribution under the Plan, Reorganized Syms may require the Holder of an Allowed Claim or Allowed Interest to provide such Holder's taxpayer identification number, and such other information, certification, or forms as necessary to comply with applicable tax reporting and withholding laws. Notwithstanding any other provision of the Plan, each Entity receiving a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution. Reorganized Syms may move to disallow an otherwise Allowed Claim or Allowed Interest entitled to a Distribution under the Plan if the Holder of such Allowed Claim or Allowed Interest, after reasonable notice, does not provide Reorganized Syms with such Holder's taxpayer identification number, and such other information, certification, or forms as necessary to comply with applicable tax reporting and withholding laws.

## 8. Setoffs

### (a) By Reorganized Syms

Except as otherwise set forth in the Plan, Reorganized Syms may, pursuant to Bankruptcy Code section 553, 558 or any other applicable law, but shall not be required to, set off against any Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, Claims of any nature whatsoever that the Debtors may have against the Holder of such Claim and that has not been released under the Plan or otherwise; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such Claim that the Debtors may have against such Holder.

(b) By Non-Debtors

Unless otherwise authorized by a Final Order, any Holder of a Claim must assert any setoff rights against a Claim by a Debtor against such Entity by timely filing (i) a Proof of Claim asserting such right of setoff, (ii) an appropriate motion on or before the Confirmation Date seeking authority to setoff, or (iii) an objection to Confirmation on or before the Confirmation Objection Deadline asserting, preserving or otherwise referencing the existence of such right of setoff, or will be deemed to have waived and be forever barred from asserting any right to setoff against a Claim by a Debtor; provided, however, that the right of any Debtor to object to the validity of any asserted right of setoff shall be preserved.

9. Procedure for Treating and Resolving Disputed, Contingent and/or Unliquidated Claims

(a) Objection Deadline; Prosecution of Objections

Except as set forth in the Plan with respect to Professional Fee Claims and Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims by the Claims Objection Deadline, as the same may be extended by the Bankruptcy Court. If an objection has not been filed to a Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated, and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the Bankruptcy Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those Entities that have requested notice in the Chapter 11 Cases, or to such Entities as the Bankruptcy Court shall order. From the Confirmation Date through the Claims Objection Deadline, Reorganized Syms shall have the exclusive authority to file objections, settle, compromise, withdraw, or litigate to judgment objections to Claims.

(b) No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtors, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter. On each Distribution Date, Reorganized Syms will make Distributions (a) on account of any Disputed Claim that has become an Allowed Claim since the preceding Distribution Date and (b) on account of previously Allowed Claims, from the applicable reserves, of property that would have been distributed to such Claimholders on the dates Distributions previously were made to Holders of Allowed Claims had the Disputed Claims that have become Allowed Claims been Allowed on such dates.

(c) *De Minimis* Distributions

Reorganized Syms shall not have any obligation to make a Distribution on account of an Allowed Claim from any reserve or otherwise if (a) the aggregate amount of all Distributions authorized to be made from such reserve or otherwise on the Distribution Date in question (other than the final



Distribution Date) is or has a value less than the Minimum Distribution Threshold, or (b) if the amount to be distributed to the specific Holder of the Allowed Claim on the particular Distribution Date does not constitute a final Distribution to such Holder and such Distribution has a value less than \$25.00. Reorganized Syms shall have no obligation to make any Distribution, whether final or not, unless and until the total amount of such Distribution to a specific Holder of an Allowed Claim is equal to or greater than \$25.00.

The foregoing limitations on "*De Minimis* Distributions" shall not apply to Distributions to be made to the Majority Shareholder.

(d) Claims Resolution and Compromise

As of the Effective Date, Reorganized Syms is authorized to compromise or settle all Claims, Disputed Claims, and Liens pursuant to Bankruptcy Rule 9019(b), and to execute necessary documents, including Lien releases (subject to the written consent of the party having such Lien) and stipulations of settlement or release, without further order of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order.

10. Fractional Dollars

Any other provision of the Plan notwithstanding, Reorganized Syms shall not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

11. Allocation of Plan Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a Distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

12. Distribution Record Date

Reorganized Syms shall have no obligation to recognize the transfer of or sale of any participation in any Allowed Claim or Allowed Interest that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes in the Plan to recognize and distribute only to those Holders of Allowed Claims and Interests who are Holders, or participants therein, as of the close of business on the Distribution Record Date. Instead, Reorganized Syms shall be entitled to recognize and deal for all purposes under the Plan with only those record holders stated on the official claims register or other applicable records as of the close of business on the Distribution Record Date.

## **P. Treatment of Executory Contracts**

### **1. Rejected Contracts and Leases**

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan document, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 rejecting all prepetition executory contracts, including purchase orders, and unexpired leases to which any Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) previously shall have been assumed, assumed and assigned, or rejected by the Debtors, (b) previously shall have expired or terminated pursuant to its own terms before the Effective Date, (c) is the subject of a pending motion to assume or reject on the Confirmation Date, including but not limited to the Debtors' ground leases of property located in Fairfield, Connecticut and Secaucus, New Jersey, or (d) is identified in Exhibit B to the Plan as an insurance policy or insurance agreement of the Debtors; provided, however, that the Debtors may amend such Exhibit B at any time prior to the Confirmation Date; provided further, however, that listing an insurance agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder. Notwithstanding anything to the contrary in the Plan, the Confirmation Order or any other Plan document, the Syms Local 108 CBA and Syms Local 400 CBA and the Syms Pension Plan shall not be rejected by operation of the Confirmation Order.

### **2. Insurance Policies and Agreements**

Except as set forth in the Plan or the Confirmation Order, Insurance policies issued to, or insurance agreements entered into by, the Debtors prior to the Petition Date (including, without limitation, any policies covering directors' or officers' conduct) shall continue in effect after the Effective Date. To the extent that such insurance policies or agreements (including, without limitation, any policies covering directors' or officers' conduct) are considered to be executory contracts, then, notwithstanding anything to the contrary in the Plan, the Plan shall constitute a motion to assume or ratify such insurance policies and agreements, and, subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such assumption is in the best interests of each Debtor and its Estate. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed to by the parties thereto prior to the Effective Date, no payments shall be required to cure any defaults of the Debtors existing as of the Confirmation Date with respect to each such insurance policy or agreement. To the extent that the Bankruptcy Court determines otherwise as to any such insurance policy or agreement, the Debtors reserve the right to seek the rejection of such insurance policy or agreement or other available relief.

With respect to the agreement relating to a life insurance policy on Marcy Syms, issued by Massachusetts Life Insurance Company to Laben Lathan, Trustee of Trust UTD 5/20/99 (the "Split-Dollar Policy"), Syms and Reorganized Syms shall be released from any future obligation (whether to Marcy Syms, any third party or otherwise) to pay premiums and shall release any interest in the insurance policy in return for a credit of \$1,774,359 against the Initial Shareholder Payment to the Majority Shareholder under the Share Redemption Agreement (which is \$10,725,641, but which would have been \$12,500,000 absent this credit). The Plan Supplement shall include an amendment of the split dollar agreement and any other documents necessary to effect this settlement.

### 3. Indemnification Obligations

Notwithstanding Article IX.A. of the Plan, or any contract, instrument, release, or other agreement or document entered into in connection with the Plan, any and all Indemnification Obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law that has not been rejected under Bankruptcy Code section 365 pursuant to an order of the Bankruptcy Court or pursuant to the Plan, shall be deemed an executory contract that is assumed as of the Effective Date, and all Claims arising out of Indemnification Obligations shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed by the Reorganized Company pursuant to section 365 of the Bankruptcy Code. No reserve shall be established hereunder for such Indemnification Obligations.

By the date for filing of the Plan Supplement, the Directors and Officers of the Debtors shall provide the Equity Committee and the Creditors' Committee with a schedule of the potential claims of which they have actual knowledge and will represent that those are the only claims of which they have actual knowledge, and in the event that the Directors and Officers later assert indemnity for a claim which is not listed on the schedule but of which they had actual knowledge, they will be barred from asserting an indemnity obligation for such claim

Indemnification Obligations owed to any Professionals retained pursuant to sections 327 or 328 of the Bankruptcy Code and order of the Court, to the extent that such Indemnification Obligations relate to the period after the Petition Date, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code under the Plan.

### 4. Bar To Rejection Damages

If the rejection of an executory contract or unexpired lease pursuant to the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the applicable Debtor or its Estate, or their respective successors or properties unless a Proof of Claim is filed with the Claims Agent and served on the Debtors and counsel for the Debtors within thirty (30) days after service of a notice of occurrence of the Effective Date, unless another order of the Bankruptcy Court provides for an earlier date.

### 5. Assumed and Assigned Contracts and Leases

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan document entered into after the Petition Date or in connection with the Plan, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 assuming, as of the Effective Date, those agreements listed on Exhibit B to the Plan; provided, however, that the Debtors may amend such Exhibit at any time prior to the Confirmation Date; provided further, however, that listing an agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder.

## **Q. Confirmation and Consummation of the Plan**

### 1. Conditions to Confirmation

The following are conditions precedent to the occurrence of the Confirmation Date:

(a) The entry of a Final Order finding that the Disclosure Statement contains adequate information pursuant to Bankruptcy Code section 1125, which order shall be in form and substance reasonably acceptable to the Debtors, the Majority Shareholder, the Creditors' Committee, the Equity Committee, and the Non-Defaulting Backstop Parties;

(b) The proposed Confirmation Order shall be, in form and substance, reasonably acceptable to the Plan Proponents, the Majority Shareholder, the Creditors' Committee and the Non-Defaulting Backstop Parties;

(c) All provisions, terms and conditions of the Plan are approved in the Confirmation Order;

(d) A default has not occurred under the Equity Commitment Agreement that has not been cured and the Equity Commitment Agreement is in full force and effect; and

(e) The Corporate Organizational Documents shall be approved by the Confirmation Order.

For a more detailed description of the requirements for confirmation of the Plan, see Section X of this Disclosure Statement entitled, "Feasibility of the Plan and Best Interests of Creditors."

## 2. Conditions to the Effective Date

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing in accordance with Article X.C:

(a) The Confirmation Order shall have been entered and become a Final Order, shall be in form and substance acceptable to the Plan Proponents, the Majority Shareholder, the Creditors' Committee and the Non-Defaulting Backstop Parties and shall provide that the Debtors and the Backstop Parties are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with the Plan or effectuate, advance, or further the purposes thereof;

(b) All Plan Exhibits and documents filed as part of the Plan Supplement shall be in form and substance reasonably acceptable to the Plan Proponents, the Majority Shareholder, the Creditors' Committee and the Non-Defaulting Backstop Parties, and shall have been executed and delivered by all parties signatory thereto;

(c) The Debtors shall be authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, and the agreements or documents created in connection with the Plan;

(d) All other actions, documents, and agreements necessary to implement the Plan shall have been effected or executed and shall be in form and substance acceptable to the Plan Proponents;

(e) The Professional Fee Reserve, the Administrative Claims Reserve and the Operating Reserves shall have been funded to the extent required under the Plan and the Budget;

(f) All conditions to closing set forth in the Equity Commitment Agreement shall have been satisfied or duly waived in accordance with the terms of the Equity Commitment Agreement and the Equity Commitment Agreement shall be in full force and effect; and

(g) The Independent Director shall be mutually chosen by the Creditors' Committee and the Equity Committee and designated to the Board of Directors and the Creditors' Committee Director and the Trustee of the Golden Preferred Trust shall be designated by the Creditors' Committee and designated to the Board of Directors.

(h) The Effective Date shall occur no later than September 15, 2012.

### 3. Waiver of Conditions

Each of the conditions set forth in Articles X.A and X.B of the Plan may be waived in whole or in part by the Plan Proponents and with the consent of the Non-Defaulting Backstop Parties. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Plan Proponents regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

4. Consequences of Non-Occurrence of Effective Date

In the event that the Effective Date does not timely occur, the Plan Proponents reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that the Plan be null and void in all respects, and/or that any settlement of Claims provided for in the Plan be null and void. In the event that the Bankruptcy Court shall enter an order vacating the Confirmation Order, the time within which the Debtors may assume and assign, or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

5. Cram Down

The Plan Proponents request Confirmation under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code. The Debtors reserve the right to modify the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**R. Allowance and Payment of Certain Administrative Claims**

1. Professional Fee Claims

(a) Final Fee Applications

All Final Fee Applications must be filed no later than forty-five (45) days after the Effective Date. Objections, if any, to Final Fee Applications of such Professionals must be filed and served on the Debtors and their respective counsel, the Creditors' Committee and its counsel and the Equity Committee and its counsel, the requesting Professional and the Office of the U.S. Trustee no later than twenty (20) days from the date on which each such Final Fee Application is served and filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court, the allowed amounts of such Professional Fee Claims shall be determined by the Court.

(b) Employment of Professionals after the Effective Date

From and after the Effective Date, any requirement that professionals comply with Bankruptcy Code sections 327 through 331 or any order previously entered by the Bankruptcy Court in seeking retention or compensation for services rendered or expenses incurred after such date will terminate.

2. Substantial Contribution Compensation and Expenses Bar Date

Any Person who wishes to make a Substantial Contribution Claim based on facts or circumstances arising after the Petition Date, must file an application with the clerk of the Court, on or before the Administrative Claims Bar Date, and serve such application on counsel for the Debtors, counsel for the Creditors' Committee, and counsel for the Equity Committee, and as otherwise required by the Court and the Bankruptcy Code, or be forever barred from seeking such compensation or expense

reimbursement. Objections, if any, to the Substantial Contribution Claim must be filed no later than the Administrative Claims Objection Deadline, unless otherwise extended by Order of the Court.

### 3. Administrative Claims

All Administrative Claims arising after the Petition Date, other than Professional Fee Claims, must be filed with the Claims Agent and served on counsel for the Debtors so as to be received no later than 5:00 p.m., Eastern Time on the Administrative Claims Bar Date. Any such Claim may be submitted in person or by courier service, hand delivery or mail addressed to the Claims Agent at the Claims Agent's applicable addresses as specified in Article XIV.F of the Plan. Any such Claim submitted by facsimile will not be accepted and will not be deemed filed until such Claim is submitted by one of the methods described in the foregoing sentence. An Administrative Claim will be deemed filed only when actually received by the Claims Agent. Unless Reorganized Syms or any other party in interest objects by the Administrative Claims Objection Deadline to an Administrative Claim, such Claim shall be deemed allowed after the Administrative Claims Objection Deadline in the amount requested. In the event that Reorganized Syms or any other party in interest objects to such a Claim, the Bankruptcy Court shall determine the allowed amount of such Claim.

## **S. Effect of Plan Confirmation**

### 1. Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, and their respective successors and assigns.

### 2. Discharge

#### **(a) Discharge of the Debtors**

**Upon the Effective Date, the Debtors shall be discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in section 502 of the Bankruptcy Code, whether or not (i) a proof of claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (ii) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, (iii) a Claim based upon such debt is or has been disallowed by order of the Bankruptcy Court, or (iv) the Holder of a Claim based upon such debt accepted the Plan.**

**As of the Effective Date, except as provided in the Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Debtors or their properties, including the Syms Owned Real Estate, any other or further Claims, debts, rights, Causes of Action, claims for relief, or liabilities relating to the Debtors based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment**

obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim.

### **3. Injunction**

Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that from and after the Effective Date, all Persons who have held, hold or may hold Claims against or Interests in the Debtors are permanently enjoined from taking any of the following actions against the Estates, the Debtors, Reorganized Syms, Reorganized Filene's or any of their property on account of any such Claims or Interests: (A) commencing or continuing, in any manner or in any place, any action or other proceeding; (B) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order; (C) creating, perfecting, or enforcing any lien or encumbrance; (D) asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors; and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained in the Plan shall preclude such Persons from exercising their rights pursuant to and consistent with the terms of the Plan or the Confirmation Order; provided further, however, that nothing in this Article shall impair (i) the rights of any Holder of a Disputed Claim to establish its Claim in response to an objection filed by Reorganized Syms, or (ii) the rights of any defendant in a Cause of Action or Avoidance Action filed by Reorganized Syms to assert defenses in such action.

### **4. Exculpation and Limitation of Liability**

Except as otherwise specifically provided in the Plan, (i) the Debtors, (ii) all of the present or former directors, officers, or employees of any of the Debtors, acting in such capacity and serving as of the Petition Date, (iii) any Professionals of the Debtors, (iv) the Majority Shareholder; (v) any Professionals of the Majority Shareholder; and (vi) the Equity Committee and the Creditors' Committee and their respective members, and the professionals retained by each of the foregoing acting in their capacities as such, and any of such parties' successors and assigns, shall not have or incur any liability, claim, action, proceeding, Cause of Action, Avoidance Action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment, or Claim (as defined in Bankruptcy Code Section 101(5)), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise to one another or to any Claimholder or Interestholder, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission originating or occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Debtors, the Chapter 11 Cases, the negotiation and filing of the Plan or any prior plans, the filing of the Chapter 11 Cases, the pursuit of confirmation of the Plan or any prior plans, the consummation of the Plan including the Rights Offering and Share Purchase Transaction, the administration of the Plan, or the property to be liquidated and/or distributed under the Plan, except for their willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan provided, however, that the foregoing shall not extinguish the personal liability of any of the aforementioned Entities for any statutory violation of applicable tax laws or bar any right of action asserted by a governmental taxing authority against the



aforementioned Entities for any statutory violation of applicable tax laws, or any obligation or liability arising under the Equity Commitment Agreement or the terms of the Plan.

## **5. Debtor Releases**

Pursuant to section 1123(b) of the Bankruptcy Code for good and valuable consideration, on and after the Effective Date, except as set forth on Exhibit A, (i) all current and former officers, directors, employees, agents and professionals of the Debtors in their capacity as such, (ii) the Majority Shareholder in its capacity as such; (iii) the Equity Committee and the Creditors' Committee and their respective members, and the professionals retained by each of the foregoing acting in their capacities as such, and (iv) the Majority Shareholder and the Majority Shareholder's professionals in their capacities as such (the "Released Parties") are deemed released and discharged by the Debtors, Reorganized Syms, Reorganized Filene's and the Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, Reorganized Syms, Reorganized Filene's or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors or Reorganized Syms, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any of the foregoing releasees, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, or related agreements, instruments or other documents, or upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date.

## **6. The Non-Defaulting Backstop Parties' Release, Exculpation and Indemnification**

### **(a) The Non-Defaulting Backstop Parties' Release**

For good and valuable consideration, on and after the Effective Date, the Non-Defaulting Backstop Parties and their respective directors, officers, partners, members, affiliates, representatives, employees, agents, and attorneys (each a "Backstop Releasee") are deemed released and discharged by the Debtors, Reorganized Syms, Reorganized Filene's and the Estates from any and all claims, obligations, rights, suits, damages, causes of action, remedies and liabilities related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated thereby, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, Reorganized Syms, Reorganized Filene's or the Estates would have otherwise been entitled to assert.

### **(b) The Non-Defaulting Backstop Parties' Exculpation**

The Non-Defaulting Backstop Parties and their respective directors, officers, partners, members, affiliates, representatives, employees, agents, and attorneys shall not have or incur any

liability, claim, action, proceeding, cause of action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, or right to payment, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise to any Holder of Claims or Interests, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated thereby; except for the Non-Defaulting Backstop Parties' willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects the Non-Defaulting Backstop Parties shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities thereunder.

#### **(c) The Non-Defaulting Backstop Parties' Indemnification**

The Debtors or Reorganized Debtors, and the Estates, as the case may be, agree to indemnify and hold harmless the Non-Defaulting Backstop Parties and their respective directors, officers, partners, members, affiliates, representatives, employees, agents, and attorneys (each a "Backstop Party Indemnitee") from and against any and all claims, obligations, rights, suits, damages, causes of action, remedies and liabilities that any such Backstop Party Indemnitee may incur, have asserted against it or be involved in as a result of or arising out of or in any way related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby, including any related transaction or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any of such Backstop Party Indemnitee is a party thereto, and to reimburse each of such Backstop Party Indemnitee within ten (10) days after demand for any legal or other expenses incurred in connection with any of the foregoing; provided however, that the foregoing indemnity shall not, as to any Backstop Party Indemnitee, apply to claims, obligations, rights, suits, damages, causes of action, remedies and liabilities to the extent they have resulted from the willful misconduct or gross negligence of such Backstop Party Indemnitee. Notwithstanding any other provision to the contrary, no Backstop Party Indemnitee shall be liable for any special, indirect, consequential or punitive damages in connection with its activities related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby. The terms set forth in this subsection shall survive termination of the Equity Commitment Agreement and shall remain in full force and effect regardless of whether the Rights Offering is consummated.

#### **7. The Majority Shareholder's Indemnification**

The Debtors or Reorganized Syms, Reorganized Filene's and the Estates, as the case may be, agree to indemnify and hold harmless the Majority Shareholder and its representatives, employees, agents, and attorneys (each a "Majority Shareholder Indemnitee") from and against any and all claims, obligations, rights, suits, damages, causes of action, remedies and liabilities that any such Majority Shareholder Indemnitee may incur, have asserted against it or be involved in as a result of or arising out of or in any way related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby, including any related transaction or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any of such Majority Shareholder Indemnitee is a party thereto, and to reimburse each of such Majority Shareholder Indemnitee within ten (10) days after demand for any legal or other expenses incurred in connection with any of the foregoing; provided however,

that the foregoing indemnity shall not, as to any Majority Shareholder Indemnatee, apply to (i) claims, obligations, rights, suits, damages, causes of action, remedies and liabilities to the extent they have resulted from the willful misconduct or gross negligence of such Majority Shareholder Indemnatee; (ii) claims, obligations, rights, suits, damages, causes of action, remedies and liabilities to the extent they have resulted from a breach or default by the Majority Shareholder under the Equity Commitment Agreement; and (iii) claims, obligations, rights, suits, damages, causes of action, remedies and liabilities asserted by a third party that is unrelated to the Plan, the Rights Offering, the Equity Commitment Agreement, the Share Purchase Transaction, or any other transactions contemplated hereby or thereby. Notwithstanding any other provision to the contrary, no Majority Shareholder Indemnatee shall be liable for any special, indirect, consequential or punitive damages in connection with its activities related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby. The terms set forth in this subsection shall survive termination of the Equity Commitment Agreement and shall remain in full force and effect regardless of whether the Rights Offering is consummated. No reserve shall be established hereunder for any Majority Shareholder Indemnification Obligations.

#### **8. Third Party Releases**

As of the Effective Date, all Persons who directly or indirectly have been a Holder, are a Holder, or may become a Holder of a Claim or Interest and (a) who vote to accept the Plan as set forth on the relevant Ballot and do not mark their Ballot to indicate their refusal to grant the releases provided in this paragraph, (b) are Holders in Filene's Classes 4A or 5A, or (c) whose Claim or Interest is deemed Unimpaired under the Plan (the "Third Party Releasees"), shall be deemed, by virtue of their receipt of Distributions and/or other treatment contemplated under the Plan, to have unconditionally, irrevocably and forever released and covenanted with Reorganized Syms, Reorganized Filene's and the Released Parties not to (y) sue or otherwise seek recovery from Reorganized Syms, Reorganized Filene's or any Released Party on account of any Claim or Interest in any way related to the Debtors or their business and affairs, including but not limited to any Claim or Interest based upon tort, breach of contract, violations of federal or state securities laws or otherwise, based upon any act, occurrence, or failure to act from the beginning of time through the Effective Date or (z) assert against Reorganized Syms, Reorganized Filene's or any Released Party any claim, obligation, right, cause of action or liability that any Holder of a Claim or Interest may be entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, agreement or occurrence from the beginning of time through the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, provided, however, (i) none of the Released Parties shall be released from any Claim primarily based on any act or omission that constitutes gross negligence or willful misconduct as determined by a court of competent jurisdiction, and (ii) the foregoing release shall not apply to obligations arising under the Plan, and (iii) the foregoing release shall not apply or be construed to prohibit a party in interest from seeking to enforce the terms of the Plan.

For the avoidance of doubt, the Equity Committee, the Majority Shareholder, and the Creditors' Committee, and their respective members and Professionals in their capacity as such, release the Released Parties in accordance with Article XII.G of the Plan.

For the avoidance of doubt, Article XII.G of the Plan shall not be applied to, and shall not be deemed to, modify, limit or override the effect, scope and operation of Articles XII.A, XII.B, XII.C, XII.D and XII.E of the Plan.

## **9. Term of Bankruptcy Injunction or Stays**

**All injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code section 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.**

## **10. Separate Plans Meeting Confirmation Standards**

If the Bankruptcy Court determines that the Plan meets the standards for confirmation as to Syms but not as to Filene's, the Creditors Committee shall have the option to either:

(a) continue the Confirmation Hearing for up to five (5) business days, and if the Plan for all Debtors cannot be confirmed at the continued Confirmation Hearing, the Creditors' Committee may contest and oppose the confirmation of the Plan without Filene's at such continued Confirmation Hearing; or

(b) consent to confirmation of the Plan and the effectiveness of the Plan as to the Debtors other than Filene's, and then take no more than the next 120 calendar days to confirm a plan of reorganization or liquidation for Filene's with the same economic terms for Filene's and for Syms as contained in the Plan, and failing confirmation and going effective within those 120 days, Syms' obligations to make distributions to Holders of Claims in the Filene's Classes under the Plan shall be null and void. Under this option, if amounts incurred by the professionals of the Filene's estate during that 120 day period in pursuing a Filene's-only plan exceed the Debtors' projected professional expenses for the Filene's estate through September 30, 2012, as set forth in the Alvarez & Marsal updated budget dated July 4, 2012, the excess shall reduce the distribution percentage for Holders of Claims in Filene's Classes under the Plan and shall not be paid or borne by Syms or Reorganized Syms.

If the Bankruptcy Court does not confirm the Plan with respect to Filene's for any reason, the Plan shall be deemed modified to withdraw Filene's from the Plan and the other Debtors shall pursue Confirmation pursuant to the modified terms of the Plan and the requirements of the Confirmation Order with respect to the modified Plan. Subject to Article XII.J.2. of the Plan and the timing referenced therein, with respect to Filene's and Holders of Claims against Filene's (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for Consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by such Debtors or any other Person.

## **T. Retention of Jurisdiction**

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order, substantial consummation of the Plan and occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan, including, among other things, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim, the resolution of any objections to the allowance or priority of Claims or Interests and the determination of requests for the payment of Claims entitled to priority under Bankruptcy Code section 507(a)(1), including compensation of any reimbursement of expenses of parties entitled thereto;
2. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Bankruptcy Code sections 330, 331, 503(b), 1103, and 1129(a)(4); provided, however, that from and after the Effective Date, the payment of the fees and expenses of the retained Professionals of the Debtors shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court except to the extent otherwise provided in the Plan or the Confirmation Order;
3. Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;
4. Effectuate performance of and payments under the provisions of the Plan;
5. Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the Chapter 11 Cases or the Plan;
6. Enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;
7. Hear and determine disputes arising in connection with the interpretation, implementation, consummation or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;
8. Consider any modifications of the Plan, and cure any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
9. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with

implementation, consummation, or enforcement of the Plan or the Confirmation Order;

10. Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;
11. Hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Plan Supplement, the Disclosure Statement or the Confirmation Order;
12. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
13. Except as otherwise limited in the Plan, recover all assets of the Debtors and property of the Estates, wherever located;
14. Hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146;
15. Hear and determine any Causes of Action and Avoidance Actions, including any such Causes of Action and Avoidance Actions brought by the Debtors;
16. Hear and determine all disputes involving the existence, nature or scope of the injunctions, indemnification, exculpation and releases granted pursuant to the Plan;
17. Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) any winding up of the Debtors' affairs, and (iii) the activities of the Debtors, including (A) challenges to or approvals of the Debtors' activities and (B) reporting by, termination of and accounting by the Debtors;
18. Hear and determine all disputes involving any dispute relating to any liability arising out of any termination of employment or the termination of any employee or retiree benefit provision, regardless of whether such termination occurred prior to or after the Effective Date;

19. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;
20. Hear and determine any matters arising in connection with a sale of the Company's Trinity Interest;
21. Enforce all orders previously entered by the Bankruptcy Court;
22. Dismiss any and/or all of the Chapter 11 Cases; and

**U. Enter a final decree closing the Chapter 11 Cases.**

**V. Miscellaneous Provisions**

**1. Modifications and Amendments**

The Plan Proponents may alter, amend or modify the Plan or any Exhibits thereto under Bankruptcy Code section 1127(a) at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan as defined in Bankruptcy Code section 1101(2), the Plan Proponents may, under Bankruptcy Code section 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims or Interests; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Court. Any changes or modifications to the Plan Documents shall require the consent of each of the Debtors, the Equity Committee, and the Creditors Committee, which consent shall not be unreasonably withheld, and any disagreement shall be resolved by the Bankruptcy Court by hearing on shortened notice. Any such changes or modifications to the Plan Documents made without such consent shall be null and void unless otherwise ordered by the Bankruptcy Court.

**2. Severability of Plan Provisions**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, then the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial

determination and shall provide 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 pursuant to its terms.

### 3. Successors and Assigns

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of that Person.

### 4. Payment of Statutory Fees

All fees then due and payable pursuant to 28 U.S.C. § 1930, as determined by the Court at the Confirmation Hearing, shall be paid on or before the Effective Date by the Debtors. All such fees that become due and payable thereafter by a Debtor shall be paid by the Reorganized Company. The Reorganized Company shall pay quarterly fees to the U.S. Trustee until the Chapter 11 Cases are closed or converted and/or the entry of final decrees. The Reorganized Company shall file post-confirmation quarterly reports or any pre-confirmation monthly operating reports not filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines which report shall also include a summary of the status of Distributions to be made under the Plan to the extent not provided in financial statements available to the public. The U.S. Trustee shall not be required to file a request for payment of its quarterly fees, which shall be paid by the Reorganized Company.

### 5. Revocation, Withdrawal or Non-Consummation

The Plan Proponents reserve the right, with the consent of the Creditors' Committee, not to be unreasonably withheld, to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to file subsequent plans. If the Plan Proponents revoke or withdraw the Plan as to any or all of the Debtors, or if Confirmation or Consummation of the Plan as to any or all of the Debtors does not occur, then with respect to such Debtors (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for Consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by such Debtors or any other Person.

### 6. Dissolution of Official Committees

On the Effective Date, the Creditors' Committee and the Equity Committee shall dissolve as official committees in the cases on the Effective Date of the Plan, except that the Creditors Committee or its designee shall remain in existence, without any compensation or counsel or any other cost to the Debtors or the Reorganized Company, post-Effective Date for the purpose of selecting a replacement Creditors' Committee Director, Independent Director or other director pursuant to Article VII.A of the Plan. The Creditors' Committee shall designate in the Plan Supplement a representative who shall act as Trustee of the Golden Preferred Trust which shall hold the Series A Preferred Stock to be issued by the



Reorganized Company. Reasonable, out-of-pocket costs incurred in connection with forming and maintaining the trust and the Trustee's actions as a holder of the Series A Preferred Stock shall be reimbursed by the Reorganized Company, provided that the Series A Preferred Stock may be held by a successor in interest. If the members of an official committee choose to continue to operate on an unofficial basis for any other purpose, the unofficial committee shall pay its own professionals and any and all other expenses, if any.

The Reorganized Company shall select and direct counsel to represent the Reorganized Company in the Chapter 11 Cases before the Bankruptcy Court.

## **VIII. CERTAIN RISK FACTORS TO BE CONSIDERED**

As set forth at the beginning of this Disclosure Statement, there is no guarantee that the assumptions underlying the Debtors' business plan will continue to be accurate or valid at any time after the date hereof. This section of the Disclosure Statement explains that there are certain risk factors that each voting holder of a claim or interest should consider in determining whether to vote to accept or reject the Plan. Accordingly, each holder of a claim or interest who is entitled to vote on the Plan and/or participate in the Rights Offering should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), before deciding whether to vote to accept or to reject the Plan or to participate in the Rights Offering.

### **A. General Considerations**

The Plan sets forth the means for satisfying the claims against and interests in each of Syms and Filene's. Certain claims may not receive payment in full. Nevertheless, the reorganization of the Debtors' businesses and operations under the proposed Plan avoids the potentially adverse impact of the likely increased delays and costs associated with a chapter 7 liquidation of either or both entities.

### **B. Certain Bankruptcy Considerations**

Even if all impaired voting classes vote in favor of the Plan and, with respect to any impaired class deemed to have rejected the Plan, the requirements for "cramdown" are met, the Bankruptcy Court may not confirm the Plan if circumstances warrant. Bankruptcy Code section 1129 requires, among other things, a showing that the value of distributions to dissenting holders of claims and interests may not be less than the value such holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtors believe that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. See Exhibit G annexed hereto for a Liquidation Analysis of the Debtors.

Additionally, certain conditions must be fulfilled prior to confirmation of the Plan and the Effective Date. As of the date of this Disclosure Statement, there can be no assurance that any or all of the conditions in the Plan will be met (or waived) or that the other conditions to consummation, if any, will be satisfied. The Debtors reserve their right to seek to dismiss or convert one or more of the Chapter 11 cases. In addition, if a chapter 7 liquidation were to occur, there is a substantial risk that the value of the Debtors' Estates would be substantially eroded to the detriment of all stakeholders.

## **C. Certain Real Estate – Related Considerations**

### **1. Future Economic Conditions**

The value of the Syms Owned Real Estate may be affected by volatility and illiquidity in the financial and credit markets and other market or economic challenges experienced by the U.S. economy or real estate industry as a whole. For instance, as a result of the economic downturn and global recession that began in the second half of 2007, demand for retail space such as that owned by Syms declined nationwide due to industry slowdowns, bankruptcies, downsizing, layoffs and cost cutting. Real estate transactions and development opportunities lessened compared to the period prior to the current economic downturn. A return to the strong real estate conditions that prevailed in the first half of 2007 is not expected in the near term, and demand for retail space such as the Syms Owned Real Estate may continue to be flat or decline further.

Given the current economic conditions, it may be difficult to lease space, collect rent, and attract new tenants for the Syms Owned Real Estate, and it may become more difficult to market and sell any particular parcel of the Syms Owned Real Estate. Further, the cost and availability of credit may be adversely affected by illiquid credit markets and wider credit spreads, which may adversely affect the liquidity and financial condition of Syms' tenants.

The Syms Owned Real Estate is located predominately in the New York City metropolitan area, as well as in markets in the Southeastern section of the United States. A downturn in the economies of any these local markets could reduce demand for retail space even in the event of a general market upswing. Because the Syms portfolio consists primarily of retail space (as compared to a more diversified real estate portfolio), a decrease in demand for retail space in turn could adversely affect the value of the Syms Owned Real Estate.

### **2. Effectiveness and Modification of Business Plan/ Ability to Sell Real Estate Within Forecast Time Period and Application of Transfer Restrictions**

Real estate investments are relatively illiquid, and as a result, Syms' ability to sell one or more parcels of the Syms Owned Real Estate may be limited. There can be no assurance that Syms will be able to dispose of any particular parcel of the Syms Owned Real Estate within a stated time period or for a stated price. In addition, significant carrying costs are associated with each parcel of real property, such as insurance, real estate taxes and maintenance costs.

### **3. Ability to Obtain New Tenants and Relet Space**

The value of the Syms Owned Real Estate will depend in part on whether the properties are leased up with long-term, credit worthy tenants. Therefore, if current tenants decide not to renew their leases when such leases expire, Syms may have difficulty finding replacement tenants for those leases. Moreover, even if existing tenants do renew their leases or Syms can relet the space, it may not be able to retain favorable economic terms because of, among other factors, the cost of required renovations for any particular property. If Syms is unable to promptly renew the leases or relet the space at similar rates, the value of the affected real property could be adversely affected.

#### 4. Tenants May Be Unable to Meet Rent Terms

The value of the Syms Owned Real Estate will depend in part on tenants' ability to remain current on their rent. If a significant number of tenants cannot pay their rent or if Syms is not able to maintain occupancy levels on favorable terms, the sale value of the affected property may decline. In addition, if a tenant does not pay its rent, Syms may incur costs to enforce its rights as landlord. During economic downturns in the economy, there may be an increase in the number of tenants that cannot pay their rent and a corresponding increase in vacancy rates.

#### 5. Competitive Nature of Real Estate Business

The Syms Owned Real Estate is located in various locations across the United States, some of which are highly competitive environments. Reorganized Syms will compete with a large number of property owners and developers, some of which may be willing to accept lower returns on their investments. Principal competitive factors include rents charged, attractiveness of location, the quality of the property and the breadth and quality of services provided. The value of the Syms Owned Real Estate depends upon, among other factors, trends in the national, regional and local economies, financial condition and operating results of current and prospective tenants and customers, availability and cost of capital, construction and renovation costs, taxes, governmental regulation, legislation and population trends.

#### 6. Operating Costs Do Not Decline in Proportion to Revenue

Pending disposition of the Syms Owned Real Estate, Syms will earn a substantial majority of its income from renting its properties. Its operating costs, however, do not fluctuate in relation to changes in rental revenue. As a result, costs will not necessarily decline even if revenues do. Similarly, operating costs could increase while revenues stay flat or decline. In either such event, Syms may be forced to borrow to cover costs, it may incur losses or it may not have cash available for distributions to creditors or shareholders.

#### 7. Reliance on Small Number of Properties for Significant Portion of Revenue

Syms' revenue and cash available for distribution to creditors and dividends to shareholders would be materially adversely affected if any of its properties were materially damaged or destroyed. Additionally, revenue and cash available for distribution could be materially adversely affected if tenants at these properties fail to timely make rental payments due to adverse financial conditions or otherwise default under their leases or file for bankruptcy.

#### 8. Potential Costs to Comply with Environmental Laws

Under various federal, state and local laws, ordinances and regulations, a current or previous owner or operator of real estate may be required to investigate and clean up hazardous or toxic substances released at a property, and may be held liable to a governmental entity or to third parties for property damage or personal injuries and for investigation and clean-up costs incurred by the parties in connection with the contamination. These laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the release of the hazardous or toxic substances. The presence of contamination or the failure to remediate contamination may adversely affect the owner's ability to sell

or lease real estate or to borrow using the real estate as collateral. Other federal, state and local laws, ordinances and regulations require abatement or removal of asbestos-containing materials in the event of demolition or certain renovations or remodeling, the cost of which may be substantial for certain redevelopment projects that a potential purchaser would want to undertake with respect to any particular parcel of Syms Owned Real Estate, and also govern emissions of and exposure to asbestos fibers in the air. Federal and state laws also regulate the operation and removal of underground storage tanks. In connection with the ownership and management of certain properties, Reorganized Syms could be held liable for the costs of remedial action with respect to these regulated substances or related claims.

#### 9. Potential Natural or Other Disasters

A number of the parcels comprising the Syms Owned Real Estate are located in areas which could be subject to natural or other disasters, including hurricanes, severe tropical storms, and tornados.

#### 10. Some Potential Property Losses Are Not Insured

Reorganized Syms will carry comprehensive liability, fire, flood, earthquake, extended coverage and rental loss insurance on all properties, which it believes will be adequate and appropriate. There are, however, some types of losses, including lease and other contract claims, which may not be covered by insurance. If an uninsured loss or a loss in excess of insured limits occurs, such loss could have a negative impact on Reorganized Syms and/or the anticipated future revenue from any particular parcel of Syms Owned Real Estate.

#### 11. Risks Related to Terrorism

Future terrorist attacks in the United States or other acts of violence may result in declining economic activity, which could harm the demand for goods and services offered by Syms' tenants and the value of its properties. Such a resulting decrease in retail demand could make it difficult for Syms to renew, re-lease or sell Syms Owned Real Estate. Terrorist activities or violence also could directly affect the value of its properties through damage, destruction or loss, and the availability of insurance for such acts, or of insurance generally, might be lower or cost more, which could increase Syms' operating expenses and adversely affect its financial condition and results of operations. To the extent that Syms' tenants are affected by future attacks, their businesses similarly could be adversely affected, including their ability to continue to meet obligations under their existing leases. These acts might erode business and consumer confidence and spending and might result in increased volatility in national and international financial markets and economies. Any one of these events might decrease demand for real estate, or decrease or delay the occupancy of Syms' new or redeveloped properties.

#### 12. Inflation

Increased inflation could have a pronounced negative impact on Syms' general and administrative expenses, as these costs could increase at a rate higher than Syms' rents. Conversely, deflation could lead to downward pressure on rents and other sources of income.

### 13. Compliance with Americans with Disabilities Act and Similar Laws

Syms Owned Real Estate may be subject to risks relating to current or future laws, including laws benefiting disabled persons, and other state or local zoning, construction or other regulations. These laws may require significant property modifications in the future, which could result in fines being levied against Syms. The occurrence of any of these events could have an adverse impact on Reorganized Syms' cash flows and ability to make timely distributions.

Under the Americans with Disabilities Act (the "ADA"), all public accommodations must meet federal requirements related to access and use by disabled persons. Additional federal, state and local laws also may require modifications to Syms Owned Real Estate, or restrict Syms' ability to renovate its properties. If one or more of Syms' properties is not in compliance with the ADA or other legislation, then Syms may be required to incur additional costs to bring the property into compliance with the ADA or similar state or local laws. Syms cannot predict the ultimate amount of the cost of compliance with the ADA or other legislation. If Syms incurs substantial costs to comply with the ADA and any other legislation, Reorganized Syms' financial condition, results of operations and cash flow and/or ability to satisfy its debt service obligations and to make distributions could be adversely affected.

#### **D. Cash Available for Distribution on Account of General Unsecured Claims**

While the Debtors currently estimate that there will be cash available for distributions to holders of unsecured claims and Syms shareholders, not all claims have been resolved or fixed in amount, and all costs and expenses of completing the wind-down of the estates cannot be estimated with certainty. As a result, the actual allowed amounts of all such claims could turn out to be substantially higher than the estimates made by the Debtors. Accordingly, there can be no assurance that there will be cash available for distribution to all holders of unsecured claims or Syms shareholders.

#### **E. Potential Governmental Claims Relating to Employee Benefits**

The Debtors' employee benefit plans are subject to the regulatory authority of governmental agencies, including the Pension Benefit Guaranty Corporation (the "PBGC"), the Department of Labor, and the Internal Revenue Service (the "IRS"). As noted above, the Syms Corp. Pension Plan (the "Pension Plan") is likely underfunded. The Pension Plan has not yet been terminated. Syms also participates in certain multi-employer pension plans, and faces potential withdrawal liability for those plans. The PBGC, as the government agency that affords certain guarantees of pension plan liabilities for terminated single and multi-employer pension plans, is anticipated to assert joint and several claims based upon the estimate of the difference between liabilities to the Debtors' plan beneficiaries and the current value of the plan assets. The ultimate allowance of claims that have been filed against the Debtors by the PBGC may impact the distributions to holders of Syms' and Filene's general unsecured claims.

## **F. Certain Rights Offering – Related Considerations**

1. The Backstop Parties' obligation to purchase shares under the Equity Commitment Agreement is subject to a number of conditions, some of which are beyond Syms' control.

The Backstop Parties' obligation to purchase shares under the Equity Commitment Agreement is subject to a number of conditions. If any of the conditions to the Backstop Parties' obligation to purchase shares under the Equity Commitment Agreement are not satisfied or if the Equity Commitment Agreement is validly terminated, Syms would not be entitled to any proceeds under the Equity Commitment Agreement.

2. If a shareholder does not exercise its subscription rights in full, it will suffer dilution in its percentage ownership of Syms.

If a shareholder does not exercise any rights in the subscription Rights Offering, the number of shares that such shareholder owns will not change. However, because the total number of Syms common shares will increase by 2,182,367 shares, the percentage ownership in Syms held by existing shareholders will decline if some shareholders do not participate in the Rights Offering. The extent to which any individual shareholder's percentage ownership may change will depend on, among other things, the level of participation in the Rights Offering. For example, an individual shareholder that does not purchase shares in the Rights Offering, and thus does not maintain such shareholder's pro rata ownership, will be diluted by 13.1%.

3. The subscription price determined for the Rights Offering is not an indication of the fair value of Syms common stock.

The subscription price is not intended to bear any relationship to the book value of Syms' assets or its past operations, cash flows, losses, financial condition, net worth, or any other established criteria used to value securities. A shareholder should not consider the subscription price to be an indication of the fair value of Syms' common stock offered in the Rights Offering. Syms cannot give any assurance that shares of its common stock will trade at or above the subscription price in any given time period. After the date of this Disclosure Statement, Syms common stock may trade at prices above or below the subscription price.

4. A shareholder may not revoke its subscription exercise and could be committed to buying shares above the prevailing market price.

Once a shareholder exercises its subscription rights, it may not revoke the exercise of such rights. The public trading market price of Syms common stock may decline before the subscription rights expire. If a shareholder exercises its subscription rights and, afterwards, the public trading market price of Syms common stock decreases below the subscription price, such shareholder will have committed to buy shares of Syms common stock at a price above the prevailing market price. Syms cannot assure shareholders that the trading price of its common stock will equal or exceed the subscription price at the time of exercise or at the expiration of the subscription Rights Offering period.

5. If a shareholder does not act promptly and follow the subscription instructions, its exercise of subscription rights may be rejected.

Shareholders who desire to purchase shares in the Rights Offering must act promptly to ensure that all required forms and payments are actually received by the deadlines described in the Rights Offering Procedures. If a shareholder is a beneficial owner of shares, it must act promptly to ensure that its broker, bank, or other nominee acts for it and that all required forms and payments are actually received by the Subscription Agent before the deadlines described in the Rights Offering Procedures. Syms will not be responsible if a shareholder's broker, bank, or nominee fails to ensure that all required forms and payments are actually received by the Subscription Agent before the expiration date. If a shareholder fails to complete and sign the required subscription forms, sends an incorrect payment amount or otherwise fails to follow the subscription procedures that apply to its exercise in the Rights Offering, the Subscription Agent may, depending on the circumstances, reject such shareholder's subscription or accept it only to the extent of the payment received. Neither Syms nor the Subscription Agent undertakes to contact a shareholder concerning an incomplete or incorrect subscription form or payment, nor is Syms under any obligation to correct such forms or payment. Syms has the sole discretion to determine whether a subscription exercise properly follows the subscription procedures.

6. The rights are non-transferable and thus there will be no market for them.

A shareholder may not sell, transfer or assign its rights to anyone else. Syms does not intend to list the rights on any securities exchange or any other trading market. Because the subscription rights are non-transferable, there is no market or other means for a shareholder to directly realize any value associated with the subscription rights.

7. Only a limited market exists for Syms common stock which could lead to price volatility.

The limited trading market for Syms common stock may cause fluctuations in the market value of its common stock to be exaggerated, leading to price volatility in excess of that which would occur in a more active trading market of its common stock.

8. Concentrated ownership of Syms common stock creates a risk of sudden change in Syms' share price.

Investors who purchase Syms common stock may be subject to certain risks due to the concentrated ownership of Syms common stock. The sale by any of its large shareholders of a significant portion of that shareholder's holdings could have a material adverse effect on the market price of Syms common stock. As of the record date, the Majority Shareholder owns approximately 54.4% of all outstanding shares of Syms common stock. If no shareholders other than the Backstop Parties participate in the Rights Offering, the Backstop Parties will own 60.4% of Reorganized Syms, in the aggregate.

9. If the Rights Offering is canceled, neither Syms nor the Subscription Agent will have any obligation to shareholders who have subscribed for shares except to return their subscription payments.

If the Rights Offering is canceled, the subscription rights will be void and will have no value, and neither Syms nor the Subscription Agent will have any obligation with respect to the subscription rights except to return, without interest or penalty, any subscription payments actually received.

10. Following the Rights Offering and the consummation of the transaction contemplated by the Equity Commitment Agreement, the Backstop Parties may be able to exert significant influence on, or may control, Reorganized Syms' affairs and actions, including matters submitted for a shareholder vote.

If no shareholders other than the Backstop Parties participate in the Rights Offering, the Backstop Parties will own 60.4% of Reorganized Syms, in the aggregate. As a result, the Backstop Parties, if they act as a group, will have considerable influence over, or may control, Reorganized Syms' corporate affairs and actions, including matters submitted for a shareholder vote. The interests of the Backstop Parties may be different than other shareholders' interests.

11. Syms common stock is currently traded on the OTC Markets — OTCQB Tier, and an investor's ability to trade Syms common stock may be limited by trading volume.

The trading volume in Syms common stock has been relatively limited. A consistently active trading market for Syms common stock may not continue on the OTC Markets. The average daily trading volume of Syms common stock from November 15, 2011, the date it was first traded on the OTC Markets, through July 11, 2012 was approximately 15,653 shares.

12. If a shareholder makes payment of the subscription price by uncertified personal check, its check may not clear in sufficient time to enable it to purchase shares in the Rights Offering.

Any uncertified personal check used to pay the subscription price in the Rights Offering must clear prior to the expiration of the subscription period, and the clearing process may require five or more business days. As a result, if a shareholder chooses to use an uncertified personal check to pay the subscription price, it may not clear prior to the expiration of the subscription period, in which event such shareholder would not be eligible to exercise its subscription rights. Such a shareholder may eliminate this risk by paying the subscription price by wire transfer of same day funds.

13. Shares issued in the Rights Offering may not be transferred or resold except pursuant to registration or exemption under the Securities Act and applicable state securities laws.

Shares issued in the Rights Offering are restricted securities and may not be transferred or resold except pursuant to registration or exemption under the Securities Act and applicable state securities laws. Depending on the regulatory reporting of Reorganized Syms, these shares may not be permitted to be transferred or resold pursuant to an exemption from registration for at least one year.



## **IX. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion summarizes certain anticipated U.S. federal income tax consequences of the Plan to the Debtors and certain Holders of Claims and Interests that are impaired under the Plan and that are entitled to vote to accept or reject the Plan. This discussion is provided for information purposes only and is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect as of the date hereof, and all of which are subject to change or differing interpretations, possibly with retroactive effect.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to a particular Claimholder or Interestholder in light of its particular facts and circumstances, or to certain types of Claimholders or Interestholders subject to special treatment under the Tax Code (for example, non-U.S. taxpayers, governmental entities and entities exercising governmental authority, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, regulated investment companies, persons holding a Claim or Interest as part of a hedge, straddle, constructive sale, conversion transaction or other integrated transaction, Claimholders or Interestholders that are or hold their Claims or Interests through a partnership or other pass-through entity, persons that have a functional currency other than the U.S. dollar, dealers in securities or foreign currencies, employees of the Debtors, and persons who received their claims pursuant to the exercise of an employee stock option or otherwise as compensation). This discussion assumes that Claimholders or Interestholders hold their Claims or Interests as capital assets for U.S. federal income tax purposes (generally, property held for investment). This discussion does not address any aspects of state, local, non-U.S. taxation or U.S. federal taxation other than income taxation. Furthermore, this discussion does not address the U.S. federal income tax consequences to Claimholders or Interestholders that are unimpaired under the Plan or Claimholders or Interestholders that are not entitled to receive or retain any property under the Plan.

If a partnership (including any entity treated as a partnership for U.S. federal income tax purposes) holds Claims or Interests, the U.S. federal income tax consequences to the partners of such partnership will depend on the activities of the partnership and the status of the partners. A partnership considering participating in the Plan should consult its tax advisor regarding the consequences to the partnership and its partners of the Plan.

The tax treatment of Claimholders or Interestholders and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan may vary, depending upon, among other things: (i) whether the Claim or Interest (or portion thereof) constitutes a Claim for principal or interest; (ii) the type of consideration received by the Claimholder or Interestholder in exchange for the Claim or Interest and whether the Claimholder or Interestholder receives distributions under the Plan in more than one taxable year; (iii) whether the Claimholder or Interestholder is a citizen or resident of the United States for tax purposes, is otherwise subject to U.S. federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Claimholder or Interestholder acquired the Claim or Interest; (v) the length of time that the Claim or Interest has been held; (vi) whether the Claim or Interest was acquired at a discount; (vii) whether the Claimholder or Interestholder has taken a bad debt deduction with respect to the Claim or Interest (or any portion thereof) in the current or prior years; (viii) whether the Claimholder or Interestholder has previously included accrued but unpaid interest with respect to the Claim or Interest; (ix) the method of tax accounting of the Claimholder or Interestholder; (x) whether the Claim or Interest is an installment obligation for U.S. federal income tax purposes; (xi) whether the Claim or Interest, and any instrument received in exchange therefor, is

considered a "security" for U.S. federal income tax purposes; and (xii) whether the "market discount" rules are applicable to the Claimholder or Interestholder. Therefore, each Claimholder or Interestholder should consult its tax advisor for information that may be relevant to its particular situation and circumstances, and the particular tax consequences to such Claimholder or Interestholder of the transactions contemplated by the Plan.

A substantial amount of time may elapse between the date of this Disclosure Statement and the receipt of a final distribution under the Plan. Events occurring after the date of this Disclosure Statement, such as additional tax legislation, court decisions or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. There can be no assurance that the IRS will not take a contrary view with respect to one or more of the issues discussed below. No ruling has been or will be sought from the IRS with respect to any of the tax aspects of the Plan, and no opinion of counsel has been or will be obtained by the Debtors with respect thereto. No representations are being made regarding the particular tax consequences of the confirmation or implementation of the Plan as to any Claimholder or Interestholder. This discussion is not binding upon the IRS or other taxing authorities. No assurance can be given that the IRS or another authority would not assert, or that a court would not sustain, a different position from any discussed herein. Accordingly, each Claimholder or Interestholder is strongly urged to consult its tax advisor regarding the U.S. federal, state, local, and non-U.S. tax consequences of the Plan to such Claimholder or Interestholder.

THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIMHOLDER'S OR INTERESTHOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH CLAIMHOLDER OR INTERESTHOLDER IS STRONGLY URGED TO CONSULT ITS TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND APPLICABLE NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, CLAIMHOLDERS AND INTERESTHOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY CLAIMHOLDERS OR INTERESTHOLDERS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON CLAIMHOLDERS OR INTERESTHOLDERS UNDER THE TAX CODE; (B) SUCH DISCUSSION IS BEING USED IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) EACH CLAIMHOLDER OR INTERESTHOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

## **A. Consequences to the Debtors**

### **1. Cancellation of Indebtedness Income**

In general, the discharge of a debt obligation in exchange for cash and other property having an aggregate fair market value (or, in the case of a new debt instrument, an "issue price") less than the "adjusted issue price" of the debt gives rise to cancellation of indebtedness ("COD") income to the debtor.

COD income also includes any interest that has been previously accrued but remains unpaid at the time the indebtedness is discharged. Under the Tax Code, a U.S. taxpayer generally must include in gross income its COD income realized during the taxable year. However, COD income is not included in the debtor's income if the debt discharge occurs in a Title 11 bankruptcy case. Rather, under the Tax Code, such COD income instead should reduce certain of the debtor's tax attributes, generally in the following order: (a) net operating losses and net operating loss carryforwards (collectively, "NOLs"); (b) general business credit carryforwards; (c) minimum tax credit carryforwards; (d) capital loss carryforwards; (e) the tax basis of the debtor's depreciable and nondepreciable assets (but not below the amount of its liabilities immediately after the discharge); (f) passive activity loss and credit carryforwards; and (g) foreign tax credit carryforwards.

Where the debtor joins in the filing of a consolidated U.S. federal income tax return, applicable Treasury regulations require, in certain circumstances, that certain tax attributes of the consolidated subsidiaries of the debtor and other members of the group be reduced. Under these rules, Syms' own tax attributes will be reduced first by the amount of COD income Syms realizes, followed by the tax attributes (other than tax basis) of other members of the consolidated group. A corporation's own tax attributes are generally tax attributes generated by the corporation itself, such as NOLs and credits, as well as tax basis in its assets, including tax basis in the stock of its subsidiaries. If a corporation reduces its tax basis in the stock of its subsidiaries, each such subsidiary is treated as realizing COD income by the amount of such reduction, and the subsidiary must in turn reduce its tax attributes by that amount.

The reduction in tax attributes occurs only after the tax for the year of the debt discharge has been determined (i.e., such attributes may be available to offset taxable income, if any, that is generated between the date of discharge and the end of the debtor's tax year and/or may be carried back to prior years). Any excess COD income remaining after the required reduction of tax attributes is generally not subject to U.S. federal income tax and generally has no other current U.S. federal income tax impact.

A debtor may elect to alter the preceding order of attribute reduction and, instead, first reduce the tax basis of its depreciable assets (and, possibly, the depreciable assets of its subsidiaries). The Debtors have not yet determined whether to make this election.

The Debtors expect to realize COD income as a result of the discharge of obligations pursuant to the Plan, which, under the attribute reduction rules described above, is generally expected to result in a reduction of certain of the Debtors' attributes, including NOLs.

## 2. Net Operating Losses – Section 382

Section 382 of the Tax Code contains rules that limit the ability of a company that has NOLs and undergoes an "ownership change" (generally an increase in the ownership by certain shareholders of more than 50% in value of its stock over a three year period) to utilize its NOL carryforwards and certain built-in losses recognized in years after the ownership change. The limitation under Section 382 of the Tax Code also may apply to certain losses or deductions that are "built-in" (i.e., economically accrued but unrecognized) as of the date of the ownership change and that are subsequently recognized. These rules generally operate by taking into account "owner shifts" on the part of stockholders that own, directly or indirectly, 5% or more of the stock of the loss corporation and any changes in ownership arising from a new issuance of stock by the loss corporation.

Generally, if an ownership change occurs, the NOLs that the loss corporation can use each year will be limited to the product of the applicable long-term tax-exempt rate (a rate published monthly by the U.S. Treasury department, 3.26% for ownership changes occurring in July 2012) and the fair market

value of the company's stock (or, in the case of a consolidated group, the stock of the common parent) immediately before the ownership change, with certain adjustments. Any unused portion of the annual limitation on pre-change losses may be carried forward until expiration (where applicable, as in the case of NOLs), thereby increasing the annual limitation in the subsequent taxable year. However, if the corporation (or the consolidated group) does not continue its historic business or use a significant portion of its assets in a new business for two years after the ownership change, the annual limitation resulting from the ownership change is zero. If the loss corporation (or consolidated group) has a net unrealized built-in gain at the time it incurs an ownership change, any built-in gains recognized during the following five years (up to the amount of the original net unrealized built-in gain) generally will increase the annual limitation in the year recognized, permitting the loss corporation (or consolidated group) to use its pre-change losses against such recognized built-in gains in addition to its regular annual limitation. Although the rule applicable to net unrealized built-in losses generally applies to consolidated groups on a consolidated basis, certain corporations that join the consolidated group within the preceding five years may not be able to be taken into account in the group computation of net unrealized built-in loss. Such corporations would nevertheless still be taken into account in determining whether the consolidated group has a net unrealized built-in gain. In general, a loss corporation's (or consolidated group's) net unrealized built-in gain will be deemed to be zero unless it is greater than the lesser of (i) \$10,000,000 or (ii) 15% of the fair market value of its assets (with certain adjustments) before the ownership change. The Debtors believe that they have more than sufficient net unrealized built-in gains to satisfy these thresholds.

If an ownership change does occur, certain special relief provisions provided in Section 382(l)(5) may be available, in which event the application of Section 382 could be materially different from that described above. In that case, the Debtors' ability to utilize pre-Effective Date NOLs would not be limited as described above. Section 382(l)(5) cannot apply unless existing stockholders and qualified creditors of a debtor (generally trade creditors and those who held the debt for at least 18 months prior to the bankruptcy filing) receive, in exchange for their stock and debt claims, at least 50% of the vote and value of the stock of Reorganized Syms pursuant to a confirmed Chapter 11 bankruptcy case. However, if Reorganized Syms undergoes another ownership change within two years after the Effective Date, Reorganized Syms' Section 382 limitation with respect to that ownership change will be zero. If the Debtors qualify for the special rule under Section 382(l)(5), the use of the Debtors' NOLs will be subject to Section 382(l)(5) unless the Debtors affirmatively elect for the provisions not to apply. The Debtors have not yet determined whether they would seek to have the Section 382(l)(5) rules apply to an ownership change arising from the consummation of the Plan even if Section 382(l)(5) were to apply.

If an ownership change does occur and the Debtors do not qualify for, or elect not to apply, the special rules under Section 382(l)(5) for corporations in bankruptcy described above, a special rule under Section 382 applicable to corporations under the jurisdiction of a bankruptcy court will apply in calculating Reorganized Syms' annual Section 382 limitation. Under Section 382(l)(6), the limitation will be calculated by reference to the lesser of the value of Reorganized Syms' equity (with certain adjustments) immediately after the ownership change or the value of their assets (determined without regard to liabilities) immediately before the ownership change. Although such calculation may substantially increase the annual Section 382 limitation, the Debtors' use of any NOLs or other tax attributes remaining after implementation of the Plan may still be substantially limited after an ownership change. Furthermore, as discussed above, if Reorganized Syms does not continue its historic business or use a significant portion of its assets in a new business for two years after the ownership change, the annual limitation resulting from the ownership change will be zero, increased by any built-in gains recognized during the following five years (up to the amount of the original net unrealized built-in gain), as discussed above.

The Rights Offering and redemption of the shares of the Majority Shareholder are expected to cause Reorganized Syms to undergo an "ownership change" and accordingly cause the NOLs and built-in losses that they can use to be limited by Section 382 of the Tax Code in the manner described above.

### 3. Alternative Minimum Tax

For purposes of computing the Debtors' regular tax liability, all of their taxable income recognized in a taxable year generally is permitted to be offset by the carryover of NOLs (to the extent permitted under the Tax Code and subject to various limitations, including Section 382, as discussed above). Even if all of the Debtors' regular tax liability for a given year is reduced to zero by virtue of their NOLs, however, the Debtors may still be subject to the alternative minimum tax ("AMT"). The AMT imposes a tax equal to the amount by which 20% of a corporation's alternative minimum taxable income ("AMTI") exceeds the corporation's regular tax liability. AMTI is calculated pursuant to specific rules in the Tax Code which eliminate or limit the availability of certain tax deductions and which include as income certain amounts not generally included in computing regular tax liability.

### 4. Reincorporation of Reorganized Syms

The Debtors expect and intend to take the position that no gain or loss will be recognized by the Debtors as a result of the reincorporation of Reorganized Syms as a Delaware corporation.

## **B. Consequences to Claimholders**

1. Holders of Allowed Syms Convenience Claims (Syms Class 3), Allowed Syms General Unsecured Claims (Syms Class 4), Allowed Syms Union Pension Plan Claims (Syms Class 5), Allowed Filene's Convenience Claims (Filene's Class 3), Allowed Filene's General Unsecured (Short-Term) Claims (Filene's Class 4 A and B), Allowed Filene's General Unsecured (Long-Term) Claims (Filene's Class 5 A and B) and Allowed Filene's Union Pension Plan Claims (Filene's Class 6)

The U.S. federal income tax treatment of Holders that exchange a Syms Class 3 Convenience Claim, Syms Class 4 Syms General Unsecured Claim, Syms Class 5 Syms Union Pension Plan Claim, Filene's Class 3 Convenience Claim, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claim, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claim or a Filene's Class 6 Filene's Union Pension Plan Claim for a right to distributions pursuant to the Plan (an "Impaired Claim Distribution Right") is not entirely clear. Such treatment will depend in part on whether the receipt of the Impaired Claim Distribution Right is a "closed transaction" or an "open transaction" for U.S. federal income tax purposes. Open transaction treatment will apply only if the fair market value of the Impaired Claim Distribution Right is not reasonably ascertainable on the Effective Date. It is the position of the IRS, as reflected in the applicable Treasury Regulations, that only in "rare and extraordinary cases" is the value of property not reasonably ascertainable such that open transaction treatment is available. The discussion below assumes that closed transaction treatment will apply to a Holder's receipt of the Impaired Claim Distribution Right with respect to its Syms Class 3 Convenience Claim, Syms Class 4 Syms General Unsecured Claim, Syms Class 5 Syms Union Pension Plan Claim, Filene's Class 3 Convenience Claim, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claim, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claim or a Filene's Class 6 Filene's Union

Pension Plan Claim pursuant to the Plan. Holders are urged to consult their tax advisors regarding this issue.

The federal income tax consequences of the Plan to a Holder of a Syms Class 3 Convenience Claim, Syms Class 4 Syms General Unsecured Claim, Syms Class 5 Syms Union Pension Plan Claim, Filene's Class 3 Convenience Claim, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claim, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claim or a Filene's Class 6 Filene's Union Pension Plan Claim and its character in the hands of the Holder. Generally, a Holder of a Syms Class 3 Convenience Claim, Syms Class 4 Syms General Unsecured Claim, Syms Class 5 Syms Union Pension Plan Claim, Filene's Class 3 Convenience Claim, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claim, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claim or a Filene's Class 6 Filene's Union Pension Plan Claim will recognize gain or loss equal to the difference between the "amount realized" and such Holder's adjusted tax basis in the Claim. The "amount realized" generally should equal the fair market value of the distributions to be received under the Plan in respect of a Holder's Claim. Amounts received by any Holder, however, will be treated as "amounts realized" only to the extent not treated as interest as described in parts 2 and 3 below. A Holder's tax basis in the Impaired Claim Distribution Right received under the Plan will generally be equal to its fair market value on the Effective Date. The Holder's holding period in the Impaired Claim Distribution Right received should begin on the day following the Effective Date.

Any gain or loss with respect to the receipt of an Impaired Claim Distribution Right in respect of such Claim pursuant to the Plan will generally be treated as capital gain or loss or ordinary income or deduction depending on the status of the Holder, the nature of the Claim in its hands, the purpose and circumstances of its acquisition, the Holder's holding period for the Claim, the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Claim, and whether such Claim was acquired at a market discount. Capital losses may generally offset only capital gains, although individuals may, to a limited extent, offset ordinary income with capital losses.

If a payment is made in the future with respect to the Impaired Claim Distribution Right, each Holder of an Impaired Claim Distribution Right will recognize gain in the amount by which the distributions with respect to the Impaired Claim Distribution Right (other than the portion characterized as interest as described below under "— Imputation of Interest on Plan Distributions") exceed the holder's tax basis in the Impaired Claim Distribution Right. If no payment is made, or if the payment is less than the Holder's tax basis in the right distributions, the Holder will recognize a loss. It is unclear under current law whether such gain or loss would be capital or ordinary in nature. As a result, Holders are urged to consult their tax advisors concerning the U.S. federal income tax consequences of the receipt of distributions pursuant to an Impaired Claim Distribution Right.

Under both the "closed transaction" and the "open transaction" methods, a portion of each deferred payment received more than six months after the Effective Date may be treated as imputed interest, and a Holder may be required to include such interest as taxable ordinary income, under such Holder's method of accounting, regardless of whether the Holder otherwise realizes an overall loss as a result of the Plan, as described below under "— Imputation of Interest on Plan Distributions."

In addition, Holders may be subject to other special tax rules that affect the character, timing and amount of any income, gain, loss or deduction. Accordingly, Holders of Syms Class 3 Convenience Claim, Syms Class 4 Syms General Unsecured Claim, Syms Class 5 Syms Union Pension Plan Claim, Filene's Class 3 Convenience Claim, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claim, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claim or a Filene's Class 6

Filene's Union Pension Plan Claim are particularly urged to consult their own tax advisors regarding the tax consequences of the Plan to them.

## 2. Allocation of Plan Distributions between Principal and Interest

To the extent that any Allowed Claim entitled to a distribution under the Plan comprises indebtedness and accrued but unpaid interest thereon, the Debtors intend to take the position that, for income tax purposes, such distribution shall be allocated to the principal amount of the Allowed Claim first and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to the portion of such Allowed Claim representing accrued but unpaid interest. No assurances can be made in this regard. If, contrary to the Debtors' intended position, such a distribution were treated as being allocated first to accrued but unpaid interest, a Holder of such an Allowed Claim would realize ordinary income with respect to the distribution in an amount equal to the accrued but unpaid interest not already taken into income under the Holder's method of accounting, regardless of whether the Holder otherwise realized a loss as a result of the Plan. Conversely, a Holder generally would recognize a deductible loss to the extent that any accrued interest was previously included in its gross income and was not paid in full. To the extent that any portion of the distribution is treated as interest, Holders may be required to provide certain tax information in order to avoid the withholding of taxes.

If a Holder acquired a Claim constituting a debt instrument after its original issuance at a market discount (generally defined as the amount, if any, by which a Holder's tax basis in a debt obligation immediately after its acquisition is exceeded by the adjusted issue price of the debt obligation at such time, subject to a *de minimis* exception), the Holder generally will be required to treat any gain recognized pursuant to the Plan as ordinary income to the extent of the market discount accrued during the Holder's period of ownership, unless the Holder elected to include the market discount in income as it accrued.

## 3. Imputation of Interest on Plan Distributions

Under current law, the deferred receipt of distributions with respect to a Impaired Claim Distribution Right could result in a portion of such distributions being treated as interest income if some or all of the distributions are issued more than six months after the Effective Date. Where there is no express provision for interest, as is the case here, under the current regulations interest will be imputed under Section 483 of the Tax Code. Thus, if distributions become payable more than six months after the Effective Date, a portion of such distributions will constitute ordinary interest income. The amount of such interest income will be calculated by taking the amount of such cash distributions and discounting such amount from the date of issuance back to the Effective Date using the imputed interest rate under the Tax Code. The imputed interest rate will be the "applicable federal rate" provided under Section 1274(d) of the Tax Code as of the Effective Date. Thus, the longer the period of time until the distributions are received, the greater the proportion of such interests that will be treated as ordinary interest income.

## C. Consequences to Holders of Syms Interests (Syms Class 7)

Pursuant to the plan, Holders of the Interests in Syms Class 7 will retain such Interests and the rights of such Interests will not be modified. As a result, Holders of Interests in Syms Class 7 should not recognize gain or loss as a result of the Plan. Subject to Section D, below, a Holder's tax basis in the Interests in Syms Class 7 after the Effective Date would equal the Holder's adjusted tax basis in its

Interests in Syms Class 7 before the Effective Date. The holding period for Interests in Syms Class 7 will include the Holder's holding period for the Interests in Syms Class 7 prior to the Effective Date.

#### **D. Consequences to Holders of Rights Issued Under the Rights Offering**

A Holder that receives rights in the Rights Offering should not recognize taxable income, gain or loss upon the receipt or exercise of such rights. The tax basis in the Holder's existing Syms common stock should be allocated among the common stock and rights based upon the relative fair market values thereof. The tax basis in the Holder's new shares of Syms common stock received upon exercise of the rights should equal the sum of the Holder's tax basis in the rights and the exercise price paid for such new shares. The holding period in such new shares of Syms common stock received as a result of the exercise of the rights should begin on the day following the exercise date. Holders of rights issued in the Rights Offering are strongly urged to consult their own tax advisors for the particular tax consequences to them in connection with the Rights Offering.

#### **E. Information Reporting and Backup Withholding**

Certain payments, including the payments with respect to Claims or Interests pursuant to the Plan, may be subject to information reporting to the IRS. Moreover, under certain circumstances, Claimholders or Interestholders may be subject to "backup withholding" at a rate of 28% with respect to payments made pursuant to the Plan, unless such Claimholder or Interestholder either (i) comes within certain exempt categories (which generally include corporations), or (ii) provides a correct U.S. taxpayer identification number and certifies under penalty of perjury that the Claimholder or Interestholder is a U.S. person and otherwise satisfies the backup withholding rules.

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Claimholder's or Interestholder's U.S. federal income tax liability, and a Claimholder or Interestholder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS (generally, a U.S. federal income tax return).

In addition, Treasury regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer claiming a loss in excess of specified thresholds. Each Claimholder or Interestholder is strongly urged to consult its tax advisor regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Claimholders' or Interestholders' tax returns.

