

OPERATING AGREEMENT

FOR

ALLYN'S, LLC

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**OPERATING AGREEMENT
OF
ALLYN'S, LLC**

Agreement made this 28th day of January 2014, between **Allyn's, LLC**, a Wisconsin limited liability company ("Company") and **Harmon Allyn and Violet Allyn** ("Members").

1. **NAME.** The name of the Company is **Allyn's, LLC**.

2. **ORGANIZATION.** The Members organize the Company as a Wisconsin limited liability company pursuant to the provisions of the Act.

3. **REGISTERED AGENT AND OFFICE.** The registered agent for the service of process and the registered office will be that person and location reflected in the Articles as filed in the office of the Department of Financial Institutions. The Managing Member may, from time to time, change the registered agent or office through appropriate filings with the Department of Financial Institutions.

4. **NATURE OF BUSINESS.**

A. **Permitted Business.** The Company may engage in any lawful business permitted by the Act. The Company will have the authority to do all things necessary or convenient to accomplish its purpose and operate its business.

5. **DEFINITIONS.** For purposes of this Agreement (as defined below), unless the context clearly indicates otherwise, the following terms will have the following meanings:

A. "Act" means Wisconsin Chapter 183, Limited Liability Company Law, and all amendments to the Act.

B. "Agreement" means this Operating Agreement and amendments adopted in accordance with the Agreement and the Act.

C. "Articles" means the Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Department of Financial Institutions. A copy is attached as Exhibit A.

D. "Capital Contribution" means any contribution of property, services, or the obligation to contribute property or services made by or on behalf of a Member.

E. "Code" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

F. "Company" means **Allyn's, LLC**, a limited liability company, formed under the laws of Wisconsin, and any successor limited liability company.

G. "Effective Date" means the date this Agreement was signed.

H. "Members" mean the persons signing this Operating Agreement as a Member.

I. "Membership Interest" means all of the members' rights and interest in the Company under this Agreement and the Act, including the right to the profits and losses of the Company, the right to receive distributions of cash and other assets of the Company and the right to control and manage the Company.

6. TITLE TO COMPANY PROPERTY. All real and personal property acquired by the Company will be acquired and held by the Company in its name.

7. CAPITAL CONTRIBUTIONS. The Members have made or shall make a contribution of capital to the company in the form of cash, property, services, or obligations, all as reflected on the books of account of the Company and in exchange the Members have received their Membership Interest in the Company as reflected on Exhibit B.

8. GENERAL RESTRICTIONS ON TRANSFERS. Except in accordance with the terms of this Agreement, no Member may Transfer all or any portion of the Member's Percentage Interest without Majority Consent. Any Transfer, attempted Transfer, or purported Transfer in violation of this Agreement's terms and conditions shall be null and void.

9. ALLOCATION OF PROFITS AND LOSSES. The Company's net profits and losses will be allocated one hundred percent (100%) to the Members.

10. MANAGING MEMBER. The Managing Member must be a Member chosen by Majority Consent. The initial Managing Member is **Harmon Allyn**. The number of Managing Members shall be one except as otherwise provided by Majority Consent. The managing member is the authorized agent of the Company only and for the purpose of the Company's business. The acts of the managing member, including the signing and delivering on behalf of the Company of any documentation and/or instruments, for the carrying on in the ordinary course of business the business of the Company, only bind the Company.

A. Authority. Except to the extent that this Agreement requires an action to be taken with a Majority Consent, the Managing Member for, in the name of, on behalf of, and at the expense of the Company, is authorized to do on the Company's behalf all things that, in his or her sole judgment, are necessary, proper, or desirable to carry out the Company business in its ordinary course, including, but not limited to, the right to:

- (i) establish Reserves and thereafter maintain those Reserves, in such amounts as the Managing Member deems appropriate;
- (ii) buy, sell, and lease Company property that does not represent a material part of the Company's aggregate property;
- (iii) pursuant to a budget approved by Majority Consent, borrow money and procure temporary, permanent, conventional, or other financing or refinancings on such terms and conditions, at such rates of interest, and from such parties as are approved, and, if security is required for the loan, to mortgage or subject to another security interest any material portion of the Company assets;
- (iv) after giving notice thereof to the Members, bring, defend, settle, compromise, or otherwise participate in any actions, proceedings, or investigations, whether at law, in equity, or before any governmental authority or agency, and whether brought against the Company or the Members, arising out of, connected with, or related to the Company's business and affairs or the enforcement or protection of interests in or of the Company;
- (v) insure the Company's activities and property;
- (vi) pursuant to a budget approved by Majority Consent, enter into agreements with persons for property management services, other real estate services, construction services, and all other contracts or agreements that the Managing Member deems reasonable and necessary, and pay from the Company's funds the consideration required under such contracts or agreements;
- (vii) pay out of the Company's funds all fees and expenses incurred in the organization of the Company, as well as all operating expenses;
- (viii) perform all other acts or activities customary or incident to the acquisition, ownership, management, sale, and leasing of property;
- (ix) pursuant to a budget approved by Majority Consent, make capital improvements to or otherwise rehabilitate the Company's properties as needed and finance the improvements out of Cash Flow or from borrowings;
- (x) enter into and execute all documents, instruments, and agreements reasonably deemed by the Managing member to be necessary, appropriate, or needed for the performance of his or her duties and the exercise of his or her powers under this Operating Agreement;
- (xi) appoint a new Registered Agent or change the Registered Office; and

(xii) retain attorneys, accountants, architects, and other professionals in the course of the performance of the Managing Member's duties and exercise of his or her powers.

