

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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	:	Chapter 11
In re:	:	
	:	Case No. 11-13511 (KJC)
FILENE'S BASEMENT, LLC, <u>et al.</u> , <sup>1</sup>	:	
	:	Jointly Administered
Debtors.	:	
	:	<b>Bid Deadline: August 13, 2012 at 12:00 p.m. (ET)</b>
	:	<b>Auction Date: August 14, 2012 at 12:00 p.m. (ET)</b>
	:	
	:	<b>Sale Objection Deadline: August 15, 2012 at 4:00 p.m. (ET)</b>
	:	<b>Sale Hearing Date: August 16, 2012 at 1:00 p.m. (ET)</b>

**NOTICE OF PUBLIC AUCTION AND SALE HEARING REGARDING  
CERTAIN REAL PROPERTY LOCATED IN MIAMI, FLORIDA**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), filed on July 17, 2012 a motion [Docket No. 1676] (the "Motion")<sup>2</sup> seeking an order of the Bankruptcy Court (I)(A) Approving Bidding Procedures for Sale of Certain Real Property in Miami, Florida (the "Property"), (B) Authorizing Seller to Enter Into Agreement in Connection Therewith Subject to Higher and Better Proposals, (C) Approving Break-Up Fee in Connection Therewith, (D) Approving Related Broker Fees of Cushman & Wakefield, Inc. and (E) Setting Auction and Sale Hearing Dates; (II) Approving Sale of Property Free and Clear of Liens; and (III) Granting Related Relief. The Property is a parcel of real property located at 4601 NW 77<sup>th</sup> Avenue, Miami, Florida (also known as 4615 NW 77<sup>th</sup> Avenue, Miami, Florida) consisting of approximately 3.64 acres and 53,000 sq. ft. of building space.

**PLEASE TAKE FURTHER NOTICE** that Nestor Plana and/or Assigns has been approved by the Bankruptcy Court as the stalking horse bidder (the "Stalking Horse Bidder") to purchase the Property free and clear of all liens, claims, encumbrances and other interests, subject to the submission of higher or better offers in an auction process (the "Auction").

**PLEASE TAKE FURTHER NOTICE** that, on July 31, 2012, the Bankruptcy Court entered an order [Docket No. 1739] (the "Bidding Procedures Order") approving the bidding procedures (the "Bidding Procedures"), which set the key dates and times related to the Sale of the Property. The Bidding Procedures Order is attached hereto as Exhibit 1. The Bidding Procedures are appended as Exhibit A to the Bidding

<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.

<sup>2</sup> All capitalized terms used, but not defined herein, shall have the meaning ascribed to such terms in the Motion.



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Procedures Order. The Purchase and Sale Agreement ("PSA") between the Seller and the Stalking Horse Bidder is appended as Exhibit B to the Bidding Procedures Order.<sup>3</sup> **All interested bidders should carefully review the Bidding Procedures.** The summary of the Bidding Procedures contained in this Notice is provided for convenience only. To the extent that there are any inconsistencies between the Bidding Procedures and the summary description in this Notice, the terms of the Bidding Procedures shall control.

**PLEASE TAKE FURTHER NOTICE** that the deadline by which all "Qualified Bids" (as defined in the Bidding Procedures) must be **actually received** by the parties specified in the Bidding Procedures is **August 13, 2012 at 12:00 p.m. prevailing Eastern Time.**

**PLEASE TAKE FURTHER NOTICE** that, if the Debtors receive one or more qualified competing bids that satisfy the requirements and time frame specified by the Bidding Procedures, then the Debtors will conduct the Auction to determine the highest or otherwise best bid for the Property on **August 14, 2012 at 12:00 p.m. prevailing Eastern Time** at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, One Rodney Square, Wilmington, Delaware, 19801, or at any such other location as the Debtors may hereafter designate.

**PLEASE TAKE FURTHER NOTICE** that within one (1) business day after the closing of the Auction, the Debtors shall file with the Bankruptcy Court and serve upon all Qualified Bidders and entities that have requested notice in the Bankruptcy Cases a notice identifying the Successful Bidder, which notice shall also be posted on the website of the Debtors' noticing and claims agent at <http://www.kccllc.net/filenes>. The proposed form of Sale Approval Order with respect to the Sale of the Property is attached hereto as Exhibit 2.

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek approval of the Sale before the Honorable Judge Kevin J. Carey, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at 824 North Market Street, 5<sup>th</sup> Floor, Courtroom #5, Wilmington, Delaware 19801, on **August 16, 2012 at 1:00 p.m. prevailing Eastern Time.**

**PLEASE TAKE FURTHER NOTICE** that objections to the Motion and Sale, if any, **must**: (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with the Court and served so **actually received** no later than **August 15, 2012 at 4:00 p.m. prevailing Eastern Time** by the following parties: (a) counsel for the Debtors, (i) Skadden, Arps, Slate, Meagher & Flom, LLP One Rodney Square, Wilmington, Delaware 19899, Attn: Mark Chehi, Esq., Email: [mark.chehi@skadden.com](mailto:mark.chehi@skadden.com), Fax: (302) 651-3001, (ii) Skadden, Arps, Slate, Meagher & Flom, LLP Four Times Square, New York, New York 10036, Attn: Mark

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<sup>3</sup> A native or editable version of the PSA will be provided upon request made to the undersigned counsel, Jason M. Liberi, at (302) 651-3023 or [Jason.Liberi@skadden.com](mailto:Jason.Liberi@skadden.com).

McDermott, Esq. Email: mark.mcdermott@skadden.com, Fax: (917) 777-2290; (b) the Debtors' Real Estate Broker, Cushman and Wakefield, Inc., 1290 Avenue of the Americas, New York, NY 10104, Attn: David Rosenbloom, Email: david.rosenbloom@cushwake.com, Fax (212) 805-1548; (c) the advisors to the official committees appointed in these cases (together, the "Committees"), (i) Hahn & Hessen, LLP, 488 Madison Avenue, New York, New York 10022, Attn: Mark T. Power, Esq. Email: mpower@hahnhausen.com, Fax: (212) 478-7400, (ii) Hahn & Hessen, LLP, 488 Madison Avenue, New York, New York 10022, Attn: Janine M. Cerbone, Esq. Email: jcerbone@hahnhausen.com, Fax: (212) 478-7400 (iii) Munger, Tolles & Olson, 355 South Grand Avenue, 35th Floor, Los Angeles, CA 90071 Attn: Thomas B. Walper, Esq. Email: Thomas.walper@mto.com, Fax: (213) 683-5193 and (iv) Morris, Nichols, Arshat & Tunnel LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney, Esq. Email: rdehney@mnat.com, Fax: (302) 425-4673; (d) the Office of the United States Trustee, 844 King Street, Wilmington, Delaware 19801 Attn: David Klauder, Esq. Email: david.klauder@usdoj.gov, Fax: (302) 573-6497; and (e) counsel to the Stalking Horse Bidder, (i) GrayRobinson, P.A., 1221 Brickell Avenue, Suite 1600, Miami, Florida 33131 Attn: Steven J. Solomon, Esq., Email: Steven.Solomon@gray-robinson.com, Fax: (305) 416-6887, and (ii) Abadin Cook, 9155 South Dadeland Boulevard, Dadeland Centre, Suite 1208, Miami, Florida 33156 Attn: Mercedes Sellek, Esq., Email: msellek@abadincook.com, Fax: (305) 397-1521.

**CONSEQUENCES OF FAILING TO TIMELY FILE  
AND SERVE AN OBJECTION**

**ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE SALE ON OR BEFORE THE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.**

Dated: Wilmington, Delaware  
August 1, 2012

*/s/ Jason M. Liberi*

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Mark S. Chehi (I.D. No. 2855)  
Jason M. Liberi (I.D. No. 4425)  
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  
(212) 735-3000

Counsel for Debtors and Debtors in Possession

## **Exhibit 1 to Notice**

(Bidding Procedures Order)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11  
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)  
Debtors.<sup>1</sup> : Jointly Administered  
: *Δ I. 1676, 1678*  
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**ORDER UNDER BANKRUPTCY CODE SECTIONS 105, 328, 363 AND 503 AND BANKRUPTCY RULES 2002, 6004 AND 9006 (I) APPROVING BIDDING PROCEDURES FOR SALE OF CERTAIN REAL PROPERTY LOCATED IN MIAMI, FLORIDA, (II) AUTHORIZING SELLER TO ENTER INTO AGREEMENT IN CONNECTION THEREWITH, (III) APPROVING BREAK-UP FEE IN CONNECTION THEREWITH, (IV) APPROVING RELATED BROKER FEES OF CUSHMAN & WAKEFIELD, INC, AND (IV) SETTING AUCTION AND SALE HEARING DATES**

Upon the motion (the "Motion")<sup>2</sup> of Syms Corp. ("Syms" or the "Seller") and its associated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") for entry of orders under Bankruptcy Code sections 105, 328, 363 and 503, Bankruptcy Rules 2002, 6004 and 9006, and Local Rules 2002-1, 6004-1 and 9006-1 (I)(A) approving bidding procedures for the sale of certain real property of the Seller located at 4601 NW 77<sup>th</sup> Avenue in Miami, Florida (the "Property"), (B) authorizing the Seller to enter into the Purchase and Sale Agreement (as amended, the "Agreement"), subject to higher and better proposals, (C) approving the break-up fee in connection therewith, (D) approving the related broker fees of Cushman & Wakefield, Inc. and (E) setting the auction and sale hearing dates; (II) approving the sale of Property free and clear of liens; and (III) granting related relief; and the Court having re-

<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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

viewed the Motion; and the Court having determined that the relief requested in the Motion with respect to the Bidding Procedures is in the best interests of the Seller, its estate, its creditors, its stakeholders and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:<sup>2</sup>**

A. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b).

B. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion are Bankruptcy Code sections 105, 328, 363 and 503 and Bankruptcy Rules 2002, 6004 and 9006.

D. Good and sufficient notice of the relief sought in the Motion has been given and no further notice is required in connection with this Order. A reasonable opportunity to object or be heard regarding the relief requested in the Motion (including, without limitation, with respect to the proposed Bidding Procedures, the Break-Up Fee and the C&W Broker Fee) has been afforded to (i) counsel to the Committees, (ii) any party who, in the past six (6) months, expressed in writing to the Seller or C&W an interest in acquiring the Property and who the Seller and its representatives reasonably and in good faith determine has the financial wherewithal to effectuate a transaction with respect to the Property (such parties, the "Interested Buy-

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<sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

ers"), (iii) any party with a known lien of record on, or other asserted interest in, the Property, (iv) the U.S. Trustee and (v) all other parties who have filed a notice of appearance and request for service of documents in these cases.

E. The Seller's proposed manner of notice of the Bidding Procedures, the Auction and the Sale Hearing, as set forth in the Motion, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

F. The Bidding Procedures are fair, reasonable, and appropriate and represent the best method for maximizing the realizable value of the Property.

G. The Seller has demonstrated a compelling and sound business justification for authorizing the Sale of the Property, entry into the Agreement as a stalking horse agreement and the payment of the Break-Up Fee to the Purchaser under the circumstances, timing, and procedures set forth herein and in the Motion. The Break-Up Fee is fair and reasonable and provides a benefit to the Seller's estate, creditors and stakeholders.

H. Entry into the Agreement is in the best interest of the Seller and the Seller's estate, creditors and stakeholders. The Agreement will enable the Seller to secure an adequate floor for the Auction and will provide a clear benefit to the Seller's estates.

I. The Seller's payment of the Break-Up Fee under the conditions set forth in the Motion and the Agreement is (a) an actual and necessary cost of preserving the Seller's estate, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Seller's estate and creditors and all parties in interest herein, (c) reasonable and appropriate and (d) necessary to ensure that the Purchaser will continue to pursue the proposed Agreement to undertake the Sale of the Property.



J. The C&W Broker Fee comports with the C&W Retention Order, is fair and reasonable under the circumstances, and provides a benefit to the Seller's estate, creditors and stakeholders.

K. The entry of this Order is in the best interests of the Seller and its estate, creditors, and stakeholders and all other parties in interest herein; and it is therefore

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Bidding Procedures, as set forth on Exhibit A attached hereto and incorporated herein by reference as if fully set forth herein, are hereby approved and shall govern all proceedings relating to the Agreement, any subsequent bids for the Property and the Auction, if applicable.

2. The Seller may: (a) determine, in its business judgment, which Qualified Bid is the highest or otherwise best offer and (b) reject at any time, before entry of an order of the Court approving a Qualified Bid, any bid (other than the Purchaser's bid) which, in the Seller's sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or applicable law or (iii) contrary to the best interests of the Seller, its estate or its stakeholders. The Seller is authorized (x) to terminate the Bidding Process or the Auction at any time if it determines, in its business judgment, that the Bidding Process will not maximize the value of the Property to be realized by the Seller's estate and (y) to seek Court approval of the Agreement with Purchaser.