#### **F. Importance of Obtaining Professional Tax Assistance**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIMHOLDER'S OR INTERESTHOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIMHOLDERS AND INTERESTHOLDERS ARE URGED TO CONSULT THEIR TAX



ADVISORS ABOUT THE FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

**X. FEASIBILITY OF THE PLAN, BEST INTERESTS OF CREDITORS AND THE CRAMDOWN ALTERNATIVE**

**A. Feasibility of the Plan**

The Bankruptcy Code requires that the Bankruptcy Court determine that the confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors. For purposes of showing that the Plan meets this "feasibility" standard, the Debtors have analyzed their ability to meet their respective obligations under the Plan. To support their belief in the feasibility of the Plan, the Debtors prepared their respective financial projection (the "Financial Projections") set forth as Exhibit E to this Disclosure Statement and a sources and uses statement (the "Sources and Uses Statement") set forth on Exhibit F to this Disclosure Statement. The Financial Projections show that the Debtors should have sufficient cash to make payments required under the Plan and to pay their operating expenses pending disposition of their assets. Accordingly, the Debtors believe the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

THE FINANCIAL PROJECTIONS ARE BY THEIR NATURE FORWARD LOOKING, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE INFORMATION SET FORTH THEREIN. ACCORDINGLY, READERS OF THIS DISCLOSURE STATEMENT ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON THE FINANCIAL PROJECTIONS, AND SHOULD CAREFULLY REVIEW **SECTION VIII "CERTAIN RISK FACTORS TO BE CONSIDERED"** HEREIN.

The Financial Projections were not prepared with a view toward compliance with the published guidelines of the American Institute of Certified Public Accountants or any other regulatory or professional agency or body or generally accepted accounting principles. Furthermore, the Debtors' independent certified public accountants have not compiled or examined the Financial Projections and accordingly, do not express any opinion or any other form of assurance with respect thereto and assume no responsibility for the Financial Projections.

In addition to assumptions footnoted in the Financial Projections themselves, the Financial Projections also assume that (i) the Plan will be confirmed and consummated in accordance with its terms, and (ii) there will be no material contingent or unliquidated litigation or indemnity claims applicable to the Debtors. Although considered reasonable by the Debtors as of the date hereof, unanticipated events and circumstances occurring after the preparation of the Financial Projections may affect actual recoveries under the Plan.

As discussed at the beginning of this Disclosure Statement, the Debtors do not intend to update or otherwise revise the Disclosure Statement, including the Financial Projections, to reflect events or circumstances existing or arising after the date hereof or to reflect the occurrence of unanticipated events, even if any or all of the underlying assumptions do not come to fruition. Notwithstanding the foregoing, however, the Debtors reserve the right to update or revise this Disclosure Statement, including the Financial Projections, prior to the Confirmation Hearing to reflect the disposition of any significant asset of the Debtors, such as a parcel of the Syms Owned Real Estate.

## **B. Best Interests Test**

As a general matter, under the Bankruptcy Code, confirmation of a plan also requires a finding that, with respect to each impaired class of claims and interests, that each holder of an allowed claim or interest has voted to accept the plan, or that the plan provides that such holder will receive or retain property of a value, as of the plan's effective date, that is not less than the amount that such holder would receive or retain if the debtor were to be liquidated under chapter 7 of the Bankruptcy Code. This requirement is known as the "best interests of creditors" test.

In this case, the best interests test must be satisfied with respect to holders of claims in Syms Classes 4 and 5, holders of interests in Syms Class 7, and holders of claims in Filene's Classes 4 A and B and 5 A and B, because those are the only classes of claims and interests entitled to vote to accept or reject the Plan. In order to calculate the probable distribution to holders of claims and interests in such classes if the Debtors were liquidated under chapter 7, the Bankruptcy Court must first determine the aggregate dollar amount that would be generated from each Debtor's assets if their chapter 11 cases were converted to chapter 7 cases under the Bankruptcy Code. This "liquidation value" would consist primarily of the proceeds from a forced sale of the Debtors' assets by a chapter 7 trustee.

The amount of liquidation value available to Syms and Filene's unsecured creditors would be reduced by, first, the claims of secured creditors to the extent of the value of their collateral, and, second, by the costs and expenses of liquidation, as well as by other administrative expenses and costs of both the chapter 7 cases and the chapter 11 cases. Costs of liquidation under chapter 7 of the Bankruptcy Code would include the fees payable to a chapter 7 trustee, as well as those attorneys and other professionals that such trustee would retain. All claims arising from the operations of the Debtors during the pendency of the chapter 11 cases would also have to be satisfied as chapter 7 expenses. In addition, the liquidation costs would include expenses incurred with respect to selling the Syms Owned Real Estate and the IP Assets belonging to Filene's. The liquidation itself may trigger certain tax and other priority claims that otherwise would be due in the ordinary course of business. Those priority claims would be paid in full from the liquidation proceeds before the balance would be made available to pay general unsecured claims or to make any distribution in respect of equity interests.

After considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to Syms and Filene's unsecured creditors, including (i) the increased costs and expenses of liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy, (ii) the erosion in value of assets in the context of the expeditious liquidation required in a chapter 7 case and the "forced sale" atmosphere that would prevail, and (iii) the increase in administrative costs and other claims that would be satisfied on a priority basis, the Debtors have determined that confirmation of the Plan will provide each holder of an allowed claim with a recovery that is not less than such holder would receive under a liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

The Debtors' analysis of creditor and shareholders recoveries under a chapter 7 liquidation scenario (the "Liquidation Analysis") is attached as Exhibit G. The Liquidation Analysis focuses on Filene's only, as the Debtors believe Syms is solvent and all its creditors are being paid in full. The information set forth in Exhibit G provides a summary of the liquidation values of Filene's assets assuming a chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the assets of Filene's. Underlying the Liquidation Analysis are a number of estimates and assumptions that, although considered reasonable by the Debtors' management, are inherently subject to significant economic and market uncertainties and contingencies. The Liquidation Analysis is also based upon assumptions with regard to liquidation decisions that are subject to change. Accordingly, the values

reflected in the Liquidation Analysis may not be realized if the Debtors were, in fact, to undergo such a chapter 7 liquidation.

The Debtors believe that holders of Class 3 and 4 claims against Syms and Class 3, 4 A and B, 5 A and B and 6 claims against Filene's will receive at least as much under the Plan than in a liquidation. Creditors of Syms would be paid in full in a chapter 7 liquidation. The same is true under the Plan. Accordingly, the best interests test is satisfied with respect to Syms. In the event of a chapter 7 liquidation of Filene's, the Debtors believe that estimated distributions to unsecured creditors would be approximately 2% (such projection does not include any potential recoveries from Filene's claims against the Syms estate, as set forth more fully in Section VI.B.), whereas under the Plan, holders of Filene's Class 3 and 4 A and B claims will receive recoveries of 100 cents on the dollar and holders of Filene's Class 5 A and B claims will receive recoveries of 75 cents on the dollar. Accordingly, the best interests test is satisfied with respect to Filene's as well.

### **C. Confirmation Without Acceptance of All Impaired Classes: The "Cramdown" Alternative**

Bankruptcy Code section 1129(b) provides that a plan can be confirmed even if the plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted it. Under this section of the Bankruptcy Code, the Bankruptcy Court may confirm the Plan at the request of the Debtors if the Plan "does not discriminate unfairly" and is "fair and equitable" as to each impaired class that has not accepted the plan.

In general, a plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated fairly with respect to other classes of equal rank. A plan is fair and equitable as to a class of claims which rejects a plan if the plan provides (a) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) that the holder of any claim or interest that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property at all. With respect to a class of interests, a plan is fair and equitable with respect to such class if the plan provides that each holder of an interest receive or retain on account of such interest property that has a value, as of the effective date of the plan, equal to the greatest of (a) the allowed amount of any fixed liquidation preference to which such holder is entitled, (b) any fixed redemption price to which such holder is entitled, or (c) the value of such interest.

In this case, the Debtors believe that the Plan satisfies these standards and would be confirmed over the rejecting vote of any impaired class or classes.

## **XI. APPLICABILITY OF SECURITIES LAWS**

The Offered Shares are being offered and sold in the Rights Offering pursuant to an exemption from the registration requirements provided by Section 4(2) of the Securities Act, including, where applicable, in reliance upon Rule 506 of Regulation D promulgated thereunder. The Offered Shares are therefore exempt from federal securities registration and, in addition, involve a "covered security" under the National Securities Markets Improvement Act of 1996 ("NSMIA"). State regulation of such an offering (but not notice filings and fees) has been preempted by NSMIA.

Because the Offered Shares have not been registered under the Securities Act or any other applicable securities law, such securities will be "restricted securities" within the meaning of Rule 144

promulgated under the Securities Act. Accordingly, they may not be offered, sold or otherwise transferred except in compliance with the registration requirements of the Securities Act or any other applicable securities law, or pursuant to an exemption therefrom or in a transaction not subject thereto.

As a purchaser of securities that have not been registered under the Securities Act, each holder of Offered Shares should proceed on the assumption that the economic risk of the investment must be borne for an indefinite period, since the securities may not be resold unless they are subsequently registered under the Securities Act or an exemption from such registration is available. The exemption provided by Rule 144 generally will permit non-affiliates of an issuer that does not make periodic filings with the SEC to make unlimited public resales of the Offered Shares after holding them for one year. By contrast, affiliates of an issuer that does not make periodic filings with the SEC may only make public resales of the Offered Shares pursuant to Rule 144 after holding the Offered Shares for one year and only so long as certain public information requirements, volume limitations, manner of sale requirements and SEC filing requirements are met.

Certificates evidencing the Offered Shares will bear a legend substantially in the form below:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OR OTHER APPLICABLE LAW EXCEPT FOR TRANSFERS THAT ARE EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR OTHER APPLICABLE LAW."

THE DEBTORS RECOMMEND THAT HOLDERS OF CLAIMS CONSULT THEIR OWN COUNSEL CONCERNING WHETHER THEY MAY FREELY TRADE THE OFFERED SHARES.

## **XII. PLAN SUPPLEMENT**

Exhibits to the Plan not attached hereto shall be filed in one or more Plan Supplements. Any Plan Supplement (and amendments thereto) filed by the Debtors shall be deemed an integral part of the Plan and shall be incorporated by reference as if fully set forth herein. The Plan Supplements may be viewed at the office of the clerk of the Court or its designee during normal business hours, by visiting the Court's website at [www.deb.uscourts.gov](http://www.deb.uscourts.gov) (PACER account required) or at the Claims Agent website <http://www.kccllc.net/filenes>, or by written request to the Claims Agent at:

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department  
Email: [FilenesInfo@kccllc.com](mailto:FilenesInfo@kccllc.com)  
Telephone: (877) 606-7510

The documents contained in any Plan Supplements shall be subject to approval by the Bankruptcy Court pursuant to the Confirmation Order.

### **XIII. RECOMMENDATION AND CONCLUSION**

For all of the reasons set forth in this Disclosure Statement, the Debtors believe that confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors, the Creditors' Committee and the Equity Committee urge all holders of claims in Syms Classes 3, 4 and 5 and Filene's Classes 3, 4, 5 and 6 and interests in Syms Class 7 to vote to ACCEPT the Plan, and to complete and return their ballots in accordance with the ballot instructions so that they will be RECEIVED by the Voting Agent on or before 5:00 p.m. (prevailing Pacific Time) on **August 23, 2012**.

Dated: Wilmington, Delaware  
July 13, 2012

SYMS CORP.  
(for itself and on behalf of its Subsidiary  
Debtors)

By: /s/ Gary P. Binkoski  
Name: Gary P. Binkoski  
Title: Chief Financial Officer

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Counsel for Debtors and Debtors in Possession

**EXHIBIT A**

**Second Amended Joint Plan of Reorganization**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

-----	X	
	:	
In re:	:	Chapter 11
	:	
FILENE'S BASEMENT, L.L.C., <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors.	:	Jointly Administered
	:	
-----	X	

**SECOND AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF  
SYMS CORP. AND ITS SUBSIDIARIES**

Co-Proposed by the Debtors and the Official Committee of Syms Corp. Equity Security Holders

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## **EXHIBITS**

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EXHIBIT F	BUDGET
EXHIBIT G	SYMS OWNED REAL ESTATE
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**Note:** To the extent that the foregoing Exhibits and any additional Exhibits are not annexed to this Plan, such Exhibits will be filed with the Bankruptcy Court in Plan Supplement(s) filed on or before the date(s) set for the filing of such documents and forms of documents.

## INTRODUCTION

Syms Corp. ("Syms"), Filene's Basement, LLC ("Filene's"), Syms Clothing, Inc. ("Clothing"), Syms Advertising Inc. ("Advertising" and, together with Syms, Filene's, and Clothing, the "Debtors"), and the Equity Committee jointly propose the following joint chapter 11 plan of reorganization under chapter 11 of the Bankruptcy Code (as defined below). This Plan contemplates the reorganization of Syms into a real estate holding company that will operate and lease, as appropriate, the owned real estate assets pending their disposition in a non-distressed, commercially reasonable manner. Filene's will be reorganized as a wholly owned subsidiary of Reorganized Syms for the principal purpose of exploring the sale or joint venture opportunities with respect to Filene's Intellectual Property. The Plan also embodies a global compromise and settlement, pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019, of certain matters related to the historical operation of the Debtors' businesses, including a compromise and settlement of possible intercompany claims and claims that the Debtors' Estates should be substantively consolidated. The Plan further contemplates the Share Purchase Transaction and Rights Offering which will effect a change of control such that the Majority Shareholder shall cease to be the majority shareholder of Reorganized Syms.

All holders of Claims and Interests who are eligible to vote on the Plan are encouraged to read the Plan and the accompanying Disclosure Statement (including all exhibits thereto) in their entirety before voting to accept or reject the Plan. Subject to certain restrictions and requirements set forth in Bankruptcy Code section 1127 and Bankruptcy Rule 3019, and subject to Section XIV.A. of the Plan, the Plan Proponents reserve the right to alter, amend, modify, revoke, or withdraw the Plan prior to its substantial consummation. Reference is made to the Disclosure Statement, distributed contemporaneously herewith, for a discussion of the Debtors' history, business, properties, intellectual property and operations, a summary and analysis of the Plan, and certain related matters, including the settlements embodied in the Plan and the risk factors relating to the consummation of the Plan.

## I. DEFINED TERMS AND RULES OF INTERPRETATION

### A. Rules of Construction

For purposes of this Plan, except as expressly provided herein or unless the context otherwise requires, all capitalized terms not otherwise defined, including those capitalized terms used in the preceding Introduction, shall have the meanings ascribed to them in Article I of this Plan or any Exhibit hereto. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. To the extent that there is an inconsistency between a definition in this Plan and a definition set forth in the Bankruptcy Code, the definition set forth herein shall control. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

### B. Definitions

**1.1 Accredited Investor** has the meaning set forth in Rule 501(a) promulgated under the Securities Act.

**1.2 Accredited Investor Order** means the Order Pursuant to 11 U.S.C. §§ 105(a), 1125, 1126, and 1129 (i) Authorizing the Debtors to Distribute the Accredited Investor Questionnaire to Syms Equity Holders, (ii) Approving the Accredited Investor Procedures, and (iii) Establishing the Accredited Investor Record Date and Rights Offering Record Date.

**1.3 Accredited Investor Procedures** means those procedures employed for the purpose of determining whether the holders of Syms Interests are Accredited Investors and, thus, eligible to participate in the Rights Offering.

**1.4 Accredited Investor Questionnaire** means a questionnaire, in substantially the form attached as Exhibit A to the Accredited Investor Order, sent to each Holder of Syms Interests as of the Rights Offering Record Date to determine whether the Holder is an Eligible Holder.

**1.5 Accredited Investor Record Date** means the record date set forth in the Accredited Investor Order which date is the same as the Rights Offering Record Date.

**1.6 Administrative Claim** means a Claim arising under Bankruptcy Code sections 503(b), 507(b), or 1114(e)(2), including, but not limited to, (a) any actual and necessary costs and expenses, incurred after the Petition Date, of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries and commissions for services and payments for inventory, leased equipment and premises); (b) Professional Fee Claims; and (c) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

**1.7 Administrative Claims Bar Date** means the last date by which a request for payment of an Administrative Claim must be Filed, which date is sixty (60) days after the Effective Date; provided, however, that such date does not extend the time for filing claims set by the Initial Administrative Claims Bar Date.

**1.8 Administrative Claims Objection Deadline** means the last day for Filing an objection to any request for payment of an Administrative Claim which shall be (a) the later of (i) 180 days after the Effective Date or (ii) 90 days after the filing of such Administrative Claim or (b) such other date specified in this Plan or ordered by the Bankruptcy Court. The filing of a motion to extend the Administrative Claims Objection Deadline shall automatically extend the Administrative Claims Objection Deadline until a Final Order is entered on such motion. In the event that such motion to extend the Administrative Claims Objection Deadline is denied by the Bankruptcy Court, the Administrative Claims Objection Deadline shall be the later of the then-current Administrative Claims Objection Deadline (as previously extended, if applicable) or 30 days after the Bankruptcy Court's entry of an order denying the motion to extend the Administrative Claims Objection Deadline.

**1.9 Administrative Claims Reserve** means the reserve of Cash established by the Debtors pursuant to Article VII.G.2. hereof for Holders of Allowed Administrative Claims to the extent that such Allowed Claims have not otherwise been paid in full (or in the manner agreed upon between the Holder of each such Allowed Claim and the Debtors) prior to the Effective Date.

**1.10 Advertising** means Syms Advertising Inc.

**1.11 Allowed Claim** means a Claim or any portion thereof (a) that has been allowed by a Final Order of the Bankruptcy Court (or such court as the Debtors and the Holders of any such Claim agree may adjudicate such Claim and any objections thereto), (b) that either (x) has been Scheduled as a liquidated, non-contingent, and undisputed in an amount greater than zero on the Schedules, or (y) is the subject of a timely filed proof of claim as to which either (i) no objection to its allowance has been filed within the periods of limitation fixed by the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled, waived through payment, withdrawn or overruled, or (c) that is expressly allowed in a liquidated amount in the Plan; provided,



however, that with respect to an Administrative Claim, "Allowed Claim" means an Administrative Claim as to which a timely written request for payment has been made in accordance with the Administrative Claims Bar Date as to which the Debtors, or any other party in interest (x) has not interposed a timely objection or (y) has interposed a timely objection and such objection has been settled, waived through payment, withdrawn or overruled; provided further, however, that for purposes of determining the status (i.e., Allowed or Disputed) of a particular Claim prior to the expiration of the period fixed for filing objections to the allowance or disallowance of Claims, any such Claim which has not been previously allowed or disallowed by a Final Order of the Bankruptcy Court or the Plan shall be deemed a Disputed Claim unless such Claim is specifically identified by the Debtors as being an Allowed Claim.

Notwithstanding the foregoing, an Insured Claim shall become an Allowed Claim only at such time and to the extent that such a claim becomes the subject of a final, nonappealable adjudication of liability and damages in a court or other tribunal of competent jurisdiction or a definitive written agreement in compromise of such claim pursuant to Article VIII.I.4 of the Plan between and among the Holder, the Debtor(s) or Reorganized Debtor(s), as applicable, against whom such Claim is asserted, and, to the extent required by the terms of the underlying insurance policy, the issuer of such policy.

**1.12 Allowed ... Claim** means an Allowed Claim of the particular type or Class described.

**1.13 Avoidance Actions** means causes of action arising under Bankruptcy Code sections 502, 510, 541, 542, 544, 545, 547, 548, 549, 550, 551 or 553, or under related state or federal statutes and common law, including, without limitation, fraudulent transfer laws, whether or not litigation is commenced to prosecute such causes of action.

**1.15 Backstop Parties** means those certain holders of Syms Interests who agree to subscribe for and purchase their respective pro rata share of the shares of Syms common stock offered in the Rights Offering, and all other shares of Syms common stock offered to, but not purchased by, other Eligible Holders in the Rights Offering in accordance with the Equity Commitment Agreement.

**1.16 Ballot** means each of the ballot forms distributed to each Holder of a Claim or Interest entitled to vote to accept or reject this Plan.

**1.17 Bankruptcy Code** means title 11 of the United States Code, as now in effect or hereafter amended and as applicable to the Chapter 11 Cases.

**1.18 Bankruptcy Court** means the United States Bankruptcy Court for the District of Delaware, or any other court with original jurisdiction over the Chapter 11 Cases.

**1.19 Bankruptcy Rules** means, collectively, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended and as applicable to the Chapter 11 Cases or proceedings therein, as the case may be, and the Local Rules, as now in effect or hereafter amended.

**1.20 Board of Directors** means the board of directors of Reorganized Syms.

**1.21 Budget** means the budget attached hereto as Exhibit F prepared by the Equity Committee.

**1.22 Business Day** means any day, other than a Saturday, Sunday or Legal Holiday.

**1.23 Carry Costs** means the recurring costs of carrying the Reorganized Company's Near Term Properties and Medium Term Properties, including costs for real property taxes, insurance, repairs and other similar expenses.

**1.24 Carry Cost/Repair/TI Reserve** means the Sub-Category Expense Reserve, which shall fund the payment of Carry Costs and TI Costs.

**1.25 Case Interest Rate** means the federal judgment rate provided in 28 U.S.C. § 1961 in effect on the Petition Date.

**1.26 Cash** means legal tender of the United States of America and equivalents thereof, which may be conveyed by check or wire transfer.

**1.27 Causes of Action** means any and all claims, actions, proceedings, causes of action, suits, accounts, controversies, agreements, promises, rights of action, rights to legal remedies, rights to equitable remedies, rights to payment and Claims (as defined in Bankruptcy Code section 101(5)), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, that any Debtor and/or Estate may hold against any Person.

**1.28 CBAs** means Filene's Local 1102 CBA, Syms Local 108 CBA, Syms Local 400 CBA and Syms Local 1102 CBA.

**1.29 Chapter 11 Case(s)** means (a) when used with reference to a particular Debtor, the case under Chapter 11 of the Bankruptcy Code commenced by such Debtor in the Bankruptcy Court and (b) when used with reference to all Debtors, the cases under Chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court.

**1.30 Claim** means a "claim" as defined in Bankruptcy Code section 101(5) or Administrative Claim.

**1.31 Claimholder** means the Holder of a Claim.

**1.32 Claims Agent** means Kurtzman Carson Consultants LLC.

**1.33 Claims Objection Deadline** means the last day for Filing objections to Claims, other than Administrative Claims and Professional Fee Claims, which day shall be (a) the later of (i) 270 days after the Effective Date or (ii) 180 days after the Filing of a Proof of Claim for, or request for payment of, such Claim or (b) such other date as the Bankruptcy Court may order. The Filing of a motion to extend the Claims Objection Deadline shall automatically extend the Claims Objection Deadline until a Final Order is entered on such motion. In the event that such motion to extend the Claims Objection Deadline is denied, the Claims Objection Deadline shall be the later of the then-current Claims Objection Deadline (as previously extended, if applicable) or 30 days after the Bankruptcy Court's entry of an order denying the motion to extend the Claims Objection Deadline.

**1.34 Class** means a category of Holders of Claims or Interests, as described in Article III hereof.

**1.35    *Clothing*** means Syms Clothing, Inc.

**1.36    *Collateral*** means any property or interest in property of a Debtor's Estate subject to a right of setoff or Lien to secure the payment or performance of a Claim, which right of setoff or Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

**1.37    *Confirmation*** means entry by the Bankruptcy Court of the Confirmation Order.

**1.38    *Company's Trinity Interest*** means the Reorganized Company's interest in the Trinity Joint Venture.

**1.39    *Confirmation Date*** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court docket in the jointly administered Chapter 11 Cases.

**1.40    *Confirmation Hearing*** means the hearing held by the Bankruptcy Court to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

**1.41    *Confirmation Objection Deadline*** means the last day for Filing objections to confirmation of the Plan.

**1.42    *Confirmation Order*** means the order entered by the Bankruptcy Court confirming the Plan under Bankruptcy Code section 1129.

**1.43    *Consummation or Consummate*** means the occurrence of or to achieve the Effective Date.

**1.44    *Convenience Claim*** means any Syms General Unsecured Claim, Filene's General Unsecured (Short-Term) Claim or Filene's General Unsecured (Long-Term) Claim (i) that is Allowed in an amount equal to or less than \$10,000 or (ii) in an amount that is greater than \$10,000, but which the Holder thereof elects on its Ballot to be Allowed in an amount no greater than \$10,000 and to be treated as a Convenience Claim in accordance with the Plan.

**1.45    *Corporate Overhead Reserve*** means the Sub-Category Expense Reserve, which shall fund the payment of corporate overhead, salaries, and other general administrative and operating expenses of the Reorganized Company.

**1.46    *Corporate Organizational Documents*** means the Certificate of Incorporation and Bylaws which shall govern the corporate power and authority of Reorganized Syms and the LLC Agreement which shall govern Reorganized Filene's, copies of which are annexed hereto as Exhibit C.

**1.47    *Creditor*** means any Person who holds a Claim against one or more of the Debtors.

**1.48 Creditors' Committee** means the Official Committee of Unsecured Creditors appointed by the United States Trustee in the Chapter 11 Cases pursuant to Bankruptcy Code section 1102.

**1.49 Creditors' Committee Director** means the director appointed to the Board of Directors as of the Effective Date by the Creditors' Committee and thereafter elected in accordance with the Corporate Organizational Documents of Reorganized Syms.

**1.50 Cure** means the distribution of Cash, or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption or assumption and assignment of an executory contract or unexpired lease, pursuant to Bankruptcy Code section 365(b), in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may be agreed upon by the parties, under such executory contract or unexpired lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable bankruptcy law.

**1.51 Debtor(s)** means any of Syms, Filene's, Advertising, or Clothing.

**1.52 Disallowed Claim** means a Claim, or any portion thereof, that (a) has been disallowed by a Final Order, (b) is listed in the Schedules at zero or as contingent, disputed or unliquidated and as to which no Proof of Claim has been filed by the applicable bar date or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, or (c) is not listed in the Schedules, and as to which (i) no Proof of Claim has been filed by the applicable bar date or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, or (ii) no Administrative Claim has been filed by the Administrative Claims Bar Date or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law.

**1.53 Disclosure Statement** means the disclosure statement (including all exhibits and schedules thereto) relating to this Plan distributed contemporaneously herewith in accordance with Bankruptcy Code sections 1125 and 1126(b) and Bankruptcy Rule 3018.

**1.54 Discretionary Fund Reserve** means the discretionary fund reserve that, together with the Emergency Fund Reserve and the Sub-Category Expense Reserves, comprise the Operating Reserves.

**1.55 Disputed Claim** means a Claim, or any portion thereof, that has not been Allowed pursuant to the Plan or a Final Order, and:

(a) if a Claim has been filed, or deemed to have been filed, by the applicable bar date (i) a Claim for which a corresponding Claim has been listed on the Schedules as unliquidated, contingent or disputed; (ii) a Claim for which a corresponding Claim has been listed on the Schedules as other than unliquidated, contingent or disputed, but the amount of such Claim or identity of the applicable Debtor as asserted in the Claim varies from the amount of such Claim or identity of the applicable Debtor as listed in the Schedules; or (iii) a Claim that is deemed disputed under the Plan definition of Allowed Claim or as to which any party in interest has timely filed an objection or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules and any orders of the Bankruptcy Court, or which is otherwise disputed by a Debtor in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order;

(b) if an Administrative Claim has been filed or deemed to have been filed by the Administrative Claims Bar Date, any such Claim that is deemed disputed under the Plan definition of

Allowed Claim or as to which any party in interest has timely filed an objection or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court, or which is otherwise disputed by a Debtor in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order;

(c) for which a claim was required to be filed by order of the Bankruptcy Court, but as to which a Claim was not timely or properly filed; or

(d) that is disputed or deemed disputed in accordance with the provisions of this Plan, including the Plan definition of Allowed Claim.

**1.56 Disputed . . . Claim** means a Disputed Claim of the type described.

**1.57 Distribution** means any distribution pursuant to the Plan to the Holders of Allowed Claims and Allowed Interests.

**1.58 Distribution Date** means the date upon which a Distribution is made in accordance with the Plan to Holders of Allowed Claims or Allowed Interests entitled to receive Distributions under the Plan, which distributions shall occur not less than on a quarterly basis provided that the Excess Cash available for distribution equals or exceeds the Minimum Distribution Threshold, provided that the Minimum Distribution Threshold shall not apply to the final distribution for a particular Class of Claims or for the Initial or Subsequent Majority Shareholder Payment.

**1.59 Distribution Record Date** means the record date for purposes of making Distributions under the Plan on account of Allowed Claims or Allowed Interests, which date shall be the Confirmation Date or such other date designated in the Confirmation Order.

**1.60 Effective Date** means the Business Day this Plan becomes effective as provided in Article X.B hereof.

**1.61 Eligible Holder** means any Holder of Syms Interests other than the Majority Shareholder as of the Rights Offering Record Date that (i)(A) has submitted to the Subscription Agent on or prior to the Accredited Investor Deadline (as defined in the Rights Offering Procedures) a properly completed Accredited Investor Questionnaire certifying that such holder is an Accredited Investor and has otherwise complied with the Rights Offering Procedures or (B) is deemed to be an Accredited Investor under the Rights Offering Procedures; and (ii) the Debtors otherwise have a reasonable basis to believe is an Accredited Investor.

**1.62 Emergency Fund Reserve** means the emergency fund reserve that, together with the Discretionary Fund Reserve and the Sub-Category Expense Reserves, comprise the Operating Reserves.

**1.63 Entity** means a person, estate, trust, governmental unit and United States Trustee, within the meaning of Bankruptcy Code section 101(15).

**1.64 Equity Committee** means the Official Committee of Syms Corp. Equity Security holders.

**1.65 Equity Committee Directors** means the directors appointed to the Board of Directors as of the Effective Date by the Equity Committee or the Backstop Parties,

as applicable, pursuant to the Corporate Organizational Documents of Reorganized Syms, and elected thereafter by holders of common stock of Reorganized Syms in accordance with the Corporate Organizational Documents of Reorganized Syms.

**1.66 Equity Commitment Agreement** means that certain agreement, dated July [ ], 2012 by and among the Majority Shareholder, Syms and the Backstop Parties pursuant to which the Backstop Parties agree on the terms set forth therein to collectively subscribe for and purchase their respective pro rata share of the shares of Syms common stock offered in the Rights Offering, and all other shares of Syms common stock offered to, but not purchased by, other Eligible Holders in the Rights Offering, a copy of which is annexed hereto as Exhibit E.

**1.67 Equity Commitment Order** means that Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) approving, and authorizing Syms Corp. to enter into the Equity Commitment Agreement.

**1.68 Estate(s)** means, individually, the estate of Syms, Filene's, Clothing or Advertising and, collectively, the estates of all of the Debtors created under Bankruptcy Code section 541.

**1.69 Excess Cash** means the sum of (i) all Cash on the Effective Date in excess of the sum of (x) the Exit Costs and (y) the portion of the Operating Reserves funded in Cash on the Effective Date, and (ii) the Net Proceeds, less (x) any amounts necessary to fund the Operating Reserves that are not funded as of the Effective Date, and (y) any amounts to be distributed to Holders of Allowed Claims in Filene's Classes 4B or 5B.

**1.70 Exhibit** means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement.

**1.71 Exhibit Filing Date** means the date on which Exhibits to the Plan or the Disclosure Statement shall be filed with the Bankruptcy Court, which date shall be at least five (5) business days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court without further notice to parties-in-interest.

**1.72 Exit Costs** means collectively the amounts due on all Allowed Senior Claims and any and all other amounts necessary for the Debtors to emerge from Chapter 11.

**1.73 Face Amount** means (a) when used in reference to a Disputed or Disallowed Claim, the full stated amount claimed by the Claimholder in any proof of claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and (b) when used in reference to an Allowed Claim, the Allowed amount of such Claim.

**1.74 File, Filed or Filing** means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

**1.75 Filene's** means Filene's Basement, LLC.

**1.76 Filene's Assets** means all assets of the Filene's estate as of the Effective Date including, but not limited to, Filene's Cash and Filene's Intellectual Property.

**1.77 *Filene's General Unsecured (Long-Term) Claim*** means a general unsecured Claim against Filene's on account of rejection of an executory contract or unexpired lease pursuant to sections 365 and 502 of the Bankruptcy Code to the extent not guaranteed by Syms, and that, in all cases, is not an Administrative Claim, Convenience Claim, Intercompany Claim, Non-Tax Priority Claim, Priority Tax Claim, Secured Claim, Syms General Unsecured Claim, Syms Union Pension Plan Claim, Filene's General Unsecured (Short-Term) Claim, Filene's Union Pension Fund Claim, or Superpriority Intercompany Claim.

**1.78 *Filene's General Unsecured (Short-Term) Claim*** means a general unsecured Claim against Filene's, including but not limited to any Claims of a vendor on account of goods or services provided prior to the Petition Date or of an employee for severance pay that is not guaranteed by Syms, and that is not an Administrative Claim, Convenience Claim, Intercompany Claim, Non-Tax Priority Claim, Priority Tax Claim, Secured Claim, Syms General Unsecured Claim, Syms Union Pension Plan Claim, Filene's General Unsecured (Long-Term) Claim, Filene's Union Pension Plan Claim, or Superpriority Intercompany Claim.

**1.80 *Filene's Local 1102 CBA*** means Collective Bargaining Agreement Between Local 1102 RWDSU UFCW and Filene's Basement LLC.

**1.81 *Filene's General Unsecured Creditor Liquidation Value*** means the amount equal to the sum of (a) the Cash in the Filene's estate as of the Effective Date of the Plan, plus (b) the liquidation value of the Filene's assets other than Cash as determined by the Bankruptcy Court at the Confirmation Hearing, less all Allowed Senior Claims against Filene's as of the Effective Date, which net amount shall be used by Reorganized Syms to calculate Pro Rata distributions to be made to Holders of Allowed Claims against Filene's under Filene's Classes 4B and 5B of the Plan.

**1.82 *Filene's Intellectual Property*** means the intellectual property assets owned by Filene's, including but not limited to trademarks, licenses, patents, domain names and customer lists.

**1.83 *Filene's Union Pension Plan Claim*** means a general unsecured Union Pension Plan Claim against Filene's.

**1.84 *Final Fee Application*** means a final request for payment of a Professional Fee Claim.

**1.85 *Final Order*** means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any Chapter 11 Case, the operation or effect of which has not been stayed, reversed, or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending, provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be filed after the time to appeal or seek review or rehearing has expired with respect to such order will not cause such order not to be a Final Order.

**1.86 *General Unsecured Claim Satisfaction*** means when Claims in Syms and Filene's Class 3 (Convenience Claims), Syms Class 4 (General Unsecured Claims), Filene's Class 4 (General Unsecured Short-Term Claims) and Filene's Class 5 (General

Unsecured Long-Term Claims) have been paid in full their Distributions under the Plan, and any Disputed Claims in such Classes have been Disallowed or reserved for in Cash by the Reorganized Company, which reserves shall be funded contemporaneously with the pro rata distribution to the Holders of the Allowed Unsecured Claims in such Class.

**1.87 Golden Preferred Trust** means the holder of the Series A Preferred Stock as defined in the Corporate Organizational Documents. All references in the Plan to the Golden Preferred Trust shall include any successor in interest, and all references to the Trustee of the Golden Preferred Trust shall include the person who is authorized to act on behalf of such successor in interest.

**1.88 Holder** means an entity holding a Claim or Interest.

**1.89 Impaired** means, when used in reference to a Claim, Interest, or Class, a Claim, Interest, or a Class that is impaired within the meaning of Bankruptcy Code section 1124.

**1.90 Indemnification Obligation** means any obligation of any of the Debtors to indemnify, reimburse, or provide contribution to any present or former officer, director, or employee, or any present or former Professionals, advisors, or representatives of the Debtors, pursuant to by-laws, articles of incorporation, contract, or otherwise.

**1.91 Independent Director** means the outside, independent director mutually chosen by the Equity Committee and the Creditors' Committee and appointed to the Board of Directors on the Effective Date, and thereafter nominated and elected in accordance with the Corporate Organizational Documents of Reorganized Syms.

**1.92 Individual Filene's Creditor Claim** means a Claim (i) asserted against Syms that is in any way based on or derivative of a Claim against Filene's, (ii) that does not arise from a written guarantee by Syms, the validity of which written guarantee has been acknowledged and agreed to by Syms, (iii) that is not property of the Filene's bankruptcy estate or over which the Filene's bankruptcy estate has standing, and (iv) that is not released by Filene's under the Plan Settlement.

**1.93 Initial Administrative Claims Bar Date Order** means the order of the Bankruptcy Court, dated January 18, 2012, setting the initial administrative claims bar date.

**1.94 Initial Distribution Date** means the Effective Date or as soon thereafter as may be reasonably practicable, but in any event no later than the fifth (5<sup>th</sup>) Business Day following the Effective Date.

**1.95 Initial Majority Shareholder Payment** means the payment under the Plan Waterfall in an amount totaling \$10,725,641 (which is net of the Split Dollar Settlement Payment in the amount of \$1,774,359), to be paid from 40% of the first available distributable Excess Cash.

**1.96 Insured Claim** means any Claim or portion of a Claim (other than a Workers Compensation Claim) that is insured under the Debtors' insurance policies. Insured Claims constitute Disputed Claims, and the Plan shall constitute an objection thereto for all purposes, except to the extent that an Insured Claim becomes an Allowed Claim in accordance with Section 1.11 hereof.



**1.97 Insurer Covered Amount** has the meaning ascribed to such term in Article V.H. of the Plan.

**1.98 Intercompany Claim** means any Claim held by a Debtor against another Debtor, other than a Superpriority Intercompany Claim, including, without limitation: (a) any account reflecting intercompany book entries by a Debtor with respect to another Debtor, (b) any Claim not reflected in such book entries that is held by a Debtor against another Debtor, (c) any derivative Claim asserted by or on behalf of one Debtor against another Debtor and (d) any Claim asserted by one Debtor against another as a result of a payment made by the claimant Debtor pursuant to a guarantee or similar instrument.

**1.99 Interest** means the legal, equitable, contractual, and other rights of any Person with respect to any capital stock or other ownership interest in any Debtor, whether or not transferable, and any option, warrant or right to purchase, sell, or subscribe for an ownership interest or other equity security in any Debtor.

**1.100 JV Interest Sale** means a sale or other disposition of a minority (less than 50% of the economic interest) interest in the Trinity Joint Venture to a non-Insider.

**1.101 KEIP Order** means the Order Under Bankruptcy Code Sections 105, 363(b), And 503(c)(3) Approving A Limited, Wind-Down Employee Retention Plan, dated January 17, 2012 at docket no. 657.

**1.102 Legal Holiday** has the meaning set forth in Bankruptcy Rule 9006(a).

**1.103 Lien** shall mean any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage, or hypothecation to secure payment of a debt or performance of an obligation, other than, in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.

**1.104 Local Rules** means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

**1.105 Majority Shareholder** means collectively Ms. Marcy Syms, the Laura Merns Living Trust, dated February 14, 2003 and the Marcy Syms Revocable Living Trust, dated January 12, 1990, as amended, that collectively own and have the power to vote approximately 54.7% of Interests in Syms.

**1.106 Medium Term Properties** means those three properties identified on Exhibit [ ] to the Disclosure Statement as medium term properties.

**1.107 Merger** means the merger of Advertising, and Clothing into Syms in accordance with Article VII.A.3. hereof.

**1.108 Minimum Distribution Threshold** means 5% of the Allowed Claims in a Class to receive a Distribution, but not less than \$1 million.

**1.109 Near Term Properties** means those 13 properties identified on Exhibit C to the Disclosure Statement as near term properties.

**1.110 Net Proceeds** means all Cash proceeds realized by the Reorganized Company from the sale or assignment or use of Syms Assets, including Syms Owned Real Estate, or Filene's Assets, settlements, or any other sources, net of the costs and expenses of such transactions (including taxes, fees, leasing and brokerage commissions, and professional fees).

**1.111 Non-Defaulting Backstop Parties** means those Backstop Parties who have not defaulted on their obligations under the Equity Commitment Agreement.

**1.112 Non-Tax Priority Claim** means a Claim entitled to priority in payment pursuant to Bankruptcy Code section 507(a), other than an Administrative Claim or Priority Tax Claim.

**1.113 Offered Shares** means those shares of Syms common stock offered for sale to the Eligible Holders in the Rights Offering.

**1.114 Operating Reserves** means collectively the Carry Cost/Repair/TI Reserve, the Pension Reserve, the Corporate Overhead Reserve, the Trinity Carry Reserve, the Emergency Fund Reserve and the Discretionary Fund Reserve.

**1.115 Pension Reserve** means the Sub-Category Expense Reserve set forth in the Budget, which shall fund the minimum annual payments due under the Syms Pension Plan (after adjusting for any amounts paid on the Effective Date as an administrative expense) and fund the quarterly payments coming due within the applicable Budget period for the Allowed Union Pension Plan Claims.

**1.116 Person** has the meaning set forth in Bankruptcy Code section 101(41).

**1.117 Petition Date** means November 2, 2011, the date on which the Debtors filed their petitions for relief commencing the Chapter 11 Cases.

**1.118 Plan** means this second amended joint plan of reorganization and all Exhibits annexed to the Plan, referenced in the Plan or included in the Plan Supplement, as the same may be altered, amended, modified or supplemented from time to time in accordance with the Bankruptcy Code and the Bankruptcy Rules.

**1.119 Plan Documents** means the Plan, the Disclosure Statement, the Equity Commitment Agreement, the Rights Offering Procedures, the Subscription Agreement, the Certificate of Incorporation and Bylaws for Reorganized Syms, the LLC Agreement for Reorganized Filene's, the order approving the Disclosure Statement and the Confirmation Order.

**1.120 Plan Proponents** means the Debtors and the Equity Committee, subject to the right of the Equity Committee to withdraw as a Plan Proponent.

**1.121 Plan Settlement** means the settlement set forth in Article II hereof and that is implemented and effectuated by the Plan.

**1.122 Plan Supplement** means the supplement to the Plan that the Debtors will file with the Bankruptcy Court by the Exhibit Filing Date.

**1.123 Plan Waterfall** means the order of distribution of the Excess Cash set forth in Article IV of the Plan.

**1.124 Prepetition Secured Loan** means that certain credit facility memorialized by the Credit Agreement (as amended) dated as of August 27, 2009 between Syms and Filene's as borrowers and Bank of America, N.A. as Administrative and Collateral Agent.

**1.125 Priority Tax Claim** means a Claim of a governmental unit of the kind specified in Bankruptcy Code sections 502(i), 507(a)(8) or 1129(a)(9)(D).

**1.126 Professional** means (a) any professional employed in these Chapter 11 Cases pursuant to Bankruptcy Code sections 327, 328, or 1103 or otherwise, and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to Bankruptcy Code section 503(b)(4).

**1.127 Professional Fee Claim** means a Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges incurred after the Petition Date and prior to and including the Effective Date, plus post-Effective Date fees and expenses incurred in the preparation and prosecution of fee applications.

**1.128 Professional Fee Estimate** means (i) with respect to any Professional, a good faith estimate of such Professional's accrued unpaid Professional Fee Claims to be provided by each Professional in writing to the Debtors prior to the commencement of the Confirmation Hearing, or, in the absence of such a writing, to be prepared by the Debtors and (ii) collectively, the sum of all individual Professional Fee Estimates.

**1.129 Professional Fee Reserve** means the reserve of Cash established pursuant to Article VII.G.1. hereof for Holders of Allowed Professional Fee Claims to the extent that such Allowed Professional Fee Claims have not otherwise been paid in full (or in the manner agreed upon between the Holder of each such Allowed Professional Fee Claim and the Debtors) prior to the Effective Date in an amount equal to the Professional Fee Estimate.

**1.130 Proof of Claim** means a proof of claim, including, but not limited to, any Administrative Claim, filed with the Bankruptcy Court in connection with the Chapter 11 Cases pursuant to section 501 of the Bankruptcy Code.

**1.131 Pro Rata** means a Holder's proportionate share such that, at any time, (i) in the case of Claims, the proportion that the Face Amount of the Allowed Claims held by such Holder in a particular Class bears to the aggregate Face Amount of all Allowed Claims in such Class, and (ii) in the case of Interests, the proportion that the number of Interests held by such Holder in a particular Class bears to the aggregate number of all Interests in such Class.

**1.132 Purchase Offer** means a bona fide purchase offer for the Company's Trinity Interest that is acceptable to the Reorganized Company.

**1.133 Rejection Bar Date** means the deadline by which any Entity whose Claims arise out of the rejection of an executory contract or unexpired lease (pursuant to Bankruptcy Code section 365) after the Petition Date, must File a Proof of Claim, which deadline shall be the later of (i) thirty (30) days after the effective date of rejection as provided by an order of the Bankruptcy Court, pursuant to Bankruptcy Code section 365, authorizing the rejection of such contract or lease, (ii) any date set by order of the Court, (iii) the general bar date, and (iv) thirty (30) days after the

Effective Date; provided, however, that if any Entity is subject to the General Bar Date Order at Docket No. 674 or any Pre-Existing Bar Date as defined in the General Bar Date Order, such Entity is bound thereby, as applicable, and nothing herein shall extend any such bar date.

**1.134 Released Parties** has the meaning ascribed to such term in Article XII.E of the Plan.

**1.135 Reorganized Company** means Reorganized Syms and its wholly owned limited liability company, Reorganized Filene's.

**1.136 Reorganized Filene's** means Filene's on and after the Effective Date.

**1.137 Reorganized Syms** means Syms on and after the Effective Date.

**1.139 Rights Offering** means the rights offering whereby all Eligible Holders of Interests in Syms other than the Majority Shareholder will be issued Subscription Rights, as set forth in, and subject to the Rights Offering Procedures and the Plan.

**1.140 Rights Offering Documents** means, collectively, the documents necessary for effectuating the Rights Offering.

**1.141 Rights Offering Procedures** means the procedures for implementing the Rights Offering, attached hereto as Exhibit D.

**1.142 Rights Offering Proceeds** means the proceeds from the Rights Offering in an amount equaling \$25 million.

**1.143 Rights Offering Record Date** means the rights offering record date set forth in the Accredited Investor Order which date is the same as the Accredited Investor Record Date.

**1.144 Schedules** means the schedules of assets and liabilities, the list of Holders of Interests, and the statements of financial affairs filed by the Debtors pursuant to Bankruptcy Code section 521 and the Bankruptcy Rules, as such schedules have been or may be further modified, amended or supplemented in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

**1.145 Secured Claim** means a Claim that is secured by a Lien which is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law, on property in which an Estate has an interest, or a Claim that is subject to setoff under section 553 of the Bankruptcy Code to the extent of the value of the Holder's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable as determined by a Final Order pursuant to section 506(a) of the Bankruptcy Code, or in the case of setoff, pursuant to section 553 of the Bankruptcy Code, or in either case as otherwise agreed upon in writing by the Debtors and the Holder of such Claim.

**1.146 Securities Act** means the Securities Act of 1933, as amended, and the rules and regulations promulgated pursuant thereto.

**1.147 Senior Claim** means any Administrative Claim, Non-Tax Priority Claim, Priority Tax Claim or Secured Claim against any of the Debtors.

**1.148 *Share Purchase Transaction*** means the transactions in connection with consummation of the Plan whereby 7,857,794 shares of the Majority Shareholder's Interests in Syms are purchased by Reorganized Syms on the Effective Date on the terms set forth in the Plan.

**1.149 *Split Dollar Settlement Payment*** means the payment to be made in connection with issues relating to the Split Dollar Policy, which is being credited against the Initial Shareholder Payment (which, absent this credit, would have been \$12,500,000, but which has been reduced to \$10,725,641 to reflect this credit).

**1.150 *Split Dollar Policy*** means the split-dollar life insurance policy on Marcy Syms, issued by Massachusetts Life Insurance Company to Laben Lathan, Trustee of Trust UTD 5/20/99.

**1.151 *Sub-Category Expense Reserve*** means any of the following: the Carry Cost/Repair/TI Reserve, the Pension Reserve, the Corporate Overhead Reserve or the Trinity Carry Reserve.

**1.152 *Subscription Rights*** means the non-certificated subscription rights issued to Eligible Holders in the Rights Offering.

**1.153 *Subsequent Majority Shareholder Payment*** means the payment under the Plan Waterfall in an amount totaling \$7,065,907, to be paid from the Excess Cash after full payment of amounts owed to all Allowed General Unsecured Claims and the Initial Majority Shareholder Payment under the Plan.

**1.154 *Substantial Contribution Claim*** means a Claim under Bankruptcy Code sections 503(b)(3), (b)(4), or (b)(5) for compensation or reimbursement of expenses incurred in making a substantial contribution in the Chapter 11 Cases.

**1.155 *Superpriority Intercompany Claim*** means an Allowed Intercompany Claim arising from and after the Petition Date, with priority as an administrative expense of the kind specified in section 503(b) and super-priority of the kind specified in section 507(b) of the Bankruptcy Code, pursuant to the Amended Order Pursuant To 11 U.S.C. §§ 105(a) And 363, Fed. R. Bankr. P. 6003 And Del. Bankr. L.R. 2015-2 (I) Authorizing Continued Maintenance Of Existing Bank Accounts, (II) Authorizing Continued Use Of Existing Business Forms And (III) Authorizing Continued Use Of Existing Cash Management System With Certain Modifications, dated December 28, 2011.

**1.156 *Syms*** means Syms Corp.

**1.157 *Syms Assets*** means all assets of the Syms estate as of the Effective Date including, but not limited to, Syms Cash and Syms Owned Real Estate.

**1.158 *Syms General Unsecured Claim*** means a Claim against Syms, including a Claim on account of a guarantee provided by Syms, that is not an Administrative Claim, Convenience Claim, Intercompany Claim, Non-Tax Priority Claim, Priority Tax Claim, Secured Claim, Superpriority Intercompany Claim, Filene's Union Pension Plan Claim, or Syms Union Pension Plan Claim.

**1.159 *Syms Local 108 CBA*** means that certain Collective Bargaining Agreement between Syms Corp. and Local 108 Retail, Wholesale and Department Store Union,

as amended by the Memorandum of Understanding Between Syms Corp. and Local 108, RWDSU, UFCW.

**1.160 Syms Local 400 CBA** means that certain Agreement Made by and between Local 400 Chartered by the United Food & Commercial Workers International Union and Syms Corporation.

**1.161 Syms Local 1102 CBA** means that certain Collective Bargaining Agreement between Local 1102 RWDSU UFCW and Associated Men's Wear Retailers of New York, Inc.

**1.162 Syms Owned Real Estate** means all real property (including leasehold interests) owned by Syms as of the Effective Date.

**1.163 Syms Pension Plan** means the Syms single-employer defined benefit pension plan covered by Title IV of ERISA.

**1.164 Syms Union Pension Plan Claim** means a general unsecured Union Pension Plan Claim against Syms.

**1.165 TI Costs** means the projected amount to be utilized for making, or reimbursing tenants for, tenant improvements and leasing commissions incurred with respect to the leasing of the Medium Term Properties.

**1.166 Trinity Carry Reserve** means the Sub-Category Expense Reserve which shall fund the payment of taxes, insurance, repairs, and other similar expenses and improvements for the Trinity Property.

**1.167 Trinity Joint Venture** means the transfer of the Trinity Property into a new joint venture.

**1.168 Trinity Mortgage** means to incur mortgage debt financing to be secured by the Trinity Property in an amount not to exceed the lesser of (i) \$30 million or (ii) 50% of the fair market value of the Trinity Property based on a commercial current as-built appraisal prepared in accordance with acceptable appraisal industry standards.

**1.169 Trinity Property** means the two parcels of real property owned by Syms and located at 42 Trinity Place, New York, New York 10007 which shall be developed or sold over an extended period of time as determined by the Board of Directors.

**1.170 Trinity Reserve Carry Amount** means the amount of funds used to fund the Trinity Carry Reserve, excluding any reallocation of funds from the Corporate Overhead Reserve.

**1.171 Unimpaired** means a Claim, Class, or Interest that is not impaired within the meaning of Bankruptcy Code section 1124.

**1.172 Union Pension Plan Claims** means the general unsecured Claims of Local 1102 for pension withdrawal liability.

**1.173 Unsubscribed Shares** means those shares of Syms common stock offered under the Rights Offering that are not subscribed for by the Eligible Holders.

**1.174 U.S. Trustee** means the Office of the United States Trustee for the District of Delaware.

**1.175 Voting Deadline** means the date and time, as fixed by an order of the Bankruptcy Court and set forth in the Disclosure Statement, by which all Ballots to accept or reject the Plan must be received in order to be counted.

**1.176 Voting Record Date** means July 13, 2012.

**1.177 Workers Compensation Claim** means a Claim held by a current or former employee of the Debtors for workers' compensation insurance coverage under the workers' compensation laws applicable in the particular state in which the employee is or was employed by the Debtors.

### **C. Rules of Interpretation**

For purposes of the Plan, (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (b) any reference in the Plan to an existing document or exhibit Filed or to be Filed means such document or exhibit as it may have been or may be amended, modified, or supplemented, (c) unless otherwise specified, all references in the Plan to sections, articles, Schedules and Exhibits are references to sections, articles, Schedules and Exhibits of or to the Plan, (d) the words "herein" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan, (e) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan, and (f) to the extent not modified herein, the rules of construction set forth in Bankruptcy Code section 102 and in the Bankruptcy Rules shall apply.

### **D. Computation of Time**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

### **E. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) and except as otherwise provided herein or therein, the laws of (i) the State of Delaware shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan and (ii) the laws of the state of incorporation of each Debtor, as may be modified by the Plan, shall govern corporate governance matters with respect to such Debtor, in either case without giving effect to the principles of conflicts of law thereof.

### **F. Exhibits**

All Exhibits are incorporated into and are a part of this Plan as if set forth in full herein, and, to the extent not annexed hereto, such Exhibits shall be filed in one or more Plan Supplements with the Bankruptcy Court on or before the Exhibit Filing Date. After the Exhibit Filing Date, copies of Exhibits can be obtained upon written request to Skadden, Arps, Slate, Meagher & Flom LLP, One Rodney Square,

P.O. Box 636, Wilmington, Delaware, 19899 (Attn: Mark S. Chehi, Esq.), counsel to the Debtors or by downloading such Exhibits from the Bankruptcy Court's website at <http://www.deb.uscourts.gov> (registration required) or the Claims Agent's website at [www.kccllc.net](http://www.kccllc.net). To the extent any Exhibit is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-Exhibit portion of the Plan shall control.

## **II. PLAN SETTLEMENT**

### **A. Global Settlement**

The Plan implements a comprehensive global compromise and settlement (the "Plan Settlement") of (i) the treatment of Intercompany Claims, Superpriority Intercompany Claims, Claims against Filene's, Claims against Syms, and the Claims and Interests asserted by other parties in interest, (ii) the disposition of the property of the Debtors' Estates, (iii) any possible claims or causes of action that the Debtors' Estates should be substantively consolidated, (iv) the disposition of any claims or causes of action of the Debtors or their Estates and (v) any claims or causes of action between and among the Equity Committee and the members of the Equity Committee and their affiliates, the Creditors' Committee and the members of the Creditors' Committee and their affiliates, and the Majority Shareholder and current and former officers, directors, managers and professionals of the Debtors. Pursuant to Bankruptcy Rule 9019 and section 1123(b)(3) of the Bankruptcy Code and consistent with section 1129 of the Bankruptcy Code, the Plan shall constitute a motion for approval of, and the Confirmation Order shall authorize and constitute Bankruptcy Court approval of, the Plan Settlement.

Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan, including the Share Purchase Transaction and the releases set forth in the Plan, shall constitute a good faith compromise and settlement of all Claims or controversies relating to the rights that a Holder of a Claim or Interest may have with respect to any Claim, Interest or any Distribution to be made pursuant to the Plan on account of any Allowed Claim or Interest or on account of any Intercompany Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such Claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtors, the Reorganized Company and their respective property and Claim and Interest Holders and is fair, equitable and reasonable.

On the Effective Date, pursuant to Bankruptcy Rule 9019 and section 1123(b) of the Bankruptcy Code, in full and final satisfaction, settlement and release of all Intercompany Claims, Superpriority Intercompany Claims, any possible claims or causes of action that the Debtors' Estates should be substantively consolidated, and for good and valuable consideration, including the treatment specified in the Plan for Claims against Filene's and the Claims and Interests asserted by other parties in interest, the Plan Settlement shall be effectuated in accordance with the following terms if the Plan Settlement is approved by the Bankruptcy Court:

1. The Holders of Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date and immediately prior to the Merger, Intercompany Claims shall be deemed to offset and all Intercompany Claims remaining after offset shall be deemed cancelled and extinguished.

2. The Holders of Superpriority Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date and immediately prior to the Merger, Superpriority Intercompany Claims shall be deemed to offset and all Superpriority Intercompany Claims remaining after offset shall be deemed cancelled and extinguished.



3. On the Effective Date, and except as set forth in this Plan, all property of each of the Debtors' Estates shall vest in Reorganized Syms other than the Filene's Intellectual Property, which shall revert in Reorganized Filene's provided that 100% of any Cash realized or received by Filene's on or after the Effective Date from any source shall constitute Net Proceeds to be used in accordance with the Plan by Reorganized Syms.

4. Reorganized Syms shall assume any and all Indemnification Obligations of the Debtors pursuant to Article IX.C. of the Plan; *provided, however*, that such assumption shall not cause the assumption of any severance obligation by any Debtor or Reorganized Syms not previously approved by the Bankruptcy Court pursuant to the KEIP Order.

5. The treatment of the Claims against and Interests in the Debtors shall be as specified in the Plan, including but not limited to the Plan Waterfall.

6. On the Effective Date, all actual or potential Claims and Causes of Action asserting that the Debtors' Estates or any of them should be substantively consolidated or that the corporate veil of Syms should be pierced or any similar Claim or Cause of Action to render Syms liable for Claims against Filene's other than on the basis of a valid, written guarantee, shall be deemed settled, released, waived and forever enjoined. Holders of Filene's General Unsecured (Short-Term) and (Long-Term) Claims may opt-out of the releases provided herein by electing treatment in Filene's Class 4B or 5B, provided, however, that such Holders of Allowed Claims who opt-out shall receive, a payment equal to a Pro Rata distribution to Holders of Allowed Filene's General Unsecured Claims from the Filene's General Unsecured Creditor Liquidation Value (estimated to be 0 - 5%), and retention of any Individual Filene's Creditor Claims against Syms to the extent timely asserted and subject to any defenses or counterclaims of Syms.

7. On the Effective Date, the Debtors and their Estates shall release the Released Parties in accordance with Article XII.E of the Plan.

8. On the Effective Date, all actual or potential Claims and Causes of Action between or among the Equity Committee and the members of the Equity Committee and their respective affiliates and professionals, the Creditors' Committee and the members of the Creditors' Committee and their respective affiliates and professionals, and the Majority Shareholder and current and former officers, directors, managers and professionals of the Debtors, shall be deemed settled, released, waived and forever enjoined.

9. Except as agreed to by the Plan Proponents and the Creditors' Committee and identified in Exhibit A to the Plan, to be included with the Plan Supplement, all Causes of Action and Avoidance Actions shall be released as of the Effective Date.

10. In consideration of the benefits received by the Majority Shareholder under the Plan, Ms. Marcy Syms covenants not to and shall not directly or indirectly interfere with or participate in any disposition of property or operations of the Reorganized Company except as specifically provided for herein.

11. On the Effective Date, and except as otherwise provided herein, the directors serving on the Board of Directors immediately prior to the Effective Date shall retain reasonable access to the books and records of the Debtors following the Effective Date with respect to matters pertaining to the time period before the Effective Date.

**B. Settlement With Local 1102 Retirement Trust, Filene's Local 1102 Union and Syms Local 1102 Union**

Local 1102 Retirement Trust filed a Claim against Syms asserting priority status in the amount of \$6,408,848 on account of alleged multi-employer pension plan withdrawal liability arising under the Employee Retirement Income Security Act of 1974. Syms disputes the asserted Claim and its asserted priority status.

Filene's Local 1102 Union represents former Filene's employees who were covered by the Filene's Local 1102 CBA. Filene's Local 1102 Union filed certain Claims in the Chapter 11 cases.

Syms Local 1102 Union represents former Syms employees who were covered by the Syms Local 1102 CBA. Syms Local 1102 Union filed certain Claims in the Chapter 11 cases.

The Debtors, Local 1102 Retirement Trust, Filene's Local 1102 Union and Syms Local 1102 Union have reached a global settlement of certain matters as follows:

1. (a) On the Effective Date, Syms will pay to Local 1102 Retirement Trust the amount of \$203,232, representing one minimum funding payment due April 21, 2012, plus interest accruing at a rate of 3.25% per year from April 21, 2012.

(b) On November 15, Syms will pay Local 1102 Retirement Trust \$406,464, representing (i) one minimum funding payment due July 1, 2012, plus interest accruing at a rate of 3.25% per year from July 1, 2012, and (ii) one minimum funding payment due November 1, 2012, plus interest accruing at a rate of 3.25% per year from November 1, 2012.

(c) Syms will thereafter make quarterly payments to Local 1102 Retirement Trust in the amount of \$203,232, beginning February 1, 2013 and on the first of every third month thereafter, until Local 1102 Retirement Trust's entire \$6,408,848 claim is paid in full.

2. Claims filed by Filene's Local 1102 Union and Syms Local 1102 Union will be administered and treated in accordance with the provisions of the Plan and Confirmation Order.

3. On the Effective Date, the Filene's Local 1102 CBA and the Syms Local 1102 CBA will be deemed voluntarily terminated by agreement of the Debtors, Filene's Local 1102 Union, Syms Local 1102 Union and Local 1102 Retirement Trust. The Debtors shall have no other or further obligations under the Filene's Local 1102 CBA and the Syms Local 1102 CBA; excluding, however, any Claims and obligations arising prior to the Effective Date and previously asserted by Filene's Local 1102 Union, Syms Local 1102 Union or their respective constituents.

**III. CLASSIFICATION OF CLAIMS AND INTERESTS**

**A. Separate Plans**

This Plan, while prepared jointly, constitutes two separate plans, one for Syms, and one for Filene's. The Debtors do not believe that Advertising or Clothing have any assets or liabilities. Accordingly, the Debtors have not proposed a plan for either of these Debtors other than that they shall be merged into Reorganized Syms as provided in the Plan. Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of certain unclassified Claims, along with Classes of Claims against and Interests in Syms and Filene's. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the

extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving distributions pursuant to this Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

**B. Unclassified Claims Against Syms**

1. Administrative Claims
2. Superpriority Intercompany Claims
3. Priority Tax Claims

**C. Classified Claims Against and Interests in Syms**

1. Class 1: Secured Claims (Unimpaired). Syms Class 1 consists of separate sub-Classes for all Secured Claims against Syms.
2. Class 2: Non-Tax Priority Claims (Unimpaired). Syms Class 2 consists of Non-Tax Priority Claims against Syms.
3. Class 3: Convenience Claims (Impaired). Syms Class 3 consists of Convenience Claims against Syms.
4. Class 4: General Unsecured Claims (Impaired). Syms Class 4 consists of Syms General Unsecured Claims.
5. Class 5: Union Pension Plan Claims (Impaired). Syms Class 5 consists of Syms Union Pension Fund Claims.
6. Class 6: Intercompany Claims (Impaired). Syms Class 6 consists of Syms Intercompany Claims.
7. Class 7: Interests in Syms (Impaired). Syms Class 7 consists of all Interests in Syms.

**D. Unclassified Claims Against Filene's**

1. Administrative Claims
2. Superpriority Intercompany Claims
3. Priority Tax Claims

**E. Classified Claims Against and Interests in Filene's**

1. Class 1: Secured Claims (Unimpaired). Filene's Class 1 consists of separate sub-Classes for all Secured Claims against Filene's.
2. Class 2: Non-Tax Priority Claims (Unimpaired). Filene's Class 2 consists of Non-Tax Priority Claims against Filene's.

3. Class 3: Convenience Claims (Impaired). Filene's Class 3 consists of Convenience Claims against Filene's.
4. Class 4A and B: Filene's General Unsecured (Short-Term) Claims (Impaired). Filene's Class 4 consists of Filene's General Unsecured (Short-Term) Claims.
5. Class 5A and B: Filene's General Unsecured (Long-Term) Claims (Impaired). Filene's Class 5 consists of Filene's General Unsecured (Long-Term) Claims.
6. Class 6: Union Pension Plan Claims (Impaired). Filene's Class 6 consists of Filene's Union Pension Fund Claims.
7. Class 7: Intercompany Claims (Impaired). Filene's Class 7 consists of Filene's Intercompany Claims.
8. Class 8: Interests in Filene's (Unimpaired). Filene's Class 8 consists of Interests in Filene's.

#### **IV. PLAN WATERFALL**

Excess Cash shall be distributed in accordance with the Provisions Governing Distributions at Article VIII. of the Plan and subject to the following waterfall (the "Plan Waterfall"):

1. Excess Cash shall be distributed in the following allocations: first, to payment of Allowed Senior Claims, as and when Allowed, to the extent not previously reserved for and, second (i) 60% of the first available distributable Excess Cash to Holders of Allowed Convenience Class Claims, then to Holders of Allowed Syms General Unsecured Claims, and (ii) 40% of the first available distributable Excess Cash to the Majority Shareholder until the Initial Majority Shareholder Payment in the amount of \$10,725,641 (which is net of the Split Dollar Payment in the amount of \$1,774,359) has been paid in full; then
2. Any remaining Excess Cash shall be paid to Holders of Allowed Syms General Unsecured Claims until such Claims are paid in full; then
3. Any remaining Excess Cash shall be paid to Holders of Allowed Filene's General Unsecured (Short-Term) Claims until such Claims are paid in full; then
4. Any remaining Excess Cash shall be paid to Holders of Allowed Filene's General Unsecured (Long-Term) Claims until 75% of such Claims are paid; then
5. Any remaining Excess Cash shall be paid to the Majority Shareholder until the Majority Shareholder has received, exclusive of the Initial Majority Shareholder Payment, the Subsequent Majority Shareholder Payment in the aggregate amount of \$7,065,907, which amount represents the remaining payment due to the Majority Shareholder for the purchase of the Majority Shareholder's shares, less the reimbursement to the Estates related to the Split-Dollar Policy; then

6. Any remaining Excess Cash shall be retained by Reorganized Syms and distributed or otherwise utilized as directed by the Reorganized Company's Board of Directors.

## **V. TREATMENT OF CLAIMS AND INTERESTS**

### **A. Unclassified Claims Against Syms**

#### **1. Administrative Claims**

On, or as soon as reasonably practicable after the later of, (i) the Initial Distribution Date or (ii) the Distribution Date immediately following the date on which an Administrative Claim becomes an Allowed Administrative Claim, each Holder of such Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim, or (b) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing; provided, however, that Allowed Administrative Claims with respect to liabilities incurred by Syms in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto.

#### **2. Superpriority Intercompany Claims**

Pursuant to the Plan Settlement, the Holders of Superpriority Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Superpriority Intercompany Claims shall be deemed offset, cancelled and extinguished.

#### **3. Priority Tax Claims**

On, or as soon as reasonably practicable after the later of, (i) the Initial Distribution Date or (ii) the Distribution Date immediately following the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing.

### **B. Unclassified Claims Against Filene's**

#### **1. Administrative Claims**

On, or as soon as reasonably practicable after the later of, (i) the Initial Distribution Date or (ii) the Distribution Date immediately following the date on which an Administrative Claim becomes an Allowed Administrative Claim, each Holder of such Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim, or (b) such other less favorable treatment as to which such Holder and Filene's shall have agreed upon in writing; provided, however, that Allowed Administrative Claims with respect to liabilities incurred by Filene's in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto.

## 2. Superpriority Intercompany Claims

Pursuant to the Plan Settlement, the Holders of Superpriority Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Superpriority Intercompany Claims shall be deemed offset, cancelled and extinguished.

## 3. Priority Tax Claims

On, or as soon as reasonably practicable after the later of, (i) the Initial Distribution Date or (ii) the Distribution Date immediately following the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as to which such Holder and Filene's shall have agreed upon in writing.

# C. Classified Claims Against and Interests In Syms

## 1. Syms Class 1: Secured Claims (Unimpaired)

Syms Class 1 consists of separate sub-Classes for all Secured Claims against Syms. On, or as soon as reasonably practicable after, the later of (a) the Initial Distribution Date, or (b) the Distribution Date immediately following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for, such Allowed Secured Claim, (i) Cash equal to the value of its Allowed Secured Claim, (ii) the Collateral securing the Secured Claim, or (iii) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing. Any Holder of a Secured Claim shall retain its right of setoff or Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold (or deemed abandoned) by Syms free and clear of such right of setoff or Lien) to the same extent and with the same priority as such right of setoff or Lien as of the Petition Date until such time as (A) the Holder of such Secured Claim (i) has been paid Cash equal to the value of its Allowed Secured Claim, (ii) has received a return of the Collateral securing the Secured Claim, or (iii) has been afforded such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing; or (B) such purported right of setoff or Lien has been determined by an order of the Bankruptcy Court to be invalid or otherwise avoidable.

## 2. Syms Class 2: Non-Tax Priority Claims (Unimpaired)

Syms Class 2 consists of Non-Tax Priority Claims against Syms. On, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date, or (ii) the Distribution Date immediately following the date on which a Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim, each Holder of an Allowed Non-Tax Priority Claim shall be entitled to receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Non-Tax Priority Claim, Cash in an amount equal to its Allowed Non-Tax Priority Claim.

## 3. Syms Class 3: Convenience Claims (Impaired)

Syms Class 3 consists of Convenience Claims against Syms. After all Allowed Senior Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash becomes available, each Holder of an Allowed Syms Convenience Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's

Syms Convenience Claim becomes an Allowed Syms Convenience Claim (1) one or more cash payments from 60% of the first available distributable Excess Cash until the Initial Majority Shareholder Payment is made in full from the other 40% of the first available distributable Excess Cash, and then cash payments aggregating not more than 100% of the Allowed amount of its Allowed Syms Convenience Claim, or (2) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Syms Convenience Claim. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Syms Convenience Claims from and after October 1, 2015.

4. Syms Class 4: Syms General Unsecured Claims (Impaired)

Syms Class 4 consists of Syms General Unsecured Claims. After all Allowed Senior Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash becomes available, each Holder of an Allowed Syms General Unsecured Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Syms General Unsecured Claim becomes an Allowed Syms General Unsecured Claim (1) one or more cash payments from 60% of the first available distributable Excess Cash until the Initial Majority Shareholder Payment is made in full from the other 40% of the first available distributable Excess Cash, and then cash payments aggregating not more than 100% of the Allowed amount of its Allowed Syms General Unsecured Claim, or (2) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Syms General Unsecured Claim. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Syms General Unsecured Claims from and after October 1, 2015. Interest shall be paid in kind and compounded annually.

For the avoidance of a doubt, Syms Class 4 does not include Syms Class 5 Syms Union Pension Plan Claims.

5. Syms Class 5: Syms Union Pension Plan Claims (Impaired)

Syms Class 5 consists of Syms Union Pension Plan Claims. Pursuant to the Plan, the Holders of Syms Union Pension Plan Claims will receive quarterly Distributions from the Pension Plan Reserve for the Allowed amount of such Syms Union Pension Plan Claims, as set forth in Article VII.G.3. below, in accordance with Syms' contractual or legal obligations under the Union Pension Plans and the settlement of any Claims under the Plan.

6. Syms Class 6: Syms Intercompany Claims (Impaired)

Syms Class 6 consists of Syms Intercompany Claims. Pursuant to the Plan Settlement, the Holders of Syms Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Syms Intercompany Claims shall be deemed offset, cancelled and extinguished.

7. Syms Class 7: Interests in Syms (Impaired)

Syms Class 7 consists of all Interests in Syms. All Interests in Syms are Allowed Interests and each Holder of an Interest in Syms, other than the Majority Shareholder, shall (A) retain its Interest, except as otherwise provided in the Plan, and (B) if the Holder is an Eligible Holder, shall receive Subscription Rights to participate in the Rights Offering on the terms and conditions of the Rights

Offering Procedures; provided, however, that the Majority Shareholder shall not receive any Subscription Rights in the Rights Offering.

