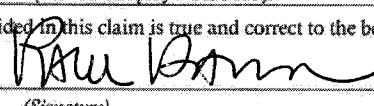


UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE		PROOF OF CHAPTER 11 ADMINISTRATIVE CLAIM	
Name of Debtor (check one only): ☒ FILENE'S BASEMENT, LLC ☐ SYMS CORP. ☐ SYMS CLOTHING, INC. ☐ SYMS ADVERTISING INC.		Case Number: 11-13511 (KJC) 11-13512 (KJC) 11-13513 (KJC) 11-13514 (KJC)	
NOTE: This form should <u>not</u> be used for a claim arising <u>before</u> the commencement of the case, but may be used for purposes of asserting an administrative expense claim under 11 U.S.C. § 503(b)(9) (see Item #4).			
Name of Creditor: (The person or entity to whom the debtor owes money or property) 201 Needham Street LLC		☐ Check box if you are aware that anyone else has filed a proof of administrative claim relating to your claim. Attach copy of statement giving particulars.	
Name and Address Where Notices Should be Sent: 201 Needham Street LLC c/o Daniel C. Cohn, Esq. Murtha Cullina LLP 99 High Street Boston, MA 02110 Telephone No.: 617-457-4000 Email Address: dcohn@murthalaw.com		☐ Check box if you have never received any notices in this case. ☒ Check box if the address differs from the address on the envelope sent to you.	
ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:		Check here if this claim ☐ replaces ☐ amends a previously filed chapter 11 administrative claim, dated: _____	
1. BASIS FOR CLAIM: ☐ Goods sold ☐ Services performed ☒ Unpaid Post-Petition Rent ☐ Other (Describe briefly in Item #5)			
2. DATE DEBT WAS INCURRED: <u>11/2/11-11/30/11</u> * * Other than claims under 11 U.S.C. § 503(b)(9) described below, claim must have arisen on or after November 2, 2011 to be considered a chapter 11 administrative claim.		3. IF CHAPTER 11 CLAIM WAS ALLOWED BY THE COURT, DATE ALLOWED: _____ * * Attach a copy of the Bankruptcy Court Order.	
4. TOTAL AMOUNT OF CHAPTER 11 ADMINISTRATIVE CLAIM: <u>\$31,538.68</u> If your administrative claim arose under 11 U.S.C. § 503(b)(9), indicate the total amount of your claim for the value of any goods received by the Debtor within 20 days before November 2, 2011, in which the goods have been sold to a Debtor in the ordinary course of such Debtor's business. If all or part of your claim is secured or entitled to priority, complete Item 5 or 6 below. ☒ Check this box if your claim includes interest or other charges. Attach itemized statement of such interest or additional charges.			
5. BRIEF DESCRIPTION OF CLAIM (attach any additional information): Unpaid post-petition rent. Please see attached supporting documentation.			
6. CREDITS AND SETOFFS: The amount of all payments on this claim that has been credited and deducted for the purpose of making this proof of administrative claim.			
7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, bills of lading, itemized statements of running accounts, contracts, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.			
8. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of administrative claim.			
9. SIGNATURE (check appropriate box):			
☒ I am the creditor.		☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any)	
☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005).		☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004).	
I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.			
Print Name: <u>Paul Dawson</u> Title: <u>ASSET MANAGER</u> Company: <u>Crosspoint Associates, Inc.</u> Address: <u>217 West Central Street, Natick, Massachusetts 01760</u> Telephone No.: <u>508-655-0505</u>		 (Signature) <u>2/28/2012</u> (Date) Email: <u>pdawson@crosspointassociates.com</u>	

- ☒ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return

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KURTZMAN CARSON CONSULTANTS



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**ATTACHMENT TO 201 NEEDHAM STREET, LLC'S
LANDLORD ADMINISTRATIVE CLAIM
(Filene's Basement, LLC/Case No. 11-13511)**

Itemized Statement of Claim and Charges (Pursuant to Item #4):

Post-Petition Rent (29 days):	\$54,777.78
Post-Petition Operating Expenses (29 days):	\$7,031.90
Attorney's Fees (pursuant to § 22(c) of Lease):	\$1,700.00
Payment (check received for 15 days of rent):	(\$31,971.00)

Total Amount of Administrative Claim:	\$31,538.68
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A copy of the Lease is attached hereto as Exhibit A.

EXHIBIT A

LEASE BETWEEN JUDITH A. SPINELLI AS LESSOR

AND

FILENE'S BASEMENT, INC. AS LESSEE

LEASE AGREEMENT, dated as of October 31, 1996, between Lessor, having an address at 745 Concord Avenue, Cambridge, Massachusetts, and Lessee, having an address at 40 Walnut Street, Wellesley, Massachusetts.

On June 23, 1980 the Lessor and Ava Botelle Fashions, Inc. ("Ava Botelle") entered into a lease agreement for the Leased Premises (as defined below). Such lease was for a term of 15 years with one five year extension option. On September 14, 1994 Ava Botelle assigned all of its right, title and interest in and to the June 23, 1980 lease to Filene's Basement, Inc. (the "Basement"). The Lessor consented to this assignment, and the Basement subsequently properly extended the June 23, 1980 lease so that the termination dated thereof is now June 30, 2000. The Lessor and the Basement as Lessee desire to continue their Lessor/Lessee relationship and are, therefore, entering into this Lease Agreement.

1. DEMISED PREMISES. In consideration of the rents and covenants herein stipulated to be paid and performed, Lessor hereby demises and lets to Lessee for the term described in paragraph 3, (i) the premises, (ii) all improvements constructed and to be constructed thereon, not including, however, any removable equipment owned, and placed upon such premises, by Lessee and (iii) all easements, rights and appurtenances relating thereto. Said premises, improvements, easements, rights and appurtenances are hereinafter referred to as the Leased Premises. The Leased Premises are more particularly described in Schedule A attached hereto.

2. TITLE AND CONDITIONS. The Leased Premises are demised and let subject to (a) the rights of any parties in possession thereof and the existing state of the title thereof as of the commencement of the term of this Lease, (b) any state of facts which an accurate survey or physical inspection thereof might show, (c) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by an governmental authority having jurisdiction, and (d) with respect to buildings, structures and other improvements located on the Leased Premises, in their condition as of the commencement of the term of this Lease and (except as otherwise provided below ~~in this paragraph~~) without representation or warranty by Lessor.

3. USE OF LEASED PREMISES. Lessee may occupy and use the Leased Premises for any lawful business purpose. Any mortgage, deed of trust or similar encumbrance (herein called a Mortgage) placed upon the Leased Premises as security for any indebtedness of Lessor shall be subject to the rights of Lessee under this Lease.

4. PRIMARY TERM. Subject to the terms, covenants, agreements and conditions contained herein, Lessee shall have and hold the Leased Premises for a primary term (herein called the Primary Term) commencing on July 1 of 2000 and ending at midnight on June 30 of 2005.

5. EXTENDED TERMS. Upon expiration of the Primary Term, Lessee shall have the right and option to extend this Lease for one additional term of five years (herein called the Extended Term) unless and until this Lease shall be sooner terminated pursuant to the terms of this Lease. The Extended Term shall commence on the day immediately succeeding the expiration date of the Primary Term and shall end at midnight of the day immediately preceding the fifth anniversary of the first day of the Extended Term. Lessee shall be deemed to have exercised its right and option to extend this Lease for the Extended Term unless it shall have notified Lessor, in writing, at least 180 days prior to the expiration of the Primary Term that it does not elect to exercise such right and option.

THE BASE RENT FOR THE PRIMARY TERM COMMENCING JULY 1 OF 2000 AND ENDING AT MIDNIGHT ON JUNE 30 OF 2005 SHALL BE \$23.00 PER SQUARE FOOT, OR \$460,000.00 PER YEAR.