3. Subject to the Bidding Procedures and approval of the Sale at the Sale Hearing, the Seller is authorized to enter into the Agreement attached hereto as Exhibit B. The Agreement will serve as the stalking horse agreement.

4. The Seller is authorized to pay to the Purchaser the Break-Up Fee, in an amount not to exceed \$135,000 in the aggregate, if the Purchaser is not permitted to purchase the Property because the Purchaser is not the winning bidder pursuant to the sale process outlined in the Motion. The Break-Up Fee, if paid, shall be paid to the Purchaser at closing from the proceeds of any subsequent sale agreement approved by the Court.

5. The Seller is authorized to pay to Cushman & Wakefield, Inc. the C&W Broker Fee in accordance with the engagement letter between Cushman & Wakefield, Inc. and Seller, in an amount not to exceed 2.5% of the gross sale proceeds with respect to the Sale of the Property (whether sold to the Purchaser or a different Successful Bidder), upon the closing of a Sale of the Property as contemplated by the Motion.

6. A hearing (the "Sale Hearing") at which the Seller may seek approval of the Successful Bid shall be held in this Court on **August 16, 2012 at 1:00 p.m. (Eastern)** at which time the Court shall consider the sale aspect of the Motion. The Sale Hearing, or any portion thereof, may be adjourned by the Debtors from time to time without further notice to creditors or parties in interest other than an announcement of the adjournment in open court or by written notice filed and served upon the parties who received notice of the Motion.

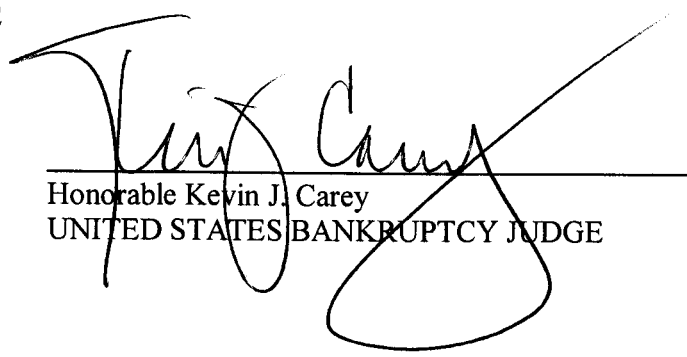
7. Objections to the Sale, if any, shall be filed and served no later than **4:00 p.m. (Eastern) on August 15, 2012** (the "Objection Deadline").

8. The failure of any objecting person or entity to timely file its objection by the Objection Deadline shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, the Sale, the Auction, or the Seller's consummation and performance of the Agreement or a purchase agreement with the Successful Bidder (including, in either case, the transfer of the Property free and clear of liens), if authorized by the Court.

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

Dated: Wilmington, Delaware

July 31, 2012

  
\_\_\_\_\_  
Honorable Kevin J. Carey  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**(Bidding Procedures)**

**SYMS CORP.**  
**BIDDING PROCEDURES REGARDING**  
**4601 NW 77<sup>th</sup> AVENUE, MIAMI, FLORIDA**

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the proposed sale (the "Sale") of the interest held by Syms Corp. (the "Seller", and together with its affiliated chapter 11 debtors and debtors in possession, the "Debtors") in the real property, consisting of approximately 3.64 acres and 53,000 sq. ft. of building space, located at 4601 NW 77<sup>th</sup> Avenue, Miami, Florida (the "Property"). On July 16, 2012, subject to Bankruptcy Court approval, the Seller executed that certain Purchase And Sale Agreement (together with any amendments thereto, the "Agreement") with Independent Living Systems, LLC, a Florida limited liability, and/or assigns (the "Purchaser"). The transaction contemplated by the Agreement is subject to competitive bidding as set forth herein and approval by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") pursuant to section 363 of title 11 of the United States Code (the "Bankruptcy Code"), and certain other closing conditions.

On July 17, 2012, the Seller filed its Motion For Orders Under Bankruptcy Code Sections 105, 328, 363 And 503, Bankruptcy Rules 2002, 6004 And 9006, And Local Rules 2002-1, 6004-1 And 9006-1 (I)(A) Approving Bidding Procedures For Sale Of Certain Real Property In Miami, Florida, (B) Authorizing Seller To Enter Into Agreement In Connection Therewith Subject To Higher And Better Proposals, (C) Approving Break-Up Fee In Connection Therewith, (D) Approving Related Broker Fees Of Cushman & Wakefield, Inc. And (E) Setting Auction And Sale Hearing Dates; (II) Approving Sale Of Property Free And Clear Of Liens; And (III) Granting Related Relief (the "Sale Motion").

On July 31, 2012, the Bankruptcy Court entered the Order Under Bankruptcy Code Sections 105, 328, 363 And 503 And Bankruptcy Rules 2002, 6004 And 9006 (I) Approving Bidding Procedures For Sale Of Certain Real Property Located In Miami, Florida, (II) Authorizing Seller To Enter Into Agreement In Connection Therewith, (III) Approving Break-Up Fee In Connection Therewith, (IV) Approving Related Broker Fees Of Cushman & Wakefield, Inc. And (IV) Setting Auction And Sale Hearing Dates (the "Bidding Procedures Order").<sup>1</sup>

The Bidding Procedures Order set (i) **August 16, 2012 at 1:00 p.m. (Eastern)** or (ii) such later date as determined by the Bankruptcy Court as the date when the Bankruptcy Court will conduct a hearing (the "Sale Hearing") to authorize the Seller to sell its interest in the Property.

The Bidding Procedures set forth herein describe, among other things, the asset available for sale, the manner in which bids become Qualified Bids (as defined herein), the conduct of any subsequent Auction (as defined herein), the ultimate selection of the Successful Bidder (as defined herein), and the Bankruptcy Court's approval thereof. In the event that the

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<sup>1</sup> Unless otherwise defined herein, each capitalized term shall have the meaning assigned to it in the Sale Motion or the Bidding Procedures Order.

Seller and any party disagree as to the interpretation or application of these Bidding Procedures, the Bankruptcy Court will have jurisdiction to hear and resolve such dispute.

The Property is being sold with the assistance of the Debtors' court-approved real estate disposition consultant, Cushman & Wakefield, Inc. ("C&W").

### **ASSETS TO BE SOLD**

The asset proposed to be sold is the Seller's interest in the Property.

### **"AS IS, WHERE IS"**

Any sale or other disposition of the Property will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description (except as expressly set forth in the Agreement) by the Seller, its agents, or its estate.

### **BREAK-UP FEE**

Pursuant to the Bidding Procedures Order, the Agreement has been deemed a stalking horse agreement and the Purchaser has been deemed a stalking horse bidder. The Agreement provides for a break-up fee of \$135,000 to be paid to the Purchaser in the event that the Purchaser is not the buyer of the Property (the "Break-Up Fee"). The amount of the Break-Up Fee may be considered by the Seller, in consultation with the Committees, in determining the highest and best bid and the net value that the Seller and its estate will realize at the Auction.

### **DUE DILIGENCE**

The Seller, with the assistance of C&W, will afford to each interested party that, in the Seller's discretion and in consultation with the Committees, demonstrates the financial capability to consummate the Sale and which the Seller determine is reasonably likely to make a bona fide offer (a "Qualified Bidder"), due diligence access to the Property prior to the Bid Deadline. The Seller and C&W shall coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline.

Due diligence access may include access to data rooms, on-site inspections, and such other matters as a Qualified Bidder may request and as to which the Seller, in its sole discretion, may agree. The Seller may, in its discretion, coordinate diligence efforts such that multiple Qualified Bidders have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections. Neither the Seller nor any of its affiliates (or any of its respective representatives) will be obligated to furnish any information relating to the Property to any person other than to Qualified Bidders.

A Qualified Bid (as defined below) may not be contingent upon, or otherwise provide for, the completion of any due diligence or property inspection or the expiration of any due diligence or property inspection period.

Each Qualified Bidder submitting a Qualified Bid (as defined below) will be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its offer, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Property in making its bid.

### **QUALIFIED BIDS**

The Seller will consider all proposals for the Property. However, only Qualified Bidders submitting "Qualified Bids" may participate in the Auction. To be considered a "Qualified Bid" for purposes of the Auction the person or entity submitting the bid must submit an offer by the Bid Deadline (as defined herein) that includes:

(a) an executed copy of the Agreement marked to show those amendments and modifications to the Agreement that the Qualified Bidder proposes (such modified Agreement, a "Marked Agreement"), including modifications to the Purchase Price (as defined in the Agreement), which price must be at least \$4,535,000 (the "Initial Minimum Overbid");

(b) a statement that the bid does not provide for any due diligence period or property inspection period;

(c) identification of the potential bidder and the officer(s) or authorized agent(s) who will appear on behalf of such bidder;

(d) evidence, satisfactory to the Seller in its reasonable discretion (after consultation with representatives of the Committees), of the bidder's financial wherewithal;

(e) a statement that the bid shall not be conditioned on the outcome of unperformed due diligence by the bidder or any financing contingency;

(f) a good faith deposit (the "Good Faith Deposit"), in readily available funds, made payable to Syms Corp., equal to the greater of (i) 10% of the purchase price or (ii) \$453,500;

(g) a confirmation that the bidder has not, and will not, engage in collusion with respect to the bidding or the Sale.

(h) an acknowledgement that the bidder's offer is irrevocable until two (2) business days after the Closing of the Sale of the Property, and

(i) a commitment that, in the event the bidder is the Alternate Bidder (as defined below), the bidder will proceed with the purchase of the Property pursuant to the terms of the Marked Agreement, as may be further modified at the Auction.

### **FINANCIAL ASSURANCE FROM QUALIFIED BIDDERS**

Each Qualified Bidder shall comply with all reasonable requests for additional information by the Seller or its advisors regarding such Qualified Bidder's financial wherewithal to consummate and perform obligations in connection with the Sale. Failure by the Qualified Bidder to comply with requests for additional information may be a basis for the Seller to determine that a bid made by the Qualified Bidder is not a Qualified Bid.

### **BID DEADLINE**

Any person or entity wishing to participate in the Auction must submit a Qualified Bid on or before **August 13, 2012 at 12:00 p.m. (Eastern) (the "Bid Deadline")** in writing, to:

(a) counsel for the Sellers

(i) Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, Wilmington, Delaware 19899, Attn: Mark Chehi, Esq., Email: mark.chehi@skadden.com, Fax: (302) 651-3001,

(ii) Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, New York 10036, Attn: Mark McDermott, Esq., Email: mark.mcdermott@skadden.com, Fax: (917) 777- 2290,

(b) the Debtors' Real Estate Disposition Consultants, Cushman & Wakefield, Inc., 1290 Avenue of the Americas, New York, NY 10104, Attn: David Rosenbloom, Email: david.rosenbloom@cushwake.com, Fax (212) 805-1548; and

(c) counsel to the official committees appointed in these cases (together, the "Committees")

(i) Hahn & Hessen, LLP, 488 Madison Avenue, New York, New York 10022, Attn: Mark T. Power, Esq., Email: mpower@hahnhausen.com, Fax: (212) 478-7400,

(ii) Munger, Tolles & Olson, 355 South Grand Avenue, 35th Floor, Los Angeles, CA 90071, Attn: Thomas B. Walper, Esq., Email: thomas.walper@mtol.com, Fax: (213) 683-5193.



The Seller may, in its sole discretion, determine to allow a bidder up to one (1) additional business days after the Bid Deadline to cure or correct any infirmities preventing an initial bid from being considered a Qualified Bid.

The Seller shall announce the terms of the highest or otherwise best Qualified Bid (the "Starting Auction Bid"), after consultation with the Committees, at or before the commencement of the Auction.

### **THE AUCTION**

In the event that the Seller receives any Qualified Bids, an auction with respect to the Sale (the "Auction") will be conducted at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, One Rodney Square, P.O. Box 636, Wilmington, DE 19801, tentatively commencing at **12:00 p.m. (Eastern) on August 14, 2012**. The Purchaser and any Qualified Bidder wishing to participate in the Auction must appear in person or by phone (as may be allowed by Seller in its sole discretion) and submit its highest or otherwise best bid at the Auction. All creditors and other parties in interest are permitted to attend (but not to participate in) the Auction. The bidding at the Auction will be transcribed.

### **AUCTION PROCEDURES**

Only the Purchaser and any Qualified Bidders who have submitted Qualified Bids shall be eligible to participate at the Auction. During the Auction, bidding shall begin initially with the Starting Auction Bid and subsequently continue in such minimum increments as the Seller, after consultation with the Committees, shall determine at the Auction (such bids submitted at the Auction, the "Auction Bids") but not to exceed \$100,000. The Auction shall continue until the Purchaser and all Qualified Bidders have made their highest or otherwise best offers. At the Auction, all Auction Bids subsequent to the Starting Auction Bid, whether oral or written, shall be deemed to constitute valid modifications or amendments to the signed Marked Agreement submitted by such bidder.

