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Our reference

JZC/ECC/347519/2
AUM/1215590534.2

16 June 2017

By Fax Only : 1300 135 638

Dear Sir/Madam

FOR IMMEDIATE RELEASE TO THE MARKET

The PAS Group Limited ACN 169 477 463 - Notice of Change of Interest of Substantial Holder

We act for Coliseum Capital Management, LLC (**Coliseum**).

On behalf of Coliseum, and in accordance with section 671B of the *Corporations Act 2001* (Cth), we **enclose** a "Form 604 - Notice of change of interest of substantial holder" in respect of The PAS Group Limited.

A copy of the enclosed notice has also been provided to The PAS Group Limited.

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Philips', written over a white rectangular area.

JAMES PHILIPS
Partner
DLA PIPER AUSTRALIA

Direct +61 2 9286 8178

James.Philips@dlapiper.com

Enc

cc: The PAS Group Limited
Fax: +61 3 9902 5500
ATTN: The Company Secretary

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A list of offices and regulatory information can be found at www.dlapiper.com

Form 604
Corporations Act 2001
Section 671B

Notice of change of interests of substantial holder

To Company Name/Scheme The PAS Group Limited (PAS)

ACN/ARSN ACN 169 477 463

1. Details of substantial holder (1)

Name Brand Acquisition Co., LLC, Coliseum Capital Management LLC and its associates, being the entities listed in Annexure A.

ACN/ARSN (if applicable) N/A

There was a change in the interests of the substantial holder on

On 16 June 2017, the Bidder lodged its bidder's statement dated 16 June 2017 with ASIC in relation to an on-market takeover bid to acquire all of the ordinary shares in PAS not already owned by Brand Acquisition Co., LLC, Coliseum Capital Management LLC or its associates. As a result, this notice is required to be given under section 671B(1)(c) of the *Corporations Act 2001 (Cth)* (*Corporations Act*).

The previous notice was given to the company on

11/05/2017

The previous notice was dated

11/05/2017

2. Previous and present voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had relevant interest (3) in when last required, and when now required, to give a substantial holding notice to the company or scheme, are as follows:

Class of securities (4)	Previous notice		Present notice	
	Person's votes	Voting power (5)	Person's votes	Voting power (5)
ORD	66,376,217	48.56%	66,376,217	48.56%

3. Changes in relevant interests

Particulars of each change in, or change in the nature of, a relevant interest of the substantial holder or an associate in voting securities of the company or scheme, since the substantial holder was last required to give a substantial holding notice to the company or scheme are as follows:

Date of change	Person whose relevant interest changed	Nature of change (6)	Consideration given in relation to change (7)	Class and number of securities affected	Person's votes affected
N/A	N/A	N/A	N/A	N/A	N/A

4. Present relevant interests

Particulars of each relevant interest of the substantial holder in voting securities after the change are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Nature of relevant interest (6)	Class and number of securities	Person's votes
See Annexure B					

5. Changes in association

The persons who have become associates (2) of, ceased to be associates of, or have changed the nature of their association (9) with, the substantial holder in relation to voting interests in the company or scheme are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
Brand Acquisition Co., LLC	Pursuant to section 12(2)(c) of the Corporations Act in connection with Brand Acquisition Co., LLC's on-market bid announced to ASX on 16 June 2017, each of Coliseum Capital Partners, LP, Coliseum Capital Partners II, LP, Blackwell Partners, LLC, Series A are members of Brand Acquisition Co., LLC and each of them, together with Coliseum Capital Management, LLC (as manager of Brand Acquisition Co., LLC) have entered into an Amended and Restated Limited Liability Company agreement in respect of Brand Acquisition Co., LLC dated 15 June 2017, a copy of which is attached with this notice in Annexure C.

6. Addresses

The addresses of persons named in this form are as follows:

Name	Address
Coliseum Capital Management, LLC	105 Rowayton Avenue, Rowayton, Connecticut 06853, United States of America
Coliseum Capital, LLC	105 Rowayton Avenue, Rowayton, Connecticut 06853, United States of America
Coliseum Capital Partners, L.P.	105 Rowayton Avenue, Rowayton, Connecticut 06853, United States of America
Coliseum Capital Partners II, L.P.	105 Rowayton Avenue, Rowayton, Connecticut 06853, United States of America
Blackwell Partners, LLC, Series A	c/o Dumac, LLC, 280 S. Mangum Street, Suite 210, Durham, North Carolina 27701, United States of America
Adam Gray	105 Rowayton Avenue, Rowayton, Connecticut 06853, United States of America
Christopher Shackelton	105 Rowayton Avenue, Rowayton, Connecticut 06853, United States of America
Seaver Kent Family Investments, LLC	1000 NW Wall Street, Suite 210, Bend, Oregon, 97701, United States of America
Brand Acquisition Co., LLC	105 Rowayton Avenue, Rowayton, Connecticut 06853, United States of America

Signature

print name Adam Gray, as person authorised to provide holding notifications capacity Manager

sign here  date 16/06/2017

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 6 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (6) Include details of:
 - (a) any relevant agreement or other circumstances because of which the change in relevant interest occurred. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement.

- (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.

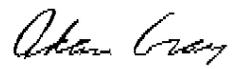
- (7) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included on any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown".
- (9) Give details, if appropriate, of the present association and any change in that association since the last substantial holding notice.

THIS IS ANNEXURE 'A' OF 1 PAGE REFERRED TO IN ASIC FORM 604 - NOTICE OF CHANGE OF INTEREST OF SUBSTANTIAL HOLDER DATED 16 JUNE 2017

The associates of Brand Acquisition Co., LLC and Coliseum Capital Management LLC are:

- 1 Coliseum Capital, LLC;
- 2 Coliseum Capital Partners, L.P.;
- 3 Coliseum Capital Partners II, L.P.;
- 4 Blackwell Partners, LLC, Series A;
- 5 Adam Gray;
- 6 Christopher Shackelton; and
- 7 Seaver Kent Family Investments, LLC.

NAME: Adam Gray POSITION: Manager

SIGNED:  DATE: 16 June 2017

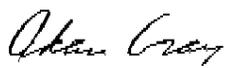
THIS IS ANNEXURE 'B' OF 2 PAGES REFERRED TO IN ASIC FORM 604 - NOTICE OF CHANGE OF INTEREST OF SUBSTANTIAL HOLDER DATED 16 JUNE 2017