**D. Classified Claims Against And Interests In Filene's**

**1. Filene's Class 1: Secured Claims (Unimpaired)**

Filene's Class 1 consists of separate sub-Classes for all Secured Claims against Filene's. On, or as soon as reasonably practicable after, the later of (a) the Initial Distribution Date, or (b) the Distribution Date immediately following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for, such Allowed Secured Claim, (i) Cash equal to the value of its Allowed Secured Claim, (ii) the Collateral securing the Secured Claim, or (iii) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing. Any Holder of a Secured Claim shall retain its right of setoff or Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold (or deemed abandoned) by the Debtors free and clear of such right of setoff or Lien) to the same extent and with the same priority as such right of setoff or Lien as of the Petition Date until such time as (A) the Holder of such Secured Claim (i) has been paid Cash equal to the amount of its Allowed Secured Claim, (ii) has received a return of the Collateral securing the Secured Claim, or (iii) has been afforded such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing; or (B) such purported right of setoff or Lien has been determined by an order of the Bankruptcy Court to be invalid or otherwise avoidable.

**2. Filene's Class 2: Non-Tax Priority Claims (Unimpaired)**

Filene's Class 2 consists of Non-Tax Priority Claims against Filene's. On, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date, or (ii) the Distribution Date immediately following the date on which a Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim, each Holder of an Allowed Non-Tax Priority Claim shall be entitled to receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Non-Tax Priority Claim, Cash in an amount equal to its Allowed Non-Tax Priority Claim.

**3. Filene's Class 3: Convenience Claims (Impaired)**

Filene's Class 3 consists of Convenience Claims against Filene's. After all Allowed Senior Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash becomes available, each Holder of an Allowed Filene's Convenience Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's Convenience Claim becomes an Allowed Filene's Convenience Claim (1) one or more cash payments from 60% of the first available distributable Excess Cash until the Initial Majority Shareholder Payment is made in full from the other 40% of the first available distributable Excess Cash, and then cash payments aggregating not more than 100% of the Allowed amount of its Allowed Filene's Convenience Claim, or (2) such other less favorable treatment as to which such Holder and Filene's shall have agreed upon in writing, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's Convenience Claim. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Filene's Convenience Claims from and after October 1, 2015.



4. Filene's Class 4A and B: Filene's General Unsecured (Short-Term) Claims (Impaired)

Filene's Class 4 consists of Filene's General Unsecured (Short-Term) Claims. Each Holder in Filene's Class 4 shall receive the treatment specified in Class 4A unless the Holder elects to opt-out and receive the treatment specified in Class 4B.

Class 4A: After all Allowed Senior Claims, Allowed Convenience Claims, Allowed Syms Class 4 General Unsecured Claims and the Initial Majority Shareholder Payment have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash become available, each Holder of an Allowed Filene's General Unsecured (Short-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Short-Term) Claim becomes an Allowed Filene's General Unsecured (Short-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Short-Term) Claim and its Individual Filene's Creditor Claims (1) one or more cash payments from the Excess Cash aggregating not more than 100% of the Allowed amount of its Allowed Filene's General Unsecured (Short-Term) Claim, or (2) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Filene's General Unsecured (Short-Term) Claims from and after October 1, 2015. Interest shall be paid in kind and compounded annually.

Class 4B: Holders of Filene's General Unsecured (Short-Term) Claims will have the option to indicate on their respective Ballots their refusal to grant the releases provided in Section XII.H. ("Opt-Out"), provided, however, such Holder of an Allowed Filene's General Unsecured (Short-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Short-Term) Claim becomes an Allowed Filene's General Unsecured (Short-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Short-Term) Claim, a payment equal to a Pro Rata distribution to Holders of Allowed Filene's General Unsecured (Short-Term) Claims from the Filene's General Unsecured Creditor Liquidation Value, and retention of any Claims of the Holder against Syms to the extent timely asserted and subject to any defenses or counterclaims of Syms.

For the avoidance of a doubt, Filene's Class 4 does not include Filene's Class 6 Filene's Union Pension Plan Claims.

5. Filene's Class 5: Filene's General Unsecured (Long-Term) Claims (Impaired)

Filene's Class 5 consists of Filene's General Unsecured (Long-Term) Claims. Each Holder in Filene's Class 5 shall receive the treatment specified in Class 5A unless the Holder elects to opt-out and receive the treatment specified in Class 5B.

Class 5A: After all Allowed Senior Claims, Allowed Convenience Claims, Allowed Syms Class 4 General Unsecured Claims, the Initial Majority Shareholder Payment and Allowed Filene's Class 4 General Unsecured (Short-Term) Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash become available, each Holder of an Allowed Filene's General Unsecured (Long-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Long-Term) Claim becomes an Allowed Filene's General Unsecured (Long-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Long-

Term) Claim and its Individual Filene's Creditor Claims (1) one or more cash payments from the Excess Cash aggregating not more than 75% of the Allowed amount of its Allowed Filene's General Unsecured (Long-Term) Claim, or (2) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Filene's General Unsecured (Long-Term) Claims from and after October 1, 2015. Interest shall be paid in kind and compounded annually.

Class 5B: Holders of Filene's General Unsecured (Long-Term) Claims will have the ability to Opt-Out, provided, however, such Holder of an Allowed Filene's General Unsecured (Long-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Long-Term) Claim becomes an Allowed Filene's General Unsecured (Long-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Long-Term) Claim, a payment equal to a Pro Rata distribution to Holders of Allowed Filene's General Unsecured (Long-Term) Claims from the Filene's General Unsecured Creditor Liquidation Value, and retention of any Claims of the Holder against Syms to the extent timely asserted and subject to any defenses or counterclaims of Syms.

For the avoidance of a doubt, Filene's Class 5 does not include Filene's Class 6 Filene's Union Pension Plan Claims.

If there has not been a General Unsecured Claim Satisfaction by October 1, 2016, then, effective on such date, (A) the terms of the two Equity Committee Directors then in office who are youngest in age shall automatically terminate, the term of the Independent Director shall automatically terminate, and the persons formerly holding such directorships shall cease to be directors, all without the need for any action by the Board of Directors or the stockholders of the Corporation, (B) immediately following such termination of directorships and the resultant automatic reduction in the size of the Board of Directors to two (2) directors (the one Equity Committee Director and the Series A Director), the size of the Board of Directors shall automatically be increased so that the Board of Directors is comprised of a total of nine (9) authorized directorships with the seven (7) directorships created thereby to be filled (and thereafter elected) solely by the Trustee of the Golden Preferred Trust, voting as a separate class to the exclusion of the holders of Common Stock and any other Preferred Stock. Thereafter, upon the occurrence of a General Unsecured Claim Satisfaction after October 1, 2016, Reorganized Syms shall immediately redeem the Series A Preferred Stock, the terms of all directors elected by the Trustee of the Golden Preferred Trust shall automatically terminate, the persons holding such directorships immediately prior to such termination shall cease to be directors and the size of the Board of Directors shall be automatically reduced to one (1) authorized directorship. Subject to the rights of the Majority Shareholder described below, following the redemption of the Series A Preferred Stock (whether before or after October 1, 2016), (a) all directors shall be elected exclusively by the holders of Common Stock, and (b) the total number of directors comprising the Board of Directors may be fixed from time to time solely by resolution of the Board of Directors, and vacancies and newly created directorships may be filled solely by a majority of the directors then in office, even if less than a quorum.

#### 6. Filene's Class 6: Filene's Union Pension Plan Claims (Impaired)

Filene's Class 6 consists of Filene's Union Pension Plan Claims. Pursuant to the Plan, the Holders of Filene's Union Pension Plan Claims will receive quarterly Distributions from the Pension Plan Reserve for the Allowed amount of such Union Pension Plan Claims, as set forth in Article VII.G.3. below, in accordance with Syms' contractual or legal obligations under the Union Pension Plans and the settlement of any Claims under the Plan.

7. Filene's Class 7: Filene's Intercompany Claims (Impaired)

Filene's Class 7 consists of Filene's Intercompany Claims. Pursuant to the Plan Settlement, the Holders of Filene's Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Filene's Intercompany Claims shall be deemed cancelled and extinguished.

8. Filene's Class 8: Interests in Filene's (Unimpaired)

Filene's Class 8 consists of Interests in Filene's. On the Effective Date, each Holder of Interests in Filene's shall retain its Interests.

**E. Special Provision Regarding Unimpaired Claims**

Except as otherwise provided in the Plan, the Confirmation Order, any other order of the Court, or any document or agreement enforceable pursuant to the terms of the Plan, nothing shall affect the rights and defenses, both legal and equitable, of the Debtors with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupment against Unimpaired Claims.

**F. Allowed Claims**

Notwithstanding any provision herein to the contrary, Distributions shall be made only to Holders of Allowed Claims. No Holder of a Disputed Claim shall receive any Distribution on account thereof until (and then only to the extent that) its Disputed Claim becomes an Allowed Claim. The Debtors may, in their discretion, withhold Distributions otherwise due hereunder to any Claimholder until the Claims Objection Deadline to enable a timely objection thereto to be filed. Any Holder of a Claim that becomes an Allowed Claim after the Effective Date will receive its Distribution in accordance with the terms and provisions of this Plan.

**G. Pension Obligations**

Following confirmation of the Plan, the Debtors shall maintain the Syms Pension Plan and make all contributions required under applicable minimum funding rules: provided, however, that the Debtors may terminate the Syms Pension Plan from and after January 1, 2017. Prior to January 1, 2017, the Reorganized Company shall not accelerate the Distributions to Holders of Allowed Claims in Syms Class 5 and Filene's Class 6 as provided herein. In the event that the Debtors terminate the Pension Plan, the Debtors intend that any such termination shall be a standard termination pursuant to Section 4041(c) of the Employer Retirement Income Security Act of 1974, as amended.

No provision of, or proceeding within, the Debtors' bankruptcy proceedings, Confirmation Order or Plan shall in any way be construed to discharge, release, limit, or relieve the Debtors or any other party, in any capacity, from any liability or responsibility with respect to the Syms Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Syms Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility, if any, by any provision of, or proceeding within, the Debtors' bankruptcy proceedings, Confirmation Order or Plan; provided, however, that nothing contained herein shall be deemed to constitute a waiver of any rights or protections that Debtors may have under 11 U.S.C. section 362. Any and all obligations under the Syms Pension Plan shall be made by Reorganized Syms from the Pension Reserve.

## **H. Special Provisions Regarding Insured Claims**

Distributions under the Plan to each Holder of an Insured Claim shall be in accordance with the treatment provided under the Plan for Syms General Unsecured Claims and Filene's General Unsecured (Short-Term) Claims; provided, however, that the amount of any such Claim shall be determined as follows:

(1) to the extent a Holder has an Allowed Insured Claim, all or a portion of which is within the applicable deductible or self-insured retention under the relevant insurance policy of the Debtors, then such amount shall be paid following the allowance of the Allowed Insured Claim, in the ordinary course of the Debtor's business and consistent with the Debtor's insurance policies and past practices;

(2) to the extent a Holder has an Allowed Insured Claim, a portion of which exceeds the applicable deductible or self-insured retention under the relevant insurance policy of the Debtors, then the amount of such Allowed Insured Claim that (i) exceeds the applicable deductible or self-insured retention but (ii) is less than or equal to the limits of coverage under the relevant insurance policy of the Debtors (the "Insurer Covered Amount") shall not be Allowed as a Syms General Unsecured Claim or a Filene's General Unsecured (Short-Term) Claim; and

(3) to the extent a Holder has an Allowed Insured Claim, a portion of which exceeds the limits of coverage under the relevant insurance policy of the Debtors, then such Holder shall have an Allowed Syms General Unsecured Claim or Allowed Filene's General Unsecured (Short-Term) Claim in the amount by which such Allowed Insured Claim exceeds the limits of coverage under the Debtors' relevant insurance policy;

provided, further, that:

(4) the Insurer Covered Amount shall not be recoverable from the Debtors, and shall only be recoverable from the applicable insurer; and

(5) an Allowed Insured Claim shall not be valid or enforceable against the Debtors' insurers unless and until, among other things, the applicable deductible or self-insured retention has been satisfied in accordance with subsection (1) above and the underlying insurance policy or policies.

Nothing in this section shall constitute a waiver of any causes of action the Debtors or the Reorganized Company may hold against any Person, including the Debtors' or the Reorganized Company's insurance carriers, or a waiver of any rights, claims or defenses the insurers may have. Nothing in this section is intended to, shall, or shall be deemed to preclude any holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any distribution such holder may receive under the Plan or to preclude any insurer from contesting or asserting defenses to the claims of such holders. The Debtors and the Reorganized Company do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled and the insurers expressly reserve their rights to contest or assert defenses to any such assertion by the Debtors or the Reorganized Company. Nothing in the Disclosure Statement, Plan or Confirmation Order shall be construed as, or is, a determination as to coverage in connection with any Insured Claim under any applicable insurance policy.

## **I. Special Provisions Regarding Workers' Compensation Claims and Obligations**

As of the Effective Date, the Debtors and the Reorganized Company shall continue to honor in the ordinary course of business their obligations under the terms and conditions of (1) all applicable workers' compensation laws in states in which the Debtors and the Reorganized Company operate and (2) the Debtors' and the Reorganized Company's written contracts, agreements, policies, programs and plans for workers' compensation and workers' compensation insurance; provided, however, that nothing in this Plan shall limit, diminish or otherwise alter the Debtors' or Reorganized Company's defenses, causes of action or other rights under applicable non-bankruptcy law with respect to any such contracts, agreements, policies, programs and plans; provided, further, that nothing herein shall be deemed to impose any obligations on the Debtors or the Reorganized Company in addition to those arising under applicable state law.

All Proofs of Claim on account of workers' compensation shall be deemed withdrawn automatically and without any further notice to or action, order or approval of the Bankruptcy Court.

## **VI. ACCEPTANCE OR REJECTION OF THE PLAN**

### **A. Impaired Classes Entitled to Vote**

Only Holders of Syms Class 3 Syms Convenience Claims, Syms Class 4 Syms General Unsecured Claims, Syms Class 5 Syms Union Pension Claims, Syms Class 7 Syms Interests, Filene's Class 3 Filene's Convenience Claims, Filene's Class 4 Filene's General Unsecured (Short-Term) Claims, Filene's Class 5 Filene's General Unsecured (Long-Term) Claims, and Filene's Class 6 Filene's Union Pension Claims are entitled to vote to accept or reject the Plan.

### **B. Acceptance by an Impaired Class**

In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), (i) an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan and (ii) an Impaired Class of Interests shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds of the Allowed Interests in such Class that have timely and properly voted to accept or reject the Plan.

### **C. Presumed Acceptances/Rejections**

Syms Classes 1 and 2 and Filene's Classes 1, 2, and 8 are Unimpaired by the Plan. Under Bankruptcy Code section 1126(f), Holders of Claims in such Classes are conclusively presumed to accept the Plan, and the votes of such Holders will not be solicited. Under Bankruptcy Code section 1126(g), Holders of Syms Class 6 Claims and Holders of Filene's Class 7 Claims are not entitled to receive any recovery under the Plan but have proposed the Plan and therefore shall be deemed to have accepted the Plan.

## **VII. MEANS FOR IMPLEMENTATION OF THE PLAN**

### **A. Corporate Action**

#### **1. Continued Corporate Existence of Reorganized Syms and Reorganized Filene's**

Subject to the transactions contemplated by this Plan, Reorganized Syms shall continue to exist after the Effective Date as a separate entity, with all the powers of a corporation under applicable law and Reorganized Filene's shall continue to exist as a wholly owned LLC subsidiary of Reorganized Syms for the principal purpose of exploring the sale or the joint venture opportunities with respect to Filene's intellectual property. On and after the Effective Date, the Reorganized Company may operate its businesses and may use, acquire and dispose of property and compromise or settle any Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Reorganized Syms shall be reorganized and reincorporated as a Delaware corporation as of the Effective Date pursuant to its certificate of incorporation and bylaws or other organizational documents as set forth in Plan Exhibit C, without prejudice to any right to terminate such existence (whether by merger, dissolution or otherwise) under applicable law after the Effective Date, provided that without the consent of the Trustee of the Golden Preferred Trust, Reorganized Syms shall not merge or consolidate prior to such time as the General Unsecured Claim satisfaction has occurred. Among other things, Reorganized Syms' certificate of incorporation shall comply with section 1123(a)(6) of the Bankruptcy Code.

#### **2. Governance and Management of the Reorganized Company**

The Reorganized Syms Board of Directors shall be comprised of five (5) members as of the Effective Date. Three (3) Equity Committee Directors shall be appointed by the Equity Committee as of the Effective Date, of which two (2) of the three (3) shall be designated by the Backstop Parties if there are Unsubscribed Shares in the Rights Offering. One (1) director shall be the Independent Director and one (1) director shall be the Creditors' Committee Director. The Board of Directors will be "staggered" with the Independent Director and the Creditors' Committee Director constituting "Class I" and the Equity Committee Directors constituting "Class II." All directors will have terms of two years, with the Class I directors first standing for election at the first annual meeting following the Effective Date, and the Class II directors first standing for election at the second annual meeting following the Effective Date. No actions of the Board of Directors shall be valid without the presence of at least four of the five directors, except if the Trustee of the Golden Preferred Trust or the Majority Shareholder come to control the election of a majority of the seats on the Board of Directors as provided herein and in the Corporate Organization Documents of Reorganized Syms. In the event there is a vacancy of an Equity Committee Director seat, the remaining Equity Committee Directors shall have the right to appoint a replacement. In the event there is a vacancy of the Creditors' Committee Director seat, the Trustee of the Golden Preferred Trust shall have the right to appoint a replacement. In the event there is a vacancy of the Independent Director seat, the Creditors' Committee Director and the Equity Committee Directors will mutually agree on a replacement who meets the requirements to serve as the Independent Director. The Creditors' Committee Director and the Independent Director shall automatically cease to be directors when there has been a General Unsecured Claim Satisfaction. There are certain actions that may not be taken without the affirmative vote of the Trustee of the Golden Preferred Trust. For example, without the affirmative vote of the Trustee of the Golden Preferred Trust, Reorganized Syms shall not directly or indirectly amend, alter or repeal any provision of the Certificate of Incorporation or the Bylaws, and without the affirmative vote of the Majority Shareholder, Reorganized Syms shall not directly or indirectly amend, alter or repeal any provision of the Certificate of Incorporation or the Bylaws if such amendment would amend, alter or repeal any rights, privileges or terms applicable to the Preferred Stock held by the Majority Shareholder. In addition, certain actions require the affirmative vote of the Series A Director.

Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, the initial board of directors and the officers of the Reorganized Company will be identified in the Plan Supplement. The compensation to be disbursed to the directors, executives and officers serving as of the Effective Date also will be disclosed in the Budget.

3. Ms. Marcy Syms' Covenant Not to Interfere

In consideration of the benefits received by the Majority Shareholder under the Plan, Ms. Marcy Syms covenants not to and shall not directly or indirectly interfere with or participate in any disposition of property or operations of the Reorganized Company except as specifically provided for in the Plan. The Reorganized Company shall have the right to offset any damages incurred as a result of a breach of this covenant by Ms. Marcy Syms against the Subsequent Majority Shareholder Payment. Nothing herein contained shall be deemed to limit any rights of the Majority Shareholder to enforce any remedies available under the Plan, or at law or equity, in the event of a default or breach under the Plan.

4. Merger of Advertising and Clothing into Reorganized Syms

On the Effective Date, or as soon thereafter as is practicable, Advertising and Clothing shall be merged with and into Reorganized Syms in accordance with applicable governing law. The officers, directors and managers of Advertising and Clothing shall be deemed to have resigned upon the Effective Date, or as soon thereafter as the Merger may be effected in accordance with applicable law; provided, however, that such resignations shall not relieve such officers, directors and managers from all remaining responsibilities with respect to such entities in accordance with applicable law. If necessary or appropriate, Reorganized Syms shall cause certificates of merger to be filed for Advertising and Clothing and shall take all other actions necessary or appropriate to effect the Merger under applicable law.

5. No Further Corporate Action

Except as otherwise provided in the Plan, each of the matters provided for under the Plan involving the corporate or limited liability company structure of the Debtors or corporate or limited liability company action to be taken by or required of the Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement of further action by any Person, including but not limited to, Holders of Claims against or Interests in the Debtors, or directors or officers of the Debtors.

6. Effectuating Documents; Further Transactions

The Debtors' officers and directors, as appropriate, shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**B. Vesting of Estate Assets**

On the Effective Date, and except as otherwise set forth herein, all property of the Estates, including the Syms Owned Real Estate and all Causes of Action and Avoidance Actions identified on Exhibit A to the Plan, to be filed in the Plan Supplement, shall vest in Reorganized Syms free and clear of all Claims, Liens, charges, encumbrances, rights, and Interests of creditors and equity security holders; provided, however, that any and all rights to the "Syms" name shall be transferred to Ms. Marcy Syms on the Effective Date and Ms. Syms shall not sell or otherwise transfer, dispose of or use the "Syms" name for any commercial purpose including any transaction resulting in Ms. Syms receiving, directly or

indirectly, any profit or any financial or other benefit, without the consent of, and the payment of all gross proceeds to, the Reorganized Company. Any documents necessary to effect this conditional transfer shall be included in the Plan Supplement. The Reorganized Company shall not use for commercial purposes any images of Ms. Marcy Syms or her family members, absent their express consent, and the Reorganized Company shall transfer to her for no consideration, taped commercials in the Debtors' possession which contain images of Ms. Marcy Syms or her family members, which commercials she agrees not to sell, transfer, dispose of or use for any commercial purposes. No transfer of the taped commercials shall constitute the transfer of any rights or interests, or in any way limit the use of, intellectual property of the Debtors and the Reorganized Company. All other trade names, marks and intellectual property of the Debtors shall remain the property of the Reorganized Company and subject to the direction of the Reorganized Company's Board of Directors, other than Filene's Intellectual Property, which shall revert in Reorganized Filene's free and clear of all Claims, Liens, charges, encumbrances, rights, and interests of creditors and shall revert subject to the direction of the Reorganized Company's Board of Directors by virtue of the Reorganized Company acting as the sole member or manager of Reorganized Filene's; provided, however, that 100% of any Cash realized or received by Filene's after the Effective Date shall constitute Net Proceeds to be used in accordance with the Plan by Reorganized Syms.

As of the Effective Date, the Reorganized Company shall operate its business and use, acquire and dispose of its property, including by operating, leasing and disposing of the Syms Owned Real Estate, without supervision of the Bankruptcy Court, and free of any restrictions imposed by the Bankruptcy Code or the Bankruptcy Rules, other than those restrictions expressly imposed by this Plan or the Confirmation Order.

#### **C. Sources of Distributions and Uses of Net Proceeds of Syms Owned Real Estate**

Distributions in accordance with the terms of the Plan shall be made from, among other things, (i) Cash on hand as of the Effective Date, (ii) proceeds of the Rights Offering, (iii) Net Proceeds and/or (iv) proceeds from any post-Effective Date financings or capital raises as may be authorized by the Board of Directors of the Reorganized Company.

##### **1. Syms Owned Real Estate Disposition and Development**

If not sold prior to the Effective Date, with the consent of the Equity Committee and the Creditors' Committee, Reorganized Syms will seek to sell the 13 Near Term Properties promptly in a commercially reasonable manner. The three Medium Term Properties will be leased and sold over a longer period of time in an effort to maximize their values. The Trinity Property will be developed or sold over an extended period of time as determined by the Board of Directors.

If, by October 1, 2013, the Allowed Syms and Filene's Class 3 (Convenience Claims) and the Allowed Syms Unsecured Creditors in Syms Class 4 General Unsecured Claims are not paid in full, the Creditors' Committee Director, acting through a one director committee of the Board of Directors, shall control the sale, by auction or otherwise, of any unsold Near Term Properties which shall be done in a commercially reasonable manner consistent with maximizing the value of the Near Term Properties and the Net Proceeds of such sale shall fund the Operating Reserve to the extent not previously fully funded, and the excess shall be treated as Excess Cash for distribution under the Plan Waterfall.

If, by October 1, 2014, the Allowed Filene's Class 4A and B General Unsecured (Short-Term) Claims and Allowed Filene's Class 5A and B General Unsecured (Long-Term) Claims are not paid in full, the Creditors' Committee Director, acting through a one director committee of the Board of Directors, shall control the sale, by auction or otherwise, of any Medium Term Properties, and any Near Term Properties that remain unsold, which shall be done in a commercially reasonable manner consistent with



maximizing the value of the Medium Term Properties and, if applicable, Near Term Properties, and the Net Proceeds of such sale shall fund the Operating Reserves to the extent not previously fully funded and the excess shall be treated as Excess Cash for distribution purposes under the Plan Waterfall; provided, however, that such October 1, 2014 deadline may be extended to April 1, 2015 if the Trustee of the Golden Preferred Trust consents or, even without the consent of the Trustee of the Golden Preferred Trust, the Independent Director concludes that Reorganized Syms is proceeding in good faith to lease and sell the unsold Near Term Property(ies) and Medium Term Property(ies) such that additional time is appropriate because Reorganized Syms still has a reasonable prospect of leasing and selling the Near Term Property(ies) or Medium Term Property(ies) within any extension period.

#### **D. Cancellation of Existing Securities and Agreements**

Except as otherwise provided in the Plan, and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article V hereof, all promissory notes, share certificates, other instruments evidencing any Claims or Interests and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire Syms Class 7 Interests, shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule, and the obligations of the Debtors under the notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be discharged. The holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan. The foregoing shall not apply to a Claim or Interest that is Unimpaired under the Plan or to Syms Class 7 Interests.

#### **E. Issuance of New Shares; Purchase of Majority Shareholder Shares**

Pursuant to and in accordance with the Equity Commitment Agreement, the Accredited Investor Procedures, and the Rights Offering Procedures, on the Effective Date, Reorganized Syms shall (i) issue 10,040,160 new shares to the Eligible Holders and the Backstop Parties, collectively, and (ii) purchase 7,857,794 shares from the Majority Shareholder. Syms' purchase of the Majority Shareholder Interests shall occur substantially contemporaneously with the issuance of the new shares to the Eligible Holders and Backstop Parties.

The issuance of the Subscription Rights under the Rights Offering Procedures and related documents and the distribution thereof under this Plan, and the distribution and exercise of the Subscription Rights, shall be exempt from registration under applicable securities laws pursuant to section 1145(a) of the Bankruptcy Code and/or section 4(2) of the Securities Act, and/or any other applicable exemptions. All documents, agreements, and instruments entered into and delivered on or as of the Effective Date contemplated by or in furtherance of this Plan shall become, and the Equity Commitment Agreement shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any entity (other than as expressly required by such applicable agreement).

The Majority Shareholder shall receive the Initial Majority Shareholder Payment in the form of cash payments from 40% of the first available distributable Excess Cash until the Majority Shareholder has received payment in full of the Initial Majority Shareholder Payment. After there has been a General Unsecured Claim Satisfaction, the Subsequent Majority Shareholder Payment shall be paid from any remaining Excess Cash, in the total amount of \$7,065,907. Provided that there has been a General Unsecured Claim Satisfaction, the Subsequent Majority Shareholder Payment shall be made no later than

October 1, 2016. If the Subsequent Majority Shareholder Payment is not made on or before October 1, 2016, the Majority Shareholder may pursue collection remedies and proceed to judgment, so long as execution on the judgment is not effected until all Allowed General Unsecured Claims are paid in full. No distributions, dividends or redemptions shall be made by the Reorganized Company until after the Initial Majority Shareholder Payment and the Subsequent Majority Shareholder Payment are made in full. Ms. Syms and the Trusts shall be entitled to pursue any remedies available at law or equity as a creditor of the Reorganized Company, including for actions taken in violation of the terms of the Plan and the failure to pay distributions under the Plan to Ms. Syms and the Trusts in accordance with or by the deadlines set in the Plan. The Certificate of Incorporation shall provide a preferred series share, which share shall be pledged as security and held in escrow, entitling the Majority Shareholder to control a majority of the Board of Directors if the Initial Majority Shareholder Payment and the Subsequent Majority Shareholder Payment are not made by October 16, 2016, provided that and conditioned upon the General Unsecured Claim Satisfaction having occurred.

Reorganized Syms shall provide at least the information rights for the time period required, each as set forth in its Bylaws contained in Plan Exhibit C to permit a market maker to quote the Offered Shares and Syms Interests on the OTC Pink tier of the OTC Markets Group quotation service or an equivalent successor electronic quotation system that (a) displays quotes from broker-dealers for over-the-counter securities and (b) does not maintain regulatory filing requirements.

#### **F. Capital Raising and Use of Cash Proceeds**

Following the Effective Date, the Reorganized Company may issue new debt or equity capital in accordance with applicable law, as and to the extent authorized by the Board of Directors of Reorganized Syms and consistent with the Plan.

The Reorganized Company shall be permitted to incur debt, grant liens and lease and sell all or any portion of any asset without any restrictions (except in connection with any transaction with any insider or affiliate of the Reorganized Company or any directors, which must be approved by the consent of the Board of Directors including the Creditors' Committee Director) other than:

(1) So long as Plan obligations are unpaid under the Plan Waterfall, and unless otherwise required to be used to fund the Operating Reserves, 100% of net cash proceeds from each transaction, including the incurrence of any debt, lien or other obligation (net of transaction expenses and, in the case of financings, reasonable interest reserves through a date no later than September 30, 2016) received by the Reorganized Company, shall be treated as Excess Cash and used to fund distributions under the Plan Waterfall.

(2) For the avoidance of doubt, with respect to the Trinity Property, the Reorganized Company shall have the right to (a) transfer the Trinity Property into a Trinity Joint Venture, (b) conduct a JV Interest Sale, and/or (c) authorize the Trinity Joint Venture to incur a Trinity Mortgage subject in each case to compliance with the following terms and conditions in the event that the creditors in Syms Classes 3 and 4 and Filene's Classes 3, 4, and 5, or the Majority Shareholder have not been paid their full Distributions under the Plan or would not be paid their full Distributions under the Plan following the Trinity Joint Venture, JV Interest Sale, or Trinity Mortgage:

(a) all proceeds realized from the JV Interest Sale (net of transaction related expenses) shall be distributed, unless the Trustee of the Golden Preferred Trust agrees otherwise, as follows: not less than 60% of the balance of net proceeds will be included as Excess Cash and shall be distributed in accordance with the

Plan Waterfall, and the remaining 40% or lesser amount of the balance of such net proceeds shall be invested in full in the Trinity Joint Venture;

(b) the funds received from any Trinity Mortgage shall be distributed, unless the Trustee of the Golden Preferred Trust agrees otherwise, as follows: first, the Trinity Carry Reserve Amount to the extent that an amount equal to the Trinity Carry Cost Reserve Amount was not distributed as Excess Cash from a JV Interest Sale, which funds shall become Excess Cash and shall be distributed in accordance with the Plan Waterfall; and thereafter the balance of borrowed funds shall remain in the Trinity Joint Venture and will be limited to be used for pre-construction costs, direct development and construction costs, corporate overhead and carry costs for the Trinity Property, and taxes, licenses and fees for the Trinity Property, as applicable, to be determined at the Board of Directors discretion;

(c) in the event of a change in control of the majority of the Board of Directors of the Reorganized Company to either the unsecured creditors or the Majority Shareholder pursuant to the terms of the Plan, the Reorganized Company's interest in the Trinity Joint Venture (the "Company's Trinity Interest") shall be freely assignable to (i) accredited institutional investors which could include a Public Real Estate Company, (ii) privately-owned companies and individuals who are experienced real estate investors, in each case in good credit standing and with sufficient liquidity and experience to perform its duties under the partnership or joint venture agreement; provided, however, that the Reorganized Company shall have the right to agree with its joint venture partner in the Trinity Joint Venture to provide such joint venture partner thirty (30) days written notice (the "Assignment Notice Period") of a Purchase Offer, and on or prior to the expiration of the Assignment Notice Period, such joint venture partner in the Trinity Joint Venture shall provide notice of its election to exercise a right of first refusal to purchase the Company's Trinity Interest on terms that are the same or not less favorable to the Reorganized Company as those terms set forth in the Purchase Offer. The Confirmation Order shall provide that the Reorganized Company is authorized to sell the Company's Trinity Interest and the Bankruptcy Court shall retain jurisdiction over any sale of the Company's Trinity Interest;

(d) the interest may be otherwise assigned subject to the approval of the Venture's General Partner, which shall not be unreasonably withheld;

(e) a change in control to either unsecured creditors or the Majority Shareholder of the Reorganized Company pursuant to the terms of the Plan shall not constitute a default under the terms of the Trinity Joint Venture or the Trinity Mortgage; and

(f) prior to a change in control of the majority of the Board of Directors of the Reorganized Company to either the unsecured creditors or the Majority Shareholder pursuant to the terms of the Plan, the Reorganized Company may only sell or otherwise dispose of a majority interest in the Trinity Joint Venture to a non-Insider if (x) there has been (or will be as a result of such sale) a General Unsecured Claim Satisfaction and to the extent a General Unsecured Claim Satisfaction has occurred, the Majority Shareholder have received full

payment of their Plan Distributions, or (y) the Trustee of the Golden Preferred Trust or to the extent the General Unsecured Claim Satisfaction has occurred, Marcy Syms consents.

## **G. Funding of Reserves**

### **1. Professional Fee Reserve**

On or before the Effective Date, the Debtors shall fund the Professional Fee Reserve in the amount of the aggregate Professional Fee Estimate. The Debtors shall (i) segregate and shall not commingle the Cash held therein and (ii) pay each Allowed Professional Fee Claim from the Professional Fee Reserve upon entry of a Final Order allowing such Claim. In the event that Cash remains in the Professional Fee Reserve after payment of all Allowed Professional Fee Claims, such residual Cash shall be utilized to make distributions to Holders of Claims and Interests as provided for in the Plan.

### **2. Administrative Claims Reserve**

On or before the Effective Date, the Debtors shall fund the Administrative Claims Reserve in an amount equal to an estimate of all Allowed Administrative Claims. The Debtors shall (i) segregate and shall not commingle the Cash held therein and (ii) pay each Allowed Administrative Claim, upon entry of a Final Order allowing such Claim or on such other date provided herein. In the event that Cash remains in the Administrative Claims Reserve after payment of all Allowed Administrative Claims, such residual Cash shall be used to make distributions to Holders of Claims and Interests as provided for in the Plan.

### **3. Operating Reserves**

The Equity Committee has prepared the Budget attached to the Plan as Exhibit F and provided the Budget to the Creditors' Committee. The only limitation such Budget shall have on the Board of Directors shall be the Operating Reserves total in the aggregate and by Sub-Category Expense Reserve. The Board of Directors shall not be bound or limited by any line item references within individual Sub-Category Expense Reserves; provided, however, that (a) no funds in the Operating Reserve may be used in connection with any Insider or affiliate transaction absent the consent of the Board of Directors, including the Creditors' Committee Director (b) any fees or other compensation payable to Directors as reflected in the Budget shall not be increased absent the consent of the Board of Directors and of the Trustee of the Golden Preferred Trust, and (c) absent the consent of the Trustee of the Golden Preferred Trust, the aggregate cap for any Sub-Category Expense Reserve may not be increased and the amounts reserved in each of the Sub-Category Expense Reserves may not be used to fund any expenses designated to be paid from another Sub-Category Expense Reserve, except that, (i) by majority vote of the Board of Directors, amounts in the Corporate Overhead Reserve may be reallocated to the Carry Cost/Repair/TI Reserve and (ii) by majority vote of the Board of Directors, and with the consent of the Independent Director, amounts in the Corporate Overhead Reserve may be reallocated to the Trinity Carry Reserve.

The Operating Reserves shall be funded utilizing agreed upon cash reserve amounts to fund working capital and operations of the Reorganized Company for the two year period commencing on the Effective Date (projected to be October 1, 2012 to September 30, 2014) with the Discretionary Reserve Fund and the Emergency Reserve Fund and the following four Sub-Category Expense Reserves: (w) a Corporate Overhead Reserve of \$5.0 million in the aggregate, (x) a \$3,829,088 Pension Fund Reserve (of which \$2.0 million shall fund the minimum annual payments due under the Syms Pension Plan and \$1,829,088 shall fund the minimum quarterly payments due to Local 1102 for the allowed amount of the Claims for pension withdrawal liability), (y) a Carry Cost/Repair/TI Reserve of \$9.0 million in the aggregate, and (z) a Trinity Carry Reserve of \$3.0 million in the aggregate.

(1) The Operating Reserves shall be funded for the two year period commencing on the Effective Date as follows: (m) \$5 million in cash on the Effective Date to the extent available after payment of Exit Costs and, to be allocated to each Sub-Category Expense Reserve in an amount to be determined by the Board of Directors, and (n) from the future proceeds realized by the Reorganized Company in the one year following the Effective Date from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash; provided however, that the amount allocated in the second year of the Budget for the Corporate Overhead Reserve and the Pension Reserve shall be funded in the last quarter of the first year, unless the Board of Directors determines that the delay of such funding would provide the Reorganized Company with inadequate liquidity to operate in accordance with the Budget and maximizing value.

(2) For the third year period after the Effective Date (projected to be October 1, 2014 to September 30, 2015), the aggregate caps for each Sub-Category Expense Reserve shall be increased to cover projected expenses to be incurred during that year in amounts not to exceed the following, less any remaining unused funds in such Sub-Category Expense Reserves as of the end of the two year period: (w) \$1,250,000 for the Corporate Overhead Reserve, (x) the projected amount of the minimum annual payment due under the Syms Pension Plan during such third year for the Pension Reserve and a \$812,928 reserve to fund the minimum quarterly payments to be paid to Local 1102 for the allowed amount of the Claims for pension withdrawal liability during such third year, and (y) the amount of Carry Costs projected to be incurred, plus 20%, of the Carry Costs projected for any unsold Near Term Properties or Medium Term Properties for the Carry Cost/Repair/TI Reserve.

(3) For the fourth year period after the Effective Date (projected to be October 1, 2015 to September 30, 2016), the aggregate caps for each Sub-Category Expense Reserve shall be increased to cover projected expenses to be incurred during that year in amounts not to exceed the following, less any remaining unused funds in such Sub-Category Expense Reserves as of the end of the two year period: (w) \$750,000 for the Corporate Overhead Reserve, (x) the projected amount of the minimum annual payment due under the Syms Pension Plan during such fourth year for the Pension Reserve and \$812,928 to fund the minimum quarterly payments to be paid to Local 1102 for the allowed amount of the Claims for pension withdrawal liability during such fourth year, and (y) the amount of Carry Costs projected to be incurred, plus 20% of the Carry Costs projected, for any unsold Near Term Properties or Medium Term Properties for the Carry Cost/Repair/TI Reserve.

(4) On the two year anniversary of the Effective Date, the Board of Directors shall review and revise the Sub-Category Reserve amounts set forth above for the third and fourth year periods after the Plan Effective Date, provided that any increase in the aggregate amount of the cap increases for the Sub-Category Reserves shall not exceed the amounts set forth above in Section VII.G.3(2) and (3) without the consent of the Trustee of the Golden Preferred Trust, except that, (i) by majority vote of the Board of Directors, amounts in the Corporate Overhead Reserve may be reallocated to the Carry Cost/Repair/TI Reserve and (ii) by majority vote of the Board, and with the consent of the Independent Director, amounts in the Corporate Overhead Reserve may be reallocated to the Trinity Carry Reserve. At the end of the two year period commencing on the Effective Date, the Operating Reserves for the third and fourth years periods after the Effective Date shall be funded from proceeds realized by the Reorganized Company from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash.

(5) At the end of the two year period commencing on the Effective Date, the sum of \$500,000, to be funded from Net Proceeds realized by the Reorganized Company from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash, shall be set aside in the Emergency Fund Reserve to be used, by the Reorganized Company with the consent of the Creditors' Committee Director, for operating and other expenses. The Creditors' Committee Director may at any

time reduce the amount of funds in the Emergency Fund Reserve and make such reduced funds Excess Cash. If distributing the Emergency Fund Reserve would result in a General Unsecured Claim Satisfaction, the amounts necessary for the Emergency Fund Reserve shall instead be treated as Excess Cash and used for Plan distributions.

(6) At the end of the two year period commencing on the Plan Effective Date, the sum of \$500,000, to be funded from proceeds realized by the Reorganized Company from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash (as defined below), shall be set aside in the Discretionary Fund Reserve that shall be allocated and used for operating and other expenses of Reorganized Syms as determined by a majority vote of the Board, and with the consent of the Independent Director.

(7) After the Reorganized Company has sold all of the Near Term Properties and Medium Term Properties, any unused funds remaining in the Carry Cost/Repair/TI Reserve shall become Excess Cash and shall be distributed in accordance with the Plan Waterfall.

#### **H. Exemption from Certain Transfer Taxes**

Pursuant to Bankruptcy Code section 1146(a), any transfers from any of the Debtors to any Person, including any transfers of Syms Owned Real Estate after Confirmation in the United States, shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### **I. Preservation and Settlement of Certain Causes of Action and Avoidance Actions**

##### **1. Preservation of Certain Causes of Action and Avoidance Actions**

In accordance with Bankruptcy Code section 1123(b)(3), except as agreed to by the Plan Proponents and the Creditors' Committee and identified on Exhibit A to the Plan, to be included with the Plan Supplement, all Causes of Action and Avoidance Actions shall be released as of the Effective Date. The Debtors shall retain all of the Causes of Action and Avoidance Actions identified on Plan Exhibit A to be filed in the Plan Supplement and all such Causes of Action and Avoidance Actions shall vest in the Reorganized Company on the Effective Date. The Reorganized Company may investigate, enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Causes of Action and Avoidance Actions identified in Plan Exhibit A. The failure of the Debtors to list a claim, right, cause of action, suit or proceeding in Plan Exhibit A shall constitute a waiver and release by the Debtors and their Estates of such claim, right of action, suit or proceeding.

##### **2. Settlement of Certain Causes of Action and Avoidance Actions**

At any time after the Confirmation Date but before the Effective Date, notwithstanding anything in the Plan to the contrary, the Reorganized Company may settle some or all of the Causes of Action and Avoidance Actions identified in Plan Exhibit A pursuant to Bankruptcy Rule 9019 with the approval of the Court and upon notice to the Creditors' Committee and the Equity Committee; after the Effective Date, the Reorganized Company, will determine whether to bring, settle, release, compromise, enforce or abandon such rights (or decline to do any of the foregoing).

**J. Effectuating Documents; Further Transactions**

The Debtors shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, that are not inconsistent with the other terms and conditions of the Plan.

**VIII. PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Distributions for Claims Allowed as of the Effective Date**

Except as otherwise set forth in the Plan, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as Cash becomes available therefore and Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of this Plan, and on such day as selected by the Reorganized Company; provided, however, that the Excess Cash shall be used to make Distributions, in accordance with the Plan Waterfall, on not less than a quarterly basis if the distributable amount of Excess Cash is no less than the Minimum Distribution Threshold or is the last distribution to a Class. Once there has been a General Unsecured Claim Satisfaction, Excess Cash shall be distributed to the Majority Shareholder in satisfaction of the Subsequent Majority Shareholder Payment not less than a quarterly basis if the distributable amount of Excess Cash is no less than \$10,000.

Notwithstanding any other provision of the Plan to the contrary, no Distribution shall be made on account of any Allowed Claim or portion thereof that has been satisfied after the Petition Date pursuant to an order of the Bankruptcy Court.

**B. Reorganized Syms as Disbursing Agent**

Subject to the terms and provisions of this Plan, Reorganized Syms shall make all Distributions required under this Plan with respect to the Debtors' Estates, provided, however, that Reorganized Syms may employ a third-party disbursing agent, in the discretion of the Board of Directors, upon the filing of a notice with the Court. Reorganized Syms shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court or required by the Bankruptcy Code or the Bankruptcy Rules. Reorganized Syms shall be authorized and directed to rely upon the Debtors' books and records and the Debtors' representatives and professionals in determining Claims not entitled to a Distribution under the Plan in accordance with the terms of the Plan.

**C. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

**1. Delivery of Distributions in General**

Distributions to Holders of Allowed Claims shall be made by Reorganized Syms (a) at the addresses set forth on the Proofs of Claim filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is filed or if the Debtors have been notified of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Debtors after the date of any related Proof of Claim, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Debtors have not received a written notice of a change of address, (d) at the addresses set forth in the other records of the Debtors at the time of the Distribution or (e) in the case of the Holder of a Claim that is governed by an agreement and is administered by an agent or servicer, at the addresses contained in the official records of such agent or servicer. In making Distributions under the Plan, Reorganized Syms may rely upon the accuracy of the claims register maintained by the Claims Agent in

the Chapter 11 Cases, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

## **2. Undeliverable and Unclaimed Distributions**

If the Distribution to any Holder of an Allowed Claim or Allowed Interest is returned to Reorganized Syms as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such Holder unless and until Reorganized Syms is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest. Amounts in respect of undeliverable Distributions shall be returned to Reorganized Syms until such Distributions are claimed. Reorganized Syms shall segregate and, deposit in a segregated account (the "Unclaimed Distribution Reserve") undeliverable and unclaimed Distributions for the benefit of all such similarly situated Persons or Governmental Units until such time as a Distribution becomes deliverable or is claimed.

Any Holder of an Allowed Claim or Allowed Interest that does not assert a Claim or Interest pursuant to this Plan for an undeliverable or unclaimed Distribution within six (6) months after the last Distribution Date shall be deemed to have forfeited its Claim or Interest for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim or Interest for an undeliverable or unclaimed Distribution against the Debtors and their Estates, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its and their property. In such cases, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall be distributed in accordance with the terms of this Plan. Nothing contained in this Plan shall require Reorganized Syms to attempt to locate any Holder of an Allowed Claim or Allowed Interest.

### **D. Prepayment**

Except as otherwise provided in this Plan or the Confirmation Order, Reorganized Syms shall have the right to prepay, without penalty, all or any portion of an Allowed Claim.

### **E. Means of Cash Payment**

Cash payments made pursuant to this Plan shall be in U.S. dollars and shall be made at the option and in the sole discretion of Reorganized Syms by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by Reorganized Syms. In the case of foreign creditors, Cash payments may be made, at the option of Reorganized Syms, in such funds and by such means as are necessary or customary in a particular jurisdiction.

### **F. Interest on Disputed Claims**

Unless otherwise specifically provided for in the Plan or the Confirmation Order, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date such Disputed Claim becomes an Allowed Claim; provided, however, that interest shall accrue at the rate of 7.0% per annum on any unpaid Disputed Claim that becomes an Allowed Claim from and after October 1, 2015 until Distribution is made on such Claim.

### **G. Withholding and Reporting Requirements**

In accordance with Bankruptcy Code section 346 and in connection with the Plan and all Distributions thereunder, Reorganized Syms shall, to the extent applicable, comply with all withholding and reporting requirements imposed by any U.S. federal, state, local, or non-U.S. taxing authority.



Reorganized Syms shall be authorized to take any and all actions necessary and appropriate to comply with such requirements. All Distributions hereunder may be subject to the withholding and reporting requirements. As a condition of making any Distribution under the Plan, Reorganized Syms may require the Holder of an Allowed Claim or Allowed Interest to provide such Holder's taxpayer identification number, and such other information, certification, or forms as necessary to comply with applicable tax reporting and withholding laws. Notwithstanding any other provision of this Plan, each Entity receiving a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution. Reorganized Syms may move to disallow an otherwise Allowed Claim or Allowed Interest entitled to a Distribution under the Plan if the Holder of such Allowed Claim or Allowed Interest, after reasonable notice, does not provide Reorganized Syms with such Holder's taxpayer identification number, and such other information, certification, or forms as necessary to comply with applicable tax reporting and withholding laws.

## **H. Setoffs**

### **1. By Reorganized Syms**

Except as otherwise set forth in the Plan, Reorganized Syms may, pursuant to Bankruptcy Code section 553, 558 or any other applicable law, but shall not be required to, set off against any Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, Claims of any nature whatsoever that the Debtors may have against the Holder of such Claim and that has not been released under the Plan or otherwise; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such Claim that the Debtors may have against such Holder.

### **2. By Non-Debtors**

Unless otherwise authorized by a Final Order, any Holder of a Claim must assert any setoff rights against a Claim by a Debtor against such Entity by timely filing (i) a Proof of Claim asserting such right of setoff, (ii) an appropriate motion on or before the Confirmation Date seeking authority to setoff, or (iii) an objection to Confirmation on or before the Confirmation Objection Deadline asserting, preserving or otherwise referencing the existence of such right of setoff, or will be deemed to have waived and be forever barred from asserting any right to setoff against a Claim by a Debtor; provided, however, that the right of any Debtor to object to the validity of any asserted right of setoff shall be preserved.

## **I. Procedure for Treating and Resolving Disputed, Contingent and/or Unliquidated Claims**

### **1. Objection Deadline; Prosecution of Objections**

Except as set forth in the Plan with respect to Professional Fee Claims and Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims by the Claims Objection Deadline, as the same may be extended by the Bankruptcy Court. If an objection has not been filed to a Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated, and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the Bankruptcy Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those Entities that have requested notice in the Chapter 11 Cases, or to such Entities as the Bankruptcy Court shall order. From the Confirmation Date through the Claims Objection Deadline, Reorganized Syms shall have the exclusive authority to file objections, settle, compromise, withdraw, or litigate to judgment objections to Claims.

## 2. No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtors, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter. On each Distribution Date, Reorganized Syms will make Distributions (a) on account of any Disputed Claim that has become an Allowed Claim since the preceding Distribution Date and (b) on account of previously Allowed Claims, from the applicable reserves, of property that would have been distributed to such Claimholders on the dates Distributions previously were made to Holders of Allowed Claims had the Disputed Claims that have become Allowed Claims been Allowed on such dates.

## 3. De Minimis Distributions

Reorganized Syms shall not have any obligation to make a Distribution on account of an Allowed Claim from any reserve or otherwise if (a) the aggregate amount of all Distributions authorized to be made from such reserve or otherwise on the Distribution Date in question (other than the final Distribution Date) is or has a value less than the Minimum Distribution Threshold, or (b) if the amount to be distributed to the specific Holder of the Allowed Claim on the particular Distribution Date does not constitute a final Distribution to such Holder and such Distribution has a value less than \$25.00. Reorganized Syms shall have no obligation to make any Distribution, whether final or not, unless and until the total amount of such Distribution to a specific Holder of an Allowed Claim is equal to or greater than \$25.00.

The foregoing limitations on "De Minimis Distributions" shall not apply to Distributions to be made to the Majority Shareholder.

## 4. Claims Resolution and Compromise

As of the Effective Date, Reorganized Syms is authorized to compromise or settle all Claims, Disputed Claims, and Liens pursuant to Bankruptcy Rule 9019(b), and to execute necessary documents, including Lien releases (subject to the written consent of the party having such Lien) and stipulations of settlement or release, without further order of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order.

### **J. Fractional Dollars**

Any other provision of this Plan notwithstanding, Reorganized Syms shall not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under this Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

### **K. Allocation of Plan Distributions Between Principal and Interest**

To the extent that any Allowed Claim entitled to a Distribution under this Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for all income tax purposes,

be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

**L. Distribution Record Date**

Reorganized Syms shall have no obligation to recognize the transfer of or sale of any participation in any Allowed Claim or Allowed Interest that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute only to those Holders of Allowed Claims and Interests who are Holders, or participants therein, as of the close of business on the Distribution Record Date. Instead, Reorganized Syms shall be entitled to recognize and deal for all purposes under this Plan with only those record holders stated on the official claims register or other applicable records as of the close of business on the Distribution Record Date.

**IX. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Rejected Contracts and Leases**

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan document, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 rejecting all prepetition executory contracts, including purchase orders, and unexpired leases to which any Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) previously shall have been assumed, assumed and assigned, or rejected by the Debtors, (b) previously shall have expired or terminated pursuant to its own terms before the Effective Date, (c) is the subject of a pending motion to assume or reject on the Confirmation Date, including but not limited to the Debtors' ground leases of property located in Fairfield, Connecticut and Secaucus, New Jersey, or (d) is identified in Exhibit B to the Plan as an insurance policy or insurance agreement of the Debtors; provided, however, that the Debtors may amend such Exhibit B at any time prior to the Confirmation Date; provided further, however, that listing an insurance agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder. Notwithstanding anything to the contrary in the Plan, the Confirmation Order or any other Plan document, the Syms Local 108 CBA and Syms Local 400 CBA and the Syms Pension Plan shall not be rejected by operation of the Confirmation Order.

**B. Insurance Policies and Agreements**

Except as set forth in the Plan or the Confirmation Order, Insurance policies issued to, or insurance agreements entered into by, the Debtors prior to the Petition Date (including, without limitation, any policies covering directors' or officers' conduct) shall continue in effect after the Effective Date. To the extent that such insurance policies or agreements (including, without limitation, any policies covering directors' or officers' conduct) are considered to be executory contracts, then, notwithstanding anything to the contrary in the Plan, the Plan shall constitute a motion to assume or ratify such insurance policies and agreements, and, subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such assumption is in the best interests of each Debtor and its Estate. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed to by the parties thereto prior to the Effective Date, no payments shall be required to cure any defaults of the Debtors existing as of the Confirmation Date with respect to each such insurance policy or agreement. To the extent that the Bankruptcy Court determines otherwise as to any such insurance policy or agreement, the Debtors reserve the right to seek the rejection of such insurance policy or agreement or other available relief.

With respect to the agreement relating to a life insurance policy on Marcy Syms, issued by Massachusetts Life Insurance Company to Laben Lathan, Trustee of Trust UTD 5/20/99 (the "Split-Dollar Policy"), Syms and Reorganized Syms shall be released from any future obligation (whether to Marcy Syms, any third party or otherwise) to pay premiums and shall release any interest in the insurance policy in return for a credit of \$1,774,359 against the Initial Shareholder Payment to the Majority Shareholder under the Share Redemption Agreement (which is \$10,725,641, but which would have been \$12,500,000 absent this credit). The Plan Supplement shall include an amendment of the split dollar agreement and any other documents necessary to effect this settlement.

### **C. Indemnification Obligations**

Notwithstanding Article IX.A. of the Plan, or any contract, instrument, release, or other agreement or document entered into in connection with this Plan, any and all Indemnification Obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law that has not been rejected under Bankruptcy Code section 365 pursuant to an order of the Bankruptcy Court or pursuant to the Plan, shall be deemed an executory contract that is assumed as of the Effective Date, and all Claims arising out of Indemnification Obligations shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed by the Reorganized Company pursuant to section 365 of the Bankruptcy Code. No reserve shall be established hereunder for such Indemnification Obligations.

By the date for filing of the Plan Supplement, the Directors and Officers of the Debtors shall provide the Equity Committee and the Creditors' Committee with a schedule of the potential claims of which they have actual knowledge and will represent that those are the only claims of which they have actual knowledge, and in the event that the Directors and Officers later assert indemnity for a claim which is not listed on the schedule but of which they had actual knowledge, they will be barred from asserting an indemnity obligation for such claim.

Indemnification Obligations owed to any Professionals retained pursuant to sections 327 or 328 of the Bankruptcy Code and order of the Court, to the extent that such Indemnification Obligations relate to the period after the Petition Date, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code under the Plan.

### **D. Bar to Rejection Damages**

If the rejection of an executory contract or unexpired lease pursuant to the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the applicable Debtor or its Estate, or their respective successors or properties unless a Proof of Claim is filed with the Claims Agent and served on the Debtors and counsel for the Debtors within thirty (30) days after service of a notice of occurrence of the Effective Date, unless another order of the Bankruptcy Court provides for an earlier date.

### **E. Assumed and Assigned Contracts and Leases**

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan document entered into after the Petition Date or in connection with the Plan, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 assuming, as of the Effective Date, those agreements listed on Exhibit B to this Plan; provided, however, that the Debtors may amend such Exhibit at any time prior to the Confirmation Date; provided further, however, that listing an agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder.

**X. CONFIRMATION AND CONSUMMATION OF THE PLAN**

**A. Conditions to Confirmation**

The following are conditions precedent to the occurrence of the Confirmation Date:

1. The entry of a Final Order finding that the Disclosure Statement contains adequate information pursuant to Bankruptcy Code section 1125, which order shall be in form and substance reasonably acceptable to the Debtors, the Majority Shareholder, the Creditors' Committee, the Equity Committee, and the Non-Defaulting Backstop Parties;
2. The proposed Confirmation Order shall be, in form and substance, reasonably acceptable to the Plan Proponents, the Majority Shareholder, the Creditors' Committee and the Non-Defaulting Backstop Parties;
3. All provisions, terms and conditions hereof are approved in the Confirmation Order;
4. A default has not occurred under the Equity Commitment Agreement that has not been cured and the Equity Commitment Agreement is in full force and effect; and
5. The Corporate Organizational Documents shall be approved by the Confirmation Order.

**B. Conditions to Effective Date**

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing in accordance with Article X.C:

1. The Confirmation Order shall have been entered and become a Final Order, shall be in form and substance acceptable to the Plan Proponents, the Majority Shareholder, the Creditors' Committee and the Non-Defaulting Backstop Parties and shall provide that the Debtors and the Backstop Parties are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with the Plan or effectuate, advance, or further the purposes thereof;
2. All Plan Exhibits and documents filed as part of the Plan Supplement shall be in form and substance reasonably acceptable to the Plan Proponents, the Majority Shareholder, the Creditors' Committee and the Non-Defaulting Backstop Parties, and shall have been executed and delivered by all parties signatory thereto;
3. The Debtors shall be authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, and the agreements or documents created in connection with the Plan;

4. All other actions, documents, and agreements necessary to implement the Plan shall have been effected or executed and shall be in form and substance acceptable to the Plan Proponents;
5. The Professional Fee Reserve, the Administrative Claims Reserve and the Operating Reserves shall have been funded to the extent required under the Plan and the Budget;
6. All conditions to closing set forth in the Equity Commitment Agreement shall have been satisfied or duly waived in accordance with the terms of the Equity Commitment Agreement and the Equity Commitment Agreement shall be in full force and effect; and
7. The Independent Director shall be mutually chosen by the Creditors' Committee and the Equity Committee and designated to the Board of Directors and the Creditors' Committee Director and the Trustee of the Golden Preferred Trust shall be designated by the Creditors' Committee and designated to the Board of Directors.
8. The Effective Date shall occur no later than September 15, 2012.

**C. Waiver of Conditions**

Each of the conditions set forth in Articles X.A and X.B of the Plan may be waived in whole or in part by the Plan Proponents and with the consent of the Non-Defaulting Backstop Parties. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Plan Proponents regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

**D. Consequences of Non-Occurrence of Effective Date**

In the event that the Effective Date does not timely occur, the Plan Proponents reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that the Plan be null and void in all respects, and/or that any settlement of Claims provided for in the Plan be null and void. In the event that the Bankruptcy Court shall enter an order vacating the Confirmation Order, the time within which the Debtors may assume and assign, or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

**E. Cram Down**

The Plan Proponents request Confirmation under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code. The Debtors reserve the right to modify the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

## **XI. ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS**

### **A. Professional Fee Claims**

#### **1. Final Fee Applications**

All Final Fee Applications must be filed no later than forty-five (45) days after the Effective Date. Objections, if any, to Final Fee Applications of such Professionals must be filed and served on the Debtors and their respective counsel, the Creditors' Committee and its counsel and the Equity Committee and its counsel, the requesting Professional and the Office of the U.S. Trustee no later than twenty (20) days from the date on which each such Final Fee Application is served and filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court, the allowed amounts of such Professional Fee Claims shall be determined by the Court.

#### **2. Employment of Professionals after the Effective Date**

From and after the Effective Date, any requirement that professionals comply with Bankruptcy Code sections 327 through 331 or any order previously entered by the Bankruptcy Court in seeking retention or compensation for services rendered or expenses incurred after such date will terminate.

### **B. Substantial Contribution Compensation and Expenses Bar Date**

Any Person who wishes to make a Substantial Contribution Claim based on facts or circumstances arising after the Petition Date, must file an application with the clerk of the Court, on or before the Administrative Claims Bar Date, and serve such application on counsel for the Debtors, counsel for the Creditors' Committee, and counsel for the Equity Committee, and as otherwise required by the Court and the Bankruptcy Code, or be forever barred from seeking such compensation or expense reimbursement. Objections, if any, to the Substantial Contribution Claim must be filed no later than the Administrative Claims Objection Deadline, unless otherwise extended by Order of the Court.

### **C. Administrative Claims**

All Administrative Claims arising after the Petition Date, other than Professional Fee Claims, must be filed with the Claims Agent and served on counsel for the Debtors so as to be received no later than 5:00 p.m., Eastern Time on the Administrative Claims Bar Date. Any such Claim may be submitted in person or by courier service, hand delivery or mail addressed to the Claims Agent at the Claims Agent's applicable addresses as specified in Article XIV.F herein. Any such Claim submitted by facsimile will not be accepted and will not be deemed filed until such Claim is submitted by one of the methods described in the foregoing sentence. An Administrative Claim will be deemed filed only when actually received by the Claims Agent. Unless Reorganized Syms or any other party in interest objects by the Administrative Claims Objection Deadline to an Administrative Claim, such Claim shall be deemed allowed after the Administrative Claims Objection Deadline in the amount requested. In the event that Reorganized Syms or any other party in interest objects to such a Claim, the Bankruptcy Court shall determine the allowed amount of such Claim.

## **XII. EFFECT OF PLAN CONFIRMATION**

### **A. Binding Effect**

This Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, and their respective successors and assigns.

**B. Discharge**

Upon the Effective Date, the Debtors shall be discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in section 502 of the Bankruptcy Code, whether or not (i) a proof of claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (ii) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, (iii) a Claim based upon such debt is or has been disallowed by order of the Bankruptcy Court, or (iv) the Holder of a Claim based upon such debt accepted this Plan.

As of the Effective Date, except as provided in this Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Debtors or their properties, including the Syms Owned Real Estate, any other or further Claims, debts, rights, Causes of Action, claims for relief, or liabilities relating to the Debtors based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date. In accordance with the foregoing, except as provided in this Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim.

**C. Injunction**

Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that from and after the Effective Date, all Persons who have held, hold or may hold Claims against or Interests in the Debtors are permanently enjoined from taking any of the following actions against the Estates, the Debtors, Reorganized Syms, Reorganized Filene's or any of their property on account of any such Claims or Interests: (A) commencing or continuing, in any manner or in any place, any action or other proceeding; (B) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order; (C) creating, perfecting, or enforcing any lien or encumbrance; (D) asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors; and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; *provided, however*, that nothing contained herein shall preclude such Persons from exercising their rights pursuant to and consistent with the terms of this Plan or the Confirmation Order; *provided further, however*, that nothing in this Article shall impair (i) the rights of any Holder of a Disputed Claim to establish its Claim in response to an objection filed by Reorganized Syms, or (ii) the rights of any defendant in a Cause of Action or Avoidance Action filed by Reorganized Syms to assert defenses in such action.

**D. Exculpation and Limitation of Liability**

Except as otherwise specifically provided in the Plan, (i) the Debtors, (ii) all of the present or former directors, officers, or employees of any of the Debtors, acting in such capacity and serving as of the Petition Date, (iii) any Professionals of the Debtors, (iv) the Majority Shareholder; (v) any Professionals of the Majority Shareholder; and (vi) the Equity Committee and the Creditors' Committee and their respective members, and the professionals retained by each of the foregoing acting in their capacities as such, and any of such parties' successors and assigns, shall not have or incur any liability, claim, action, proceeding, Cause of Action, Avoidance Action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right



to payment, or Claim (as defined in Bankruptcy Code Section 101(5)), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise to one another or to any Claimholder or Interestholder, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission originating or occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Debtors, the Chapter 11 Cases, the negotiation and filing of the Plan or any prior plans, the filing of the Chapter 11 Cases, the pursuit of confirmation of the Plan or any prior plans, the consummation of the Plan including the Rights Offering and Share Purchase Transaction, the administration of the Plan, or the property to be liquidated and/or distributed under the Plan, except for their willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan *provided, however*, that the foregoing shall not extinguish the personal liability of any of the aforementioned Entities for any statutory violation of applicable tax laws or bar any right of action asserted by a governmental taxing authority against the aforementioned Entities for any statutory violation of applicable tax laws, or any obligation or liability arising under the Equity Commitment Agreement or the terms of the Plan.

**E. Debtor Releases**

Pursuant to section 1123(b) of the Bankruptcy Code for good and valuable consideration, on and after the Effective Date, except as set forth on Exhibit A, (i) all current and former officers, directors, employees, agents and professionals of the Debtors in their capacity as such, (ii) the Majority Shareholder in her capacity as such; (iii) the Equity Committee and the Creditors' Committee and their respective members, and the professionals retained by each of the foregoing acting in their capacities as such, and (iv) the Majority Shareholder and the Majority Shareholder's professionals in their capacities as such, (the "Released Parties") are deemed released and discharged by the Debtors, Reorganized Syms, Reorganized Filene's and the Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, Reorganized Syms, Reorganized Filene's or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors or Reorganized Syms, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any of the foregoing releasees, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, or related agreements, instruments or other documents, or upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date.

**F. The Non-Defaulting Backstop Parties' Release, Exculpation and Indemnification**

**1. The Non-Defaulting Backstop Parties' Release**

For good and valuable consideration, on and after the Effective Date, the Non-Defaulting Backstop Parties and their respective directors, officers, partners, members, affiliates,

representatives, employees, agents, and attorneys (each a "Backstop Releasee") are deemed released and discharged by the Debtors, Reorganized Syms, Reorganized Filene's and the Estates from any and all claims, obligations, rights, suits, damages, causes of action, remedies and liabilities related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated thereby, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, Reorganized Syms, Reorganized Filene's or the Estates would have otherwise been entitled to assert.

## **2. The Non-Defaulting Backstop Parties' Exculpation**

The Non-Defaulting Backstop Parties and their respective directors, officers, partners, members, affiliates, representatives, employees, agents, and attorneys shall not have or incur any liability, claim, action, proceeding, cause of action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, or right to payment, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise to any Holder of Claims or Interests, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated thereby; except for the Non-Defaulting Backstop Parties' willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects the Non-Defaulting Backstop Parties shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities thereunder.

## **3. The Non-Defaulting Backstop Parties' Indemnification**

The Debtors or Reorganized Debtors, and the Estates, as the case may be, agree to indemnify and hold harmless the Non-Defaulting Backstop Parties and their respective directors, officers, partners, members, affiliates, representatives, employees, agents, and attorneys (each a "Backstop Party Indemnitee") from and against any and all claims, obligations, rights, suits, damages, causes of action, remedies and liabilities that any such Backstop Party Indemnitee may incur, have asserted against it or be involved in as a result of or arising out of or in any way related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby, including any related transaction or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any of such Backstop Party Indemnitee is a party thereto, and to reimburse each of such Backstop Party Indemnitee within ten (10) days after demand for any legal or other expenses incurred in connection with any of the foregoing; provided however, that the foregoing indemnity shall not, as to any Backstop Party Indemnitee, apply to claims, obligations, rights, suits, damages, causes of action, remedies and liabilities to the extent they have resulted from the willful misconduct or gross negligence of such Backstop Party Indemnitee. Notwithstanding any other provision to the contrary, no Backstop Party Indemnitee shall be liable for any special, indirect, consequential or punitive damages in connection with its activities related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby. The terms set forth in this subsection shall survive termination of the Equity Commitment Agreement and shall remain in full force and effect regardless of whether the Rights Offering is consummated.

#### **G. The Majority Shareholder's Indemnification**

The Debtors or Reorganized Syms, Reorganized Filene's and the Estates, as the case may be, agree to indemnify and hold harmless the Majority Shareholder and its representatives, employees, agents, and attorneys (each a "Majority Shareholder Indemnatee") from and against any and claims, obligations, rights, suits, damages, causes of action, remedies and liabilities that any such Majority Shareholder Indemnatee may incur, have asserted against it or be involved in as a result of or arising out of or in any way related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby, including any related transaction or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any of such Majority Shareholder Indemnatee is a party thereto, and to reimburse each of such Majority Shareholder Indemnatee within ten (10) days after demand for any legal or other expenses incurred in connection with any of the foregoing; provided however, that the foregoing indemnity shall not, as to any Majority Shareholder Indemnatee, apply to (i) claims, obligations, rights, suits, damages, causes of action, remedies and liabilities to the extent they have resulted from the willful misconduct or gross negligence of such Majority Shareholder Indemnatee; (ii) claims, obligations, rights, suits, damages, causes of action, remedies and liabilities to the extent they have resulted from a breach or default by the Majority Shareholder under the Equity Commitment Agreement; and (iii) claims, obligations, rights, suits, damages, causes of action, remedies and liabilities asserted by a third party that is unrelated to the Plan, the Rights Offering, the Equity Commitment Agreement, the Share Purchase Transaction, or any other transactions contemplated hereby or thereby. Notwithstanding any other provision to the contrary, no Majority Shareholder Indemnatee shall be liable for any special, indirect, consequential or punitive damages in connection with its activities related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby. The terms set forth in this subsection shall survive termination of the Equity Commitment Agreement and shall remain in full force and effect regardless of whether the Rights Offering is consummated. No reserve shall be established hereunder for any Majority Shareholder Indemnification Obligations.

#### **H. Third Party Releases**

As of the Effective Date, all Persons who directly or indirectly have been a Holder, are a Holder, or may become a Holder of a Claim or Interest and (a) who vote to accept the Plan as set forth on the relevant Ballot and do not mark their Ballot to indicate their refusal to grant the releases provided in this paragraph, (b) are Holders in Filene's Classes 4A or 5A, or (c) whose Claim or Interest is deemed Unimpaired under the Plan (the "Third Party Releasers"), shall be deemed, by virtue of their receipt of Distributions and/or other treatment contemplated under the Plan, to have unconditionally, irrevocably and forever released and covenanted with Reorganized Syms, Reorganized Filene's and the Released Parties not to (y) sue or otherwise seek recovery from Reorganized Syms, Reorganized Filene's or any Released Party on account of any Claim or Interest in any way related to the Debtors or their business and affairs, including but not limited to any Claim or Interest based upon tort, breach of contract, violations of federal or state securities laws or otherwise, based upon any act, occurrence, or failure to act from the beginning of time through the Effective Date or (z) assert against Reorganized Syms, Reorganized Filene's or any Released Party any claim, obligation, right, cause of action or liability that any Holder of a Claim or Interest may be entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, agreement or occurrence from the beginning of time through the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, provided, however, (i) none of the Released Parties shall be released from any Claim primarily based on any act or omission that constitutes gross negligence or willful misconduct as determined by a court of competent jurisdiction, and (ii) the foregoing release shall

**not apply to obligations arising under the Plan, and (iii) the foregoing release shall not apply or be construed to prohibit a party in interest from seeking to enforce the terms of the Plan.**

**For the avoidance of doubt, the Equity Committee, the Majority Shareholder, and the Creditors' Committee, and their respective members and Professionals in their capacity as such, release the Released Parties in accordance with this Article XII.G.**

**For the avoidance of doubt, this Article XII.G shall not be applied to, and shall not be deemed to, modify, limit or override the effect, scope and operation of Articles XII.A, XII.B, XII.C, XII.D and XII.E hereof.**

**I. Term of Bankruptcy Injunction or Stays**

All injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code section 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

**J. Separate Plans Meeting Confirmation Standards**

If the Bankruptcy Court determines that the Plan meets the standards for confirmation as to Syms but not as to Filene's, the Creditors Committee shall have the option to either:

1. continue the Confirmation Hearing for up to five (5) business days, and if the Plan for all Debtors cannot be confirmed at the continued Confirmation Hearing, the Creditors' Committee may contest and oppose the confirmation of the Plan without Filene's at such continued Confirmation Hearing; or
2. consent to confirmation of the Plan and the effectiveness of the Plan as to the Debtors other than Filene's, and then take no more than the next 120 calendar days to confirm a plan of reorganization or liquidation for Filene's with the same economic terms for Filene's and for Syms as contained in the Plan, and failing confirmation and going effective within those 120 days, Syms' obligations to make distributions to Holders of Claims in the Filene's Classes under the Plan shall be null and void. Under this option, if amounts incurred by the Professionals during that 120 day period in pursuing a Filene's-only plan exceed the Debtors' projected professional expenses through September 30, 2012, as set forth in the Alvarez & Marsal updated budget dated July 4, 2012, any amounts in excess shall reduce the distribution percentage for Holders of Claims in Filene's Classes under the Plan and shall not be paid or borne by Syms or Reorganized Syms.