The Seller may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent Auction Bids) for conducting the Auction, provided that such rules are not inconsistent with these Bidding Procedures or applicable law. The Seller, in consultation with the Committees, may (i) determine whether to distribute copies of other Qualified Bids to other Qualified Bidders prior to or during the Auction or (ii) proceed with sealed bidding. Nothing herein shall prohibit the Seller from meeting privately with any Qualified Bidders to negotiate the terms of any bid.

### **SELECTION OF THE SUCCESSFUL BID**

At the conclusion of the Auction, or as soon thereafter as practicable, the Seller, in consultation with the Committees, shall (i) review each bid on the basis of its financial and contractual terms and the factors relevant to the Sale and the best interests of the Seller's estates, creditors and other stakeholders and (ii) determine which bid is the highest or otherwise best offer (the "Successful Bid" and the bidder making such bid, the "Successful Bidder") and the next highest or otherwise best offer after the Successful Bid (the "Alternate Bid" and the bidder

making such bid, the "Alternate Bidder"). The Successful Bidder shall supplement its Good Faith Deposit within two (2) business days so that, to the extent necessary, such Good Faith Deposit equals ten percent (10%) of the purchase price of the Successful Bid.

Any bid submitted after the conclusion of the Auction shall not be considered for any purpose unless an order of the Bankruptcy Court is entered directing that such bid be considered. Neither the Seller nor any other person shall have any obligation to seek such an order from the Bankruptcy Court.

The Seller will sell the Property to the Successful Bidder according to the terms of the Successful Bid upon the approval of such bid by the Bankruptcy Court after the Sale Hearing. The Seller's presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Seller's acceptance of the bid. The Seller will be deemed to have accepted a bid only after the bid has been approved by the Bankruptcy Court at the Sale Hearing.

#### **ACCEPTANCE OF THE SUCCESSFUL BID**

Following the Auction or a determination that the Purchaser is the Successful Bidder, the Seller will file and serve a Sale Hearing Notice. The Sale Hearing will be held before the Honorable Kevin J. Carey, on **August 16, 2012 at 1:00 p.m. (Eastern time)** in the United States Bankruptcy Court for the District of Delaware, but may be adjourned or rescheduled in the Seller's discretion, with the consent of the Committees, subject to Bankruptcy Court approval, as necessary, without further notice other than an announcement of the adjourned date at the Sale Hearing.

If the Seller does not receive any Qualified Bids (other than the Qualified Bid of the Purchaser), the Seller will report the same to the Bankruptcy Court at the Sale Hearing and will proceed with a Sale to the Purchaser following entry of an order approving such Sale (the "Sale Approval Order"). If the Seller does receive additional Qualified Bids, then at the Sale Hearing the Seller will seek approval of the Successful Bid, as well as the Alternate Bid. At the Sale Hearing, the Seller will seek certain findings from the Court regarding the Auction, including, among other things, that (i) the Auction was conducted in a fair and reasonable manner, (ii) the Successful Bidder was selected in accordance with the Bidding Procedures, and (iii) consummation of the Sale contemplated by the Successful Bid will provide the highest and best value for the Property and is in the best interests of the Seller, its estate, its creditors and other stakeholders.

The Debtors shall have accepted a Qualified Bid only when the Bankruptcy Court has approved the Successful Bid and entered the Sale Approval Order.

Following approval of the Sale to the Successful Bidder, if, for any reason, the Successful Bidder fails to close the Sale contemplated by its Successful Bid, then, without notice to any other party or further Bankruptcy Court order, the Seller shall be authorized to close the Sale with the Qualified Bidder that submitted the Alternate Bid in accordance with the foregoing procedures.

### **RETURN OF GOOD FAITH DEPOSITS**

The Good Faith Deposits of all Qualified Bidders other than the Successful Bidder and the Alternate Bidder required to submit a deposit under these Bid Procedures shall be returned within three (3) business days after the Auction. The Good Faith Deposit of the Successful Bidder and the Alternate Bidder shall be held until the closing of the Sale and the deposit of the Successful Bidder, or the Alternate Bidder if the Property is sold to it, will be applied to the amount of the Successful Bid.

The Seller will not be required to maintain any Good Faith Deposit in an interest bearing account, but any interest earned on any Good Faith Deposit will be remitted to the Qualified Bidder as described herein or applied to the amount of the Successful Bid.

### **RESERVATION OF RIGHTS**

The Seller reserves the right to (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid is the highest or otherwise best offer and which Qualified Bid is the next highest or otherwise best offer; (iv) reject at any time any bid (other than the Purchaser's bid) that is (a) inadequate or insufficient or (b) not in conformity with the requirements of the Bidding Procedures Order or the requirements of the Bankruptcy Code; (v) waive the requirements of any of the Bidding Procedures with respect to a potential or Qualified Bidder if the Seller determines in its business judgment (after consultation with the Committees) that it is in the best interests of its estate and creditors and stakeholders; (vi) extend the Bid Deadline (after consultation with the Committees) to a date and time that is not later than 12:00 midnight on August 22, 2012; (v) seek Bankruptcy Court authority to extend the Bid Deadline beyond such date; (vi) change the date of the Auction (after consultation with representatives of the Committees) to a date that is no later than September 30, 2012; and (vii) seek Bankruptcy Court authority to change the date of any Auction beyond such date.

### **JURISDICTION**

The Bankruptcy Court shall retain exclusive jurisdiction over any matter or dispute relating to the Sale of the Property, the Bidding Procedures, the Sale Hearing, the Auction, the Agreement, and/or any other matter that in any way relates to the foregoing.

**EXHIBIT B**

**(Agreement)**

**PURCHASE AND SALE AGREEMENT**

**BETWEEN**

**SYMS Corp.**  
**a New Jersey corporation (Seller)**

**AND**

**Nestor Plana and/or Assigns (Buyer)**

**REGARDING**  
**4601 NW 77<sup>th</sup> Avenue, Miami, Florida (Property)**

## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is made and entered into as of the \_\_\_\_ day of July, 2012 (the "Effective Date") by and between SYMS CORP., a New Jersey corporation (the "Seller"), and Independent Living Systems, LLC, a Florida limited liability company, and/or assigns (the "Buyer").

### WITNESSETH:

In consideration of the mutual promises and covenants herein contained, the parties hereto hereby agree as follows:

#### Section 1 - Exhibits To Agreement

The following exhibits (the "Exhibits") are attached to and form a part of this Agreement.

<u>EXHIBIT A:</u>	Legal Description of Land
<u>EXHIBIT B:</u>	Form of Deed
<u>EXHIBIT C:</u>	Seller's Deliveries
<u>EXHIBIT D:</u>	Assumed Contracts, Leases and Licenses
<u>EXHIBIT O:</u>	Motion and Order Authorizing Sale of the Property

#### Section 2 - The Property

(a) Upon and subject to the terms and conditions herein set forth, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and acquire from Seller, the following described property:

(i) The parcel of real property located at 4601 NW 77<sup>th</sup> Avenue, Miami, Florida also known as 4615 NW 77<sup>th</sup> Avenue, Miami, Florida, as more particularly described on Exhibit A, together with all appurtenances, hereditaments, rights, privileges and easements belonging or in any way appertaining thereto (the "Land");

(ii) All buildings, improvements and fixtures of whatsoever kind or nature situated upon the Land, together with any and all electrical, heating, air-conditioning, plumbing and other equipment and systems, elevators, canopies and landscaping (collectively, the "Improvements"); and

(iii) All right, title and interest of Seller in and to (i) all public and private streets, roads, avenues, parking areas, alleys and passageways, open or proposed, in front of or abutting and/or serving the Land; (ii) any award made or to be made and any unpaid award for damage to the Land or Improvements by reason of any taking or change of grade of any such street, road, avenue, alley or passageway; and (iii) any strips or gores of land adjoining the Land.

(b) All of the interests described in Section 2(a) above are sometimes hereinafter

collectively referred to as the "Property", and the interests defined in Sections 2(a)(i) and (ii) above are sometimes hereinafter collectively referred to as the "Premises".

### Section 3 - Purchase Price

The purchase price to be paid by Buyer to Seller for the Property (the "Purchase Price") shall be FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,500,000.00). The Purchase Price shall be payable as follows:

(a) The sum of Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00) (the "Initial Deposit") shall be deposited with the Escrow Agent (as defined in Section 12) within five (5) Business Days (defined below) following the Effective Date. On or before the expiration of the Review Period (defined below), an additional sum of Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00) (the "Final Deposit"; the Initial Deposit and the Final Deposit are collectively referred to as the "Deposit") shall be deposited with the Escrow Agent. The Deposit shall be held in an interest-bearing account. The Escrow Agent shall invest the Deposit in a federally-insured, interest-bearing account acceptable to Buyer. Interest earned on the Deposit shall be added to and shall become part of the Deposit but shall be accounted for separately. At the Closing, the Deposit shall be paid to Seller and credited toward the Purchase Price.

(b) The balance of the Purchase Price, plus or minus adjustments as provided in this Agreement, shall be paid through the Escrow Agent by federal wire transfer at Closing.

### Section 4 - Review Period.

Within five (5) Business Days of the execution of this Agreement by Seller, Seller shall deliver to Buyer copies of the materials set forth on Exhibit C ("Seller's Deliveries") to the extent in Seller's possession or control. Buyer shall have until 5:00 p.m. EST on July 27, 2012 after Buyer's receipt of Seller's Deliveries (the "Review Period") to review Seller's Deliveries and, in accordance with applicable law, to conduct such investigations, tests and studies as Buyer may desire, at its sole cost, to determine the feasibility, suitability and desirability of purchasing the Property (collectively, "Investigations"). The Review Period may be extended by Buyer by the number of days Seller delays with the Seller's Deliveries. During the Review Period, Buyer and its agents, employees and contractors (collectively, the "Buyer Investigators") shall have the right, upon forty-eight (48) hours notice to Seller, to enter the Property from time to time during normal business hours for the purpose of conducting Investigations. All entries, investigations and testing by Buyer shall be conducted at such time and in such manner as to minimize any inconvenience to or disruption of the business of Seller or its tenant, if any. Buyer shall have the opportunity to have a representative present during any inspection or test. Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, losses, costs, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) related to Buyer Investigators' entry onto the Premises and/or the Investigations, and Buyer shall promptly repair and restore any damage to the Premises related to such Investigations and/or Buyer Investigators' entry onto the Premises to the same condition which existed prior to such Investigations. Buyer's obligation to make repairs and to indemnify Seller

as provided in the immediately preceding sentence shall survive termination of this Agreement. Buyer may terminate this Agreement for any reason or no reason by sending Seller written notice of termination prior to 5:00 p.m. EST time on July 27, 2012. If Buyer terminates this Agreement as aforesaid, then Escrow Agent shall, subject to the terms of this Agreement, return all funds and documents being held by Escrow Agent to the party who deposited the same, in which case Seller and Buyer shall each be relieved of all further liability hereunder, except that Buyer shall remain liable for Buyer's obligations specifically surviving the termination of this Agreement, and except that Seller and Buyer shall equally share any escrow costs incurred to the date of termination. Buyer acknowledges that Seller is selling the Property in AS IS condition.

**Section 5 - Seller's Representations, Warranties and Covenants**

(a) Seller represents, warrants and/or covenants as follows:

(i) Seller is validly existing as a corporation under the laws of the State of New Jersey, and is authorized to conduct business in the State of Florida as a duly registered foreign corporation.

(ii) Seller has full power, authority and legal right to enter into this Agreement and to consummate the transaction contemplated hereby and the party signing this Agreement on behalf of Seller has full power and authority to bind Seller. Seller has obtained all necessary approvals, resolutions, and/or consents to authorize Seller's execution, delivery and performance of this Agreement and performance of Seller's obligations hereunder.

(iii) Neither the execution, delivery nor performance of this Agreement (or of any instrument or document to be executed or delivered pursuant to the terms hereof) will result in the violation of any contractual obligation of Seller to any third party, nor will such execution, delivery or performance conflict with, constitute an event of default under, or result in a breach of or violation of the provisions of any agreement or other instrument to which Seller is a party or by which its properties or assets are bound, or of any applicable law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or any determination or award of any arbitrator.

(iv) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

(v) Seller has full right and power to convey the Property in accordance with this Agreement. Seller has not previously granted any other party the option or right to purchase all or any portion of the Property.

(vi) There are no pending inquiries or complaints, proceedings or investigations by any government agency charging or considering whether the Improvements, or the continued use, occupancy, operation or maintenance of the Property, violates any applicable law, agreement, regulation or ruling.