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (B)	Nature of relevant interest (6)	Class and number of securities	Person's votes
Coliseum Capital Management, LLC	Goldman Sachs & Co	Blackwell Partners, LLC Series A in respect of 13,157,561 Ordinary Shares and Coliseum Capital LLC as General Partner of Coliseum Capital Partners, LP, in respect of 43,238,794 Ordinary Shares and as General Partner of Coliseum Capital Partners II, LP in respect of 9,979,862 Ordinary Shares.	Investment adviser of each of Coliseum Capital Partners LP, Blackwell Partners, LLC Series A and Coliseum Capital Partners II, LLP.	66,376,217 Ordinary Shares	66,376,217
Coliseum Capital, LLC	Goldman Sachs & Co	As General Partner of Coliseum Capital Partners, L.P. in respect of 43,328,794 Ordinary Shares, and as General Partner of Coliseum Capital II, L.P. in respect of 9,979,862 Ordinary Shares.	General partner of Coliseum Capital Partners, LP and Coliseum Capital Partners II, LP	53,218,656 Ordinary Shares	53,218,656
Coliseum Capital Partners, L.P.	Goldman Sachs & Co	Coliseum Capital, LLC as its General Partner.	Beneficial holder	43,238,794 Ordinary Shares	43,238,794
Blackwell Partners LLC, Series A	Goldman Sachs & Co	Blackwell Partners LLC, Series A	Beneficial holder	13,157,561 Ordinary Shares	13,157,561
Coliseum Capital Partners II, L.P.	Goldman Sachs & Co	Coliseum Capital, LLC as General Partner.	Beneficial holder	9,979,862 Ordinary Shares	9,979,862

Adam Gray, Christopher Shackelton and Seaver Kent Family Investments, LLC.	Goldman Sachs & Co	Blackwell Partners, LLC, Series A in respect of 13,157,561 Ordinary Shares, and Coliseum Capital LLC as General Partner of Coliseum Capital Partners, LP, in respect of 43,238,794 Ordinary Shares, and as General Partner of Coliseum Capital Partners II, LP in respect of 9,979,862 Ordinary Shares.	Each holding voting power above 20 per cent in each of Coliseum Capital Management, LLC and Coliseum Capital, LLC	66,376,217 Ordinary Shares	66,376,217
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NAME: Adam Gray

POSITION: Manager

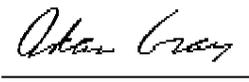
SIGNED: 

DATE: 16 June 2017

THIS IS ANNEXURE 'C' OF 22 PAGES REFERRED TO IN ASIC FORM 604 - NOTICE OF CHANGE OF INTEREST OF SUBSTANTIAL HOLDER DATED 16 JUNE 2017

NAME: Adam Gray

POSITION: Manager

SIGNED: 

DATE: 16 June 2017

**BRAND ACQUISITION CO., LLC
AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT**

This Amended and Restated Limited Liability Company Agreement (this "**Agreement**") of Brand Acquisition Co., LLC, a Delaware limited liability company (the "**Company**"), dated as of June 15, 2017, is by and among the Company, the Members and Coliseum Capital Management, LLC, a Delaware limited liability company, as the non-member manager of the Company (the "**Manager**");

RECITALS

WHEREAS, on June 8, 2017, the Manager caused the filing of the Certificate of Formation of the Company with the Secretary of State of the State of Delaware and thereby formed the Company as a limited liability company under the Act;

WHEREAS, on June 8, 2017, the Members entered into that certain Brand Acquisition Co., LLC Limited Liability Company Agreement (the "**Original Agreement**");

WHEREAS, on June 8, 2017, each of the parties listed on the signature page hereto became a Member as a holder of Common Units;

WHEREAS, the Members desire that the Company launch an unconditional on market cash offer for all of the outstanding shares The Pas Group Limited ("**Pas Group**") not currently owned by them (the "**Offer**"); and

WHEREAS, the Members and Manager desire to amend and restate the Original Agreement in its entirety to provide for, among other things, the management of the business and affairs of the Company, the allocation of profits and losses among the Members, the rights and obligations of the Members to each other and to the Company, and certain other matters described herein.

NOW, THEREFORE, the Members and the Manager agree as follows:

1. **DEFINITIONS.** For purposes of this Agreement, the following definitions apply:

"**Act**" means the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.) as amended and in effect from time to time.

"**Adjusted Capital Account Balance**" means, with respect to any Member, such Member's Capital Account Balance as of the end of the relevant taxable year or other period, after (a) crediting to the Member's Capital Account any amounts that such Member is obligated to restore to the Company pursuant to Regulation § 1.704-1 (b)(2)(ii)(c) or is deemed to be obligated to restore pursuant to Regulation § 1.704-2(g)(1) or Regulation § 1.704-2(i)(5); and (b) debiting to the Member's Capital Account the items described in Regulation sections 1.704-1(b)(2)(ii)(d)(4), (d)(5), and (d)(6).

"**Affiliate**" means with respect to any specified Person, any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such other Person (for the purposes of this definition, "control," including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the

management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise).

"Agreement" is defined in the Preamble.

"Asset Value" of any property of the Company means its adjusted basis for federal income tax purposes unless:

- (a) the property was accepted by the Company as a contribution to capital at a value different from its adjusted basis, in which event the initial Asset Value for such property shall mean the gross Fair Value of the property agreed to by the Company and the contributing Member; or
- (b) as a consequence of the issuance of additional Units or the redemption of all or part of the Interest of a Member, the property of the Company is revalued in accordance with Section 4.2.

As of any date references to the "then prevailing Asset Value" of any property shall mean the Asset Value last determined for such property less the depreciation, amortization and cost recovery deductions taken into account in computing Net Profit or Net Loss in fiscal periods subsequent to such prior determination date.

"Capital Account" is defined in Section 4.1.

"Capital Contribution" is defined in Section 3.5.

"Certificate of Formation" means the Certificate of Formation of the Company and any amendments thereto and restatements thereof filed on behalf of the Company with the Delaware Secretary of State pursuant to the Act.

"Code" means the Internal Revenue Code of 1986, as amended.

"Common Unit" means each of the Common Units defined in Section 3.2.

"Company" is defined in the Preamble.

"Distribution" means cash or property (net of liabilities assumed or to which the property is subject) distributed to a Member in respect of the Member's Interest.

"Expenses" is defined in Section 13.1.

"Fair Value" means, as applied to assets, the fair market value of such assets as determined in good faith by the Manager.

"Fiscal Year" means the fiscal year of the Company, which shall be the calendar year, or such other fiscal year as determined by the Manager.

"Indemnified Persons" is defined in Section 13.1.

“Interest” means, with respect to any Member as of any time, such Member’s limited liability company interest in the Company, which includes the number of Units such Member holds and such Member’s Capital Account balance.

“Manager” is defined in the Preamble.

“Members” means the Persons listed as on the signature page hereto and any other Person that both acquires an Interest in the Company and is admitted to the Company as a Member.

“Net Profit” and **“Net Loss”** are defined in Section 5.5(a).

“Offer” is defined in the Recitals.

“Original Agreement” is defined in the Recitals.

“Pas Group” is defined in the Recitals.

“Percentage Interest” means, with respect to a Member, such Member’s percentage sharing in the residual profits and losses of the Company as of the time of determination and will be adjusted as provided in this Agreement to be in the same ratios as the Capital Contributions of the Members.

“Permitted Transfer” means a Transfer of Units to a Permitted Transferee undertaken pursuant to Section 11.

“Permitted Transferee” is defined in Section 11.2.

“Person” means an individual, partnership, joint venture, association, corporation, trust, estate, limited liability company, limited liability partnership, unincorporated entity of any kind, governmental entity, or any other legal entity.

“Regulations” means the Treasury regulations, including temporary regulations, promulgated under the Code.

“Securities Act” means the Securities Act of 1933, as amended.

“Tax Matters Member” is defined in Section 10.1.