If the Bankruptcy Court does not confirm the Plan with respect to Filene's for any reason, this Plan shall be deemed modified to withdraw Filene's from the Plan and the other Debtors shall pursue Confirmation pursuant to the modified terms of the Plan and the requirements of the Confirmation Order with respect to the modified Plan. Subject to Article XII.J.2. above and the timing referenced therein, with respect to Filene's and Holders of Claims against Filene's (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null

and void, and (c) nothing contained in the Plan, and no acts taken in preparation for Consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by such Debtors or any other Person.

### **XIII. RETENTION OF JURISDICTION**

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order, substantial consummation of the Plan and occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan, including, among other things, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim, the resolution of any objections to the allowance or priority of Claims or Interests and the determination of requests for the payment of Claims entitled to priority under Bankruptcy Code section 507(a)(1), including compensation of any reimbursement of expenses of parties entitled thereto;
2. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Bankruptcy Code sections 330, 331, 503(b), 1103, and 1129(a)(4); provided, however, that from and after the Effective Date, the payment of the fees and expenses of the retained Professionals of the Debtors shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court except to the extent otherwise provided in this Plan or the Confirmation Order;
3. Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;
4. Effectuate performance of and payments under the provisions of the Plan;
5. Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the Chapter 11 Cases or the Plan;
6. Enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;
7. Hear and determine disputes arising in connection with the interpretation, implementation, consummation or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

8. Consider any modifications of the Plan, and cure any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
9. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, consummation, or enforcement of the Plan or the Confirmation Order;
10. Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;
11. Hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Plan Supplement, the Disclosure Statement or the Confirmation Order;
12. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
13. Except as otherwise limited herein, recover all assets of the Debtors and property of the Estates, wherever located;
14. Hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146;
15. Hear and determine any Causes of Action and Avoidance Actions, including any such Causes of Action and Avoidance Actions brought by the Debtors;
16. Hear and determine all disputes involving the existence, nature or scope of the injunctions, indemnification, exculpation and releases granted pursuant to this Plan;
17. Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) any winding up of the Debtors' affairs, and (iii) the activities of the Debtors, including (A) challenges to or approvals of the Debtors' activities and (B) reporting by, termination of and accounting by the Debtors;
18. Hear and determine all disputes involving any dispute relating to any liability arising out of any termination of employment or the termination of any employee or retiree benefit provision, regardless of whether such termination occurred prior to or after the Effective Date;
19. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

20. Hear and determine any matters arising in connection with a sale of the Company's Trinity Interest;
21. Enforce all orders previously entered by the Bankruptcy Court;
22. Dismiss any and/or all of the Chapter 11 Cases; and
23. Enter a final decree closing the Chapter 11 Cases.

#### **XIV. MISCELLANEOUS PROVISIONS**

##### **A. Modifications and Amendments**

The Plan Proponents may alter, amend or modify the Plan or any Exhibits thereto under Bankruptcy Code section 1127(a) at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan as defined in Bankruptcy Code section 1101(2), the Plan Proponents may, under Bankruptcy Code section 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims or Interests; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Court. Any changes or modifications to the Plan Documents shall require the consent of each of the Debtors, the Equity Committee, and the Creditors Committee, which consent shall not be unreasonably withheld, and any disagreement shall be resolved by the Bankruptcy Court by hearing on shortened notice. Any such changes or modifications to the Plan Documents made without such consent shall be null and void unless otherwise ordered by the Bankruptcy Court.

##### **B. Severability of Plan Provisions**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, then the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide 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 pursuant to its terms.

##### **C. Successors and Assigns**

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of that Person.

##### **D. Payment of Statutory Fees**

All fees then due and payable pursuant to 28 U.S.C. § 1930, as determined by the Court at the Confirmation Hearing, shall be paid on or before the Effective Date by the Debtors. All such fees that

become due and payable thereafter by a Debtor shall be paid by the Reorganized Company. The Reorganized Company shall pay quarterly fees to the U.S. Trustee until the Chapter 11 Cases are closed or converted and/or the entry of final decrees. The Reorganized Company shall file post-confirmation quarterly reports or any pre-confirmation monthly operating reports not filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines which report shall also include a summary of the status of Distributions to be made under the Plan to the extent not provided in financial statements available to the public. The U.S. Trustee shall not be required to file a request for payment of its quarterly fees, which shall be paid by the Reorganized Company.

***E. Revocation, Withdrawal or Non-Consummation***

The Plan Proponents reserve the right, with the consent of the Creditors' Committee, not to be unreasonably withheld, to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to file subsequent plans. If the Plan Proponents revoke or withdraw the Plan as to any or all of the Debtors, or if Confirmation or Consummation of the Plan as to any or all of the Debtors does not occur, then with respect to such Debtors (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for Consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by such Debtors or any other Person.

***F. Service of Documents***

Any notice, request or demand required or permitted to be made or provided to or upon a Debtor, the Creditors' Committee and/or the Equity Committee under the Plan shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) facsimile transmission, (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, and (d) addressed as follows:

***The Debtors:***

Syms Corp.  
1 Syms Way  
Secaucus, NJ 07094  
Attn: Laura Brandt, Esq.

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, DE 19899-0636  
Attn: Mark S. Chehi  
Tel: (302) 651-3000  
Fax: (302) 651-3001

and



Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036  
Attn: Jay M. Goffman  
Mark A. McDermott  
Tel: (212) 735-3000  
Fax: (212) 735-2000

***The Creditors' Committee:***

Michael J. Merchant  
Paul N. Heath  
Marisa Terranova  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Tel: (302) 651-7700

and

Mark T. Power  
Janine M. Cerbone  
Alison M. Ladd  
HAHN & HESSEN LLP  
488 Madison Avenue  
New York, New York 10022  
Tel: (212) 478-7200

***The Equity Committee:***

Robert J. Dehney  
Curtis M. Miller  
Matthew B. Harvey  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899-1347  
Tel: (302) 658-9200  
Fax: (302) 658-3989

and

Thomas B. Walper  
Seth Goldman  
Bradley R. Schneider  
MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue  
35th Floor  
Los Angeles, CA 90071-1560  
Tel: (213) 683-9100  
Fax: (213) 683-5172

***The Claims Agent:***

Kurtzman Carson Consultants LLC  
2335 Alaska Ave  
El Segundo, CA 90245  
310-823-9000

**G. Effect on Previous Orders**

Nothing contained in the Plan or any Confirmation Order shall be deemed to conflict with, or derogate from, the terms of any previous orders entered by the Bankruptcy Court, such that, to the extent that there are any inconsistencies between the terms of any such order, on the one hand, and the Plan and the Confirmation Order, on the other hand, the terms of the order shall govern.

**H. Tax Reporting And Compliance**

The Debtors are hereby authorized to request an expedited determination under Bankruptcy Code section 505(b) of the tax liability of the Debtors for all taxable periods ending after the Petition Date through and including the Effective Date.

**I. Filing Of Additional Documents**

On or before substantial Consummation of this Plan, the Plan Proponents shall file such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

**J. Dissolution of Official Committees**

On the Effective Date, the Creditors' Committee and the Equity Committee shall dissolve as official committees in the cases on the Effective Date of the Plan, except that the Creditors Committee or its designee shall remain in existence, without any compensation or counsel or any other cost to the Debtors or the Reorganized Company, post-Effective Date for the purpose of selecting a replacement Creditors' Committee Director, Independent Director or other director pursuant to Article VII.A. of the Plan. The Creditors' Committee shall designate in the Plan Supplement a representative who shall act as Trustee of the Golden Preferred Trust which shall hold the Series A Preferred Stock to be issued by the Reorganized Company. Reasonable, out-of-pocket costs incurred in connection with forming and maintaining the trust and the Trustee's actions as a holder of the Series A Preferred Stock shall be reimbursed by the Reorganized Company, provided that the Series A Preferred Stock may be held by a successor in interest. If the members of an official committee choose to continue to operate on an unofficial basis for any other purpose, the unofficial committee shall pay its own professionals and any and all other expenses, if any.

The Reorganized Company shall select and direct counsel to represent the Reorganized Company in the Chapter 11 Cases before the Bankruptcy Court.

Dated: Wilmington, DE  
July 13, 2012

SYMS CORP.  
(for itself and on behalf of each Debtor)

OFFICIAL COMMITTEE OF SYMS CORP.  
EQUITY SECURITY HOLDERS

By: /s/ Gary Binkoski  
Name: Gary P. Binkoski  
Title: Chief Financial Officer

By: /s/ Andrew Sole  
Name: Esopus Creek Advisors, LLC  
Title: Managing Member

/s/ Mark S. Chehi  
Mark S. Chehi (ID No. 2855)  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, Delaware 19899-0636  
(302) 651-3000

/s/ Robert J. Dehney  
Robert J. Dehney (Bar No. 3578)  
Curtis S. Miller (Bar No. 4583)  
Matthew B. Harvey (Bar No. 5186)  
Morris, Nichols, Arsht & Tunnell LLP  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899-1347  
Telephone: (302) 658-9200  
Fax: (302) 658-3989

- and -

-and-

Jay M. Goffman  
Mark A. McDermott  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036-6522  
  
Counsel for Debtors and Debtors in Possession

Thomas B. Walper  
Seth Goldman  
Bradley R. Schneider  
Munger, Tolles & Olson LLP  
355 South Grand Avenue, 35th Floor  
Los Angeles, CA 90071-1560  
Telephone: (213) 683-9100  
Facsimile: (213) 683-5172

Counsel to the Official Committee of Syms  
Corp. Equity Security Holders

**EXHIBIT B**

**Disclosure Statement Approval Order**

**EXHIBIT C**

**Schedule of Syms Owned Real Estate**

Address	Total Property	Tenant(s)	Lease Term	Tenant Sq. Ft.
4400 Forest Hill Blvd, West Palm Beach, FL 33406	112,414	20 tenants	Ranging from month-to-month through March 2016	58,114
1340 Swedesford Rd, Berwyn, PA 19312	71,026	Devon Fitness	Through Dec 2016	16,294
4615 NW 77th Avenue, Miami, FL 33166	53,000	None	None	0
21700 Telegraph Road, Southfield, MI 48034	53,784	Lear Corp	Through Feb 2022	53,784
5775 Jimmy Carter Boulevard, Norcross, GA 30071	69,200	None	None	0
10770 Westheimer, Houston, TX 77042	41,824	None	None	0
652 Commerce Drive, Fairfield, CT 06825	42,900	None	None	0
295 Tarrytown Road, Elmsford, NY 10523	143,116	Bed Bath & Beyond	Through February 2018	84,500
1803 Roswell Road, Marietta, GA 30062	77,066	4 tenants	Ranging from month-to-month through June 2014	29,422
280 West North Avenue, Addison, IL 60101	62,523	None	None	0
1865 E. Marlon Pike, Cherry Hill, NJ 08003	150,000	None	None	0
8075 Sheridan Drive, Williamsville, NY 14221	102,347	787 Elk LLC dba Len-Co	Through April 2017	56,130
5300 Powerline, Ft. Lauderdale, FL 33309	55,110	None	None	0
695 Merrick Avenue, Westbury, NY 11590	90,520	None	None	0
330 Route 17 North, Paramus, NJ 07652	77,148	Hillmans Eyewear dba Lenscrafters	Through October 2016	4,100
1 Syms Way, Secaucus, NJ 07094	339,981	None	None	None
28-42 Trinity Place, New York 10007	69,965	None	None	None

**EXHIBIT D**

**Real Estate Disposition Plan**

Property	Square Footage
<u>Near-Term Sale:</u>	
Southfield	53,784
Houston	41,824
Secaucus	339,981
Cherry Hill	150,000
Berwyn	71,026
Williamsville	102,347
Fairfield	42,900
Addison	62,523
Ft. Lauderdale	55,110
West Palm	112,414
Miami	53,000
Norcross	69,200
Marietta	77,086
<u>Stabilization &amp; Medium-Term Sale:</u>	
Westchester	143,116
Westbury	90,520
Paramus	77,148
<u>Longer-Term Development:</u>	
Trinity Place	69,965



**EXHIBIT E**

**Financial Projections**

(\$ in millions)

	Emerg. 9/30/12	Quarter Ending								Cumulative
		12/31/12	3/31/13	6/30/13	9/30/13	12/31/13	3/31/14	6/30/14	9/30/14	
Beginning Cash	\$6.3	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$6.3	\$5.5	\$6.3
Less: Cash Held in Reserves (Beginning of Period)	-	(1.4)	(19.4)	(12.8)	(11.5)	(8.3)	(6.1)	(5.1)	(4.3)	-
Unrestricted Cash	\$6.3	-	-	-	-	-	-	\$1.2	\$1.2	\$6.3
Rights Offering Proceeds	\$25.0	-	-	-	-	-	-	-	-	\$25.0
Other Chapter 11 Recoveries <sup>(1)</sup>	0.9	-	4.7	-	-	-	-	-	-	5.5
Draw from Operating Reserves	-	1.4	6.6	1.3	3.2	2.2	1.0	0.8	4.3	20.8
Net Proceeds	\$25.9	\$1.4	\$11.3	\$1.3	\$3.2	\$2.2	\$1.0	\$0.8	\$4.3	\$51.4
Net Property Cash Flows	\$4.0	\$23.5	\$23.4	\$19.9	\$16.4	(\$0.4)	\$29.0	-	-	\$115.8
Pension Related Expenses (Single Employer) <sup>(2)</sup>	-	(0.7)	-	-	-	(0.9)	-	-	-	(1.6)
Pension Related Expenses (Local 1102) <sup>(3)</sup>	-	(0.4)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(1.8)
Overhead & Other Expenses	-	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(4.9)
Total Cash Flows	\$4.0	\$21.7	\$22.6	\$19.1	\$15.6	(\$2.2)	\$28.2	(\$0.8)	(\$0.8)	\$107.4
Funding to Operating Reserves	(1.4)	(19.4)	-	-	-	-	-	-	-	(20.8)
Cash Available for Distribution	\$34.8	\$3.7	\$33.9	\$20.4	\$18.8	-	\$29.1	\$1.2	\$4.7	\$144.2
Priority & Admin Paydown <sup>(4)</sup>	(\$34.8)	-	-	-	-	-	-	-	-	(\$34.8)
Distributions to Unsecured Creditors <sup>(5)</sup>	-	(2.2)	(24.7)	(20.4)	(18.8)	-	(20.9)	-	-	(87.0)
Distributions to Majority Shareholder	-	(1.5)	(9.2)	-	-	-	(7.1)	-	-	(17.8)
Total Paydowns & Distributions	(\$34.8)	(\$3.7)	(\$33.9)	(\$20.4)	(\$18.8)	-	(\$27.9)	-	-	(\$139.6)
Gross Ending Cash Balance	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$6.3	\$5.5	\$4.7	\$4.7
Less: Cash Held In Reserves (End of Period)	(1.4)	(19.4)	(12.8)	(11.5)	(8.3)	(6.1)	(5.1)	(4.3)	-	-
Ending Excess Cash Balance	-	-	-	-	-	-	\$1.2	\$1.2	\$4.7	\$4.7

#### Operating Reserves<sup>(6)</sup>

Beginning Balance	-	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$5.1	\$4.3	-
Fund	1.4	19.4	-	-	-	-	-	-	-	20.8
Draw	-	(1.4)	(6.6)	(1.3)	(3.2)	(2.2)	(1.0)	(0.8)	(4.3)	(20.8)
Ending Balance	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$5.1	\$4.3	-	-

#### Outstanding Obligations & Payments Due

Unsecured Creditors	\$87.0	\$84.8	\$60.1	\$39.7	\$20.9	\$20.9	-	-	-	-
Majority Shareholder	17.8	16.3	7.1	7.1	7.1	7.1	-	-	-	-
Outstanding Pension Obligations <sup>(7)</sup>	12.7	11.6	11.4	11.2	11.0	9.9	9.6	9.4	9.2	9.2
Net Remaining Payments	\$117.5	\$112.7	\$78.5	\$57.9	\$38.9	\$37.8	\$9.6	\$9.4	\$9.2	\$9.2

- (1) For purposes of conservatism, assumes additional Ch.11 recoveries (including the return of the Liberty Mutual Letters of Credit, estimated IP sale proceeds and certain other items) are received 6 months post-emergence.
- (2) Includes minimum catch-up contributions to single employer plan.
- (3) Includes quarterly withdrawal liability payments associated with the Local 1102 multi-employer plan.
- (4) Assumes all professional fees payable in July-September are deferred through the emergence date.
- (5) Excludes pension termination claims. Assumes the single employer pension plan is not terminated at emergence, and the \$6.4 million Local 1102 multi-employer withdrawal liability is paid over time in quarterly installments.
- (6) Total reserves (\$20.8 million) comprised of a \$5.0 million working capital reserve, \$3.8 million pension reserve, and a combined TI & carry cost reserve of \$12.0 million.
- (7) Represents the remaining balance associated with the Syms single employer and multi-employer pension plan obligations.

**EXHIBIT F**

**Sources and Uses Statement**

## Syms / Filene's Basement

### Exit Funding Requirement - Sources / Uses

(\$'s in '000s)

SOURCES		[1]	USES		
Rights Offering	\$	25,000 [2]	Professional Fees	\$	18,448 [4]
Sale of Property		4,000 [3]	Disputed Admin Claims - Reserve Amount		4,010
CIT Receivable		862	503(b)(9) Claims		3,023
Cash		6,335	DSW Lease		1,600 [5]
			Disputed Secured Claims - Reserve Amount		1,349
			Tax Claims		1,355 [6]
			Landlord Claims		1,257 [7]
			Severance & Vacation		594 [8]
			Pension Withdrawal - Admin/Priority Portion		554 [9]
			Misc. Expenses		162 [10]
			Reincorporation and Corporate Fees		200 [11]
			Disputed Priority Claims - Reserve Amount		20
			General Contingency		2,225
			Working Capital at New Co.		1,401
Total Sources	\$	36,197	Total Uses	\$	36,197

#### Notes:

- This analysis assumes an effective date of 9/15/12. Should a delay occur, additional funding will be required to support the incremental professional fees and operating expenses.

#### Footnotes:

- [1] Sources included are those recovered prior to the effective date. Other sources that are not listed above are assumed to be recovered after the effective date.
- [2] Provided by backstop financing.
- [3] Assumed to close prior to effective date, net proceeds of approximately \$4M.
- [4] Assumes no professional fees are paid from July through September and all outstanding fees are paid at exit.
- [5] Allowed administrative claim as part of the 79th Street lease assignment to DSW.
- [6] Primarily Massachusetts unemployment tax claim.
- [7] Various post petition unpaid rent.
- [8] Administrative and priority portion of severance & vacation.
- [9] Administrative and priority portion of pension withdrawal.
- [10] Primarily utility claims.
- [11] Assumes reincorporation in Delaware

**EXHIBIT G**

**Liquidation Analysis**

## Overview

This document contains the Best Interests Analysis (the "Liquidation Analysis") of Filene's Basement, LLC ("Filene's Basement"). The Debtors, with the assistance of their financial advisors, have prepared this Liquidation Analysis for the purpose of evaluating whether the Plan meets the best interests test under section 1129(a)(7) of the Bankruptcy Code. The Liquidation Analysis focuses on Filene's Basement only, as the Debtors believe Syms is solvent and all its creditors are being paid in full.

The Debtors have prepared this Liquidation Analysis based on a hypothetical liquidation of Filene's Basement under Chapter 7 of the Bankruptcy Code. It is assumed, among other things, that the hypothetical liquidation under Chapter 7 would commence under the direction of a Court-appointed trustee and would continue for a period of time, during which time all of Filene's Basement's remaining assets would be sold and the cash proceeds, net of liquidation related costs, would then be distributed to creditors in accordance with Bankruptcy Code.

The determination of the costs of, and proceeds from, the hypothetical liquidation of the Filene's Basement assets in a Chapter 7 case is an uncertain process involving the extensive use of estimates and assumptions that, although considered reasonable by Filene's Basement, are inherently subject to significant business, economic, and competitive uncertainties and contingencies beyond its control of its management and legal advisors. Inevitably, some assumptions in the Liquidation Analysis might not materialize in an actual Chapter 7 liquidation, and unanticipated events and circumstances could affect the ultimate results in an actual Chapter 7 liquidation.

THE LIQUIDATION ANALYSIS IS NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE FILENE'S BASEMENT ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED IN AN ACTUAL LIQUIDATION.

THE UNDERLYING FINANCIAL INFORMATION IN THE LIQUIDATION ANALYSIS WAS NOT COMPILED OR EXAMINED BY ANY INDEPENDENT ACCOUNTANTS. NEITHER THE DEBTOR NOR THEIR ADVISORS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD OR WOULD NOT APPROXIMATE THE ESTIMATES AND ASSUMPTIONS REPRESENTED IN THE LIQUIDATION ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY.

This Liquidation Analysis assumes that a liquidation of Filene's Basement would occur over approximately two (2) months beginning on July 1, 2012 and ending on August 31, 2012. It is assumed that the Chapter 7 trustee would arrange for the Debtor to focus their efforts on selling substantially all assets during this time.

The Liquidation Analysis should be read in conjunction with the following notes and assumptions:

**Summary Notes to Liquidation Analysis:**

1. *Dependence on assumptions.* The Liquidation Analysis depends on estimates and assumptions. The Liquidation Analysis is based on a number of estimates and assumptions that, although developed and considered reasonable by the management and the advisors of the Debtors, are inherently subject to significant economic, business, regulatory and competitive uncertainties and contingencies beyond the control of the Debtors or their management. The Liquidation Analysis is also based on the Debtors' best judgment of how numerous decisions in the liquidation process would be resolved. Accordingly, there can be no assurance that the values reflected in this Liquidation Analysis would be realized if Filene's Basement were, in fact, to undergo such a liquidation. Actual results could vary materially and adversely from those contained herein.
2. *Dependence on unaudited financial statements.* This Liquidation Analysis contains numerous estimates. It is based upon the Filene's Basement claims register as of the end of June 2012.
3. *Preference or fraudulent transfers.* No recovery or related litigation costs attributed to any potential avoidance actions under the Bankruptcy Code or otherwise, including potential preference or fraudulent transfer actions, are assumed within this analysis due to, among other issues, the inherent uncertainty about litigation results, the difficulty of assessing defenses to such actions, the inability to predict costs and fees associated with litigation and the risks of collection. These matters are discussed in greater detail in connection with the plan settlement described in the Disclosure Statement.
4. *Claims Estimates.* Claims are estimated based upon: (1) actual claims filed, (2) known book liabilities as of June 2012, and (3) estimated liabilities as of the date of this liquidation analysis. Additional claims may arise that were not estimated as of the date of this liquidation analysis.

## Summary of Liquidation Analysis:

# Liquidation Analysis

(\$'s in 000's)

	Debtor Estimates / Claims Amounts	Recovery Percentage	Total
<b>Sources</b>			
Cash as of August 31, 2012	\$6,846		\$6,846
Trademark/Customer List	1,000		1,000
Other Assets	954		954
<b>Total Assets Available for Distribution</b>	<b>\$8,800</b>		<b>\$8,800</b>
<b>Super Priority Claims</b>			
Intercompany Payable	\$2,155	100%	\$2,155
<b>Subtotal - Super Priority Claims</b>	<b>\$2,155</b>	<b>100%</b>	<b>\$2,155</b>
<b>Funds available to Admin Claims, Priority Claims, Unsecured Claims and Equity Holders</b>			<b>\$10,955</b>
<b>Administrative Expenses</b>			
Trustee Fees	(\$59)	100%	(\$59)
Professional Fees	(4,710)	100%	(4,710)
Severance & Vacation	(61)	100%	(61)
Landlord Claim	(1,070)	100%	(1,070)
Misc. Expenses	(18)	100%	(18)
503(b)(9) Claims	(1,368)	100%	(1,368)
Contingency	(250)	100%	(250)
<b>Subtotal - Administrative Claims</b>	<b>(\$7,536)</b>	<b>100%</b>	<b>(\$7,536)</b>
<b>Priority</b>			
Tax Claims	(\$1,355)	100%	(\$1,355)
Severance & Vacation	(103)	100%	(103)
Misc. Expenses	(1)	100%	(1)
Customer Liability	(207)	100%	(207)
Contingency	(250)	100%	(250)
<b>Subtotal - Priority Claims</b>	<b>(\$1,916)</b>	<b>100%</b>	<b>(\$1,916)</b>
<b>Funds available to Unsecured Creditors &amp; Equity Holders</b>			<b>\$1,504</b>
<b>Unsecured Claims</b>			
Landlord Claims - includes 502 (b)(6) non-guarantee portion	(\$36,770)	2%	(\$659)
Accounts Payable - non guarantee portion	(2,905)	2%	(52)
Severance & Vacation Claims (Pre-Petition)	(2,415)	2%	(43)
Misc. Expense	(629)	2%	(11)
Subrogation claims	(18,494)	2%	(332)
Intercompany Payable (Pre - Petition)	(22,633)	2%	(406)
Contingency	(4,420)	0%	-
<b>Subtotal - Unsecured Claims</b>	<b>(\$88,267)</b>		<b>(\$1,504)</b>
<b>Equity Distribution</b>			<b>\$0</b>



## **Detailed Assumptions**

### **Asset Recovery Estimates**

Asset recovery estimates presented in this liquidation analysis are based on the Filene's Basement balance sheet as of the end August 31, 2012, and are as follows:

- (a) Cash: The Liquidation Analysis assumes that all cash balances in Filene's Basement's possession as of August 31, 2012 totaling approximately \$6.8 million are 100% recoverable.
- (b) Trademarks/Customer List: The Debtors estimate that trademarks and customer lists have a value of approximately \$1 million.
- (c) Other Assets: Other assets include (a) return of Liberty Mutual letter of credit (\$0.1 million), (b) letter of credit receivables (\$0.5 million), and (c) return of utility deposits (\$0.4 million).
- (d) Superpriority Claims: Superpriority claims are claims by Filene's Basement against Syms that arose on account of goods, services or other value provided after the Petition Date. Filene's Basement holds such a claim against Syms in the amount of approximately \$2.155 million.

### **Liquidation Expenses & Claims**

- (e) Post Petition Administrative Expenses: The wind-down assumes that a liquidation of Filene's Basement would occur over approximately two (2) months.

Liquidation expenses include: (1) trustee fees equal to \$59,000 or 3% of sources excluding cash, (2) professional fee expenses of \$4.7 million, (3) severance and vacation in the amount of \$61,000 (4) landlord claims in the amount of \$1.1 million, (5) Misc Expenses in the amount of \$18,000, and (6) 503(b)(9) claims in the amount of \$1.4 million. Additionally, the Debtors created a disputed claims reserve in the amount of \$250,000.

- (f) Priority claims: Includes (1) tax claims in the amount of \$1.35 million, (2) severance and vacation in the amount of \$103,000 (3) misc. expenses in the amount of \$1,000 and (4) customer liabilities in the amount of \$207,000. Additionally, the Debtors created a disputed claims reserve in the amount of \$250,000.
- (g) Unsecured Claims: Includes 502(b)(6) claims (\$36.77 million), account payable claims (\$2.95 million), severance and vacation (\$2.4 million), misc expenses (\$629,000), subrogation claims (\$18.5 million), and intercompany claims (\$22.6 million). Additionally, the Debtors created a disputed claims reserve in the amount of \$4.4 million.

**EXHIBIT H**

**Equity Commitment Agreement (Partially Redacted)**

**EXHIBIT I**

**Rights Offering Procedures**

**EXHIBIT C**

**Confirmation Hearing Notice**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	X	
	:	
In re:	:	Chapter 11
	:	
Filene's Basement, L.L.C., <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors <sup>1</sup>	:	Jointly Administered
	:	
	:	
	:	
	X	

NOTICE OF ORDER (I) APPROVING DISCLOSURE STATEMENT;  
(II) APPROVING KEY DATES AND DEADLINES RELATED TO BALLOT  
SOLICITATION AND TABULATION PROCEDURES, FORMS OF BALLOTS, AND  
MANNER OF NOTICE; AND (III) FIXING DATE, TIME AND PLACE FOR  
CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS THERETO

**TO ALL CREDITORS, INTEREST HOLDERS AND PARTIES IN INTEREST,  
PLEASE TAKE NOTICE THAT:**

1. On [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the District of Delaware entered an order (the "Disclosure Statement and Solicitation Procedures Order") approving, among other things: (i) the Disclosure Statement, dated May 24, 2012, (the "Disclosure Statement"), as providing adequate information for holders of claims against and interests in the Debtors to make a decision as to whether to accept or reject the Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries, co-proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders, and (ii) the procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation Procedures"). The Solicitation Procedures and the Disclosure Statement are annexed as Exhibits A and B to the Disclosure Statement and Solicitation Procedures Order.
  
2. The Solicitation Procedures contain special balloting instructions and solicitation and tabulation procedures. **GENERAL UNSECURED CREDITORS AND SYMS SHAREHOLDERS, AND THEIR COUNSEL SHOULD REVIEW THE SOLICITATION PROCEDURES CAREFULLY.**

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

3. The Disclosure Statement and Solicitation Procedures Order require that votes to accept or reject the Plan must be actually received by Kurtzman Carson Consultants, L.L.C. (the "Voting Agent") **no later than 5:00 p.m. prevailing Pacific Time on August 23, 2012**, unless such time is extended in the sole discretion of the Debtors (the "Voting Deadline").
4. A hearing (the "Confirmation Hearing") to consider the confirmation of the Plan will be held at **1:00 p.m. prevailing Eastern Time on August 29, 2012**, before the Honorable Kevin J. Carey, United States Bankruptcy Judge at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Courtroom 5, Wilmington, Delaware. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtors of the adjourned date(s) at the Confirmation Hearing or any continued hearing, and the Plan may be modified, if necessary, pursuant to section 1127 of the Bankruptcy Code prior to, during, or as a result of the Confirmation Hearing, without further notice to interested parties other than by filing such modifications with the Court prior to the Confirmation Hearing or announcing any such modifications at the Confirmation Hearing.
5. In accordance with the Solicitation Procedures, Solicitation Packages will be mailed to (a) all holders of Claims listed on the Debtors' Schedules, (b) all holders of Claims who have filed a proof of claim by the Bar Date (or their counsel if the proof of claim was filed by such counsel on behalf of the claimant), (c) each entity listed on the Schedules as a party to an executory contract or unexpired lease with the Debtors, (d) Syms shareholders of record, (e) the Office of the United States Trustee for the District of Delaware, (f) counsel for the Creditors' Committee, (g) counsel for the Equity Committee, and (h) each party that filed a notice of appearance with the Court and has not withdrawn such notice of appearance as of the date the Court enters the Disclosure Statement and Solicitation Procedures Order.
6. Any holder of a Claim or Interest that the Debtors believe, in accordance with the Disclosure Statement and Solicitation Procedures Order, is entitled to vote to accept or reject the Plan, has been mailed a Ballot and voting instructions appropriate for such Claim or Interest. For any vote to accept or reject the Plan to be counted, a Ballot to accept or reject the Plan must be actually received by the Voting Agent by the Voting Deadline. In accordance with the Solicitation Procedures, all Ballots must be returned to the Voting Agent at:

**Creditor Ballots**

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department

**Shareholder Ballots (Beneficial Owner  
Ballots to be returned to Nominee)**

Kurtzman Carson Consultants, LLC  
Syms Corp. Class 6 Interests Balloting  
599 Lexington Avenue  
39<sup>th</sup> Floor  
New York, NY 10022

7. Objections to the confirmation of, or proposed modifications to, the Plan, if any, must (a) be in writing, (b) state the name and address of the objecting party and the nature of the claim or interest of such party, (c) state with particularity the basis and nature of any objection or proposed modification, and (d) be filed, together with proof of service, with the Court and served so that they are **actually received** no later than **5:00 p.m. prevailing Eastern Time on August 21, 2012** (the "Objection Deadline") by all of the following parties (the "Notice Parties"): (i) Syms Corp., et al, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.; (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Skadden, Arps, Slate Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq.; (iii) counsel to the Official Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq. and Janine M. Cerbone, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Michael J. Merchant, Esq.; (iv) counsel to the Official Committee of Syms Corp. Equity Security Holders, Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq. and Seth Goldman, Esq. and Morris Nichols Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq.; and (v) the Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq. **Objections not timely filed and served in the manner set forth above may not be considered and shall be overruled.**
8. Any holder of a Claim that is not scheduled and is not the subject of a timely filed proof of claim or a proof of claim deemed timely filed with the Court pursuant to either the Bankruptcy Code or any order of the Court or otherwise deemed timely filed under applicable law, shall not be treated as a creditor with respect to such Claim for purposes of (a) receiving notices regarding the Plan, (b) voting on the Plan or (c) receiving distribution under the Plan.

9. Any party in interest wishing to obtain (i) information about the Solicitation Procedures or (ii) copies of the Disclosure Statement, the Plan or the Solicitation Procedures (a) should contact the Debtors' Voting Agent at **(877) 606-7510 or FilenesInfo@kccllc.com.**, or (b) view such documents at the Debtors' website, at **www.kccllc.net/filenes**. All documents that are filed with the Court may be reviewed during regular business hours (9:00 a.m. to 4:00 p.m. weekdays, except legal holidays) at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801.

Dated:           Wilmington, Delaware  
                  June [\_\_\_], 2012]

/s/ draft

Mark S. Chehi (I.D. No. 2855)  
Jason M. Liberi (I.D. No. 4425)  
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(302) 651-3001

- and -

Jay M. Goffman  
Mark A. McDermott  
Suzanne D.T. Lovett  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036-6522  
(212) 735-3000  
(212) 735-2000

Counsel for Debtors and Debtors in Possession



**EXHIBIT D**

**Rights Offering Procedures**

## RIGHTS OFFERING PROCEDURES

### 1. Defined Terms

*Accredited Investor* has the meaning set forth in Rule 501(a) promulgated under the Securities Act of 1933.

*Accredited Investor Deadline* means 5:00 p.m. (prevailing Eastern Time) on August 6, 2012.

*Accredited Investor Order* means the order (a) authorizing the Company to distribute the Accredited Investor Questionnaire, (b) approving procedures related to such distribution and (c) setting a record date for the Rights Offering, entered by the United States Bankruptcy Court for the District of Delaware on July 9, 2012.

*Accredited Investor Questionnaire* means a questionnaire in substantially the form approved by the Accredited Investor Order.

*Aggregate Unsubscribed Shares* means any Offered Shares that are not validly subscribed for by Eligible Holders pursuant to their right to subscribe for their Pro Rata Share of the Offered Shares.

*Backstop Agreement* means that certain Equity Commitment Agreement dated as of [July 13, 2012], by and among the Company, Ms. Marcy Syms, the Laura Merns Living Trust, the Marcy Syms Revocable Living Trust and the Backstop Parties, as such agreement may be further amended or modified in accordance with its terms.

*Backstop Parties* means those parties named as Backstop Parties in the Backstop Agreement.

*Business Day* means any day that is a Saturday, Sunday, legal holiday or other day on which commercial banks in New York, New York are authorized or required by applicable law to close.

*Common Stock* means the shares of common stock of the Company, par value \$0.05 per share.

*Company* means Syms Corp., a New Jersey corporation.

*Debtors* means the Company, Filene's Basement, LLC, Syms Clothing, Inc. and Syms Advertising Inc.

*Effective Date* means the date the Plan becomes effective.

*Eligible Holder* means any holder of Common Stock as of the Record Date, including the Backstop Parties but excluding Ms. Marcy Syms, the Laura Merns Living Trust and the Marcy Syms Revocable Living Trust, that (a) has submitted to the Subscription Agent on or prior to the Accredited Investor Deadline a properly completed Accredited Investor Questionnaire certifying

that such holder is an Accredited Investor and (b) the Company determines is an Accredited Investor.

*Initial Shares* has the meaning set forth in Section 2.

*Offered Shares* means 10,040,160 shares of Common Stock to be offered to Eligible Holders in the Rights Offering.

*Plan* means the Joint Plan of Reorganization of the Debtors filed with the United States Bankruptcy Court for the District of Delaware on May 24, 2012, as such plan of reorganization may be amended or modified from time to time in accordance with its terms.

*Pro Rata Share* means:

(x) in the case of the Offered Shares, the number of Offered Shares that an Eligible Holder can subscribe for in the Rights Offering, which is equal to (a) the total number of Offered Shares multiplied by (b) the quotient obtained by dividing (i) the number of shares of Common Stock held by such Eligible Holder as of the Record Date by (ii) the number of shares of Common Stock held by all Eligible Holders as of the Record Date; and

(y) in the case of the Aggregate Unsubscribed Shares, the number of Aggregate Unsubscribed Shares that an Eligible Holder can subscribe for in the Rights Offering, which is equal to (a) the total number of Aggregate Unsubscribed Shares multiplied by (b) the quotient obtained by dividing (i) the number of shares of Common Stock held by such Eligible Holder as of the Record Date by (ii) the number of shares of Common Stock held by all Eligible Holders as of the Record Date.

*Purchase Price* means \$2.49 per share.

*Record Date* means July 12, 2012 at 5:00 p.m. New York City time.

*Rights Offering* means the offering to Eligible Holders of the opportunity to subscribe for Offered Shares at the Purchase Price.

*Subscription Agent* means Kurtzman Carson Consultants LLC, or any other entity designated as such by the Company, in its capacity as a subscription agent and escrow agent in connection with the Rights Offering.

*Subscription Agreement* means the agreement to be entered into by and between the Company and an Eligible Holder pursuant to which such Eligible Holder exercises its Subscription Rights.

*Subscription Commencement Date* means the date on which Subscription Agreements are first sent to Eligible Holders.

*Subscription Expiration Deadline* means [August 21, 2012], the date by which properly completed Subscription Agreements and the Purchase Price will be required to be delivered to the Subscription Agent as provided in the Subscription Agreements.

*Subscription Period* means the period beginning on the Subscription Commencement Date and ending on the Subscription Expiration Deadline.

*Subscription Rights* means the non-transferable, non-certificated subscription rights to purchase Offered Shares in connection with the Rights Offering on the terms and subject to the conditions set forth in the Plan, these Rights Offering Procedures and the Subscription Agreement.

*Unsubscribed Shares* has the meaning set forth in Section 2.

*Unsubscribed Shares Notice* has the meaning set forth in Section 2.

## **2. Rights Offering**

Subject to the terms and conditions set forth in the Plan, these Rights Offering Procedures and the Subscription Agreements:

*Initial Shares.* Each Eligible Holder will be entitled to purchase up to its Pro Rata Share of the Offered Shares at the Purchase Price. The number of Offered Shares actually subscribed for and purchased by an Eligible Holder shall be referred to as such Eligible Holder's "*Initial Shares*".

*Unsubscribed Shares.* In addition, each Eligible Holder may subscribe for up to its Pro Rata Share of the Aggregate Unsubscribed Shares at the Purchase Price. The number of Aggregate Unsubscribed Shares actually subscribed for and purchased by an Eligible Holder shall be referred to as such Eligible Holder's "*Unsubscribed Shares*".

As soon as reasonably practicable, and in no event later than two (2) Business Days, following the Subscription Expiration Deadline, the Company will distribute by e-mail or overnight delivery to each Eligible Holder who elected in its Subscription Agreement to subscribe for any of the Aggregate Unsubscribed Shares a notice (the "*Unsubscribed Shares Notice*") setting forth the number of Unsubscribed Shares to be purchased by such Eligible Holder and the aggregate Purchase Price therefor, and the bank account to which such aggregate Purchase Price is to be paid.

### **ALL SUBSCRIPTIONS SET FORTH IN THE SUBSCRIPTION AGREEMENTS ARE IRREVOCABLE.**

Eligible Holders have the right, but not the obligation, to participate in the Rights Offering.

## **3. Subscription Period**

The Rights Offering will commence on the Subscription Commencement Date and will expire on the Subscription Expiration Deadline. Each Eligible Holder intending to purchase Common Stock in the Rights Offering must affirmatively elect to exercise its Subscription Rights in the manner set forth in the instructions included with the Subscription Agreements (consistent herewith, including as described in Section 5 hereof) on or prior to the Subscription Expiration Deadline.

Any exercise of Subscription Rights after the Subscription Expiration Deadline will not be allowed and any purported exercise received by the Subscription Agent after the Subscription Expiration Deadline, regardless of when the documents or payment relating to such exercise were sent, will not be honored.

## **4. Delivery of Subscription Agreements**

Each Eligible Holder may exercise all or any portion of such Eligible Holder's Subscription Rights, but the exercise of any Subscription Rights will be irrevocable. In order to facilitate the exercise of the Subscription Rights, beginning on the Subscription

Commencement Date, the Subscription Agent will send a Subscription Agreement to each Eligible Holder, together with appropriate instructions for the proper completion, due execution and timely delivery of the Subscription Agreement and the payment of the applicable Purchase Price for its Initial Shares.

## **5. Exercise of Subscription Rights**

In order to validly exercise Subscription Rights, each Eligible Holder must:

- (a) return a duly completed Subscription Agreement to the Subscription Agent so that such Subscription Agreement is actually received by the Subscription Agent on or before the Subscription Expiration Deadline;
- (b) at the same time it returns its Subscription Agreement to the Subscription Agent, but in no event later than the Subscription Expiration Deadline, pay the applicable Purchase Price for its Initial Shares to the Subscription Agent by wire transfer of immediately available funds in accordance with the instructions included with the Subscription Agreement; and
- (c) within six (6) Business Days following the distribution of the Unsubscribed Share Notice by e-mail or overnight delivery, pay the applicable Purchase Price for its Unsubscribed Shares to the Subscription Agent by wire transfer of immediately available funds in accordance with the instructions included in the Unsubscribed Share Notice.

In the event that funds received by the Subscription Agent in payment for such Eligible Holder's Initial Shares or Unsubscribed Shares are less than the Purchase Price for such shares, the number of such Eligible Holder's Initial Shares or Unsubscribed Shares, as the case may be, deemed to be purchased by the Eligible Holder will be the lesser of (i) the number of such Eligible Holder's Initial Shares or Unsubscribed Shares, as the case may be, requested by such Eligible Holder and (ii) a number determined by dividing the amount of such funds received by the Purchase Price.

The payments of cash made in accordance with the Rights Offering will be deposited and held by the Subscription Agent in a segregated escrow account until administered in connection with the settlement of the Rights Offering on the Effective Date. The Subscription Agent may not use such funds for any other purpose prior to such Effective Date and may not encumber or permit such funds to be encumbered with any lien or similar encumbrance.

## **6. Transfer Restriction; Revocation**

The Subscription Rights are not transferable. Any transfer or attempted transfer of the Subscription Rights will be null and void, and no purported transferee will be treated as the holder of any Subscription Rights. Once an Eligible Holder has properly exercised its Subscription Rights, such exercise will not be permitted to be revoked.

## **7. Return of Payment**

If the Rights Offering is not consummated, any cash paid to the Subscription Agent will be returned, without interest, to the applicable Eligible Holder as soon as reasonably practicable after the earlier of (a) the Subscription Expiration Deadline and (b) the date on which the Rights Offering is terminated.

In the event that the Subscription Agent receives more funds from an Eligible Holder than the aggregate Purchase Price for such Eligible Holder's Initial Shares and Unsubscribed Shares, then such funds, to the extent of such overpayment, will be returned, without interest, to the applicable Eligible Holder as soon as reasonably practicable.

## **8. Rights Offering Backstop**

On the terms and subject to the conditions set forth in the Backstop Agreement, each of the Backstop Parties has agreed, severally and not jointly, to subscribe for and purchase its respective Pro Rata Share of the Offered Shares and the Aggregate Unsubscribed Shares and its respective share of any and all other Aggregate Unsubscribed Shares not purchased by the other Eligible Holders in the Rights Offering.

## **9. Settlement of the Rights Offering and Distribution of the Offered Shares**

On the Effective Date (or as soon as reasonably practicable thereafter), the Company's transfer agent will distribute the Offered Shares purchased by each Eligible Holder that has properly exercised its Subscription Rights in accordance with the delivery instructions set forth in such Eligible Holder's Subscription Agreement.

## **10. Fractional Shares**

No fractional shares will be issued in the Rights Offering or pursuant to the Backstop Agreement. All share allocations (including each Eligible Holder's Initial Shares and Unsubscribed Shares) will be calculated to one decimal place and rounded down to the closest whole share.

## **11. Validity of Exercise of Subscription Rights**

All questions concerning the timeliness, viability, form and eligibility of any exercise of Subscription Rights (including each Eligible Holder's Initial Shares and Unsubscribed Shares) will be determined by the Company, whose good faith determinations will be final and binding. The Company may waive any defect or irregularity, or permit a defect or irregularity to be corrected within such time as they may determine, or reject the purported exercise of any Subscription Rights. Subscription Agreements will be deemed not to have been received or accepted until all irregularities have been waived or cured within such time as the Company determines. The Company is not obligated to give notice to any Eligible Holder regarding any defect or irregularity in connection with any purported exercise of Subscription Rights by such participant. In addition, the Company may permit any such defect or irregularity to be cured within such time as it may determine in good faith to be appropriate.

*Before exercising any Subscription Rights, Eligible Holders should read the Disclosure Statement and Plan for information relating to the Debtors and risk factors to be considered.*

## **12. Modification of Procedures**

The Company reserves the right to modify or adopt additional procedures to effectuate the Rights Offering and to issue the Offered Shares. In so doing, the Company may execute and enter into agreements and take further action that the Company determines are necessary and appropriate to effect and implement the Rights Offering and the issuance of the Offered Shares.

## **13. Inquiries And Transmittal of Documents; Subscription Agent**

The instructions included with the Subscription Agreement should be carefully read and strictly followed.

Questions relating to the Rights Offering should be directed to the Subscription Agent at the following phone number:

(877) 833-4150

The risk of non-delivery of all documents and payments to the Subscription Agent is on the Eligible Holder electing to exercise its Subscription Rights and not the Company, the Subscription Agent, the Backstop Parties or any other Eligible Holder.



**EXHIBIT E**

**Accredited Investor Questionnaire**

## ACCREDITED INVESTOR QUESTIONNAIRE

You have been identified as the beneficial owner, or a representative acting on behalf of a beneficial owner, of shares of common stock, par value \$0.05 per share, of Syms Corp., a New Jersey corporation (the “Company”).

On November 2, 2011, the Company and each of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. In connection with their chapter 11 cases, the Debtors are contemplating a plan of reorganization that would involve certain transactions to be made available only to certain shareholders who are “Accredited Investors” as defined in the United States securities laws.

Please complete, and, if applicable, have your nominee complete the nominee confirmation of ownership form portion of, this “Accredited Investor Questionnaire”, certifying whether or not you are an accredited investor, and return such executed questionnaire to the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC (the “Subscription Agent”), on or before 5:00 p.m. (prevailing Eastern Time) on August 2, 2012 (the “Accredited Investor Deadline”) at the following address:

*By First Class, Registered, Certified, or Express Mail,  
Overnight Courier, Electronic Mail or via Facsimile:*

Syms Corp.  
c/o Kurtzman Carson Consultants LLC  
599 Lexington Avenue, 39<sup>th</sup> Floor  
New York, NY 10022  
E-mail: Symsinfo@kccllc.com  
Fax: (212) 702-0864

Accredited Investor Questionnaires will be deemed to be timely returned only when actually received by the Subscription Agent on or before the Accredited Investor Deadline.

**IF YOU DO NOT PROPERLY MAKE EITHER OF THE TWO POSSIBLE  
CERTIFICATIONS IN THE ACCREDITED INVESTOR QUESTIONNAIRE AND  
CAUSE ITS RETURN TO THE SUBSCRIPTION AGENT PRIOR TO THE AUGUST 2,  
2012 ACCREDITED INVESTOR DEADLINE YOU WILL NOT BE ENTITLED TO  
PARTICIPATE IN THE RIGHTS OFFERING.**

**This questionnaire shall not constitute an offer to sell or the solicitation of any offer to buy any securities.**

**IMPORTANT: If you hold your shares through a bank, broker or other nominee (collectively, the “Nominee”), you MUST return the completed Accredited Investor Questionnaire to your Nominee so they may complete the confirmation of ownership section on your behalf.**

If you have any questions about the Accredited Investor Questionnaire or the procedures described herein, please contact the Subscription Agent, Kurtzman Carson Consultants LLC, at (877) 833-4150.

## **SIGNATURE PAGE TO ACCREDITED INVESTOR QUESTIONNAIRE**

The undersigned hereby represents for the benefit of Syms Corp., a New Jersey corporation (the “Company”) and each of its subsidiaries (collectively, the “Debtors”) that, as of the date set forth below, it is the beneficial owner, or is acting on behalf of a beneficial owner, as of July 10, 2012 (the “Record Date”), of the number of shares of common stock, par value \$0.05 per share (“Common Stock”), set forth below.

The undersigned also hereby represents for the benefit of the Debtors that it:

☐

Is an “Accredited Investor” under the definition attached as Annex A.

☐

Is NOT an “Accredited Investor” under the definition attached as Annex A.

The undersigned understands that it is providing the information contained herein to the Company solely for purposes of enabling it to consider undertaking a transaction with respect to its shares of Common Stock. This letter neither is an offer with respect to the Common Stock nor creates any obligations whatsoever on the part of the Company to make any offer or on the part of the undersigned to participate if an offer is made.

The undersigned agrees that it will promptly notify the Subscription Agent in writing at either of the addresses indicated above if any of the representations it makes in this letter cease to be correct.

**PLEASE COMPLETE AND RETURN THIS QUESTIONNAIRE AT THE ADDRESS INDICATED ABOVE SO THAT IT IS ACTUALLY RECEIVED BY THE SUBSCRIPTION AGENT ON OR PRIOR TO AUGUST 2, 2012. THIS QUESTIONNAIRE MAY BE RETURNED BY ELECTRONIC MAIL, FIRST CLASS, REGISTERED, CERTIFIED, OR EXPRESS MAIL, OVERNIGHT COURIER OR VIA FACSIMILE.**

Dated: \_\_\_\_\_, 2012

Name of Holder:

Number of Shares of Common Stock held as of the Record Date:

By: \_\_\_\_\_  
(Name)

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City/State/Zip Code)

\_\_\_\_\_  
(Phone)

\_\_\_\_\_  
(Facsimile)

\_\_\_\_\_  
(E-Mail Address)

### **NOMINEE'S CONFIRMATION OF OWNERSHIP**

Your ownership of Common Stock must be confirmed to participate in the Rights Offering.

The Nominee holding your Common Stock as of the Record Date must complete Box A on your behalf. Box B is only required if any or all of your Common Stock was on loan as of the Rights Offer Record Date (as determined by your Nominee).

Box A	
For Use Only by the Nominee	
DTC Participant Name:	
DTC Participant Number:	
Number of Shares of Common Stock (CUSIP 871551 10 7) held by this account as of the Record Date:	
	shares of Common Stock
Medallion Guarantee:	
Nominee contact name and telephone number:	
Contact name:	
Contact telephone number:	

Box B	
Nominee Proxy - Only if Needed	
DTC Participant Name:	_____
DTC Participant Number:	_____
Number of Shares of Common Stock (CUSIP 871551 10 7) held on behalf of, and hereby assigned to, the Nominee listed above in Box A as of the Record Date:  _____ shares of Common Stock	
Medallion Guarantee:	
Nominee contact name and telephone number:	
Contact name:	_____
Contact telephone number:	_____

(TO BE COMPLETED ONLY IF YOUR SHARES ARE HELD IN A BANK OR  
BROKERAGE ACCOUNT)

**Definition of an “Accredited Investor”**

“Accredited Investor” (pursuant to Rule 501 promulgated under the Securities Act of 1933, as amended (the “Act”)) means any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

- (i) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- (ii) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
- (iii) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
- (iv) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
- (v) Any natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of his purchase exceeds \$1,000,000;<sup>1</sup>
- (vi) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- (vii) Any trust, with total assets in excess of \$5,000,000, not formed for the specific

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<sup>1</sup> Net worth for this purpose means total assets (excluding primary residence but including personal property and other assets) in excess of total liabilities. (In calculating net worth, the related amount of indebtedness secured by the primary residence up to its fair market value may also be excluded. Indebtedness secured by the residence in excess of the value of the home should be considered a liability and deducted from net worth.)

purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii); and

- (viii) Any entity in which all of the equity owners are accredited investors.

**EXHIBIT F**

**Form of Subscription Agreement**

**SYMS CORP.**

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**FORM OF SUBSCRIPTION AGREEMENT<sup>1</sup>**

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**Copy # \_\_\_\_\_**

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<sup>1</sup> This document was prepared for use by Eligible Holders other than the Backstop Parties and will be conformed for the Backstop Parties.



## NOTICES

THIS SUBSCRIPTION AGREEMENT HAS BEEN PREPARED ON A CONFIDENTIAL BASIS SOLELY FOR THE BENEFIT OF SELECTED ELIGIBLE HOLDERS IN CONNECTION WITH THE PRIVATE PLACEMENT OF SECURITIES OF SYMS CORP. OR A SUCCESSOR (THE "COMPANY") PURSUANT TO THE CHAPTER 11 PLAN OF REORGANIZATION OF THE COMPANY AND ITS SUBSIDIARIES THAT COMMENCED JOINTLY ADMINISTERED CASES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (AS SUCH TERM IS HEREINAFTER DEFINED) (THE "CHAPTER 11 PLAN"). ANY REPRODUCTION OR DISTRIBUTION OF THIS SUBSCRIPTION AGREEMENT, OR RETRANSMITTAL OF ITS CONTENTS, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY IS PROHIBITED. THIS SUBSCRIPTION AGREEMENT, INCLUDING ALL COPIES HEREOF, MUST BE RETURNED TO THE COMPANY IF REQUESTED.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED, APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY. NONE OF THE FOREGOING AUTHORITIES HAVE PASSED UPON, OR ENDORSED THE MERITS OF, THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE SECURITIES REFERRED TO HEREIN HAVE NOT BEEN REGISTERED WITH THE SEC UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATES. THE SECURITIES WILL BE OFFERED AND SOLD PURSUANT TO THE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY SECTION 1145 OF THE BANKRUPTCY CODE AND SECTION 4(2) OF THE SECURITIES ACT AND/OR REGULATION D PROMULGATED THEREUNDER AND IN COMPLIANCE WITH ANY APPLICABLE STATE OR NON-U.S. SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THIS SUBSCRIPTION AGREEMENT IS NOT AN OFFER TO SELL TO OR A SOLICITATION OF AN OFFER TO BUY FROM, NOR WILL ANY SECURITIES BE OFFERED OR SOLD TO, ANY PERSON IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION, PURCHASE OR SALE WOULD BE UNLAWFUL UNDER THE SECURITIES LAWS OF SUCH JURISDICTION.

THE SECURITIES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR PLEDGED, IN WHOLE OR IN PART, EXCEPT BOTH (A) AS PERMITTED UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE OR OTHER SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THERE IS NO PUBLIC MARKET FOR

THE SECURITIES, AND IT IS NOT EXPECTED THAT THERE WILL BE A MARKET IN THE FORESEEABLE FUTURE. IN ADDITION, THERE IS NO OBLIGATION ON THE PART OF THE COMPANY OR ANY OTHER PERSON TO REGISTER THE SECURITIES UNDER THE SECURITIES ACT OR ANY OTHER SECURITIES LAWS.

THE COMPANY MAKES NO REPRESENTATION TO ANY OFFEREE OR PURCHASER OF THE SECURITIES REGARDING THE LEGALITY OF AN INVESTMENT THEREIN BY SUCH OFFEREE OR PURCHASER UNDER APPLICABLE LEGAL INVESTMENT OR SIMILAR LAWS.

PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS SUBSCRIPTION AGREEMENT, OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM THE COMPANY OR ANY OF ITS AGENTS, OFFICERS OR REPRESENTATIVES, AS LEGAL OR TAX ADVICE. EACH OFFEREE SHOULD CONSULT HIS OWN ADVISORS AS TO LEGAL, TAX AND RELATED MATTERS CONCERNING AN INVESTMENT IN THE COMPANY.

AS A PURCHASER OF THE SECURITIES IN A PRIVATE PLACEMENT NOT REGISTERED UNDER THE SECURITIES ACT, EACH INVESTOR SHOULD PROCEED ON THE ASSUMPTION THAT THE ECONOMIC RISK OF THE INVESTMENT MUST BE BORNE FOR AN INDEFINITE PERIOD, SINCE THE SECURITIES MAY NOT BE RESOLD UNLESS THEY ARE SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

THIS INVESTMENT INVOLVES A HIGH DEGREE OF RISK. IT IS SPECULATIVE AND SUITABLE ONLY FOR PERSONS WHO HAVE SUBSTANTIAL FINANCIAL RESOURCES AND HAVE NO NEED FOR LIQUIDITY IN THIS INVESTMENT. FURTHER, THIS INVESTMENT SHOULD ONLY BE MADE BY THOSE WHO UNDERSTAND OR HAVE BEEN ADVISED WITH RESPECT TO THE TAX CONSEQUENCES OF AND RISK FACTORS ASSOCIATED WITH THE INVESTMENT AND WHO ARE ABLE TO BEAR THE SUBSTANTIAL ECONOMIC RISK OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THEREFORE, INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO RETAIN OWNERSHIP OF THE SECURITIES AND TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

### NOTICE TO FLORIDA INVESTORS

THE SECURITIES REFERRED TO HEREIN WILL BE SOLD TO, AND ACQUIRED BY, THE HOLDER IN A TRANSACTION EXEMPT UNDER SECTION 517.061(11) OF THE FLORIDA SECURITIES ACT. THE SECURITIES HAVE NOT BEEN REGISTERED UNDER SAID ACT WITH THE FLORIDA DIVISION OF SECURITIES AND INVESTOR PROTECTION. IN ADDITION, THE FLORIDA SECURITIES ACT PROVIDES THAT WHERE SALES ARE MADE TO 5 OR MORE FLORIDA INVESTORS, ALL FLORIDA INVESTORS SHALL HAVE THE PRIVILEGE OF VOIDING THE PURCHASE WITHIN THREE DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY SUCH PURCHASER TO THE COMPANY, AN AGENT OF THE COMPANY OR AN ESCROW AGENT, OR WITHIN THREE DAYS AFTER THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO SUCH PURCHASER, WHICHEVER OCCURS LATER. TO ACCOMPLISH THIS, IT IS SUFFICIENT FOR A FLORIDA PURCHASER TO SEND A LETTER OR TELEGRAM TO THE ISSUER WITHIN SUCH THREE DAY PERIOD, STATING THAT THE PURCHASER IS VOIDING AND RESCINDING THE PURCHASE. IF A PURCHASER SENDS A LETTER, IT IS PRUDENT TO DO SO BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO INSURE THAT THE LETTER IS RECEIVED AND TO EVIDENCE THE TIME OF MAILING. HOWEVER, THIS RIGHT IS NOT AVAILABLE TO ANY PURCHASER WHO IS A BANK, TRUST COMPANY, SAVINGS INSTITUTION, INSURANCE COMPANY, SECURITIES DEALER, INVESTMENT COMPANY (AS DEFINED IN THE INVESTMENT COMPANY ACT OF 1940 AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER), PENSION OR PROFIT-SHARING TRUST OR QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT).

### NOTICE TO NEW HAMPSHIRE INVESTORS

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, 1955, AS AMENDED ("RSA") WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE THAT ANY DOCUMENT FILED UNDER RSA 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

## SUBSCRIPTION AGREEMENT

Subscription Agreement (this "Agreement"), by and between Syms Corp., a New Jersey corporation (including any successor as contemplated by the Plan (as defined below), the "Company"), and the undersigned (the "Subscriber"), shall be deemed executed as of the date the Company executes this Agreement.

WHEREAS, on November 2, 2011, each of the Company and its subsidiaries filed voluntary petitions for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, on May 24, 2012, the Debtors and the Official Committee of Syms Corp. Equity Security Holders filed and jointly proposed the Joint Chapter 11 Plan of Reorganization of Syms Corp. and Its Subsidiaries (the "Plan");

WHEREAS, pursuant to the Plan, each Eligible Holder has been granted Subscription Rights entitling such Eligible Holder to purchase up to its Pro Rata Share of the Offered Shares and its Pro Rata Share of the Aggregate Unsubscribed Shares, as calculated in accordance with the Rights Offering Procedures and subject to reduction as described in Section 2 of the Rights Offering Procedures;

WHEREAS, the Subscriber has certified that it is an Eligible Holder and held on the Record Date the number of shares of Common Stock set forth on Item 1 of Schedule I;

WHEREAS, the Subscriber wishes to subscribe to purchase Offered Shares as set forth herein on the terms and subject to the conditions of the Rights Offering and in accordance with the Plan; and

WHEREAS, capitalized terms used but not defined in this Agreement have the meanings given in the Rights Offering Procedures attached hereto as Exhibit A (the "Rights Offering Procedures").

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subscriber and the Company hereby represent and agree as follows:

1. SUBSCRIPTION.

(a) The Subscriber hereby agrees to subscribe for that number of shares of Common Stock set forth on Item 3 (the "Initial Shares") and Item 4 (subject to a pro rata reduction as provided in the Rights Offering Procedures, the "Unsubscribed Shares", and together with the Initial Shares the "Shares") of Schedule I. The Subscriber will pay to the Subscription Agent the applicable Purchase Price set forth in Item 5 of Schedule I, (i) in the case of its Initial Shares (Item 3), at the time it returns this Agreement to the Subscription Agent, but in no event later than the Subscription Expiration Deadline and (ii) in the case of its Unsubscribed Shares (Item 4), the aggregate Purchase Price for the Subscriber's Unsubscribed Shares, in no event later than six (6) Business Days after the Determination Date (as defined below)(the "Unsubscribed Shares Payment Deadline"), in each case by wire transfer of immediately available funds in accordance with the instructions included on Schedule I or in the Unsubscribed Shares Notice (as defined below).

(b) As soon as reasonably practicable, and in no event later than two (2) Business Days following the Subscription Expiration Deadline, the Company shall distribute by e-mail or overnight delivery to each Eligible Holder who has subscribed for any of the Aggregate Unsubscribed Shares a notice setting forth the number of such Eligible Holder's Unsubscribed Shares and the aggregate Purchase Price therefor (the "Unsubscribed Shares Purchase Price") to be purchased by such Eligible Holder and the bank account to which the Unsubscribed Shares Purchase Price is to be paid (an "Unsubscribed Shares Notice") (the date of receipt of such Unsubscribed Shares Notice, the "Determination Date").

(c) In the event that funds received by the Subscription Agent in payment for the Subscriber's Initial Shares in accordance with the instructions provided with this Agreement are less than the Initial Shares Purchase Price (as set forth on Schedule I), the number of Initial Shares deemed to be purchased by the Subscriber pursuant to this Agreement will be the lesser of (i) the number of Initial Shares set forth set forth in Item 3 on Schedule I and (ii) a number determined by dividing the amount of such funds received in accordance with the instructions included with this Agreement by the Purchase Price. Any Initial Shares subscribed for but eliminated from the number of Initial Shares deemed purchased, pursuant to the previous sentence, shall be deemed part of the Aggregate Unsubscribed Shares.

(d) In the event that funds received by the Subscription Agent in payment for the Subscriber's Unsubscribed Shares as of the Unsubscribed Shares Payment Deadline are less than the Unsubscribed Shares Purchase Price set forth in the applicable Unsubscribed Shares Notice, the number of Unsubscribed Shares deemed to be purchased by the Subscriber pursuant to this Agreement will be the lesser of (i) the number of Unsubscribed Shares set forth on Schedule I and (ii) a number determined by dividing the amount of such funds received on or prior to the Unsubscribed Shares Payment Deadline by the Purchase Price. Any of the Subscriber's Unsubscribed Shares subscribed for but eliminated from the number of

Unsubscribed Shares deemed purchased by the Subscriber, pursuant to the previous sentence, shall be purchased by the Backstop Parties pursuant to the Backstop Agreement.

(e) In the event that the Subscription Agent receives more funds from the Subscriber than the aggregate Purchase Price for the Subscriber's Initial Shares or Unsubscribed Shares, then such funds, to the extent of such overpayment, will be returned, without interest, to the Subscriber as soon as reasonably practicable after the Determination Date.

(f) The closing of the issuance of Shares contemplated by this Agreement (the "Closing") will take place at the offices of [\_\_\_\_\_] on the Effective Date. The date on which the Closing occurs is the "Closing Date."

(g) The Subscriber understands and acknowledges that:

(i) The Shares purchased pursuant hereto will be initially issued in the name of the Subscriber, a controlled Affiliate of the Subscriber or a Related Fund, as indicated on Schedule I.

(ii) This Agreement contains its irrevocable firm commitment, subject only to the terms and conditions of this Agreement and the Rights Offering, to purchase the Shares, subject to pro rata adjustment as provided for in this Agreement and in the Rights Offering Procedures.

(iii) Except to the extent provided in this Agreement, the Company makes no representation or warranty in connection with the purchase of the Shares.

(iv) No federal or state agency has made or will make any finding or determination as to the adequacy or accuracy of any information provided to the Subscriber in connection with its consideration of its investment in the Shares or as to the fairness of this private placement for investment, nor any recommendation or endorsement of the Shares.

(h) The Subscriber understands and acknowledges that the Company will be relying on representations, warranties and agreements made by the Subscriber to the Company, and the covenants agreed to by the Subscriber, herein. The Subscriber agrees to provide, if requested, any additional information that may reasonably be required to determine its eligibility to purchase the Shares. If there is any change in any of the information provided by the Subscriber, or if any of the Subscriber's representations and warranties becomes inaccurate in any respect, the Subscriber will immediately furnish such revised or corrected information to the Company.

(i) The Subscriber understands and acknowledges that the subscription for the Shares contained herein may be accepted or rejected, in whole or in part, by the Company in its sole and absolute discretion, without liability to the Company. The Subscriber also understands and acknowledges that all calculations, including the calculation of the Subscriber's or any other Eligible Holder's Initial Shares and Unsubscribed Shares, shall be finally determined by the Company.

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

(a) The Company represents and warrants to the Subscriber as of the date hereof as follows:

(i) The Company is, as of the date hereof, a corporation duly organized and validly existing under the laws of the State of New Jersey. As of the Effective Date, the Company will be a corporation duly organized and validly existing under the laws of the state of Delaware.

(ii) Subject to the entry of the confirmation order relating to the Plan and occurrence of the Closing, (A) the Company will have the requisite corporate power and authority to execute and deliver this Agreement, (B) this Agreement and the consummation by the Company of the transactions contemplated hereby will have been duly authorized by all requisite corporate action and (C) this Agreement will have been duly and validly executed and delivered by the Company and will constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(iii) The Shares, when issued in accordance with the provisions hereof, will be validly issued by the Company, and will represent fully paid and nonassessable shares of the Company.

(iv) Except for the representations and warranties contained in this Section 2, none of the Company and any other Person on behalf of the Company makes any other express or implied representation or warranty with respect to the Company or any other information provided to the Subscriber. Neither the Company nor any other Person will have or be subject to any liability or indemnification obligation to the Subscriber or any other Person resulting from the distribution to the Subscriber, or use by the Subscriber of, any such information, including any information, documents, projections, forecasts or other material made available to the Subscriber, unless any such information is included in a representation or warranty contained in this Section 2.

3. REPRESENTATIONS AND WARRANTIES OF THE SUBSCRIBER.

The Subscriber represents and warrants to the Company as of the date hereof as follows:

(a) The Subscriber is an Eligible Holder and held on the Record Date the number of shares of Common Stock set forth on Item 1 of Schedule I. Any information which the Subscriber has heretofore furnished to the Company or any agent of the Company, with respect to the Subscriber, including the information in the Accredited Investor Questionnaire, is correct and complete as of the date of this Agreement and if there should be any material change in such information prior to its purchase of the Shares, or at any time thereafter, the Subscriber will immediately furnish, in writing, such revised or corrected information to the Company.

(b) The Subscriber has the requisite corporate or individual power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement and the consummation by Subscriber of the transactions contemplated hereby have been duly authorized by all requisite action. This Agreement has been duly and validly executed and delivered by Subscriber and constitutes the valid and binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms. Except to the extent Subscriber is an individual, Subscriber is a duly organized entity validly existing under the laws of the jurisdiction of its incorporation or formation.

(c) Except as provided under applicable state securities laws, this subscription is and shall be irrevocable, except that the Subscriber shall have no obligation hereunder if this Agreement is for any reason rejected or this offering is for any reason cancelled.

(d) The Subscriber understands that the Shares have not been registered under the Securities Act nor qualified under any state securities laws and that the Shares are being offered and sold pursuant to an exemption from such registration and qualification requirements based in part upon the Subscriber's representations contained herein.

(e) The Subscriber has read and understands this Agreement, the Plan and the Disclosure Statement and understands the terms and conditions herein and therein and the risks associated with the Company and its business as described in the Disclosure Statement.

(f) The Subscriber has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the investment contemplated by this Agreement, and it is able to bear the economic risk of an investment in the Company. The Subscriber has sufficient financial resources available to support the loss of all or a portion of its investment in the Company, and has no need for liquidity in its investment in the Company.



(g) The Subscriber recognizes that no public market exists for the Shares, that it is not expected that any such public market will exist in the future and that there is no obligation on the part of the Company or any other Person to register the Shares under the Securities Act or any other securities laws. The Subscriber understands that it must bear the economic risk of this investment indefinitely unless its Shares are registered pursuant to the Securities Act or an exemption from such registration is available, and unless the disposition of such Shares is qualified under applicable state securities laws or an exemption from such qualification is available. The Subscriber further understands that there is no assurance that any exemption from the Securities Act will be available, or, if available, that such exemption will allow the Subscriber to Transfer all or part of its Shares, in the amounts or at the times the Subscriber might propose.

(h) The Subscriber is acquiring the Shares solely for its own account for investment and neither with a view toward, nor any present intention of, Transferring the Shares. No other Person has any right with respect to or interest in the Shares to be purchased by the Subscriber, nor has the Subscriber agreed to give any Person any such interest or right in the future.

(i) No finder's fee or other similar fee is payable to any third party in connection with the Subscriber's investment in the Company. Should such a fee be payable to any third party, such fee is payable in its entirety by the Subscriber and not by the Company or any of its affiliates.

(j) The Subscriber is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under Section 4(2) of the Securities Act and that the Accredited Investor Questionnaire previously completed by the Subscriber sets forth a true, correct and complete statement of the Subscriber's accredited investor status.

(k) No third-party consents or approvals are required to be obtained, made or given in order to permit the Subscriber to execute and deliver this Agreement and to perform its obligations hereunder.

(l) Neither the execution and delivery of this Agreement by the Subscriber nor the consummation of any of the transactions contemplated hereby will violate or conflict with, or result in a breach of, or constitute a default under (whether upon notice or the passage of time or both) any (i) contract to which the Subscriber is a party or (ii) applicable laws, regulations, orders, judgments and decrees.

(m) Other than as set forth in this Agreement, the Subscriber is not relying upon any other information, representation or warranty by the Company. The Subscriber has consulted, to the extent deemed appropriate by the Subscriber, with the Subscriber's own

advisors as to the financial, tax, legal and related matters concerning an investment in the Shares and on that basis believes that an investment in the Shares is suitable and appropriate for the Subscriber.

(n) The foregoing representations and warranties will be true on the date hereof and as of the Closing Date and will survive delivery of this Agreement. If any of such representations and warranties is not true prior to acceptance of this Agreement by the Company or prior to the Closing Date, the Subscriber will give written notice of such fact to the Company, specifying which representations and warranties are not true and the reasons therefor.