(vii) There does not exist with respect to the Property any lease, license, concession agreement, other right or claim of right of third party occupancy or possession, unrecorded easement or other unrecorded agreement which would bind or purport to bind the Property after Seller's conveyance thereof or would or purport to bind any successor of Seller in interest or title to the Property unless set forth on Exhibit D.

(viii) There are no underground or above-ground storage tanks located on or under the Property. Seller has not itself caused and, to Seller's knowledge, there does not exist any contamination of any of the Property or underlying ground water by any Hazardous Substance (defined below). To Seller's knowledge, no Hazardous Substance is being or has been generated, used, stored, discharged, disposed of or released onto or from any of the Property by Seller or any other person or entity. The foregoing shall not be deemed to apply to: the use or storage of ordinary and customary cleaning supplies or similar items so long as such storage and use is solely incidental to (and not a material part of) the use of the Property and complies with applicable laws. "Hazardous Substance" means any petroleum or petroleum-related product, any asbestos-containing materials (whether or not friable) or any other hazardous or toxic waste or substance (as such terms are used in applicable laws regulating the generation, storage, transportation, discharge, disposal, release or removal of environmentally hazardous substances).

(ix) There are no lawsuits pending or threatened with respect to Seller whose outcome could adversely affect title to or the use, occupancy or operation of the Property or Seller's ability to convey any of the Property to Buyer under this Agreement (including, without limitation, actions for condemnation).

(x) All documents furnished by Seller to Buyer in connection with the execution and delivery of this Agreement or pursuant to the provisions of this Agreement, including, without limitation, Seller's Deliveries, are, to Seller's knowledge, true and complete copies of the originals of such documents.

(xi) There are no tax valuation cases pending with respect to the Property for calendar year 2012. If Seller has pending tax valuation cases for calendar years prior to 2012, Buyer covenants and agrees to promptly remit to Seller any refund received by Buyer for any portion of the real estate taxes and assessments paid by Seller for calendar years 2011 and prior, such obligation to survive Closing and the delivery of the Deed to Buyer.

Seller shall not file any new tax valuation complaints with respect to the Property.

(xii) Except for service contracts relating to the maintenance and upkeep of the Property which will be terminated at or prior to Closing at Seller's sole expense, copies of which have been delivered to Buyer with Seller's Deliveries (the "Service Contracts"), Seller has not entered into any: (a) agreements for the provision of goods or services with respect to the Property; or (b) agency, employment or consulting agreements, collective bargaining agreements or other plans or other agreements or understandings covering any such employees, agents or contractors to which Buyer or Seller's successor in title and

interest to the Property will be bound or subject by reason of the transactions contemplated herein.

(xiii) During the period from the date hereof to Closing, Seller shall maintain the Property consistent with the manner that Seller has maintained the Property prior to the execution of this Agreement (subject to casualty damage and to normal wear and tear).

(xiv) All bills and claims for labor performed on behalf of Seller and materials furnished to or for the benefit of the Property purchased by Seller for all periods prior to the date of Closing have been (or prior to Closing will be) paid in full or will be adequately bonded off, and there are no actual or potential mechanics' liens or materialmen's liens (whether or not perfected) on or affecting the Property caused by Seller.

(xv) During the period from the date hereof to Closing, Seller shall not: (A) enter into any lease, occupancy agreement, or license encumbering the Property, (b) enter into any Service Contract or other agreement affecting the Property which shall bind the Property after Closing, without Buyer's prior written consent, which Buyer shall not unreasonably withhold, condition or delay, (c) commit any other act that would impair its title to any part of the Property, or (d) file any additional notices of protest against, or commence proceedings to review, real property tax assessments against the Land.

(xvi) During the period from the date hereof to Closing, Seller shall not do or voluntarily suffer any act which would result in any of the warranties or representations contained in this Section not being materially true or correct as of Closing.

(xvii) There are no pending or threatened governmental actions, proceedings, investigations, or litigation relating to any portion of the Property or Seller. Seller has not received any notice from any constituted public authority of the existence of any violations of any law, ordinance, order or regulation affecting the Property, or any condition or situation that requires work to be done to cure an unsatisfactory condition with respect to the Property (or to correct a violation of a law, ordinance, order or regulation affecting the Property) and that remains undone or will remain undone at the date of Closing.

(xviii) Casualty and property insurance covering all perils with policy limits in excess of the Purchase Price with respect to the Property is in place, and will remain in full force, until through and including the Closing Date and the rights of the Buyer to any proceeds of such insurance under Section 19 this Agreement or otherwise are senior to the rights of any other competing interest and have not been separately pledged.

(b) Seller agrees that the foregoing representations and warranties are true on the Effective Date and shall, as a condition to closing, be true in all material respects on the Closing Date. The Seller shall update the aforesaid representations and warranties on the Closing Date by delivering to the Buyer a certificate (the "Seller's Closing Certificate") of the Seller restating such representations and warranties as of such date. Seller shall and does hereby indemnify

against and hold Buyer harmless from any loss, damage, liability and expense, together with all court costs and reasonable attorneys' fees which Buyer may incur, by reason of any material breach by Seller of Seller's representations above, which indemnity and hold-harmless obligation shall survive Closing and shall not be deemed merged therein.

#### **Section 6 - Buyer's Representations and Warranties**

(a) As a material inducement to Seller to enter into this Agreement and consummate the purchase and sale of the property, Buyer represents and warrants as follows:

- (i) Buyer is an individual residing in Miami-Dade County, Florida.
- (ii) Buyer has full power, authority and legal right to enter into this Agreement and to consummate the transaction contemplated hereby, and the party signing this Agreement on behalf of Buyer has full power and authority to bind Buyer.
- (iii) None of the execution, delivery or performance of this Agreement (or of any instrument or document to be executed or delivered pursuant to the terms hereof) will result in the violation of any contractual obligation of Buyer to any third party; nor will such execution, delivery or performance conflict with, constitute an event of default under, or result in a breach of or violation of the provisions of any agreement or other instrument to which Buyer is a party or by which its properties or assets are bound, or of any applicable law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or any determination or award of any arbitrator.

(b) The Buyer agrees that the foregoing representations and warranties are true on the Effective Date and shall, as a condition to closing, be true in all material respects on the Closing Date. The Buyer shall update the aforesaid representations and warranties on the Closing Date by delivering to the Seller a certificate (the "Buyer's Closing Certificate") of the Buyer restating such representations and warranties as of such date. Buyer shall and does hereby indemnify against and hold Seller harmless from any loss, damage, liability and expense, together with all court costs and reasonable attorneys' fees which Seller may incur, by reason of any material breach by Buyer of Buyer's representations above, which indemnity and hold-harmless obligation shall survive Closing and shall not be deemed merged therein.

#### **Section 7 - Seller's and Buyer's Covenants Prior to Closing**

From and after the Effective Date and until Closing, Seller agrees that Seller will (i) maintain and operate the Property only in the ordinary and usual manner and shall maintain reasonable insurance with respect to the Property; and (ii) deliver to Buyer, promptly after receipt by Seller, copies of all material notices received by Seller relevant to any of the Property, including, without limitation, notices of violation issued by governmental authorities with respect to the Premises received by Seller after the date of this Agreement.

### **Section 8 - Instruments of Conveyance**

Seller shall convey good, marketable and insurable fee simple title to the Property to Buyer or its nominee by good and sufficient special warranty deed in substantially the form attached hereto as **Exhibit B** (the "**Deed**"), free and clear of all liens, charges, pledges, claims, security interests, conditional sale agreements or other title retention agreements, leases, security interests, options, or other encumbrances (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction) and any monetary amounts which are secured by any lien (collectively, the "**Liens**"), defects, encumbrances and clouds on title except the following permitted exceptions (the "**Permitted Exceptions**"):

- (i) real estate taxes and assessments, both general and special, for the year of Closing, not yet due and payable;
- (ii) zoning, building and similar laws, ordinances and regulations in effect as of the Effective Date;
- (iii) any other title and survey matters approved by Buyer pursuant to **Section 10** and **Section 11** below; and
- (iv) all covenants, agreements, conditions, easements, restrictions and rights, which are a matter of public record (excluding, however, mortgages, deeds of trust, mechanics liens, tax liens, judgment liens, any other liens securing monetary amounts, leases, licenses, any other similar agreements conveying possessory rights, purchase option rights, rights of first refusal and any other similar rights of purchase) (collectively, the "**Permitted Encumbrances**").

### **Section 9 - Title Evidence**

It shall be a condition to Closing that Buyer shall be able to obtain an ALTA Owner's Policy of Title Insurance (the "**Title Policy**") in the amount of the Purchase Price, showing fee simple title in the Premises to be in Buyer, subject only to the Permitted Exceptions and the so-called "printed" or "standard" exceptions. At its option, the Buyer may direct the title company to issue additional title insurance endorsements if Buyer pays for the extra costs of such additional endorsements, provided that the title company's failure to issue any such additional endorsements shall not affect Buyer's obligations under this Agreement.

In connection with the Bankruptcy Petition, as further defined below, Buyer shall have the right to submit the Motion and Order Authorizing Sale of the Property to the title company in order that the title company may review the same and confirm the Motion and Order Authorizing Sale of the Property are in form and substance that will permit issuance of the Title Policy free and clear of any and all claims, liens and encumbrances against the Property at Closing.

### **Section 10 - Title and Survey Objections**

- (a) Promptly following the Effective Date, Buyer shall order from the Title Company

a commitment for the Title Policy (the "Title Commitment") and request that the same (with legible copies of all exceptions attached thereto) to be delivered to Buyer and Seller. Not later than five (5) days prior to the expiration of the Review Period, Buyer shall serve upon Seller a notice specifying those exceptions to title, if any, to which Buyer objects in Buyer's sole discretion (the "Objections"). In the event that Buyer shall fail to so notify Seller of any Objections prior to the expiration of the Review Period, Buyer shall be deemed to have approved any such exceptions to title shown on the Title Commitment.

(b) Upon receipt by Seller of Buyer's notice of Objections, Seller, without being under any obligation to cure, shall have five (5) Business Days after receipt of notice in which to cure such Objections (or, if the Objections are not readily curable within said five (5) day period, then Seller may have such additional time as may be reasonable to cure such Objections, provided that the Closing Date (defined below) shall not be extended without Buyer's written consent, which may be withheld in Buyer's sole and absolute discretion) (said five (5) Business Day period, as the same may be extended, being hereinafter referred to as the "Cure Period"). If some or all of the Objections can only reasonably be cured at Closing, then Seller may covenant to cure such Title Objections as of Closing. If Seller fails to cure or elects not to cure the Objections within the Cure Period, then Buyer shall have the option to: (i) accept the Property subject to the Objections, without reduction of the Purchase Price; or (ii) declare this Agreement to be null and void and of no further force or effect, in which case the Deposit shall be returned to Buyer, Escrow Agent shall return all funds and documents deposited with Escrow Agent to the party depositing same, and the parties shall be relieved of all further liability under this Agreement, except for obligations specifically surviving the termination of this Agreement, and except that Seller and Buyer shall equally share all escrow costs incurred to date. Buyer shall notify Seller of its election of alternative (i) or (ii) above within the Cure Period after receipt of notice from Seller of Seller's failure or election not to cure the Objections. If Buyer fails to so notify Seller within the aforesaid Cure Period, Buyer shall be deemed to have elected alternative (i) above. Notwithstanding anything herein contained to the contrary, Seller shall be required to discharge of record all mortgages, financing statements, deeds of trust, liens, and any other instruments evidencing or securing the repayment of debt or other monetary obligation ("Monetary Liens"), and if Seller fails to do so, Buyer may direct Escrow Agent to pay and discharge such Monetary Liens out of the Purchase Price at Closing. Seller's obligation to cause Monetary Liens to be paid and discharged shall survive the Closing and delivery of the Deed to Buyer.

#### **Section 11 – Survey**

Buyer shall have the right to obtain a survey of the Premises (the "Survey") at Buyer's expense. If Seller has provided Buyer with an existing survey ("Existing Survey") as part of Seller's Deliveries, Buyer may at its option engage the surveyor who prepared the Existing Survey to update such Existing Survey at Buyer's expense. If Buyer's Survey discloses any matters that are unacceptable to Buyer in Buyer's sole discretion ("Survey Objections"), Buyer may include such Survey Objections in Buyer's notice of Objections delivered pursuant to Section 10(b) above, and in such case such Survey Objections shall be addressed in the same manner as Objections as set forth in said Section 10(b).

#### **Section 12 - Escrow Agent**

Abadin Cook shall act as escrow agent (the "Escrow Agent"). A copy of this Agreement shall be delivered to the Escrow Agent and shall constitute instructions to the Escrow Agent, subject to the terms and conditions of its regular and usual printed form of acceptance insofar as such terms and conditions are applicable and consistent with this Agreement. Seller, Buyer and Escrow Agent shall enter into a separate written agreement (consistent with the terms herein).

#### **Section 13 - Possession**

Possession and control of the Property, subject to the Permitted Exceptions, shall be delivered to Buyer at Closing.