“Transfer” shall mean any sale, pledge, assignment, encumbrance or other transfer or disposition of any Units to any other Person, whether directly, indirectly, voluntarily, involuntarily, by operation of law, pursuant to a merger, reorganization, consolidation, judicial process or otherwise, and, without limiting the generality of the foregoing, shall include any interspousal transfer incident to a dissolution of marriage.

“Units” means each of the Common Units.

2. FORMATION AND PURPOSE.

2.1 **Formation**. The Company was formed as a limited liability company on June 8, 2017 in accordance with the Act by the filing of the Certificate of Formation with the Delaware Secretary of State.

The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement, to the extent permitted by the Act, shall control.

2.2 Name. The name of the Company is "Brand Acquisition Co., LLC". The business of the Company may be conducted under that name or, upon compliance with applicable laws, any other name that the Manager deems appropriate. The Manager shall file, or shall cause to be filed, any fictitious name certificates and similar filings, and any amendments thereto, that the Manager considers appropriate.

2.3 Registered Office/Agent. The registered office and registered agent required to be maintained by the Company pursuant to the Act shall be the office and the agent so designated in the Certificate of Formation. The Company may, upon compliance with the applicable provisions of the Act, change its registered office or registered agent from time to time at the discretion of the Manager.

2.4 Term. The term of the Company shall continue indefinitely unless sooner terminated as provided herein. The existence of the Company as a separate legal entity shall continue until the termination of the Certificate of Formation as provided in the Act.

2.5 Purpose. Subject to the limitations contained elsewhere in this Agreement, the Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary, advisable, convenient or incidental thereto.

2.6 Filings. Such Persons may be designated from time to time by the Manager as authorized persons, within the meaning of the Act, to execute, deliver and file any amendments or restatements of the Certificate of Formation or any other certificates or instruments and any amendments or restatements thereof necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

2.7 Principal Office; Location of Operations. The principal executive office of the Company shall be located at such place as the Manager shall establish, and the Manager may from time to time change the location of the principal executive office of the Company to any other place within or without the State of Delaware. The Manager may establish and maintain such additional offices and places of business of the Company, either within or without the State of Delaware, as it deems appropriate.

2.8 Classification as a Partnership. The Members intend that the Company be classified as a partnership for U.S. federal and, to the extent possible, state and local tax purposes, and the Members and the Company shall take no other action to the contrary, including a contrary position on any tax return.

3. MEMBERSHIP, CAPITAL CONTRIBUTIONS AND UNITS.

3.1 Members. The Members are listed on a Member's register as maintained by the Manager and from time to time amended and supplemented in accordance with this Agreement or as otherwise deemed necessary or appropriate as determined by the Manager in its discretion. As of the date of this Agreement, each Member holds the number of Common Units set forth on the Member's register. The Member's register may be amended from time to time by or at the direction of the Manager so that it sets

forth the then current list of Members and/or such other information as the Manager may determine to include from time to time.

3.2 Member Interests and Units. The Interests of the Members of the Company shall be divided into a single class of Common Units, which are not certificated; **provided** that, at the request of any Member, the Units held by such Member shall be certificated.

3.3 Specific Limitations. Without the written consent of the Manager, no Member shall have the right or power to: (a) withdraw or reduce its Capital Contribution except as a result of the dissolution of the Company or as otherwise provided by the Act or in this Agreement, (b) make voluntary Capital Contributions or contribute any property to the Company, (c) bring an action for partition against the Company or any Company assets, (d) cause the dissolution of the Company, except as set forth in this Agreement or as required by the Act, or (e) require that property other than cash be distributed in connection with any Distribution.

3.4 Additional Members and Units; Effect of Transfers. Except in connection with a Permitted Transfer or as otherwise determined by the Manager, no additional Members shall be admitted to the Company. Upon the execution of this Agreement or a counterpart of this Agreement, together with any other documents or instruments required by the Manager in connection therewith, and the making of the Capital Contribution (if any) specified by the Manager to be made at such time, a Person shall be admitted to the Company as a Member of the Company.

3.5 Capital Contributions.

3.5.1 The Members shall be obligated to make capital contributions to the Company ("Capital Contributions") on a pro rata basis in accordance with their respective Percentage Interest or in such other manner as may be determined by the Manager from time to time] as determined by the Manager in its discretion for any purpose (including to fund all expenses, debts, liabilities, and obligations of the Company then due, and working capital and other amounts, that the Manager reasonably deems necessary for the Company's business and assets or to place into reserves for expenses, expenditures, claims or contingencies with respect to such business and assets.

3.5.2 The provisions of this Section 3.5 are intended solely to benefit the Company and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third party beneficiary of this Agreement in respect of its interest as a creditor of the Company).

3.5.3 Except as otherwise determined by the Manager in its sole discretion, the Manager shall not be obligated to make any contribution to the capital of, or otherwise lend funds to, the Company.

4. CAPITAL ACCOUNTS.

4.1 Capital Accounts. A separate account (each a "Capital Account") shall be established and maintained for each Member that will be:

(a) increased by (i) the amount of cash and the Fair Value of any other property contributed by such Member to the Company as a Capital Contribution (net of liabilities secured

by such property or that the Company assumes or takes the property subject to) and (ii) such Member's share of the Net Profit (and other items of income and gain) of the Company, and

(b) reduced by (i) the amount of cash and the Fair Value of any other property distributed to such Member (net of liabilities secured by such property or that the Member assumes or takes the property subject to) and (ii) such Member's share of the Net Loss (and other items of loss and deduction) of the Company.

The Capital Accounts of the Members as of the date hereof are set forth on the Member's register. It is the intention of the Members that the Capital Accounts of the Company be maintained in accordance with the provisions of Section 704(b) of the Code and the Regulations thereunder and that this Agreement be interpreted consistently therewith.

4.2 Revaluations of Assets and Capital Account Adjustments. Unless otherwise determined by the Manager, immediately preceding the issuance of additional Units in exchange for cash, property or services to a new or existing Member and upon the redemption of the Interest of a Member, the then prevailing Asset Values of the Company shall be adjusted to equal their respective gross Fair Value and any increase in the net equity value of the Company (Asset Values less liabilities) shall be credited to the Capital Accounts of the Members in the same manner as Net Profits are credited under Section 5.5(b) (or any decrease in the net equity value of the Company shall be charged in the same manner as Net Losses are charged under Section 5.5(b)). Accordingly, as of the date of issuance of additional Units or the redemption of all or a portion of a Member's Interest in the Company, the Capital Accounts of Members will reflect both realized and unrealized gains and losses through such date and the net equity value of the Company as of such date.

4.3 Additional Capital Account Adjustments. Any income of the Company that is exempt from federal income tax shall be credited to the Capital Accounts of the Members in the same manner as Net Profits are credited under Section 5.5(b) when such income is realized. Any expenses or expenditures of the Company that may neither be deducted nor capitalized for tax purposes (or are so treated for tax purposes) shall be charged to the Capital Accounts of the Members in the same manner as Net Losses are charged under Section 5.5(b). If the Company has in effect an election under Section 754 of the Code to provide a special basis adjustment upon the transfer of an Interest in the Company or the distribution of property by the Company, Capital Accounts shall be adjusted to the limited extent required by the Regulations under Section 704 of the Code following such transfer or distribution.

