ASCENDIA BRANDS, INC.
Form DEF 14C
September 11, 2006

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

SCHEDULE 14C

INFORMATION STATEMENT PURSUANT TO SECTION 14(C)

OF THE SECURITIES EXCHANGE ACT OF 1934

Check the appropriate box:

o Preliminary Information Statement
o Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))
x Definitive Information Statement

ASCENDIA BRANDS, INC.

(Name of Registrant As Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

x No fee required
o Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11
(1) Title of each class of securities to which transaction applies:

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(2) Aggregate number of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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(4) Proposed maximum aggregate value of transaction:

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(5) Total fee paid:

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o Fee paid previously with preliminary materials.
o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

(4) Date Filed:

ASCENDIA BRANDS, INC.

100 American Metro Boulevard

Suite 108

Hamilton, New Jersey 08619

INFORMATION STATEMENT NOTICE

To our Stockholders:

Ascendia Brands, Inc. (Ascendia or the Company) hereby gives notice to the holders of its common stock, par value $.001 per share (the Common Stock), and Series A Junior Participating Preferred Stock, par value $.001 per share (the Series A Preferred Stock , and collectively with the Common Stock, the Capital Stock), that by written consent on August 2, 2006, in lieu of a meeting of stockholders, the holders of more than a majority of the voting power of our outstanding Capital Stock approved the issuance of notes convertible into shares of Common Stock and warrants exercisable for shares of Common Stock in an amount greater than 20% of our outstanding shares of Common Stock (the Transaction). A description of the securities is contained in this Information Statement. The stockholders took this action solely for the purposes of satisfying requirements of the American Stock Exchange that require an issuer of listed securities to obtain prior stockholder approval of the Transaction.

The stockholder action by written consent was taken pursuant to Section 228 of the Delaware General Corporation Law, which permits any action that may be taken at a meeting of the stockholders to be taken by written consent by the holders of the number of shares of voting stock required to approve the action at a meeting. All necessary corporate approvals in connection with the matters referred to in this Information Statement have been obtained. This Information Statement is being furnished to all stockholders of the Company pursuant to Section 14(c) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and the rules thereunder solely for the purpose of informing stockholders of these corporate actions before they take effect. In accordance with Rule 14c-2 under the Exchange Act, the stockholder consent is expected to become effective twenty (20) calendar days following the mailing of this Information Statement, or as soon thereafter as is reasonably practicable.

This action has been approved by the board of directors of the Company and the holders of more than a majority of the voting power of our outstanding Capital Stock. **WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY.**

By order of the Board of Directors

Joseph A. Falsetti

President & Chief Executive Officer

September 11, 2006

ASCENDIA BRANDS, INC.

100 American Metro Boulevard

Suite 108

Hamilton, New Jersey 08619

INFORMATION STATEMENT

We are required to deliver this Information Statement to holders of our common stock, par value $.001 per share (the Common Stock), and Series A Junior Participating Preferred Stock, par value $.001 per share (the Series A Preferred Stock , and collectively with the Common Stock, the Capital Stock), in order to inform them that, in connection with the approval by our board of directors of the matters described below, the holders of more than a majority of the voting power of our outstanding Capital Stock subsequently approved these matters by written consent on August 2, 2006 (the Written Consent).

July 31, 2006 has been fixed as the record date for the determination of stockholders who are entitled to receive this Information Statement. On July 31, 2006, there were 13,913,056 shares of our Common Stock outstanding and 2,553.6746 shares of our Series A Preferred Stock outstanding. Each share of Common Stock entitles its holder to one vote and each share of Series A Preferred Stock entitles its holder to 10,118.1774 votes, in each case, on matters submitted to a vote of holders of the Common Stock.

THIS INFORMATION STATEMENT IS FIRST BEING SENT OR GIVEN TO THE HOLDERS OF OUR COMMON STOCK AND SERIES A PREFERRED STOCK ON OR ABOUT SEPTEMBER 18, 2006.

WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY.

ISSUANCE OF SECURITIES

On June 30, 2006 the Company entered into a Second Amended and Restated Securities Purchase Agreement (the Securities Purchase Agreement) with Prencen, LLC (Prencen) and Prencen Lending LLC (Prencen Lending). The Securities Purchase Agreement amends and restates certain agreements entered into on October 1, 2005 and November 16, 2005 and the Bridge Term Loan Agreement, dated November 15, 2005, between the Company, Prencen Lending (as Agent and Lender) and Highgate House Funds, Ltd. (the Bridge Term Loan). The closing of the transactions contemplated by the Securities Purchase Agreement (the Closing) occurred on August 3, 2006.

Under the Securities Purchase Agreement, the Company issued and sold to Prencen Lending at the Closing senior secured convertible notes (the Notes) in the principal amount of $91 million, which Notes are secured by all of the Company s and its subsidiaries assets and guaranteed by all of the Company s subsidiaries. The proceeds from the sale of the Notes were applied to pay the principal and accrued interest under the Bridge Term Loan, to pay fees and expenses associated with the closing of the Securities Purchase Agreement and to fund a partial redemption of the Series A Preferred Stock (see below).

The Notes have a term of 10 years (subject to certain put and call rights described below) and will bear interest at the rate of 9 percent *per annum*, provided that Company has the option to defer interest payments until December 31, 2006, at which time such deferred interest will be payable to Precen Lending in cash. If the Company consummates an Acquisition (as defined in the Notes), it may elect to defer and capitalize interest for the balance of the Notes then outstanding.

Any portion of the balance due under the Notes will be convertible at any time, at the option of the holders(s), into our Common Stock (the Conversion Shares) at a price of $1.75 per share (subject to certain anti-dilution adjustments), provided that the holders may not, except in accordance with the terms of the Notes, convert any amounts due under the Notes if and to the extent that, following such a conversion, the holder and its affiliates would collectively beneficially own more than 9.99 percent of the aggregate number of shares of our Common Stock outstanding following such conversion.

At any time after the fifth anniversary of the issuance of the Notes, the Company may redeem, or any holder may demand that the Company redeem, all or any portion of the balance outstanding under the Notes at a premium of 5 percent. The Notes are redeemable by the holder(s) at any time upon the occurrence of an event of default or a change in control of the Company (as defined in the Notes), at a premium of 25 and 20 percent, respectively. In addition, upon the consummation of an Acquisition, the Company may redeem, at a premium of 15 percent, a portion of the principal amount of the Notes equal to the excess, if any, of the then outstanding principal amount of the Notes over $51 million.

The Notes rank as senior secured debt of the Company, provided, however, that a revolving credit facility of up to $13 million is secured by a first priority lien on the U.S. inventory and accounts receivable of certain of the Company s subsidiaries. The Notes will be subordinated to indebtedness, on terms and conditions reasonably satisfactory to Prencen Lending, incurred in connection with an Acquisition, in an amount up to $250 million.

In connection with the transactions contemplated by the Securities Purchase Agreement, the Company also issued certain warrants entitling the holders thereof to purchase shares of its Common Stock (the Warrant Shares). At the Closing, the Company issued to Prencen 3,053,358 Series A Warrants at an exercise price of $2.10 per share (the Series A Warrants). It also issued Prencen Series B Warrants for up to 3,000,000 shares of Common Stock. The Series B Warrants are exercisable in amounts and at exercise prices (which may range from $1.15 to $1.95) to be determined in accordance with the terms of the Series B Warrants. (The Series B Warrants and the Series A Warrants are referred to collectively as the Warrants). The Warrants may not, except in accordance with the terms of the Warrants, be exercised if and to the extent that, following such exercise, the holder and all affiliates of the holder would collectively beneficially own more than 9.99 percent of the aggregate number of shares of our Common Stock outstanding following such exercise.