THE BASE RENT FOR THE FIVE YEAR OPTION PERIOD COMMENCING JULY 1 OF 2005 SHALL BE BASED UPON A CONSUMER PRICE INDEX FORMULA WITH A CEILING WITH RESPECT TO THE ANNUAL INCREASE IN RENT IN CONNECTION WITH THE CONSUMER PRICE INDEX FORMULA OF 3 PER CENT PER YEAR. A MORE DETAILED DESCRIPTION OF THIS FORMULA IS SET FORTH ON SCHEDULE C ATTACHED HERETO.

6. RENT. The rent Lessee covenants to pay to Lessor, as installments of rent for the Leased Premises during the Primary term of this Lease, i.e., commencing July 1 of 2000 and ending June 30 of 2005, the Basic Rent amount of \$23.00 per square foot and shall pay the same at Lessor's address set forth above or at such other place within the continental United States or to such other person as Lessor from time to time may designate to Lessee in writing, in lawful money of the United States of America. The annual rent for the primary term shall be Four Hundred Sixty Thousand (\$460,000.00) Dollars and the monthly rent shall be

Thirty Eight Thousand Three Hundred Thirty Three and 33/100 (\$38,333.33) Dollars and the rent shall be paid in monthly installments on the first day of each and every month.

(b) Lessee shall pay all real estate taxes with respect to the demised premises during the time of its occupancy of said premises whether during the original term or any extended term/terms of this Lease.

7. LEASE COMMENCEMENT DATE. The lease commencement date shall be July 1, 2000.

8. SECURITY DEPOSIT. [Intentionally omitted]

9. NON-DISTURBANCE/QUIET ENJOYMENT. Lessor shall obtain a non-disturbance agreement from its current lender and from future lenders who require subordination, which shall not allow for the early termination or any modification of the lease and its various extensions and options so long as Lessee is not in default of the terms of said Lease or extensions and options.

The non-disturbance agreement shall be executed at the time of lease execution.

10. ACCESS. Lessee shall have access to the Premises twenty-four (24) hours per day each day of the year. Lessor, at Lessee's expense shall provide keys to the Lessee with respect to access to the demised premises. Lessee shall have the right to use the security system currently existing in the Premises.

11. HEATING, VENTILATION AND AIR CONDITIONING. Lessor will supply a mechanical system in good working order to provide adequate heating and cooling to the premises. Lessor will provide Lessee HVAC so that the temperature in the leased Premises does not exceed 75 degrees Fahrenheit with 50% relative humidity in the summer and is not lower than 70 degrees in the winter during business hours. Lessee shall maintain said mechanical system.

12. NET LEASE; NON-TERMINABILITY. (a) This Lease shall not terminate, nor shall Lessee have any right to terminate this Lease (except as otherwise expressly provided in this Lease), nor shall Lessee be entitled to any abatement or reduction of rent hereunder nor shall the obligations of Lessee under this Lease be affected, by reason of (i) any damage to or the destruction of all or any part of the Leased Premises for whatever cause, (ii) the taking of the Leased Premises or any portion thereof by condemnation, requisition or otherwise for any reason, or (iii) any other cause whether similar or

dissimilar to the foregoing, any present or future law to the contrary notwithstanding.

13. LIENS. (a) Lessee will not, directly or indirectly, create or permit to be created by it and will not permit to remain (whether or not created by Lessee), and will promptly discharge, at its expense, any mortgage, lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Leased Premises or any part thereof created by Lessee or affecting Lessee's interest therein or the Basic Rent, additional rent or other sums payable by Lessee under this Lease. In the event of such mortgage lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement created by or resulting from any act of, or failure to act by, Lessor, Lessor will promptly discharge the same at its expense. The existence of any mechanic's, laborer's, materialman's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this paragraph, if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen. Nothing contained in this Lease shall be construed as constituting the consent or request of Lessor, expressed or implied, of any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services or the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Leased Premises or any part thereof. Notice is hereby given that Lessor will not be liable for any labor, services or materials furnished or to be furnished to Lessee, or to anyone holding the Leased Premises or any part thereof through or under Lessee, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Lessor in and to the Leased Premises.

(b) The term "Permitted Encumbrances" with respect to the Leased Premises means:

(i) Easements, rights of way, servitudes, zoning laws, use regulations and other similar reservations, rights and restrictions, and other minor defects and irregularities in the title to the Leased Premises, which do not materially lessen the value thereof or materially impair the use thereof for the purposes held by Lessor or leased by Lessee;

(ii) The right reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license, permit or provision of law to terminate such right, power, franchise, grant, license or

permit, or to purchase, condemn or appropriate the Leased Premises;

(iii) Any liens for taxes, assessments and other governmental charges and any liens of mechanics, materialmen and laborers for work or services performed or materials furnished in connection with the Leased Premises which are not due and payable or the amount or validity of which is being contested at the time by appropriate legal procedures which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Leased Premises or any part thereof to satisfy the same, provided that Lease shall have complied with the provisions of this Lease dealing with the context of any such tax, assessment, other governmental charge or lien;

(iv) Any encroachment, encumbrance, exception or violation set forth in Schedule A hereto;

(v) The lien created by any Mortgage and any rights granted as provided therein;

(vi) This Lease, and

(vii) Any Assignment of this Lease made by Lessor as security for a Mortgage.

14. INDEMNIFICATION. Lessee agrees to pay, and to protect, indemnify and save harmless Lessor from and against any and all liabilities, losses, damages, costs, expenses (including all reasonable attorneys' fees and expenses of Lessee and Lessor), causes of action, suits, claims, demands or judgments of any nature whatsoever arising from (i) any injury to, or the death of, any person or any damage to property on the Leased Premises or in any manner growing out of or connected with the use, non-use, condition or occupation of the Leased Premises or any part thereof or resulting from the condition thereof, (ii) violation by Lessee of any agreement or condition of this Lease, and (iii) violation by Lessee of any contractor agreement to which Lessee is a party or any restriction, statute, law, ordinance or regulation, in each case affecting the Leased Premises or any part thereof or the ownership, occupancy or use thereof.

15. MAINTENANCE AND REPAIR. (a) Lessee acknowledges that it has received the Leased Premises in good order and condition. Lessee agrees that it will, at its expense, keep and maintain the Leased Premises, (excluding, however the roof of

the building at the Leased Premises, which the Lessor agrees to maintain in good repair) including any altered, rebuilt, additional or substituted buildings, structures and other improvements thereto, in good repair and appearance, except for ordinary wear and tear, and will with reasonable promptness make all non-structural changes and repairs of every kind and nature which may be required to be made upon or in connection with the Leased Premises or any part thereof in order to keep and maintain the Leased Premises in good repair and appearance. Lessor shall be required to maintain, repair or rebuild, or to make any structural alterations, replacements or renewals of any nature or description to the Leased Premises or any part thereof so as to keep the Leased Premises in good repair and appearance.

(b) In the event that any buildings, structures or other improvement to the Leased Premises, whether situated upon the Leased Premises at the commencement of this Lease or thereafter constructed thereon, shall by and through the sole activity of the Lessee (i) encroach upon any property, street or right-of-way adjoining or adjacent to the Leased Premises, or (ii) shall violate the agreements or conditions contained in any restrictive covenant affecting the Leased Premises or any part thereof, or (iii) shall hinder or obstruct any easement or right-of-way to which the Leased Premises are subject or (iv) shall impair the rights of others under any such easement or right-of-way, then, promptly after the delivery of the written request of Lessor to Lessee, Lessee shall, at its expense, either (i) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation, hindrance, obstruction or impairment, whether the same shall affect Lessor, Lessee or both, (ii) make such changes in the buildings, structures and other improvements to the Leased Premises and take such other action as shall be necessary to remove such encroachments, hindrances or obstructions and to end such violations or impairments, including if necessary the alteration or removal of any building, structure or other improvement to the Leased Premises or (iii) give to Lessor a bond or other form of indemnity reasonably satisfactory to Lessor, indemnifying Lessor against loss arising out of any such encroachment, violation, hindrance, obstruction or impairment.