4.4 Additional Capital Account Provisions. No Member shall have the right to demand a return of all or any part of such Member's Capital Contributions. Any return of the Capital Contributions of any Member shall be made solely from the assets of the Company and only in accordance with the terms of this Agreement. Except to the extent otherwise expressly provided for in this Agreement, no interest shall be paid to any Member with respect to such Member's Capital Contributions or Capital Account. In the event that all or a portion of the Units of a Member are transferred in accordance with this Agreement, the transferee of such Units shall also succeed to all or the relevant portion of the Capital Account of the transferor. Units held by a Member may not be transferred independently of the Interest to which the Units relate.

5. DISTRIBUTIONS AND ALLOCATIONS OF PROFIT AND LOSS; REPURCHASE OF INTEREST

5.1 **Manager Determination.** The Manager shall determine the timing and the aggregate amount of any Distributions to Members in its sole and complete discretion, which Distributions shall be made to the Members on a pro rata basis in accordance with their respective Percentage Interest at the time of such Distribution.

5.2 **No Violation.** Notwithstanding any provision to the contrary contained in this Agreement, the Company may not make a Distribution to any Member on account of such Member's Interest in the Company if such Distribution would violate Section 18-607 of the Act or other applicable law.

5.3 **Withholding.** All amounts withheld pursuant to the Code or any federal, state, local or non-U.S. tax law with respect to any payment, distribution or allocation to a Member shall be treated as amounts distributed to such Member. The Manager is authorized to withhold from Distributions to Members, or with respect to allocations to Members and in each case to pay over to the appropriate federal, state, local or non-U.S. government any amounts required to be so withheld. The Manager shall allocate any such withheld amounts to the Members in respect of whose Distribution or allocation the tax was withheld and shall treat such withheld amounts as actually distributed to such Members.

5.4 **Property Distributions and Installment Sales.** If any assets of the Company shall be distributed in kind pursuant to this Section 5, such assets shall be distributed to the Members entitled thereto in the same proportions as the Members would have been entitled to cash Distributions. The amount by which the Fair Value of any property to be distributed in kind to the Members exceeds or is less than the then prevailing Asset Value of such property shall, to the extent not otherwise recognized by the Company, be taken into account in determining Net Profit and Net Loss and determining the Capital Accounts of the Members as if such property had been sold at its Fair Value immediately prior to such Distribution. If any assets are sold in transactions in which, by reason of Section 453 of the Code, gain is realized but not recognized, such gain shall be taken into account when realized in computing gain or loss of the Company for purposes of allocation of Net Profit or Net Loss under this Section 5 and, if such sales shall involve substantially all the assets of the Company, the Company shall be deemed to have been dissolved and terminated notwithstanding any election by the Members to continue the Company for purposes of collecting the proceeds of such sales.

5.5 **Net Profit or Net Loss.**

(a) The "Net Profit" or "Net Loss" of the Company for each Fiscal Year or relevant part thereof shall mean the Company's taxable income or loss for federal income tax purposes for such period (including all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code) with the following adjustments:

(i) Gain or loss attributable to the disposition of property of the Company with an Asset Value different than the adjusted basis of such property for federal income tax purposes shall be computed with respect to the Asset Value of such property, and any tax gain or loss not included in Net Profit or Net Loss shall be taken into account and allocated for federal income tax purposes among the Members pursuant to Section 5.7.

(ii) Depreciation, amortization or cost recovery deductions with respect to any property with an Asset Value that differs from its adjusted basis for federal income tax purposes at the beginning of a period shall be in an amount that bears the same ratio to such

beginning Asset Value as the federal income tax depreciation, amortization or other cost recovery deductions for such period bear to such beginning adjusted tax basis; provided, however, that if the adjusted tax basis of an asset at the beginning of such period is zero, depreciation shall be determined with respect to such asset using any reasonable method selected by the Manager.

(iii) Any items that are required to be specially allocated pursuant to Section 5.7 shall not be taken into account in determining Net Profit or Net Loss.

(b) *Allocations of Income, Gain, Loss, Deduction and Credit.* Net Profit or Net Loss of the Company for any relevant fiscal period shall be allocated to the Capital Accounts of the Members so as to ensure, to the extent possible, that the Capital Account balance of each Member as of the end of such fiscal period is equal to the aggregate Distributions that such Member would be entitled to receive if all of the assets of the Company were sold for their Asset Values, the liabilities of the Company were paid in full (except that non-recourse liabilities shall be paid only to the extent, with respect to each asset subject to a non-recourse liability, the non-recourse liability does not exceed the Asset Value), and the remaining proceeds were distributed as of the end of such accounting period in accordance with Section 5.1, reduced by such Member's share of "partnership minimum gain" and "partner nonrecourse debt minimum gain" (as defined in Section 1.704-2 of the Regulations) as computed immediately prior to the hypothetical sale of assets. The allocations made pursuant to this Section 5.5 are intended to comply with the provisions of Section 704(b) of the Code and the Regulations thereunder and, in particular, to reflect the Members' economic interests in the Company as set forth in Section 5.1, and this Section 5.5 shall be interpreted in a manner consistent with such intention.

5.6 Regulatory Allocations. Although the Members do not anticipate that events will arise that will require application of this Section 5.6, provisions governing the allocation of income, gain, loss, deduction and credit (and items thereof) are included in this Agreement as may be necessary to provide that the Company's allocation provisions contain a so-called "Qualified Income Offset" and comply with all provisions relating to the allocation of so-called "Non-recourse Deductions" and "Partner Non-recourse Deductions" and the chargeback thereof as set forth in the Regulations under Section 704(b) of the Code.

5.7 Tax Allocations. Code Section 704(c) and Unrealized Appreciation or Depreciation.

(a) *Contributed Assets.* In accordance with Section 704(c) of the Code, income, gain, loss and deduction with respect to any property contributed to the Company with an adjusted basis for federal income tax purposes different from the initial Asset Value at which such property was accepted by the Company shall, solely for tax purposes, be allocated among the Members so as to take into account such difference in the manner required by Section 704(c) of the Code and the applicable Regulations.

(b) *Revalued Assets.* If the Asset Value of any assets of the Company is adjusted pursuant to Section 4.2, subsequent allocations of income, gain, loss and deduction with respect to such assets shall, solely for tax purposes, be allocated among the Members so as to take into account such adjustment in the same manner as under Section 704(c) of the Code and the applicable Regulations.

(c) *Elections and Limitations.* The allocations required by this Section 5.7 are solely for purposes of federal, state and local income taxes and shall not affect the allocation of Net Profits or Net Losses as between Members or any Member's Capital Account. All tax allocations required by this Section 5.7 shall be made as determined by the Manager, with the advice of the Company's auditors or tax counsel.

(d) *Allocations.* Except as noted above, or as otherwise required by law, all items of income, deduction and loss shall be allocated for federal, state and local income tax purposes in the same manner such items are allocated under Section 5.5.