#### 4. TRANSFER.

The Subscriber covenants that it will not sell or otherwise Transfer all or part of its Shares except pursuant to an effective registration under the Securities Act or in a transaction which qualifies as an exempt transaction under the Securities Act.

#### 5. SUBSCRIBER ACKNOWLEDGMENTS.

The Subscriber further acknowledges the following as of the date hereof and as of the Closing Date:

(a) The Disclosure Statement contains projections. The projections are subjective in many respects and are based on expectations, estimates, opinions and beliefs of the Company's management with respect to its financial condition, business and industry performance, general economic, market and financial conditions and other matters, all of which are difficult to predict and many of which are beyond the Company's control. Accordingly, there can be no assurance that the estimates and assumptions made in preparing the projections will prove accurate or that the forecasts will be realized. In addition, the projections do not and cannot take into account such factors as general economic conditions, unforeseen changes and developments in available technologies and products, the entry into the Company's market of significant additional competitors, natural disasters, the terms and conditions of future financings of the Company, and other risks inherent to the business of the Company. While management believes that the projections reflect the possible future results of the Company's operations, such results cannot be guaranteed. The Subscriber acknowledges that it is prepared for the substantial economic risks involved in the purchase of the Shares, including the total loss of its investment. The Company will not be under any duty to update the projections included in the Disclosure Statement prior to or after the Closing Date.

(b) The Subscriber understands that the Shares and any certificates therefor will bear a restrictive legend in substantially the following form, in addition to any legend

imposed or required by the Company's organizational documents or other applicable securities laws:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND SUCH THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREUNDER.

The Subscriber may present the certificate evidencing the Shares bearing such legend to the Company's transfer agent for the Shares for exchange for one or more new certificates not bearing such legend or for Transfer to a new holder without such legend at such times as (i) such Shares are sold pursuant to an effective registration statement under the Securities Act or (ii) such holder has delivered to the Company an opinion of counsel reasonably satisfactory to the Company to the effect that the Shares are no longer subject to the restrictions pursuant to an exemption under the Securities Act and such Shares may be sold without registration under the Securities Act, in which event the certificate issued to the transferee will not bear such legend.

6. CONDITIONS TO CLOSING.

(a) Conditions to Each Party's Obligations. The respective obligations of the Subscriber and the Company to consummate the transactions contemplated by this Agreement are subject to (i) the occurrence of the Effective Date and (ii) compliance by the Company and the Subscriber with the Rights Offering Procedures governing the Rights Offering, including payment of the Initial Shares Purchase Price and the Unsubscribed Shares Purchase Price (as reduced pursuant to an Unsubscribed Shares Notice).

(b) Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement with the Subscriber are subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(i) All representations and warranties of the Subscriber in Section 3 of this Agreement must be true, correct and complete in all respects on the Closing Date.

(ii) All acknowledgments of the Subscriber in Sections 1 and 5 of this Agreement must be true, correct and complete in all respects on the Closing Date.

(c) Conditions to Obligations of the Subscriber. The obligations of the Subscriber to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of the condition that all representations and warranties of the Company in Section 2 of this Agreement must be true and correct in all material respects on the Closing Date.

7. TERMINATION.

This Agreement will terminate automatically upon the termination of the Backstop Agreement. In the event this Agreement is terminated, any payments received pursuant to Section 1(a) of this Agreement will be returned within four (4) Business Days to the Subscriber.

8. INTERPRETATION OF THIS AGREEMENT.

(a) Terms Defined. As used in this Agreement, the following terms have the respective meanings set forth below:

"Affiliate": With respect to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (including with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person (whether through ownership of securities or partnership or other ownership interests, by agreement, contract, obligation, promise, undertaking or understanding, whether written or oral, or otherwise).

"Bankruptcy Code": Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended, supplemented or otherwise modified from time to time.

"Disclosure Statement": The disclosure statement (including all exhibits and schedules thereto or referenced therein) that relates to the Plan, as approved by the United States Bankruptcy Court for the District of Delaware pursuant to section 1125 of the Bankruptcy Code, as the same may be amended, modified or supplemented.

"Person": An individual, partnership, limited liability company, joint-stock company, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"Related Fund": With respect to the Subscriber, any fund, account or investment vehicle that is controlled or managed by (a) the Subscriber, (b) a controlled Affiliate of the Subscriber or (c) the same investment manager or advisor as the Subscriber or an Affiliate of such investment manager or advisor.

"Securities Act": The Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Transfer": Any resale, sale, assignment, pledge, hypothecation, distribution or other disposition or encumbrance.

(b) Directly or Indirectly. Where any provision in this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision will be applicable whether such action is taken directly or indirectly by such Person.

(c) Governing Law; Jurisdiction. THIS AGREEMENT, AND ALL CLAIMS ARISING OUT OF OR RELATING THERETO, WILL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE. THE SUBSCRIBER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF, AND VENUE IN, THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE AND WAIVES ANY OBJECTION BASED ON *FORUM NON CONVENIENS*.

(d) Section Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and should not be deemed to constitute a part thereof.

(e) Construction. This Agreement has been freely and fairly negotiated between the parties. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. The words "include", "includes", and "including" will be deemed to be followed by "without limitation." Pronouns in masculine, feminine and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

## 9. MISCELLANEOUS.

### (a) Notices.

(i) The Subscriber acknowledges that a completed and signed copy of this Agreement, together with payment of the Initial Shares Purchase Price, must be received by the Subscription Agent in accordance with the instructions included herewith prior to the Subscription Expiration Deadline for the subscription contemplated hereby to be valid.

(ii) Except as otherwise provided in this Agreement, following execution of this Agreement, all demands, notices, requests, consents and other communications under this Agreement must be in writing, sent contemporaneously to all of the notice parties set forth below and deemed given when delivered, if delivered by hand or upon confirmation of transmission, if delivered by facsimile, or if no response to the effect that an email cannot be delivered to the sender is received within 2 hours, if delivered by email, during standard business hours (from 8:00 A.M. to 6:00 P.M. at the place of receipt) at the addresses and facsimile numbers set forth below:

(A) if to the Subscriber, at his or her address or facsimile number shown on Schedule I, or at such other address or facsimile number as the Subscriber may have furnished the Company in writing; and

(B) if to the Company, at (or at such other address or facsimile number as it may have furnished in writing to the Subscriber):

Syms Corp.  
One Syms Way  
Secaucus, New Jersey 07094  
Attn: Laura Brandt  
Facsimile:  
laurabrandt@syms.com

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher and Flom LLP  
4 Times Square  
New York, New York 10036  
Attn: Jay Goffman and Mark McDermott  
Facsimile: 212-735-2000  
jay.goffman@skadden.com; mark.mcdermott@skadden.com

(b) Expenses and Taxes. The Company will pay, and hold the Subscriber harmless from any and all liabilities (including interest and penalties) with respect to, or resulting from any delay or failure in paying, stamp and other taxes (other than income taxes), if any, which may be payable or determined to be payable on the execution and delivery of this Agreement or acquisition of the securities pursuant to this Agreement.

(c) Reproduction of Documents. This Agreement and all documents relating hereto may not be reproduced or distributed by the Subscriber without the prior written consent of the Company.

(d) Assignment; Successors. This Agreement is not assignable by the Subscriber without the prior written consent of the Company. This Agreement and the rights, powers and duties set forth herein will inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.

(e) Entire Agreement; Amendment and Waiver. This Agreement [and the Backstop Agreement]<sup>2</sup> constitutes the entire understanding of the parties hereto and supersedes all prior understandings among such parties with respect to the matters covered herein. This Agreement may be amended, and the observance of any term of this Agreement may be waived, with (and only with) the written consent of the Company and the Subscriber.

(f) Severability. If any provision of this Agreement or the application of such provision to any person or circumstance is held to be invalid by any court of competent jurisdiction, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid will not be affected thereby.

(g) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.

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<sup>2</sup> To be included in the Subscription Agreements with the Backstop Parties. Such provision to be modified to state that in the event of any conflicts between the Backstop Agreement and the Subscription Agreement, the Backstop Agreement is to control.

SYMS CORP.

Title:

My commission expires:



## SCHEDULE I

### Name and Address of Subscriber

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_ Facsimile: \_\_\_\_\_  
\_\_\_\_\_ Email: \_\_\_\_\_  
\_\_\_\_\_

If Not Subscriber, Name of Controlled Affiliate or Related  
Fund in Whose Name Shares Should be Issued: \_\_\_\_\_

(Please provide full legal name)

Item 1. Number of Shares of Common Stock Held as of the Record Date: \_\_\_\_\_

Item 2. Calculation of Pro Rata Share for Initial Shares:

10,040,160                      X                      [\_\_\_\_\_]                      (rounded down to                      =  
\_\_\_\_\_  
Number of Offered                      [Shares Held as of the                      the nearest whole  
Shares                      Record Date (Item 1                      Share)  
above)÷ [Number of  
Shares Held as of the  
Record Date by All  
Eligible Holders]]

Item 3. Number of Initial Shares (Number of Offered Shares Subscriber Elects to  
Subscribe for (a whole number not to exceed amount calculated in Item 2)): \_\_\_\_\_

Item 4. Number of Unsubscribed Shares Subscriber Elects to Subscribe for (a  
whole number) (subject to pro rata reduction as provided in the Rights Offering  
Procedures): \_\_\_\_\_

Item 5. Purchase Price. By filling in the following blanks, you are agreeing to purchase the number of Offered Shares specified  
below at a purchase price of \$2.49 per share, on the terms and subject to the conditions set forth in the Plan and this Agreement. The  
number of Unsubscribed Shares to be purchased is subject to pro rata reduction as provided in the Rights Offering Procedures.

_____ Number of Initial Shares (Item 3)	X	\$2.49	=	_____ Initial Shares Purchase Price
_____ Number of Unsubscribed Shares (Item 4 as adjusted to reflect a pro rata reduction as provided in the Rights Offering Procedures)	X	\$2.49	=	_____ Unsubscribed Shares Purchase Price

[TO BE PROVIDED BY THE COMPANY]

**Payment of the Initial Shares Purchase Price shall be made by wire transfer of immediately available funds in accordance with the instructions set forth below.**

**Payment of the Unsubscribed Shares Purchase Price shall not be made until the Subscriber receives the Unsubscribed Shares Notice setting forth its actual allocation of Unsubscribed Shares.**

Name of Account:	Computershare Inc AAF for KCC Client Funding Syms Corp.
Bank Account No.:	4426855330
Bank Name:	Bank of America
Bank Location:	New York
Routing Number:	026009593
Special Instructions:	Reference "Funding for Syms Corp. Rights Offering"

PLEASE NOTE: NO SUBSCRIPTION WILL BE VALID UNLESS THE SUBSCRIPTION AGREEMENT IS VALIDLY SUBMITTED ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE AND PAYMENT OF YOUR INITIAL SHARES PURCHASE PRICE IS RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE, [DATE].

PLEASE MAIL OR DELIVER YOUR COMPLETED SUBSCRIPTION FORM TO:

SYMS CORP. RIGHTS OFFERING PROCESSING  
C/O KURTZMAN CARSON CONSULTANTS LLC  
599 LEXINGTON AVENUE, 39<sup>TH</sup> FLOOR  
NEW YORK, NY 10022  
TELEPHONE: 917-281-4800

SUBSCRIPTION FORMS WILL NOT BE ACCEPTED VIA ELECTRONIC MEANS.

**Exhibit A**

**Rights Offering Procedures**

**EXHIBIT 2**

**Revised Proposed Order Blackline**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

-----	x
	:
In re:	: Chapter 11
	:
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	: Case No. 11-13511 (KJC)
	:
Debtors.	: Jointly Administered
	:
-----	x

DISCLOSURE STATEMENT WITH RESPECT TO  
THE SECOND AMENDED JOINT CHAPTER 11  
PLAN OF REORGANIZATION OF SYMS CORP.  
AND ITS SUBSIDIARIES Mark S. Chehi (ID No. 2855)  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, Delaware 19899-0636  
(302) 651-3000  
(302) 651-2000

– and –

Jay M. Goffman  
Mark A. McDermott  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036-6522

Counsel for Debtors and Debtors in Possession

Dated: July 13, 2012  
Wilmington, Delaware

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED  
HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE DEBTORS' JOINT CHAPTER  
11 PLAN OF REORGANIZATION, AND MAY NOT BE RELIED UPON FOR ANY PURPOSE  
OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY  
INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND  
REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE  
PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL HOLDERS OF CLAIMS AND INTERESTS WHO ARE ELIGIBLE TO VOTE ON THE PLAN ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS AND SCHEDULES ANNEXED TO THE PLAN AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE TO PROVIDE HOLDERS OF CLAIMS AND INTERESTS WITH "ADEQUATE INFORMATION" AS DEFINED IN THE BANKRUPTCY CODE SO THAT THEY CAN MAKE AN INFORMED JUDGMENT ABOUT THE PLAN AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW.

THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), ANY STATE SECURITIES COMMISSION OR ANY SECURITIES EXCHANGE OR ASSOCIATION, NOR HAS THE SEC, ANY STATE SECURITIES COMMISSION OR ANY SECURITIES EXCHANGE OR ASSOCIATION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING SECURITIES OR CLAIMS OF SYMS CORP., FILENE'S BASEMENT, LLC OR ANY OF THE OTHER DEBTORS AND DEBTORS IN POSSESSION IN THESE CASES, SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER APPLICABLE EVIDENTIARY RULES. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, SYMS CORP., FILENE'S BASEMENT, LLC OR ANY OF THE OTHER DEBTORS AND DEBTORS IN POSSESSION IN THESE CASES.

EXCEPT AS OTHERWISE PROVIDED HEREIN, CAPITALIZED TERMS NOT OTHERWISE DEFINED IN THIS DISCLOSURE STATEMENT HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN. UNLESS OTHERWISE NOTED, ALL DOLLAR AMOUNTS PROVIDED IN THIS DISCLOSURE STATEMENT AND THE PLAN ARE GIVEN IN UNITED STATES DOLLARS.

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, EACH HOLDER IS HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER UNDER THE TAX CODE, (B) SUCH DISCUSSION IS

INCLUDED HEREBY BY THE DEBTORS IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN AND (C) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

#### **SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This Disclosure Statement contains certain forward-looking statements prepared by the Debtors and the Official Committee of Syms Corp. Equity Security Holders (the "Equity Committee"), all of which are based on various estimates and assumptions. Such forward-looking statements are subject to inherent uncertainties and to a wide variety of significant business, economic, and competitive risks, including, among others, those summarized herein. *See Section VIII — "Certain Risk Factors To Be Considered."* When used in this Disclosure Statement, the words "anticipate," "believe," "estimate," "will," "may," "intend," and "expect" and similar expressions generally identify forward-looking statements. Although the Debtors and the Equity Committee believe that the plans, intentions, and expectations reflected in the forward-looking statements are reasonable, they cannot be sure that they will be achieved. These statements are only predictions and are not guarantees of future performance or results. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated by a forward-looking statement. All forward-looking statements attributable to the Debtors, the Equity Committee or persons acting on their behalf are expressly qualified in their entirety by the cautionary statements set forth in this Disclosure Statement. Forward-looking statements speak only as of the date on which they are made. Except as required by law, the Debtors and the Equity Committee expressly disclaim any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.

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Other Exhibits to the Plan will be contained in a separate Plan Supplement, which will be filed with the Bankruptcy Court on or before August 13, 2012, six (6) business days before to the deadline established by the Bankruptcy Court for filing and serving objections to confirmation of the Plan. The Plan Supplement will be available for inspection in the office of the Clerk of the Bankruptcy Court during normal court hours and at the Debtors' internet site at <http://www.kccllc.net/fileenes>. Additional copies of the Plan Supplement may be obtained upon request to the Debtors' Claims Agent at the following address:

Filene's Claims Processing Center  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

## **I. INTRODUCTION**

On November 2, 2011 (the "Petition Date"), Syms Corp. ("Syms"), Filene's Basement, LLC ("Filene's"), Syms Advertising Inc. ("Advertising") and Syms Clothing, Inc. ("Clothing") and together with Syms, Filene's and Advertising, the "Debtors") each commenced a case in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). As described further below, since the Petition Date, the Debtors have permanently ceased their retail operations; liquidated their retail inventory pursuant to store closing sales; terminated substantially all their employees; and disposed of many of their real property leases under which they were tenants. The assets of the Debtors' estates now include cash from the store closing sales; 17 parcels of real estate owned by Syms; a residential condominium in Secaucus, New Jersey; interests in four long-term ground leases; intellectual property owned by Filene's; and various estate claims and causes of action.

### **A. Structure of Plan/Treatment of Creditors**

Concurrently herewith, the Debtors have filed their second amended joint chapter 11 plan of reorganization, a copy of which is attached hereto as Exhibit A (the "Plan"). The Plan is being proposed jointly by the Debtors and the Official Committee of Syms Corp. Equity Security Holders (the "Equity Committee"). The Plan is comprised of two separate reorganization plans, one for each of Syms and Filene's. The Debtors believe that Syms is solvent due to the significant value of its real estate holdings. Accordingly, Syms anticipates paying all its creditors in full, including creditors to whom Syms provided guarantees of certain of Filene's liabilities. Reorganized Syms will manage, lease and dispose of its real estate assets over time, in a non-distressed, commercially reasonable manner, in order to maximize the value of these assets for the benefit of its creditors and its shareholders.

On the other hand, the Debtors and the Equity Committee believe that Filene's is insolvent, and therefore, the Filene's creditors are only entitled to a distribution equal to a fraction of their claims. The Official Committee of Unsecured Creditors (the "Creditors' Committee") disputes that Filene's is insolvent, and believes that the Filene's estate holds various claims against the Syms' estate, as described further below, and that recovery on these claims would bring sufficient value into the Filene's estate to enable Filene's to pay its creditors in full. In the alternative, the Creditors' Committee asserts that the Filene's and Syms estates should be substantively consolidated such that the Filene's and Syms' assets combined should be used to pay all creditors of both estates. The Debtors and the Equity Committee do not believe that there is a basis for either of the Creditors' Committee's assertions.

However, in resolution of such claims, Syms has agreed that Filene's creditors will share in a portion of the proceeds of Syms' assets, thereby affording Filene's creditors a significantly greater recovery than they would have received without succeeding in proving such claims. In particular, Filene's trade creditors and employees will be paid in full over time from proceeds of the disposition of Syms owned real estate. Holders of lease rejection claims will be paid 75% of the allowed amount of their claims over time, also from proceeds from the disposition of Syms owned real estate. As an alternative to the foregoing, Filene's creditors will have the option of accepting distributions from Filene's assets only, which will result in an estimated recovery of between 0% and 2%, while preserving whatever individual claims they may have against Syms. Filene's will be reorganized as a wholly-owned subsidiary of reorganized Syms for the principal purpose of exploring the sale or joint venture opportunities with respect to Filene's intellectual property. The Debtors do not believe that Advertising or Clothing have any assets or liabilities. The Debtors therefore have not proposed a plan for either of these entities.

## **B. Redemption of Majority Shareholder's Shares**

Ms. Marcy Syms, the Laura Merns Living Trust, dated February 14, 2003, and the Marcy Syms Revocable Living Trust, dated January 12, 1990 (collectively, the "Majority Shareholder") owns approximately 54.4% of all outstanding shares of Syms common stock. Since early in these Chapter 11 cases, the Equity Committee has expressed a desire for minority shareholders of Syms to obtain operational control of Syms from the Majority Shareholder so they could pursue the development and disposition of Syms owned real estate. After significant discussions between the Equity Committee and the Majority Shareholder, and to resolve various differences between the parties and pave the way for a consensual restructuring, the Majority Shareholder has agreed to sell all its shares – 7,857,794 shares in all – to reorganized Syms for \$2.49 per share, or \$19,565,590 in the aggregate, subject to an agreed reduction in resolution of certain claims described below. That agreement is memorialized in that certain Equity Commitment Agreement, a copy of which is attached hereto as Exhibit H.

Syms will purchase the Majority Shareholder's shares on the Plan effective date. However, reorganized Syms will pay for the shares over time. In particular, as described immediately below, Syms will raise new funds from a rights offering. After payment of exit and other costs, any proceeds remaining from the rights offering, plus proceeds of real estate dispositions, will be split between creditors and the Majority Shareholder, with creditors receiving 60% and the Majority Shareholder receiving 40%, until the Majority Shareholder is paid \$10,725,761. The balance of Syms' payment obligation to the Majority Shareholder, in the amount of \$7,065,907, will be paid after reorganized Syms has satisfied all its obligations to creditors under the Plan.

On the Effective Date, reorganized Syms' board of directors will be comprised of three designees of the Equity Committee (two of whom may be designated by the Backstop Parties), one designee of the Creditors' Committee, and one independent director agreeable to both the Equity Committee and the Creditors' Committee. The Plan contains detailed provisions regarding the use of reorganized Syms' cash, along with provisions for control of the disposition of Syms owned real estate to vest in the Creditors' Committee's board designee if certain disposition milestones are not met. The Board of directors will engage appropriate real estate professionals to manage Reorganized Syms or contract with an established real estate asset manager or operator to provide the real estate expertise necessary for Reorganized Syms. Any director, officer, or trustee disclosures required for confirmation of the Plan shall be made prior to the hearing to consider confirmation of the Plan.

With respect to that certain split-dollar life insurance policy on Marcy Syms, Syms and reorganized Syms shall be released from any future obligation (whether to Marcy Syms, any third party or otherwise) to pay premiums and shall release any interest in the insurance policy in return for a credit of approximately \$1.774 million against the amounts to be paid to the Majority Shareholder pursuant to the share purchase transaction. The approximately \$1.774 million has already been netted out of the initial distributions payable to the Majority Shareholder.

## **C. Rights Offering**

Under the Plan, Syms will offer to sell to existing shareholders, other than the Majority Shareholder, who qualify as "accredited investors" under the securities laws, the right to purchase a total of 10,040,160 new shares at a price equal to \$2.49 per share, or approximately \$25 million in the aggregate. The funds from the rights offering will be used, first, to pay certain administrative costs and other amounts necessary for Syms and Filene's to exit Chapter 11, with the balance utilized to pay creditors and to reduce Syms' obligation to pay the Majority Shareholder for its shares as described above.

As a result of the rights offering, the total number of Syms common shares will increase by 2,182,367 shares, from the 14,448,188 shares currently outstanding to 16,630,555 shares. Because of this increase, the percentage ownership in Syms held by existing shareholders other than the Majority Shareholder will likely change. That percentage currently is approximately 45.3%. The extent to which any individual shareholder's percentage ownership may change will depend on, among other things, the level of participation in the rights offering. For example, an individual shareholder that does not purchase shares in the rights offering, and thus does not maintain such shareholder's pro rata ownership, will be diluted by 13.1%.

Certain members of the Equity Committee and their affiliates have agreed to purchase new shares made available in the rights offering that are not subscribed for by other shareholders. These members include DS Advisors LLC, Esopus Creek Value Series Fund LP-Series "A," and Marcato Capital Management LLC (collectively, the "Backstop Parties"). The "backstop" purchase obligation of these parties is memorialized in the Equity Commitment Agreement, a copy of which is attached hereto as Exhibit H. If no shareholders other than the Backstop Parties participate in the rights offering, the Backstop Parties will own 60.4% of reorganized Syms, in the aggregate.

The Backstop Parties have been represented by counsel separate from the Equity Committee and abstained from decisions on the Equity Commitment Agreement and rights offering made by the Equity Committee. The legal fees of counsel to the Backstop Parties will be paid by the Debtors under the Equity Commitment Agreement. No other fee or compensation of any kind is being paid to the Backstop Parties for the commitment to backstop the \$25 million rights offering.

#### **D. Estimates of Share Value/Go-Forward Business Plan**

The value of reorganized Syms' shares ultimately will depend on a number of factors, all of which are difficult to predict. The Debtors' business advisors have estimated that Syms owned real estate has an aggregate net realizable value of approximately \$147 million. Based on this estimate, and taking into account the increased number of shares under the Plan, the Debtors estimate that shares in reorganized Syms are worth between \$1.50 and \$2.00 per share. This range assumes (i) that the ultimate amount of claims allowed in these Chapter 11 cases will be between \$100 million and \$110 million; (ii) that Syms' most valuable parcel of real estate, the so-called "Trinity Property" located in lower Manhattan, is sold as-is, without being further developed; and (iii) that the expected proceeds to be realized from real estate sales should be discounted by 10% to account for the time value of money. As of the date of this Disclosure Statement, the Debtors believe that total claims will be closer to the \$110 million end of the range.

The estimated share value described above could vary significantly for a number of reasons, including if the total amount of claims that ultimately is allowed falls outside the range described above; if anticipated real estate values are not achieved; or if real estate dispositions do not occur as and when expected. In this regard, the Equity Committee and its advisors believe that the value of Syms owned real estate could be significantly greater than the \$147 million aggregate figure estimated by the Debtors' advisors. As described below, the Equity Committee's business plan contemplates the near-term disposition of 13 parcels of Syms owned real estate, followed by the medium-term disposition of three additional parcels after they have been leased up and stabilized, followed by the long-term development and disposition of the Trinity Property.

Various development scenarios have been analyzed that contemplate the development and future sale of the Trinity Property as either a mixed use residential apartment property or a mixed use condominium. Using a range of assumptions based on current market conditions, the construction and sale of the asset over a four- to five-year period has the potential to generate incremental gross proceeds estimated to range from \$0 to \$120 million (where the low end of the range represents a sale of the

development site in today's market), as compared to the range suggested by the valuations of the Debtors' professionals. Notwithstanding the risks associated with development, this could result in incremental values of between \$0 and \$7.22 per share, on an undiscounted basis, based on the pro forma share count of 16,630,555. The range of gross incremental value realizable from the Trinity Property does not take into account several factors that could impact shareholder value, including (but not limited to) a deterioration in market conditions; availability of construction financing; potential taxation of future sale proceeds; obligations of reorganized Syms that would be required to be repaid from sale proceeds; and additional carrying costs that could be incurred due to delays in entitlement or development approvals.

Moreover, the Equity Committee's plans for Syms owned real estate, including its estimates of possible future value, contemplate very significant development costs for the Trinity Property. Moreover, the Equity Committee's expectations for future shareholder value depend largely on the Trinity Property, as the other properties owned by Syms likely will be necessary to pay creditor claims. The hoped-for values cannot be achieved without the ability to obtain the financing necessary to fund these development costs. There is no assurance that reorganized Syms will be able to obtain such financing and realize these values. Moreover, the anticipated values are not expected to be achieved for at least three to five years. There is no assurance that the commercial real estate market will support such values three to five years in the future. Accordingly, there can be no guarantee of the ultimate value of the Trinity Property or any other parcels of real estate and hence, no guarantee regarding the value to Syms shareholders.

\* \* \*

The Debtors have prepared this Disclosure Statement pursuant to Bankruptcy Code section 1125 for use in the solicitation of votes on the Plan. Certain of the information has been prepared by the Equity Committee with the assistance of its business advisors, including the business plan for disposition of Syms owned real estate, including the Trinity Property and related estimates of value. As noted above, the Plan, while denominated a "joint" Plan, constitutes two separate plans for purposes of voting and distribution: one plan for Syms, and a separate plan for Filene's. This introduction provides a brief overview of each of these two plans. However, it affords a general overview only, which is qualified in its entirety by, and should be read in conjunction with, the more detailed discussions, information, financial statements and notes appearing elsewhere in this Disclosure Statement and the Plan. All capitalized terms not defined in this Disclosure Statement have the meanings ascribed to such terms in the Plan.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THE CHAPTER 11 CASES AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTORS BELIEVE THAT SUCH SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE FULL TEXT OF SUCH DOCUMENTS. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS AND THE EQUITY COMMITTEE DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING FINANCIAL INFORMATION, IS WITHOUT ANY INACCURACY OR OMISSION.

**THE DEBTORS, THE EQUITY COMMITTEE AND THE CREDITORS' COMMITTEE BELIEVE THAT THE PLAN WILL ENABLE THE DEBTORS TO ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTORS AND THE HOLDERS OF ALL CLAIMS AND INTERESTS. ACCORDINGLY, THE DEBTORS, THE EQUITY COMMITTEE AND THE CREDITORS' COMMITTEE URGE HOLDERS OF CLAIMS AND INTERESTS TO VOTE TO ACCEPT THE PLAN. FOR FURTHER INFORMATION AND INSTRUCTIONS ON VOTING TO ACCEPT OR**

**REJECT THE PLAN, SEE SECTION III OF THE DISCLOSURE STATEMENT, ENTITLED "PLAN VOTING, CONFIRMATION AND OBJECTION PROCEDURES."**

**II. OVERVIEW OF THE PLAN**

The table below summarizes the classification and treatment of prepetition and postpetition claims against and interests in each of Syms and Filene's. The table below also contains an estimate of the recoveries that the Debtors believe will ultimately be available to each class of claims and interests under each separate plan proposed for Syms and Filene's, respectively. These estimates are based upon a number of assumptions, which may or may not prove to be accurate.

1. Plan for Syms

Description and Amount of Claims and Interests	Summary of Treatment
<b>Unclassified Claims Against Syms</b>	
Administrative Claims	<p>Administrative Claims include pre-petition claims held by providers of goods for the value of any such goods shipped to Syms within 20 days of the Petition Date in the ordinary course of business, along with post-petition claims held by persons who provided goods and services to Syms after the Petition Date, including landlords for unpaid post-petition rent, utility providers, and professionals. Under the Plan, each Administrative Claim either will be paid in full in cash on the Effective Date of the Plan or as soon thereafter as such claim is allowed, or will receive such other less favorable treatment as to which the holder of such claim and Syms have agreed upon in writing.</p> <p><b>Estimated Amount: \$21.854 million</b>  <b>Estimated Recovery: 100%</b></p>
Superpriority Intercompany Claims	<p>Superpriority Intercompany Claims are intercompany claims arising from and after the Petition Date, with priority as an administrative expense of the kind specified in section 503(b) and superpriority of the kind specified in section 507(b) of the Bankruptcy Code. Pursuant to the Plan settlement described below, the holders of such claims shall not receive or retain any property under the Plan on account of such claims, and the claims shall be deemed cancelled and extinguished.</p> <p><b>Estimated Amount: \$2.155 million</b>  <b>Estimated Recovery: Settled</b></p>
Priority Tax Claims	<p>Priority Tax Claims are any claims owed by Syms to governmental units for taxes that are entitled to priority under the Bankruptcy Code. Syms received authority to pay all such claims at the inception of its Chapter 11 case. Accordingly, Syms does not believe there are any remaining Priority Tax Claims. To the extent any such Claims exist, under the Plan, such claims will be paid in full in cash upon the Plan Effective Date or as soon thereafter as they are allowed, or will receive such less favorable terms as Syms and the holder of any such claim agree upon in writing.</p> <p><b>Estimated Amount: \$0</b></p>

Description and Amount of Claims and Interests	Summary of Treatment
	<b>Estimated Recovery: 100%</b>
<b>Classified Claims Against Syms</b>	
Syms Class 1: Secured Claims (Unimpaired)	<p>Secured Claims are claims secured by a lien on collateral or that are subject to a right of setoff. Syms has already received authority to pay in full the secured claim of Syms' primary secured creditor, Bank of America, N.A., from proceeds of the Syms store closing sales, and made such payment in November 2011. Under the Plan, any holder of a Secured Claim shall either be paid in full in cash, shall receive the collateral securing its claim, or shall receive such less favorable treatment as Syms and the holder of such claim agree upon in writing.</p> <p><b>Estimated Amount: \$0</b>  <b>Estimated Recovery: 100%</b></p>
Syms Class 2: Non-Tax Priority Claims (Unimpaired)	<p>A Non-Tax Priority Claim is a pre-petition claim entitled to priority under the Bankruptcy Code other than an Administrative Claim or a Priority Tax Claim. Such claims include claims by employees for unpaid wages and similar amounts, along with the claims of customers for deposits and similar matters. Under the Plan, each holder of a Non-Tax Priority Claim either shall be entitled to be paid in full in cash upon the Plan Effective Date or on the distribution date immediately following the date on which the claim becomes allowed, or shall receive such other less favorable treatment as to which such holder and Syms shall have agreed upon in writing.</p> <p><b>Estimated Amount: \$1.518 million</b>  <b>Estimated Recovery: 100%</b></p>
Syms Class 3: Convenience Claims (Impaired)	<p>A Syms Convenience Claim is a pre-petition claim against Syms that is not entitled to priority under the Bankruptcy Code and is not secured by a lien on collateral, but that is (i) allowed in an amount equal to or less than \$10,000 or (ii) in an amount that is greater than \$10,000, but which the holder thereof elects on its ballot to be allowed in an amount no greater than \$10,000. Under the Plan, each holder of a Convenience Claim that is allowed shall be paid in cash 100% of the allowed amount of the claim as net proceeds from real estate or other assets become available consistent with the terms of the Plan, with any amounts not paid by October 1, 2015 accruing interest at a rate of 7% per year, which interest shall be paid in kind and compounded annually.</p> <p><b>Estimated Amount: \$1.899 million</b>  <b>Estimated Recovery: 100%</b></p>
Syms Class 4: Syms General Unsecured Claims (Impaired)	<p>A Syms General Unsecured Claim is a pre-petition claim that is not entitled to priority under the Bankruptcy Code, is not secured by a lien on collateral, and does not otherwise qualify as a Convenience Claim. Such claims include claims for unpaid trade payables, lease rejection damages, employee severance claims, and other unsecured claims, including claims on account of written Syms guarantees of Filene's leases and trade claims. Under the Plan, each holder of a Syms General Unsecured Claim that is allowed shall be</p>



Description and Amount of Claims and Interests	Summary of Treatment
	<p>paid in cash 100% of the allowed amount of the claim as net proceeds from real estate or other assets become available consistent with the terms of the Plan, with any amounts not paid by October 1, 2015 accruing interest at a rate of 7% per year, which interest shall be paid in kind and compounded annually. Alternatively, any such holder shall receive such other less favorable treatment as to which such holder and Syms shall have agreed upon in writing. Syms anticipates paying these claims within one year of the Plan Effective Date. <a href="#">For more information regarding the treatment of Syms General Unsecured Claims, refer to Section VII.C.2(c)(iii) herein and Section VII.C.4 of the Plan.</a></p> <p><b>Estimated Amount: \$53.896 million</b>  <b>Estimated Recovery: 100%</b></p>
Syms Class 5: Union Pension Plan Claims (Impaired)	<p>A Syms Union Pension Plan Claim is an obligation owed to Local 1102 for pension withdrawal liability arising under the Syms Pension Plan. Under the Plan, each holder of a Syms Union Pension Plan Claim that is allowed shall receive quarterly distributions from cash reserves established by the Plan until paid in full.</p> <p><b>Estimated Amount: \$6.409 million</b>  <b>Estimated Recovery: 100%</b></p>
Syms Class 6: Intercompany Claims (Unimpaired)	<p>A Syms Intercompany Claim is a claim against Syms held by another Debtor, including any claim reflected on the books and records of such other Debtor and any derivative claim asserted by or on behalf of another Debtor against Syms and which is not a Syms Superpriority Intercompany Claim. Pursuant to the Plan settlement described below, the holders of Syms Intercompany Claims shall not receive or retain any property under the Plan on account of such claims. On the Plan Effective Date, all Syms Intercompany Claims shall be deemed offset, cancelled and extinguished.</p> <p><b>Estimated Amount: See section 1.2 below</b>  <b>Estimated Recovery: Settled</b></p>
Syms Class 7: Interests (Impaired)	<p>Each holder of stock in Syms other than the Majority Shareholder shall retain such stock under the Plan. As described above, the Majority Shareholder will sell its shares to Syms for \$2.49 per share. A portion of the funds necessary for Syms to pay this amount will be raised by Syms under the Plan in the rights offering by offering to shareholders who are "accredited investors" as defined by the securities laws, other than the Majority Shareholder, the right to purchase their pro rata share of reorganized Syms shares at \$2.49 per share. As described above, the Debtors estimate that the estimated value to Syms minority shareholders is between <b>\$1.50 and \$2.00 per share</b>. This estimate reflects the dilution of those shareholders that do not participate in the rights offering. It also assumes (i) that the aggregate net realizable value of Syms owned real estate is approximately \$147 million; (ii) that a discount rate of 10% is applied to this value; and (iii) that total claims that ultimately will be allowed and paid under the Plan are between</p>

Description and Amount of Claims and Interests	Summary of Treatment
	\$100 million and \$110 million (the Debtors believe total claims will be closer to \$110 million). As noted above, however, the Equity Committee's business plan contemplates the stabilization or development of certain real estate, including the Trinity Property, that, if successfully implemented, could result in the aggregate net realizable value of Syms owned real estate being higher than the Debtors' estimates, which could result in estimated incremental share values between <b>\$0.00 and 7.22 per share.</b>
Plan for Filene's Description and Amount of Claims and Interests	Summary of Treatment
Unclassified Claims Against Filene's	
Administrative Claims	<p>Administrative Claims include pre-petition claims held by providers of goods for the value of any such goods shipped to Filene's within 20 days of the Petition Date in the ordinary course of business, plus post-petition claims held by persons who provided goods and services to Filene's after the Petition Date, including landlords for unpaid post-petition rent, utility providers, and professionals. Under the Plan, each Administrative Claim either will be paid in full in cash on the Effective Date of the Plan or as soon thereafter as such claim is allowed, or will receive such other less favorable treatment as to which the holder of such claim and Filene's have agreed upon in writing.</p> <p><b>Estimated Amount: \$8.068 million</b>  <b>Estimated Recovery: 100%</b></p>
Superpriority Intercompany Claims	<p>Superpriority Intercompany Claims are Intercompany Claims arising from and after the Petition Date, with priority as an administrative expense of the kind specified in section 503(b) and superpriority of the kind specified in section 507(b) of the Bankruptcy Code. Pursuant to the Plan settlement, the holders of such claims shall not receive or retain any property under the Plan on account of such claims and the claims shall be deemed cancelled and extinguished.</p> <p><b>Estimated Amount: \$0</b>  <b>Estimated Recovery: Settled</b></p>
Priority Tax Claims	<p>Priority Tax Claims are any claims owed by Filene's to governmental units for taxes that are entitled to priority under the Bankruptcy Code. Any such claims that are allowed will be paid in full in cash upon the Plan Effective Date or as soon thereafter as they are allowed, or will receive such less favorable terms as Filene's and the holder of any such claim agree upon in writing.</p> <p><b>Estimated Amount: \$1.355 million</b>  <b>Estimated Recovery: 100%</b></p>
Classified Claims Against Filene's	
Filene's Class 1: Secured Claims (Unimpaired)	<p>Secured Claims are claims secured by a lien on collateral or that are subject to a right of setoff. Filene's already received authority to pay in full the secured claim of Filene's primary secured creditor, Bank of America, N.A., from proceeds of Filene's store closing</p>

Description and Amount of Claims and Interests	Summary of Treatment
	<p>sales, and made such payment in November 2011. Under the Plan, any holder of a Secured Claim shall either be paid in full in cash, shall receive the collateral securing its claim, or shall receive such less favorable treatment as Filene's and the holder of such claim agree upon in writing.</p> <p><b>Estimated Amount: \$0</b>  <b>Estimated Recovery: 100%</b></p>
Filene's Class 2: Non-Tax Priority Claims (Unimpaired)	<p>A Non-Tax Priority Claim is a pre-petition claim entitled to priority under the Bankruptcy Code other than an Administrative Claim or a Priority Tax Claim. Such claims include claims by employees for unpaid wages and similar amounts, along with claims of customers for deposits and similar matters. Under the Plan, each holder of a Non-Tax Priority Claim either shall be entitled to be paid in full in cash upon the Plan Effective Date or on the distribution date immediately following the date on which the claim becomes allowed, or shall receive such other less favorable treatment as to which such holder and Filene's shall have agreed upon in writing.</p> <p><b>Estimated Amount: \$581,000</b>  <b>Estimated Recovery: 100%</b></p>
Filene's Class 3: Convenience Claims (Impaired)	<p>A Filene's Convenience Claim is a pre-petition claim against Filene's that is not entitled to priority under the Bankruptcy Code and is not secured by a lien on collateral, but that is (i) allowed in an amount equal to or less than \$10,000 or (ii) in an amount that is greater than \$10,000, but which the holder thereof elects on its ballot to be allowed in an amount no greater than \$10,000. Under the Plan, each holder of a Convenience Claim that is allowed shall be paid in cash 100% of the allowed amount of the claim as net proceeds from real estate or other assets become available consistent with the terms of the Plan, with any amounts not paid by October 1, 2015 accruing interest at a rate of 7% per year, which interest shall be paid in kind and compounded annually.</p> <p><b>Estimated Amount: \$1.613 million</b>  <b>Estimated Recovery: 100%</b></p>
Filene's Class 4 A and B: Filene's General Unsecured (Short-Term) Claims (Impaired)	<p>A Filene's General Unsecured (Short-Term) Claim is a pre-petition claim against Filene's that is not entitled to priority under the Bankruptcy Code, is not secured by a lien on collateral, is not guaranteed by Syms, and does not otherwise qualify as a Filene's Convenience Claim. Such claims include claims primarily for unpaid trade payables and employee severance claims. Under the Plan, each holder of a Filene's General Unsecured (Short-Term) Claim that is allowed shall have the option of (a) being paid in full in cash over time 100% of the allowed amount of the claim, with any amounts not paid by October 1, 2015 accruing interest at a rate of 7% per year, which interest shall be paid in kind and compounded annually, or receiving such other less favorable treatment as to which such holder and Filene's shall have agreed upon in writing, or (b) being paid its pro rata share of the liquidation value of Filene's assets, in cash upon the Plan Effective Date or as soon thereafter as such claims are allowed, while</p>

Description and Amount of Claims and Interests	Summary of Treatment
	<p>preserving any direct claim it believes it has against Syms. Filene's anticipates paying those holders who elect to be paid over time within two years of the Plan Effective Date.</p> <p><b>Estimated Amount: \$8.755 million</b>  <b>Estimated Recovery: 100% (for those electing to be paid over time) and between 0% and 2% for those electing to be paid their pro rata share of the liquidation value of Filene's assets.</b></p>
<p>Filene's Class 5 A and B: Filene's General Unsecured (Long-Term) Claims (Impaired)</p>	<p>A Filene's General Unsecured (Long-Term) Claim is a pre-petition claim against Filene's that is not entitled to priority under the Bankruptcy Code, is not secured by a lien on collateral, is not guaranteed by Syms, and does not otherwise qualify as either a Filene's Convenience Claim or Filene's General Unsecured (Short-Term) Claim. Such claims include claims primarily for rejection of executory contracts and unexpired leases. Under the Plan, each holder of a Filene's General Unsecured (Long-Term) Claim that is allowed shall have the option of (a) being paid 75% of the allowed amount of its claim in cash over time, with any amounts not paid by October 1, 2015 accruing interest at a rate of 7% per year, which interest shall be paid in kind and compounded annually, or receiving such other less favorable treatment as to which such holder and Filene's shall have agreed upon in writing, or (b) being paid its pro rata share of the liquidation value of Filene's assets, in cash upon the Plan Effective Date or as soon thereafter as such claims are allowed, while preserving any direct claim it believes it has against Syms. Filene's anticipates paying those holders who elect to be paid 75% of the allowed value of their claim within two years of the Plan Effective Date.</p> <p><b>Estimated Amount: \$36.877 million</b>  <b>Estimated Recovery: 75% (for those electing to be paid over time) and between 0% and 2% for those electing to be paid their pro rata share of the liquidation value of Filene's assets.</b></p>
<p>Filene's Class 6: Union Pension Plan Claims (Impaired)</p>	<p>A Filene's Union Pension Plan Claim is an obligation owed to Local 1102 for pension withdrawal liability. Under the Plan, each holder of a Filene's Union Pension Plan Claim that is allowed shall receive quarterly distributions from cash reserves established by the Plan until paid in full.</p> <p><b>Estimated Amount: \$6.409 million</b>  <b>Estimated Recovery: 100%</b></p>
<p>Filene's Class 7: Intercompany Claims (Impaired)</p>	<p>A Filene's Intercompany Claim is a claim against Filene's held by another Debtor, including but not limited to a claim reflected on the books and records of such other Debtor and any derivative claim asserted by or on behalf of another Debtor against Filene's and which is not a Filene's Superpriority Intercompany Claim. Pursuant to the Plan settlement described below, the holders of Filene's Intercompany Claims shall not receive or retain any property under the Plan on account of such claims. On the Plan Effective Date, all Filene's Intercompany Claims shall be deemed offset, cancelled and extinguished.</p>

Description and Amount of Claims and Interests	Summary of Treatment
	<b>Estimated Amount: \$33.0 million</b> <b>Estimated Recovery: Settled</b>
Filene's Class 8: Interests (Unimpaired)	Filene's interests consist of limited liability company membership interests in Filene's, which are owned exclusively by Syms. Syms shall retain its interests in Filene's. <b>Estimated Recovery: 0%</b>

ALTHOUGH THE DEBTORS BELIEVE THAT THE ESTIMATED RECOVERIES ARE REASONABLE, THERE IS NO ASSURANCE THAT THE ACTUAL AMOUNTS OF ALLOWED CLAIMS IN EACH CLASS WILL NOT MATERIALLY EXCEED THE ESTIMATED AGGREGATE AMOUNTS SHOWN IN THE TABLE ABOVE. The actual recoveries under the Plan will depend upon a variety of factors, including whether, and in what amount and with what priority, contingent claims against the Debtors become non-contingent and fixed; and whether, and to what extent, disputed claims are resolved in favor of the Debtors. Accordingly, no representation can be or is being made with respect to whether each estimated recovery amount shown in the table above will be realized.

**In the view of the Debtors, the Equity Committee, and the Creditors' Committee, the Plan provides holders of claims and interests with the best recovery possible. The Debtors, the Equity Committee, and the Creditors' Committee believe that the Plan is in the best interests of creditors and shareholders and should be approved. Therefore, the Debtors, the Equity Committee, and the Creditors' Committee recommend that all persons entitled to vote on the Plan, vote to accept the Plan.**

### III. PLAN VOTING, CONFIRMATION AND RELATED PROCEDURES

#### A. General Disclaimer

This Disclosure Statement is being transmitted to holders of claims against and interests in the Debtors that are entitled to vote on the Plan. The primary purpose of this Disclosure Statement is to provide adequate information so that holders who are entitled to vote on the Plan can make a reasonably informed decision with respect to the Plan before they decide to vote to accept or reject the Plan. A secondary purpose of this Disclosure Statement is to provide Syms shareholders, other than the Majority Shareholder, who are "accredited investors" as defined by the securities laws, with certain information that will help them decide whether to purchase new Syms shares in the Rights Offering.

The Bankruptcy Court has approved this Disclosure Statement as containing "adequate information," which means information of a kind and in sufficient and adequate detail to enable voting creditors and shareholders to make an informed judgment with respect to acceptance or rejection of the Plan. HOWEVER, THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT REPRESENT AN APPROVAL OF THE INFORMATION CONTAINED HEREIN FOR PURPOSES OF THE DEBTORS' DISCLOSURE OBLIGATIONS UNDER APPLICABLE SECURITIES LAWS IN CONNECTION WITH THE RIGHTS OFFERING.

WHEN, AND IF, CONFIRMED BY THE BANKRUPTCY COURT, THE PLAN WILL BIND ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS, WHETHER OR NOT

SUCH HOLDERS ARE ENTITLED TO VOTE OR DID VOTE ON THE PLAN AND WHETHER OR NOT SUCH HOLDERS RECEIVE OR RETAIN ANY DISTRIBUTIONS OR PROPERTY UNDER THE PLAN. THUS, YOU ARE ENCOURAGED TO READ THE PLAN AND THIS DISCLOSURE STATEMENT CAREFULLY.

THIS DISCLOSURE STATEMENT IS THE ONLY DOCUMENT THAT THE COURT HAS APPROVED TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. No solicitation of votes may be made except after the distribution of this Disclosure Statement, and no person has been authorized to distribute any information concerning the Debtors other than the information contained herein.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS, BY ITS NATURE, FORWARD LOOKING AND CONTAINS ESTIMATES AND ASSUMPTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. Unless otherwise specifically and expressly stated herein, this Disclosure Statement does not reflect any events that may occur after the date of this Disclosure Statement, even if those events may have a material impact on the information contained in this Disclosure Statement. The Debtors do not expect to distribute any amendments or supplements to this Disclosure Statement to reflect any occurrences that happen after the date hereof. Therefore, the delivery of this Disclosure Statement shall not under any circumstance imply that the information contained in it remains correct or complete as of any time subsequent to the date hereof.

**THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTING FIRM AND HAS NOT BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.**

**B. Holders of Claims and Interests Entitled to Vote**

Under the Bankruptcy Code, only holders of allowed claims or interests in classes of claims or interests that are (a) impaired and (b) placed in a class that will receive a distribution under a plan may vote to accept or reject the plan. In this case, Syms Class 3 Convenience Claims, Syms Class 4 General Unsecured Claims, Syms Class 5 Pension Plan Claims, Syms Class 7 Interests, Filene's Class 3 Convenience Claims, Filene's Class 4 A and B General Unsecured (Short-Term) Claims, Filene's Class 5 A and B General Unsecured (Long-Term) Claims and Filene's Class 6 Pension Plan Claims are entitled to vote on the Plan.

Classes of claims or equity interests in which the holders thereof are unimpaired under a chapter 11 plan are deemed to have accepted the plan and are not entitled to vote to accept or reject the plan. In this case, Syms Classes 1 and 2 and Filene's Classes 1, 2 and 8 are unimpaired, and holders of claims and interests in such classes are conclusively presumed to accept the Plan. Thus, such holders are not entitled to cast a vote on the Plan.

Classes of claims or interests that receive no distribution on account of their claims or interests are deemed to have rejected the plan and are not entitled to vote to accept or reject the plan. In this case, pursuant to the settlement of various intercompany matters described below, the holders of claims in Syms Class 6 (consisting entirely of intercompany claims against Syms) and Filene's Class 7 (consisting entirely of intercompany claims against Filene's) shall not retain or receive any property under the Plan. However, because each of these claims and interests are held exclusively by the Debtors, as plan co-proponents, each such class is deemed to have accepted the Plan.

### **C. Solicitation Package**

Accompanying this Disclosure Statement are copies of (1) the Plan, a copy of which is attached hereto as Exhibit A; (2) the Bankruptcy Court's order, a copy of which is attached hereto as Exhibit B (the "Disclosure Statement and Solicitation Procedures Order") that approves this Disclosure Statement, sets forth the time for submitting ballots to accept or reject the Plan, and sets forth the date, time and place of the hearing to consider confirmation of the Plan and the time for filing objections to confirmation of the Plan; and (3) for those entitled to vote on the Plan, one or more ballots (and return envelopes) to be used in voting to accept or reject the Plan.

The Disclosure Statement and Solicitation Procedures Order also explains how the Debtors will tabulate the ballots that are cast on the Plan, including assumptions and procedures for tabulating ballots that are not completed fully or correctly. You should read the Disclosure Statement and Solicitation Procedures Order and the instructions attached to the ballot you have received in this package in connection with this section of the Disclosure Statement.

### **D. Voting Procedures, Ballots, and Voting Deadline**

#### **1. In General**

After carefully reviewing the Plan, this Disclosure Statement and the detailed instructions accompanying your ballot, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed ballot. You must complete and sign your original ballot (copies will not be accepted) and return it in the envelope provided. Each ballot has been coded to reflect the class of claims or interests it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded ballot or ballots sent to you with this Disclosure Statement.

**IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN **AUGUST 23, 2012** AT 5:00 P.M. (PACIFIC TIME) (THE "VOTING DEADLINE") BY KURTZMAN CARSON CONSULTANTS, LLC (THE "VOTING AGENT") AT THE ADDRESS BELOW.**

**THE BALLOT IS THE ONLY REQUIRED ITEM TO BE SENT TO THE VOTING AGENT. PLEASE DO NOT SEND EVIDENCE OF YOUR CLAIM AMOUNT OR ANY CERTIFICATES WITH YOUR BALLOT.**

If you have any questions about (i) the procedure for voting your claim or interest or with respect to the packet of materials that you have received or (ii) the amount of your claim or interest, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any appendix or exhibit to the Plan or Disclosure Statement, please contact:

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department  
Email: [FilenesInfo@kccllc.com](mailto:FilenesInfo@kccllc.com)  
Telephone: (877) 606-7510

## 2. Withdrawal of Ballots; Revocation; Changes to Vote

Any holder of a claim or interest who votes to accept or reject the Plan is entitled to withdraw its ballot at any time before the Voting Deadline. To do so, you must deliver a written notice of withdrawal to the Voting Agent. To be valid, a notice of withdrawal must (i) contain a description of the claim(s) or interests to which it relates and the total amount of such claim(s) or interests, (ii) be signed by the same person who signed the original ballot, (iii) contain a certification that the person withdrawing the ballot owns the claim(s) or interests and possesses the right to withdraw the vote sought to be withdrawn and (iv) be received by the Voting Agent before the Voting Deadline at the address set forth above. The Debtors expressly reserve the absolute right to contest whether any ballot has been validly withdrawn. Unless the Bankruptcy Court orders otherwise, if a notice of withdrawal is not timely received by the Voting Agent, it will not be considered valid to withdraw a previously cast ballot.

Any party who submits a ballot before the Voting Deadline is entitled to change such vote. To do so, you must submit a new, properly completed ballot for acceptance or rejection of the Plan. If a party submits more than one properly completed ballot before the Voting Deadline, the Voting Agent will only count the ballot that bears the latest date for purposes of counting the ballot towards acceptance or rejection of the Plan.

## 3. Waivers of Defects and Other Irregularities

Unless otherwise directed by the Bankruptcy Court, the Voting Agent and the Debtors will determine whether the ballots cast on the Plan are valid, in the correct form and were timely received. Their determination will be final and binding. The Debtors reserve the right to reject any and all ballots that are not submitted in proper form, the acceptance of which would, in the opinion of the Debtors or their counsel, be unlawful. The Debtors further reserve the right to waive any defects or irregularities or conditions of delivery as to any particular ballot in order to allow such ballot to be counted.

Unless waived, any defects or irregularities in connection with deliveries of ballots must be cured within such time as the Debtors (or the Bankruptcy Court) determine. The Debtors and the Voting Agent are not obligated to notify any voting party that its ballot was deemed defective or that it was disregarded in the tabulation of votes, and the Debtors and the Voting Agent will not incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not therefore been cured or waived) will be invalidated.

## E. Rights Offering

Syms is offering its existing "accredited investor" shareholders, other than the Majority Shareholder, the opportunity to subscribe for and purchase up to an aggregate of 10,040,160 new shares of common stock (the "Offered Shares") at a purchase price of \$2.49 per share (the "Rights Offering").

In order for the Rights Offering to be exempt from the registration requirements under the Securities Act of 1933, as amended (the "Securities Act"), it arguably must comply with Rule 506 of Regulation D, promulgated under Section 4(2) of the Securities Act. Pursuant to Rule 506, only current Syms shareholders who qualify as "accredited investors" under Regulation D may participate in the Rights Offering. To identify such accredited investors, the Subscription Agent separately has mailed Accredited Investor Questionnaires to each broker, dealer, agent, bank or other entity (each, a "Record Holder") that holds book-entry positions in Syms stock as of July 10, 2012, either for itself or for beneficial owners of Syms stock as of July 10, 2012 (collectively "Beneficial Owners").



To be deemed an accredited investor eligible to participate in the Rights Offering, a Beneficial Owner must complete the Accredited Investor Questionnaire certifying such Beneficial Owner's status as an accredited investor and, if the Beneficial Owner is not the Record Holder, return the properly executed Accredited Investor Questionnaire to the Record Holder **so as to be actually received** by such deadline as the Record Holder may establish. The Record Holder shall certify on the Accredited Investor Questionnaire the amount of shares of Syms stock it holds for the benefit of the Beneficial Owner and return the completed Accredited Investor Questionnaire to the Voting Agent **so as to be actually received** by the Voting Agent before 5:00 p.m. (Eastern Time) on **August 2, 2012**. Completed Accredited Investor Questionnaires may be transmitted electronically by Record Holders to the Voting Agent by facsimile to (212) 702-0864 or by electronic mail to [symsinfo@kccllc.com](mailto:symsinfo@kccllc.com), so long as such electronic transmissions are actually received by the deadline. Any Record Holder that elects to electronically transmit its completed Accredited Investor Questionnaires to the Voting Agent must also deliver the hard-copy original Accredited Investor Questionnaires to the Voting Agent no later than **August 9, 2012**.

Any Beneficial Owner that does not validly certify that it is an accredited investor on the Accredited Investor Questionnaire and return the same to the Voting Agent by **August 2, 2012**, shall not be entitled to participate in the Rights Offering. Any Accredited Investor Questionnaire that is timely returned to the Voting Agent but does not indicate whether the relevant Beneficial Owner is or is not an accredited investor will not be deemed to have been validly executed, and the applicable Beneficial Owner will not be entitled to participate in the Rights Offering. Any Beneficial Owner that fails to submit a duly executed Accredited Investor Questionnaire to the Voting Agent by **August 2, 2012** will not be entitled to participate in the Rights Offering.

Once the eligible accredited investors are identified, the Voting Agent will send agreements to participate in the Rights Offering ("**Subscription Agreements**") to the eligible accredited investors by no later than **August 6, 2012**. The Subscription Agreements are the contracts by which such eligible accredited investors will agree to subscribe for and purchase the Offered Shares from Syms. Each eligible accredited investor who wishes to subscribe for shares in the Rights Offering must sign a Subscription Agreement indicating the number of shares it wishes to purchase and return it to the Voting Agent by no later than **August 21, 2012**. Those who return their Subscription Agreements and who Syms determines are eligible accredited investors are referred to as "**Eligible Holders**."

Eligible Holders initially may subscribe for up to a maximum of their pro rata share of the Offered Shares (the "**Initial Shares**"). The pro rata share for each Eligible Holder will be determined by multiplying (a) the total number of Offered Shares by (b) the quotient obtained by dividing (i) the number of shares of Syms common stock held by that Eligible Holder by (ii) the total number of shares of Syms common stock held by all the Eligible Holders, rounded down to the nearest whole share.

Eligible Holders interested in subscribing for additional shares may also indicate on their Subscription Agreement that they would like to subscribe for Unsubscribed Shares. The number of aggregate Unsubscribed Shares will be the number of Offered Shares minus the number of Initial Shares subscribed for by all Eligible Holders. Each Eligible Holder may receive up to its pro rata portion of the Unsubscribed Shares. The pro rata portion of Unsubscribed Shares that electing Eligible Holders may subscribe for will be determined by multiplying (a) the aggregate number of Unsubscribed Shares by (b) the quotient obtained by dividing (i) the number of shares of Syms common stock held by that Eligible Holder by (ii) the total number of shares of Syms common stock held by all the Eligible Holders, rounded down to the nearest whole share.

Once the subscription deadline has passed, Syms will calculate and inform each Eligible Holder who subscribed for Unsubscribed Shares how many of the Unsubscribed Shares will be allotted to each. Each Eligible Holder that is not a Backstop Party must then promptly, and not later than **August 29, 2012**,

remit payment for their respective allotted Unsubscribed Shares. Backstop Parties must deposit into escrow payment for Unsubscribed Shares by **August 27, 2012**.

**F. Confirmation Hearing and Deadline for Objections to Confirmation**

The Bankruptcy Court will hold a hearing to determine whether to confirm the Plan on [\_\_\_\_\_, 2012 at \_\_\_\_\_ (Eastern Time)] before the Honorable Kevin J. Carey, United States Bankruptcy Judge for the District of Delaware, in the United States Bankruptcy Court for the District of Delaware, Courtroom 5, 824 N. Market Street, Wilmington, Delaware 19801. The Debtors may continue the confirmation hearing by announcing such continuance in open court, in an agenda for such hearing, or by filing a notice of the continuance. Any holder of a claim or interest has a right to attend the confirmation hearing.

The Disclosure Statement and Solicitation Procedures Order provides that objections, if any, to confirmation of the Plan must be filed with the clerk of the Bankruptcy Court and served so that they are RECEIVED on or before [\_\_\_\_\_, 2012, at \_\_\_\_\_ (Eastern Time)] by the following parties:

- (i) Syms Corp., et al, One Syms Way, Secaucus, New Jersey, 07904, Attn: Laura Brandt, Esq.;
- (ii) Counsel to the Debtors: Skadden, Arps, Slate, Meagher & Flom LLP, One Rodney Square, Wilmington, Delaware 19801, Attn: Mark S. Chehi, Esq. and Jason M. Liberi, Esq.; and Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, Attn: Mark A. McDermott, Esq. and Suzanne D.T. Lovett, Esq.;
- (iii) Counsel to the Official Committee of Unsecured Creditors: Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022, Attn: Mark T. Power, Esq., and Janine M. Cerbone, Esq.; and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Paul N. Heath, Esq., and Michael J. Merchant, Esq.;
- (iv) Counsel to the Official Committee of Syms Corp. Equity Security Holders: Munger, Tolles & Olson LLP, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attn: Thomas B. Walper, Esq., Seth Goldman, Esq. and Bradley R. Schneider, Esq.; and Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attn: Robert J. Dehney, Esq., Gregory W. Werkheiser, Esq., and Matthew B. Harvey, Esq.; and
- (v) The Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Klauder, Esq.

#### IV. GENERAL INFORMATION ABOUT THE DEBTORS

##### A. Business Overview

###### 1. Syms

Syms was founded in 1959. The company and the number of its retail stores grew over the years until, as of the Petition Date, it operated twenty off-price retail stores under the Syms brand name and five co-branded stores with Filene's. As of the Petition Date, Syms employed approximately 910 employees. Syms stores were located throughout the Northeast, Middle Atlantic, Midwest, Southwest and Southeast regions of the United States. Seventeen of the Syms stores operated in properties owned by Syms, and the other six Syms stores operated in properties that Syms leased from third-party landlords. Syms owns its corporate headquarters facility in Secaucus, New Jersey, which also housed a distribution/warehouse facility until it was closed in December 2011. A list of the owned properties is attached to this Disclosure Statement as Exhibit C (the "Syms Owned Real Estate"). Syms is also a lessee under four separate ground leases underlying some of its owned properties.

Prior to the Petition Date, the Syms stores were known primarily for their men's tailored clothing, although they offered a broad range of first quality, in-season merchandise, bearing nationally recognized designer or brand-name labels, as well as shoes and accessories, for men, women and children at prices substantially lower than those generally found in department and specialty stores. Syms stores had as their tagline "An Educated Consumer Is Our Best Customer,"<sup>TM</sup> one of the best known and longest lasting taglines in retail. In addition, Syms currently operates as a commercial landlord, managing tenants under 25 leases in its properties located in Florida, Georgia, New York, New Jersey, Pennsylvania and Michigan.

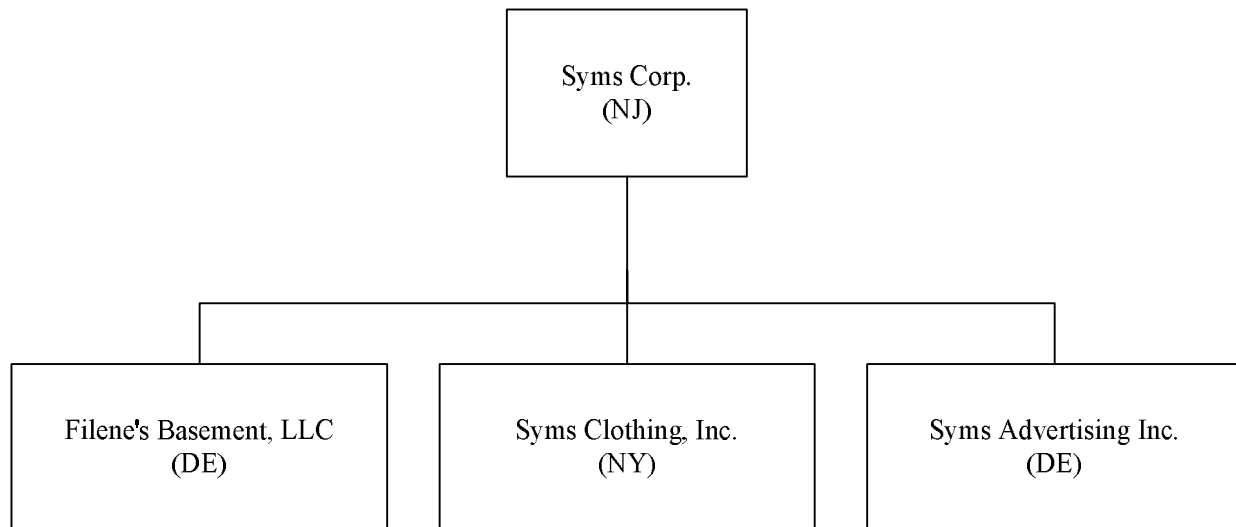
###### 2. Filene's

On June 18, 2009, a subsidiary of Syms – SYL, LLC – bought a substantial part of the operating assets of Filene's Basement, Inc. after the latter had declared bankruptcy. These assets included real property leases, inventory, equipment and other assets. After SYL, LLC bought these assets, it changed its name to Filene's Basement, LLC. Filene's Basement, LLC is one of the Debtors in these Chapter 11 cases. As of the Petition Date, Filene's owned and operated twenty-one Filene's stores and employed approximately 1,500 employees. The stores were located throughout the Northeast, Middle Atlantic, Midwest and Southeast regions of the United States. All of the Filene's premises were leased. Filene's also leased and operated a 457,000 square foot distribution facility in Auburn, Massachusetts (the "Auburn Warehouse") and an off-site storage location in Landover, Maryland.

Like Syms stores, the Filene's stores offered a broad range of first quality, in-season merchandise bearing nationally recognized designer or brand-name labels at discounted prices for men, women and children. The Filene's stores were known for their selection of women's ready-to-wear clothing. Some of the Filene's stores also carried a selection of fine jewelry. The Filene's stores were known for their tagline "Where Bargains Were Born,"<sup>TM</sup> which demonstrates the brand's long-standing position as an original off-price store. The Filene's stores were also known for their "Running of the Brides"<sup>TM</sup> events, which focused on bridal gowns and related apparel and were unique to Filene's.

## B. Prepetition Corporate and Capital Structure

As noted above, there are four Debtors in these cases. The Debtors' corporate organization chart is below.



Syms remains a publicly-held New Jersey corporation. Prior to the Petition Date, Syms' common stock was listed on The NASDAQ Stock Market under the symbol "SYMS." As of the Petition Date, approximately 14.5 million shares of Syms' common stock were outstanding. Since the Petition Date, the price of Syms' common stock has ranged between \$6.46 and \$12.80 per share. Ms. Marcy Syms, the Chair of Syms and its majority shareholder, exercises voting control over approximately 54.4% of the Syms common stock.

Prior to the Petition Date, Syms and Filene's were joint borrowers under a secured \$75 million revolving credit facility pursuant to a credit agreement, dated as of August 27, 2009 (as amended) with Bank of America, N.A. ("BoA") as administrative and collateral agent (the "Credit Agreement"). Syms' and Filene's obligations under the Credit Agreement were secured by liens on their respective inventory and other personal property and two parcels of Syms Owned Real Estate located in Paramus, New Jersey and Secaucus, New Jersey. At the time of the chapter 11 filings, the Debtors owed approximately \$31.3 million to Bank of America under the Credit Agreement, which included amounts owing for letters of credit. As described below, all amounts owed to Bank of America have been paid in full from the proceeds of the Debtors' store liquidation sales.

## C. Events Leading to the Chapter 11 Cases

The Debtors experienced significant operational losses prior to the Petition Date. For instance, for the fiscal year ended February 26, 2011, the Debtors' combined losses before income taxes as reported in Syms' Form 10-K was \$51.7 million. For the three months ending October 29, 2011, the Debtors had combined losses of \$65.95 million as reported in Syms' Form 10-Q for the third quarter.

The Debtors' poor economic condition was attributable to numerous factors. The prolonged recession led to a lack of consumer confidence. Consumers' disposable income had been reduced and, as a result, consumers were buying less often and buying fewer items, including the type of merchandise sold in Syms and Filene's stores. Moreover, many of the Filene's customers who were lost as a result of the Filene's Basement, Inc. bankruptcy filing did not return to shop at Filene's after the acquisition. Furthermore, the

retail apparel business is highly competitive. Syms and Filene's stores faced increasing competition from discount stores, specialty apparel stores, department stores, manufacturer-owned factory outlet stores and other retail outlets, many of which are units of large national or regional chains that have substantially greater resources and buying power than the Debtors. The Debtors also faced increasing competition from e-commerce sites.

Additionally, the Debtors did not obtain the economic benefits they had expected from the acquisition of Filene's Basement, Inc.'s assets in June 2009. When the Filene's Basement, Inc. assets were acquired, Syms hoped to achieve significant synergies and cost savings, so that each of Syms and Filene's could grow and be profitable. In particular, Syms wanted to spread corporate overhead over a larger store base while maintaining the separate identity – and longstanding history – of each of the companies and their respective stores, brand names and customer bases. The benefits of the acquisition did not materialize to the degree expected.

In light of the foregoing, in March 2011, the Debtors retained both Rothschild Inc. ("Rothschild") and Alvarez & Marsal Private Equity Performance Improvement, LLC ("A&M"). Rothschild was retained to initiate a process of identifying and evaluating strategic alternatives. A&M was retained to assist the Debtors with working capital and liquidity management, provide additional expertise to the Debtors in developing and implementing performance-enhancing initiatives, and, if, and as appropriate, depending on the scope of the strategic alternatives process, provide due diligence support to the Debtors when third parties indicated interest as part of the strategic alternatives process. A&M instituted inventory planning and allocation practices, eliminated non-performing categories of inventory, negotiated with sources of credit to establish more attractive credit lines, and recommended that certain of the Debtors' underperforming stores be closed.

Rothschild, at the direction of the Board of Directors of Syms, contacted numerous strategic, financial, and real estate buyers to gauge their interest in pursuing one or more transactions with the Debtors. The Debtors placed no restrictions on the types of proposals or transactions that they would consider. The process was exceptionally comprehensive and spanned six months, from May through October 2011. In July 2011, the Debtors also hired Cushman & Wakefield Securities, Inc. and Cushman & Wakefield, Inc. (together, "Cushman"), nationally known real estate firms, to assist the Debtors in evaluating options with respect to the Syms Owned Real Estate. Although the Debtors received indications of interest from various strategic, financial, real estate and liquidation firms, the Debtors ultimately determined with the assistance of their advisors that such indications were unacceptable and did not constitute viable bids for an out-of-court, going concern transaction.

Given the Debtors' decreased liquidity, reduced access to trade terms, and inability to replenish inventory on a timely basis or at the level required to sustain their operations, and in light of their ongoing business losses and the deterioration of the Syms and Filene's retail operations and the lack of any viable, strategic transaction alternatives, the Debtors concluded that they were unable to reorganize their operations on a stand-alone basis, and that their only viable option for maximizing stakeholder value was an orderly wind-down of their retail operations, followed by dispositions of the Syms Owned Real Estate. Accordingly, on November 2, 2011, the Debtors commenced their Chapter 11 cases and sought to immediately conduct store closing sales at all their retail locations.

## **V. THE CHAPTER 11 CASES**

### **A. General**

On the Petition Date, the Debtors filed various motions with the Bankruptcy Court requesting permission to continue operating various aspects of their business as the Debtors wound down their retail operations. The Debtors were granted authority to continue honoring their obligations to their employees and customers; to continue paying their tax obligations in the ordinary course; and to continue operating their existing cash management system in the ordinary course. The Debtors are represented in the Chapter 11 cases by Skadden, Arps, Slate, Meagher & Flom LLP and Young Conaway Stargatt & Taylor, LLP as legal counsel. The Debtors also have retained A&M, Cushman and Rothschild to assist them in these Chapter 11 cases.