16. ALTERATIONS. (a) Lessee may, at its expense, without approval of the Lessor, make non-structural additions to and alterations of the buildings, structures or other improvements to the Leased Premises, and Lessee may make substitutions and replacements for the same on the Leased Premises, provided that (i) the market value of the Leased Premises shall not thereby be lessened, (ii) the foregoing actions shall be performed in a

good and workmanlike manner, and (iii) such additions, alterations, substitutions and replacements shall be expeditiously completed in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto. Lessee shall promptly pay all costs and expenses of each such addition, alteration, substitution or replacement and shall discharge all liens filed against the Leased Premises arising out of the same. Lessee shall procure and pay for all permits and licenses required in connection with any such addition, alteration, substitution or replacement. Lessee shall obtain Lessor's written approval with respect to any proposed structural additions and alterations which approval shall not be unreasonably withheld.

17. CONDEMNATION. (a) Subject to the rights of Lessee hereinafter set forth in this paragraph 17, Lessee hereby irrevocably assigns to Lessor any award or payment to which Lessee may be or become entitled by reason of any taking of the Leased Premises or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Leased Premises or any part thereof, by any governmental authority, civil or military, whether the same shall be paid or payable in respect of Lessee's leasehold interest hereunder or otherwise. Lessor shall be entitled to participate in any such proceedings at Lessee's expense.

(b) If (i) the entire Leased Premises shall be taken in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or (ii) any substantial portion of the Leased Premises which is sufficient to render the remaining portion thereof uneconomic for Lessee's continued use or occupancy in Lessee's business shall be taken in or by such proceedings, then Lessee shall, not later than 30 days after receipt by it of official notification of any such taking, give notice to Lessor of its intention to terminate this Lease on any business day specified in such notice which occurs not less than 90 nor more than 120 days after receipt of such official notification. This Lease shall terminate on such date, except with respect to obligations and liabilities of Lessee under this Lease, actual or contingent, which have arisen on or prior to such date, upon payment by Lessee of all installments of Basic Rent and all other sums then due and payable under this Lease to and including such termination date.

(c) If (i) a portion of the Leased Premises shall be taken in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, which taking is not sufficient to authorize or require that Lessee give notice of

its intention to terminate this Lease as provided in paragraph 17(b), or (ii) the use or occupancy of the Leased Premises or any part thereof shall be temporarily requisitioned by any governmental authority, civil or military, then this Lease shall continue in full effect with an appropriate abatement or reduction of Basic Rent, additional rent or other sums payable by Lessee hereunder, based upon the amount of square footage of the Leased Premises taken or impacted by such taking. Lessee may, but shall not be required to, at its expense, repair any damage caused by any such taking or requisition, so that, after completion of such repair, the Leased Premises shall be, as nearly as possible, in a condition as good the condition thereof immediately prior to such taking or requisition, except for ordinary wear and tear. In the event of any such lesser taking in or by condemnation or other eminent domain proceedings and Lessee elects to repair as provided above, Lessee shall be entitled to receive the Net Award payable in connection with such taking, but such payment shall be made only against certificates of Lessee, signed by the President or a Vice President of Lessee, delivered to Lessor from time to time as such work of repair progresses or is completed, each such certificate describing such work of repair for which Lessee is requesting payment, the cost incurred by Lessee in connection therewith and stating that Lessee has not theretofore received payment for such work of repair.

(d) Any proceeds of the Net Award remaining after the final payment has been made for such work of repair referred to in paragraph 17(c) shall be retained by Lessor. Thereafter, each installment of Basic Rent payable during the Primary Term on and after the first Basic Rent payable during the Primary Term on and after the first Basic Rent Payment Date occurring 30 days or more after the final payment to Lessee of such proceeds, as provided in the next preceding sentence, shall be reduced by a fraction, the numerator of which fraction shall be the amount of such Net Award so retained by Lessor, and the denominator of which fraction shall be \$38,333.33.

(e) In the event of any temporary requisition referred to in paragraph 17(c), Lessee shall be entitled to receive the entire Net Award payable by reason of such temporary requisition.

(f) If the cost of any repairs made by Lessee pursuant to paragraph 17(c) shall exceed the amount of the Net Award, the deficiency shall be paid by Lessor. No payments shall be made to Lessee pursuant to paragraph 17(c) or (e), if any default shall have happened and be continuing under this Lease unless and until such default shall have been cured or removed.

(g) For the purposes of this Lease, all amounts payable pursuant to any agreement with any condemning authority which has been made in settlement of or under threat of any condemnation or other eminent domain proceeding affecting the Leased Premises shall be deemed to constitute an award made in such proceeding.

18. INSURANCE. (a) Lessee will at all times maintain, at its expense, insurance on the Leased Premises of the following character:

(i) Insurance against loss or damage by fire, lighting, windstorm, hail, explosion, aircraft, smoke damage, vehicle damage and other risks from time to time included under "extended coverage" policies and such other risks as are or shall customarily be insured against by persons, corporate or otherwise, engaged in businesses similar to that of Lessee and with respect to property that is similar to the Leased Premises, in amounts sufficient to prevent Lessor or Lessee from becoming a co-insurer of any loss under the applicable policies but in any event in amounts not less than the full insurable value of the Leased Premises. The term "full insurable value," as used herein, means actual replacement value less physical depreciation.

(ii) General public liabilities insurance against claims for bodily injury, death or property damage occurring on, in or about the Leased Premises and the adjoining streets, sidewalks and passageways, such insurance to afford protection to Lessor of not less than \$2,000,000.00 with respect to any one accident, and not less than \$1,000,000.00 with respect to property damage. Policies for such insurance shall be for the mutual benefit of Lessor, Lessee and the mortgagee under any Mortgage.

(iii) Workers' compensation insurance covering all persons employed in connection with any work done on or about the Leased Premises with respect to which claims for death or bodily injury could be asserted against Lessor, Lessee or the Leased Premises, or in lieu of such workers' compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate state agency of the state in which the Leased Premises are situated from time to time in force.

(v) Such other insurance on the Leased Premises in such amounts and against such other insurable hazards which at the time are commonly obtained in the case of property

similar to the Leased Premises, including war risk insurance when and to the extent obtainable from the United States Government or an agency thereof.

Such insurance shall be written by companies of recognized financial standing which are authorized to do an insurance business in the state in which Leased Premises are located, and such insurance shall name as the insured parties thereunder Lessor and Lessee, as their interests may appear. Lessor shall not be required to prosecute any claim against, or to contest any settlement proposed by, any insurer, provided, that Lessee may, at its expense prosecute any such claim or contest any such settlement, and in such event Lessee may bring such prosecution or contest in the name of Lessor, Lessee or both, and Lessor will join therein at Lessee's written request upon the receipt by Lessor of an indemnity from lessee against any and all costs, liabilities and expenses in connection with such prosecution or contest.

(b) Insurance claims by reason of damage to or destruction of any portion of the Leased Premises shall be adjusted by Lessee, but Lessor and the mortgagee under a Mortgage shall have the right to join with Lessee in adjusting any such loss. If the entire amount of any proceeds paid pursuant to any such claim shall not exceed \$200,000.00, then such proceeds shall be payable to Lessee. If the entire amount of any proceeds paid pursuant to any such claim shall exceed \$200,000.00, then such proceeds shall be paid to Lessee by the recipient thereof but only upon certificates of Lessee, signed by the President or a Vice President thereof, delivered to Lessor from time to time as the work of rebuilding, replacing and repairing the damage or destruction to the Leased Premises progresses, each such certificate describing such work for which Lessee is requesting payment, the cost incurred by Lessee in connection therewith and stating that Lessee has not theretofore received payment for such work. Upon completion of such work, any remaining proceeds will be paid to Lessee upon delivery to Lessor of a certificate of Lessee, signed by the President or a Vice President thereof, to the effect that such work has been completed. No payment of any proceeds shall be made to Lessee pursuant to this paragraph 18(b), if any default shall have happened and be continuing under this Lease unless and until such default shall have been cured or removed.