At the Closing, the Company entered into an Amended and Restated Registration Rights Agreement (the Registration Rights Agreement) in favor of Prencen and Prencen Lending with respect to the Conversion Shares, Warrant Shares and any of our Common Stock currently held or subsequently acquired by Prencen or Prencen Lending (the Registrable Securities). Under the Registration Rights Agreement, the Company is required to file a registration statement with respect to the Registrable Securities not less than 60 days following the Closing, and is required to use its best efforts to have such registration statement declared effective not later than the earlier of 120 days following the filing date or 180 days following the Closing. The Registration Rights Agreement contains customary penalties for the failure to comply with such deadlines or to maintain the effectiveness of the registration statement.

At the Closing, the Company paid Prentice Capital Management, LP, an affiliate of Prencen and Prencen Lending, a closing fee of $3,667,500 and reimbursed Prencen and Prencen Lending for certain disbursements related to the transaction. In addition, the Company paid fees and expenses of $5,525,171 to Stanford Group Company (Stanford). At the Closing, the Company also issued Stanford and its designees warrants for the purchase of its Common Stock as follows: (i) 137,615 warrants at an exercise price of $3.76 per share, and (ii) 552,632 warrants at an exercise price of $4.37 per share.

Under the Securities Purchase Agreement, the Company became obligated to use a portion of the proceeds of the sale of the Notes to redeem a total of 205.9 shares of the Series A Perferred Stock held by MarNan, LLC (MarNan) and Dana Holdings, LLC (Dana). Dana is a limited liability company, 48.44 percent of the ownership interests in which are owned by Joseph A. Falsetti, the Chief Executive Officer of the Company and the Chairman of its Board of Directors. (For further information, please refer to the Table of Beneficial Ownership, *infra*.) The aggregate redemption consideration of $3,645,833 corresponds to $1.75 per share for each share of Common Stock into which the Series A Preferred Stock to be redeemed would be convertible, if such conversion had occurred on August 2, 2006 (a Series A Conversion Share), based upon the conversion ratio of 10,118.1774 shares of Common Stock per share of Series A Preferred Stock in effect as of such date, resulting in a total of 2,083,333 Series A Conversion Shares. In connection with the amendment and restatement of the agreements entered into on October 1 and November 15, 2005, including specifically the Company s agreement to redeem 205.9 shares of Series A Preferred Stock owned by Dana and MarNan, MarNan and Prencen terminated, prior to Closing, an agreement dated October 10, 2005 obligating Prencen to purchase from MarNan shares of the Series A Preferred Stock corresponding to 2,083,333 Series A Conversion Shares, for an aggregate consideration of $5 million, corresponding to a price of $2.40 per Series A Conversion Share.

The above description does not purport to be a complete statement of the parties rights and obligations under the Securities Purchase Agreement and related agreements and is qualified in its entirety by reference to (i) the Securities Purchase Agreement, (ii) the Form of Notes attached as Exhibit A thereto, (iii) the Form of Warrants attached as Exhibits B-1 and B-2 thereto, (iv) the Form of Registration Rights Agreement attached as Exhibit C thereto, and (v) the Form of Voting Agreement by and among the Company and certain of its stockholders attached as Exhibit I thereto, copies of which are attached to the Company s Current Report on Form 8-K filed on July 7, 2006 as Exhibits 4.1 through 4.5, respectively, and which are attached hereto as Exhibits B through F, respectively. Except for their status as the contractual documents between the parties with respect to the transactions described therein, none of the above-referenced agreements is intended to provide factual information about the parties and the representations and warranties contained in such documents are made only for purposes of the respective agreements and as of specific dates, are intended solely for the benefit of the parties to the respective agreements, and may be subject to limitations agreed by the parties, including being qualified by disclosures between the parties. These representations and warranties may have been made for the purposes of allocating contractual risk between the parties to the respective agreements instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the parties that differ from those applicable to investors. Accordingly, they should not be relied on by investors as statements of factual information.