The Office of the United States Trustee thereafter appointed two statutory committees in these Chapter 11 cases (together, the "Committees"): the Creditors' Committee, charged with a fiduciary duty to represent the interests of all the Debtors' creditors, and the Equity Committee, charged with a fiduciary duty to represent the interests of all Syms shareholders. The members of the Creditors' Committee are (i) PVH Corp., (ii) Rabina Properties, LLC, (iii) Rosenthal & Rosenthal, Inc., and (iv) Vornado Realty Trust; the members of the Equity Committee are (i) DS Fund I, LLC, (ii) Esopus Creek Value Series Fund LP – Series "L", (iii) Franklin Value Investors Trust, Franklin Balance Sheet Investment Fund, (iv) Kahn Brothers Group, Inc., and (v) Marcato Capital Management, LLC.

Each of the Committees has retained restructuring advisors to assist them in these Chapter 11 cases. In particular, the Creditors' Committee has retained legal counsel, a financial advisor, and a real estate advisor as follows: (i) Hahn & Hessen LLP, (ii) Richards, Layton & Finger, P.A., (iii) Loughlin Management Partners & Company, Inc., and (iv) Abacus Advisors Group LLC. The Equity Committee has retained: (i) Munger, Tolles & Olson LLP, (ii) Morris, Nichols, Arsht & Tunnell LLP, (iii) PricewaterhouseCoopers LLP, (iv) Houlihan Lokey Capital, Inc., and (v) Retail Consulting Services, Inc., d/b/a RCS Real Estate Advisors.

### **B. Significant Events During the Chapter 11 Cases**

#### **1. Store Closing Sales**

Immediately upon filing their Chapter 11 petitions, the Debtors sought Bankruptcy Court approval to conduct going-out-of-business sales with the assistance of a liquidation agent. On November 16, 2011, the Bankruptcy Court entered an order that authorized the Debtors to enter into an agency agreement with a joint venture between Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC as liquidation agent to commence the store closing sales at the Debtors' then remaining thirty-nine store locations. The Bankruptcy Court further authorized the Debtors to assume an agency agreement that they had entered into prior to filing the Chapter 11 cases with respect to five Filene's retail locations and to continue store closing sales that had been commenced at those locations.

The commencement of these Chapter 11 cases and the store closing sales were timed to coincide with the holiday shopping season so that the Debtors could have the benefit of, among other things, the "Black Friday" shopping weekend after the Thanksgiving holiday. The Debtors sold virtually all their inventory and much of their furniture, fixtures and equipment during the store closing process. The sales concluded across their various locations in the last days of December 2011. As of December 31, 2011, the

Debtors had ceased retail operations at all of their stores and vacated all their leased retail store and distribution center locations.

Pursuant to the agency agreement with the liquidators, the Debtors received an initial, guaranteed payment of approximately \$44.25 million. The Debtors used \$33.2 million from this payment to pay in full all amounts accrued and owed to the Debtors' secured lender, Bank of America. Upon conclusion of the store closing process, the Debtors and the liquidators audited and reconciled the results of the store closing sales. The Debtors received additional payments in accordance with the agency agreement of \$8.8 million. Thus, the total amount that the Debtors received under the agency agreement in connection with their store closing sales totaled \$53.1 million.

## 2. Real Estate Matters

As of the Petition Date, the Debtors were lessees under twenty-four commercial real estate leases. The Debtors, with the assistance of the Committees, developed a process for marketing those leases in an effort to sell them or to terminate one or more of them with the agreement of their landlords in order to minimize costs and claims under such leases. On December 16, 2011, the Bankruptcy Court entered an order that approved the Debtors' proposed procedures for the disposition of their leases. Hilco Real Estate, LLC was retained to assist the Debtors, and conducted an extensive lease marketing process.

The Debtors obtained limited interest in their leases, and ultimately Syms negotiated the sale of only one of its leases, for the store located at 2220 Broadway, New York, NY. The lease was sold to DSW Inc. ("DSW") for approximately \$495,000. As part of the lease transfer, Syms agreed to grant DSW an allowed administrative claim of \$1.6 million as a tenant improvement allowance. The Debtors otherwise negotiated consensual terminations of three of their leases with their respective landlords. With the exception of their long-term ground leases, the Debtors rejected all of their remaining leases and vacated such leased premises as of December 31, 2011.

Under the Bankruptcy Code, when a debtor rejects a real estate lease, the rejection is considered a breach that gives rise to a claim for breach by the landlord against the debtor. However, the Bankruptcy Code imposes certain caps on the maximum amount of breach claims that a landlord may assert. Filene's estimates that lease rejection claims against it total approximately \$51.4 million. Syms estimates that lease rejection claims against it total approximately \$4.6 million. However, Syms provided full and partial guarantees to certain of Filene's landlords; the claims against Syms on account of such guarantees are estimated at approximately \$14.6 million. The Debtors, with the significant pre-petition assistance of Cushman and later, the Equity Committee, negotiated a consensual termination of Syms' lease of its store located at 530 Fifth Avenue in New York City. That agreement avoided a potential rejection claim against Syms of approximately \$8.4 million, and resulted in the return of over \$2.3 million that would have been paid to the landlord to terminate the lease, as well as an additional payment to Syms by the landlord of approximately \$400,000.

As of May 8, 2012, the Debtors had moved to assume all four of their long-term ground leases, and on May 24, 2012, the Bankruptcy Court entered orders authorizing the assumption of two of the Debtors' ground leases for properties located in Elmsford, New York. The Debtors currently are engaged in negotiations regarding certain amounts that allegedly must be paid before the ground lease for their Secaucus, New Jersey property can be assumed. The Debtors also have been engaged in negotiations and litigation regarding various issues relating to the ground lease for their Fairfield, Connecticut property. As of the date hereof, the Debtors have not received Court approval to assume the ground leases for their Secaucus, New Jersey and Fairfield, Connecticut properties.

As described herein, Cushman and Rothschild have worked together on the Debtors' behalf to consider various alternatives for maximizing the value of the Syms Owned Real Estate. To that end, Cushman commenced a comprehensive, nationwide process to identify one or more buyers and/or tenants of one or more parcels of the Syms Owned Real Estate. Cushman and Rothschild have also considered various options for financing one or more parcels of the Syms Owned Real Estate. As of the date of this Disclosure Statement, the Debtors have received several expressions of interest in various parcels, and obtained Bankruptcy Court approval to enter into a lease of Syms' Southfield, Michigan location.

### 3. Intellectual Property Matters

As of the Petition Date, Filene's owned certain intellectual property assets consisting of, among other things, (i) all of the Debtors' worldwide trademarks, including more than forty (40) registered United States trademarks as well as foreign and state registered marks; (ii) seventy (70) internet domain names including [www.syms.com](http://www.syms.com) and [www.filenesbasement.com](http://www.filenesbasement.com); (iii) a perpetual, royalty-free license agreement with Macy's for the Filene's Basement trademark; and (iv) all of the Debtors' customer information databases, which primarily consist of close to two million names, addresses and/or email addresses of customers who joined one of the Debtors' two customer loyalty programs, the *Syms Educated Consumer* program and the *Filene's Basement Fan Club* (collectively, the "IP Assets"). In addition to the retail name marks, the Syms-related IP Assets include, among others, house brands such as *Stanley Blacker* and *Maine Bay*. The Filene's IP Assets include, among others, trademarks and intellectual property related to their well-known *Running of the Brides* event.

The Debtors retained Hilco IP Services LLC d/b/a Hilco Streambank as their intellectual property disposition consultant to market the IP Assets. In consultation with the Committees and with the assistance of their professionals, the Debtors also proposed a set of procedures for the auction and sale of the IP Assets and requested the appointment of a consumer privacy ombudsman to ensure the protection of any consumer-related personally identifiable information included amongst the IP Assets. On April 9, 2012, the Bankruptcy Court entered an order approving the IP bidding procedures. On April 10, 2012, the Office of the United States Trustee appointed Todd B. Ruback as the consumer privacy ombudsman. As of the date hereof, the Debtors have received several expressions of interest in the IP Assets, but have not yet entered into a definitive sale agreement.

### 4. Employee-Related Matters

As noted above, at the inception of these Chapter 11 cases, the Debtors obtained Bankruptcy Court authority to honor certain of their obligations to their employees in the ordinary course of business, including salaries, wages, and related benefits. Upon conclusion of the store closing sales in December 2011, all store-level employees were terminated. The Debtors continue to employ a small group of corporate employees who are assisting the Debtors in the wind-down of their operations.

As a result of these employee terminations and the Debtors' cessation of their retail operations, the Debtors incurred significant obligations to their former employees that the Debtors unfortunately could not honor in the ordinary course due to restrictions imposed by the Bankruptcy Code. In particular, Syms is obligated on approximately \$2.4 million in severance obligations to its former employees, and Filene's is obligated on approximately \$2.5 million in such obligations to its former employees. A union representing certain of the Debtors' employees asserted that the Debtors owe an additional \$1.3 million in post-petition severance claims under the Worker Adjustment and Retraining Notification Act ("WARN"). The union filed an unfair labor practice charge against the Debtors in connection with this matter. The charge was dismissed, and a subsequent appeal of the dismissal was denied by the National Labor Relations Board. The Debtors dispute the union's claims.



Finally, Syms has certain obligations in connection with various pension plans. In particular, Syms has underfunded pension liabilities of approximately \$2.3 million, and it further has received demands for approximately \$7.0 million on account of its withdrawal from two of its multi-employer pension plans. These pension-related obligations and the severance obligations summarized above largely constitute general unsecured claims against Syms that will be paid in accordance with the Plan. Certain portions of the severance obligations and related obligations to the Debtors' former employees will constitute administrative claims or priority claims that will be paid in accordance with the Plan. An amount to be determined of the UFCW Unions and Participating Employers Pension Fund Claim may be entitled to administrative priority and will be paid in accordance with the Plan. The claim for the asserted WARN violation would, if allowed, constitute a post-petition, administrative claim and would be entitled to be paid in full under the Plan.

## **VI. OVERVIEW OF CLAIMS, ASSETS, PLAN SETTLEMENT AND REORGANIZED SYMS' BUSINESS PLAN FOR ITS OWNED REAL ESTATE**

### **A. Overview of Claims and Assets**

On December 22, 2011, each of the Debtors filed with the Bankruptcy Court separate schedules of assets and liabilities and statements of financial affairs as required by the Bankruptcy Code. Only two of the Debtors – Syms and Filene's – listed assets and liabilities. The other two Debtors, Advertising and Clothing, are mere shell entities with no assets or liabilities. The schedules and statements for each of Syms and Filene's were prepared based on their books and records and, therefore, do not necessarily reflect the actual values of their assets or the amounts of claims that ultimately will be allowed in these Chapter 11 cases.

On January 18, 2012, the Bankruptcy Court entered an order establishing March 1, 2012 as the bar date for creditors to file their claims with the Bankruptcy Court. The order also established May 4, 2012 as the bar date for governmental units to file their claims with the Bankruptcy Court. As of the bar dates, approximately 1,352 claims were filed against Syms in the aggregate asserted amount of approximately \$117.5 million, and approximately 1,409 claims were filed against Filene's in the aggregate asserted amount of approximately \$116 million. The Debtors are in the process of reviewing and reconciling claims, have filed several objections to numerous claims, and anticipate filing additional objections over the course of the next several months.

The total amount of claims asserted to date is in excess of the amounts that the Debtors believe ultimately will be allowed. In the experience of the Debtors' restructuring advisors, claims filed by creditors typically vastly exceed the amounts reflected on a debtor's books and records and the amounts which eventually are allowed and paid. As noted in the "Overview of the Plan" section of this Disclosure Statement above, the Debtors believe that total general unsecured claims against Syms are roughly \$58.4 million including convenience class claims, and that total general unsecured claims against Filene's are roughly \$42.7 million, including convenience class claims and excluding any intercompany claims.

The general unsecured claims which Syms estimates it is liable for can be broken down into three main groups. First, general unsecured claims against Syms include trade claims against it of approximately \$17.6 million and claims of Filene's trade creditors that Syms has guaranteed in the approximate amount of \$3.9 million. Second, as noted above, Syms estimates that it has total exposure to landlords on account of rejection of Syms leases and rejection of Filene's leases that Syms has guaranteed, in whole or in part, in the amount of approximately \$20.3 million. Third, Syms estimates that it has total under-funded liability and withdrawal liability with respect to its pension plans of approximately \$14.3 million, plus unpaid severance

obligations to its employees in the total amount of approximately \$2.3 million. Additionally, Syms created a disputed claims reserve of \$4.4 million as a contingency.

In the case of Filene's, general unsecured claims also can be broken down into three main groups. First, Filene's estimates that it has total trade claims (*i.e.*, "short-term claims") against it of approximately \$3.5 million. Second, as noted above, Filene's estimates that it has total exposure to landlords on account of rejection of unguaranteed Filene's leases (*i.e.*, "long-term claims") in the amount of approximately \$36.8 million. Filene's exposure on rejected lease claims is far greater than Syms' exposure because Filene's leased all its locations, whereas Syms leased only a few of its locations. Third, Filene's estimates that it has unpaid severance obligations to its employees in the total amount of approximately \$2.4 million. Filene's also created a disputed claims reserve of \$4.4 million as a contingency.

As noted above, Syms' primary assets include cash from the store liquidation sales and the Syms Owned Real Estate. Filene's primary assets include cash from the store liquidation sales and the IP Assets, including the Syms trademark. Both Debtors also retain the right to bring certain lawsuits against third parties, which could result in settlements of judgments in favor of the Debtors. Syms currently is holding approximately \$1.3 million in cash, and Filene's currently is holding approximately \$6.9 million in cash. These amounts are net of the amount that Syms and Filene's paid in November 2011 to Bank of America in satisfaction of obligations under their prepetition secured credit facility. These amounts also reflect cash balances held by each entity at the inception of the Chapter 11 cases and other cash amounts and reserves, net of post-petition operating expenses.

As noted above, the Syms Owned Real Estate includes 17 parcels of commercial real estate located throughout the United States, certain of which Syms leases to third-party commercial tenants, as well as a residential condominium in Secaucus, New Jersey. In certain instances, Syms is a tenant under a long-term ground lease for certain of the Syms Owned Real Estate, rather than an owner of the fee interest in the property. Attached hereto as Exhibit C is a chart that summarizes basic information about each parcel of Syms Owned Real Estate, including its location, size, and, where applicable, certain tenant information. Syms, with the assistance of Cushman, has estimated that the aggregate net realizable value of the Syms Owned Real Estate from a commercially reasonable disposition process is approximately \$147 million.

## **B. Resolution of Intercompany Matters**

As noted above, Syms' assets, listed on its books and records, including the Syms Owned Real Estate, are sufficient to pay all its creditors, including Filene's creditors that Syms guaranteed, in full while affording a dividend to its shareholders. There has been a dispute, however, between Syms and the Equity Committee, on the one hand, and the Creditors' Committee, on the other hand, regarding whether Filene's creditors also should be paid in full. In particular, while the Filene's estate currently has limited liquid assets available for its unsecured creditors, the Creditors' Committee has asserted that (i) Filene's has significant claims against Syms that, once liquidated and paid from the proceeds of the disposition of Syms Owned Real Estate, will allow Filene's creditors, as well as Syms' creditors, to be paid in full, and (ii) aside from such claims, Filene's bankruptcy estate should be substantively consolidated with the Syms bankruptcy estate, the result of which would be that Filene's creditors would share in the proceeds of the disposition of Syms Owned Real Estate and all creditors would likely be paid in full.

### **1. Asserted Intercompany Claims**

The Creditors' Committee has raised three main issues respecting intercompany claims. The first relates to the secured claim of the Debtors' pre-petition lender, BoA. As of the Petition Date, BoA was owed approximately \$33.2 million. As noted above, this amount was paid in full from proceeds of the store

closing sales. The issue between Syms and the Equity Committee, on the one hand, and the Creditors' Committee, on the other hand, is whether this secured debt should be deemed repaid solely by Syms, or proportionally by both Syms and Filene's based on their allocable share of the store liquidation proceeds. The Creditors' Committee acknowledges that Syms and Filene's were joint obligors on the BoA debt under the terms of the Credit Agreement. However, the Creditors' Committee points out that the liability to BoA was carried exclusively on Syms' books and records prior to the Petition Date, and BoA advanced all funds under the credit facility to Syms. Syms would then advance some of the funds received from BoA to Filene's and record the advance in the intercompany account between Syms and Filene's. All funding to Filene's was booked as an intercompany advance. Filene's balance sheet shows that it owes no secured debt. Accordingly, the Creditors' Committee's position has been and is that based on the accounting records and their course of conduct, as between Syms and Filene's, Syms borrowed the entire amount owed to BoA and then either lent on an unsecured basis or invested as capital into Filene's its share of the proceeds of the BoA debt.

Further, the Creditors' Committee asserts that pursuant to the terms of the BoA Credit Agreement, Syms waived its right to step into BoA's shoes to seek reimbursement or contribution from Filene's while Filene's is insolvent. Under the circumstances, the Creditors' Committee therefore advocates that Syms should bear the entire burden of the debt. In particular, Filene's has a post-petition claim against Syms for its share of the store disposition proceeds used to pay off the BoA debt. This position, if adopted, would result in Filene's having another approximately \$15 million in store disposition proceeds available for Filene's general unsecured creditors, thereby significantly enhancing their recovery. The Creditors' Committee further argues that even if it were unsuccessful if it litigated this theory, the Debtors nonetheless treated Filene's unfairly by allocating the entire BoA debt based on the value of Syms' and Filene's inventory.

Syms and the Equity Committee, on the other hand, dispute these various contentions. As both Syms and Filene's were joint obligors on the BoA debt, each of Syms and Filene's is therefore responsible for the total debt. The Debtors allocated the repayment of the BoA loan based on each entity's share of the store liquidation proceeds, which assets were collateral for the BoA loan. Syms and the Equity Committee believe this is consistent with the fact that the Bank BoA loan was a revolving credit facility, and that the available borrowing base was a function of both Syms' and Filene's available inventory. Indeed, Syms and Filene's entered into the BoA facility for Filene's benefit at the time that Syms acquired Filene's operating assets in 2009. Prior to that time, Syms had no need for a revolving facility from BoA.

Second, the Creditors' Committee asserts that Syms owes Filene's significant royalty payments on account of Filene's ownership of Syms' trademarks and tradenames. In support of its assertion, the Creditors' Committee has pointed to a license agreement between the two entities, originally entered into in 1986, that contemplated Syms' payment of a royalty fee equal to a percentage of net merchandise sales. The license agreement provides that it continues in perpetuity until terminated on 270 days prior written notice. The Creditors' Committee has seen no evidence that the license agreement was properly terminated nor that Syms ever made the required payments to Filene's dating back to 1986. Furthermore, because SYL, Inc. – which is Filene's prior to its name change – was at all times under the dominion and control of Syms, the Creditors' Committee contends that the applicable statute of limitations will be tolled under the adverse domination doctrine, and Syms will be liable to Filene's for the full amount owed for the entire 26-year period of delinquency.

The Creditors' Committee's theory is grounded in breach of contract and argues that the unambiguous terms of the license agreement speak for themselves and preclude the Debtors from introducing any external evidence to the contrary. If the parties wanted to terminate the license agreement, they should have done so in accordance with its terms, which they failed to do. Based on this assertion, the Creditors' Committee believes that Syms owes Filene's approximately \$287.1 million in royalties under the

license agreement, of which at least \$15.5 million is attributable to the period since Syms acquired Filene's in 2009, although it is only seeking a recovery in an amount sufficient to satisfy Filene's creditors in full.

Syms and the Equity Committee dispute these contentions and believe they are utterly without merit. As noted above, the entity that is currently named "Filene's" previously was known as SYL, Inc. That entity was formed in 1986 in connection with certain tax planning strategies that Syms was undertaking at the time. In particular, SYL, Inc. was formed as a wholly-owned subsidiary of Syms with a single purpose: to hold the Syms trademarks and trade names. SYL, Inc. and Syms simultaneously entered into the license agreement, the purpose of which was to afford various tax benefits. This arrangement remained in place until December 2003. It was discontinued at that time, however, as a result of challenges brought by various state taxing authorities, not only against Syms but also against numerous other companies that had implemented such intercompany arrangements.

Syms and the Equity Committee assert that, since 2003, Syms and SYL, Inc. have not observed any aspect of this arrangement: no royalties were paid, and no tax benefits were realized. SYL, Inc. converted to SYL, LLC on December 15, 2003, by filing a certificate of conversion and a certificate of formation with the Delaware Secretary of State. The Debtors and the Equity Committee believe that SYL, Inc., and subsequently SYL, LLC, had no assets or operations other than this intellectual property until June 2009, when SYL, LLC was utilized as the vehicle for acquiring Filene's operating assets. At that time, SYL, LLC converted Filene's Basement, Inc. to a limited liability company and renamed it Filene's Basement, LLC. While the intellectual property was left in Filene's, Filene's did not use it; no royalties were paid; and no tax benefits were realized by Syms.

Based upon the foregoing, Syms and the Equity Committee dispute the Creditors' Committee's assertions that Syms became obligated, beginning in June 2009 when it acquired Filene's, to start paying royalties to Filene's, and that Filene's bankruptcy estate has a claim against Syms for unpaid royalties. Because the arrangement between Syms and Filene's was discontinued almost six years before Filene's was acquired, in the view of Syms and the Equity Committee, the Creditors' Committee cannot now credibly create a claim for millions of dollars in asserted, unpaid royalties.

Third, the Creditors' Committee asserts that certain claims that Syms has against Filene's should be equitably subordinated or recharacterized as equity. If the Creditors' Committee were to succeed in these assertions, then remaining Filene's creditors would be entitled to a proportionally greater recovery. The Creditors' Committee's assertions relate to a \$33 million prepetition, general unsecured, intercompany claim that Syms has asserted against Filene's, plus subrogation claims of approximately \$18.4 million that Syms would be entitled to assert under guarantees of certain Filene's trade claims and leases. The Creditors' Committee asserts that because there is no contemporaneous evidence that Syms intended to make an arms-length, third-party loan to Filene's at the time of each advance; because Syms and Filene's never documented these matters as loans or claims; because Filene's did not make payments on them; because no interest was charged; because Filene's had limited ability to repay them; and because the intercompany obligations had no attributes of a debt obligation, then these amounts should be deemed capital contributions rather than loans.

Syms and the Equity Committee, on the other hand, assert that Syms afforded significant financial support to Filene's for which Syms should be given appropriate credit. This support was recorded contemporaneously as intercompany accounts payable and receivable entries in the Debtors' books and records. This support allowed Filene's to operate and pay its creditors for much of the time that it was owned by Syms and, accordingly, benefited Filene's and its creditors. Indeed, the amount of the \$33 million pre-petition intercompany claim is roughly equivalent to the amount of Filene's cumulative losses based on the books and records maintained by Syms during the period of time that Syms owned it. At a minimum,

therefore, it is only equitable that this claim be available to offset whatever other claims the Creditors' Committee asserts.

Finally, the Creditors' Committee also argues that Filene's has various chapter 5 avoidance claims against Syms based upon certain avoidable pre-Petition Date transfers between Filene's and Syms pursuant to which Filene's did not receive reasonably equivalent value. Syms and the Equity Committee dispute these contentions.

## 2. Asserted Substantive Consolidation

In addition to, and as an alternative to, the foregoing, the Creditors' Committee has asserted, among other theories, that it believes that Syms and Filene's historically operated as a single entity; that the Debtors cannot meaningfully distinguish Syms creditors from Filene's creditors; that the two entities commingled their operations and assets; that all creditors effectively dealt with Syms and Filene's as a single entity; that intercompany claims and accounts between the Debtors should be ignored; and hence, that all creditors should be allowed to be paid from all assets of both Syms and Filene's, including the Syms Owned Real Estate. These assertions are based on a doctrine in bankruptcy known as "substantive consolidation" under which a bankruptcy court has the power to disregard the separate forms of affiliated legal entities; to pool the assets of, and claims against, the consolidated bankruptcy estates; to disregard any and all intercompany claims; and to satisfy all creditors' claims from the common fund.

There are no statutorily-prescribed standards for determining whether two legal entities operated as one or whether their bankruptcy estates should be substantively consolidated. Instead, the propriety of doing so must be determined on a case-by-case basis based on all the particularized facts and circumstances of the estates in question. The two, judicially-created standards for determining whether separate estates should be substantively consolidated are easily stated, but difficult to apply in practice: whether separate entities so disregarded their separateness that creditors relied on the breakdown of entity borders and treated them as one legal entity, or whether the entities' assets and liabilities are so hopelessly scrambled that separating them is prohibitive and hurts all stakeholders.

The Creditors' Committee has asserted that several aspects of the Debtors' historic operations support its belief that Syms and Filene's effectively operated as a single legal entity and hence, that all creditors should be paid in full, including that Syms hoped to achieve operational synergies when it acquired Filene's in 2009; that Syms and Filene's integrated certain of their operations in pursuit of such synergies; that certain aspects of the Debtors' merchandising, purchasing, warehousing, distribution and sales practices allegedly were integrated to the point where one could not differentiate the product lines and families of merchandise between Syms and Filene's; that Syms and Filene's had a single credit facility based on a common borrowing base and a common cash management system; and that the Debtors had co-branded stores and used both Syms' and Filene's logos on checks, purchase orders, corporate letterhead, promotional materials, and employee nameplates.

Syms and the Equity Committee, however, believe that Syms and Filene's operated as distinct legal entities and that their estates, therefore, should not be substantively consolidated. Syms and Filene's had separate stores, separate websites, and separate advertisements and promotions; the Debtors' pre-petition revolving lender treated them as two separate entities by requiring both of them to become borrowers under the lending facility; vendors invoiced Syms and Filene's separately based on their historic business dealings prior to the acquisition of Filene's assets, with such vendors being paid from accounts owned by Syms and Filene's, respectively; many other Filene's vendors and landlords dealt with Syms and Filene's as separate entities, as evidenced by some Filene's vendors and landlords negotiating for Syms guarantees, whereas others negotiated that term away in favor of enhanced economics; and the Debtors' unions viewed Syms and

Filene's as separate employers by negotiating separate collective bargaining agreements to govern relationships with Syms' and Filene's separate pools of employees.

### 3. Proposed Settlement

Syms acknowledges that litigation over these matters likely would be expensive and protracted, thereby delaying the Debtors' exit from Chapter 11 and reducing recoveries for Syms shareholders. Syms also acknowledges that the results of litigation over these matters is not free from doubt. Syms and the Equity Committee, on the one hand, and the Creditors' Committee, on the other hand, each have various factual and legal strengths and weaknesses to their various positions. Accordingly, in order to avoid the expense and delay of protracted litigation over these matters and avoid the risk to Syms shareholders of adverse judicial rulings that order the Syms and Filene's estates to be substantively consolidated or that otherwise could result in enhanced recoveries to Filene's creditors to the detriment of Syms shareholders, the Debtors propose a compromise and settlement as follows.

Under this proposed plan settlement, Syms creditors would be paid in full. Filene's general unsecured creditors, however, would be broken into two separate groups: Filene's General Unsecured (Short-Term) Creditors and Filene's General Unsecured (Long-Term) Creditors. As described above, the former group includes claims primarily for unpaid trade payables and employee severance claims in the estimated amount of approximately \$8.775 million, whereas the latter group includes non-guaranteed claims by Filene's landlords for lease rejection claims in the estimated amount of approximately \$36.877 million. Under the proposed settlement, Syms would ensure that the former group is paid in full, whereas the latter group is paid 75 cents on the dollar.

The reason for this distinction is that holders of trade claims and employees for severance and related claims arguably may have stronger arguments that, from their perspective, Syms and Filene's appeared to have operated as a unitary enterprise and hence, that their bankruptcy estates should be substantively consolidated. Syms by no means believes this to be the case, but given the risks and costs of litigation, and given the relatively small amount of claims in this group in relation to the potential costs of such litigation, Syms concluded to simply pay such claims in full rather than dissipate value on litigation expense.

In Syms' view, however, which the Creditors' Committee disputes, the Filene's landlords in the latter group have a weaker legal position than the holders of trade claims and employees for severance and related claims. This is because, in Syms' view, each of those landlords is a sophisticated real estate enterprise who had contractual relationships in place with the Filene's business at the time it was acquired by Syms. Some of those landlords chose to keep those contractual arrangements in place unaltered, whereas others chose to negotiate guarantees from Syms or other enhanced economics in lieu of such guarantees. In contrast, employees and certain trade vendors arguably may not have appreciated the distinction between the two entities after the acquisition. Notwithstanding the foregoing, Syms acknowledges the risks and significant expenses of litigation, including the potential delays occasioned by litigation. In light of these risks, Syms is prepared to ensure, though the Plan, that Filene's landlords will receive 75 cents on the dollar in full and final compromise of their claims.

Under section 1123(b)(3)(A) of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules, a settlement should be approved if it represents a reasonable compromise that is in the collective best interests of all constituencies in light of the risks of continued litigation. The settlement need not afford the best possible recovery to any particular constituency, but instead need only represent a recovery that falls within a reasonable range of litigation possibilities. The Debtors believe that the foregoing settlement, which does not allow either Syms shareholders or creditors of Filene's to receive all that they would like to receive, falls within a reasonable range of litigation outcomes and is in the collective best interest of all stakeholders in

light of the costs, delay, and risks of litigation. Moreover, the proposed settlement terms and treatment of creditors (including Filene's creditors) facilitates plan feasibility through its implementation of deferred payments to creditors of Reorganized Syms.

**C. Settlement With Local 1102 Retirement Trust, Filene's Local 1102 Union and Syms Local 1102 Union**

Local 1102 Retirement Trust filed a Claim against Syms asserting priority status in the amount of \$6,408,848 on account of alleged multi-employer pension plan withdrawal liability arising under the Employee Retirement Income Security Act of 1974. Syms disputes the asserted Claim and its asserted priority status. Filene's Local 1102 Union represents former Filene's employees who were covered by the Filene's Local 1102 collective bargaining agreement. Filene's Local 1102 Union filed certain Claims in the Chapter 11 cases. Syms Local 1102 Union represents former Syms employees who were covered by the Syms Local 1102 CBA. Syms Local 1102 Union filed certain Claims in the Chapter 11 cases. The Debtors, Local 1102 Retirement Trust, Filene's Local 1102 Union and Syms Local 1102 Union have reached a global settlement of certain matters as follows:

1. (a) On the Plan Effective Date, Syms will pay to Local 1102 Retirement Trust the amount of \$203,232, representing one minimum funding payment due April 21, 2012, plus interest accruing at a rate of 3.25% per year from April 21, 2012.

(b) On November 15, 2012 Syms will pay Local 1102 Retirement Trust \$406,464, representing (i) one minimum funding payment due July 1, 2012, plus interest accruing at a rate of 3.25% per year from July 1, 2012, and (ii) one minimum funding payment due November 1, 2012, plus interest accruing at a rate of 3.25% per year from November 1, 2012.

(c) Syms will thereafter make quarterly payments to Local 1102 Retirement Trust in the amount of \$203,232, beginning February 1, 2013 and on the first of every third month thereafter, until Local 1102 Retirement Trust's entire \$6,408,848 claim is paid in full.

2. Claims filed by Filene's Local 1102 Union and Syms Local 1102 Union will be administered and treated in accordance with the provisions of the Plan and Confirmation Order.

3. On the Effective Date, the Filene's Local 1102 collective bargaining agreement and the Syms Local 1102 collective bargaining agreement will be deemed voluntarily terminated by agreement of the Debtors, Filene's Local 1102 Union, Syms Local 1102 Union and Local 1102 Retirement Trust. The Debtors shall have no other or further obligations under the Filene's Local 1102 collective bargaining agreement and the Syms Local 1102 collective bargaining agreement; excluding, however, any Claims and obligations arising prior to the Effective Date and previously asserted by Filene's Local 1102 Union, Syms Local 1102 Union or their respective constituents.

**D. Share Purchase Transaction/Rights Offering**

As noted above, the Plan contemplates a transaction involving the Majority Shareholder. The Majority Shareholder owns 7,857,794 shares of Syms common stock that will be the subject of this transaction. Such shares represent approximately 54.4% of all outstanding shares of Syms common stock. Since early in these Chapter 11 cases, the Equity Committee has expressed a desire for the Majority Shareholder to give up control of Syms and for Reorganized Syms to pursue a plan to develop Syms Owned Real Estate. After significant discussions between the Equity Committee and the Majority Shareholder, and to resolve various differences between the parties and pave the way for a consensual restructuring, the

Majority Shareholder agreed to sell the foregoing shares to reorganized Syms for \$2.49 per share, or \$19,565,907.06 in the aggregate. That agreement is memorialized in that certain Equity Commitment Agreement, a copy of which is attached hereto as Exhibit H.

As described above, Syms will obtain a portion of the funds necessary to purchase the Majority Shareholder's shares by offering to sell to existing minority shareholders of Syms, who qualify as "accredited investors" under the securities laws, the right to purchase 10,040,160 new shares (the "Offered Shares") at \$2.49 per share, or approximately \$25 million in the aggregate (the "Rights Offering"). To ensure that the Rights Offering will result in approximately \$25 million of proceeds, certain members of the Equity Committee and their affiliates have agreed to purchase those new shares not subscribed for by other shareholders (the "Unsubscribed Shares"). This obligation is also memorialized in the Equity Commitment Agreement. Accordingly, if the Plan is confirmed and the Equity Commitment Agreement is consummated, the Majority Shareholder will no longer have any ownership in Syms; all ownership in Syms will instead be in the hands of Syms existing, minority shareholders.

The Backstop Parties have been represented by counsel separate from the Equity Committee and abstained from decisions on the Equity Commitment Agreement and Rights Offering made by the Equity Committee. The legal fees of counsel to the Backstop Parties will be paid by the Debtors under the Equity Commitment Agreement. No other fee or compensation of any kind is being paid to the Backstop Parties for the commitment to backstop the \$25 million Rights Offering. The Rights Offering permits Eligible Holders (defined above) to subscribe for up to their pro rata share of both the initial offering of shares and to subscribe for up to their pro rata share of any Unsubscribed Shares.

The funds from the Rights Offering will be used, first, to pay certain administrative expenses, priority claims and other amounts necessary for Syms and Filene's to exit Chapter 11, with the balance allocated 60% to creditors and 40% to the Majority Shareholder, until the amount of \$10,725,761 (which amount is net of the reimbursement which would otherwise be paid to the Estates under the split dollar settlement) has been paid in full to the Majority Shareholder. Holders of Allowed Syms General Unsecured Claims shall then be paid in full. Next, Holders of Allowed Filene's General Unsecured (Short-Term) Claims shall be paid in full. Holders of Allowed Filene's General Unsecured (Long-Term) Claims shall then be paid until 75% of such Claims are paid. Finally, the Majority Shareholder shall be paid in the aggregate amount of \$7,065,907, which amount represents the remaining payment due to the Majority Shareholder for the purchase of the Majority Shareholder's shares, less the reimbursement to the Estates related to the split-dollar life-insurance policy.

#### **E. Overview of Reorganized Syms' Business Plan: Disposition of Syms Owned Real Estate**

As described above, prior to the Petition Date, Syms had begun considering different alternatives with respect to the Syms Owned Real Estate. In particular, Syms, with the assistance of Rothschild, attempted to find one or more transaction partners with respect to both its retail and real estate assets, as well as considered other possible alternatives for the Syms Owned Real Estate other than liquidation. Syms' efforts to consider various alternatives for the Syms Owned Real Estate continued post-petition with the assistance of Cushman and Rothschild and with the input of the Creditors' Committee, the Equity Committee and their respective advisors. This included consideration of the possibility of either reorganizing as a real estate holding company that would hold, manage, and lease the Syms Owned Real Estate on a long term basis for the benefit of Syms shareholders or, alternatively, reorganizing as a real estate investment trust.

There were many factors that Syms considered as part of this evaluative process. For instance, the Debtors have significant net operating loss tax assets ("NOLs") of approximately \$101.1 million that could



be of value in certain reorganization scenarios. However, as discussed in Section IX.A of this Disclosure Statement, the value of the NOLs could be significantly limited in certain other reorganization scenarios. Moreover, while it is possible that the value of the Syms Owned Real Estate could appreciate in value if held and managed long-term, there are carrying costs to do so, as well as execution and other risks, including the risk that values will not increase as anticipated; that the costs of developing the real estate and locating tenants, which are significant, could be greater than anticipated; and that hoped-for rent and income levels will not be achieved.

The Debtors also considered the fact that many of the parcels of Syms Owned Real Estate are located in disparate locations; that efforts to reorganize around a core group of such parcels arguably could be focused only on those parcels located in and around the New York City metropolitan area; and that the Syms Owned Real Estate collectively is comprised of relatively few locations as to which Syms may be able to achieve operational efficiencies and synergies in managing them. Based upon all the foregoing considerations, the Debtors ultimately determined, with the assistance of Cushman and Rothschild, that the value of the Syms Owned Real Estate will be maximized by selling the entire portfolio over time, in a non-distressed, commercially reasonable manner.

Under the Plan, the disposition of Syms Owned Real Estate will be controlled by Syms then-current majority shareholders. Accordingly, given the diverse asset opportunities within the real estate portfolio, a business plan has been developed by the Equity Committee with the assistance of its advisors to optimize the value of each property utilizing a combination of strategies, including the near-term marketing of selected non-core properties on an "as-is" basis, the stabilization of select assets with upside potential, and a longer-term development of the Trinity Property. A schedule classifying the Syms owned real estate is attached hereto as Exhibit D, and the objectives and timing assumptions associated with each strategy are described below. **All discussions of strategies with respect to the marketing, value-enhancement, development or disposition of the Syms Owned Real Estate has been prepared based on current expectations and is subject to change by the Board of Directors of Reorganized Syms in its own judgment or as circumstances dictate consistent with the terms of the Plan.**

#### 1. Marketing of 13 Non-Core Properties on an "As-Is" Basis

Thirteen of the 17 properties comprising the Syms Owned Real Estate are intended to be marketed for sale on an "as-is" basis, requiring minimal capital outlay. The sale process is estimated to continue for approximately 12 months post-emergence. Cushman estimates that net sales proceeds (after deduction of carrying costs and selling commissions) will be approximately \$55-\$65 million. Proceeds will be used, if necessary under the terms of the Plan, to fund the budget for the ongoing operations of Reorganized Syms, and the net proceeds shall be used to make distributions to holders of Allowed Convenience Claims, Allowed Syms General Unsecured Claims, Allowed Filene's General Unsecured (Short Term) Claims, Allowed Filene's General Unsecured (Long Term) Claims, and payments to the Majority Shareholder. A schedule classifying the Syms Owned Real Estate is contained in Exhibit D.

#### 2. Lease Up and Sale of Three Value-Enhancement Properties on a Stabilized Basis

The value of the 3 properties located in the New York metropolitan region other than the Trinity Property is expected to be enhanced through a marketing strategy that targets a lease-up and sale/refinance strategy over the first 24-30 months following the Plan Effective Date. These are the properties located in Paramus, New Jersey; Elmsford, New York; and Westbury, New York. Upon stabilization, each property is expected to be individually marketed for monetization (with options including a full sale, partial sale, or financing) shortly thereafter. The New York metropolitan market is recovering from the recession of 2008-2010. These assets are considered to be irreplaceable locations in dominant retail corridors and are

positioned well for a value-enhancement strategy. Near-term prospects appear to be favorable, with a major tenant showing interest in leasing one of these properties in its entirety.

Costs associated with leasing these properties (including capital improvements and repairs, tenant improvements and leasing commissions) are expected to enhance the property values on a risk-adjusted basis, which, if realized, would be accretive to the value of the Plan on an undiscounted basis. However, there can be no assurance that the Company will be successful in finding tenants willing to lease the entire buildings. It is possible that one or more buildings may need to be renovated and subdivided to attract tenants, which could impact profitability. In addition, market conditions could change due to unforeseen economic events, which could impact demand and the terms of tenant leases. The profitability associated with holding these three properties could be negatively impacted as a result of unforeseen circumstances in addition to those described above. If these properties are successfully monetized on a leased basis, the expected net proceeds generated from the sales or financing are projected to be sufficient to satisfy the Plan distribution obligations to the Holders of Allowed Syms Convenience Claims, Allowed Filene's Convenience Claims, Allowed Syms General Unsecured Claims, Filene's General Unsecured (Short-Term) Claims, and Filene's General Unsecured (Long-Term) Claims, and to complete the payment obligations owed under the Majority Shareholder Share Redemption Transaction in accordance with the Plan.

As discussed further below, the Plan provides for hiring a seasoned executive from a local New York metropolitan real estate company to provide asset management services to Reorganized Syms. The responsibilities of this executive will primarily consist of the day-to-day management of the properties, including managing the stabilization and marketing processes described above for the 3 value-enhancement properties.

### 3. Redevelopment of the Trinity Property (New York)

While the near-term priority of reorganized Syms will be the marketing of the 13 non-core properties and the repositioning/leasing-up of the three New York metropolitan properties, there could be considerable upside associated with exploiting the development potential of the Trinity Property. The 11,470 square foot plot of land under this building allows for an as-of-right floor-area ratio of 15, along with approximately 16,500 square feet of owned air rights and an adjacent smaller building that would permit the construction of a new mixed use structure of approximately 220,000 square feet, considerably in excess of the size of the current improvements.

The lower Manhattan residential market continues to benefit from the strengthening of the local economy and real estate sub-markets, and, importantly, will directly benefit from demand associated with the ongoing redevelopment efforts in the Financial District, particularly the development of the new World Trade Center complex, which is located two blocks north of the Trinity Property. It is expected that thousands of new jobs will be created from these development efforts, and this will create considerable new demand for residential properties nearby. It is anticipated that value realizable from the Trinity Property can be considerably enhanced by pursuing entitlement and approvals over the coming 24 months, which will better position the site to benefit from these very favorable trends.

The creation of a joint venture partnership with a local "best in class" developer will also be pursued over the next 24 months, with full redevelopment of the Trinity Property likely to commence shortly thereafter. Assuming real estate market conditions remain favorable, the site is expected to be developed into a mixed-use residential property within an estimated 48 month timeframe, although this timeframe could vary based on a variety of factors. It is anticipated that the Trinity Property will be an excellent candidate for vertical development, given the combination of water/city views and unique sight lines, significant lot size, favorable zoning, limited new construction in the area, and improving economic conditions. Depending on market demand, the Trinity Property could potentially be developed into either a

condominium or residential apartment rental building with a commercial development located within the base of the building to maximize the development potential.

Under the terms of the Plan, Reorganized Syms will have the right to (a) transfer the Trinity Property into a Trinity Joint Venture, (b) conduct a JV Interest Sale, and/or (c) authorize the Trinity Joint Venture to incur a Trinity Mortgage subject in each case to compliance with the following terms and conditions in the event that the creditors in Syms Classes 3 and 4 and Filene's Classes 3, 4, and 5, or the Majority Shareholder have not been paid their full Distributions under the Plan or would not be paid their full Distributions under the Plan following the Trinity Joint Venture, JV Interest Sale, or Trinity Mortgage:

- (a) all proceeds realized from the JV Interest Sale (net of transaction related expenses) shall be distributed, unless the Trustee of the Golden Preferred Trust agrees otherwise, as follows: not less than 60% of the balance of net proceeds will be included as Excess Cash and shall be distributed in accordance with the Plan Waterfall, and the remaining 40% or lesser amount of the balance of such net proceeds shall be invested in full in the Trinity Joint Venture;
- (b) the funds received from any Trinity Mortgage shall be distributed, unless the Trustee of the Golden Preferred Trust agrees otherwise, as follows: first, the Trinity Carry Reserve Amount to the extent that an amount equal to the Trinity Carry Cost Reserve Amount was not distributed as Excess Cash from a JV Interest Sale, which funds shall become Excess Cash and shall be distributed in accordance with the Plan Waterfall; and thereafter the balance of borrowed funds shall remain in the Trinity Joint Venture and will be limited to be used for pre-construction costs, direct development and construction costs, corporate overhead and carry costs for the Trinity Property, and taxes, licenses and fees for the Trinity Property, as applicable, to be determined at the Board of Directors discretion;
- (c) in the event of a change in control of the majority of the Board of Directors of the Reorganized Company to either the unsecured creditors or the Majority Shareholder pursuant to the terms of the Plan, the Reorganized Company's interest in the Trinity Joint Venture (the "Company's Trinity Interest") shall be freely assignable to (i) accredited institutional investors which could include a Public Real Estate Company, (ii) privately-owned companies and individuals who are experienced real estate investors, in each case in good credit standing and with sufficient liquidity and experience to perform its duties under the partnership or joint venture agreement; provided, however, that the Reorganized Company shall have the right to agree with its joint venture partner in the Trinity Joint Venture to provide such joint venture partner thirty (30) days written notice (the "Assignment Notice Period") of a bona fide purchase offer for the Company's Trinity Interest that is acceptable to the Reorganized Company, and on or prior to the expiration of the Assignment Notice Period, such joint venture partner in the Trinity Joint Venture shall provide notice of its election to exercise a right of first refusal to purchase the Company's Trinity Interest on terms that are the same or not less favorable to the Reorganized Company as those terms set forth in the Purchase Offer. The

Confirmation Order shall provide that the Bankruptcy Court shall retain jurisdiction over any sale of the Company's Trinity Interest;

- (d) the interest may be otherwise assigned subject to the approval of the Venture's General Partner, which shall not be unreasonably withheld;
- (e) a change in control to either unsecured creditors or the Majority Shareholder of the Reorganized Company pursuant to the terms of the Plan shall not constitute a default under the terms of the Trinity Joint Venture or the Trinity Mortgage; and
- (f) prior to a change in control of the majority of the Board of Directors of the Reorganized Company to either the unsecured creditors or the Majority Shareholder pursuant to the terms of the Plan, the Reorganized Company may only sell or otherwise dispose of a majority interest in the Trinity Joint Venture to a non-insider if (x) there has been (or will be as a result of such sale) a General Unsecured Claim Satisfaction and to the extent a General Unsecured Claim Satisfaction has occurred, the Majority Shareholder has received full payment of their Plan Distributions, or (y) the Trustee of the Golden Preferred Trust or to the extent the General Unsecured Claim Satisfaction has occurred, the Majority Shareholder consents.

#### 4. Corporate Structure and Management

Upon emergence from Chapter 11, Reorganized Syms is expected to be a public corporation, incorporated under Delaware law, exclusively focused on the repositioning and development of its real estate assets. To execute the value-enhancement and development strategies previously outlined, Reorganized Syms will seek to employ or retain an experienced professional management team to provide oversight, asset management and decision making in connection with the following objectives:

- i) the disposition of any remaining non-core properties without additional capital outlays;
- ii) the repositioning/value-enhancement and future monetization efforts relating to the 3 value-enhancement properties (Paramus, New Jersey; Elmsford, New York; and Westbury, New York);
- iii) the development of the Trinity Property.

In addition, the management team retained by Reorganized Syms would be responsible for the day-to-day management of all the Syms Owned Real Estate, maintaining compliance with corporate reporting requirements, preparation of budgets and annual business plans, and advisory services to the Board of Directors on any matters related to the Syms Owned Real Estate. Filene's will be reorganized as a wholly-owned subsidiary of Reorganized Syms for the principal purpose of exploring the sale or joint venture opportunities with respect to the IP Assets. Advertising and Clothing shall be merged into Reorganized Syms.

#### 5. Business Plan Forecast

The Equity Committee, with the assistance of its financial advisors, has developed a long-term business plan designed to optimize the value of the Syms Owned Real Estate and provide agreed upon

distributions to all stakeholders in a timely fashion. A two-year forecast showing the projected cash flows associated with the business plan is set forth in Exhibit E. Key assumptions reflected in this forecast are described below.

(a) Real Estate Assumptions

**Thirteen Non-Core Properties:** The forecast contemplates the sale of the 13 non-core properties within the next 12 months at values equal to either (i) the latest estimate of vacant sale proceeds provided by Cushman or, in certain cases (ii) the current high offer received to date; in each case net of carrying expenses and selling costs.

**Three Value-Enhancement Properties:** The forecast contemplates the stabilization and future sale of the 3 value-enhancement properties within a timeframe of approximately 24-30 months. Expected costs associated with the lease-up of the 3 properties include carrying expenses, tenant improvement expenses, and leasing commissions. As part of the Plan, it is contemplated that a real estate expense reserve not to exceed \$9.0 million in the aggregate will be funded as part of the budget with proceeds from, among other things, the Rights Offering and the sale of the non-core properties. Once the value-enhancement properties have tenants in place, it is expected that rental income will provide sufficient positive cash flow to offset costs associated with carrying these properties through the anticipated sale dates.

**Trinity Property:** The forecast contemplates the development of the Trinity Property over a longer term horizon which extends beyond the two-year forecast provided in Exhibit E. Costs associated with the Trinity Property within the two-year forecast include \$1.7 million of annual carrying costs, \$1.1 million associated with legal, architectural and other pre-development costs and \$0.8 million of expenditures related to ongoing façade repairs at the property, which are expected to be completed by the end of 2012. **The forecast also assumes equity proceeds of approximately \$6.0 million will be received by the Reorganized Company upon the sale of a minority equity interest in early 2014 to a joint venture partner as permitted under the Plan and as determined by the Board of Directors of Reorganized Syms. The Plan provides a reserve for taxes, insurance, repairs, and other similar expenses and improvements for the Trinity Property, not to exceed \$3.0 million in the aggregate.**

(b) Corporate Overhead and Other Expenses

The forecast includes annual minimum catch-up contributions required to maintain the previously "frozen" Syms' single-employer pension plan, which is being assumed by Reorganized Syms under the Plan. The forecast also includes quarterly payments relating to the settlement with Local 1102 Retirement Trust, Filene's Local 1102 Union and Syms Local 1102 Union. It is anticipated that these costs will be covered by a pension reserve of \$3.8 million funded under the budget with proceeds from, among other things, cash on hand, the Rights Offering and the sale of the non-core properties to cover payments required over the first 24 months following the Effective Date. The annual minimum contribution payments for the single-employer pension plan provided for in the forecast are based on estimates provided by third-party pension consultants and are subject to change depending on the future performance of the underlying investments.

Corporate overhead expenses (including board member and officer salaries) necessary to run the business of approximately \$2.4 million per year, totaling approximately \$5.0 million over the first 24 months following the Effective Date, are also included in the forecast. The forecast assumes that Reorganized Syms is publicly-traded on the OTC/pink sheets, and therefore includes audit and other expenses associated with maintaining regulatory compliance. The Plan provides for an operating reserve of \$5.0 million to fund corporate overhead expenses for the first 24 months following the Effective Date. The

operating reserve will be funded under the budget with proceeds from, among other things, cash on hand, the Rights Offering and the sale of the non-core properties.

(c) Creditor Repayments

Based on the real estate assumptions and projected overhead expenses required to operate Reorganized Syms over the first 24 months following the Effective Date, it is expected that sufficient excess cash from dispositions of the real estate will be generated from the \$25 million Rights Offering and the sale of the 16 properties (*i.e.*, other than the Trinity Property) to pay all distributions under the Plan to Holders of Allowed Syms General Unsecured Claims, Filene's General Unsecured (Short-Term) Claims, and Filene's General Unsecured (Long-Term) Claims, and to complete the payment obligations owed under the Share Purchase Transaction in accordance with the Plan prior to the development of the Trinity Property.

(d) Sources and Uses

Attached as Exhibit F to this Disclosure Statement is a sources and uses statement that summarizes the sources, uses, and amounts of cash as of the Effective Date of the Plan. The Debtors have estimated the Effective Date of the Plan to be September 15, 2012 though, as noted in the Risk Factors to this Disclosure Statement, there is no assurance that the Plan will become effective by that date.

**F. Assessment of Plan Value**

Based on the range of estimated proceeds realizable from the property portfolio under the strategies outlined previously, which assume no material changes to the health and liquidity of the commercial retail real estate markets, it is contemplated that Reorganized Syms will pay all distributions under the Plan to Holders of Allowed Syms General Unsecured Claims, Filene's General Unsecured (Short-Term) Claims, and Filene's General Unsecured (Long-Term) Claims, and complete the payment obligations owed under the Share Redemption Transaction in accordance with the Plan prior to the development of the Trinity Property.

Shareholders of Reorganized Syms are unlikely to receive significant distributions from the sale of the 13 non-core properties or the 3 value-enhancement properties; therefore, the return to shareholders under the Plan is heavily dependent on the ultimate net proceeds generated from the sale of the Trinity Property. The business plan contemplates the development of this property over a long-term period. It is important to note that this development is subject to a high level of risk, as the success of the project will be contingent upon a number of factors, many of which cannot be predicted with high levels of accuracy. Some of the important factors that will influence the success of the development project include (but are not limited to):

- Ability to partner with a "best-in-class" development partner;
- Availability of funding (primarily construction and development loans) under attractive terms;
- Health of the real estate market in Manhattan and general economic conditions;
- Success of the current municipal efforts to revitalize the Financial District, which will directly impact and shape commercial and residential real estate demand in the area;

- Changes in municipal and state regulations, zoning and/or codes;
- Demand for residential housing options in Lower Manhattan;
- Additional supply of housing in the form of new construction; and
- Changes in tax policies as it relates to real estate development.

Various development scenarios have been analyzed that contemplate the development and future sale of the Trinity Property as either a single-use residential property (that could take various forms, *i.e.*, condominium or rental with the potential for floors dedicated to a hotel) or a multi-use residential and commercial property. Using a range of assumptions based on current market conditions, the estimated incremental value that could be achieved for stakeholders who are willing to roll their interest into a venture to create a mixed-use rental or condominium building, which can be realized through construction and sale of the asset over a four- to five-year period, could range from \$0 to \$120 million, resulting in an incremental value of between \$0.00 and \$7.22 per share where the low end of the range represents a vacant use of the asset in today's market. This range is illustrative in nature; actual value realized by shareholders will be dependent on the following factors:

- Joint venture partnership interests, which could range from 10% - 49% depending on the agreement and structure of the partnership;
- Terms of construction and development loans, which could range from 50 - 100% on a loan-to-cost basis;
- Taxes payable upon future sale of the property, which would depend on existence of NOLs at the time of sale as well as the ultimate use of the developed space;
- Remaining obligations of Reorganized Syms, including, potentially, the single-employer pension plan assumed and funded by Reorganized Syms; and
- Additional carrying costs due to delays in entitlement or development approvals.

Based on the level of risk involved and the high degree of uncertainty surrounding the ultimate development strategy, it is impossible to provide an accurate assessment of plan value beyond the ranges provided above.

## **VII. DETAILED SUMMARY OF THE PLAN**

THIS SECTION PROVIDES A DETAILED SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT, AND TO THE EXHIBITS ATTACHED THERETO. THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN WILL CONTROL THE TREATMENT OF CREDITORS AND EQUITY SECURITY HOLDERS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS AND OTHER PARTIES IN INTEREST.

#### **A. Purpose and Effect of the Plan**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor is authorized to reorganize its business for the benefit of its creditors and shareholders. As a general matter, a plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by a bankruptcy court makes such plan binding upon a debtor and any creditor of or equity security holder in such debtor, whether or not such creditor or equity security holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

Under the Plan, claims against, and interests in, the Debtors are divided into classes according to their relative seniority and other criteria. If the Plan is confirmed by the Bankruptcy Court and becomes effective, the claims and interests of the various classes will be treated in accordance with the Plan provisions for each such class. On the date that the Plan becomes effective, known as the "Effective Date," and at certain times thereafter, distributions will be made to each Debtor's creditors and Syms' shareholders as provided in the Plan. At the beginning of this Disclosure Statement is a table that summarizes the classification and treatment of claims and interests against the Debtors. What follows below is a more detailed description of the classes of claims against the Debtors created under the Plan, the treatment of those classes under the Plan, and the property to be distributed under the Plan.

#### **B. Plan Waterfall**

Excess Cash will be distributed in accordance with the Provisions Governing Distributions in Article VIII of the Plan and subject to the following waterfall (the "Plan Waterfall"):

1. Excess Cash shall be distributed in the following allocations: first, to payment of Allowed Senior Claims, as and when Allowed, to the extent not previously reserved for and, second (i) 60% of the first available distributable Excess Cash to Holders of Allowed Convenience Class Claims, then to Holders of Allowed Syms General Unsecured Claims, and (ii) 40% of the first available distributable Excess Cash to the Majority Shareholder until the Initial Majority Shareholder Payment in the amount of \$10,725,761 (which is net of the Split Dollar Payment in the amount of \$1,774,359) has been paid in full; then
2. Any remaining Excess Cash shall be paid to Holders of Allowed Syms General Unsecured Claims until such Claims are paid in full; then
3. Any remaining Excess Cash shall be paid to Holders of Allowed Filene's General Unsecured (Short-Term) Claims until such Claims are paid in full; then
4. Any remaining Excess Cash shall be paid to Holders of Allowed Filene's General Unsecured (Long-Term) Claims until 75% of such Claims are paid; then
5. Any remaining Excess Cash shall be paid to the Majority Shareholder until the Majority Shareholder has received, exclusive of the Initial Majority Shareholder Payment, the Subsequent Majority Shareholder Payment in the aggregate amount of \$7,065,907, which amount represents the remaining payment due to the Majority Shareholder for the purchase of



the Majority Shareholder's shares, less the reimbursement to the Estates related to the Split-Dollar Policy; then

6. Any remaining Excess Cash shall be retained by Reorganized Syms and distributed or otherwise utilized as directed by the Reorganized Company's Board of Directors.

### **C. Classification and Treatment of Claims and Interests**

#### **1. Treatment of Unclassified Claims Against Syms and Filene's**

##### **(a) Administrative Claims**

An Administrative Claim means a claim arising under Bankruptcy Code section 507(a)(2) for costs and expenses of administration of the Chapter 11 Cases under Bankruptcy Code sections 503(b), 507(b), or 1114(e)(2), including: (a) any actual and necessary costs and expenses, incurred after the Petition Date, of preserving the estates and operating the businesses of the Debtors (such as wages, salaries and commissions for services and payments for inventory, leased equipment and premises) and claims of governmental units for taxes (including tax audit claims related to tax years commencing after the Petition Date, but excluding claims relating to tax periods, or portions thereof, ending on or before the Petition Date); and (b) all other claims entitled to administrative claim status pursuant to a final order of the Bankruptcy Court, but excluding Priority Tax Claims, Non-Tax Priority Claims and Professional Fee Claims.

As explained above, on January 18, 2012, the Bankruptcy Court issued an order setting an Initial Administrative Bar Date of 5:00 p.m. (Eastern) on March 1, 2012, for all Administrative Claims first arising on or before December 31, 2011 (Dkt. 674).

Pursuant to the Plan, on, or as soon as reasonably practicable after the later of, (i) the Initial Distribution Date or (ii) the Distribution Date immediately following the date on which an Administrative Claim becomes an Allowed Administrative Claim, each Holder of such Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim, or (b) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing; provided, however, that Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto.

The Debtors have estimated that the aggregate amount of Allowed Administrative Claims payable under the Plan will be approximately \$21.854 million for Syms and \$8.068 million for Filene's.

##### **(b) Superpriority Intercompany Claims**

Superpriority Intercompany Claims are claims by any Debtor against another Debtor that arose on account of goods, services or other value provided after the Petition Date. Pursuant to the Plan Settlement, the Holders of Superpriority Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Superpriority Intercompany Claims shall be deemed offset, cancelled and extinguished.

The present net amount owed between Syms and Filene's is that Filene's holds a claim against Syms in the amount of approximately \$2.155 million.

(c) Priority Tax Claims

A Priority Tax Claim means a claim of a governmental unit of the kind specified in Bankruptcy Code sections 502(i) or 507(a)(8).

Under the Plan, except to the extent that an Allowed Priority Tax Claim has been paid prior to the Initial Distribution Date, on, or as soon as reasonably practicable after the later of, (i) the Initial Distribution Date or (ii) the Distribution Date immediately following the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing.

The Debtors have estimated that the aggregate amount of Allowed Priority Tax Claims payable under the Plan will be approximately \$0 at Syms and \$1.355 million at Filene's.

2. Classification and Treatment of Claims and Interests

(a) Secured Claims

(i) Syms Class 1 Secured Claims – Unimpaired

Syms Secured Claims are claims secured by a lien on collateral or that are subject to a right of setoff. Syms received authority to pay in full the secured claim of Syms' primary secured creditor, Bank of America, from proceeds of Syms' store closing sales. Syms believes that there may be certain other secured claims arising out of its workers' compensation program. Under the Plan, on, or as soon as reasonably practicable after, the later of (a) the Initial Distribution Date, or (b) the Distribution Date immediately following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for, such Allowed Secured Claim, (i) Cash equal to the value of its Allowed Secured Claim, (ii) the Collateral securing the Secured Claim, or (iii) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing. Any Holder of a Secured Claim shall retain its right of setoff or Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold (or deemed abandoned) by Syms free and clear of such right of setoff or Lien) to the same extent and with the same priority as such right of setoff or Lien as of the Petition Date until such time as (A) the Holder of such Secured Claim (i) has been paid Cash equal to the value of its Allowed Secured Claim, (ii) has received a return of the Collateral securing the Secured Claim, or (iii) has been afforded such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing; or (B) such purported right of setoff or Lien has been determined by an order of the Bankruptcy Court to be invalid or otherwise avoidable.

(ii) Filene's Class 1 Secured Claims – Unimpaired

Filene's Secured Claims are claims secured by a lien on collateral or that are subject to a right of setoff. Filene's received authority to pay in full the secured claim of Filene's primary secured creditor, Bank

of America, from proceeds of Filene's store closing sales. Filene's believes that there may be certain Secured Claims arising out of its workers' compensation program. Under the Plan, on, or as soon as reasonably practicable after, the later of (a) the Initial Distribution Date, or (b) the Distribution Date immediately following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for, such Allowed Secured Claim, (i) Cash equal to the value of its Allowed Secured Claim, (ii) the Collateral securing the Secured Claim, or (iii) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing. Any Holder of a Secured Claim shall retain its right of setoff or Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold (or deemed abandoned) by the Debtors free and clear of such right of setoff or Lien) to the same extent and with the same priority as such right of setoff or Lien as of the Petition Date until such time as (A) the Holder of such Secured Claim (i) has been paid Cash equal to the amount of its Allowed Secured Claim, (ii) has received a return of the Collateral securing the Secured Claim, or (iii) has been afforded such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing; or (B) such purported right of setoff or Lien has been determined by an order of the Bankruptcy Court to be invalid or otherwise avoidable.

(b) Non-Tax Priority Claims

(i) Syms Class 2 Non-Tax Priority Claims – Unimpaired

A Syms Non-Tax Priority Claim is a pre-petition claim that is entitled to priority under the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim. Such claims include claims by employees for unpaid wages and similar amounts, along with the claims of Syms' customers for deposits and similar matters. Under the Plan, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date, or (ii) the Distribution Date immediately following the date on which a Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim, each Holder of an Allowed Non-Tax Priority Claim shall be entitled to receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Non-Tax Priority Claim, Cash in an amount equal to its Allowed Non-Tax Priority Claim.

(ii) Filene's Class 2 Non-Tax Priority Claims – Unimpaired

A Filene's Non-Tax Priority Claim is a pre-petition claim that is entitled to priority under the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim. Such claims include claims by Filene's employees for unpaid wages and similar amounts, along with claims of Filene's customers for deposits and similar matters. Under the Plan, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date, or (ii) the Distribution Date immediately following the date on which a Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim, each Holder of an Allowed Non-Tax Priority Claim shall be entitled to receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Non-Tax Priority Claim, Cash in an amount equal to its Allowed Non-Tax Priority Claim.

(c) Unsecured Claims

(i) Syms Class 3 Convenience Class – Impaired

Syms Class 3 consists of Syms Convenience Class Claims and is an impaired class of claims. A convenience class claim is any allowed unsecured claim against Syms in an amount which is less than \$10,000, or is a greater amount but the holder of such claim elects to reduce such claim to \$10,000 in order to be treated in this class. After all Allowed Senior Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash becomes available, each Holder of an Allowed Syms Convenience Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Syms Convenience Claim becomes an Allowed Syms Convenience Claim (1) one or more cash payments from 60% of the first available distributable Excess Cash until the Initial Majority Shareholder Payment is made in full from the other 40% of the first available distributable Excess Cash, and then cash payments aggregating not more than 100% of the Allowed amount of its Allowed Syms Convenience Claim, or (2) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Syms G Convenience Claim. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Syms Convenience Claims from and after October 1, 2015.

(ii) Filene's Class 3 Convenience Claims – Impaired

Filene's Class 3 consists of Filene's Convenience Class Claims and is an impaired class of claims. A convenience class claim is any allowed unsecured claim against Filene's in an amount which is less than \$10,000, or is a greater amount but the holder of such claim elects to reduce such claim to \$10,000 in order to be treated in this class. After all Allowed Senior Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash becomes available, each Holder of an Allowed Filene's Convenience Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's Convenience Claim becomes an Allowed Filene's Convenience Claim (1) one or more cash payments from 60% of the first available distributable Excess Cash until the Initial Majority Shareholder Payment is made in full from the other 40% of the first available distributable Excess Cash, and then cash payments aggregating not more than 100% of the Allowed amount of its Allowed Filene's Convenience Claim, or (2) such other less favorable treatment as to which such Holder and Filene's shall have agreed upon in writing, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's Convenience Claim. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Syms Convenience Claims from and after October 1, 2015.

(iii) Syms Class 4 General Unsecured Claims – Impaired

Syms Class 4 consists of Syms General Unsecured Claims. After all Allowed Senior Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash becomes available, each Holder of an Allowed Syms General Unsecured Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Syms General Unsecured Claim becomes an Allowed Syms General Unsecured Claim (1) one or more cash payments from 60% of the first available distributable Excess Cash until the Initial Majority Shareholder Payment is

made in full from the other 40% of the first available distributable Excess Cash, and then cash payments aggregating not more than 100% of the Allowed amount of its Allowed Syms General Unsecured Claim, or (2) such other less favorable treatment as to which such Holder and Syms shall have agreed upon in writing, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Syms General Unsecured Claim. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Syms General Unsecured Claims from and after October 1, 2015. Interest shall be paid in kind and compounded annually.

The Plan Proponents, with the Creditors' Committee's consent, reserve the right to modify the Plan to include interest paid to the Syms Unsecured Creditors in an amount required under the Bankruptcy Code, if it is determined to be necessary under applicable confirmation standards.

For the avoidance of a doubt, Syms Class 4 does not include Syms Class 5 Syms Union Pension Plan Claims.

(iv) Filene's Class 4 A and B: Filene's General Unsecured (Short-Term) Claims – Impaired

Filene's Class 4 A and B consists of Filene's General Unsecured (Short-Term) Claims. Each Holder in Filene's Class 4 A and B shall receive the treatment specified in Class 4A unless the Holder elects to opt-out and receive the treatment specified in Class 4B.

Class 4A: After all Allowed Senior Claims, Allowed Convenience Claims, Allowed Syms Class 4 General Unsecured Claims and the Initial Majority Shareholder Payment have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as and to the extent practicable as Excess Cash become available, each Holder of an Allowed Filene's General Unsecured (Short-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Short-Term) Claim becomes an Allowed Filene's General Unsecured (Short-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Short-Term) Claim and its Individual Filene's Creditor Claims (1) one or more cash payments from the Excess Cash aggregating not more than 100% of the Allowed amount of its Allowed Filene's General Unsecured (Short-Term) Claim, or (2) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Filene's General Unsecured (Short-Term) Claims from and after October 1, 2015. Interest shall be paid in kind and compounded annually.

Class 4B: Holders of Filene's General Unsecured (Short-Term) Claims will have the option to indicate on their respective Ballots their refusal to grant the releases provided in Section XII.G. ("Opt-Out"), provided, however, such Holder of an Allowed Filene's General Unsecured (Short-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Short-Term) Claim becomes an Allowed Filene's General Unsecured (Short-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Short-Term) Claim, a payment equal to a Pro Rata distribution to Holders of Allowed Filene's General Unsecured (Short-Term) Claims from the Filene's General Unsecured Creditor Liquidation Value, and retention of any Claims of the Holder against Syms to the extent timely asserted and subject to any defenses or counterclaims of Syms.

For the avoidance of a doubt, Filene's Class 4 A and B does not include Filene's Class 6 Filene's Union Pension Plan Claims.

(v) Filene's Class 5 A and B: Filene's General Unsecured (Long-Term) Claims – Impaired

Filene's Class 5 A and B consists of Filene's General Unsecured (Long-Term) Claims. Each Holder in Filene's Class 5 A and B shall receive the treatment specified in Class 5A unless the Holder elects to opt-out and receive the treatment specified in Class 5B.

Class 5A: After all Allowed Senior Claims, Allowed Convenience Claims, Allowed Syms Class 4 General Unsecured Claims, the Initial Majority Shareholder Payment and Allowed Filene's Class 4 A and B General Unsecured (Short-Term) Claims have been paid in full or, to the extent not paid in full, funds sufficient to satisfy such Claims have been placed in a segregated reserve, and as to the extent practicable as Excess Cash become available, each Holder of an Allowed Filene's General Unsecured (Long-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Long-Term) Claim becomes an Allowed Filene's General Unsecured (Long-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Long-Term) Claim and its Individual Filene's Creditor Claims (1) one or more cash payments from the Excess Cash aggregating not more than 75% of the Allowed amount of its Allowed Filene's General Unsecured (Long-Term) Claim, or (2) such other less favorable treatment as to which such Holder and the Debtors shall have agreed upon in writing. Interest shall accrue at a rate of 7.0% per annum on any unpaid Plan Distribution to Holders of Allowed Filene's General Unsecured (Long-Term) Claims from and after October 1, 2015. Interest shall be paid in kind and compounded annually.

Class 5B: Holders of Filene's General Unsecured (Long-Term) Claims will have the ability to Opt-Out, provided, however, such Holder of an Allowed Filene's General Unsecured (Long-Term) Claim shall receive, on the later of (a) the Initial Distribution Date or (b) the Distribution Date(s) immediately following the date on which such Holder's Filene's General Unsecured (Long-Term) Claim becomes an Allowed Filene's General Unsecured (Long-Term) Claim, in full satisfaction, settlement, release, and discharge of and in exchange for its Allowed Filene's General Unsecured (Long-Term) Claim, a payment equal to a Pro Rata distribution to Holders of Allowed Filene's General Unsecured (Long-Term) Claims from the Filene's General Unsecured Creditor Liquidation Value, and retention of any Claims of the Holder against Syms to the extent timely asserted and subject to any defenses or counterclaims of Syms.

For the avoidance of a doubt, Filene's Class 5 A and B does not include Filene's Class 6 Filene's Union Pension Plan Claims.

If there has not been a General Unsecured Claim Satisfaction by October 1, 2016, then, effective on such date, (A) the terms of the two Equity Committee Directors then in office who are youngest in age shall automatically terminate, the term of the Independent Director shall automatically terminate, and the persons formerly holding such directorships shall cease to be directors, all without the need for any action by the Board of Directors or the stockholders of the Corporation, (B) immediately following such termination of directorships and the resultant automatic reduction in the size of the Board of Directors to two (2) directors (the one Equity Committee Director and the Series A Director), the size of the Board of Directors shall automatically be increased so that the Board of Directors is comprised of a total of nine (9) authorized directorships with the seven (7) directorships created thereby to be filled (and thereby elected) solely by the Trustee of the Golden Preferred Trust, voting as a separate class to the exclusion of the holders of Common Stock and any other Preferred Stock. Thereafter, upon the occurrence of a General Unsecured Claim Satisfaction after October 1, 2016, Reorganized Syms shall immediately redeem the Series A Preferred Stock, the terms of all directors elected by the Trustee of the Golden Preferred Trust shall automatically terminate, the persons holding such directorships immediately prior to such termination shall cease to be directors and the size of the Board of Directors shall be automatically reduced to one (1) authorized

directorship. Subject to the rights of the Majority Shareholder described below, following the redemption of the Series A Preferred Stock (whether before or after October 1, 2016), (a) all directors shall be elected exclusively by the holders of Common Stock, and (b) the total number of directors comprising the Board of Directors may be fixed from time to time solely by resolution of the Board of Directors, and vacancies and newly created directorships may be filled solely by a majority of the directors then in office, even if less than a quorum.