(c) Every insurance policy referred to in clauses (i) and iv) of paragraph 18(a) shall bear a first mortgagee endorsement in favor of the mortgagee under a first mortgage of the Leased Premises; and any loss under any such policy shall be made payable to such mortgagee, provided that any recoveries under

any of said policies shall be applied by such mortgagee. Every policy which Lessee is obligated to carry shall contain an agreement by the insurer that it will not cancel such policy after 10 days' prior written notice to Lessor and such mortgagee and that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Lessor or Lessee which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment and notwithstanding (i) the occupation or use of the Leased Premises for purposes more hazardous than permitted by the terms of such policy, (ii) any foreclosure or other action or proceeding taken by such mortgage pursuant to any provision of such Mortgage upon the happening of an event of default, as defined therein, or (iii) any change in title or ownership of the Leased Premises.

(d) Lessee shall deliver to Lessor promptly after the execution and delivery of this Lease the original or duplicate policies or certificates of the insurers, satisfactory to the mortgagee under a first Mortgage of the Leased Premises, evidencing all the insurance which is required to be maintained by Lessee hereunder, and Lessee shall, within 30 days prior to the expiration of any such insurance, deliver copies of such policies or other certificates of the insurers evidencing the renewal of such insurance. Should Lessee fail to effect, maintain or renew any insurance provided for in this paragraph 18, or to pay the premium therefor, or to deliver to Lessor copies of any of such policies or certificates, then and in any of said events Lessor, at its option, but without obligation so to do, may upon 5 days' notice to Lessee, procure such insurance, and any sums expended by it to procure such insurance shall be additional rent hereunder and shall be repaid by Lessee within 5 days following the date on which such expenditure shall be made by Lessor.

(e) Lessee shall not obtain or carry separate insurance concurrent in form or contributing in the event of loss with that required in this paragraph 18 to be furnished by Lessee unless Lessor is included therein as a named insured, with loss payable as in this Lease provided. Lessee shall immediately notify Lessor whenever any such separate insurance is obtained and shall deliver to lessor the policies or certificates evidencing the same.

19. CASUALTY. (a) If the Leased Premises or any part thereof shall be damaged or destroyed by fire or other casualty, and if the estimated cost of rebuilding, replacing and repairing the same shall be less than \$25,000, Lessee shall, with reasonable promptness and diligence, rebuild, replace and repair any damage or destruction to the Leased Premises, at its

expense, in such manner as to restore the same to an economic unit having a fair market value which the Leased Premises had immediately prior to such damage or destruction.

(b) If the Leased Premises shall be substantially damaged or destroyed in any single casualty so that the Leased Premises shall be uneconomic for restoration or for Lessee's continued use and occupancy in Lessee's business, then at Lessee's option, Lessee may give notice to Lessor, within 30 days after the occurrence of such damage or destruction, of Lessee's intention to terminate this Lease on any business day specified in such notice which occurs not less than 30 nor more than 90 days after the occurrence of such damage or destruction, provided that such notice shall be accompanied by a certificate of Lessee, signed the President or a Vice President thereof, stating that in the judgment of lessee, the Leased Premises are uneconomic for Lessee's continued use and occupancy in Lessee's business by reason of such damage or destruction. This Lease shall terminate on such termination date, except with respect to obligations and liabilities of Lessee under this Lease, actual or contingent, which have arisen on or prior to such date, upon payment by Lessee of all installments of Basic Rent and other sums then due and payable under this Lease to and including such termination date.

20. ASSIGNMENT AND SUBLETTING. Lessee shall only be allowed to sublease the demised premises to a retail business operation. Lessee may sublet all or any part of the Leased Premises for retail purposes only and may assign all its rights and interests under this Lease for retail purposes only and with the written consent of Lessor which consent shall not be unreasonably withheld, condition or delayed, provided that such sublease shall be subject to the provisions of this Lease. If Lessee assigns all its rights and interests under this Lease, the assignee under such assignment shall expressly assume all the obligations of Lessee hereunder in a written instrument delivered to Lessor at the time of such assignment. No assignment or sublease made as permitted by this paragraph 20 shall affect or reduce any of the obligations of lessee hereunder, and all such obligations shall continue in full effect as obligations of a principal and not as obligations of a guarantor or surety, to the same extent as though no assignment or subletting had been made. No sublease or assignment made as permitted by this paragraph 20 shall impose any obligations on Lessor or otherwise affect any of the rights of Lessor under this Lease. Neither this Lease nor the term hereby demised shall be mortgaged by Lessee, nor shall Lessee mortgage or pledge the interest of Lessee in and to any sublease of the Leased Premises or the rentals payable thereunder. Any such

mortgage, pledge, sublease or assignment made in violation of this paragraph 20 shall be void. In any event, Lessee shall obtain Lessor's written approval with respect to any assignment and sublease, which approval shall not be unreasonably withheld.

Lessor shall share equally any increase of any increased rent paid by the Sublessee over the rent which the Lessee is otherwise obligated to pay Lessor by the terms of this Lease.

21. CONDITIONAL LIMITATIONS; DEFAULT PROVISION. (a) Any of the following occurrences or acts shall constitute an Event of Default under this Lease: (i) if Lessee, at any time during the continuance of this Lease (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity, or before any administrative tribunal, which have or might have the effect of preventing Lessee from complying with the terms of this Lease), shall (1) fail to make any payment of Basic Rent, additional rent or other sum herein required to be paid by Lessee, and Lessee shall fail to make any such payment for a period of 10 days after delivery by Lessor of written notice to Lessee that any such payment has become due, or (2) fail to observe or perform any other provision hereof for 60 days after Lessor shall have delivered to Lessee notice of such failure (provided, that in the case of any default referred to in this clause (2) which cannot with diligence be cured within such 60-day period, if Lessee shall proceed promptly to cure the same and thereafter shall prosecute the curing of such default with diligence, then upon receipt by Lessor of a certificate from the President or a Vice President of Lessee stating the reason that such default cannot be cured within 30 days and stating that Lessee is proceeding with diligence to cure such default, the time within which such failure may be cured shall be extended for period as may be reasonably necessary to complete the curing of the same with diligence), or (ii) if Lessee shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Lessee as a bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within 120 days after the filing thereof, or (iii) if a receiver, trustee or liquidator of Lessee or of all or substantially all of the assets of Lessee or of the Leased Premises shall be appointed in any proceedings brought by

Lessee, or if any proceeding brought against Lessee shall not be discharged within 120 days after such appointment, or if Lessee shall consent to or acquiesce in such appointment.

(b) If an Event of Default shall have happened and be continuing, Lessor shall have the right at its election, then at any time thereafter while such Event of Default shall continue, to give Lessee written notice of Lessor's intention to terminate the term of this Lease on a date specified in such notice. Upon the giving of such notice, the term of this Lease and the estate hereby granted shall expire and terminate on such date as fully and completely and with the same effect as if such date were the date hereinbefore fixed for the expiration of the term of this Lease, and all rights of Lessee hereunder shall expire and terminate, but Lessee shall remain liable as hereafter provided.

(c) If an Event of Default shall have happened and be continuing, Lessor shall have the immediate right, whether or not the term of this Lease shall have been terminated to re-enter and repossess the Leased Premises or any part thereof by force, summary proceedings, ejected or otherwise and the right to remove all persons and property therefrom. Lessor shall be under no liability for or by reason of any such entry, repossession or removal. No such re-entry or taking of possession of the Leased Premises by Lessor shall be construed as election on lessor's part to terminate the term of this Lease unless a written notice of such intention be given to Lessee pursuant to this Lease, or unless the termination of this Lease be decreed by a court of competent jurisdiction.