B. Certificate of Authority. Any person dealing with the Company or the Managing Member may rely on a certificate signed by the Managing Member as to:

(i) the identity of the Members and Managing Members;

(ii) the existence or nonexistence of any fact or facts that constitute a condition precedent to acts by the Managing Member or any other matter germane to the Company's affairs;

(iii) the persons who are authorized to execute and deliver any instrument or document on the Company's behalf;

(iv) any act or failure to act by the Company or the Members;
and

(v) any other matter whatsoever involving the Company or any Member.

C. No Other Representatives. Only the Managing Member has the right, power, and authority to execute documents on behalf of and in the name of the Company, and no person shall be obligated to inquire into the Managing Member's authority to bind the Company.

11. ACCOUNTING METHOD AND FISCAL YEAR. Accounting and income tax records of the Company will be maintained as required by law and on a calendar year basis. Unless otherwise determined by the Members, the Company's method of accounting shall be the same as employed by the Members.

12. CURRENT DISTRIBUTIONS.

A. Current Tax Distributions. To the extent permitted by law and consistent with the Company's obligations to its creditors as determined by the Managing Member, the Company shall make Tax Distributions on or before the Tax Distribution Dates. The aggregate amount of the Tax Distribution made with respect to any given Tax Distribution Date shall be the product of (i) the Company's estimated federal taxable income under the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), for the Fiscal Period ending on the last day of the calendar month immediately preceding the Tax Distribution Date and commencing on the first day of the calendar month that includes the immediately previous Tax Distribution Date, multiplied by (ii) the applicable Tax Rate. Notwithstanding the foregoing, to the extent

the Company has had an estimated federal taxable loss for any prior Fiscal Period in that Fiscal Year, the amount in clause (i), above, shall be reduced by that portion of the loss remaining after reducing taxable income for prior Fiscal Periods in the Fiscal Year for the loss. Each Member shall receive a Tax Distribution proportional to the amount of federal taxable income to be allocated to the Member.

B. Additional Tax Distributions. If any income tax return of the Company, as a result of an audit or otherwise, reflects items of income, gain, loss, or deduction that are different from the amounts estimated, with respect to a Fiscal Year in a manner that results in additional income or gain of the Company being allocated to the Members, an additional Tax Distribution shall be made under the principles of Section 12(a), above, to the Members (or former Members) who are allocated the additional income or gain, except that (i) the last day of the calendar month in which the adjustment occurs shall be treated as a Tax Distribution Date, (ii) the amount of the additional income or gain shall be treated as the Company's federal taxable income, and (iii) the applicable Tax Rate shall be that which applied for the Fiscal Period to which the additional income or gain relates.

C. Cash Available for Distribution. When and as approved by the Managing Member, Cash Available for Distribution shall be distributed to the Members in proportion to their Percentage Interests during the Fiscal Period to which the distribution relates.

13. LIQUIDATING DISTRIBUTIONS. In the event the Company is liquidated pursuant to this agreement, the assets to be distributed shall be distributed to the Members in accordance with their Capital Account balances, after making the adjustments for allocations, up to and including the date of the liquidating distribution.

14. TAX WITHHOLDING. To the extent the Company must make any withholding or estimated tax payments to any taxing authority on behalf of a Member, such payment or withholding shall be considered a distribution to the Member on whose behalf such payment or withholding was made. The Company shall reduce the amount of distributions (whether a Tax Distribution or otherwise) to such Member in an amount equal to such payment or withholding related to any particular Fiscal Period.

15. ALLOCATION OF PROFITS AND LOSSES. Except as provided in Paragraphs 16 and 18.D. below, Profits and Losses shall be allocated among the Members in proportion to their Percentage Interests for the Fiscal Period.

16. REGULATORY ALLOCATIONS. This Agreement shall be deemed to contain provisions relating to "minimum gain chargeback," "nonrecourse deductions," "qualified income offset," "gross income allocations," and any other provision required to be contained in this Agreement pursuant to the Treasury Regulations promulgated

under section 704(b) of the Code (the "Section 16 Allocations"), other than any requirement that a Member be required to contribute to the Company an amount equal to any deficit in the Member's Capital Account.

No allocation of Loss shall be made to a Member if the allocation would result in a negative balance in the Member's Capital Account in excess of the amount the Member is deemed obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and (l)(5) of the Treasury Regulation. If there is a negative balance in the Member's Capital Account in excess of the amount(s) set forth above, the Member shall be allocated income and gain in the amount of that excess as quickly as possible. Any Loss that cannot be allocated to a Member pursuant to the restrictions contained in this paragraph shall be allocated to other Members.