(vi) Syms Class 5: Syms Union Pension Plan Claims –  
Impaired

Syms Class 5 consists of Syms Union Pension Plan Claims. Pursuant to the Plan, the Holders of Syms Union Pension Plan Claims will receive quarterly Distributions from the Pension Plan Reserve for the Allowed amount of such Syms Union Pension Plan Claims, as set forth in Article VII.G.3. below, in accordance with Syms' contractual or legal obligations under the Union Pension Plans and the settlement of any Claims under the Plan.

(vii) Filene's Class 6: Filene's Union Pension Plan Claims –  
Impaired

Filene's Class 6 consists of Filene's Union Pension Plan Claims. Pursuant to the Plan, the Holders of Filene's Union Pension Plan Claims will receive quarterly Distributions from the Pension Plan Reserve for the Allowed amount of such Pension Plan Claims, as set forth in Article VII.G.3. below, in accordance with Syms' contractual or legal obligations under the Union Pension Plans and the settlement of any Claims under the Plan.

(viii) Syms Class 6 Intercompany Claims – Impaired

Syms Class 6 consists of Intercompany Claims against Syms and is an impaired class of claims. Syms Intercompany Claims include but are limited to claims by a Debtor against Syms which claims are reflected on the books and records of such Debtor, are derivative claims asserted by or on behalf of such Debtor, or are asserted by a Debtor on account of a guarantee. Pursuant to the Plan Settlement, the Holders of Syms Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Syms Intercompany Claims shall be deemed offset, cancelled and extinguished.

(ix) Filene's Class 7 Intercompany Claims – Impaired

Filene's Class 7 consists of Filene's Intercompany Claims. Pursuant to the Plan Settlement, the Holders of Filene's Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Filene's Intercompany Claims shall be deemed cancelled and extinguished.

(d) Interests

(i) Syms Class 7 Interests – Impaired

Syms Class 7 consists of all Interests in Syms. All Interests in Syms are Allowed Interests and each Holder of an Interest in Syms, other than the Majority Shareholder, shall (A) retain its Interest, except as otherwise provided in the Plan, and (B) if the Holder is an Eligible Holder, shall receive Subscription Rights to participate in the Rights Offering on the terms and conditions of the Rights Offering Procedures; provided, however, that the Majority Shareholder shall not receive any Subscription Rights in the Rights Offering.

(ii) Filene's Class 8 Interests – Unimpaired

Filene's Class 8 consists of all equity interests in Filene's. Syms is the only holder of Filene's Class 8 interests. On the Effective Date, each Holder of Interests in Filene's shall retain its Interests.

3. Special Provision Regarding Unimpaired Claims

Except as otherwise provided in the Plan, the Confirmation Order, any other order of the Court, or any document or agreement enforceable pursuant to the terms of the Plan, nothing shall affect the rights and defenses, both legal and equitable, of the Debtors with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupment against Unimpaired Claims.

4. Allowed Claims

Notwithstanding any provision in the Plan to the contrary, Distributions shall be made only to Holders of Allowed Claims. No Holder of a Disputed Claim shall receive any Distribution on account thereof until (and then only to the extent that) its Disputed Claim becomes an Allowed Claim. The Debtors may, in their discretion, withhold Distributions otherwise due hereunder to any Claimholder until the Claims Objection Deadline to enable a timely objection thereto to be filed. Any Holder of a Claim that becomes an Allowed Claim after the Effective Date will receive its Distribution in accordance with the terms and provisions of the Plan.

5. Pension Plan Obligations

Following confirmation of the Plan, the Debtors shall maintain the Syms Pension Plan and make all contributions required under applicable minimum funding rules: provided, however, that the Debtors may terminate the Syms Pension Plan from and after January 1, 2017. Prior to January 1, 2017, the Reorganized Company shall not accelerate the Distributions to Holders of Allowed Claims in Syms Class 5 and Filene's Class 6 as provided in the Plan. In the event that the Debtors terminate the Pension Plan, the Debtors intend that any such termination shall be a standard termination pursuant to Section 4041(c) of the Employer Retirement Income Security Act of 1974, as amended.

No provision of, or proceeding within, the Debtors' bankruptcy proceedings, Confirmation Order or Plan shall in any way be construed to discharge, release, limit, or relieve the Debtors or any other party, in any capacity, from any liability or responsibility with respect to the Syms Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Syms Pension Plan shall not be enjoined or



precluded from enforcing such liability or responsibility, if any, by any provision of, or proceeding within, the Debtors' bankruptcy proceedings, Confirmation Order or Plan; provided, however, that nothing contained in the Plan shall be deemed to constitute a waiver of any rights or protections that the Debtors may have under 11 U.S.C. section 362. Any and all obligations under the Syms Pension Plan shall be made by Reorganized Syms from the Pension Reserve.

#### 6. Special Provisions Regarding Insured Claims

Distributions under the Plan to each Holder of an Insured Claim shall be in accordance with the treatment provided under the Plan for Syms General Unsecured Claims and Filene's General Unsecured (Short-Term) Claims; provided, however, that the amount of any such Claim shall be determined as follows:

(a) to the extent a Holder has an Allowed Insured Claim, all or a portion of which is within the applicable deductible or self-insured retention under the relevant insurance policy of the Debtors, then such amount shall be paid following the allowance of the Allowed Insured Claim, in the ordinary course of the Debtor's business and consistent with the Debtor's insurance policies and past practices;

(b) to the extent a Holder has an Allowed Insured Claim, a portion of which exceeds the applicable deductible or self-insured retention under the relevant insurance policy of the Debtors, then the amount of such Allowed Insured Claim that (i) exceeds the applicable deductible or self-insured retention but (ii) is less than or equal to the limits of coverage under the relevant insurance policy of the Debtors (the "Insurer Covered Amount") shall not be Allowed as a Syms General Unsecured Claim or a Filene's General Unsecured (Short-Term) Claim; and

(c) to the extent a Holder has an Allowed Insured Claim, a portion of which exceeds the limits of coverage under the relevant insurance policy of the Debtors, then such Holder shall have an Allowed Syms General Unsecured Claim or Allowed Filene's General Unsecured (Short-Term) Claim in the amount by which such Allowed Insured Claim exceeds the limits of coverage under the Debtors' relevant insurance policy;

provided, further, that:

(d) the Insurer Covered Amount shall not be recoverable from the Debtors, and shall only be recoverable from the applicable insurer; and

(e) an Allowed Insured Claim shall not be valid or enforceable against the Debtors' insurers unless and until, among other things, the applicable deductible or self-insured retention has been satisfied in accordance with subsection (a) above and the underlying insurance policy or policies.

Nothing in this section shall constitute a waiver of any causes of action the Debtors or the Reorganized Company may hold against any Person, including the Debtors' or the Reorganized Company's insurance carriers, or a waiver of any rights, claims or defenses the insurers may have. Nothing in this section is intended to, shall, or shall be deemed to preclude any holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any distribution such holder may receive under the Plan or to preclude any insurer from contesting or asserting defenses to the claims of such holders. The Debtors and the Reorganized Company do not waive, and expressly reserve their rights to assert that any insurance coverage is property

of the Estates to which they are entitled and the insurers expressly reserve their rights to contest or assert defenses to any such assertion by the Debtors or the Reorganized Company. Nothing in the Disclosure Statement, Plan or Confirmation Order shall be construed as, or is, a determination as to coverage in connection with any Insured Claim under any applicable insurance policy.

#### 7. Special Provisions Regarding Workers' Compensation Claims and Obligations

As of the Effective Date, the Debtors and the Reorganized Company shall continue to honor in the ordinary course of business their obligations under the terms and conditions of (1) all applicable workers' compensation laws in states in which the Debtors and the Reorganized Company operate and (2) the Debtors' and the Reorganized Company's written contracts, agreements, policies, programs and plans for workers' compensation and workers' compensation insurance; provided, however, that nothing in the Plan shall limit, diminish or otherwise alter the Debtors' or Reorganized Company's defenses, causes of action or other rights under applicable non-bankruptcy law with respect to any such contracts, agreements, policies, programs and plans; provided, further, that nothing in the Plan shall be deemed to impose any obligations on the Debtors or the Reorganized Company in addition to those arising under applicable state law.

All Proofs of Claim on account of workers' compensation shall be deemed withdrawn automatically and without any further notice to or action, order or approval of the Bankruptcy Court.

### **D. Acceptance or Rejection of the Plan**

#### 1. Impaired Classes Entitled to Vote

Only Holders of Syms Class 3 Syms Convenience Claims, Syms Class 4 Syms General Unsecured Claims, Syms Class 5 Syms Union Pension Claims, Syms Class 7 Syms Interests, Filene's Class 3 Filene's Convenience Claims, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claims, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claims, and Filene's Class 6 Filene's Union Pension Claims are entitled to vote to accept or reject the Plan.

#### 2. Acceptance by an Impaired Class

In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), (i) an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan and (ii) an Impaired Class of Interests shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds of the Allowed Interests in such Class that have timely and properly voted to accept or reject the Plan.

#### 3. Presumed Acceptances/Rejections

Syms Classes 1 and 2 and Filene's Classes 1, 2, and 8 are Unimpaired by the Plan. Under Bankruptcy Code section 1126(f), Holders of Claims in such Classes are conclusively presumed to accept the Plan, and the votes of such Holders will not be solicited. Under Bankruptcy Code section 1126(g), Holders of Syms Class 6 Claims and Holders of Filene's Class 7 Claims are not entitled to receive any recovery under the Plan but have proposed the Plan and therefore shall be deemed to have accepted the Plan.

## **E. Corporate Action**

### **1. Continued Corporate Existence of Reorganized Syms and Reorganized Filene's**

Subject to the transactions contemplated by the Plan, Reorganized Syms shall continue to exist after the Effective Date as a separate entity, with all the powers of a corporation under applicable law and Reorganized Filene's shall continue to exist as a wholly owned LLC subsidiary of Reorganized Syms for the principal purpose of exploring the sale or the joint venture opportunities with respect to Filene's intellectual property. On and after the Effective Date, the Reorganized Company may operate its businesses and may use, acquire and dispose of property and compromise or settle any Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Reorganized Syms shall be reorganized and reincorporated as a Delaware corporation as of the Effective Date pursuant to its certificate of incorporation and bylaws or other organizational documents as set forth in Plan Exhibit C, without prejudice to any right to terminate such existence (whether by merger, dissolution or otherwise) under applicable law after the Effective Date, provided that without the consent of the Trustee of the Golden Preferred Trust, Reorganized Syms shall not merge or consolidate prior to such time as the General Unsecured Claim satisfaction has occurred. Among other things, Reorganized Syms' certificate of incorporation shall comply with section 1123(a)(6) of the Bankruptcy Code.

### **2. Governance and Management of the Reorganized Company**

The Reorganized Syms Board of Directors shall be comprised of five (5) members as of the Effective Date. Three (3) Equity Committee Directors shall be appointed by the Equity Committee as of the Effective Date, of which two (2) of the three (3) shall be designated by the Backstop Parties if there are Unsubscribed Shares in the Rights Offering. One (1) director shall be the Independent Director and one (1) director shall be the Creditors' Committee Director. The Board of Directors will be "staggered" with the Independent Director and the Creditors' Committee Director constituting "Class I" and the Equity Committee Directors constituting "Class II." All directors will have terms of two years, with the Class I directors first standing for election at the first annual meeting following the Effective Date, and the Class II directors first standing for election at the second annual meeting following the Effective Date. No actions of the Board of Directors shall be valid without the presence of at least four of the five directors, except if the Trustee of the Golden Preferred Trust or the Majority Shareholder come to control the election of a majority of the seats on the Board of Directors as provided in the Plan and in the Corporate Organization Documents of Reorganized Syms. In the event there is a vacancy of an Equity Committee Director seat, the remaining Equity Committee Directors shall have the right to appoint a replacement. In the event there is a vacancy of the Creditors' Committee Director seat, the Trustee of the Golden Preferred Trust shall have the right to appoint a replacement. In the event there is a vacancy of the Independent Director seat, the Creditors' Committee Director and the Equity Committee Directors will mutually agree on a replacement who meets the requirements to serve as the Independent Director. The Creditors' Committee Director and the Independent Director shall automatically cease to be directors when there has been a General Unsecured Claim Satisfaction. There are certain actions that may not be taken without the affirmative vote of the Trustee of the Golden Preferred Trust. For example, without the affirmative vote of the Trustee of the Golden Preferred Trust, Reorganized Syms shall not directly or indirectly amend, alter or repeal any provision of the Certificate of Incorporation or the Bylaws, and without the affirmative vote of the Majority Shareholder, Reorganized Syms shall not directly or indirectly amend, alter or repeal any provision of the Certificate of Incorporation or the Bylaws if such amendment would amend, alter or repeal any rights, privileges or terms applicable to the Preferred Stock held by the Majority Shareholder. In addition, certain actions require the affirmative vote of the Series A Director.

Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, the initial board of directors and the officers of the Reorganized Company will be identified in the Plan Supplement. The compensation to be disbursed to the directors, executives and officers serving as of the Effective Date also will be disclosed in the Budget.

3. Ms. Marcy Syms' Covenant Not to Interfere

In consideration of the benefits received by the Majority Shareholder under the Plan, Ms. Marcy Syms covenants not to and shall not directly or indirectly interfere with or participate in any disposition of property or operations of the Reorganized Company except as specifically provided for in the Plan. The Reorganized Company shall have the right to offset any damages incurred as a result of a breach of this covenant by Ms. Marcy Syms against the Subsequent Majority Shareholder Payment. Nothing in the Plan contained shall be deemed to limit any rights of the Majority Shareholder to enforce any remedies available under the Plan, or at law or equity, in the event of a default or breach under the Plan.

4. Merger of Advertising and Clothing into Reorganized Syms

On the Effective Date, or as soon thereafter as is practicable, Advertising and Clothing shall be merged with and into Reorganized Syms in accordance with applicable governing law. The officers, directors and managers of Advertising and Clothing shall be deemed to have resigned upon the Effective Date, or as soon thereafter as the Merger may be effected in accordance with applicable law; provided, however, that such resignations shall not relieve such officers, directors and managers from all remaining responsibilities with respect to such entities in accordance with applicable law. If necessary or appropriate, Reorganized Syms shall cause certificates of merger to be filed for Advertising and Clothing and shall take all other actions necessary or appropriate to effect the Merger under applicable law.

5. No Further Corporate Action

Except as otherwise provided in the Plan, each of the matters provided for under the Plan involving the corporate or limited liability company structure of the Debtors or corporate or limited liability company action to be taken by or required of the Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan, and shall be authorized and approved in all respects without any requirement of further action by any Person, including but not limited to, Holders of Claims against or Interests in the Debtors, or directors or officers of the Debtors.

6. Effectuating Documents; Further Transactions

The Debtors' officers and directors, as appropriate, shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**F. Vesting of Estate Assets**

On the Effective Date, and except as otherwise set forth in the Plan, all property of the Estates, including the Syms Owned Real Estate and all Causes of Action and Avoidance Actions identified on Exhibit A to the Plan, to be filed in the Plan Supplement, shall vest in Reorganized Syms free and clear of

all Claims, Liens, charges, encumbrances, rights, and Interests of creditors and equity security holders; provided, however, that any and all rights to the "Syms" name shall be transferred to Ms. Marcy Syms on the Effective Date and Ms. Syms shall not sell or otherwise transfer, dispose of or use the "Syms" name for any commercial purpose including any transaction resulting in Ms. Syms receiving, directly or indirectly, any profit or any financial or other benefit, without the consent of, and the payment of all gross proceeds to, the Reorganized Company. Any documents necessary to effect this conditional transfer shall be included in the Plan Supplement. The Reorganized Company shall not use for commercial purposes any images of Ms. Marcy Syms or her family members, absent their express consent, and the Reorganized Company shall transfer to her for no consideration, taped commercials in the Debtors' possession which contain images of Ms. Marcy Syms or her family members, which commercials she agrees not to sell, transfer, dispose of or use for any commercial purposes. No transfer of the taped commercials shall constitute the transfer of any rights or interests, or in any way limit the use of, intellectual property of the Debtors and the Reorganized Company. All other trade names, marks and intellectual property of the Debtors shall remain the property of the Reorganized Company and subject to the direction of the Reorganized Company's Board of Directors, other than Filene's Intellectual Property, which shall revert in Reorganized Filene's free and clear of all Claims, Liens, charges, encumbrances, rights, and interests of creditors and shall revert subject to the direction of the Reorganized Company's Board of Directors by virtue of the Reorganized Company acting as the sole member of Reorganized Filene's; provided, however, that 100% of any Cash realized or received by Filene's after the Effective Date shall constitute Net Proceeds to be used in accordance with the Plan by Reorganized Syms.

As of the Effective Date, the Reorganized Company shall operate its business and use, acquire and dispose of its property, including by operating, leasing and disposing of the Syms Owned Real Estate, without supervision of the Bankruptcy Court, and free of any restrictions imposed by the Bankruptcy Code or the Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order.

#### **G. Sources of Distributions and Uses of Net Proceeds of Syms Owned Real Estate**

Distributions in accordance with the terms of the Plan shall be made from, among other things, (i) Cash on hand as of the Effective Date, (ii) proceeds of the Rights Offering, (iii) Net Proceeds and/or (iv) proceeds from any post-Effective Date financings or capital raises as may be authorized by the Board of Directors of the Reorganized Company.

##### **1. Syms Owned Real Estate Disposition and Development**

If not sold prior to the Effective Date, with the consent of the Equity Committee and the Creditors' Committee, Reorganized Syms will seek to sell the 13 Near Term Properties promptly in a commercially reasonable manner. The three Medium Term Properties will be leased and sold over a longer period of time in an effort to maximize their values. The Trinity Property will be developed or sold over an extended period of time as determined by the Board of Directors.

If, by October 1, 2013, the Allowed Syms and Filene's Class 3 (Convenience Claims) and the Allowed Syms Unsecured Creditors in Syms Class 4 General Unsecured Claims are not paid in full, the Creditors' Committee Director, acting through a one director committee of the Board of Directors, shall control the sale, by auction or otherwise, of any unsold Near Term Properties which shall be done in a commercially reasonable manner consistent with maximizing the value of the Near Term Properties and the Net Proceeds of such sale shall fund the Operating Reserve to the extent not previously fully funded, and the excess shall be treated as Excess Cash for distribution under the Plan Waterfall.

If, by October 1, 2014, the Allowed Filene's Class 4 A and B General Unsecured (Short-Term) Claims and Allowed Filene's Class 5 A and B General Unsecured (Long-Term) Claims are not paid in full, the Creditors' Committee Director, acting through a one director committee of the Board of Directors, shall control the sale, by auction or otherwise, of any Medium Term Properties, and any Near Term Properties that remain unsold, which shall be done in a commercially reasonable manner consistent with maximizing the value of the Medium Term Properties and, if applicable, Near Term Properties, and the Net Proceeds of such sale shall fund the Operating Reserves to the extent not previously fully funded and the excess shall be treated as Excess Cash for distribution purposes under the Plan Waterfall; provided, however, that such October 1, 2014 deadline may be extended to April 1, 2015 if the Trustee of the Golden Preferred Trust consents or, even without the consent of the Trustee of the Golden Preferred Trust, the Independent Director concludes that Reorganized Syms is proceeding in good faith to lease and sell the unsold Near Term Property(ies) and Medium Term Property(ies) such that additional time is appropriate because Reorganized Syms still has a reasonable prospect of leasing and selling the Near Term Property(ies) or Medium Term Property(ies) with any extension period.

#### **H. Cancellation of Existing Securities and Agreements**

Except as otherwise provided in the Plan, and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article V of the Plan, all promissory notes, share certificates, other instruments evidencing any Claims or Interests and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire Syms Class 7 Interests, shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule, and the obligations of the Debtors under the notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be discharged. The holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan. The foregoing shall not apply to a Claim or Interest that is Unimpaired under the Plan or to Syms Class 7 Interests.

#### **I. Issuance of New Shares; Redemption of Majority Shareholder Shares**

Pursuant to and in accordance with the Equity Commitment Agreement, the Accredited Investor Procedures, and the Rights Offering Procedures, on the Effective Date, Reorganized Syms shall (i) issue 10,040,160 new shares to the Eligible Holders and the Backstop Parties, collectively, and (ii) purchase 7,857,794 shares from the Majority Shareholder. Syms' purchase of the Majority Shareholder Interests shall occur substantially contemporaneously with the issuance of the new shares to the Eligible Holders and Backstop Parties.

The issuance of the Subscription Rights under the Rights Offering Procedures and related documents and the distribution thereof under the Plan, and the distribution and exercise of the Subscription Rights, shall be exempt from registration under applicable securities laws pursuant to section 1145(a) of the Bankruptcy Code and/or section 4(2) of the Securities Act, and/or any other applicable exemptions. All documents, agreements, and instruments entered into and delivered on or as of the Effective Date contemplated by or in furtherance of the Plan shall become, and the Equity Commitment Agreement shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any entity (other than as expressly required by such applicable agreement).

The Majority Shareholder shall receive the Initial Majority Shareholder Payment in the form of cash payments from 40% of the first available distributable Excess Cash until the Majority Shareholder has received payment in full of the Initial Majority Shareholder Payment. After there has been a General Unsecured Claim Satisfaction, the Subsequent Majority Shareholder Payment shall be paid from any remaining Excess Cash, in the total amount of \$7,065,907. Provided that there has been a General Unsecured Claim Satisfaction, the Subsequent Majority Shareholder Payment shall be made no later than October 1, 2016. If the Subsequent Majority Shareholder Payment is not made on or before October 1, 2016, the Majority Shareholder may pursue collection remedies and proceed to judgment, so long as execution on the judgment is not effected until all Allowed General Unsecured Claims are paid in full. No distributions, dividends or redemptions shall be made by the Reorganized Company until after the Initial Majority Shareholder Payment and the Subsequent Majority Shareholder Payment are made in full. Ms. Syms and the Trusts shall be entitled to pursue any remedies available at law or equity as a creditor of the Reorganized Company, including for actions taken in violation of the terms of the Plan and the failure to pay distributions under the Plan to Ms. Syms and the Trusts in accordance with or by the deadlines set in the Plan. The Certificate of Incorporation shall provide a preferred series share, which share shall be pledged as security and held in escrow, entitling the Majority Shareholder to control a majority of the Board of Directors if the Initial Majority Shareholder Payment and the Subsequent Majority Shareholder Payment are not made by October 16, 2016, provided that and conditioned upon the General Unsecured Claim Satisfaction having occurred.

Reorganized Syms shall provide at least the information rights for the time period required, each as set forth in its Bylaws contained in Plan Exhibit C to permit a market maker to quote the Offered Shares and Syms Interests on the OTC Pink tier of the OTC Markets Group quotation service or an equivalent successor electronic quotation system that (a) displays quotes from broker-dealers for over-the-counter securities and (b) does not maintain regulatory filing requirements.

## **J. Capital Raising and Use of Cash Proceeds**

Following the Effective Date, the Reorganized Company may issue new debt or equity capital in accordance with applicable law, as and to the extent authorized by the Board of Directors of Reorganized Syms and consistent with the Plan.

The Reorganized Company shall be permitted to incur debt, grant liens and lease and sell all or any portion of any asset without any restrictions (except in connection with any transaction with any insider or affiliate of the Reorganized Company or any directors, which must be approved by the consent of the Board of Directors including the Creditors' Committee Director) other than:

(1) So long as Plan obligations are unpaid under the Plan Waterfall, and unless otherwise required to be used to fund the Operating Reserves, 100% of net cash proceeds from each transaction, including the incurrence of any debt, lien or other obligation (net of transaction expenses and, in the case of financings, reasonable interest reserves through a date no later than September 30, 2016) received by the Reorganized Company, shall be treated as Excess Cash and used to fund distributions under the Plan Waterfall.

(2) For the avoidance of doubt, with respect to the Trinity Property, the Reorganized Company shall have the right to (a) transfer the Trinity Property into a Trinity Joint Venture, (b) conduct a JV Interest Sale, and/or (c) authorize the Trinity Joint Venture to incur a Trinity Mortgage subject in each case to compliance with the following terms and conditions in the event that the creditors in Syms Classes 3 and 4 and Filene's Classes 3, 4, and 5, or Ms. Marcy Syms and the Trusts have not been paid their full

Distributions under the Plan or would not be paid their full Distributions under the Plan following the Trinity Joint Venture, JV Interest Sale, or Trinity Mortgage:

(a) all proceeds realized from the JV Interest Sale (net of transaction related expenses) shall be distributed, unless the Trustee of the Golden Preferred Trust agrees otherwise, as follows: not less than 60% of the balance of net proceeds will be included as Excess Cash and shall be distributed in accordance with the Plan Waterfall, and the remaining 40% or lesser amount of the balance of such net proceeds shall be invested in full in the Trinity Joint Venture;

(b) the funds received from any Trinity Mortgage shall be distributed, unless the Trustee of the Golden Preferred Trust agrees otherwise, as follows: first, the Trinity Carry Reserve Amount to the extent that an amount equal to the Trinity Carry Cost Reserve Amount was not distributed as Excess Cash from a JV Interest Sale, which funds shall become Excess Cash and shall be distributed in accordance with the Plan Waterfall; and thereafter the balance of borrowed funds shall remain in the Trinity Joint Venture and will be limited to be used for in pre-construction costs, direct development and construction costs, corporate overhead and carry costs for the Trinity Property, and taxes, licenses and fees for the Trinity Property, as applicable, to be determined at the Board of Directors discretion;

(c) in the event of a change in control of the majority of the Board of Directors of the Reorganized Company to either the unsecured creditors or Marcy Syms and the Trusts pursuant to the terms of the Plan, the Reorganized Company's interest in the Trinity Joint Venture (the "Company's Trinity Interest") shall be freely assignable to (i) accredited institutional investors which could include a Public Real Estate Company, (ii) privately-owned companies and individuals who are experienced real estate investors, in each case in good credit standing and with sufficient liquidity and experience to perform its duties under the partnership or joint venture agreement; provided, however, that the Reorganized Company shall have the right to agree with its joint venture partner in the Trinity Joint Venture to provide such joint venture partner thirty (30) days written notice (the "Assignment Notice Period") of a bona fide purchase offer for the Company's Trinity Interest that is acceptable to the Reorganized Company, and on or prior to the expiration of the Assignment Notice Period, such joint venture partner in the Trinity Joint Venture shall provide notice of its election to exercise a right of first refusal to purchase the Company's Trinity Interest on terms that are the same or not less favorable to the Reorganized Company as those terms set forth in the Purchase Offer. The Confirmation Order shall provide that the Bankruptcy Court shall retain jurisdiction over any sale of the Company's Trinity Interest;

(d) the interest may be otherwise assigned subject to the approval of the Venture's General Partner, which shall not be unreasonably withheld;

(e) a change in control to either unsecured creditors or Marcy Syms and the Trusts of the Reorganized Company pursuant to the terms of the Plan shall not constitute a default under the terms of the Trinity Joint Venture or the Trinity Mortgage; and



(f) prior to a change in control of the majority of the Board of Directors of the Reorganized Company to either the unsecured creditors or Marcy Syms and the Trusts pursuant to the terms of the Plan, the Reorganized Company may only sell or otherwise dispose of a majority interest in the Trinity Joint Venture to a non-insider if (x) there has been (or will be as a result of such sale) a General Unsecured Claim Satisfaction and to the extent a General Unsecured Claim Satisfaction has occurred, Marcy Syms and the Trusts have received full payment of their Plan Distributions, or (y) the Trustee of the Golden Preferred Trust or to the extent the General Unsecured Claim Satisfaction has occurred, Marcy Syms consents.

## **K. Funding of Reserves**

### **(a) Professional Fee Reserve**

On or before the Effective Date, the Debtors shall fund the Professional Fee Reserve in the amount of the aggregate Professional Fee Estimate. The Debtors shall (i) segregate and shall not commingle the Cash held therein and (ii) pay each Allowed Professional Fee Claim from the Professional Fee Reserve upon entry of a Final Order allowing such Claim. In the event that Cash remains in the Professional Fee Reserve after payment of all Allowed Professional Fee Claims, such residual Cash shall be utilized to make distributions to Holders of Claims and Interests as provided for in the Plan.

### **(b) Administrative Claims Reserve**

On or before the Effective Date, the Debtors shall fund the Administrative Claims Reserve in an amount equal to an estimate of all Allowed Administrative Claims. The Debtors shall (i) segregate and shall not commingle the Cash held therein and (ii) pay each Allowed Administrative Claim, upon entry of a Final Order allowing such Claim or on such other date provided in the Plan. In the event that Cash remains in the Administrative Claims Reserve after payment of all Allowed Administrative Claims, such residual Cash shall be used to make distributions to Holders of Claims and Interests as provided for in the Plan.

### **(c) Operating Reserves**

The Equity Committee has prepared the Budget attached to the Plan as Exhibit F and provided the Budget to the Creditors' Committee. The only limitation such Budget shall have on the Board of Directors shall be the Operating Reserves total in the aggregate and by Sub-Category Expense Reserve. The Board of Directors shall not be bound or limited by any line item references within individual Sub-Category Expense Reserves; provided, however, that (a) no funds in the Operating Reserves may be used in connection with any insider or affiliate transaction absent the consent of the Board of Directors, including the Creditors' Committee Director (b) any fees or other compensation payable to Directors as reflected in the Budget shall not be increased absent the consent of the Board of Directors and of the Trustee of the Golden Preferred Trust, and (c) absent the consent of the Trustee of the Golden Preferred Trust, the aggregate cap for any Sub-Category Expense Reserve may not be increased and the amounts reserved in each of the Sub-Category Expense Reserves may not be used to fund any expenses designated to be paid from another Sub-Category Expense Reserve, except that, (i) by majority vote of the Board of Directors, amounts in the Corporate Overhead Reserve may be reallocated to the Carry Cost/Repair/TI Reserve and (ii) by majority vote of the Board of Directors, and with the consent of the Independent Director, amounts in the Corporate Overhead Reserve may be reallocated to the Trinity Carry Reserve.

The Budget shall be funded utilizing agreed upon cash reserve amounts to fund working capital and operations of the Reorganized Company for the two year period commencing on the Effective Date (projected to be October 1, 2012 to September 30, 2014) with the Discretionary Reserve Fund and the Emergency Reserve Fund and the following four Sub-Category Expense Reserves: (w) a Corporate Overhead Reserve of \$5.0 million in the aggregate, (x) a \$3,829,088 Pension Fund Reserve (of which \$2.0 million shall fund the minimum annual payments due under the Syms Pension Plan and \$1,829,088 shall fund the minimum quarterly payments due to Local 1102 for the allowed amount of the Claims for pension withdrawal liability), (y) a Carry Cost/Repair/TI Reserve of \$9.0 million in the aggregate, and (z) a Trinity Carry Reserve of \$3.0 million in the aggregate.

(1) The Operating Reserves shall be funded for the two year period commencing on the Effective Date as follows: (m) \$5 million in cash on the Effective Date to the extent available after payment of Exit Costs and, to be allocated to each Sub-Category Expense Reserve in an amount to be determined by the Board of Directors, and (n) from the future proceeds realized by the Reorganized Company in the one year following the Effective Date from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash; provided however, that the amount allocated in the second year of the Budget for the Corporate Overhead Reserve and the Pension Reserve shall be funded in the last quarter of the first year, unless the Board of Directors determines that the delay of such funding would provide the Reorganized Company with inadequate liquidity to operate in accordance with the Budget and maximizing value.

(2) For the third year period after the Effective Date (projected to be October 1, 2014 to September 30, 2015), the aggregate caps for each Sub-Category Expense Reserve shall be increased to cover projected expenses to be incurred during that year in amounts not to exceed the following, less any remaining unused funds in such Sub-Category Expense Reserves as of the end of the two year period: (w) \$1,250,000 for the Corporate Overhead Reserve, (x) the projected amount of the minimum annual payment due under the Syms Pension Plan during such third year for the Pension Reserve and a \$812,928 reserve to fund the minimum quarterly payments to be paid to Local 1102 for the allowed amount of the Claims for pension withdrawal liability during such third year, and (y) the amount of Carry Costs projected to be incurred, plus 20%, of the Carry Costs projected for any unsold Near Term Properties or Medium Term Properties for the Carry Cost/Repair/TI Reserve.

(3) For the fourth year period after the Effective Date (projected to be October 1, 2015 to September 30, 2016), the aggregate caps for each Sub-Category Expense Reserve shall be increased to cover projected expenses to be incurred during that year in amounts not to exceed the following, less any remaining unused funds in such Sub-Category Expense Reserves as of the end of the two year period: (w) \$750,000 for the Corporate Overhead Reserve, (x) the projected amount of the minimum annual payment due under the Syms Pension Plan during such fourth year for the Pension Reserve and \$812,928 to fund the minimum quarterly payments to be paid to Local 1102 for the allowed amount of the Claims for pension withdrawal liability during such fourth year, and (y) the amount of Carry Costs projected to be incurred, plus 20% of the Carry Costs projected, for any unsold Near Term Properties or Medium Term Properties for the Carry Cost/Repair/TI Reserve.

(4) On the two year anniversary of the Effective Date, the Board of Directors shall review and revise the Sub-Category Reserve amounts set forth above for the third and fourth year periods after the Plan Effective Date, provided that any increase in the aggregate amount of the cap increases for the Sub-Category Reserves shall not exceed the amounts set forth above in Section VII.G.3(2) and (3) without the consent of the Trustee of the Golden Preferred Trust, except that, (i) by majority vote of the Board of Directors, amounts in the Corporate Overhead Reserve may be reallocated to the Carry Cost/Repair/TI Reserve and (ii) by majority vote of the Board, and with the consent of the Independent Director, amounts in the Corporate Overhead Reserve may be reallocated to the Trinity Carry Reserve. At the end of the two

year period commencing on the Effective Date, the Operating Reserves for the third and fourth years periods after the Effective Date shall be funded from proceeds realized by the Reorganized Company from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash.

(5) At the end of the two year period commencing on the Effective Date, the sum of \$500,000, to be funded from Net Proceeds realized by the Reorganized Company from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash, shall be set aside in the Emergency Fund Reserve to be used, by the Reorganized Company with the consent of the Creditors' Committee Director, for operating and other expenses. The Creditors' Committee Director may at any time reduce the amount of funds in the Emergency Fund Reserve and make such reduced funds Excess Cash. If distributing the Emergency Fund Reserve would effect a General Unsecured Claim Satisfaction, the amounts necessary for the Emergency Fund Reserve shall instead be treated as Excess Cash and used for Plan distributions.

(6) At the end of the two year period commencing on the Plan Effective Date, the sum of \$500,000, to be funded from proceeds realized by the Reorganized Company from the sale of assets, settlements or any other sources, before such proceeds become Excess Cash (as defined below), shall be set aside in the Discretionary Fund Reserve that shall be allocated and used for operating and other expenses of Reorganized Syms as determined by a majority vote of the Board, and with the consent of the Independent Director.

(7) After the Reorganized Company has sold all of the Near Term Properties and Medium Term Properties, any unused funds remaining in the Carry Cost/Repair/TI Reserve shall become Excess Cash and shall be distributed in accordance with the Plan Waterfall.

#### **L. Exemption From Certain Transfer Taxes**

Pursuant to Bankruptcy Code section 1146(a), any transfers from any of the Debtors to any Person, including any transfers of Syms Owned Real Estate after Confirmation in the United States, shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### **M. Preservation and Settlement of Certain Causes of Action and Avoidance Actions**

##### **1. Preservation of Certain Causes of Action and Avoidance Actions.**

In accordance with Bankruptcy Code section 1123(b)(3), except as agreed to by the Plan Proponents and the Creditors' Committee and identified on Exhibit A to the Plan, to be included with the Plan Supplement, all Causes of Action and Avoidance Actions shall be released as of the Effective Date. The Debtors shall retain all of the Causes of Action and Avoidance Actions identified on Plan Exhibit A to be filed in the Plan Supplement and all such Causes of Action and Avoidance Actions shall vest in the Reorganized Company on the Effective Date. The Reorganized Company may investigate, enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Causes of Action and Avoidance Actions identified in Plan Exhibit A. The failure of the Debtors to list a claim, right, cause of action, suit or proceeding in Plan Exhibit A shall constitute a waiver and release by the Debtors and their Estates of such claim, right of action, suit or proceeding.

2. Settlement of Certain Causes of Action and Avoidance Actions.

At any time after the Confirmation Date but before the Effective Date, notwithstanding anything in the Plan to the contrary, the Reorganized Company may settle some or all of the Causes of Action and Avoidance Actions identified in Plan Exhibit A pursuant to Bankruptcy Rule 9019 with the approval of the Court and upon notice to the Creditors' Committee and the Equity Committee; after the Effective Date, the Reorganized Company, will determine whether to bring, settle, release, compromise, enforce or abandon such rights (or decline to do any of the foregoing).

**N. Effectuating Documents; Further Transactions**

The Debtors shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, that are not inconsistent with the other terms and conditions of the Plan.

**O. Provisions Governing Distributions**

1. Distributions for Claims Allowed as of the Effective Date

Except as otherwise set forth in the Plan, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as Cash becomes available therefore and Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of the Plan, and on such day as selected by the Reorganized Company; provided, however, that the Excess Cash shall be used to make Distributions, in accordance with the Plan Waterfall, on not less than a quarterly basis if the distributable amount of Excess Cash is no less than the Minimum Distribution Threshold or is the last distribution to a Class. Once there has been a General Unsecured Claim Satisfaction, Excess Cash shall be distributed to the Majority Shareholder in satisfaction of the Subsequent Majority Shareholder Payment not less than a quarterly basis if the distributable amount of Excess Cash is no less than \$10,000.

Notwithstanding any other provision of the Plan to the contrary, no Distribution shall be made on account of any Allowed Claim or portion thereof that has been satisfied after the Petition Date pursuant to an order of the Bankruptcy Court.

2. Reorganized Syms as Disbursing Agent

Subject to the terms and provisions of the Plan, Reorganized Syms shall make all Distributions required under the Plan with respect to the Debtors' Estates, provided, however, that Reorganized Syms may employ a third-party disbursing agent, in the discretion of the Board of Directors, upon the filing of a notice with the Court. Reorganized Syms shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court or required by the Bankruptcy Code or the Bankruptcy Rules. Reorganized Syms shall be authorized and directed to rely upon the Debtors' books and records and the Debtors' representatives and professionals in determining Claims not entitled to a Distribution under the Plan in accordance with the terms of the Plan.

### 3. Delivery of Distributions and Undeliverable or Unclaimed Distributions

#### (a) Delivery of Distributions in General

Distributions to Holders of Allowed Claims shall be made by Reorganized Syms (a) at the addresses set forth on the Proofs of Claim filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is filed or if the Debtors have been notified of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Debtors after the date of any related Proof of Claim, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Debtors have not received a written notice of a change of address, (d) at the addresses set forth in the other records of the Debtors at the time of the Distribution or (e) in the case of the Holder of a Claim that is governed by an agreement and is administered by an agent or servicer, at the addresses contained in the official records of such agent or servicer. In making Distributions under the Plan, Reorganized Syms may rely upon the accuracy of the claims register maintained by the Claims Agent in the Chapter 11 Cases, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

#### (b) Undeliverable and Unclaimed Distributions

If the Distribution to any Holder of an Allowed Claim or Allowed Interest is returned to Reorganized Syms as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such Holder unless and until Reorganized Syms is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest. Amounts in respect of undeliverable Distributions shall be returned to Reorganized Syms until such Distributions are claimed. Reorganized Syms shall segregate and, deposit in a segregated account (the "Unclaimed Distribution Reserve") undeliverable and unclaimed Distributions for the benefit of all such similarly situated Persons or Governmental Units until such time as a Distribution becomes deliverable or is claimed.

Any Holder of an Allowed Claim or Allowed Interest that does not assert a Claim or Interest pursuant to the Plan for an undeliverable or unclaimed Distribution within six (6) months after the last Distribution Date shall be deemed to have forfeited its Claim or Interest for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim or Interest for an undeliverable or unclaimed Distribution against the Debtors and their Estates, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its and their property. In such cases, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall be distributed in accordance with the terms of the Plan. Nothing contained in the Plan shall require Reorganized Syms to attempt to locate any Holder of an Allowed Claim or Allowed Interest.

### 4. Prepayment

Except as otherwise provided in the Plan or the Confirmation Order, Reorganized Syms shall have the right to prepay, without penalty, all or any portion of an Allowed Claim.

5. Means of Cash Payment

Cash payments made pursuant to the Plan shall be in U.S. dollars and shall be made at the option and in the sole discretion of Reorganized Syms by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by Reorganized Syms. In the case of foreign creditors, Cash payments may be made, at the option of Reorganized Syms, in such funds and by such means as are necessary or customary in a particular jurisdiction.

6. Interest on Disputed Claims

Unless otherwise specifically provided for in the Plan or the Confirmation Order, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date such Disputed Claim becomes an Allowed Claim; provided, however, that interest shall accrue at the rate of 7.0% per annum on any unpaid Disputed Claim that becomes an Allowed Claim from and after October 1, 2015 until Distribution is made on such Claim.

7. Withholding and Reporting Requirements

In accordance with Bankruptcy Code section 346 and in connection with the Plan and all Distributions thereunder, Reorganized Syms shall, to the extent applicable, comply with all withholding and reporting requirements imposed by any U.S. federal, state, local, or non-U.S. taxing authority. Reorganized Syms shall be authorized to take any and all actions necessary and appropriate to comply with such requirements. All Distributions hereunder may be subject to the withholding and reporting requirements. As a condition of making any Distribution under the Plan, Reorganized Syms may require the Holder of an Allowed Claim or Allowed Interest to provide such Holder's taxpayer identification number, and such other information, certification, or forms as necessary to comply with applicable tax reporting and withholding laws. Notwithstanding any other provision of the Plan, each Entity receiving a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution. Reorganized Syms may move to disallow an otherwise Allowed Claim or Allowed Interest entitled to a Distribution under the Plan if the Holder of such Allowed Claim or Allowed Interest, after reasonable notice, does not provide Reorganized Syms with such Holder's taxpayer identification number, and such other information, certification, or forms as necessary to comply with applicable tax reporting and withholding laws.

8. Setoffs

(a) By Reorganized Syms

Except as otherwise set forth in the Plan, Reorganized Syms may, pursuant to Bankruptcy Code section 553, 558 or any other applicable law, but shall not be required to, set off against any Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, Claims of any nature whatsoever that the Debtors may have against the Holder of such Claim and that has not been released under the Plan or otherwise; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such Claim that the Debtors may have against such Holder.

(b) By Non-Debtors

Unless otherwise authorized by a Final Order, any Holder of a Claim must assert any setoff rights against a Claim by a Debtor against such Entity by timely filing (i) a Proof of Claim asserting such right of setoff, (ii) an appropriate motion on or before the Confirmation Date seeking authority to setoff, or (iii) an objection to Confirmation on or before the Confirmation Objection Deadline asserting, preserving or otherwise referencing the existence of such right of setoff, or will be deemed to have waived and be forever barred from asserting any right to setoff against a Claim by a Debtor; provided, however, that the right of any Debtor to object to the validity of any asserted right of setoff shall be preserved.

9. Procedure for Treating and Resolving Disputed, Contingent and/or Unliquidated Claims

(a) Objection Deadline; Prosecution of Objections

Except as set forth in the Plan with respect to Professional Fee Claims and Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims by the Claims Objection Deadline, as the same may be extended by the Bankruptcy Court. If an objection has not been filed to a Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated, and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the Bankruptcy Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those Entities that have requested notice in the Chapter 11 Cases, or to such Entities as the Bankruptcy Court shall order. From the Confirmation Date through the Claims Objection Deadline, Reorganized Syms shall have the exclusive authority to file objections, settle, compromise, withdraw, or litigate to judgment objections to Claims.

(b) No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtors, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter. On each Distribution Date, Reorganized Syms will make Distributions (a) on account of any Disputed Claim that has become an Allowed Claim since the preceding Distribution Date and (b) on account of previously Allowed Claims, from the applicable reserves, of property that would have been distributed to such Claimholders on the dates Distributions previously were made to Holders of Allowed Claims had the Disputed Claims that have become Allowed Claims been Allowed on such dates.

(c) *De Minimis* Distributions

Reorganized Syms shall not have any obligation to make a Distribution on account of an Allowed Claim from any reserve or otherwise if (a) the aggregate amount of all Distributions authorized to be made from such reserve or otherwise on the Distribution Date in question (other than the final Distribution Date) is or has a value less than the Minimum Distribution Threshold, or (b) if the amount to be distributed to the

specific Holder of the Allowed Claim on the particular Distribution Date does not constitute a final Distribution to such Holder and such Distribution has a value less than \$25.00. Reorganized Syms shall have no obligation to make any Distribution, whether final or not, unless and until the total amount of such Distribution to a specific Holder of an Allowed Claim is equal to or greater than \$25.00.

The foregoing limitations on "*De Minimis* Distributions" shall not apply to Distributions to be made to the Majority Shareholder.

(d) Claims Resolution and Compromise

As of the Effective Date, Reorganized Syms is authorized to compromise or settle all Claims, Disputed Claims, and Liens pursuant to Bankruptcy Rule 9019(b), and to execute necessary documents, including Lien releases (subject to the written consent of the party having such Lien) and stipulations of settlement or release, without further order of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order.

10. Fractional Dollars

Any other provision of the Plan notwithstanding, Reorganized Syms shall not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

11. Allocation of Plan Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a Distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

12. Distribution Record Date

Reorganized Syms shall have no obligation to recognize the transfer of or sale of any participation in any Allowed Claim or Allowed Interest that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes in the Plan to recognize and distribute only to those Holders of Allowed Claims and Interests who are Holders, or participants therein, as of the close of business on the Distribution Record Date. Instead, Reorganized Syms shall be entitled to recognize and deal for all purposes under the Plan with only those record holders stated on the official claims register or other applicable records as of the close of business on the Distribution Record Date.



## **P. Treatment of Executory Contracts**

### **1. Rejected Contracts and Leases**

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan document, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 rejecting all prepetition executory contracts, including purchase orders, and unexpired leases to which any Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) previously shall have been assumed, assumed and assigned, or rejected by the Debtors, (b) previously shall have expired or terminated pursuant to its own terms before the Effective Date, (c) is the subject of a pending motion to assume or reject on the Confirmation Date, including but not limited to the Debtors' ground leases of property located in Fairfield, Connecticut and Secaucus, New Jersey, or (d) is identified in Exhibit B to the Plan as an insurance policy or insurance agreement of the Debtors; provided, however, that the Debtors may amend such Exhibit B at any time prior to the Confirmation Date; provided further, however, that listing an insurance agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder. Notwithstanding anything to the contrary in the Plan, the Confirmation Order or any other Plan document, the Syms Local 108 CBA and Syms Local 400 CBA and the Syms Pension Plan shall not be rejected by operation of the Confirmation Order.

### **2. Insurance Policies and Agreements**

Except as set forth in the Plan or the Confirmation Order, Insurance policies issued to, or insurance agreements entered into by, the Debtors prior to the Petition Date (including, without limitation, any policies covering directors' or officers' conduct) shall continue in effect after the Effective Date. To the extent that such insurance policies or agreements (including, without limitation, any policies covering directors' or officers' conduct) are considered to be executory contracts, then, notwithstanding anything to the contrary in the Plan, the Plan shall constitute a motion to assume or ratify such insurance policies and agreements, and, subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such assumption is in the best interests of each Debtor and its Estate. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed to by the parties thereto prior to the Effective Date, no payments shall be required to cure any defaults of the Debtors existing as of the Confirmation Date with respect to each such insurance policy or agreement. To the extent that the Bankruptcy Court determines otherwise as to any such insurance policy or agreement, the Debtors reserve the right to seek the rejection of such insurance policy or agreement or other available relief.

With respect to the agreement relating to a life insurance policy on Marcy Syms, issued by Massachusetts Life Insurance Company to Laben Lathan, Trustee of Trust UTD 5/20/99 (the "Split-Dollar Policy"), Syms and Reorganized Syms shall be released from any future obligation (whether to Marcy Syms, any third party or otherwise) to pay premiums and shall release any interest in the insurance policy in return for a credit of \$1,774,359 against the Initial Shareholder Payment to the Majority Shareholder under the Share Redemption Agreement (which is \$10,725,641, but which would have been \$12,500,000 absent this credit). The Plan Supplement shall include an amendment of the split dollar agreement and any other documents necessary to effect this settlement.

### 3. Indemnification Obligations

Notwithstanding Article IX.A. of the Plan, or any contract, instrument, release, or other agreement or document entered into in connection with the Plan, any and all Indemnification Obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law that has not been rejected under Bankruptcy Code section 365 pursuant to an order of the Bankruptcy Court or pursuant to the Plan, shall be deemed an executory contract that is assumed as of the Effective Date, and all Claims arising out of Indemnification Obligations shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed by the Reorganized Company pursuant to section 365 of the Bankruptcy Code. No reserve shall be established hereunder for such Indemnification Obligations.

By the date for filing of the Plan Supplement, the Directors and Officers of the Debtors shall provide the Equity Committee and the Creditors' Committee with a schedule of the potential claims of which they have actual knowledge and will represent that those are the only claims of which they have actual knowledge, and in the event that the Directors and Officers later assert indemnity for a claim which is not listed on the schedule but of which they had actual knowledge, they will be barred from asserting an indemnity obligation for such claim

Indemnification Obligations owed to any Professionals retained pursuant to sections 327 or 328 of the Bankruptcy Code and order of the Court, to the extent that such Indemnification Obligations relate to the period after the Petition Date, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code under the Plan.

### 4. Bar To Rejection Damages

If the rejection of an executory contract or unexpired lease pursuant to the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the applicable Debtor or its Estate, or their respective successors or properties unless a Proof of Claim is filed with the Claims Agent and served on the Debtors and counsel for the Debtors within thirty (30) days after service of a notice of occurrence of the Effective Date, unless another order of the Bankruptcy Court provides for an earlier date.

### 5. Assumed and Assigned Contracts and Leases

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan document entered into after the Petition Date or in connection with the Plan, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 assuming, as of the Effective Date, those agreements listed on Exhibit B to the Plan; provided, however, that the Debtors may amend such Exhibit at any time prior to the Confirmation Date; provided further, however, that listing an agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder.

## **Q. Confirmation and Consummation of the Plan**

### 1. Conditions to Confirmation

The following are conditions precedent to the occurrence of the Confirmation Date:

(a) The entry of a Final Order finding that the Disclosure Statement contains adequate information pursuant to Bankruptcy Code section 1125, which order shall be in form and substance reasonably acceptable to the Debtors, the Majority Shareholder, the Creditors' Committee, the Equity Committee, and the Non-Defaulting Backstop Parties;

(b) The proposed Confirmation Order shall be, in form and substance, reasonably acceptable to the Plan Proponents, the Majority Shareholder, the Creditors' Committee and the Non-Defaulting Backstop Parties;

(c) All provisions, terms and conditions of the Plan are approved in the Confirmation Order;

(d) A default has not occurred under the Equity Commitment Agreement that has not been cured and the Equity Commitment Agreement is in full force and effect; and

(e) The Corporate Organizational Documents shall be approved by the Confirmation Order.

For a more detailed description of the requirements for confirmation of the Plan, see Section X of this Disclosure Statement entitled, "Feasibility of the Plan and Best Interests of Creditors."

## 2. Conditions to the Effective Date

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing in accordance with Article X.C:

(a) The Confirmation Order shall have been entered and become a Final Order, shall be in form and substance acceptable to the Plan Proponents, the Majority Shareholder, the Creditors' Committee and the Non-Defaulting Backstop Parties and shall provide that the Debtors and the Backstop Parties are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with the Plan or effectuate, advance, or further the purposes thereof;

(b) All Plan Exhibits and documents filed as part of the Plan Supplement shall be in form and substance reasonably acceptable to the Plan Proponents, the Majority Shareholder, the Creditors' Committee and the Non-Defaulting Backstop Parties, and shall have been executed and delivered by all parties signatory thereto;

(c) The Debtors shall be authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, and the agreements or documents created in connection with the Plan;

(d) All other actions, documents, and agreements necessary to implement the Plan shall have been effected or executed and shall be in form and substance acceptable to the Plan Proponents;

(e) The Professional Fee Reserve, the Administrative Claims Reserve and the Operating Reserves shall have been funded to the extent required under the Plan and the Budget;

(f) All conditions to closing set forth in the Equity Commitment Agreement shall have been satisfied or duly waived in accordance with the terms of the Equity Commitment Agreement and the Equity Commitment Agreement shall be in full force and effect; and

(g) The Independent Director shall be mutually chosen by the Creditors' Committee and the Equity Committee and designated to the Board of Directors and the Creditors' Committee Director and the Trustee of the Golden Preferred Trust shall be designated by the Creditors' Committee and designated to the Board of Directors.

(h) The Effective Date shall occur no later than September 15, 2012.

### 3. Waiver of Conditions

Each of the conditions set forth in Articles X.A and X.B of the Plan may be waived in whole or in part by the Plan Proponents and with the consent of the Non-Defaulting Backstop Parties. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Plan Proponents regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

4. Consequences of Non-Occurrence of Effective Date

In the event that the Effective Date does not timely occur, the Plan Proponents reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that the Plan be null and void in all respects, and/or that any settlement of Claims provided for in the Plan be null and void. In the event that the Bankruptcy Court shall enter an order vacating the Confirmation Order, the time within which the Debtors may assume and assign, or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

5. Cram Down

The Plan Proponents request Confirmation under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code. The Debtors reserve the right to modify the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**R. Allowance and Payment of Certain Administrative Claims**

1. Professional Fee Claims

(a) Final Fee Applications

All Final Fee Applications must be filed no later than forty-five (45) days after the Effective Date. Objections, if any, to Final Fee Applications of such Professionals must be filed and served on the Debtors and their respective counsel, the Creditors' Committee and its counsel and the Equity Committee and its counsel, the requesting Professional and the Office of the U.S. Trustee no later than twenty (20) days from the date on which each such Final Fee Application is served and filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court, the allowed amounts of such Professional Fee Claims shall be determined by the Court.

(b) Employment of Professionals after the Effective Date

From and after the Effective Date, any requirement that professionals comply with Bankruptcy Code sections 327 through 331 or any order previously entered by the Bankruptcy Court in seeking retention or compensation for services rendered or expenses incurred after such date will terminate.

2. Substantial Contribution Compensation and Expenses Bar Date

Any Person who wishes to make a Substantial Contribution Claim based on facts or circumstances arising after the Petition Date, must file an application with the clerk of the Court, on or before the Administrative Claims Bar Date, and serve such application on counsel for the Debtors, counsel for the Creditors' Committee, and counsel for the Equity Committee, and as otherwise required by the Court and the Bankruptcy Code, or be forever barred from seeking such compensation or expense reimbursement. Objections, if any, to the Substantial Contribution Claim must be filed no later than the Administrative Claims Objection Deadline, unless otherwise extended by Order of the Court.

### 3. Administrative Claims

All Administrative Claims arising after the Petition Date, other than Professional Fee Claims, must be filed with the Claims Agent and served on counsel for the Debtors so as to be received no later than 5:00 p.m., Eastern Time on the Administrative Claims Bar Date. Any such Claim may be submitted in person or by courier service, hand delivery or mail addressed to the Claims Agent at the Claims Agent's applicable addresses as specified in Article XIV.F of the Plan. Any such Claim submitted by facsimile will not be accepted and will not be deemed filed until such Claim is submitted by one of the methods described in the foregoing sentence. An Administrative Claim will be deemed filed only when actually received by the Claims Agent. Unless Reorganized Syms or any other party in interest objects by the Administrative Claims Objection Deadline to an Administrative Claim, such Claim shall be deemed allowed after the Administrative Claims Objection Deadline in the amount requested. In the event that Reorganized Syms or any other party in interest objects to such a Claim, the Bankruptcy Court shall determine the allowed amount of such Claim.

## **S. Effect of Plan Confirmation**

### 1. Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, and their respective successors and assigns.

### 2. Discharge

#### **(a) Discharge of the Debtors**

**Upon the Effective Date, the Debtors shall be discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in section 502 of the Bankruptcy Code, whether or not (i) a proof of claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (ii) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, (iii) a Claim based upon such debt is or has been disallowed by order of the Bankruptcy Court, or (iv) the Holder of a Claim based upon such debt accepted the Plan.**

**As of the Effective Date, except as provided in the Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Debtors or their properties, including the Syms Owned Real Estate, any other or further Claims, debts, rights, Causes of Action, claims for relief, or liabilities relating to the Debtors based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim.**

### 3. Injunction

Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that from and after the Effective Date, all Persons who have held, hold or may hold Claims against or Interests in the Debtors are permanently enjoined from taking any of the following actions against the Estates, the Debtors, Reorganized Syms, Reorganized Filene's or any of their property on account of any such Claims or Interests: (A) commencing or continuing, in any manner or in any place, any action or other proceeding; (B) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order; (C) creating, perfecting, or enforcing any lien or encumbrance; (D) asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors; and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained in the Plan shall preclude such Persons from exercising their rights pursuant to and consistent with the terms of the Plan or the Confirmation Order; provided further, however, that nothing in this Article shall impair (i) the rights of any Holder of a Disputed Claim to establish its Claim in response to an objection filed by Reorganized Syms, or (ii) the rights of any defendant in a Cause of Action or Avoidance Action filed by Reorganized Syms to assert defenses in such action.

### 4. Exculpation and Limitation of Liability

Except as otherwise specifically provided in the Plan, (i) the Debtors, (ii) all of the present or former directors, officers, or employees of any of the Debtors, acting in such capacity and serving as of the Petition Date, (iii) any Professionals of the Debtors, (iv) the Majority Shareholder; (v) any Professionals of the Majority Shareholder; and (vi) the Equity Committee and the Creditors' Committee and their respective members, and the professionals retained by each of the foregoing acting in their capacities as such, and any of such parties' successors and assigns, shall not have or incur any liability, claim, action, proceeding, Cause of Action, Avoidance Action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment, or Claim (as defined in Bankruptcy Code Section 101(5)), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise to one another or to any Claimholder or Interestholder, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission originating or occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Debtors, the Chapter 11 Cases, the negotiation and filing of the Plan or any prior plans, the filing of the Chapter 11 Cases, the pursuit of confirmation of the Plan or any prior plans, the consummation of the Plan including the Rights Offering and Share Purchase Transaction, the administration of the Plan, or the property to be liquidated and/or distributed under the Plan, except for their willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan provided, however, that the foregoing shall not extinguish the personal liability of any of the aforementioned Entities for any statutory violation of applicable tax laws or bar any right of action asserted by a governmental taxing authority against the aforementioned Entities for any statutory violation of applicable tax laws, or any obligation or liability arising under the Equity Commitment Agreement or the terms of the Plan.

## **5. Debtor Releases**

Pursuant to section 1123(b) of the Bankruptcy Code for good and valuable consideration, on and after the Effective Date, except as set forth on Exhibit A, (i) all current and former officers, directors, employees, agents and professionals of the Debtors in their capacity as such, (ii) the Majority Shareholder in its capacity as such; (iii) the Equity Committee and the Creditors' Committee and their respective members, and the professionals retained by each of the foregoing acting in their capacities as such, and (iv) the Majority Shareholder and the Majority Shareholder's professionals in their capacities as such (the "Released Parties") are deemed released and discharged by the Debtors, Reorganized Syms, Reorganized Filene's and the Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, Reorganized Syms, Reorganized Filene's or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors or Reorganized Syms, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any of the foregoing releasees, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, or related agreements, instruments or other documents, or upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date.

## **6. The Non-Defaulting Backstop Parties' Release, Exculpation and Indemnification**

### **(a) The Non-Defaulting Backstop Parties' Release**

For good and valuable consideration, on and after the Effective Date, the Non-Defaulting Backstop Parties and their respective directors, officers, partners, members, affiliates, representatives, employees, agents, and attorneys (each a "Backstop Releasee") are deemed released and discharged by the Debtors, Reorganized Syms, Reorganized Filene's and the Estates from any and all claims, obligations, rights, suits, damages, causes of action, remedies and liabilities related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated thereby, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, Reorganized Syms, Reorganized Filene's or the Estates would have otherwise been entitled to assert.

### **(b) The Non-Defaulting Backstop Parties' Exculpation**

The Non-Defaulting Backstop Parties and their respective directors, officers, partners, members, affiliates, representatives, employees, agents, and attorneys shall not have or incur any liability, claim, action, proceeding, cause of action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, or right to payment, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise to any Holder of Claims or Interests, or any other party



in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated thereby; except for the Non-Defaulting Backstop Parties' willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects the Non-Defaulting Backstop Parties shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities thereunder.

#### **(c) The Non-Defaulting Backstop Parties' Indemnification**

The Debtors or Reorganized Debtors, and the Estates, as the case may be, agree to indemnify and hold harmless the Non-Defaulting Backstop Parties and their respective directors, officers, partners, members, affiliates, representatives, employees, agents, and attorneys (each a "Backstop Party Indemnitee") from and against any and all claims, obligations, rights, suits, damages, causes of action, remedies and liabilities that any such Backstop Party Indemnitee may incur, have asserted against it or be involved in as a result of or arising out of or in any way related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby, including any related transaction or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any of such Backstop Party Indemnitee is a party thereto, and to reimburse each of such Backstop Party Indemnitee within ten (10) days after demand for any legal or other expenses incurred in connection with any of the foregoing; provided however, that the foregoing indemnity shall not, as to any Backstop Party Indemnitee, apply to claims, obligations, rights, suits, damages, causes of action, remedies and liabilities to the extent they have resulted from the willful misconduct or gross negligence of such Backstop Party Indemnitee. Notwithstanding any other provision to the contrary, no Backstop Party Indemnitee shall be liable for any special, indirect, consequential or punitive damages in connection with its activities related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby. The terms set forth in this subsection shall survive termination of the Equity Commitment Agreement and shall remain in full force and effect regardless of whether the Rights Offering is consummated.

#### **7. The Majority Shareholder's Indemnification**

The Debtors or Reorganized Syms, Reorganized Filene's and the Estates, as the case may be, agree to indemnify and hold harmless the Majority Shareholder and its representatives, employees, agents, and attorneys (each a "Majority Shareholder Indemnitee") from and against any and all claims, obligations, rights, suits, damages, causes of action, remedies and liabilities that any such Majority Shareholder Indemnitee may incur, have asserted against it or be involved in as a result of or arising out of or in any way related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby, including any related transaction or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any of such Majority Shareholder Indemnitee is a party thereto, and to reimburse each of such Majority Shareholder Indemnitee within ten (10) days after demand for any legal or other expenses incurred in connection with any of the foregoing; provided however, that the foregoing indemnity shall not, as to any Majority Shareholder Indemnitee, apply to (i) claims, obligations, rights, suits, damages, causes of action, remedies and liabilities to the extent they have resulted from the willful misconduct or gross negligence of such Majority Shareholder Indemnitee; (ii) claims, obligations, rights, suits, damages, causes of action, remedies and liabilities to the extent they have resulted from a breach or default by the Majority Shareholder under the Equity Commitment Agreement; and (iii) claims, obligations, rights, suits, damages, causes of action, remedies and liabilities asserted by a third party

that is unrelated to the Plan, the Rights Offering, the Equity Commitment Agreement, the Share Purchase Transaction, or any other transactions contemplated hereby or thereby. Notwithstanding any other provision to the contrary, no Majority Shareholder Indemnatee shall be liable for any special, indirect, consequential or punitive damages in connection with its activities related to the Plan, the Rights Offering, the Equity Commitment Agreement, or the transactions contemplated hereby or thereby. The terms set forth in this subsection shall survive termination of the Equity Commitment Agreement and shall remain in full force and effect regardless of whether the Rights Offering is consummated. No reserve shall be established hereunder for any Majority Shareholder Indemnification Obligations.

#### **8. Third Party Releases**

As of the Effective Date, all Persons who directly or indirectly have been a Holder, are a Holder, or may become a Holder of a Claim or Interest and (a) who vote to accept the Plan as set forth on the relevant Ballot and do not mark their Ballot to indicate their refusal to grant the releases provided in this paragraph, (b) are Holders in Filene's Classes 4A or 5A, or (c) whose Claim or Interest is deemed Unimpaired under the Plan (the "**Third Party Releasers**"), shall be deemed, by virtue of their receipt of Distributions and/or other treatment contemplated under the Plan, to have unconditionally, irrevocably and forever released and covenanted with Reorganized Syms, Reorganized Filene's and the Released Parties not to (y) sue or otherwise seek recovery from Reorganized Syms, Reorganized Filene's or any Released Party on account of any Claim or Interest in any way related to the Debtors or their business and affairs, including but not limited to any Claim or Interest based upon tort, breach of contract, violations of federal or state securities laws or otherwise, based upon any act, occurrence, or failure to act from the beginning of time through the Effective Date or (z) assert against Reorganized Syms, Reorganized Filene's or any Released Party any claim, obligation, right, cause of action or liability that any Holder of a Claim or Interest may be entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, agreement or occurrence from the beginning of time through the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, provided, however, (i) none of the Released Parties shall be released from any Claim primarily based on any act or omission that constitutes gross negligence or willful misconduct as determined by a court of competent jurisdiction, and (ii) the foregoing release shall not apply to obligations arising under the Plan, and (iii) the foregoing release shall not apply or be construed to prohibit a party in interest from seeking to enforce the terms of the Plan.

For the avoidance of doubt, the Equity Committee, the Majority Shareholder, and the Creditors' Committee, and their respective members and Professionals in their capacity as such, release the Released Parties in accordance with Article XII.G of the Plan.

For the avoidance of doubt, Article XII.G of the Plan shall not be applied to, and shall not be deemed to, modify, limit or override the effect, scope and operation of Articles XII.A, XII.B, XII.C, XII.D and XII.E of the Plan.

#### **9. Term of Bankruptcy Injunction or Stays**

All injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code section 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

#### 10. Separate Plans Meeting Confirmation Standards

If the Bankruptcy Court determines that the Plan meets the standards for confirmation as to Syms but not as to Filene's, the Creditors Committee shall have the option to either:

(a) continue the Confirmation Hearing for up to five (5) business days, and if the Plan for all Debtors cannot be confirmed at the continued Confirmation Hearing, the Creditors' Committee may contest and oppose the confirmation of the Plan without Filene's at such continued Confirmation Hearing; or

(b) consent to confirmation of the Plan and the effectiveness of the Plan as to the Debtors other than Filene's, and then take no more than the next 120 calendar days to confirm a plan of reorganization or liquidation for Filene's with the same economic terms for Filene's and for Syms as contained in the Plan, and failing confirmation and going effective within those 120 days, Syms' obligations to make distributions to Holders of Claims in the Filene's Classes under the Plan shall be null and void. Under this option, if amounts incurred by the professionals of the Filene's estate during that 120 day period in pursuing a Filene's-only plan exceed the Debtors' projected professional expenses for the Filene's estate through September 30, 2012, as set forth in the Alvarez & Marsal updated budget dated July 4, 2012, the excess shall reduce the distribution percentage for Holders of Claims in Filene's Classes under the Plan and shall not be paid or borne by Syms or Reorganized Syms.

If the Bankruptcy Court does not confirm the Plan with respect to Filene's for any reason, the Plan shall be deemed modified to withdraw Filene's from the Plan and the other Debtors shall pursue Confirmation pursuant to the modified terms of the Plan and the requirements of the Confirmation Order with respect to the modified Plan. Subject to Article XII.J.2. of the Plan and the timing referenced therein, with respect to Filene's and Holders of Claims against Filene's (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for Consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by such Debtors or any other Person.

#### **T. Retention of Jurisdiction**

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order, substantial consummation of the Plan and occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan, including, among other things, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim, the resolution of any objections to the allowance or priority of Claims or Interests and the determination of requests for the payment of Claims entitled to priority under Bankruptcy Code section 507(a)(1), including compensation of any reimbursement of expenses of parties entitled thereto;
2. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Bankruptcy Code sections 330, 331, 503(b), 1103, and 1129(a)(4); provided, however, that from and after the Effective Date, the payment of the fees and expenses of the retained Professionals of the Debtors shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court except to the extent otherwise provided in the Plan or the Confirmation Order;
3. Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;
4. Effectuate performance of and payments under the provisions of the Plan;
5. Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the Chapter 11 Cases or the Plan;
6. Enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;
7. Hear and determine disputes arising in connection with the interpretation, implementation, consummation or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;
8. Consider any modifications of the Plan, and cure any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
9. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, consummation, or enforcement of the Plan or the Confirmation Order;

10. Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;
11. Hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Plan Supplement, the Disclosure Statement or the Confirmation Order;
12. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
13. Except as otherwise limited in the Plan, recover all assets of the Debtors and property of the Estates, wherever located;
14. Hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146;
15. Hear and determine any Causes of Action and Avoidance Actions, including any such Causes of Action and Avoidance Actions brought by the Debtors;
16. Hear and determine all disputes involving the existence, nature or scope of the injunctions, indemnification, exculpation and releases granted pursuant to the Plan;
17. Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) any winding up of the Debtors' affairs, and (iii) the activities of the Debtors, including (A) challenges to or approvals of the Debtors' activities and (B) reporting by, termination of and accounting by the Debtors;
18. Hear and determine all disputes involving any dispute relating to any liability arising out of any termination of employment or the termination of any employee or retiree benefit provision, regardless of whether such termination occurred prior to or after the Effective Date;
19. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;
20. Hear and determine any matters arising in connection with a sale of the Company's Trinity Interest;

21. Enforce all orders previously entered by the Bankruptcy Court;

22. Dismiss any and/or all of the Chapter 11 Cases; and

**U. Enter a final decree closing the Chapter 11 Cases.**

**V. Miscellaneous Provisions**

1. Modifications and Amendments

The Plan Proponents may alter, amend or modify the Plan or any Exhibits thereto under Bankruptcy Code section 1127(a) at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan as defined in Bankruptcy Code section 1101(2), the Plan Proponents may, under Bankruptcy Code section 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims or Interests; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Court. Any changes or modifications to the Plan Documents shall require the consent of each of the Debtors, the Equity Committee, and the Creditors Committee, which consent shall not be unreasonably withheld, and any disagreement shall be resolved by the Bankruptcy Court by hearing on shortened notice. Any such changes or modifications to the Plan Documents made without such consent shall be null and void unless otherwise ordered by the Bankruptcy Court.

2. Severability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, then the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide 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 pursuant to its terms.

3. Successors and Assigns

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of that Person.

#### 4. Payment of Statutory Fees

All fees then due and payable pursuant to 28 U.S.C. § 1930, as determined by the Court at the Confirmation Hearing, shall be paid on or before the Effective Date by the Debtors. All such fees that become due and payable thereafter by a Debtor shall be paid by the Reorganized Company. The Reorganized Company shall pay quarterly fees to the U.S. Trustee until the Chapter 11 Cases are closed or converted and/or the entry of final decrees. The Reorganized Company shall file post-confirmation quarterly reports or any pre-confirmation monthly operating reports not filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines which report shall also include a summary of the status of Distributions to be made under the Plan to the extent not provided in financial statements available to the public. The U.S. Trustee shall not be required to file a request for payment of its quarterly fees, which shall be paid by the Reorganized Company.

#### 5. Revocation, Withdrawal or Non-Consummation

The Plan Proponents reserve the right, with the consent of the Creditors' Committee, not to be unreasonably withheld, to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to file subsequent plans. If the Plan Proponents revoke or withdraw the Plan as to any or all of the Debtors, or if Confirmation or Consummation of the Plan as to any or all of the Debtors does not occur, then with respect to such Debtors (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for Consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by such Debtors or any other Person.