(d) At any time or from time to time after the repossession of the Leased Premises or any part thereof pursuant to the terms of this Lease, Lessor may (but shall be under no obligation to) relet the Leased Premises or any part thereof for the account of Lessee, without notice to Lessee, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions as may be then typical and customary in the marketplace (which may include concessions or free rent) and for such uses as Lessor, in its absolute discretion, may determine, and Lessor may collect and receive any rents payable by reason of such reletting. Notwithstanding the foregoing provisions of the terms of this Lease, Lessor agrees to use its best efforts to accomplish such reletting; provided, however, that Lessor shall not be liable for any failure to relet the Leased Premises or any part thereof or for any failure to collect any rent due upon any such reletting.

(e) No expiration or termination of the term of this Lease

by operation of law or otherwise, and no repossession of the Leased Premises or any part thereof pursuant to this Lease or otherwise, and no reletting of the Leased Premises or any part thereof, shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

(f) In the event of any expiration or termination of this Lease or repossession of the Leased Premises or any part thereof by reason of the occurrence of an Event of Default, Lessee will pay to Lessor the Basic Rent, additional rent and other sums required to be paid by Lessee to and including the date of such expiration, termination or repossession; and, thereafter, Lessee shall, until the end of what would have been the term of this Lease in the absence of such expiration, termination or repossession, and whether or not the Leased Premises or any part thereof shall have been relet, be liable to Lessor for, and shall pay to Lessor, as liquidated and agreed current damages: (i) the Basic Rent, additional rent and other sums which would be payable under this Lease by Lessee in the absence of such expiration, termination or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Lessee pursuant to the terms of this Lease, after deducting from such proceeds all Lessor's expenses in connection with such reletting (including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, employees' expenses, alteration costs and expenses of preparation for such reletting). Lessee will pay such current damages on the days on which the Basic Rent would have been payable under this Lease in the absence of such expiration, termination or repossession, and Lessor shall be entitled to recover the same from Lessee on each such day.

22. ADDITIONAL RIGHTS OF LESSOR. (a) No right or remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. The failure of Lessor to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, or power or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future. A receipt by Lessor of any Basic Rent, any additional rent or any other sum payable hereunder with knowledge of the breach of any covenant or agreement contained in this Lease shall not be deemed a waiver of such breach, and no waiver by Lessor of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor. In addition to other remedies

provided in this Lease, Lessor shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Lessor at or in equity.

(b) Lessee hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have under any present or future constitution, statute or rule of law to redeem the Leased Premises or to have a continuance of this Lease for the term hereby demised after termination of Lessee's right of occupancy by order or judgment of any court or by any legal process or writ, or under the terms of this Lease, or after the proper termination of the term of this Lease as herein provided, and (ii) the benefits of any present or future constitution, statute or rule of law which exempts property from liability for debt or for distress for rent.

(c) In the event Lessee shall be in default in the performance of any of its obligations under this Lease, and an action shall be brought for the enforcement thereof in which it shall be determined that Lessee was in default, Lessee shall pay to Lessor all the expenses incurred in connection therewith including reasonable attorneys' fees. In the event Lessor shall, without fault on its part, be a party to any litigation commenced against Lessee, if Lessee, at its expense, shall fail to provide Lessor with counsel approved by Lessor, Lessee shall pay all costs and reasonable attorneys' fees incurred or paid by Lessor in connection with such litigation.

23. NOTICES, DEMANDS, AND OTHER INSTRUMENTS. (a) All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Lease shall be in writing and shall be deemed to have been properly given if (a) with respect to Lessee, sent by registered or certified mail, postage prepaid, addressed to Lessee at: 40 Walnut Street, Wellesley, Massachusetts 02181, Attn: Steven R. Siegel, Executive Vice President and Chief Financial Officer and (b) with respect to Lessor, sent by registered or certified mail, postage prepaid, addressed to Lessor at: 745 Concord Avenue, Cambridge, Massachusetts 02138.

(b) Lessor and Lessee shall each have the right from time to time to specify as its address for purposes of this Lease, including without limitation, this paragraph 23, any other address in the United States of America upon giving 15 days'

written notice thereof, similarly given, to the other party.

24. ESTOPPEL CERTIFICATE. Lessee and Lessor each will, at any time and from time to time (but not more often than once every six months), upon not less than 20 days' prior request by the other, execute, acknowledge and deliver to the other a statement in writing, executed by the President or any Vice President of Lessee or by the Lessor, certifying that this Lease is unmodified and in full effect (or, if there have been modifications, that this Lease is in full effect as modified, and setting forth such modifications) and the dates to which the Basic Rent, additional rent and other sums payable hereunder have been paid, and either stating that to the knowledge of the signer of such certificate no default exists hereunder or specifying each such default of which the signer may have knowledge; it being intended that any such statement may be relied upon by the Lessee or mortgagee under any Mortgage or by any prospective purchaser of the Leased Premises.

25. NO MERGER. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Leased Premises or any part thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest in this Lease or in such leasehold estate and the fee estate in the Leased Premises or any interest in such fee estate. This Lease shall be terminated for any reason except as expressly provided in this instrument.

26. SURRENDER. Upon the expiration or earlier termination of this Lease, Lessee shall peaceably leave and surrender the Leased Premises to Lessor in the same condition in which the Leased Premises were originally received from Lessor at the commencement of this Lease, except as repaired, rebuilt, restored, altered or added to as provided in, permitted by or required by any provision of this Lease and except for ordinary wear and tear, casualty and taking. Lessee shall remove from the Leased Premises on or prior to such expiration or earlier termination all property situated thereon which is not owned by Lessor and, at its expense, shall, on or prior to such expiration or earlier termination, repair any damage caused by such removal. Property not so removed shall become the property of Lessor, and Lessor may thereafter cause such property to be removed from the Leased Premises and disposed of, but Lessee shall pay the reasonable cost of any such removal and disposition and the reasonable cost of repairing any damage caused by such removal minus any net proceeds received by Lessor by reason of such disposition.

27. SEPARABILITY. Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement, and the breach of any such covenant or agreement by Lessor shall not discharge or relieve Lessee from its obligations to perform the same. If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby; and each term and provisions of this Lease shall be valid and shall be enforced to the extent permitted by law.

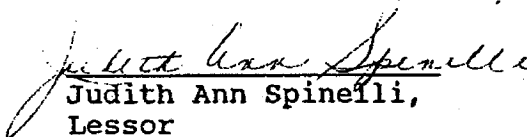
28. BINDING EFFECT. All of the covenants, conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign were in each case named as a party to this Lease. This Lease may not be changed, modified or discharged except by a writing signed by Lessor and Lessee.

29. HEADINGS. The headings of the various paragraphs of this Lease have been inserted for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the expressed terms and provisions of this Lease.

30. GOVERNING LAW. This Lease shall be governed by and interpreted under the laws of the state in which the Leased Premises are located.

31. SCHEDULES. The following are Schedules A and B referred to in this Lease.

32. NOTICE OF LEASE. The Lessor agrees that upon request of the Lessee she will join in the execution of a recordable Notice of Lease as defined in Section 4 of Chapter 183 of the General Laws of Massachusetts.


Judith Ann Spinelli,
Lessor

By _____

Attest:

By: _____

Witnesses:

Filene's Basement,
Inc., Lessee

By: _____
EUP O C F C

Attest:

By: _____

Witnesses:

The Commonwealth of Massachusetts
S.S. Date 11/1/96
Then personally appeared the above named
Steven Siegel
and acknowledged the foregoing instrument
to be his free act and deed, before me,
ELAINE S. HURST, Notary Public
My Commission Expires November 9, 2001

SCHEDULE A TO LEASE
[Description of Leased Premises]

SCHEDULE B TO LEASE

Basic Rent Payments

- A. The Basic Rent payment to be made under this Lease on each Basic Rent Payment Date during the Primary Term:
- B. The Basic Rent payment to be made under this Lease on each Basic Rent Payment Date during each Extended Term:

\$38,333.33

\$See
Schedule C

SCHEDULE C

The Extended Term shall commence on the day succeeding the expiration of the Primary Term and shall end on the day immediately preceding the fifth anniversary of the commencement of the Extended Term. All of the terms, covenants and provisions of this Lease applicable immediately prior to the expiration of the Primary Term shall apply to the Extended Term except that (i) the annual Base Rent for the Extended Term shall be fixed on the first day of July, 2005 (the "Calculation Date") and shall be equal to the greater of (a) the product of (1) the Base Rent in effect on July 1, 2000 without giving effect to any abatements, set-offs or concessions then in effect (the "Prior Rent"), increased by a yearly computation consisting of (2) a fraction, the denominator of which shall be the aggregate of the Index as of June, 2000 plus the percentage increase of the Index for each of the five (5) years preceeding the Calculation Date (with a maximum increase allowable of three percent (3%) per year), and the numerator of which shall be the Index for June, 2000, or (b) the Prior Rent.