The Section 16 Allocations are intended to comply with the Treasury Regulations promulgated under section 704(b) of the Code. The other provisions of this Article V notwithstanding, the Section 16 Allocations shall be taken into account in allocating other Profits, Losses, and items of income, gain, and deduction among the Members so that, to the extent possible, the net amount of the allocations of other Profits, Losses, and other items and the Section 16 Allocations to each Member shall equal the net amount that would have been allocated to each such Member if the Section 16 Allocations had not occurred.

17. OTHER ALLOCATION RULES.

A. Transfer of Percentage Interests. If a Member transfers all or any portion of the Member's Percentage Interest pursuant to this Agreement during any Fiscal Period, the Profits (or Losses) allocated to the Members for each such Fiscal Period shall be allocated among the Members in proportion to their respective Percentage Interests from time to time during the Fiscal Period, in accordance with section 706 of the Code, using any convention permitted by law and selected by the Managing Member.

B. Determination of Allocable Amounts. The Profits, Losses, or any other items allocable to any Fiscal Period shall be determined on a daily, monthly, or other basis, as determined by the Managing Member, using any permissible method under section 706 of the Code and the Treasury Regulations under that section.

18. TAX ALLOCATIONS.

A. Capital Contributions. In accordance with section 704(c) of the Code and the Treasury Regulations under that section, income, gain, loss, and deduction with respect to any contribution to the Company's capital shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the

property's adjusted basis to the Company for federal income tax purposes and its initial Asset Value.

B. Adjustment of Asset Value. If the Asset Value of any Company asset is adjusted, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the asset's adjusted basis for federal income tax purposes and its Asset Value as so adjusted in the same manner as under section 704(c) of the Code and the Treasury Regulations under that section.

C. Elections. Any elections or other decisions relating to the allocations shall be made by the Managing Member in any manner that reasonably reflects the purpose and intent of this Agreement.

D. Imputed Interest. To the extent the Company has interest income or deductions with respect to any obligation of or to a Member pursuant to section 483, sections 1271–1288, or section 7872 of the Code, the interest income or deductions shall be specially allocated to the Member to whom the obligation relates.

18. DISPUTE RESOLUTION.

A. Disputes. Any dispute arising with respect to this Agreement, its making or validity, its interpretation, or its breach shall be settled by arbitration in **Manitowoc**, Wisconsin, by a single arbitrator mutually agreed to by the disputing parties pursuant to the then obtaining rules of the American Arbitration Association. Such arbitration shall be the sole and exclusive remedy for such disputes except as otherwise provided in this Agreement. Any award rendered shall be final and conclusive upon the parties, and a judgment may be entered in any court having jurisdiction.

B. Costs. In any proceeding with respect to any dispute arising under or to collect any benefits due under this Agreement, the prevailing party in the proceeding shall be entitled to recover the costs of the proceeding and reasonable attorney fees from the other party. If the Company is the prevailing party, the Company may offset any amounts owed by the Company to the Person (including distributions pursuant to this Agreement) by amounts that Person owes to the Company by reason of this Section.

19. CHECK-THE-BOX REGULATION. The Company shall timely file all documentation as may be required from time to time by the Code and/or Treasury Regulation so as to be classified as the Members decide for income tax purposes.

20. AMENDMENT. This Agreement may be amended at any time by a writing signed by the Members and the Company.

21. RIGHTS OF CREDITORS AND THIRD PARTIES UNDER AGREEMENT. This Agreement is entered into between the Company and the Members for the

exclusive benefit of the Company, the Members, and their heirs, personal representatives, successors, and assigns. The Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party will have any rights under the Agreement or any agreement between the Company and any Members with respect to any Capital Contribution or otherwise. The Members will have no liability for the debts, obligations, and liabilities of the Company except as expressly provided by the Act.

22. **BANK ACCOUNTS.** All funds of the Company shall be deposited in a bank account or accounts maintained in the Company's name. The managing member shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

23. **DISTRIBUTIONS.** Except as otherwise provided in this Agreement, the Members will have the discretion to determine cash distributions to Members from the Company.

24. **LIMITATIONS UPON DISTRIBUTIONS.** No distribution shall be declared or made if, after giving effect to the distribution, the Company would be unable to pay its debts as they become due in the usual course of business or if the fair market value of the total assets of the Company would be less than the sum of all liabilities of the Company.

25. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between the Members, and the Company, and supersedes all prior discussions, negotiations, commitments, and understandings.

26. **BENEFIT.** This Agreement will be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of all parties to this Agreement.

27. **GOVERNING LAWS.** this Agreement, and its application or interpretation will be governed exclusively by its terms and by the laws of the State of Wisconsin. To the extent not specifically or expressly addressed by this Agreement, the provisions of the Act will apply.

[Signature Page to Follow]

Dated as of the date and year first above written.

Harmon Allyn
Harmon Allyn, Member

Violet Allyn
Violet Allyn, Member

This instrument was drafted by:
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EXHIBIT B

<u>Member</u>	<u>Capital Contributions</u>	<u>Percentage Interest</u>
Harmon Allyn		50%
Violet Allyn		50%