#### **Section 14 - Adjustments**

(a) Real estate taxes and assessments, both general and special, shall be prorated by Escrow Agent as of the Closing Date using the values and tax amounts reflected on the Miami-Dade County, Florida real estate tax bills, with Buyer receiving a credit for any unpaid real estate taxes and assessments applicable to calendar year 2011 and prior, and a credit for the estimated real estate taxes and assessments applicable to the period beginning on January 1, 2012 and ending on the Closing Date. Such proration shall be final, and there shall NOT be any post-Closing re-proration of real estate taxes or assessments irrespective of whether the actual final amount of real estate taxes and assessments assessed by the applicable governmental authority differs from the amount used by the Escrow Agent.

(b) Buyer shall have the exclusive right to file and prosecute and/or appeal a tax complaint for the year in which the Closing Date occurs, and all refunds and other sums payable by reason of such tax complaint or appeal shall be the sole property of Buyer.

(c) Rents and other tenant payments or reimbursements set forth in assumed leases listed on Exhibit D, if any, shall be adjusted on a pro-rata basis as of 11:59 p.m. the day prior to the Closing. Buyer shall be entitled to a credit against the Purchase Price for the total sum of all unapplied refundable security deposits required to be held by the Seller under the assumed leases.

(d) Utility meters shall be read within ten (10) days of the Closing and amounts due by Seller to Buyer shall be pro-rated according for the stub period between the meter reading and the Closing.

(e) The provisions of this Section 14 shall survive Closing and delivery of the Deed.

#### **Section 15 - Deposit of Funds and Documents**

(a) Unless Seller and Buyer otherwise mutually agree, the Closing shall be conducted through escrow and shall close on the later of (i) 30 calendar days after the expiration (or waiver by Buyer) of the Review Period or (ii) the earlier of (x) the next Business Day after the entry of an order by the Bankruptcy Court approving the sale of the Property to the Buyer in compliance

with Section 24 becoming final and non-appealable or (y) such earlier date after the entry of an order by the Bankruptcy Court approving the sale of the Property to the Buyer in compliance with Section 24 as the Buyer's title insurance company may permit (the "Closing Date"). All funds and documents required from Seller and Buyer shall be deposited in escrow with the Escrow Agent no later than the Business Day prior to the Closing Date. "Closing" is herein defined to mean the date that the transaction contemplated hereby is actually consummated by payment of the Purchase Price to Seller and disbursement from escrow of the Deed for recording.

(b) Seller shall deposit in escrow with Escrow Agent the following: (i) the Deed; (ii) Seller's Closing Certificate; (iii) resolutions of Seller evidencing Seller's due authorization of this Agreement and the sale of the Property to Buyer; (iv) a certificate of Non-Foreign Ownership with respect to the Property, duly signed by Seller, in form required by the Title Company and reasonably approved by Buyer; (v) a Bill of Sale for the personal property contained in the Property; (vi) four (4) counterparts of a settlement statement approved by Buyer and Seller (the "Settlement Statement"), executed by Seller; and (vii) a no lien, possession and gap affidavit with the customary language sufficient to remove the so-called "standard" or "pre-printed" exceptions on the Title Commitment, in a form reasonably acceptable to Buyer and the Title Company.

(f) On or before the Closing Date, Buyer shall deposit in escrow with the Escrow Agent the following: (i) the balance of the Purchase Price (less the Deposit and subject to prorations); (ii) Buyer's Closing Certificate; (iii) any additional funds as may be due from Buyer for closing costs and any amounts due Seller by reason of prorations; and (iv) four (4) counterparts of the Settlement Statement, executed by Buyer.

#### **Section 16 - Closing Procedures**

On the Closing Date, provided all conditions to Closing are either fulfilled or waived and provided that each of the deliveries required pursuant to Section 15 above has been made, the Escrow Agent shall conduct the Closing as follows:

(a) Deliver to Seller and Buyer the Settlement Statement for approval by both parties, following which approval Escrow Agent shall charge the parties with prorations and closing costs as provided in Sections 16(b) and (c) and as provided in the Settlement Statement, record the Deed, and pay the balance of the Purchase Price to Seller by federal wire transfer as directed by Seller.

(b) Escrow Agent shall deliver to Seller the following: the original Buyer's Closing Certificate; copies of all other documents deposited by Buyer or Seller; a copy of the Settlement Statement; and the funds in its possession to the credit of Seller, after charging Seller and deducting from such funds: (i) the cost of any real estate conveyance fee or transfer taxes, any monetary liens to be satisfied at Closing; and (ii) one-half (1/2) of the escrow fee.

(c) Escrow Agent shall deliver to Buyer the following: Seller's Closing Certificate; the original recorded Deed; a copy of the Settlement Statement; and the funds in its possession to

the credit of Buyer, if any, after charging Buyer and deducting from such funds: (i) the cost of recording the Deed; (ii) the "Title Costs": (A) the cost of the title examination; (B) the cost of the Title Commitment; and (C) the premium for the Title Policy; (iii) the cost of any endorsements requested by Buyer; (iv) any amount due from Seller by reason of prorations hereunder; and (v) one-half (1/2) of the escrow fee.

#### **Section 17 - Conditions to Closing**

(a) The obligation of Buyer to consummate the transaction contemplated by this Agreement is subject to the satisfaction of each of the following conditions precedent in the sole discretion of Buyer (all or any portion of the conditions may be waived in whole or in part by Buyer in Buyer's sole discretion):

(i) No material adverse change shall have occurred with respect to the Property since the Effective Date.

(ii) This Agreement shall not have been terminated pursuant to any right to terminate granted to a party under this Agreement.

(iii) The Title Company shall be prepared to issue the Title Policy as required in Section 9.

(iv) Seller shall have delivered to Buyer evidence that all Service Contracts have been terminated or otherwise assumed by Buyer.

(v) Seller shall have performed, in all material respects, all of its covenants contained in Sections 5(a) and 7, as well as all of Seller's other obligations under this Agreement to be performed at or before Closing.

(vi) Entry of an Order of the Bankruptcy Court (i) approving the Agreement and authorizing the sale of the Property pursuant to section 363(f) of the Bankruptcy Code, free and clear of all claims, liens and encumbrances, with any and all valid claims to attach to the proceeds of sale hereunder and not to the Property; (ii) immunizing the Buyer from any claims of successor liability; (iii) enjoining any of Seller's creditors from asserting a claim which arose prior to the Closing Date against Buyer; and (iv) making the appropriate findings acceptable to Buyer's title insurance company which support and then grant the protections afforded under Section 363(m) of the Bankruptcy Code in favor of Buyer.

(b) The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of each of the following conditions precedent in the sole discretion of Seller (all or any portion of the conditions may be waived in whole or in part by Seller in Seller's sole discretion):

(i) Except for changes in the facts underlying Buyer's representations and warranties occurring between the Effective Date and Closing, which changes are not



material and adverse to Seller, all of the representations and warranties made by Buyer and set forth in this Agreement shall be true and correct in all material respects as of the Closing Date.

(ii) This Agreement shall not have been terminated pursuant to any right to terminate granted to a party under this Agreement.

(c) In the event of a failure of a condition under this Section 17 (other than a failure of condition which is also a breach of a party's representation, warranty or covenant under this Agreement), the party benefited by such condition shall, as its sole remedy, have the option of terminating this Agreement or waiving such condition. In the event of such termination of this Agreement pursuant to this provision, the Deposit shall be returned to Buyer, Escrow Agent shall return all funds and documents deposited with Escrow Agent to the party depositing same, and the parties shall be relieved of all further liability under this Agreement, except that the parties shall remain liable any obligations specifically surviving the termination of this Agreement, and except that Seller and Buyer shall equally share all escrow costs incurred to date.

(d) Seller shall deliver to Escrow Agent a certified copy of a sale order acceptable for recordation, and sufficient to insure title in the Buyer, from the bankruptcy court approving the sale of the property by this transaction.

#### **Section 18 - Real Estate Broker**

Each party hereto represents to the other that such party has not dealt with any real estate broker or finder in connection with the transaction contemplated by this Agreement except for Seller's Broker, Cushman & Wakefield, and Buyer's Broker, Newmark Grubb Knight Frank. Upon closing of this transaction, Seller shall pay Cushman & Wakefield an agreed upon brokerage fee and Buyer shall pay Newmark Grubb Knight Frank an agreed upon brokerage fee. In the event that the acts of either party shall result in any other broker's or finder's commission or fee being found due and payable, such causing party agrees to hold the other party harmless from the payment of any such commission or fee and all costs, expenses and fees (including reasonable attorney fees and expenses) in respect thereto. This Section 18 shall survive Closing.

#### **Section 19 - Risk of Loss**

(a) Risk of loss until Closing shall be borne exclusively by Seller. In the event of damage or destruction to all or part of the Premises, the replacement or restoration cost of which exceeds Two Million and 00/100 Dollars (\$2,000,000.00) as certified by a public insurance adjuster licensed by the State of Florida ("Material Damage"), Buyer shall have the option of (i) terminating this Agreement or (ii) accepting the Property, together with an assignment by Seller of all of Seller's rights under policies of insurance upon Property covering such damage or destruction and Seller shall be provided a credit at Closing in the amount of Seller's deductible. In the event that Buyer elects to terminate this Agreement pursuant to this Section 19(a), then the Deposit shall be returned to Buyer, Escrow Agent shall return all funds and documents to the party who deposited the same, and Seller and Buyer shall each be relieved of all further liability under this Agreement except that the parties shall remain liable for any obligations specifically surviving the termination of this Agreement, and except that the parties shall equally share all

escrow costs incurred to date. In the event that the damage or destruction to the Property is less than Material Damage, Buyer may not terminate this Agreement; provided, however, Seller shall assign to Buyer all of Seller's rights under policies of insurance upon the Property covering such damage or destruction and Seller shall provide Buyer a credit at Closing in the amount of Seller's deductible.

(b) In the event of a taking (i) of all of the Property or such portion as shall diminish the value of the Property by Two Million and 00/100 Dollars (\$2,000,000.00) as certified by a public insurance adjuster licensed by the State of Florida or (ii) a taking that alters the access to the Property or the flow of vehicular or pedestrian traffic or (iii) a taking that reduces parking to a level below that which is required by law (in each case, a "Material Taking") by reason of eminent domain, or deed in lieu thereof, Buyer shall have the option of (i) terminating this Agreement, or (ii) accepting the Property, together with an assignment by Seller of all of Seller's rights to the proceeds of such taking or deed in lieu thereof. In the event that Buyer elects to terminate this Agreement pursuant to this Section 19(b), then the Deposit shall be returned to Buyer, Escrow Agent shall return all funds and documents to the party who deposited the same, and Seller and Buyer shall each be relieved of all further liability under this Agreement except that the parties shall remain liable for any obligations specifically surviving the termination of this Agreement, and except that the parties shall equally share all escrow costs incurred to date. In the event that the taking is less than a Material Taking, Buyer may not terminate this Agreement; provided, however, Seller shall assign to Buyer all of Seller's rights to the proceeds of such taking.

#### **Section 20 - Events of Default**

IF BUYER BREACHES ITS OBLIGATION UNDER THIS AGREEMENT TO PURCHASE THE PROPERTY, AND DOES NOT CURE SUCH BREACH WITHIN FIVE (5) DAYS AFTER WRITTEN NOTICE FROM SELLER, THEN SELLER SHALL BE ENTITLED, AS ITS SOLE AND EXCLUSIVE REMEDY ON ACCOUNT OF SUCH BREACH, TO RECEIVE AND RETAIN, AS LIQUIDATED DAMAGES, THE DEPOSIT (TOGETHER WITH ALL INTEREST EARNED ON THE DEPOSIT). THE PARTIES ACKNOWLEDGE THAT ACTUAL DAMAGES WOULD BE DIFFICULT TO ASCERTAIN, AND AGREE THAT THE AFORESAID SUM IS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES SELLER WOULD SUSTAIN BY REASON OF SUCH A BREACH BY BUYER. In the event that Seller breaches its obligation under this Agreement to sell the Property to Buyer and does not cure such breach within five (5) day after written notice from Buyer, Buyer shall have, as its sole and exclusive remedy hereunder, either: (a) the right to terminate this Agreement, in which event: (i) the Deposit shall be returned promptly to Buyer, (ii) Seller shall reimburse Buyer for Buyer's actual costs incurred with respect to Buyer's Investigations, (iii) thereafter all parties shall be relieved from further liability or obligations hereunder; or (b) the right to seek specific performance of Seller's obligation to make full settlement under this Agreement.