5.8 Allocations of Debt. Indebtedness of the Company shall be allocated among the Members under Code Section 752 as reasonably determined by the Tax Matters Member.

5.9 Changes in Members' Interest. If during any year of the Company there is a change in any Member's Interest in the Company, the Manager shall confer with the tax advisors to the Company and, in conformity with such advice allocate the Net Profit or Net Loss to the Members so as to take into account the varying Interests of the Members in the Company using the "closing of the books" method as it complies with the provisions of Section 706 of the Code and the Regulations thereunder.

5.10 Repurchase of Members' Units. The Manager has the discretion at any time to repurchase any of the Units held by any Member in exchange for the payment of an amount equal to the purchase price of such Units. Promptly following the close of the Offer, the Manager shall, in its sole discretion, determine the manner in which ownership of the Company will be allocated and, if necessary to effectuate such allocation, will repurchase shares from one or more Members. The Member's register shall be updated in connection with any such redemption.

6. STATUS, RIGHTS, POWERS AND CERTAIN OBLIGATIONS OF MEMBERS.

6.1 Limited Liability. Except as otherwise required by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, expenses, obligations and liabilities of the Company, and no Member or Indemnified Person shall be obligated personally for any such debt, expense, obligation or liability of the Company solely by reason of being a Member or Indemnified Person. All Persons dealing with the Company shall have recourse solely to the assets of the Company for the payment of the debts, obligations or liabilities of the Company. In no event shall any Member be required to make up any deficit balance in such Member's Capital Account upon the liquidation of such Member's Interest or otherwise.

6.2 No Management or Control. Except as expressly provided in this Agreement, no Member may take part in or interfere in any manner with the management of the business and affairs of the Company or have any right or authority to act for or bind the Company.

7. DESIGNATION, RIGHTS, AUTHORITIES, POWERS, RESPONSIBILITIES AND DUTIES OF THE MANAGER.

7.1 Manager. The business of the Company shall be managed by the Manager, and the Manager shall be the "manager" of the Company for all purposes under the Act.

7.2 Authority of Manager. The Manager shall have the exclusive power and authority to manage the business and affairs of the Company and to make all decisions with respect thereto. Except as otherwise expressly provided in this Agreement, the Manager or Persons designated by the Manager, including officers and agents appointed by the Manager, shall be the only Persons authorized to execute documents that shall be binding on the Company. To the fullest extent permitted by Delaware law, but subject to any specific provisions hereof granting rights to Members, the Manager shall have the power to perform any acts, statutory or otherwise, with respect to the Company or this Agreement that would otherwise be possessed by the Members under Delaware law, and the Members shall have no power whatsoever with respect to the management of the business and affairs of the Company. Without limiting the foregoing, but except as otherwise expressly provided hereto, the Manager is hereby authorized and empowered in the name of and on behalf of the Company:

(a) to enter into, make and perform all contracts, agreements, instruments and other undertakings and pay all expenses as the Manager may determine to be necessary, advisable or incidental to the carrying out of the purposes of the Company (including, for the avoidance of doubt, in connection with the formation, organization, administration, maintenance and operation of the Company);

(b) to cause the Company to make capital contributions to or other investments in any securities, including Pas Group;

(c) to open, maintain and close bank accounts and draw checks and other orders for the payment of monies;

(d) to possess, transfer, or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, the assets or other property held or owned by the Company;

(e) to make such elections under the Code and other relevant tax laws in a manner consistent with the provisions of this Agreement;

(f) to deposit, withdraw, invest, borrow, pay, retain and distribute the Members' funds in a manner consistent with the provisions of this Agreement and any other contracts, agreements, instruments and other undertakings to which the Company may be a party;

(g) to take all action that may be necessary or appropriate for the continuation of the Company's valid existence as a limited liability company under the Act and of each other jurisdiction in which such action is necessary to protect the limited liability of the Members or to enable the Company, consistent with such limited liability, to conduct the business in which it is engaged;

(h) to qualify the Company under any applicable U.S. federal or state laws or non-U.S. laws, or to obtain exemptions under such laws, if such qualification, or exemption is deemed necessary or desirable by the Manager;

(i) to prepare, execute and file with the appropriate authorities such federal, state or local applications, forms and papers on behalf of the Company as may be required by law or

deemed by the Manager, acting individually on behalf of the Company, to be necessary, appropriate or otherwise in the best interests of the Company;

(j) to permit the Company to borrow and repay (with interest) funds from the Members from time to time;

(k) to sue, prosecute, settle or compromise all claims against third parties, to compromise, settle or accept judgment in respect of claims against the Company and to execute all documents and make all representations, admissions and waivers in connection therewith; and

(l) to do any other act that the Manager, in its sole discretion, deems necessary or advisable in connection with the management, operation and administration of the Company.

Without limiting the authority of the Company or the Manager pursuant to this Section 7.2 and notwithstanding any other provision of this Agreement, the Company or the Manager, acting individually on behalf of the Company, is hereby authorized to enter into, and to perform its obligations under, any of the aforementioned contracts, agreements, instruments, undertakings, deeds, receipts, certificates, filings and other documents, without any consent of any person, including any Member, but such authorization shall not be deemed a restriction on the power of the Manager, to enter into, and to perform its obligations under, any other contracts, agreements, instruments, undertakings, deeds, receipts, certificates, filings and other documents on behalf of the Company. The Manager may execute the aforementioned contracts, agreements, instruments, undertakings, deeds, receipts, certificates, filings and other documents on behalf of the Company under any title, including without limitation "Authorized Person," that the Manager deems appropriate. Any prior acts of the Company or the Manager consistent with the foregoing are hereby ratified and confirmed.

7.3 Reliance by Third Parties. Any person or entity dealing with the Company or the Members may rely upon a certificate signed by the Manager as to: (a) the identity of the Members, (b) the existence or non-existence of any fact or facts that constitute a condition precedent to acts by Members or are in any other manner germane to the affairs of the Company, (c) the Persons authorized to execute and deliver any instrument or document of or on behalf of the Company, (d) the authorization of any action by or on behalf of the Company by the Manager or any officer or agent acting on behalf of the Company or (e) any act or failure to act by the Company or as to any other matter whatsoever involving the Company or the Members.

8. DESIGNATION, RIGHTS, AUTHORITIES, POWERS, RESPONSIBILITIES AND DUTIES OF OFFICERS AND AGENTS.

8.1 Officers, Agents. The Manager shall have the power to appoint officers and agents to act for the Company with such titles, if any, as the Manager deems appropriate and to delegate to such officers or agents such of the powers as are granted to the Manager hereunder, including the power to execute documents on behalf of the Company, as the Manager may in its sole discretion determine. Unless the authority of the officer in question is limited or otherwise specified by the Manager, any officer so appointed shall have the same authority to act for the Company as a corresponding officer of a Delaware corporation would have to act for a Delaware corporation in the absence of a specific delegation of authority.