"Index", as used in this Schedule C shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, Boston, Massachusetts, All Items 1982-1984=100. The Index is presently published by the Bureau of Labor Statistics of the United States Department of Labor. In the event publication of the Index ceases, the computation of the Base Rent due from Tenant during each year of the term with respect to which the Index is to be applied shall be computed upon the basis of whatever index published by the United States Department of Labor at that time is most nearly comparable as a measure of general changes in price levels for the Boston area.

FILENES
10/16/1996

FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE (this "Amendment") made and entered into this 22 day of September 2009, by and between 201 NEEDHAM STREET LLC, a Massachusetts limited liability company with a mailing address of c/o Crosspoint Associates, Inc., 217 West Central Street, Natick, Massachusetts 01760, successor-in-interest to Judith A Spinelli ("Lessor"), and SYL LLC d/b/a Filene's Basement, with a mailing address of c/o Syms Corp., One Syms Way, Secaucus, New Jersey 07094, successor-in-interest to Filene's Basement, Inc. ("Lessee"). Lessor and Lessee are hereby collectively referred to as the "Parties".

WHEREAS, by Lease dated as of October 31, 1996, (the "Lease"), Lessor leased to Lessee approximately 20,000 square feet of space located at 201 Needham Street, Newton, Massachusetts (the "Leased Premises"); and

WHEREAS, it is the desire of the Parties to amend the Lease; and

WHEREAS, Lessee hereby certifies to Lessor, as a material part of the consideration for Lessor entering into this Amendment and without which Lessor would not enter into this Amendment, as follows: (a) the Lease is a valid lease, is in full force and effect, has not been modified, amended or supplemented (except as set forth above), and represents the entire agreement between the Parties; (b) all obligations and conditions under the Lease to be performed by Lessor to the date of this Amendment have been satisfied; (c) there exists no default or event of default, as those or similar terms may be defined in the Lease ("Default"), on the part of Lessor of any of the terms and conditions of the Lease, no event has occurred which, with the passing of time or giving of notice or both, would constitute a Default, and Lessee is not entitled to any "free rent", other concession, rent offset, rent deduction, rent abatement or defenses under the Lease; (d) all obligations and conditions under the Lease to be performed by Lessee to the date of this Amendment have been satisfied; (e) there exists no default or event of default, as those or similar terms may be defined in the Lease ("Default"), on the part of Lessee of any of the terms and conditions of the Lease, no event has occurred which, with the passing of time or giving of notice or both, would constitute a default by Lessee under the Lease; and (f) Lessee has not assigned, sublet, otherwise transferred or encumbered its interest in the Leased Premises or the Lease except as specifically set forth above, and Lessee and the party executing this Amendment on behalf of Lessee have the full right and authority to enter into this Amendment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **DEFINED TERMS:** Capitalized terms not otherwise defined in this Amendment shall have the meaning attributed to such terms in the Lease.
2. **USE:** Section 3 of the Lease is hereby amended by deleting the phrase "lawful business purpose" and replacing it with "lawful retail use".

CROSSPOINT

3. **TERM:** Notwithstanding any other provision of the Lease to the contrary, the Term of the Lease is hereby extended from July 1, 2010 through and including June 30, 2020.
4. **EXTENDED TERMS:** Section 5 of the Lease is hereby deleted in its entirety. Tenant shall have no right to further extend the Term of the Lease.
5. **RENT:** Notwithstanding any other provision of the Lease to the contrary, the Basic Rent payable during the Term shall be as follows:

For the period July 1, 2010 through June 30, 2011, the Basic Rent shall be \$640,000.00 per annum, payable in equal monthly installments of \$53,333.33 on or before the first day of every month during the Term.

For the period July 1, 2011 through June 30, 2012, the Basic Rent shall be \$680,000.00 per annum, payable in equal monthly installments of \$56,666.67 on or before the first day of every month during the Term.

For the period July 1, 2012 through June 30, 2015, the Basic Rent shall be \$720,000.00 per annum, payable in equal monthly installments of \$60,000.00 on or before the first day of every month during the Term.

For the period July 1, 2015 through June 30, 2020, the Basic Rent shall be \$800,000.00 per annum, payable in equal monthly installments of \$66,666.67 on or before the first day of every month during the Term.

6. **HEATING, VENTILATING AND AIR CONDITIONING:** Section 11 of the Lease is hereby deleted in its entirety and replaced with the following:

Lessor shall, at Lessee's cost and expense, repair, maintain and replace any HVAC unit(s) and system(s) serving the Leased Premises as part of Lessor's Operating Expenses, as hereinafter defined.

7. **MAINTENANCE AND REPAIR:** Section 15 of the Lease is hereby deleted in its entirety and replaced with the following:

Lessor agrees to make all necessary repairs or alterations to the foundation, roof, exterior walls, structural columns, and structural beams of the Leased Premises, walkways, driveways, landscaping, exterior lighting and sewer system, and to reasonably remove snow from the Common Areas (provided Lessee, at Lessee's expense, shall be responsible for the removal of snow and ice from the sidewalks adjacent to Leased Premises). Lessee shall be obligated to pay for the costs incurred by Lessor in performing the foregoing work to the extent provided for in the other applicable provisions of this Lease. Notwithstanding the foregoing, if any of said repairs or alterations shall be made necessary by reason of repairs, installations, alterations, additions or improvements made by Lessee or anyone claiming under Lessee, by reason of the fault or negligence of Lessee or anyone

claiming under Lessee, by reason of a default in the performance or observance of any agreements, conditions, or other provisions on the part of Lessee to be performed or observed, or by reason of any special use to which the Leased Premises may be put, Lessee shall make all such repairs or alterations as may be necessary or, at Lessor's option, Lessor may make such repairs or alterations in which event Lessee shall reimburse Lessor for the actual and documented costs thereof within thirty (30) days after receipt of an invoice therefor (and same shall constitute additional rent hereunder). Lessor shall not be deemed to have committed a breach of any obligation to make repairs or alterations or perform any other act unless Lessor shall have received notice from Lessee designating the particular repairs or alterations needed or the other act of which there has been failure of performance, and shall have failed to make such repairs or alterations or performed such other act within a reasonable time after the receipt of such notice; and in any event, Lessor's liability shall be limited to the cost of making such repairs or alterations or performing such other act. As used in this Lease, the expression "exterior walls of the Leased Premises" does not include the interior surface of any exterior wall, nor shall it include any glass, windows, doors, window sashes or frames, door frames or store fronts.

8. OPERATING EXPENSES and COMMON AREAS

Notwithstanding anything to the contrary contained in the Lease, the following is hereby added to the Lease:

32. Operating Expenses. Lessee agrees to pay to Lessor a charge for "**Operating Expenses**" for each calendar year (or portion thereof) during the Term as set forth in this Section.