#### **Section 21 - Indemnities**

Seller shall hold harmless, indemnify and defend Buyer from and against any and all claims, liabilities, and expenses related thereto (including reasonable attorneys' fees), which

Buyer incurs by reason of (i) any alleged default on the part of Seller under a Service Contract where the allegation of such default is based on an event or condition which occurred or arose (or is alleged to have occurred or arisen) prior to Closing or (ii) any alleged injury or damage to the person or property of another based upon an event or condition occurring (or alleged to have occurred) prior to Closing. Buyer shall hold harmless, indemnify and defend Seller from and against any and all claims and liability, and expenses related thereto (including reasonable attorneys' fees), which Seller incurs by reason of any alleged injury or damage to the person or property of another based upon an event or condition occurring (or alleged to have occurred) after Closing.

#### **Section 22 -- PATRIOT Act**

Buyer is in compliance with the requirements of Executive Order No. 133224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders").

Neither Buyer nor any beneficial owner of Buyer: (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists"); (ii) is a person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (iii) is owned or controlled by, or acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

Buyer hereby covenants and agrees that if Buyer obtains knowledge that Buyer or any of its beneficial owners becomes listed on the Lists or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Buyer shall immediately notify Seller in writing, and in such event, Seller shall have the right to terminate this Agreement without penalty or liability to Buyer immediately upon delivery of written notice thereof to Buyer.

#### **Section 23 -- Miscellaneous**

(a) Where necessary or appropriate to the meaning hereof, the singular shall be deemed to include the plural and the masculine to include the feminine and neuter.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions herein contemplated. Any modifications or amendments to this Agreement shall be effective only if in writing and executed by each of the parties hereto.

(c) All notices, demands, and requests and other communications required or permitted hereunder shall be in writing, and shall be deemed to be delivered upon receipt or refusal by the recipient when delivered by (i) nationally-recognized overnight courier; (ii) personal delivery, (iii) facsimile, or (iii) email, at the following addresses:

To Seller: Syms Corp.  
1 Syms Way  
Seacaucus, NJ 07094  
Attention: Laura Brandt, VP & General Counsel  
Phone: (201) 902-9600 ext. 613  
Fax: (201)-537-1013  
Email: laurabrandt@syms.com

To Buyer: Nestor Plana and/or assigns  
c/o 5201 Blue Lagoon Drive  
Suite 270  
Miami, Florida 33126  
Phone: 305-262-1292 ext. 6443  
Fax: 786-513-8582  
Email: nplana@ilshealth.com

With a copy to: Mercedes M. Sellek and Miguel A. Maspons  
Abadin Cook  
9155 South Dadeland Boulevard  
Suite 1208  
Miami, FL 33156  
Phone: (305) 671-2162  
Fax: (305) 397-1521  
Email: msellek@abadincook.com

(d) Either party hereto may change the name and address of the designee to which notice shall be sent by giving notice of such change to the other party hereto as hereinbefore provided. Any notice shall be effective on the date of delivery or on the date delivery was refused.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(f) Buyer may assign this Agreement or nominate an entity to take title to the Property at Closing without the consent of Seller so long as such assignee is an entity owned and controlled by Buyer's principal, but no such assignment shall relieve Buyer from primary liability hereunder. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(g) This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Seller and Buyer have contributed substantially and

materially to the preparation of this Agreement. The headings of various Sections and paragraphs in this Agreement are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof.

(h) The Closing of this transaction shall constitute Buyer's acknowledgment that it has independently inspected and investigated the Premises and has made and entered into this Agreement based upon such inspection and investigation and its own examination of the condition of the Property. FURTHERMORE, BUYER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES (OTHER THAN THE WARRANTY OF TITLE AS SET OUT IN THE DEED), PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, STATUTORY, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER OR ANY TENANT MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, (H) COMPLIANCE WITH ANY ENVIRONMENTAL REQUIREMENTS OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" "WHERE IS" CONDITION AND BASIS WITH ALL FAULTS.

(i) The captions of the Sections of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms or provisions of this Agreement.

(j) This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Return of an executed counterpart of this Agreement by facsimile transmission shall bind the party so executing and delivering such counterpart.

(k) "Business Day" shall mean any day excluding Saturday, Sunday and any day which in the State of Florida or for the Federal government is a legal holiday or a day on which banking institutions are authorized by law or by other governmental actions to close in such state.

(l) The parties hereby designate the Escrow Agent to serve as "Real Estate Reporting Person", as defined in Section 6045(e) of the Internal Revenue Code as amended, for the purpose of making such reports and filing such returns as shall be required thereunder from time to time.

(m) The parties shall cooperate with each other as reasonably necessary to effect the provisions of this Agreement, shall use reasonable and good faith efforts to satisfy conditions to Closing and, prior to, at and after Closing, shall each execute and deliver such additional instruments or other documents, and take such further action, as the other may reasonably request to accomplish the purposes and intent of this Agreement; provided, however, that nothing in this Section shall be deemed to enlarge the obligations of the parties hereunder or to require either party to incur any liability or material expense not otherwise required of it hereunder.

(n) Should either party institute any action or proceeding to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provision hereof, the prevailing party shall be entitled to receive all costs and expenses (including reasonable attorneys' fees) incurred by such prevailing party in connection with such action or proceeding. A "prevailing party" includes one who dismisses an action brought under or with respect to this Agreement in exchange for the payment of the sums alleged to be due, performance of the covenants alleged to have been breached or other consideration substantially equal to that sought in such action. A party entitled to recover costs and expenses under this Section shall also be entitled to recover all costs and expenses (including reasonable attorneys' fees) incurred in the enforcement of any judgment or settlement obtained in such action or proceeding (and in any such judgment provision shall be made for the recovery of such post-judgment costs and expenses).

(o) Time is of the essence as to all matters set forth herein, and the parties have agreed that strict compliance is required as to any date set out in this Agreement.

(p) *Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who were exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.*

#### **Section 24 – Bankruptcy Court Approval.**

The parties acknowledge the Property is part of a bankruptcy estate pursuant to that certain filing in the District of Delaware (the "Bankruptcy Court") under Bankruptcy Petition Number 11-13512 (KJC).

Seller shall have five (5) days from receipt of Buyer's counter-part executed Agreement to accept this Agreement. Upon acceptance, Seller shall petition the Bankruptcy Court within ten (10) days thereafter for entry of an Order approving the Agreement and authorizing the sale of the Property pursuant to section 363(f) of the Bankruptcy Code, free and clear of all claims,

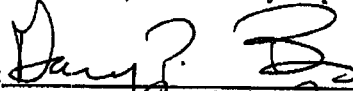
liens and encumbrances, with any and all valid claims to attach to the proceeds of sale hereunder and not to the Property (the "Bidding Procedures Motion"). The Order approving this Agreement must also (i) make the appropriate findings acceptable to Buyer's title insurance company which support and then grant the protections afforded under Section 363(m) of the Bankruptcy Code in favor of Buyer; (ii) immunize the Buyer from any claims of successor liability; and (iii) shall otherwise enjoin any of Seller's creditors from asserting a claim which arose prior to the Closing Date against Buyer. This injunction shall be interpreted broadly and include any claim, whether in contract or tort, that could have been asserted against Seller by any party, including employees, customers, vendors or otherwise. The Bidding Procedures Motion and proposed order thereon shall be in form and substance as set forth in Exhibit "O" hereof and shall be subject to the approval of the Buyer's title insurance company and the Buyer; provided, however, that the sale process timeline contemplated by the Bidding Procedures Motion may be revised, only with the consent of the Buyer, at any time before the hearing to consider the Bidding Procedures Motion.

Buyer acknowledges that the sale of the Property is subject to higher and better offers. Accordingly, in the event the Bankruptcy Court does not approve the Agreement, Buyer shall be entitled to a fee in the amount of three (3%) percent of the Purchase Price (the "Break-up Fee") to be paid to Buyer at closing from the proceeds of any subsequent contract approved by the Bankruptcy Court. If the Bankruptcy Court ultimately orders a bidding process, the Buyer shall be deemed the "stalking horse" and have all rights and privileges relative to the review of any bidding procedures and bidding protections proposed by the Seller to the Bankruptcy Court. Additionally, Seller shall permit Buyer the right to counter-offer any subsequent offers should Buyer so choose. The Order approving the Bidding Procedures Motion shall ratify the foregoing.

IN WITNESS WHEREOF, the parties have hereunto set their hands hereto as of the Effective Date.

**SELLER:**

SYMS CORP., a New Jersey corporation

By:   
Name: GARY P. BINKOSKI  
Title: CEO

**BUYER:**

INDEPENDENT LIVING SYSTEMS, L.L.C. and/or assigns


By:   
Nestor Piana, Managing Member

EXHIBIT A

LEGAL DESCRIPTION

A PORTION OF TRACT 45, FLORIDA FRUITLANDS CO. SUBDIVISION OF SECTION 23, TOWNSHIP 53 SOUTH, RANGE 40 EAST, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, AT PAGE 17, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT 45, THENCE RUN WEST ALONG THE NORTH LINE OF SAID TRACT 45 FOR A DISTANCE OF 35.01 FEET TO THE POINT-OF-BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE CONTINUE WEST, ALONG THE SAID NORTH LINE OF TRACT 45, FOR A DISTANCE OF 1133.11 FEET, TO A POINT LYING 150.00 FEET EAST OF THE CENTERLINE OF THE PALMETTO BY-PASS, AS MEASURED AT RIGHT ANGLES; THENCE RUN SOUTH  $1^{\circ}39'42''$  EAST, ALONG A LINE LYING 150.00 FEET EAST OF THE CENTERLINE OF THE PALMETTO BY-PASS, AS MEASURED AT RIGHT ANGLES, FOR A DISTANCE OF 276.11 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE AT THE LEFT; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE TO THE LEFT, HAVING FOR ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF  $88^{\circ}26'54''$ , FOR AN ARC DISTANCE OF 38.59 FEET TO A POINT OF TANGENCY WITH A LINE LYING 35.00 FEET NORTH OF THE SAID SOUTH LINE OF TRACT 45 AS MEASURED AT RIGHT ANGLES; THENCE RUN SOUTH  $89^{\circ}53'24''$  EAST, ALONG THE SAID LINE LYING 35.00 FEET NORTH OF THE SOUTH LINE OF TRACT 45, AS MEASURED AT RIGHT ANGLES; FOR A DISTANCE OF 1082.85 FEET TO A POINT OF A CURVATURE OF A CIRCULAR CURVE AT THE LEFT; THENCE RUN NORTHEASTERLY, ALONG THE ARC OF SAID CIRCULAR CURVE TO THE LEFT, HAVING FOR ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF  $91^{\circ}30'51''$ , FOR AN ARC DISTANCE OF 39.93 FEET TO A POINT OF TANGENCY WITH A LINE LYING 35.00 FEET WEST OF THE SAID EAST LINE OF TRACT 45, AS MEASURED AT RIGHT ANGLES; THENCE RUN NORTH  $1^{\circ}37'27''$  WEST, ALONG A LINE LYING 35.00 FEET WEST OF SAID EAST LINE OF TRACT 45, AS MEASURED AT RIGHT ANGLES, FOR A DISTANCE OF 272.60 FEET TO THE POINT-OF-BEGINNING.

AND

A PORTION OF TRACT 45 OF FLORIDA FRUITLANDS COMPANY'S SUBDIVISION NO. 1, OF SECTION 23, TOWNSHIP 53 SOUTH, RANGE 40 EAST, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, AT PAGE 17 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT 45 THENCE RUN SOUTH  $89^{\circ}40'06''$  WEST, ALONG THE NORTH LINE OF SAID TRACT 45, FOR A



DISTANCE OF 632.17 FEET TO A POINT; THENCE RUN SOUTH  $01^{\circ}57'17''$  EAST FOR A DISTANCE OF 299.50 FEET TO A POINT OF INTERSECTION WITH A LINE THAT LIES 35 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 45 AND ALSO BEING THE POINT OF BEGINNING OF A PARCEL OF LAND HEREINAFTER TO BE DESCRIBED; THENCE CONTINUE SOUTH  $01^{\circ}57'17''$  EAST FOR A DISTANCE OF 35.01 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID TRACT 45; THENCE RUN SOUTH  $89^{\circ}33'27''$  EAST, ALONG SAID SOUTH LINE OF TRACT 45, FOR A DISTANCE OF 535.60 FEET TO A POINT OF INTERSECTION WITH A LINE THAT LIES 150 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT 45; THENCE RUN NORTH  $01^{\circ}59'32''$  WEST, ALONG SAID PARALLEL LINE, FOR A DISTANCE OF 59.35 FEET TO A POINT OF CUSP OF A CURVATURE, CONCAVE TO THE NORTHEAST, AND HAVING FOR ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF  $88^{\circ}27'01''$ ; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 38.59 FEET TO A POINT OF TANGENCY WITH A LINE THAT LIES 35 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 45; THENCE RUN NORTH  $89^{\circ}33'27''$  EAST, ALONG SAID LINE BEING 35 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF TRACT 45, FOR A DISTANCE OF 511.29 FEET TO THE POINT OF BEGINNING. SAID DESCRIBED PARCEL OF LAND LYING AND BEING SITUATED IN MIAMI-DADE COUNTY, FLORIDA.