9. BOOKS, RECORDS, ACCOUNTING AND REPORTS; RESTRICTIVE COVENANTS.

9.1 **Books and Records.** The Company shall maintain at its principal office or such other office as the Manager shall determine all of the following:

- (a) A current list of the full name and last known business or residential address of each Member and the Manager;
- (b) Information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each Member and which each Member has agreed to contribute in the future, and the date on which each Member became a Member of the Company;
- (c) A copy of the Certificate of Formation and this Agreement, including any amendments to either, together with executed copies of any powers of attorney pursuant to which the Certificate of Formation, this Agreement or any amendments have been executed; and
- (d) Copies of the Company's federal, state and local income tax or information returns and reports.

9.2 **Filings.** At the Company's expense, the Manager shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities and to have prepared and to furnish to each Member such information with respect to the Company (including a schedule setting forth such Member's distributive share of the Company's income, gain, loss, deduction and credit as determined for federal income tax purposes) as is necessary to enable such Member to prepare such Member's federal and state income tax returns. The Manager, at the Company's expense, shall also cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative authorities, all reports required to be filed by the Company with those entities under then current applicable laws, rules and regulations.

10. TAX MATTERS MEMBER.

10.1 **Tax Matters Member.** The Manager shall be the "tax matters partner" of the Company as provided in the Regulations under Code Section 6231 and any analogous provisions of state law and in such capacity is referred to as the "**Tax Matters Member**". Subject to **Section 5.7(c)**, the Tax Matters Member, on behalf of the Company and its Members, shall be permitted to make any election or filing under the Code, the Regulations, or any other law or regulations that it in good faith believes to be in the best interests of the Company or the Members.

10.2 **Indemnity of Tax Matters Member.** The Company shall indemnify and reimburse the Tax Matters Member for all expenses (including legal and accounting fees) incurred as Tax Matters Member pursuant to this **Section 10** in connection with any examination, any administrative or judicial proceeding, or otherwise.

10.3 **Tax Returns.** Unless otherwise agreed by the Manager, all tax returns of the Company shall be prepared by the Company's independent certified public accountants in a manner consistent with the provisions of this Agreement and subject to review by the Tax Matters Member at least thirty (30) days prior to the filing of any such tax return.

11. **TRANSFER RESTRICTIONS.** No holder of any Unit may Transfer any of such Units to any other Person except as provided in this Section 11.

11.1 Permitted Transferees.

(a) Affiliates. Subject to the provisions of Section 11.2, if applicable, any holder of Units may Transfer any or all of such Units to an Affiliate of such holder.

(b) Company. Any holder of Units may Transfer any or all of such Units to the Company.

(c) Discretionary Transfers. Notwithstanding anything to the contrary herein, any holder of Units may Transfer such holder's Units with the prior written consent of the Manager, which consent in each case may be given or withheld in the Manager's sole discretion.

11.2 Conditions to Transfer. Except as otherwise provided herein, no Transfer permitted under the terms of Section 11.1 shall be effective unless the transferee of such Units (each, a "Permitted Transferee") has delivered to the Company (a) in the case of a Transfer permitted under the terms of Section 11.1(a) or 11.1 (b), a written acknowledgment and agreement in form and substance reasonably satisfactory to the Company that such Units to be received by such Permitted Transferee remain subject to all of the provisions of this Agreement and that such Permitted Transferee is bound by, and is a party to, this Agreement and (b) to the extent requested by the Manager, a written opinion from legal counsel that the transfer will not (i) violate the securities laws, (ii) cause the Company to be treated as a publicly traded partnership under the Code or as an investment company subject to the Investment Company Act of 1940, as amended, or (iii) result in the Company being treated as holding "plan assets" for purposes of the Employee Retirement Income Security Act of 1974, as amended; provided, however, that no Transfer by any holder of Units to a Permitted Transferee pursuant to Section 11.1 shall relieve such holder of any of its obligations hereunder. Any provision of this Agreement to the contrary notwithstanding, no transfer, sale, assignment or other disposition of any Units may be made except in compliance with the then applicable federal and state securities laws.

11.3 Impermissible Transfer. Any attempted Transfer of Units not permitted under the terms of this Section 11 shall be null and void, and the Company shall not in any way give effect to any such impermissible Transfer. An attempted Transfer of Units is not permitted under the terms of this Section 11 if such Transfer would result in adverse tax consequences for the Company or any Member or such Transfer would cause the Company to be a "publicly traded partnership" within the meaning of Section 7704 of the Code or the Regulations thereunder.

12. **DISSOLUTION OF COMPANY.**

12.1 Termination of Membership. No Member may resign or withdraw from the Company except that, subject to the restrictions set forth in Section 11, any Member may Transfer its, his or her Interest in the Company to a Permitted Transferee and such Permitted Transferee will become a Member in place of the Member assigning such Interest. The death, retirement, resignation, expulsion, bankruptcy or dissolution of any Member or the occurrence of any other event that terminates the continued membership of any Member shall not in and of itself cause the Company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the Company shall be continued without dissolution.

12.2 **Events of Dissolution.** The Company will be dissolved upon the happening of any of the following events: (a) the entry of a decree of judicial dissolution under Section 18-802 of the Act, (b) the determination of the Manager, (c) the disposition of all of the Company's assets or (d) the termination of the legal existence of the last remaining Member of the Company or the occurrence of any other event that terminates the continued membership of the last remaining Member of the Company in the Company unless the business of the Company is continued in a manner permitted by this Agreement or the Act.

12.3 **Liquidation.** Upon dissolution of the Company for any reason, the Company shall immediately commence to wind up its affairs. A reasonable period of time shall be allowed for the orderly termination of the Company's business, discharge of its liabilities, and distribution or liquidation of the remaining assets so as to enable the Company to minimize the normal losses attendant to the liquidation process. The Company's property and assets or the proceeds from the liquidation thereof shall be distributed so as not to contravene the Act and shall be otherwise disbursed in compliance with Section 5.1. A full accounting of the assets and liabilities of the Company shall be taken and a statement thereof shall be furnished to each Member promptly after the distribution of all of the assets of the Company. Such accounting and statements shall be prepared under the direction of the Manager. Upon such final accounting, a Manager shall terminate the Certificate of Formation in accordance with the Act and the Company's existence as a separate legal entity shall terminate.

12.4 **No Action for Dissolution.** The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company under circumstances where dissolution is not required by Section 12.2. This Agreement has been drawn carefully to provide fair treatment of all parties and equitable payment in liquidation of the Interests of all Members. Accordingly, except where the Manager has failed to liquidate the Company as required by Section 12.3, each Member hereby waives and renounces its right to initiate legal action to seek dissolution or to seek the appointment of a receiver or trustee to liquidate the Company.

12.5 **No Further Claim.** Upon dissolution, each Member shall have recourse solely to the assets of the Company for the return of such Member's capital, and if the Company's property remaining after payment or discharge of the debts and liabilities of the Company, including debts and liabilities owed to one or more of the Members, is insufficient to return the aggregate Capital Contributions of each Member, such Member shall have no recourse against the Company, the Manager or any other Member.