#### 6. Dissolution of Official Committees

On the Effective Date, the Creditors' Committee and the Equity Committee shall dissolve as official committees in the cases on the Effective Date of the Plan, except that the Creditors Committee or its designee shall remain in existence, without any compensation or counsel or any other cost to the Debtors or the Reorganized Company, post-Effective Date for the purpose of selecting a replacement Creditors' Committee Director, Independent Director or other director pursuant to Article VII.A of the Plan. The Creditors' Committee shall designate in the Plan Supplement a representative who shall act as Trustee of the Golden Preferred Trust which shall hold the Series A Preferred Stock to be issued by the Reorganized Company. Reasonable, out-of-pocket costs incurred in connection with forming and maintaining the trust and the Trustee's actions as a holder of the Series A Preferred Stock shall be reimbursed by the Reorganized Company, provided that the Series A Preferred Stock may be held by a successor in interest. If the members of an official committee choose to continue to operate on an unofficial basis for any other purpose, the unofficial committee shall pay its own professionals and any and all other expenses, if any.

The Reorganized Company shall select and direct counsel to represent the Reorganized Company in the Chapter 11 Cases before the Bankruptcy Court.

## **VIII. CERTAIN RISK FACTORS TO BE CONSIDERED**

As set forth at the beginning of this Disclosure Statement, there is no guarantee that the assumptions underlying the Debtors' business plan will continue to be accurate or valid at any time after the date hereof. This section of the Disclosure Statement explains that there are certain risk factors that each voting holder of a claim or interest should consider in determining whether to vote to accept or reject the Plan. Accordingly, each holder of a claim or interest who is entitled to vote on the Plan and/or participate in the Rights Offering should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), before deciding whether to vote to accept or to reject the Plan or to participate in the Rights Offering.

### **A. General Considerations**

The Plan sets forth the means for satisfying the claims against and interests in each of Syms and Filene's. Certain claims may not receive payment in full. Nevertheless, the reorganization of the Debtors' businesses and operations under the proposed Plan avoids the potentially adverse impact of the likely increased delays and costs associated with a chapter 7 liquidation of either or both entities.

### **B. Certain Bankruptcy Considerations**

Even if all impaired voting classes vote in favor of the Plan and, with respect to any impaired class deemed to have rejected the Plan, the requirements for "cramdown" are met, the Bankruptcy Court may not confirm the Plan if circumstances warrant. Bankruptcy Code section 1129 requires, among other things, a showing that the value of distributions to dissenting holders of claims and interests may not be less than the value such holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtors believe that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. See Exhibit G annexed hereto for a Liquidation Analysis of the Debtors.

Additionally, certain conditions must be fulfilled prior to confirmation of the Plan and the Effective Date. As of the date of this Disclosure Statement, there can be no assurance that any or all of the conditions in the Plan will be met (or waived) or that the other conditions to consummation, if any, will be satisfied. The Debtors reserve their right to seek to dismiss or convert one or more of the Chapter 11 cases. In addition, if a chapter 7 liquidation were to occur, there is a substantial risk that the value of the Debtors' Estates would be substantially eroded to the detriment of all stakeholders.

### **C. Certain Real Estate – Related Considerations**

#### **1. Future Economic Conditions**

The value of the Syms Owned Real Estate may be affected by volatility and illiquidity in the financial and credit markets and other market or economic challenges experienced by the U.S. economy or real estate industry as a whole. For instance, as a result of the economic downturn and global recession that began in the second half of 2007, demand for retail space such as that owned by Syms declined nationwide due to industry slowdowns, bankruptcies, downsizing, layoffs and cost cutting. Real estate transactions and development opportunities lessened compared to the period prior to the current economic downturn. A return to the strong real estate conditions that prevailed in the first half of 2007 is not expected in the near



term, and demand for retail space such as the Syms Owned Real Estate may continue to be flat or decline further.

Given the current economic conditions, it may be difficult to lease space, collect rent, and attract new tenants for the Syms Owned Real Estate, and it may become more difficult to market and sell any particular parcel of the Syms Owned Real Estate. Further, the cost and availability of credit may be adversely affected by illiquid credit markets and wider credit spreads, which may adversely affect the liquidity and financial condition of Syms' tenants.

The Syms Owned Real Estate is located predominately in the New York City metropolitan area, as well as in markets in the Southeastern section of the United States. A downturn in the economies of any these local markets could reduce demand for retail space even in the event of a general market upswing. Because the Syms portfolio consists primarily of retail space (as compared to a more diversified real estate portfolio), a decrease in demand for retail space in turn could adversely affect the value of the Syms Owned Real Estate.

## 2. Effectiveness and Modification of Business Plan/ Ability to Sell Real Estate Within Forecast Time Period and Application of Transfer Restrictions

Real estate investments are relatively illiquid, and as a result, Syms' ability to sell one or more parcels of the Syms Owned Real Estate may be limited. There can be no assurance that Syms will be able to dispose of any particular parcel of the Syms Owned Real Estate within a stated time period or for a stated price. In addition, significant carrying costs are associated with each parcel of real property, such as insurance, real estate taxes and maintenance costs.

## 3. Ability to Obtain New Tenants and Relet Space

The value of the Syms Owned Real Estate will depend in part on whether the properties are leased up with long-term, credit worthy tenants. Therefore, if current tenants decide not to renew their leases when such leases expire, Syms may have difficulty finding replacement tenants for those leases. Moreover, even if existing tenants do renew their leases or Syms can relet the space, it may not be able to retain favorable economic terms because of, among other factors, the cost of required renovations for any particular property. If Syms is unable to promptly renew the leases or relet the space at similar rates, the value of the affected real property could be adversely affected.

## 4. Tenants May Be Unable to Meet Rent Terms

The value of the Syms Owned Real Estate will depend in part on tenants' ability to remain current on their rent. If a significant number of tenants cannot pay their rent or if Syms is not able to maintain occupancy levels on favorable terms, the sale value of the affected property may decline. In addition, if a tenant does not pay its rent, Syms may incur costs to enforce its rights as landlord. During economic downturns in the economy, there may be an increase in the number of tenants that cannot pay their rent and a corresponding increase in vacancy rates.

## 5. Competitive Nature of Real Estate Business

The Syms Owned Real Estate is located in various locations across the United States, some of which are highly competitive environments. Reorganized Syms will compete with a large number of property owners and developers, some of which may be willing to accept lower returns on their investments.

Principal competitive factors include rents charged, attractiveness of location, the quality of the property and the breadth and quality of services provided. The value of the Syms Owned Real Estate depends upon, among other factors, trends in the national, regional and local economies, financial condition and operating results of current and prospective tenants and customers, availability and cost of capital, construction and renovation costs, taxes, governmental regulation, legislation and population trends.

#### 6. Operating Costs Do Not Decline in Proportion to Revenue

Pending disposition of the Syms Owned Real Estate, Syms will earn a substantial majority of its income from renting its properties. Its operating costs, however, do not fluctuate in relation to changes in rental revenue. As a result, costs will not necessarily decline even if revenues do. Similarly, operating costs could increase while revenues stay flat or decline. In either such event, Syms may be forced to borrow to cover costs, it may incur losses or it may not have cash available for distributions to creditors or shareholders.

#### 7. Reliance on Small Number of Properties for Significant Portion of Revenue

Syms' revenue and cash available for distribution to creditors and dividends to shareholders would be materially adversely affected if any of its properties were materially damaged or destroyed. Additionally, revenue and cash available for distribution could be materially adversely affected if tenants at these properties fail to timely make rental payments due to adverse financial conditions or otherwise default under their leases or file for bankruptcy.

#### 8. Potential Costs to Comply with Environmental Laws

Under various federal, state and local laws, ordinances and regulations, a current or previous owner or operator of real estate may be required to investigate and clean up hazardous or toxic substances released at a property, and may be held liable to a governmental entity or to third parties for property damage or personal injuries and for investigation and clean-up costs incurred by the parties in connection with the contamination. These laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the release of the hazardous or toxic substances. The presence of contamination or the failure to remediate contamination may adversely affect the owner's ability to sell or lease real estate or to borrow using the real estate as collateral. Other federal, state and local laws, ordinances and regulations require abatement or removal of asbestos-containing materials in the event of demolition or certain renovations or remodeling, the cost of which may be substantial for certain redevelopment projects that a potential purchaser would want to undertake with respect to any particular parcel of Syms Owned Real Estate, and also govern emissions of and exposure to asbestos fibers in the air. Federal and state laws also regulate the operation and removal of underground storage tanks. In connection with the ownership and management of certain properties, Reorganized Syms could be held liable for the costs of remedial action with respect to these regulated substances or related claims.

#### 9. Potential Natural or Other Disasters

A number of the parcels comprising the Syms Owned Real Estate are located in areas which could be subject to natural or other disasters, including hurricanes, severe tropical storms, and tornados.

#### 10. Some Potential Property Losses Are Not Insured

Reorganized Syms will carry comprehensive liability, fire, flood, earthquake, extended coverage and rental loss insurance on all properties, which it believes will be adequate and appropriate. There are, however, some types of losses, including lease and other contract claims, which may not be covered by insurance. If an uninsured loss or a loss in excess of insured limits occurs, such loss could have a negative impact on Reorganized Syms and/or the anticipated future revenue from any particular parcel of Syms Owned Real Estate.

#### 11. Risks Related to Terrorism

Future terrorist attacks in the United States or other acts of violence may result in declining economic activity, which could harm the demand for goods and services offered by Syms' tenants and the value of its properties. Such a resulting decrease in retail demand could make it difficult for Syms to renew, re-lease or sell Syms Owned Real Estate. Terrorist activities or violence also could directly affect the value of its properties through damage, destruction or loss, and the availability of insurance for such acts, or of insurance generally, might be lower or cost more, which could increase Syms' operating expenses and adversely affect its financial condition and results of operations. To the extent that Syms' tenants are affected by future attacks, their businesses similarly could be adversely affected, including their ability to continue to meet obligations under their existing leases. These acts might erode business and consumer confidence and spending and might result in increased volatility in national and international financial markets and economies. Any one of these events might decrease demand for real estate, or decrease or delay the occupancy of Syms' new or redeveloped properties.

#### 12. Inflation

Increased inflation could have a pronounced negative impact on Syms' general and administrative expenses, as these costs could increase at a rate higher than Syms' rents. Conversely, deflation could lead to downward pressure on rents and other sources of income.

#### 13. Compliance with Americans with Disabilities Act and Similar Laws

Syms Owned Real Estate may be subject to risks relating to current or future laws, including laws benefiting disabled persons, and other state or local zoning, construction or other regulations. These laws may require significant property modifications in the future, which could result in fines being levied against Syms. The occurrence of any of these events could have an adverse impact on Reorganized Syms' cash flows and ability to make timely distributions.

Under the Americans with Disabilities Act (the "ADA"), all public accommodations must meet federal requirements related to access and use by disabled persons. Additional federal, state and local laws also may require modifications to Syms Owned Real Estate, or restrict Syms' ability to renovate its properties. If one or more of Syms' properties is not in compliance with the ADA or other legislation, then Syms may be required to incur additional costs to bring the property into compliance with the ADA or similar state or local laws. Syms cannot predict the ultimate amount of the cost of compliance with the ADA or other legislation. If Syms incurs substantial costs to comply with the ADA and any other legislation, Reorganized Syms' financial condition, results of operations and cash flow and/or ability to satisfy its debt service obligations and to make distributions could be adversely affected.

#### **D. Cash Available for Distribution on Account of General Unsecured Claims**

While the Debtors currently estimate that there will be cash available for distributions to holders of unsecured claims and Syms shareholders, not all claims have been resolved or fixed in amount, and all costs and expenses of completing the wind-down of the estates cannot be estimated with certainty. As a result, the actual allowed amounts of all such claims could turn out to be substantially higher than the estimates made by the Debtors. Accordingly, there can be no assurance that there will be cash available for distribution to all holders of unsecured claims or Syms shareholders.

#### **E. Potential Governmental Claims Relating to Employee Benefits**

The Debtors' employee benefit plans are subject to the regulatory authority of governmental agencies, including the Pension Benefit Guaranty Corporation (the "PBGC"), the Department of Labor, and the Internal Revenue Service (the "IRS"). As noted above, the Syms Corp. Pension Plan (the "Pension Plan") is likely underfunded. The Pension Plan has not yet been terminated. Syms also participates in certain multi-employer pension plans, and faces potential withdrawal liability for those plans. The PBGC, as the government agency that affords certain guarantees of pension plan liabilities for terminated single and multi-employer pension plans, is anticipated to assert joint and several claims based upon the estimate of the difference between liabilities to the Debtors' plan beneficiaries and the current value of the plan assets. The ultimate allowance of claims that have been filed against the Debtors by the PBGC may impact the distributions to holders of Syms' and Filene's general unsecured claims.

#### **F. Certain Rights Offering – Related Considerations**

1. The Backstop Parties' obligation to purchase shares under the Equity Commitment Agreement is subject to a number of conditions, some of which are beyond Syms' control.

The Backstop Parties' obligation to purchase shares under the Equity Commitment Agreement is subject to a number of conditions. If any of the conditions to the Backstop Parties' obligation to purchase shares under the Equity Commitment Agreement are not satisfied or if the Equity Commitment Agreement is validly terminated, Syms would not be entitled to any proceeds under the Equity Commitment Agreement.

2. If a shareholder does not exercise its subscription rights in full, it will suffer dilution in its percentage ownership of Syms.

If a shareholder does not exercise any rights in the subscription Rights Offering, the number of shares that such shareholder owns will not change. However, because the total number of Syms common shares will increase by 2,182,367 shares, the percentage ownership in Syms held by existing shareholders will decline if some shareholders do not participate in the Rights Offering. The extent to which any individual shareholder's percentage ownership may change will depend on, among other things, the level of participation in the Rights Offering. For example, an individual shareholder that does not purchase shares in the Rights Offering, and thus does not maintain such shareholder's pro rata ownership, will be diluted by 13.1%.

3. The subscription price determined for the Rights Offering is not an indication of the fair value of Syms common stock.

The subscription price is not intended to bear any relationship to the book value of Syms' assets or its past operations, cash flows, losses, financial condition, net worth, or any other established criteria used to value securities. A shareholder should not consider the subscription price to be an indication of the fair value of Syms' common stock offered in the Rights Offering. Syms cannot give any assurance that shares of its common stock will trade at or above the subscription price in any given time period. After the date of this Disclosure Statement, Syms common stock may trade at prices above or below the subscription price.

4. A shareholder may not revoke its subscription exercise and could be committed to buying shares above the prevailing market price.

Once a shareholder exercises its subscription rights, it may not revoke the exercise of such rights. The public trading market price of Syms common stock may decline before the subscription rights expire. If a shareholder exercises its subscription rights and, afterwards, the public trading market price of Syms common stock decreases below the subscription price, such shareholder will have committed to buy shares of Syms common stock at a price above the prevailing market price. Syms cannot assure shareholders that the trading price of its common stock will equal or exceed the subscription price at the time of exercise or at the expiration of the subscription Rights Offering period.

5. If a shareholder does not act promptly and follow the subscription instructions, its exercise of subscription rights may be rejected.

Shareholders who desire to purchase shares in the Rights Offering must act promptly to ensure that all required forms and payments are actually received by the deadlines described in the Rights Offering Procedures. If a shareholder is a beneficial owner of shares, it must act promptly to ensure that its broker, bank, or other nominee acts for it and that all required forms and payments are actually received by the Subscription Agent before the deadlines described in the Rights Offering Procedures. Syms will not be responsible if a shareholder's broker, bank, or nominee fails to ensure that all required forms and payments are actually received by the Subscription Agent before the expiration date. If a shareholder fails to complete and sign the required subscription forms, sends an incorrect payment amount or otherwise fails to follow the subscription procedures that apply to its exercise in the Rights Offering, the Subscription Agent may, depending on the circumstances, reject such shareholder's subscription or accept it only to the extent of the payment received. Neither Syms nor the Subscription Agent undertakes to contact a shareholder concerning an incomplete or incorrect subscription form or payment, nor is Syms under any obligation to correct such forms or payment. Syms has the sole discretion to determine whether a subscription exercise properly follows the subscription procedures.

6. The rights are non-transferable and thus there will be no market for them.

A shareholder may not sell, transfer or assign its rights to anyone else. Syms does not intend to list the rights on any securities exchange or any other trading market. Because the subscription rights are non-transferable, there is no market or other means for a shareholder to directly realize any value associated with the subscription rights.

7. Only a limited market exists for Syms common stock which could lead to price volatility.

The limited trading market for Syms common stock may cause fluctuations in the market value of its common stock to be exaggerated, leading to price volatility in excess of that which would occur in a more active trading market of its common stock.

8. Concentrated ownership of Syms common stock creates a risk of sudden change in Syms' share price.

Investors who purchase Syms common stock may be subject to certain risks due to the concentrated ownership of Syms common stock. The sale by any of its large shareholders of a significant portion of that shareholder's holdings could have a material adverse effect on the market price of Syms common stock. As of the record date, the Majority Shareholder owns approximately 54.4% of all outstanding shares of Syms common stock. If no shareholders other than the Backstop Parties participate in the Rights Offering, the Backstop Parties will own 60.4% of Reorganized Syms, in the aggregate.

9. If the Rights Offering is canceled, neither Syms nor the Subscription Agent will have any obligation to shareholders who have subscribed for shares except to return their subscription payments.

If the Rights Offering is canceled, the subscription rights will be void and will have no value, and neither Syms nor the Subscription Agent will have any obligation with respect to the subscription rights except to return, without interest or penalty, any subscription payments actually received.

10. Following the Rights Offering and the consummation of the transaction contemplated by the Equity Commitment Agreement, the Backstop Parties may be able to exert significant influence on, or may control, Reorganized Syms' affairs and actions, including matters submitted for a shareholder vote.

If no shareholders other than the Backstop Parties participate in the Rights Offering, the Backstop Parties will own 60.4% of Reorganized Syms, in the aggregate. As a result, the Backstop Parties, if they act as a group, will have considerable influence over, or may control, Reorganized Syms' corporate affairs and actions, including matters submitted for a shareholder vote. The interests of the Backstop Parties may be different than other shareholders' interests.

11. Syms common stock is currently traded on the OTC Markets — OTCQB Tier, and an investor's ability to trade Syms common stock may be limited by trading volume.

The trading volume in Syms common stock has been relatively limited. A consistently active trading market for Syms common stock may not continue on the OTC Markets. The average daily trading volume of Syms common stock from November 15, 2011, the date it was first traded on the OTC Markets, through July 11, 2012 was approximately 15,653 shares.

12. If a shareholder makes payment of the subscription price by uncertified personal check, its check may not clear in sufficient time to enable it to purchase shares in the Rights Offering.

Any uncertified personal check used to pay the subscription price in the Rights Offering must clear prior to the expiration of the subscription period, and the clearing process may require five or more business days. As a result, if a shareholder chooses to use an uncertified personal check to pay the subscription price, it may not clear prior to the expiration of the subscription period, in which event such shareholder would not be eligible to exercise its subscription rights. Such a shareholder may eliminate this risk by paying the subscription price by wire transfer of same day funds.

13. Shares issued in the Rights Offering may not be transferred or resold except pursuant to registration or exemption under the Securities Act and applicable state securities laws.

Shares issued in the Rights Offering are restricted securities and may not be transferred or resold except pursuant to registration or exemption under the Securities Act and applicable state securities laws. Depending on the regulatory reporting of Reorganized Syms, these shares may not be permitted to be transferred or resold pursuant to an exemption from registration for at least one year.

## **IX. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion summarizes certain anticipated U.S. federal income tax consequences of the Plan to the Debtors and certain Holders of Claims and Interests that are impaired under the Plan and that are entitled to vote to accept or reject the Plan. This discussion is provided for information purposes only and is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect as of the date hereof, and all of which are subject to change or differing interpretations, possibly with retroactive effect.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to a particular Claimholder or Interestholder in light of its particular facts and circumstances, or to certain types of Claimholders or Interestholders subject to special treatment under the Tax Code (for example, non-U.S. taxpayers, governmental entities and entities exercising governmental authority, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, regulated investment companies, persons holding a Claim or Interest as part of a hedge, straddle, constructive sale, conversion transaction or other integrated transaction, Claimholders or Interestholders that are or hold their Claims or Interests through a partnership or other pass-through entity, persons that have a functional currency other than the U.S. dollar, dealers in securities or foreign currencies, employees of the Debtors, and persons who received their claims pursuant to the exercise of an employee stock option or otherwise as compensation). This discussion assumes that Claimholders or Interestholders hold their Claims or Interests as capital assets for U.S. federal income tax purposes (generally, property held for investment). This discussion does not address any aspects of state, local, non-U.S. taxation or U.S. federal taxation other than income taxation. Furthermore, this discussion does not address the U.S. federal income tax consequences to Claimholders or Interestholders that are unimpaired under the Plan or Claimholders or Interestholders that are not entitled to receive or retain any property under the Plan.

If a partnership (including any entity treated as a partnership for U.S. federal income tax purposes) holds Claims or Interests, the U.S. federal income tax consequences to the partners of such partnership will depend on the activities of the partnership and the status of the partners. A partnership considering

participating in the Plan should consult its tax advisor regarding the consequences to the partnership and its partners of the Plan.

The tax treatment of Claimholders or Interestholders and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan may vary, depending upon, among other things: (i) whether the Claim or Interest (or portion thereof) constitutes a Claim for principal or interest; (ii) the type of consideration received by the Claimholder or Interestholder in exchange for the Claim or Interest and whether the Claimholder or Interestholder receives distributions under the Plan in more than one taxable year; (iii) whether the Claimholder or Interestholder is a citizen or resident of the United States for tax purposes, is otherwise subject to U.S. federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Claimholder or Interestholder acquired the Claim or Interest; (v) the length of time that the Claim or Interest has been held; (vi) whether the Claim or Interest was acquired at a discount; (vii) whether the Claimholder or Interestholder has taken a bad debt deduction with respect to the Claim or Interest (or any portion thereof) in the current or prior years; (viii) whether the Claimholder or Interestholder has previously included accrued but unpaid interest with respect to the Claim or Interest; (ix) the method of tax accounting of the Claimholder or Interestholder; (x) whether the Claim or Interest is an installment obligation for U.S. federal income tax purposes; (xi) whether the Claim or Interest, and any instrument received in exchange therefor, is considered a "security" for U.S. federal income tax purposes; and (xii) whether the "market discount" rules are applicable to the Claimholder or Interestholder. Therefore, each Claimholder or Interestholder should consult its tax advisor for information that may be relevant to its particular situation and circumstances, and the particular tax consequences to such Claimholder or Interestholder of the transactions contemplated by the Plan.

A substantial amount of time may elapse between the date of this Disclosure Statement and the receipt of a final distribution under the Plan. Events occurring after the date of this Disclosure Statement, such as additional tax legislation, court decisions or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. There can be no assurance that the IRS will not take a contrary view with respect to one or more of the issues discussed below. No ruling has been or will be sought from the IRS with respect to any of the tax aspects of the Plan, and no opinion of counsel has been or will be obtained by the Debtors with respect thereto. No representations are being made regarding the particular tax consequences of the confirmation or implementation of the Plan as to any Claimholder or Interestholder. This discussion is not binding upon the IRS or other taxing authorities. No assurance can be given that the IRS or another authority would not assert, or that a court would not sustain, a different position from any discussed herein. Accordingly, each Claimholder or Interestholder is strongly urged to consult its tax advisor regarding the U.S. federal, state, local, and non-U.S. tax consequences of the Plan to such Claimholder or Interestholder.

THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIMHOLDER'S OR INTERESTHOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH CLAIMHOLDER OR INTERESTHOLDER IS STRONGLY URGED TO CONSULT ITS TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND APPLICABLE NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, CLAIMHOLDERS AND INTERESTHOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT



INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY CLAIMHOLDERS OR INTERESTHOLDERS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON CLAIMHOLDERS OR INTERESTHOLDERS UNDER THE TAX CODE; (B) SUCH DISCUSSION IS BEING USED IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) EACH CLAIMHOLDER OR INTERESTHOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

## **A. Consequences to the Debtors**

### **1. Cancellation of Indebtedness Income**

In general, the discharge of a debt obligation in exchange for cash and other property having an aggregate fair market value (or, in the case of a new debt instrument, an "issue price") less than the "adjusted issue price" of the debt gives rise to cancellation of indebtedness ("COD") income to the debtor. COD income also includes any interest that has been previously accrued but remains unpaid at the time the indebtedness is discharged. Under the Tax Code, a U.S. taxpayer generally must include in gross income its COD income realized during the taxable year. However, COD income is not included in the debtor's income if the debt discharge occurs in a Title 11 bankruptcy case. Rather, under the Tax Code, such COD income instead should reduce certain of the debtor's tax attributes, generally in the following order: (a) net operating losses and net operating loss carryforwards (collectively, "NOLs"); (b) general business credit carryforwards; (c) minimum tax credit carryforwards; (d) capital loss carryforwards; (e) the tax basis of the debtor's depreciable and nondepreciable assets (but not below the amount of its liabilities immediately after the discharge); (f) passive activity loss and credit carryforwards; and (g) foreign tax credit carryforwards.

Where the debtor joins in the filing of a consolidated U.S. federal income tax return, applicable Treasury regulations require, in certain circumstances, that certain tax attributes of the consolidated subsidiaries of the debtor and other members of the group be reduced. Under these rules, Syms' own tax attributes will be reduced first by the amount of COD income Syms realizes, followed by the tax attributes (other than tax basis) of other members of the consolidated group. A corporation's own tax attributes are generally tax attributes generated by the corporation itself, such as NOLs and credits, as well as tax basis in its assets, including tax basis in the stock of its subsidiaries. If a corporation reduces its tax basis in the stock of its subsidiaries, each such subsidiary is treated as realizing COD income by the amount of such reduction, and the subsidiary must in turn reduce its tax attributes by that amount.

The reduction in tax attributes occurs only after the tax for the year of the debt discharge has been determined (i.e., such attributes may be available to offset taxable income, if any, that is generated between the date of discharge and the end of the debtor's tax year and/or may be carried back to prior years). Any excess COD income remaining after the required reduction of tax attributes is generally not subject to U.S. federal income tax and generally has no other current U.S. federal income tax impact.

A debtor may elect to alter the preceding order of attribute reduction and, instead, first reduce the tax basis of its depreciable assets (and, possibly, the depreciable assets of its subsidiaries). The Debtors have not yet determined whether to make this election.

The Debtors expect to realize COD income as a result of the discharge of obligations pursuant to the Plan, which, under the attribute reduction rules described above, is generally expected to result in a reduction of certain of the Debtors' attributes, including NOLs.

## 2. Net Operating Losses – Section 382

Section 382 of the Tax Code contains rules that limit the ability of a company that has NOLs and undergoes an "ownership change" (generally an increase in the ownership by certain shareholders of more than 50% in value of its stock over a three year period) to utilize its NOL carryforwards and certain built-in losses recognized in years after the ownership change. The limitation under Section 382 of the Tax Code also may apply to certain losses or deductions that are "built-in" (i.e., economically accrued but unrecognized) as of the date of the ownership change and that are subsequently recognized. These rules generally operate by taking into account "owner shifts" on the part of stockholders that own, directly or indirectly, 5% or more of the stock of the loss corporation and any changes in ownership arising from a new issuance of stock by the loss corporation.

Generally, if an ownership change occurs, the NOLs that the loss corporation can use each year will be limited to the product of the applicable long-term tax-exempt rate (a rate published monthly by the U.S. Treasury department, 3.26% for ownership changes occurring in July 2012) and the fair market value of the company's stock (or, in the case of a consolidated group, the stock of the common parent) immediately before the ownership change, with certain adjustments. Any unused portion of the annual limitation on pre-change losses may be carried forward until expiration (where applicable, as in the case of NOLs), thereby increasing the annual limitation in the subsequent taxable year. However, if the corporation (or the consolidated group) does not continue its historic business or use a significant portion of its assets in a new business for two years after the ownership change, the annual limitation resulting from the ownership change is zero. If the loss corporation (or consolidated group) has a net unrealized built-in gain at the time it incurs an ownership change, any built-in gains recognized during the following five years (up to the amount of the original net unrealized built-in gain) generally will increase the annual limitation in the year recognized, permitting the loss corporation (or consolidated group) to use its pre-change losses against such recognized built-in gains in addition to its regular annual limitation. Although the rule applicable to net unrealized built-in losses generally applies to consolidated groups on a consolidated basis, certain corporations that join the consolidated group within the preceding five years may not be able to be taken into account in the group computation of net unrealized built-in loss. Such corporations would nevertheless still be taken into account in determining whether the consolidated group has a net unrealized built-in gain. In general, a loss corporation's (or consolidated group's) net unrealized built-in gain will be deemed to be zero unless it is greater than the lesser of (i) \$10,000,000 or (ii) 15% of the fair market value of its assets (with certain adjustments) before the ownership change. The Debtors believe that they have more than sufficient net unrealized built-in gains to satisfy these thresholds.

If an ownership change does occur, certain special relief provisions provided in Section 382(l)(5) may be available, in which event the application of Section 382 could be materially different from that described above. In that case, the Debtors' ability to utilize pre-Effective Date NOLs would not be limited as described above. Section 382(l)(5) cannot apply unless existing stockholders and qualified creditors of a debtor (generally trade creditors and those who held the debt for at least 18 months prior to the bankruptcy filing) receive, in exchange for their stock and debt claims, at least 50% of the vote and value of the stock of Reorganized Syms pursuant to a confirmed Chapter 11 bankruptcy case. However, if Reorganized Syms undergoes another ownership change within two years after the Effective Date, Reorganized Syms' Section 382 limitation with respect to that ownership change will be zero. If the Debtors qualify for the special rule under Section 382(l)(5), the use of the Debtors' NOLs will be subject to Section 382(l)(5) unless the Debtors affirmatively elect for the provisions not to apply. The Debtors have not yet determined whether they would seek to have the Section 382(l)(5) rules apply to an ownership change arising from the consummation of the Plan even if Section 382(l)(5) were to apply.

If an ownership change does occur and the Debtors do not qualify for, or elect not to apply, the special rules under Section 382(l)(5) for corporations in bankruptcy described above, a special rule under

Section 382 applicable to corporations under the jurisdiction of a bankruptcy court will apply in calculating Reorganized Syms' annual Section 382 limitation. Under Section 382(l)(6), the limitation will be calculated by reference to the lesser of the value of Reorganized Syms' equity (with certain adjustments) immediately after the ownership change or the value of their assets (determined without regard to liabilities) immediately before the ownership change. Although such calculation may substantially increase the annual Section 382 limitation, the Debtors' use of any NOLs or other tax attributes remaining after implementation of the Plan may still be substantially limited after an ownership change. Furthermore, as discussed above, if Reorganized Syms does not continue its historic business or use a significant portion of its assets in a new business for two years after the ownership change, the annual limitation resulting from the ownership change will be zero, increased by any built-in gains recognized during the following five years (up to the amount of the original net unrealized built-in gain), as discussed above.

The Rights Offering and redemption of the shares of the Majority Shareholder are expected to cause Reorganized Syms to undergo an "ownership change" and accordingly cause the NOLs and built-in losses that they can use to be limited by Section 382 of the Tax Code in the manner described above.

### 3. Alternative Minimum Tax

For purposes of computing the Debtors' regular tax liability, all of their taxable income recognized in a taxable year generally is permitted to be offset by the carryover of NOLs (to the extent permitted under the Tax Code and subject to various limitations, including Section 382, as discussed above). Even if all of the Debtors' regular tax liability for a given year is reduced to zero by virtue of their NOLs, however, the Debtors may still be subject to the alternative minimum tax ("AMT"). The AMT imposes a tax equal to the amount by which 20% of a corporation's alternative minimum taxable income ("AMTI") exceeds the corporation's regular tax liability. AMTI is calculated pursuant to specific rules in the Tax Code which eliminate or limit the availability of certain tax deductions and which include as income certain amounts not generally included in computing regular tax liability.

### 4. Reincorporation of Reorganized Syms

The Debtors expect and intend to take the position that no gain or loss will be recognized by the Debtors as a result of the reincorporation of Reorganized Syms as a Delaware corporation.

## **B. Consequences to Claimholders**

1. Holders of Allowed Syms Convenience Claims (Syms Class 3), Allowed Syms General Unsecured Claims (Syms Class 4), Allowed Syms Union Pension Plan Claims (Syms Class 5), Allowed Filene's Convenience Claims (Filene's Class 3), Allowed Filene's General Unsecured (Short-Term) Claims (Filene's Class 4 A and B), Allowed Filene's General Unsecured (Long-Term) Claims (Filene's Class 5 A and B) and Allowed Filene's Union Pension Plan Claims (Filene's Class 6)

The U.S. federal income tax treatment of Holders that exchange a Syms Class 3 Convenience Claim, Syms Class 4 Syms General Unsecured Claim, Syms Class 5 Syms Union Pension Plan Claim, Filene's Class 3 Convenience Claim, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claim, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claim or a Filene's Class 6 Filene's Union Pension Plan Claim for a right to distributions pursuant to the Plan (an "Impaired Claim Distribution Right") is not entirely clear. Such treatment will depend in part on whether the receipt of the

Impaired Claim Distribution Right is a "closed transaction" or an "open transaction" for U.S. federal income tax purposes. Open transaction treatment will apply only if the fair market value of the Impaired Claim Distribution Right is not reasonably ascertainable on the Effective Date. It is the position of the IRS, as reflected in the applicable Treasury Regulations, that only in "rare and extraordinary cases" is the value of property not reasonably ascertainable such that open transaction treatment is available. The discussion below assumes that closed transaction treatment will apply to a Holder's receipt of the Impaired Claim Distribution Right with respect to its Syms Class 3 Convenience Claim, Syms Class 4 Syms General Unsecured Claim, Syms Class 5 Syms Union Pension Plan Claim, Filene's Class 3 Convenience Claim, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claim, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claim or a Filene's Class 6 Filene's Union Pension Plan Claim pursuant to the Plan. Holders are urged to consult their tax advisors regarding this issue.

The federal income tax consequences of the Plan to a Holder of a Syms Class 3 Convenience Claim, Syms Class 4 Syms General Unsecured Claim, Syms Class 5 Syms Union Pension Plan Claim, Filene's Class 3 Convenience Claim, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claim, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claim or a Filene's Class 6 Filene's Union Pension Plan Claim and its character in the hands of the Holder. Generally, a Holder of a Syms Class 3 Convenience Claim, Syms Class 4 Syms General Unsecured Claim, Syms Class 5 Syms Union Pension Plan Claim, Filene's Class 3 Convenience Claim, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claim, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claim or a Filene's Class 6 Filene's Union Pension Plan Claim will recognize gain or loss equal to the difference between the "amount realized" and such Holder's adjusted tax basis in the Claim. The "amount realized" generally should equal the fair market value of the distributions to be received under the Plan in respect of a Holder's Claim. Amounts received by any Holder, however, will be treated as "amounts realized" only to the extent not treated as interest as described in parts 2 and 3 below. A Holder's tax basis in the Impaired Claim Distribution Right received under the Plan will generally be equal to its fair market value on the Effective Date. The Holder's holding period in the Impaired Claim Distribution Right received should begin on the day following the Effective Date.

Any gain or loss with respect to the receipt of an Impaired Claim Distribution Right in respect of such Claim pursuant to the Plan will generally be treated as capital gain or loss or ordinary income or deduction depending on the status of the Holder, the nature of the Claim in its hands, the purpose and circumstances of its acquisition, the Holder's holding period for the Claim, the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Claim, and whether such Claim was acquired at a market discount. Capital losses may generally offset only capital gains, although individuals may, to a limited extent, offset ordinary income with capital losses.

If a payment is made in the future with respect to the Impaired Claim Distribution Right, each Holder of an Impaired Claim Distribution Right will recognize gain in the amount by which the distributions with respect to the Impaired Claim Distribution Right (other than the portion characterized as interest as described below under "— Imputation of Interest on Plan Distributions") exceed the holder's tax basis in the Impaired Claim Distribution Right. If no payment is made, or if the payment is less than the Holder's tax basis in the right distributions, the Holder will recognize a loss. It is unclear under current law whether such gain or loss would be capital or ordinary in nature. As a result, Holders are urged to consult their tax advisors concerning the U.S. federal income tax consequences of the receipt of distributions pursuant to an Impaired Claim Distribution Right.

Under both the "closed transaction" and the "open transaction" methods, a portion of each deferred payment received more than six months after the Effective Date may be treated as imputed interest, and a Holder may be required to include such interest as taxable ordinary income, under such Holder's method of

accounting, regardless of whether the Holder otherwise realizes an overall loss as a result of the Plan, as described below under "— Imputation of Interest on Plan Distributions."

In addition, Holders may be subject to other special tax rules that affect the character, timing and amount of any income, gain, loss or deduction. Accordingly, Holders of Syms Class 3 Convenience Claim, Syms Class 4 Syms General Unsecured Claim, Syms Class 5 Syms Union Pension Plan Claim, Filene's Class 3 Convenience Claim, Filene's Class 4 A and B Filene's General Unsecured (Short-Term) Claim, Filene's Class 5 A and B Filene's General Unsecured (Long-Term) Claim or a Filene's Class 6 Filene's Union Pension Plan Claim are particularly urged to consult their own tax advisors regarding the tax consequences of the Plan to them.

## 2. Allocation of Plan Distributions between Principal and Interest

To the extent that any Allowed Claim entitled to a distribution under the Plan comprises indebtedness and accrued but unpaid interest thereon, the Debtors intend to take the position that, for income tax purposes, such distribution shall be allocated to the principal amount of the Allowed Claim first and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to the portion of such Allowed Claim representing accrued but unpaid interest. No assurances can be made in this regard. If, contrary to the Debtors' intended position, such a distribution were treated as being allocated first to accrued but unpaid interest, a Holder of such an Allowed Claim would realize ordinary income with respect to the distribution in an amount equal to the accrued but unpaid interest not already taken into income under the Holder's method of accounting, regardless of whether the Holder otherwise realized a loss as a result of the Plan. Conversely, a Holder generally would recognize a deductible loss to the extent that any accrued interest was previously included in its gross income and was not paid in full. To the extent that any portion of the distribution is treated as interest, Holders may be required to provide certain tax information in order to avoid the withholding of taxes.

If a Holder acquired a Claim constituting a debt instrument after its original issuance at a market discount (generally defined as the amount, if any, by which a Holder's tax basis in a debt obligation immediately after its acquisition is exceeded by the adjusted issue price of the debt obligation at such time, subject to a *de minimis* exception), the Holder generally will be required to treat any gain recognized pursuant to the Plan as ordinary income to the extent of the market discount accrued during the Holder's period of ownership, unless the Holder elected to include the market discount in income as it accrued.

## 3. Imputation of Interest on Plan Distributions

Under current law, the deferred receipt of distributions with respect to a Impaired Claim Distribution Right could result in a portion of such distributions being treated as interest income if some or all of the distributions are issued more than six months after the Effective Date. Where there is no express provision for interest, as is the case here, under the current regulations interest will be imputed under Section 483 of the Tax Code. Thus, if distributions become payable more than six months after the Effective Date, a portion of such distributions will constitute ordinary interest income. The amount of such interest income will be calculated by taking the amount of such cash distributions and discounting such amount from the date of issuance back to the Effective Date using the imputed interest rate under the Tax Code. The imputed interest rate will be the "applicable federal rate" provided under Section 1274(d) of the Tax Code as of the Effective Date. Thus, the longer the period of time until the distributions are received, the greater the proportion of such interests that will be treated as ordinary interest income.

### **C. Consequences to Holders of Syms Interests (Syms Class 7)**

Pursuant to the plan, Holders of the Interests in Syms Class 7 will retain such Interests and the rights of such Interests will not be modified. As a result, Holders of Interests in Syms Class 7 should not recognize gain or loss as a result of the Plan. Subject to Section D, below, a Holder's tax basis in the Interests in Syms Class 7 after the Effective Date would equal the Holder's adjusted tax basis in its Interests in Syms Class 7 before the Effective Date. The holding period for Interests in Syms Class 7 will include the Holder's holding period for the Interests in Syms Class 7 prior to the Effective Date.

### **D. Consequences to Holders of Rights Issued Under the Rights Offering**

A Holder that receives rights in the Rights Offering should not recognize taxable income, gain or loss upon the receipt or exercise of such rights. The tax basis in the Holder's existing Syms common stock should be allocated among the common stock and rights based upon the relative fair market values thereof. The tax basis in the Holder's new shares of Syms common stock received upon exercise of the rights should equal the sum of the Holder's tax basis in the rights and the exercise price paid for such new shares. The holding period in such new shares of Syms common stock received as a result of the exercise of the rights should begin on the day following the exercise date. Holders of rights issued in the Rights Offering are strongly urged to consult their own tax advisors for the particular tax consequences to them in connection with the Rights Offering.

### **E. Information Reporting and Backup Withholding**

Certain payments, including the payments with respect to Claims or Interests pursuant to the Plan, may be subject to information reporting to the IRS. Moreover, under certain circumstances, Claimholders or Interestholders may be subject to "backup withholding" at a rate of 28% with respect to payments made pursuant to the Plan, unless such Claimholder or Interestholder either (i) comes within certain exempt categories (which generally include corporations), or (ii) provides a correct U.S. taxpayer identification number and certifies under penalty of perjury that the Claimholder or Interestholder is a U.S. person and otherwise satisfies the backup withholding rules.

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Claimholder's or Interestholder's U.S. federal income tax liability, and a Claimholder or Interestholder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS (generally, a U.S. federal income tax return).

In addition, Treasury regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer claiming a loss in excess of specified thresholds. Each Claimholder or Interestholder is strongly urged to consult its tax advisor regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Claimholders' or Interestholders' tax returns.

### **F. Importance of Obtaining Professional Tax Assistance**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR

INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIMHOLDER'S OR INTERESTHOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIMHOLDERS AND INTERESTHOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

**X. FEASIBILITY OF THE PLAN, BEST INTERESTS OF CREDITORS AND THE CRAMDOWN ALTERNATIVE**

**A. Feasibility of the Plan**

The Bankruptcy Code requires that the Bankruptcy Court determine that the confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors. For purposes of showing that the Plan meets this "feasibility" standard, the Debtors have analyzed their ability to meet their respective obligations under the Plan. To support their belief in the feasibility of the Plan, the Debtors prepared their respective financial projection (the "Financial Projections") set forth as Exhibit E to this Disclosure Statement and a sources and uses statement (the "Sources and Uses Statement") set forth on Exhibit F to this Disclosure Statement. The Financial Projections show that the Debtors should have sufficient cash to make payments required under the Plan and to pay their operating expenses pending disposition of their assets. Accordingly, the Debtors believe the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

THE FINANCIAL PROJECTIONS ARE BY THEIR NATURE FORWARD LOOKING, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE INFORMATION SET FORTH THEREIN. ACCORDINGLY, READERS OF THIS DISCLOSURE STATEMENT ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON THE FINANCIAL PROJECTIONS, AND SHOULD CAREFULLY REVIEW **SECTION VIII "CERTAIN RISK FACTORS TO BE CONSIDERED"** HEREIN.

The Financial Projections were not prepared with a view toward compliance with the published guidelines of the American Institute of Certified Public Accountants or any other regulatory or professional agency or body or generally accepted accounting principles. Furthermore, the Debtors' independent certified public accountants have not compiled or examined the Financial Projections and accordingly, do not express any opinion or any other form of assurance with respect thereto and assume no responsibility for the Financial Projections.

In addition to assumptions footnoted in the Financial Projections themselves, the Financial Projections also assume that (i) the Plan will be confirmed and consummated in accordance with its terms, and (ii) there will be no material contingent or unliquidated litigation or indemnity claims applicable to the Debtors. Although considered reasonable by the Debtors as of the date hereof, unanticipated events and circumstances occurring after the preparation of the Financial Projections may affect actual recoveries under the Plan.

As discussed at the beginning of this Disclosure Statement, the Debtors do not intend to update or otherwise revise the Disclosure Statement, including the Financial Projections, to reflect events or circumstances existing or arising after the date hereof or to reflect the occurrence of unanticipated events, even if any or all of the underlying assumptions do not come to fruition. Notwithstanding the foregoing, however, the Debtors reserve the right to update or revise this Disclosure Statement, including the Financial

Projections, prior to the Confirmation Hearing to reflect the disposition of any significant asset of the Debtors, such as a parcel of the Syms Owned Real Estate.

## **B. Best Interests Test**

As a general matter, under the Bankruptcy Code, confirmation of a plan also requires a finding that, with respect to each impaired class of claims and interests, that each holder of an allowed claim or interest has voted to accept the plan, or that the plan provides that such holder will receive or retain property of a value, as of the plan's effective date, that is not less than the amount that such holder would receive or retain if the debtor were to be liquidated under chapter 7 of the Bankruptcy Code. This requirement is known as the "best interests of creditors" test.

In this case, the best interests test must be satisfied with respect to holders of claims in Syms Classes 4 and 5, holders of interests in Syms Class 7, and holders of claims in Filene's Classes 4 A and B and 5 A and B, because those are the only classes of claims and interests entitled to vote to accept or reject the Plan. In order to calculate the probable distribution to holders of claims and interests in such classes if the Debtors were liquidated under chapter 7, the Bankruptcy Court must first determine the aggregate dollar amount that would be generated from each Debtor's assets if their chapter 11 cases were converted to chapter 7 cases under the Bankruptcy Code. This "liquidation value" would consist primarily of the proceeds from a forced sale of the Debtors' assets by a chapter 7 trustee.

The amount of liquidation value available to Syms and Filene's unsecured creditors would be reduced by, first, the claims of secured creditors to the extent of the value of their collateral, and, second, by the costs and expenses of liquidation, as well as by other administrative expenses and costs of both the chapter 7 cases and the chapter 11 cases. Costs of liquidation under chapter 7 of the Bankruptcy Code would include the fees payable to a chapter 7 trustee, as well as those attorneys and other professionals that such trustee would retain. All claims arising from the operations of the Debtors during the pendency of the chapter 11 cases would also have to be satisfied as chapter 7 expenses. In addition, the liquidation costs would include expenses incurred with respect to selling the Syms Owned Real Estate and the IP Assets belonging to Filene's. The liquidation itself may trigger certain tax and other priority claims that otherwise would be due in the ordinary course of business. Those priority claims would be paid in full from the liquidation proceeds before the balance would be made available to pay general unsecured claims or to make any distribution in respect of equity interests.

After considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to Syms and Filene's unsecured creditors, including (i) the increased costs and expenses of liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy, (ii) the erosion in value of assets in the context of the expeditious liquidation required in a chapter 7 case and the "forced sale" atmosphere that would prevail, and (iii) the increase in administrative costs and other claims that would be satisfied on a priority basis, the Debtors have determined that confirmation of the Plan will provide each holder of an allowed claim with a recovery that is not less than such holder would receive under a liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

The Debtors' analysis of creditor and shareholders recoveries under a chapter 7 liquidation scenario (the "Liquidation Analysis") is attached as Exhibit G. The Liquidation Analysis focuses on Filene's only, as the Debtors believe Syms is solvent and all its creditors are being paid in full. The information set forth in Exhibit G provides a summary of the liquidation values of Filene's assets assuming a chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the assets of Filene's. Underlying the Liquidation Analysis are a number of estimates and assumptions that, although considered reasonable by the Debtors' management, are inherently subject to significant economic and market uncertainties and contingencies. The Liquidation Analysis is also based upon assumptions with regard to liquidation



decisions that are subject to change. Accordingly, the values reflected in the Liquidation Analysis may not be realized if the Debtors were, in fact, to undergo such a chapter 7 liquidation.

The Debtors believe that holders of Class 3 and 4 claims against Syms and Class 3, 4 A and B, 5 A and B and 6 claims against Filene's will receive at least as much under the Plan than in a liquidation. Creditors of Syms would be paid in full in a chapter 7 liquidation. The same is true under the Plan. Accordingly, the best interests test is satisfied with respect to Syms. In the event of a chapter 7 liquidation of Filene's, the Debtors believe that estimated distributions to unsecured creditors would be approximately 2% (such projection does not include any potential recoveries from Filene's claims against the Syms estate, as set forth more fully in Section VI.B.), whereas under the Plan, holders of Filene's Class 3 and 4 A and B claims will receive recoveries of 100 cents on the dollar and holders of Filene's Class 5 A and B claims will receive recoveries of 75 cents on the dollar. Accordingly, the best interests test is satisfied with respect to Filene's as well.

### **C. Confirmation Without Acceptance of All Impaired Classes: The "Cramdown" Alternative**

Bankruptcy Code section 1129(b) provides that a plan can be confirmed even if the plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted it. Under this section of the Bankruptcy Code, the Bankruptcy Court may confirm the Plan at the request of the Debtors if the Plan "does not discriminate unfairly" and is "fair and equitable" as to each impaired class that has not accepted the plan.

In general, a plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated fairly with respect to other classes of equal rank. A plan is fair and equitable as to a class of claims which rejects a plan if the plan provides (a) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) that the holder of any claim or interest that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property at all. With respect to a class of interests, a plan is fair and equitable with respect to such class if the plan provides that each holder of an interest receive or retain on account of such interest property that has a value, as of the effective date of the plan, equal to the greatest of (a) the allowed amount of any fixed liquidation preference to which such holder is entitled, (b) any fixed redemption price to which such holder is entitled, or (c) the value of such interest.

In this case, the Debtors believe that the Plan satisfies these standards and would be confirmed over the rejecting vote of any impaired class or classes.

## **XI. APPLICABILITY OF SECURITIES LAWS**

The Offered Shares are being offered and sold in the Rights Offering pursuant to an exemption from the registration requirements provided by Section 4(2) of the Securities Act, including, where applicable, in reliance upon Rule 506 of Regulation D promulgated thereunder. The Offered Shares are therefore exempt from federal securities registration and, in addition, involve a "covered security" under the National Securities Markets Improvement Act of 1996 ("NSMIA"). State regulation of such an offering (but not notice filings and fees) has been preempted by NSMIA.

Because the Offered Shares have not been registered under the Securities Act or any other applicable securities law, such securities will be "restricted securities" within the meaning of Rule 144 promulgated under the Securities Act. Accordingly, they may not be offered, sold or otherwise transferred

except in compliance with the registration requirements of the Securities Act or any other applicable securities law, or pursuant to an exemption therefrom or in a transaction not subject thereto.

As a purchaser of securities that have not been registered under the Securities Act, each holder of Offered Shares should proceed on the assumption that the economic risk of the investment must be borne for an indefinite period, since the securities may not be resold unless they are subsequently registered under the Securities Act or an exemption from such registration is available. The exemption provided by Rule 144 generally will permit non-affiliates of an issuer that does not make periodic filings with the SEC to make unlimited public resales of the Offered Shares after holding them for one year. By contrast, affiliates of an issuer that does not make periodic filings with the SEC may only make public resales of the Offered Shares pursuant to Rule 144 after holding the Offered Shares for one year and only so long as certain public information requirements, volume limitations, manner of sale requirements and SEC filing requirements are met.

Certificates evidencing the Offered Shares will bear a legend substantially in the form below:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OR OTHER APPLICABLE LAW EXCEPT FOR TRANSFERS THAT ARE EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR OTHER APPLICABLE LAW."

THE DEBTORS RECOMMEND THAT HOLDERS OF CLAIMS CONSULT THEIR OWN COUNSEL CONCERNING WHETHER THEY MAY FREELY TRADE THE OFFERED SHARES.

## **XII. PLAN SUPPLEMENT**

Exhibits to the Plan not attached hereto shall be filed in one or more Plan Supplements. Any Plan Supplement (and amendments thereto) filed by the Debtors shall be deemed an integral part of the Plan and shall be incorporated by reference as if fully set forth herein. The Plan Supplements may be viewed at the office of the clerk of the Court or its designee during normal business hours, by visiting the Court's website at [www.deb.uscourts.gov](http://www.deb.uscourts.gov) (PACER account required) or at the Claims Agent website <http://www.kccllc.net/filenes>, or by written request to the Claims Agent at:

Kurtzman Carson Consultants, LLC  
Re: Syms Corp., et al.  
2335 Alaska Avenue  
El Segundo, CA 90245  
Attn.: Voting Department  
Email: [FilenesInfo@kccllc.com](mailto:FilenesInfo@kccllc.com)  
Telephone: (877) 606-7510

The documents contained in any Plan Supplements shall be subject to approval by the Bankruptcy Court pursuant to the Confirmation Order.

### **XIII. RECOMMENDATION AND CONCLUSION**

For all of the reasons set forth in this Disclosure Statement, the Debtors believe that confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors, the Creditors' Committee and the Equity Committee urge all holders of claims in Syms Classes 3, 4 and 5 and Filene's Classes 3, 4, 5 and 6 and interests in Syms Class 7 to vote to ACCEPT the Plan, and to complete and return their ballots in accordance with the ballot instructions so that they will be RECEIVED by the Voting Agent on or before 5:00 p.m. (prevailing Pacific Time) on **August 23, 2012**.

Dated: Wilmington, Delaware  
July 13, 2012

SYMS CORP.  
(for itself and on behalf of its Subsidiary Debtors)

By: /s/ Gary P. Binkoski  
Name: Gary P. Binkoski  
Title: Chief Financial Officer

/s/ Mark S. Chehi  
Mark S. Chehi (I.D. No. 2855)  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, Delaware 19899-0636  
(302) 651-3000

- and -

Jay M. Goffman  
Mark A. McDermott  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036-6522

Counsel for Debtors and Debtors in Possession

**EXHIBIT A**

~~First~~Second Amended Joint Plan of Reorganization

**EXHIBIT B**

**Disclosure Statement Approval Order**

**EXHIBIT C**

**Schedule of Syms Owned Real Estate**

Address	Total Property	Tenant(s)	Lease Term	Tenant Sq. Ft.
4400 Forest Hill Blvd, West Palm Beach, FL 33406	112,414	20 tenants	Ranging from month-to-month through March 2016	58,114
1340 Swedesford Rd, Berwyn, PA 19312	71,026	Devon Fitness	Through Dec 2016	16,294
4615 NW 77th Avenue, Miami, FL 33166	53,000	None	None	0
21700 Telegraph Road, Southfield, MI 48034	53,784	Lear Corp	Through Feb 2022	53,784
5775 Jimmy Carter Boulevard, Norcross, GA 30071	69,200	None	None	0
10770 Westheimer, Houston, TX 77042	41,824	None	None	0
652 Commerce Drive, Fairfield, CT 06825	42,900	None	None	0
295 Tarrytown Road, Elmsford, NY 10523	143,116	Bed Bath & Beyond	Through February 2018	84,500
1803 Roswell Road, Marietta, GA 30062	77,066	4 tenants	Ranging from month-to-month through June 2014	29,422
280 West North Avenue, Addison, IL 60101	62,523	None	None	0
1865 E. Marlon Pike, Cherry Hill, NJ 08003	150,000	None	None	0
8075 Sheridan Drive, Williamsville, NY 14221	102,347	787 Elk LLC dba Len-Co	Through April 2017	56,130
5300 Powerline, Ft. Lauderdale, FL 33309	55,110	None	None	0
695 Merrick Avenue, Westbury, NY 11590	90,520	None	None	0
330 Route 17 North, Paramus, NJ 07652	77,148	Hillmans Eyewear dba Lenscrafters	Through October 2016	4,100
1 Syms Way, Secaucus, NJ 07094	339,981	None	None	None
28-42 Trinity Place, New York 10007	69,965	None	None	None

**EXHIBIT D**

**Real Estate Disposition Plan**



Property	Square Footage
<u>Near-Term Sale:</u>	
Southfield	53,784
Houston	41,824
Secaucus	339,981
Cherry Hill	150,000
Berwyn	71,026
Williamsville	102,347
Fairfield	42,900
Addison	62,523
Ft. Lauderdale	55,110
West Palm	112,414
Miami	53,000
Norcross	69,200
Marietta	77,086
 <u>Stabilization &amp; Medium-Term Sale:</u>	
Westchester	143,116
Westbury	90,520
Paramus	77,148
 <u>Longer-Term Development:</u>	
Trinity Place	69,965

**EXHIBIT E**

**Financial Projections**

(\$ in millions)	Emerg. 9/30/12	Quarter Ending								Cumulative
		12/31/12	3/31/13	6/30/13	9/30/13	12/31/13	3/31/14	6/30/14	9/30/14	
Beginning Cash	\$6.3	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$6.3	\$5.5	\$6.3
Less: Cash Held in Reserves (Beginning of Period)	-	(1.4)	(19.4)	(12.8)	(11.5)	(8.3)	(6.1)	(5.1)	(4.3)	-
Unrestricted Cash	\$6.3	-	-	-	-	-	-	\$1.2	\$1.2	\$6.3
Rights Offering Proceeds	\$25.0	-	-	-	-	-	-	-	-	\$25.0
Other Chapter 11 Recoveries <sup>(1)</sup>	0.9	-	4.7	-	-	-	-	-	-	5.5
Draw from Operating Reserves	-	1.4	6.6	1.3	3.2	2.2	1.0	0.8	4.3	20.8
Net Proceeds	\$25.9	\$1.4	\$11.3	\$1.3	\$3.2	\$2.2	\$1.0	\$0.8	\$4.3	\$51.4
Net Property Cash Flows	\$4.0	\$23.5	\$23.4	\$19.9	\$16.4	(\$0.4)	\$29.0	-	-	\$115.8
Pension Related Expenses (Single Employer) <sup>(2)</sup>	-	(0.7)	-	-	-	(0.9)	-	-	-	(1.6)
Pension Related Expenses (Local 1102) <sup>(3)</sup>	-	(0.4)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(1.8)
Overhead & Other Expenses	-	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)	(4.9)
Total Cash Flows	\$4.0	\$21.7	\$22.6	\$19.1	\$15.6	(\$2.2)	\$28.2	(\$0.8)	(\$0.8)	\$107.4
Funding to Operating Reserves	(1.4)	(19.4)	-	-	-	-	-	-	-	(20.8)
Cash Available for Distribution	\$34.8	\$3.7	\$33.9	\$20.4	\$18.8	-	\$29.1	\$1.2	\$4.7	\$144.2
Priority & Admin Paydown <sup>(4)</sup>	(\$34.8)	-	-	-	-	-	-	-	-	(\$34.8)
Distributions to Unsecured Creditors <sup>(5)</sup>	-	(2.2)	(24.7)	(20.4)	(18.8)	-	(20.9)	-	-	(87.0)
Distributions to Majority Shareholder	-	(1.5)	(9.2)	-	-	-	(7.1)	-	-	(17.8)
Total Paydowns & Distributions	(\$34.8)	(\$3.7)	(\$33.9)	(\$20.4)	(\$18.8)	-	(\$27.9)	-	-	(\$139.6)
Gross Ending Cash Balance	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$6.3	\$5.5	\$4.7	\$4.7
Less: Cash Held In Reserves (End of Period)	(1.4)	(19.4)	(12.8)	(11.5)	(8.3)	(6.1)	(5.1)	(4.3)	-	-
Ending Excess Cash Balance	-	-	-	-	-	-	\$1.2	\$1.2	\$4.7	\$4.7
<hr/>										
Operating Reserves <sup>(6)</sup>										
Beginning Balance	-	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$5.1	\$4.3	-
Fund	1.4	19.4	-	-	-	-	-	-	-	20.8
Draw	-	(1.4)	(6.6)	(1.3)	(3.2)	(2.2)	(1.0)	(0.8)	(4.3)	(20.8)
Ending Balance	\$1.4	\$19.4	\$12.8	\$11.5	\$8.3	\$6.1	\$5.1	\$4.3	-	-
Outstanding Obligations & Payments Due										
Unsecured Creditors	\$87.0	\$84.8	\$60.1	\$39.7	\$20.9	\$20.9	-	-	-	-
Majority Shareholder	17.8	16.3	7.1	7.1	7.1	7.1	-	-	-	-
Outstanding Pension Obligations <sup>(7)</sup>	12.7	11.6	11.4	11.2	11.0	9.9	9.6	9.4	9.2	9.2
Net Remaining Payments	\$117.5	\$112.7	\$78.5	\$57.9	\$38.9	\$37.8	\$9.6	\$9.4	\$9.2	\$9.2

- (1) For purposes of conservatism, assumes additional Ch.11 recoveries (including the return of the Liberty Mutual Letters of Credit, estimated IP sale proceeds and certain other items) are received 6 months post-emergence.
- (2) Includes minimum catch-up contributions to single employer plan.
- (3) Includes quarterly withdrawal liability payments associated with the Local 1102 multi-employer plan.
- (4) Assumes all professional fees payable in July-September are deferred through the emergence date.
- (5) Excludes ~~\$13.7 million of~~ pension termination claims. Assumes the single employer pension plan (~~\$7.3mm underfunded status~~) is not terminated at emergence, and the ~~\$6.9~~6.4 million Local 1102 multi-employer withdrawal liability is paid over time in ~~44~~ quarterly installments.
- (6) Total reserves (~~\$20.6~~20.8 million) comprised of a \$5.0 million working capital reserve, ~~\$3.6~~3.8 million pension reserve, and a combined TI & carry cost reserve of ~~\$11.0~~12.0 million.
- (7) Represents the remaining balance associated with the ~~\$13.7 million of~~ Syms single employer and multi-employer pension plan obligations ~~at emergence. Total future liability for the single employer pension assumed to be the underfunded status of \$7.3mm.~~

**EXHIBIT F**

**Sources and Uses Statement**

## Syms / Filene's Basement

### Exit Funding Requirement - Sources / Uses

(\$'s in '000s)

SOURCES		(1)	USES		
Rights Offering	\$	25,000 (2)	Professional Fees	\$	18,448 (4)
Sale of Property		4,000 (3)	Disputed Admin Claims - Reserve Amount		4,010
CIT Receivable		862	503(b)(9) Claims		3,023
Cash		6,335	DSW Lease		1,600 (5)
			Disputed Secured Claims - Reserve Amount		1,349
			Tax Claims		1,355 (6)
			Landlord Claims		1,257 (7)
			Severance & Vacation		594 (8)
			Pension Withdrawal - Admin/Priority Portion		554 (9)
			Misc. Expenses		162 (10)
			Reincorporation and Corporate Fees		200 (11)
			Disputed Priority Claims - Reserve Amount		20
			General Contingency		2,225
			Working Capital at New Co.		1,401
Total Sources	\$	36,197	Total Uses	\$	36,197

#### Notes:

- This analysis assumes an effective date of 9/15/12. Should a delay occur, additional funding will be required to support the incremental professional fees and operating expenses.

#### Footnotes:

- [1] Sources included are those recovered prior to the effective date. Other sources that are not listed above are assumed to be recovered after the effective date.
- [2] Provided by backstop financing.
- [3] Assumed to close prior to effective date, net proceeds of approximately \$4M.
- [4] Assumes no professional fees are paid from July through September and all outstanding fees are paid at exit.
- [5] Allowed administrative claim as part of the 79th Street lease assignment to DSW.
- [6] Primarily Massachusetts unemployment tax claim.
- [7] Various post petition unpaid rent.
- [8] Administrative and priority portion of severance & vacation.
- [9] Administrative and priority portion of pension withdrawal.
- [10] Primarily utility claims.
- [11] Assumes reincorporation in Delaware

**EXHIBIT G**

**Liquidation Analysis**

## **Overview**

This document contains the Best Interests Analysis (the "Liquidation Analysis") of Filene's Basement, LLC ("Filene's Basement"). The Debtors, with the assistance of their financial advisors, have prepared this Liquidation Analysis for the purpose of evaluating whether the Plan meets the best interests test under section 1129(a)(7) of the Bankruptcy Code. The Liquidation Analysis focuses on Filene's Basement only, as the Debtors believe Syms is solvent and all its creditors are being paid in full.

The Debtors have prepared this Liquidation Analysis based on a hypothetical liquidation of Filene's Basement under Chapter 7 of the Bankruptcy Code. It is assumed, among other things, that the hypothetical liquidation under Chapter 7 would commence under the direction of a Court-appointed trustee and would continue for a period of time, during which time all of Filene's Basement's remaining assets would be sold and the cash proceeds, net of liquidation related costs, would then be distributed to creditors in accordance with Bankruptcy Code.

The determination of the costs of, and proceeds from, the hypothetical liquidation of the Filene's Basement assets in a Chapter 7 case is an uncertain process involving the extensive use of estimates and assumptions that, although considered reasonable by Filene's Basement, are inherently subject to significant business, economic, and competitive uncertainties and contingencies beyond its control of its management and legal advisors. Inevitably, some assumptions in the Liquidation Analysis might not materialize in an actual Chapter 7 liquidation, and unanticipated events and circumstances could affect the ultimate results in an actual Chapter 7 liquidation.

THE LIQUIDATION ANALYSIS IS NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE FILENE'S BASEMENT ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED IN AN ACTUAL LIQUIDATION.

THE UNDERLYING FINANCIAL INFORMATION IN THE LIQUIDATION ANALYSIS WAS NOT COMPILED OR EXAMINED BY ANY INDEPENDENT ACCOUNTANTS. NEITHER THE DEBTOR NOR THEIR ADVISORS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD OR WOULD NOT APPROXIMATE THE ESTIMATES AND ASSUMPTIONS REPRESENTED IN THE LIQUIDATION ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY.

This Liquidation Analysis assumes that a liquidation of Filene's Basement would occur over approximately two (2) months beginning on July 1, 2012 and ending on August 31, 2012. It is assumed that the Chapter 7 trustee would arrange for the Debtor to focus their efforts on selling substantially all assets during this time.

The Liquidation Analysis should be read in conjunction with the following notes and assumptions:

**Summary Notes to Liquidation Analysis:**

1. *Dependence on assumptions.* The Liquidation Analysis depends on estimates and assumptions. The Liquidation Analysis is based on a number of estimates and assumptions that, although developed and considered reasonable by the management and the advisors of the Debtors, are inherently subject to significant economic, business, regulatory and competitive uncertainties and contingencies beyond the control of the Debtors or their management. The Liquidation Analysis is also based on the Debtors' best judgment of how numerous decisions in the liquidation process would be resolved. Accordingly, there can be no assurance that the values reflected in this Liquidation Analysis would be realized if Filene's Basement were, in fact, to undergo such a liquidation. Actual results could vary materially and adversely from those contained herein.
2. *Dependence on unaudited financial statements.* This Liquidation Analysis contains numerous estimates. It is based upon the Filene's Basement claims register as of the end of June 2012.
3. *Preference or fraudulent transfers.* No recovery or related litigation costs attributed to any potential avoidance actions under the Bankruptcy Code or otherwise, including potential preference or fraudulent transfer actions, are assumed within this analysis due to, among other issues, the inherent uncertainty about litigation results, the difficulty of assessing defenses to such actions, the inability to predict costs and fees associated with litigation and the risks of collection. These matters are discussed in greater detail in connection with the plan settlement described in the Disclosure Statement.
4. *Claims Estimates.* Claims are estimated based upon: (1) actual claims filed, (2) known book liabilities as of June 2012, and (3) estimated liabilities as of the date of this liquidation analysis. Additional claims may arise that were not estimated as of the date of this liquidation analysis.



## Summary of Liquidation Analysis:

# Liquidation Analysis

(\$'s in 000's)

	Debtor Estimates / Claims Amounts	Recovery Percentage	Total
<b>Sources</b>			
Cash as of August 31, 2012	\$6,846		\$6,846
Trademark/Customer List	1,000		1,000
Other Assets	954		954
<b>Total Assets Available for Distribution</b>	<b>\$8,800</b>		<b>\$8,800</b>
<b>Super Priority Claims</b>			
Intercompany Payable	\$2,155	100%	\$2,155
<b>Subtotal - Super Priority Claims</b>	<b>\$2,155</b>	<b>100%</b>	<b>\$2,155</b>
<b>Funds available to Admin Claims, Priority Claims, Unsecured Claims and Equity Holders</b>			<b>\$10,955</b>
<b>Administrative Expenses</b>			
Trustee Fees	(\$59)	100%	(\$59)
Professional Fees	(4,710)	100%	(4,710)
Severance & Vacation	(61)	100%	(61)
Landlord Claim	(1,070)	100%	(1,070)
Misc. Expenses	(18)	100%	(18)
503(b)(9) Claims	(1,368)	100%	(1,368)
Contingency	(250)	100%	(250)
<b>Subtotal - Administrative Claims</b>	<b>(\$7,536)</b>	<b>100%</b>	<b>(\$7,536)</b>
<b>Priority</b>			
Tax Claims	(\$1,355)	100%	(\$1,355)
Severance & Vacation	(103)	100%	(103)
Misc. Expenses	(1)	100%	(1)
Customer Liability	(207)	100%	(207)
Contingency	(250)	100%	(250)
<b>Subtotal - Priority Claims</b>	<b>(\$1,916)</b>	<b>100%</b>	<b>(\$1,916)</b>
<b>Funds available to Unsecured Creditors &amp; Equity Holders</b>			<b>\$1,504</b>
<b>Unsecured Claims</b>			
Landlord Claims - includes 502 (b)(6) non-guarantee portion	(\$36,770)	2%	(\$659)
Accounts Payable - non guarantee portion	(2,905)	2%	(52)
Severance & Vacation Claims (Pre-Petition)	(2,415)	2%	(43)
Misc. Expense	(629)	2%	(11)
Subrogation claims	(18,494)	2%	(332)
Intercompany Payable (Pre - Petition)	(22,633)	2%	(406)
Contingency	(4,420)	0%	-
<b>Subtotal - Unsecured Claims</b>	<b>(\$88,267)</b>		<b>(\$1,504)</b>
<b>Equity Distribution</b>			<b>\$0</b>

## **Detailed Assumptions**

### **Asset Recovery Estimates**

Asset recovery estimates presented in this liquidation analysis are based on the Filene's Basement balance sheet as of the end August 31, 2012, and are as follows:

- (a) Cash: The Liquidation Analysis assumes that all cash balances in Filene's Basement's possession as of August 31, 2012 totaling approximately \$6.8 million are 100% recoverable.
- (b) Trademarks/Customer List: The Debtors estimate that trademarks and customer lists have a value of approximately \$1 million.
- (c) Other Assets: Other assets include (a) return of Liberty Mutual letter of credit (\$0.1 million), (b) letter of credit receivables (\$0.5 million), and (c) return of utility deposits (\$0.4 million).
- (d) Superpriority Claims: Superpriority claims are claims by Filene's Basement against Syms that arose on account of goods, services or other value provided after the Petition Date. Filene's Basement holds such a claim against Syms in the amount of approximately \$2.155 million.

### **Liquidation Expenses & Claims**

- (e) Post Petition Administrative Expenses: The wind-down assumes that a liquidation of Filene's Basement would occur over approximately two (2) months.

Liquidation expenses include: (1) trustee fees equal to \$59,000 or 3% of sources excluding cash, (2) professional fee expenses of \$4.7 million, (3) severance and vacation in the amount of \$61,000 (4) landlord claims in the amount of \$1.1 million, (5) Misc Expenses in the amount of \$18,000, and (6) 503(b)(9) claims in the amount of \$1.4 million. Additionally, the Debtors created a disputed claims reserve in the amount of \$250,000.

- (f) Priority claims: Includes (1) tax claims in the amount of \$1.35 million, (2) severance and vacation in the amount of \$103,000 (3) misc. expenses in the amount of \$1,000 and (4) customer liabilities in the amount of \$207,000. Additionally, the Debtors created a disputed claims reserve in the amount of \$250,000.
- (g) Unsecured Claims: Includes 502(b)(6) claims (\$36.77 million), account payable claims (\$2.95 million), severance and vacation (\$2.4 million), misc expenses (\$629,000), subrogation claims (\$18.5 million), and intercompany claims (\$22.6 million). Additionally, the Debtors created a disputed claims reserve in the amount of \$4.4 million.

**EXHIBIT H**

**Equity Commitment Agreement (Partially Redacted)**

**EXHIBIT I**

**Rights Offering Procedures**

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