**EXHIBIT B**

**FORM OF DEED**

This instrument prepared by:  
Mercedes M. Sellek, Esq.  
Abadin Cook  
9155 South Dadeland Boulevard  
Dadeland Centre Suite 1208  
Miami, Florida 33156

Property Appraisers Parcel  
Identification (Folio) No:

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This Space Reserved for Recording

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2012, by **SYMS CORP.**, a New Jersey corporation, having a mailing address of \_\_\_\_\_ (the "Grantor"), to \_\_\_\_\_ having a mailing address of \_\_\_\_\_ (the "Grantee").

(Wherever used herein, the terms "Grantor" and "Grantee" include all the parties to this instrument and their successors and assigns.)

**WITNESSETH:**

The Grantor, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars and other valuable consideration, paid to Grantor by Grantee, receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain real property situated in Miami-Dade County, Florida, and more particularly described as follows and improvements thereon:

See Exhibit "A" attached hereto and made a part hereof (the "Property").

SUBJECT TO covenants, easements, restrictions and limitations of record, matters of plat, existing zoning and governmental regulations and real property taxes for the year 2012 and the Permitted Exceptions attached hereto as Exhibit B.

TOGETHER with all the tenements, hereditaments, appurtenances, easements, licenses and privileges thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

Grantor covenants with Grantee that Grantor is lawfully seized of the Property in fee simple.

Grantor hereby fully warrants title to the Property and will defend same against the lawful claims of all persons claiming, by, through or under Grantor, but none other.

IN WITNESS WHEREOF, the said Grantor has executed this Special Warranty Deed as of the day and year first above written.

<b>WITNESSES:</b>  _____ Print name: _____  _____ Print name: _____	<b>GRANTOR:</b>  SYMS CORP., a New Jersey corporation  By: _____ Its: _____
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STATE OF NEW JERSEY

COUNTY OF

) SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by \_\_\_\_\_, as \_\_\_\_\_ of SYMS CORP., a New Jersey corporation, who is personally known to me or has produced \_\_\_\_\_ as identification and who did take an oath.

**My Commission expires:**

NOTARY PUBLIC, STATE OF NEW JERSEY

**Exhibit "A" to Special Warranty Deed  
Legal Description of the**

**The Property**

A PORTION OF TRACT 45, FLORIDA FRUITLANDS CO. SUBDIVISION OF SECTION 23, TOWNSHIP 53 SOUTH, RANGE 40 EAST, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, AT PAGE 17, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT 45; THENCE RUN WEST ALONG THE NORTH LINE OF SAID TRACT 45 FOR A DISTANCE OF 35.01 FEET TO THE POINT-OF-BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE CONTINUE WEST, ALONG THE SAID NORTH LINE OF TRACT 45, FOR A DISTANCE OF 1133.11 FEET, TO A POINT LYING 150.00 FEET EAST OF THE CENTERLINE OF THE PALMETTO BY-PASS, AS MEASURED AT RIGHT ANGLES; THENCE RUN SOUTH 1°39'42" EAST, ALONG A LINE LYING 150.00 FEET EAST OF THE CENTERLINE OF THE PALMETTO BY-PASS, AS MEASURED AT RIGHT ANGLES, FOR A DISTANCE OF 276.11 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE AT THE LEFT; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE TO THE LEFT, HAVING FOR ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 88°26'54", FOR AN ARC DISTANCE OF 38.59 FEET TO A POINT OF TANGENCY WITH A LINE LYING 35.00 FEET NORTH OF THE SAID SOUTH LINE OF TRACT 45 AS MEASURED AT RIGHT ANGLES; THENCE RUN SOUTH 89°53'24" EAST, ALONG THE SAID LINE LYING 35.00 FEET NORTH OF THE SOUTH LINE OF TRACT 45, AS MEASURED AT RIGHT ANGLES; FOR A DISTANCE OF 1082.85 FEET TO A POINT OF A CURVATURE OF A CIRCULAR CURVE AT THE LEFT; THENCE RUN NORTHEASTERLY, ALONG THE ARC OF SAID CIRCULAR CURVE TO THE LEFT, HAVING FOR ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 91°30'51", FOR AN ARC DISTANCE OF 39.93 FEET TO A POINT OF TANGENCY WITH A LINE LYING 35.00 FEET WEST OF THE SAID EAST LINE OF TRACT 45, AS MEASURED AT RIGHT ANGLES; THENCE RUN NORTH 1°37'27" WEST, ALONG A LINE LYING 35.00 FEET WEST OF SAID EAST LINE OF TRACT 45, AS MEASURED AT RIGHT ANGLES, FOR A DISTANCE OF 272.60 FEET TO THE POINT-OF-BEGINNING.

AND

A PORTION OF TRACT 45 OF FLORIDA FRUITLANDS COMPANY'S SUBDIVISION NO. 1, OF SECTION 23, TOWNSHIP 53 SOUTH, RANGE 40 EAST, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, AT PAGE 17 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT 45 THENCE RUN SOUTH 89°40'06" WEST, ALONG THE NORTH LINE OF SAID TRACT 45, FOR A

DISTANCE OF 632.17 FEET TO A POINT; THENCE RUN SOUTH  $01^{\circ}57'17''$  EAST FOR A DISTANCE OF 299.50 FEET TO A POINT OF INTERSECTION WITH A LINE THAT LIES 35 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 45 AND ALSO BEING THE POINT OF BEGINNING OF A PARCEL OF LAND HEREINAFTER TO BE DESCRIBED; THENCE CONTINUE SOUTH  $01^{\circ}57'17''$  EAST FOR A DISTANCE OF 35.01 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID TRACT 45; THENCE RUN SOUTH  $89^{\circ}33'27''$  EAST, ALONG SAID SOUTH LINE OF TRACT 45, FOR A DISTANCE OF 535.60 FEET TO A POINT OF INTERSECTION WITH A LINE THAT LIES 150 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT 45; THENCE RUN NORTH  $01^{\circ}59'32''$  WEST, ALONG SAID PARALLEL LINE, FOR A DISTANCE OF 59.35 FEET TO A POINT OF CUSP OF A CURVATURE, CONCAVE TO THE NORTHEAST, AND HAVING FOR ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF  $88^{\circ}27'01''$ ; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 38.59 FEET TO A POINT OF TANGENCY WITH A LINE THAT LIES 35 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 45; THENCE RUN NORTH  $89^{\circ}33'27''$  EAST, ALONG SAID LINE BEING 35 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF TRACT 45, FOR A DISTANCE OF 511.29 FEET TO THE POINT OF BEGINNING. SAID DESCRIBED PARCEL OF LAND LYING AND BEING SITUATED IN MIAMI-DADE COUNTY, FLORIDA.

**Exhibit "B" to Special Warranty Deed**

**Permitted Exceptions**

## **Exhibit C**

### **Seller's Deliveries** **(If in the possession of Seller)**

1. Existing site plans, as built drawings, architectural plans and surveys
2. Existing title policy
3. Real estate tax bills for prior two (2) years
4. All current maintenance/service contracts (i.e. HVAC, roof, parking lot, landscaping, snow removal)
5. Alarm system and sprinkler system information
6. Existing environmental reports prepared by third parties in Seller's possession
7. Copies of existing Leases, Licenses or Contracts to be assumed
8. Estoppel Certificates from any existing tenants executed no earlier than thirty (30) days prior to the date of this Agreement.
9. Mortgages affecting the Property.
10. All reports or notifications to, and permits from, federal, state or local governmental authorities relating to the Property, including occupancy permit

**Exhibit D**

**Assumed Contracts, Leases and Licenses**



**FIRST ADDENDUM TO PURCHASE AND SALE AGREEMENT  
BETWEEN SYMS CORP. AND  
INDEPENDENT LIVING SYSTEMS, LLC, AND/OR ASSIGNS**

This First Addendum dated effective as of July 27, 2012 ("**Addendum**") to Purchase and Sale Agreement dated July 16, 2012 (the "**Agreement**") is made and entered into by and between INDEPENDENT LIVING SYSTEMS, LLC, a Florida limited liability company and/or assigns ("**Buyer**") and SYMS CORP., a New Jersey corporation ("**Seller**").

The following provisions supplement and amend the Agreement and in the event of any inconsistency or conflict between the terms and conditions of the Agreement and this Addendum, this Addendum shall control. All capitalized terms, not defined herein, shall have the same meaning ascribed to them in the Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Section 4- Review Period:** Buyer and Seller agree to extend the Review Period until 5:00 p.m. EDT on July 30, 2012.
2. All other terms and conditions of the Agreement remain unchanged.
3. This Addendum is subject to approval by the Bankruptcy Court under Bankruptcy Petition Number 11-13512 (KJC).

**SELLER:**

**SYMS CORP., a New Jersey corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

**INDEPENDENT LIVING SYSTEMS, L.L.C. and/or  
assigns**

By:  \_\_\_\_\_  
Nestor Plana, Managing Member

**FIRST ADDENDUM TO PURCHASE AND SALE AGREEMENT  
BETWEEN SYMS CORP. AND  
INDEPENDENT LIVING SYSTEMS, LLC, AND/OR ASSIGNS**

This First Addendum dated effective as of July 27, 2012 ("Addendum") to Purchase and Sale Agreement dated July 16, 2012 (the "Agreement") is made and entered into by and between INDEPENDENT LIVING SYSTEMS, LLC, a Florida limited liability company and/or assigns ("Buyer") and SYMS CORP., a New Jersey corporation ("Seller").

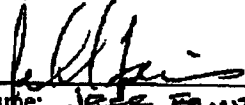
The following provisions supplement and amend the Agreement and in the event of any inconsistency or conflict between the terms and conditions of the Agreement and this Addendum, this Addendum shall control. All capitalized terms, not defined herein, shall have the same meaning ascribed to them in the Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Section 4- Review Period: Buyer and Seller agree to extend the Review Period until 5:00 p.m. EDT on July 30, 2012.
2. All other terms and conditions of the Agreement remain unchanged.
3. This Addendum is subject to approval by the Bankruptcy Court under Bankruptcy Petition Number 11-13512 (KJC).

**SELLER:**

SYMS CORP., a New Jersey corporation

By:   
Name: JEFF FEINBERG  
Title: PRESIDENT

**BUYER:**

INDEPENDENT LIVING SYSTEMS, L.L.C. and/or assigns

By: \_\_\_\_\_  
Nestor Plana, Managing Member

**SECOND ADDENDUM TO PURCHASE AND SALE AGREEMENT  
BETWEEN SYMS CORP. AND  
INDEPENDENT LIVING SYSTEMS, LLC, AND/OR ASSIGNS**

This Second Addendum is dated effective as of July 30, 2012 ("**Second Addendum**") to that certain Purchase and Sale Agreement dated July 16, 2012 (the "**Agreement**") between INDEPENDENT LIVING SYSTEMS, LLC, a Florida limited liability company and/or assigns ("**Buyer**") and SYMS CORP., a New Jersey corporation ("**Seller**").

WHEREAS, the Buyer and Seller entered into the Agreement for the purchase of certain Property located in Miami-Dade County, Florida more particularly described therein; and

WHEREAS, the Buyer requested and the Seller granted an extension to the Review Period which was memorialized in that certain First Addendum to Purchase and Sale Agreement dated July 27, 2012 (the "**Addendum**"); and

WHEREAS, following Buyer's inspections of the Property, Buyer has requested and Seller has agreed to give Buyer a credit for repairs to the Property by way of a reduction of the Purchase Price.

The Agreement, the First Addendum and this Second Addendum are hereinafter collectively referred to as the Agreement.

***NOW THEREFORE***, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. All capitalized terms, not defined herein, shall have the same meaning ascribed to them in the form of Agreement dated July 16, 2012.
2. **Section 3-Purchase Price:** Buyer and Seller agree the Purchase Price is hereby reduced to FOUR MILLION THREE HUNDRED FIFTY THOUSAND AND 00/100 (\$4,350,000.00) Dollars.
3. In addition to the adjustment to the Purchase Price, Buyer and Seller acknowledge the Deposit will be adjusted to reflect the reduction in the Purchase Price, and the Final Deposit shall be Two Hundred Ten Thousand and 00/100 (\$210,000.00) Dollars. Buyer shall deposit the Final Deposit with Escrow Agent on or before July 31, 2012 at 5:00 p.m.
4. All other terms and conditions of the Agreement remain unchanged.
5. This Addendum is subject to approval by the Bankruptcy Court under Bankruptcy Petition Number 11-13512 (KJC).