13. INDEMNIFICATION.

13.1 **General.** At the discretion of the Manager, the Company shall have the authority to indemnify, defend and hold harmless each Member, the Manager, the Tax Matters Member (in such Tax Matters Member's capacity as such) and, to the extent applicable, each such Person's officers, directors, representatives, partners, members, and employees (all such persons being referred to herein as "Indemnified Persons"), who is or was a party, witness or other participant, or is threatened or proposed to be made a party, witness or other participant, in any actual, threatened, pending or complete action, suit, proceeding, demand or investigation, whether civil, criminal, administrative, investigative, or an alternative dispute resolution proceeding by reason of the fact that such Indemnified Person is or was a Member, the Manager, the Tax Matters Member (in such Tax Matters Member's capacity as such) or an officer, manager, partner, member, shareholder or employee of such Indemnified Person, or by reason of the fact that such Indemnified Person is or was serving at the request of the Company as a manager, the Manager, tax matters member, director, board observer, officer or partner of another corporation, limited

liability company, partnership, trust, plan or other organization or enterprise, from and against all expenses (including attorneys' and experts' fees and expenses) ("Expenses"), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with such action, suit, proceeding, demand or investigation if such Indemnified Person acted in good faith and in a manner such Indemnified Person reasonably believed to be in or not opposed to the best interests of the Company (or such organization or enterprise), and, with respect to any criminal action or proceeding, such Indemnified Person had no reasonable cause to believe such Indemnified Person's conduct was unlawful. With respect to such indemnification obligations, no Member will be liable to the Company for amounts in excess of such Member's aggregate Capital Contributions.

13.2 Indemnification for Claims Brought by Indemnified Person. No indemnification shall be available for any claim brought by an Indemnified Person unless and to the extent that such claim is brought (a) to determine and/or enforce the indemnification rights of such Indemnified Person, (b) to seek or obtain payment to or on behalf of such Indemnified Person under any liability insurance policy or (c) with the express written consent of the Company.

13.3 Exculpation. No Person will be liable, in damages or otherwise, to the Company or to any Member for any loss that arises out of any act performed or omitted to be performed by it, him or her if (i) either (a) such Person, at the time of such action or inaction, determined in good faith that such Person's course of conduct was in, or not opposed to, the best interests of the Company or (b) in the case of inaction by such Person, such Person did not intend such Person's inaction to be harmful or opposed to the best interests of the Company and (ii) the conduct of such Person did not constitute fraud or willful misconduct by such Person.

13.4 Other Indemnification. The Company's obligation, if any, to indemnify or provide advancement of expenses to any person under this Article 13 shall be reduced by any amount such person may collect as indemnification or advancement of expenses from any other party. Any indemnification or advancement of expenses under this Article 13 owed by the Company shall only be in excess of, and shall be secondary to, the indemnification or advancement of expenses available from any other party and any applicable insurance policies.

13.5 Other Matters Relating to the Manager. Without limiting the applicability of any other provision of this Agreement, including the other provisions of this Section 13.5, the following provisions shall be applicable to the Manager in its capacity as the Manager:

(a) The Manager and the decisions of the Manager shall have the benefit of the business judgment rule to the same extent as such Person and such decisions would have the benefit of such rule if the Manager were a director of a Delaware corporation.

(b) Notwithstanding anything to the contrary in this Section 13.5 the Manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, the Company and, subject to other applicable law, shall have the same rights and obligations with respect to any such matter as a Person who is not the Manager.

13.6 Business Opportunities. To the fullest extent permitted by law, the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to the Manager or any of its Affiliates. The

Company renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to the Manager, including any transactions with the Manager or any of its Affiliates. If the Manager acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Company, including any transaction with the Manager or its Affiliates, the Manager shall have no duty to communicate or offer such opportunity to the Company, and the Manager shall not be liable to the Company or to the Members for breach of any fiduciary or other duty by reason of the fact that the Manager pursues or acquires for, or directs such opportunity to another Person or does not communicate such opportunity or information to the Company. No amendment or repeal of this Section 13.6 shall apply to or have any effect on the liability or alleged liability of the Manager for or with respect to any opportunities of which the Manager becomes aware prior to such amendment or repeal.

13.7 Interested Transactions. No contract or transaction between the Company and the Manager or an officer, or between the Company and any other entity in which the Manager or an officer is a manager, director or officer, or have a financial interest, shall be void or voidable solely for this reason.

14. REPRESENTATIONS AND WARRANTIES BY THE MEMBERS.

Each Member hereby represents and warrants to, and agrees with, the Manager, the other Members and the Company as follows:

14.1 Investment Intent. Such Member is acquiring such Member's Interests with the intent of holding the same for investment for such Member's own account and without the intent or a view of participating directly or indirectly in any distribution of such Interests within the meaning of the Securities Act or any applicable state securities laws.

14.2 Securities Regulation.

(a) Such Member acknowledges and agrees that such Member's Interests are being issued and sold in reliance on the exemption from registration under the Securities Act and exemptions contained in applicable state securities laws, and that such Member's Interests cannot and may not be sold or transferred except in a transaction that is exempt under the Securities Act and applicable state securities laws or pursuant to an effective Registration Statement under the Securities Act and applicable state securities laws.

(b) Such Member understands that such Member has no contractual right for the registration under the Securities Act of such Member's Interest or public offering and that, unless such Member's Interests are registered or an exemption from registration is available, such Member's Interests may be required to be held indefinitely.

14.3 Economic Risk. Such Member is able to bear the economic risk of such Member's investment in such Member's Interest.

14.4 Binding Agreement. Such Member has all requisite power and authority to enter into and perform this Agreement and this Agreement is and will remain such Member's valid and binding agreement, enforceable in accordance with its terms (subject, as to the enforcement of remedies, to any applicable bankruptcy, insolvency or other laws affecting the enforcement of creditors rights).

14.5 **Tax Position.** Unless such Member provides prior written notice to, and obtains the consent of, the Company and the holder(s) of a majority of the Common Units, such Member will not take a position on such Member's federal income tax return, in any claim for refund or in any administrative or legal proceedings that is inconsistent with this Agreement or with any information return filed by the Company.

14.6 **Information.** Such Member has received all documents, books and records pertaining to an investment in the Company requested by such Member. Such Member has had a reasonable opportunity to ask questions of and receive answers concerning the Company, and all such questions have been answered to such Member's satisfaction.

14.7 **Licenses and Permits.** Such Member will cooperate in providing such information, in signing such documents and in taking any other action as may reasonably be requested by the Company in connection with obtaining any foreign, federal, state or local license or permit needed to operate its business or the business of any entity in which the Company invests.

15. **COMPANY REPRESENTATIONS.** In order to induce the Members to enter into this Agreement, the Company hereby represents and warrants to each Member as follows:

15.1 **Duly Formed.** The Company is a duly formed and validly existing limited liability company under the Act, with all necessary power and authority under the Act to issue the Interests to be issued to the Members hereunder.

15.2 **Valid Issue.** When the Interests are issued to the Members as contemplated by this Agreement and the Capital Contributions required to be made by the Members are made, if any, the Interests issued to the Members will be duly and validly issued and no liability for any additional capital contributions or for any obligations of the Company will attach thereto.