A. The Operating Expenses for each calendar year or portion thereof shall be paid by Lessee as follows: Lessor shall, at or before the start of such calendar year, notify Lessee of the amount which Lessor estimates will be the amount of the Operating Expenses for such calendar year or portion thereof; and Lessee shall pay such amount in equal monthly installments in advance on or before the first of each month. Within a reasonable period of time following the completion of each calendar year, or upon any transfer of ownership in the Shopping Center (or, in each case, as soon as Lessor is able, there being no default or other remedy resulting from Lessor's failure to timely provide the following described statement), Lessor shall submit to Lessee a statement showing the Operating Expenses to be paid by Lessee with respect to the preceding calendar year or year-to-date of the transfer in ownership, as the case may be, computed in accordance with the provisions of this Section, the amount thereof theretofore paid by Lessee during such preceding calendar year or year-to-date, and the amount of the resulting balance due thereon, or overpayment thereof, as the case may be. Appropriate adjustment shall thereupon be made between the Parties on the basis of such statement. If such reconciliation shows any underpayment, then Lessee

shall pay such deficiency within thirty (30) days of receipt of statement. In the event of an overpayment, Lessor shall apply any excess payment to the next payment of additional rent due from Lessee to Lessor, provided that Lessee is not in default and provided that there are no outstanding balance owed by Lessee to Lessor. Each statement shall be final and conclusive (absent manifest error) between the Parties, their successors, and assigns, as to the matters set forth therein, if no objection is raised with respect thereto within ninety (90) days after submission of each statement to Lessee.

B. Lessor's "Operating Expenses" shall include, without limitation, all costs and expenses of every kind or nature incurred by Lessor in the operation of the Shopping Center including, without limitation, costs of maintenance, repair, replacement, lighting, gardening and landscaping; public liability, property damage, flood and earthquake, sign and rent insurance; structural repairs and maintenance; painting and decorating; parking field and common area striping and lighting (including cost of electricity and maintenance and replacement of fixtures, poles and bulbs); work required for compliance with laws and insurance policies; policing and regulating traffic; rubbish, garbage, and other refuse removal; machinery, equipment, and supplies used in the operation and maintenance of the Common Areas and facilities (including the cost of inspection); replacement of paving, curbs, and walkways and (calculated on a ten (10) year life); replacement of building structural elements and building systems (calculated on a twenty (20) year life), however replacement of the roof shall not be included as part of Lessor's Operating Expenses; utility and drainage fees and repairs (including connection charges); cost of on-site personnel to implement the operation, maintenance, management, leasing and repairs of the Shopping Center as provided above (including Worker's Compensation Insurance covering personnel), security, police and fire protection, to the extent provided without the identification of same imposing a requirement that Lessor provide such security, police or fire protection), all of the foregoing any other services and work to be in a manner deemed by Lessor to be reasonable and appropriate and for the best interests of the Shopping Center and allocated to any particular calendar year on the accrual method of accounting. Operating Expenses shall specifically exclude: (1) taxes, (2) franchise or income taxes imposed upon Lessor, (3) debt service, points and fees on debt or any amortization on or for any Mortgage), (4) leasing commissions, advertising and promotional expenses, legal fees for the preparation of leases and rent payable with respect to any leasing office, (5) capital improvements (except as otherwise provided herein), (6) the cost of electrical energy that is separately metered or allocated and furnished directly to Lessee and other tenants of the Shopping Center, (7) the cost of tenant installations or alterations incurred in connection with preparing space for a new tenant, (8) salaries of personnel above the grade of general manager, (9) any expense for which Lessor is otherwise compensated through the proceeds of insurance or is otherwise compensated by any tenant (including Lessee) of the Shopping Center, (10) legal fees incurred in connection with any negotiation of or prosecution and/or resolution of any claim or dispute relating to any, any space lease in the

Shopping Center, (11) the cost of cleaning the interior space of other tenants' premises in the Shopping Center, (12) costs and expenses incurred in connection with the creation of a Mortgage or in connection with the refinancing of a Mortgage or the sale of the Shopping Center, (13) the cost of repairing or restoring any portion of the Shopping Center damaged by a hazard, however the cost of any deductible shall not be excluded from Operating Expenses, (14) the cost of repairs, alterations or replacements required as a result of the exercise of any right of eminent domain, (15) the cost of any special service or increased level of service provided to a tenant of the Shopping Center that is not provided generally to tenants of the Shopping Center or Lessee, (16) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Lessor, (17) advertising and promotional expenditures, and costs of the construction and installation of signs in or on the Shopping Center identifying the owner or any tenant thereof, (18) amounts paid to an affiliate of Lessor to render services which are in excess of the amounts which would have been paid in the absence of such relationship, (19) all expenses incurred by Lessor in removing, encapsulating, or remediating the effects of Hazardous Materials (as hereinafter defined) but only to the extent that the actions of Lessee, Lessee's affiliates, contractors or vendors are not responsible for the disturbance of Hazardous Materials which then require the removal, encapsulation or remediation of the Hazardous Materials, (20) any costs reimbursed by any source or which should have been reimbursed by other tenants of the Shopping Center, (22) any costs which are due to, which result from, or which are exacerbated by Landlord's gross negligence in maintaining the Leased Premises or the Shopping Center, (23) the cost of any penalty or fine incurred by Landlord due to Landlord's violation of any legal requirement, (21) all fees and costs associated with promotion, advertising or marketing funds, a merchant's association or any similar association, and any charitable and political contributions, (22) interest or penalties attributable to late payment by Lessor of any of the taxes or Operating Expenses unless such interest or penalty is a result of Lessee's late payment of taxes or Operating Expenses to Lessor, (23) legal and professional fees, costs and expenses, judgments, fines, penalties and damages incurred by, imposed upon, or levied against, Lessor as a result of Lessor's negligence or willful misconduct, (24) the amount of refundable deposits; and (25) management fees in excess of four percent (4%) of gross revenues; provided, however, that if Lessor determines, in Lessor's reasonable discretion, that the market rate management fees paid to independent, third party property managers for comparable services at comparable first-class buildings in the City of Newton exceeds four percent (4%), Landlord shall have the right to increase management fees to the then market rate.

C. "Common Areas" means the portions of the Shopping Center, whether owned or ground leased by Lessor or made available for use by other owners or ground lessors of parcels within the Shopping Center, which have, at the time in question, been designated and improved from time to time (and subject to Lessor's rights, from time to time, to remove or add to areas from use as common areas and subject further to Lessor's rights to designate certain areas as being for the

exclusive use of one or more tenants, such as temporary outdoor sales areas and certain short term or other specially designated parking spaces which areas Lessor still may classify as "Common Areas") for common use by or for the benefit of the Shopping Center (including, without limitation, if and to the extent facilities therefor are provided by Lessor at the time in question, the land and facilities utilized as parking lots; roofs, siding, structural elements and building systems including plumbing, electrical, heating, ventilation and air-conditioning systems and sewer lines and connections; all mail areas; access and perimeter roads; truck passageways; fire corridors, service corridors and stairways providing access from the Leased Premises to such platforms and truck passageways; landscaped areas; exterior walks; stairways and ramps, stairs, underground storm and sanitary sewers and drains, utility lines and the like installed at the cost of Landlord; and washrooms comfort rooms, drinking fountains, toilets and the like).

9. **CONDEMNATION:** Section 17 is hereby amended by deleting the second sentence of subsection (d).

Section 17 is hereby further amended by adding the following at the end of subsection (e):

Notwithstanding the foregoing, if the Basic Rent, additional rent or other sums payable by Lessee are reduced in accordance with subsection 17(c), above, on account of such temporary requisition, then Lessor and not Lessee shall be entitled to receive the entire Net Award payable by reason of such temporary requisition.

10. **INSURANCE:** Section 18 of the Lease is hereby amended by deleting the last sentence of subsection (a)(ii) and replacing it with the following:

Lessee shall name Lessor, Lessor's mortgagee and Lessor's property manager as additional insured parties in Lessee's liability insurance coverage.