***Signatures to follow below***

**SELLER:**

**SYMS CORP., a New Jersey corporation**



By: \_\_\_\_\_

Name: Jeff Feinberg

Title: President

**BUYER:**

**INDEPENDENT LIVING SYSTEMS, L.L.C. and/or  
assigns**

By: \_\_\_\_\_

Nestor Plana, Managing Member

**SELLER:**

**SYMS CORP., a New Jersey corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

**INDEPENDENT LIVING SYSTEMS, L.L.C. and/or  
assigns**

By:  \_\_\_\_\_  
Nestor Plana, Managing Member

## **Exhibit 2 to Notice**

(Form of Sale Approval Order)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**ORDER UNDER BANKRUPTCY CODE SECTIONS 105 AND 363 AND BANKRUPTCY  
RULES 2002 AND 6004 APPROVING SALE OF CERTAIN REAL PROPERTY LO-  
CATED IN MIAMI, FLORIDA FREE AND CLEAR OF LIENS AND INTERESTS**

Upon the motion (the "Motion")<sup>2</sup> of Syms Corp. ("Syms" or the "Seller") and its associated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") for entry of orders under Bankruptcy Code sections 105, 328, 363 and 503, Bankruptcy Rules 2002, 6004 and 9006, and Local Rules 2002-1, 6004-1 and 9006-1 (I)(A) approving bidding procedures for the sale of certain real property of the Seller located at 4601 NW 77<sup>th</sup> Avenue in Miami, Florida (the "Property"), (B) authorizing the Seller to enter into the Purchase and Sale Agreement (as amended, the "Agreement"), a copy of which is attached hereto as Exhibit 1, dated as of \_\_\_\_\_, 2012 by and between the Seller and \_\_\_\_\_ (the "Purchaser"), subject to higher and better proposals, (C) approving a break-up fee in connection therewith, (D) approving the related broker fees of Cushman & Wakefield, Inc. and (E) setting the auction and sale hearing dates; (II) approving the final sale of the Property free and clear of liens; and (III) granting related relief; and the Court having entered its Order (I) Approving Bid-

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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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

ding Procedures, (II) Authorizing Seller to Enter Into Agreement, (III) Approving Break-Up Fee, (IV) Approving Related Broker Fees, and (IV) Setting Auction And Sale Hearing Dates, dated \_\_\_\_\_, 2012 (the “Bidding Procedures Order”) [Docket No. \_\_\_\_]; and the Sale Hearing having been held on August \_\_\_\_\_, 2012, at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Seller, its estate, its creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:<sup>2</sup>**

A. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b).

B. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion are Bankruptcy Code sections 105 and 363 and Bankruptcy Rules 2002 and 6004.

D. As evidenced by the affidavits of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Hearing, the Sale, the Bid Deadline, and the Auction as approved herein has been provided in accordance with Bankruptcy Code sections 102(l) and 363

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<sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.



and Bankruptcy Rules 2002 and 6004, (ii) such notice was good, sufficient, and appropriate under the circumstances, and (iii) no other or further notice of the Motion, the Sale Hearing, the Sale, the Bid Deadline and the Auction is necessary or shall be required.

E. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Seller has marketed the Property and conducted the sale process in compliance with the Bidding Procedures Order.

F. The Seller has full power and authority to execute the Agreement and all other applicable documents contemplated thereby. The transfer and conveyance of the Property by the Seller have been duly and validly authorized by all necessary action of the Seller. The Seller has all of the power and authority necessary to consummate the transactions contemplated by the Agreement and has taken all action necessary to authorize and approve the Agreement and to consummate the transactions contemplated thereby. No consents or approvals, other than those expressly provided for in the Agreement, are required for the Seller to consummate such transactions.

G. The Seller has demonstrated good, sufficient, and sound business purpose and justification for the Sale because, among other things, the Seller and its advisors diligently and in good faith analyzed all other available options in connection with the disposition of the Property and determined that (a) the terms and conditions set forth in the Agreement, (b) the transfer to the Purchaser of the Property pursuant thereto and (c) the Purchase Price agreed to as reflected in the Agreement, are all fair and reasonable and together constitute the highest or otherwise best value obtainable for the Property.

H. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including without limitation: (i) counsel to the Committees, (ii) any party who, in the past six (6) months, expressed in writing to the Seller or C&W an interest in acquiring the Property and who the Seller and its representatives reasonably and in good faith determine has the financial wherewithal to effectuate a transaction with respect to the Property (such parties, the "Interested Buyers"), (iii) any party with a lien of record on, or other asserted interest in, the Property, (iv) the U.S. Trustee and (v) all other parties who have filed a notice of appearance and request for service of documents in these cases.

I. The Purchaser is not an "insider" of any of the Debtors as that term is defined in 11 U.S.C. § 101(31).

J. This Sale Approval Order and the consummation of the contemplated transaction are supported by good business reasons, and will serve the best interests of the Seller, its estate, its creditors and its equity holders by maximizing the value to be obtained from the Property.

K. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Seller with the assistance of C&W engaged in an extensive marketing process with respect to the Property. The Purchase Price represents fair market value for the Property.

L. The Agreement was negotiated, proposed, and entered into by the Seller and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Seller nor the Purchaser has engaged in any conduct that would cause or permit the Sale to be avoidable under Bankruptcy Code section 363(n).

M. The Purchaser is a good faith purchaser under Bankruptcy Code section 363(m) and, as such, is entitled to all of the protections afforded thereby. The Purchaser will be acting in good faith within the meaning of Bankruptcy Code section 363(m) in closing the transactions contemplated by the Agreement at all times after the entry of this Sale Approval Order.

N. The consideration provided by the Purchaser for the Property pursuant to the Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Property, (iii) will provide a greater recovery for the Seller's stakeholders than would be provided by any other practical available alternative and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia.

O. The Sale must be approved and consummated promptly to obtain the value provided under the terms of the Agreement.

P. The transfer of the Property to the Purchaser is a legal, valid, and effective transfer of the Property, and shall vest the Purchaser with all right, title, and interest of the Seller to the Property. The Property would be sold free and clear of any claim (including successor liability claims), lien (including tax liens and any statutory or common law liens, possessory or otherwise), interest, charge, pledge, security interest, conditional sale agreement or other title retention agreement, lease, mortgage, security interest, option or other encumbrance (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction) and any monetary amounts which are secured by any lien (collectively, the "Liens"), except for (i) liens for real property taxes that are not yet due and payable, (ii) zoning ordinances, building codes and other land use laws and applicable governmental regulations, and (iii) all covenants, agreements, conditions, easements, restrictions and rights of record (exclud-

ing, however, mortgages, deeds of trust, mechanics liens, tax liens, judgment liens, any other liens securing monetary amounts, leases, licenses, any other similar agreements conveying possessory rights (other than easements and similar rights), purchase option rights, rights of first refusal and any other similar rights of purchase) (collectively, the “Permitted Encumbrances”).

Q. If the Sale of the Property by the Seller were not free and clear of any Liens, except for the Permitted Encumbrances, as set forth in the Agreement and this Sale Approval Order, or if the Purchaser would, or in the future could, be liable for any of the Liens, the Purchaser would not have entered into the Agreement and would not consummate the Sale contemplated by the Agreement, thus adversely affecting the Seller, its estate, and its stakeholders.

R. The Seller may sell its interest in the Property free and clear of all Liens (except the Permitted Encumbrances) because, in each case, one or more of the standards set forth in Bankruptcy Code sections 363(f)(1)-(5) has been satisfied. All holders of Liens who did not object or withdrew their objections to the Sale are deemed to have consented to the Sale pursuant to 11 U.S.C. § 363(f)(2) and all holders of Liens are adequately protected by having their Liens, if any, attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they claim an interest with the same priority, validity, force, and effect as they attached to such property immediately before the closing of the Sale.

S. Approval of the Agreement and consummation of the Sale of the Property at this time are in the best interests of the Seller, its estate, its stakeholders and other parties in interest; and it is therefore

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED. Any and all objections to the Motion not waived, withdrawn, settled, adjourned or otherwise resolved herein are hereby overruled and denied with prejudice.

**A. Approval of the Agreement.**

2. Pursuant to Bankruptcy Code sections 105 and 363(b), the Agreement and all of the terms and conditions thereof are hereby approved.

3. Pursuant to Bankruptcy Code section 363(b), the Seller is authorized, but not directed, to perform its obligations under the Agreement and comply with the terms thereof and consummate the Sale in accordance with and subject to the terms and conditions of the Agreement.

4. The Seller is authorized, but not directed, to execute and deliver, and empowered to perform under, consummate, and implement, the Agreement, together with all additional instruments and documents as may be reasonably necessary or desirable to implement the Agreement, and to take all further actions as may be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser the Property as contemplated by the Agreement.

5. This Sale Approval Order and the Agreement shall be binding in all respects upon all stakeholders (whether known or unknown) of the Seller, all affiliates and subsidiaries of the Seller, and any subsequent trustees appointed in the Seller's chapter 11 case or upon a conversion to chapter 7 under the Bankruptcy Code. To the extent that any provision of this Sale Approval Order is inconsistent with the terms of the Agreement, this Sale Approval Order shall govern.

6. The Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment, or supplement is disclosed to the Creditors' Committee and the Equity Committee and does not have a material adverse effect on the Seller's estate, in the good faith business judgment of the Seller.

**B. Sale and Transfer of the Property.**

7. Pursuant to Bankruptcy Code sections 363(b) and 363(f), upon the consummation of the Agreement, the Seller's right, title, and interest in the Property shall be transferred to the Purchaser free and clear of all Liens except the Permitted Encumbrances, with all such Liens to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they had as against the Property immediately before such transfer, subject to any claims and defenses the Seller may possess with respect thereto.

8. If any person or entity which has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing Liens on or against the Property shall not have delivered to the Seller prior to the Closing of the Sale, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens that the person or entity has with respect to the Property, or otherwise, then (a) the Seller is hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Property and (b) the Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Approval Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive

evidence of the release of all Liens on or against the Property of any kind or nature whatsoever except for the Permitted Encumbrances.

9. This Sale Approval Order (a) shall be effective as a determination that, upon the Closing of the Sale, all Liens of any kind or nature whatsoever existing as to the Seller or the Property prior to the Closing of the Sale, except for the Permitted Encumbrances, have been unconditionally released, discharged, and terminated (other than any surviving obligations), and that the conveyances described herein have been effected and (b) shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Property.

10. All persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade stakeholders, and other stakeholders, holding Liens of any kind or nature whatsoever against or in the Seller or the Property, except the Permitted Encumbrances (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated) arising under or out of, in connection with, or in any way relating to the Property prior to the Closing of the Sale, or the transfer of the Property to the Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its successors or assigns, its property, or the Property, such persons' or entities' Liens. Nothing in this Sale Ap-

proval Order or the Agreement releases or nullifies any liability to a governmental agency under any environmental laws and regulations that any entity would be subject to as owner or operator of any Property after the date of entry of this Sale Approval Order. Nothing in this Sale Approval Order or the Agreement bars, estops, or enjoins any governmental agency from asserting or enforcing, outside the Court, any liability described in the preceding sentence. Notwithstanding the above, nothing herein shall be construed to permit a governmental agency to obtain penalties from the Purchaser for days of violation of environmental laws and regulations prior to Closing.

**C. Additional Provisions.**

11. The consideration provided by the Purchaser for the Property under the Agreement is hereby deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, and under the laws of the United States, and any state, territory, or possession thereof, or the District of Columbia.

12. Upon the Closing of the Sale, this Sale Approval Order shall be construed as and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all the Property or a bill of sale transferring good and marketable title in the Property to the Purchaser pursuant to the terms of the Agreement.

13. The transactions contemplated by the Agreement are undertaken by the Seller and the Purchaser at arm's-length, without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale of the Property shall not affect the validity of the Sale to the Purchaser, unless such authorization is duly stayed pending such



appeal. The Purchaser is a purchaser in good faith, within the meaning of section 363(m) of the Bankruptcy Code, of the Property, and is, and shall be, entitled to all of the protections afforded by such section and in accordance therewith.

14. The consideration provided by the Purchaser for the Property under the Agreement is fair and reasonable and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

15. The failure specifically to include or to reference any particular provision of the Agreement in this Sale Approval Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

16. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rule 6004(h) or any other provision of the Bankruptcy Code or Bankruptcy Rules is expressly lifted.

17. This Court retains exclusive jurisdiction to interpret, construe, enforce, and implement the terms and provisions of this Sale Approval Order, the Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Property to the Purchaser, (b) compel delivery of the purchase price or performance of other obligations owed to the Seller pursuant to the Agreement, (c) resolve any disputes arising under or related to the Agreement, (d) interpret, implement, and enforce the provisions of this Sale Approval Order, and (e) protect the Purchaser against any Lien against the Seller or the Property of any kind or nature whatsoever, except for Permitted Encumbrances, which Liens, valid and timely perfected, shall attach to the proceeds of the Sale.

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

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Honorable Kevin J. Carey  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**(Agreement)**