16. **AMENDMENTS TO AGREEMENT.**

16.1 **Amendments.** Except as otherwise expressly provided herein, this Agreement and/or the Certificate of Formation may be amended, modified or supplemented, and any provision hereof and/or thereof may be waived, only by a written instrument duly approved by the Manager and the Members that together hold, in the aggregate, at least two-thirds in Interest and duly executed by the Company; provided, however, that the Manager may, without the consent of any Member, amend or modify this Agreement (including the Member's register) or waive any provision of this Agreement (other than this Section 16), and/or the Certificate of Formation pursuant to a written instrument duly approved by the Manager to the extent necessary or (as determined by the Manager) desirable to issue new Interests in accordance with the terms of this Agreement.

16.2 **Binding Effect.** Any modification or amendment to this Agreement pursuant to this Section 16 shall be binding on all Members.

17. **GENERAL.**

17.1 **Successors; Etc.** This Agreement shall be binding upon the executors, administrators, estates, heirs and legal successors of the Manager and Members, and contains the entire contract among the Manager and Members as to the subject matter hereof. The waiver of any of the provisions, terms or

conditions contained in this Agreement shall not be considered as a waiver of any of the other provisions, terms or conditions hereof.

17.2 Notices, Etc. All notices and other communications required or permitted hereunder must be in writing and will be deemed effectively given upon personal delivery (which may be evidenced by a return receipt if sent by registered mail or by signature if delivered by courier or delivery service) or sent by facsimile (and electronic receipt was received) or sent by electronic mail (and electronic receipt was received), addressed (a) if to any Member, at the address of such Member set forth on the Member's register or at such other address as such Member shall have furnished to the Company in writing as the address to which notices are to be sent hereunder and (b) if to the Company or to the Manager to Brand Acquisition Co., LLC, c/o Coliseum Capital Management, LLC, 105 Rowayton Avenue, Rowayton, Connecticut 06853, Attention: Adam Gray.

17.3 Execution of Documents. From time to time after the date of this Agreement, upon the request of the Manager, each Member shall perform, or cause to be performed, all such additional acts, and shall execute and deliver, or cause to be executed and delivered, all such additional instruments and documents, as may be required to effectuate the purposes of this Agreement. Each Member, by the execution of this Agreement or by agreeing in writing to be bound by this Agreement, irrevocably constitutes and appoints the Manager or any Person designated by the Manager to act on such Member's behalf for purposes of this Section 17.3 as such Member's true and lawful attorney-in-fact with full power and authority in such Member's name and stead to execute, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to effectuate this Agreement, including:

- (a) all certificates and other instruments (specifically including counterparts of this Agreement), and any amendment thereof, that the Manager deems appropriate to qualify or to continue the Company as a limited liability company in any jurisdiction in which the Company may conduct business or in which such qualification or continuation is, in the opinion of the Manager, necessary to protect the limited liability of the Members;
- (b) all amendments to this Agreement adopted in accordance with the terms hereof and all instruments that the Manager deems appropriate to reflect a change or modification of the Company in accordance with the terms of this Agreement; and
- (c) all conveyances and other instruments that the Manager deems appropriate to reflect the dissolution of the Company.

The appointment by the Manager to act on its behalf for purposes of this Section 17.3 as such Member's attorney-in-fact shall be deemed to be a power coupled with an interest, in recognition of the fact that each of the Members under this Agreement will be relying upon the power of the Manager to act as contemplated by this Agreement in any filing and other action by him, her or it on behalf of the Company, and will survive the bankruptcy, dissolution, death, adjudication of incompetence or insanity of any Member giving such power and the transfer or assignment of all or any part of such Member's Interests; provided, however, that in the event of a Transfer by a Member of all of its Interests, the power-of-attorney given by the transferor will survive such assignment only until such time as the transferee has been admitted to the Company as a substituted Member and all required documents and instruments shall have

been duly executed, filed, and recorded to effect such substitution, after such time such power-of-attorney will be given by such transferee by operation of this Section 17.3.

17.4 Governing Law. This Agreement and any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the transactions contemplated hereby or the actions of such party in the negotiation, administration, performance or enforcement hereof, is governed by and shall be construed in accordance with the laws of the State of Delaware, excluding any conflict of laws rule or principle that would refer the governance or the construction of this Agreement to the laws of another jurisdiction.

17.5 Venue. The parties hereto agree that all disputes shall be initiated and tried exclusively in the State and Federal courts located in New York, New York. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this Section 17.5. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that the State and Federal courts located in New York, New York shall have in personam jurisdiction and venue over each of them for the purposes of litigating any dispute, controversy or proceeding arising out of or related to this Agreement.

17.6 Severability. If any provision of this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect the other provisions hereof, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law. Notwithstanding the foregoing, if any such invalidity or unenforceability shall deprive any party hereto of a material portion of the benefits intended to be provided to such party hereby, the parties shall in good faith seek to negotiate a substitute benefit for such Person, it being understood that it is possible that no such substitute benefit will be able to be so negotiated, in which event the other provisions of this Section 17.6 shall govern.

17.7 Headings. The headings used in this Agreement are used for administrative convenience only and do not constitute substantive matter to be considered in construing this Agreement.

17.8 No Third Party Rights. The provisions of this Agreement are for the benefit of the Company, the Manager, the Members and the Indemnified Persons and no other Person, including creditors of the Company, shall have any right or claim against the Company, the Manager or any Member by reason of this Agreement or any provision hereof or be entitled to enforce any provision of this Agreement.

17.9 Specific Performance. Each of the parties acknowledges and agrees that the other parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached or violated. Accordingly, each of the parties agrees that, without posting bond or other undertaking, the other parties will be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter in addition

to any other remedy to which it may be entitled, at law or in equity. Each party further agrees that, in the event of any action for specific performance in respect of such breach or violation, it will not assert that the defense that a remedy at law would be adequate.

17.10 Waiver. No waiver by any party of any breach or violation or, default of or right granted under any provision hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent breach, violation, or default of, or failure to exercise any right granted by, any provision hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

17.11 Counterparts. This Agreement may be executed in two or more counterparts (and by facsimile of "pdf"), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement (or caused this Agreement to be executed on its behalf by its officer or representative thereunto duly authorized) under seal as of the date first above written.

COMPANY:

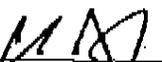
BRAND ACQUISITION CO., LLC

By: COLISEUM CAPITAL MANAGEMENT, LLC, as
Manager

By: 
Name: CHRIS SHACKLETON
Title: Managing Partner

MANAGER:

COLISEUM CAPITAL MANAGEMENT, LLC

By: 
Name: CHRIS SHACKLETON
Title: Managing Partner

INVESTORS:

COLISEUM CAPITAL PARTNERS, L.P.

By: Coliseum Capital, LLC, General Partner

By: 
Name: CHRIS SHACKLETON
Title: Manager

COLISEUM CAPITAL PARTNERS II, L.P.

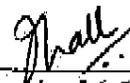
By: Coliseum Capital, LLC, General Partner

By: 
Name: CHRIS SHACKLETON
Title: Manager

[Signatures continue on following page]

BLACKWELL PARTNERS LLC -- SERIES A

By: 
Name: Eric M. Koehrsen
Title: Investment Manager
DUMAC, Inc., Authorized Agent

By: 
Name: Janine M. Lall
Title: Controller
DUMAC, Inc., Authorized Agent