Section 18 of the Lease is hereby further amended by adding the following language to the end of Section 18:

Lessee agrees to pay as part of Operating Expenses or, at Lessor's election, separately, Lessor's Insurance Costs. The term "**Lessor's Insurance Costs**" shall include, without limitation and at Lessor's election, all costs of coverages of customary insurance insuring the Shopping Center or any portion thereof or rights therein (including, without limitation, the Common Areas). Said coverage may include, without limitation, fire, extended coverage, flood and earthquake coverage, rent insurance, and liability. Should Lessor elect to bill Lessee monthly for such insurance, then Lessee agrees to pay an amount equal to one-twelfth of the annual cost of such insurance each month. The amount of such insurance shall be an additional rent under this Lease.

11. **CASUALTY:** Section 19 of the Lease is hereby deleted in its entirety and is replaced with the following:

(a) If the Leased Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Lessee shall, with reasonable promptness and diligence, rebuild, replace and repair any damage or destruction to the Leased Premises, at its sole cost and expense (except that Lessor shall make available to Lessee the insurance proceeds, if any, in accordance with Section 18(b), above), in such manner as to restore the same to an economic unit having a fair market value which the Leased Premises had immediately prior to such damage or destruction. Any repair work to be performed by Lessee under this subsection (a) shall comply with the terms and provisions of Section 16, above.

(b) If the Leased Premises shall be substantially damaged or destroyed in any single casualty during the final two (2) years of the Term, then, at Lessee's option, Lessee may give notice to Lessor, within thirty (30) days after the occurrence of such damage or destruction, of Lessee's intention to terminate this Lease on any business day specified in such notice which occurs not less than thirty (30) nor more than ninety (90) days after the occurrence of such damage or destruction. This Lease shall terminate on such termination date, exception with respect to obligations and liabilities of Lessee under this Lease, actual or contingent, which have arisen on or prior to such date. Notwithstanding the termination, Tenant shall remain liable for payment of Basic Rent through the remainder of the Term of this Lease as if such termination had not occurred. For purposes of this Section 19(b), "substantially damaged or destroyed" shall mean damage or destruction the repairs of which cannot be substantially completed in a period equal to twenty-five percent (25%) of the remaining Term of the Lease.

12. **NOTICES, DEMANDS AND OTHER INSTRUMENTS:** Section 23 of the Lease is hereby deleted in its entirety and replaced with the following:

Except as otherwise in this Lease provided, a bill, statement, notice, or communication which Lessor may desire or be required to give to Lessee shall be deemed sufficiently given or rendered if in writing and delivered to Lessee by hand or sent by nationally recognized overnight courier, or certified or registered mail, return receipt requested, in each case addressed to Lessee at the address first hereinabove given or at such other address as Lessee may designate by written notice upon at least thirty (30) days' notice, and shall be deemed given or rendered on the date of delivery by hand to Lessee or deposit with a nationally recognized overnight courier or the United States Postal Service, as applicable. Any notice by Lessee to Lessor must be served by certified or registered mail, return receipt requested or sent by nationally recognized overnight courier, at the address first hereinabove given or at such other address as Lessor may designate by written notice. For purposes of the delivery of all notices, consents, approvals,

demands and other communications under this Lease, the respective addresses of Lessor and Lessee are hereby amended as follows:

Lessor:

201 Needham Street LLC
c/o Crosspoint Associates, Inc.
217 West Central Street
Natick, Massachusetts 01760

With a copy to:

Jonathan W. Harlow, Jr., Esq.
Fellman Law Group, P.C.
54 Jaconnet Street
Newton, MA 02461

Lessee:

SYL LLC d/b/a Filene's Basement
c/o Syms Corp.
One Syms Way
Secaucus, NJ 07094
Attention: Philip Piscopo

with a copy to:

Steven M. Hecht, Esq.
Lowenstein Sandler PC
65 Livingston Avenue
Roseland, NJ 07068

13. **FINANCIAL STATEMENTS:** In the event that Lessee or Syms Corp. ("Guarantor") is no longer a publicly-traded company at any time during the Term of the Lease, Lessee agrees to furnish to Lessor upon Lessor's request, at any time, financial statements (including financial statements of both Lessee and all Guarantors) prepared by an independent Certified Public Accountants or an officer of Lessee or Guarantor (including, but not limited to, a balance sheet and a profit and loss statement) if, as and when such statements may be required by Lessor or Lessor's lender. Notwithstanding the foregoing, Lessor shall request such financial statements no more than twice annually (except in the case of a proposed transfer of ownership).
14. **GUARANTOR:** As a material inducement for Lessor to execute this Amendment, Syms Corp. shall execute and deliver its Guaranty Agreement in the form attached hereto as **Exhibit A-1**.

15. **SUBORDINATION:** In furtherance of Section 9 of the Lease, Lessor and Lessee hereby agree that at the option of Lessor or Lessor's mortgagee, this Lease shall become subordinate to all mortgages, in any amounts, and all advances thereon which may now or hereafter affect such leases, or the real property of which the Leased Premises is a part, and to all renewals, modifications, consolidations, participations, replacements, and extensions thereof, provided that the holder of the mortgage shall enter into a subordination, non-disturbance and attornment agreement in such form and substance as the holder of the Mortgage shall prescribe and further provided the same meets commercially reasonable standards for similar transactions and is acceptable to Lessee in its reasonable discretion. The term "Mortgages" as used herein shall be deemed to include, without limitation, mortgages, trust indentures, deeds of trust and ground leases.

In the event that Lessor or Lessor's mortgagee elects to subordinate this Lease as mentioned in the preceding paragraph, then Lessor or its mortgagee shall give Lessee notice to such effect, and Lessor shall deliver a form of Subordination, Attornment and Non-Disturbance Agreement to Lessor. In the event Lessor or any ground lessor under any ground lease or any mortgagee desires confirmation of such subordination, Lessee shall execute promptly any certificate that Lessor may request, and failure to do so within ten (10) days of receipt of Lessor's request shall be considered a breach of this Lease. Lessee shall have no right to place any lien or encumbrance of any sort, including, without limitation, chattel mortgages, against the Leased Premises, the Shopping Center, or any of the Lessee's fixtures, furniture, equipment or improvements, except that Lessee may place a chattel mortgage on its moveable trade fixtures, provided that any such mortgage shall be subject to and subordinate to any mortgage placed upon the Leased Premises or upon the Shopping Center by the Lessor.

16. **CERTIFICATES:** Section 24 of the Lease is hereby deleted in its entirety and replaced with the following:

Lessee shall, without charge, at any time and from time to time thereafter, within ten (10) days after written request by Lessor, certify by a written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or purchaser, or any person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (c) as to the existence of any default thereunder; (d) as to the existence of any offsets, counterclaims, or defenses thereto on the part of Lessee; and (e) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by Lessor, a purchaser or a prospective purchaser, or mortgagee under any Mortgage; and the contents of such certificate shall be binding on Lessee.

17. **LEASE AMENDMENT:** Except as expressly set forth herein, the terms of the Lease shall be and remain unchanged and in full force and effect. Notwithstanding the foregoing, in the event of a conflict or inconsistency between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control.

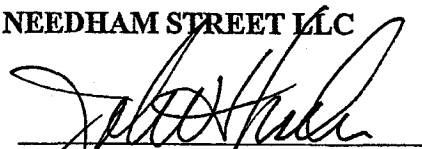
18. **AMENDMENT BINDING:** This Amendment shall be binding upon and inure to the benefit of the Parties' respective heirs, successors and assigns.
19. **CAPTIONS.** Paragraph titles or captions contained in this Amendment are included only as a convenience and in no way define or limit the substance or intent of any provision of this Amendment.
20. **COUNTERPARTS.** This Amendment may be executed in counterparts.
21. **SEVERABILITY.** If any provision of this Amendment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent in any jurisdiction, the remainder of this Amendment and the application of its provisions to other persons or circumstances in other jurisdictions shall not be affected thereby.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Lessor and Lessee have executed this First Amendment to Lease as of the date first above written.

LESSOR:

201 NEEDHAM STREET LLC

By: 

John W. Hueber.
Its Member Manager

LESSEE:

SYL LLC

By: 

Name: Philip A. Piscopo
Title: Member