Our Common Stock is listed on the American Stock Exchange (the AMEX) and we are subject to the rules and requirements set forth in the AMEX Company Guide. Under Section 713(a) of the AMEX Company Guide, we were required to obtain prior stockholder approval of the issuance of securities in any private transaction involving (i) the issuance of shares of our Common Stock (or securities convertible into or exercisable for Common Stock) for less than the greater of book or market value of our Common Stock which together with sales by our officers, directors or principal shareholders equals 20% or more of our Common Stock outstanding before such issuance or (ii) the issuance of shares of our Common Stock (or securities convertible into or exercisable for Common Stock) equal to 20% or more of our Common Stock outstanding before the issuance for less than the greater of book or market value of our Common Stock. We sometimes refer to this rule as the 20% Rule . The securities to be issued in the financing may be issued at a discount to the market price of our Common Stock. The Conversion Shares and the Warrant Shares would constitute more than 20% of the number of shares of our Common Stock outstanding. In addition, we obtained prior stockholder approval for the securities to be issued in the financing in the event that any other rule or requirement of the AMEX Company Guide would require such approval. We have obtained stockholder approval by written consent and this Written Consent will become effective on the twentieth (20th) day following the date on which this Information Statement is first sent or given to our stockholders, or as soon thereafter as is reasonably practicable. A copy of the form of Written Consent executed in connection with the stockholder approval is attached hereto as Exhibit A.

The Written Consent was signed by persons who, as of the execution date, collectively owned 95 percent of the Company s Series A Preferred Stock and 28 percent of the Company s Common Stock, namely Dana, MarNan, Franco S. Pettinato, Edward J. Doyle, Robert Enck and Steven M. Bettinger. Edward J. Doyle is a Director of the Company, and Franco S. Pettinato is one of its Executive Officers. As of the date upon which the Written Consent was signed, each share of Series A Preferred Stock was entitled to 10,118.1774 votes on most matters (including the approval of the transactions described above), with the consequence that the persons signing the Written Consent collectively accounted for 71.4 percent of the aggregate votes entitled to be cast. (For further information, please refer to the Table of Beneficial Ownership, *infra*.) No payment was made to any person in consideration of their executing the Written Consent

Prencen and Prencen Lending have acknowledged and agreed that neither the Conversion Shares nor the Warrant Shares will be issued in an amount in excess of the number of shares that may be permitted under the AMEX rules, until such issuances have been approved by the Company s stockholders and the listing of the Conversion Shares and the Warrant Shares on the AMEX has been authorized by the AMEX.

Issuance of the Conversion Shares and Warrant Shares will result in dilution to our existing stockholders, but will not otherwise materially affect our existing common stockholders rights as stockholders.

NO APPRAISAL OR DISSENTERS RIGHTS

Under the Delaware General Corporation Law, our stockholders are not entitled to any dissenters rights or appraisal of their shares of Common Stock in connection with the approval of the actions described in this Information Statement.

NO ACTION IS REQUIRED

No other votes are necessary or required. This Information Statement is first being mailed or given to stockholders on or about September 18, 2006. In accordance with the Securities Exchange Act of 1934, as amended (the Exchange Act), the Written Consent and the approval of the matters described in the Written Consent and this Information Statement will become effective twenty (20) calendar days following the mailing of this Information Statement, or as soon thereafter as is reasonably practicable.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

As of July 31, 2006, the Company s directors, executive officers and principal stockholders beneficially own, directly or indirectly, in the aggregate, approximately 28% of its outstanding Common Stock and 90% of its Series A Preferred Stock. Each share of Common Stock entitles its holder to one vote and each share of Series A Preferred Stock entitles its holder to 10,118.1774 votes, in each case, on matters submitted to a vote of holders of the Common Stock. These stockholders have significant influence over the Company s business affairs, with the ability to control matters requiring approval by the Company s stockholders, including the Written Consent set forth in this Information Statement.

The following table sets forth certain information as of July 31, 2006, with respect to the beneficial ownership of shares of our Common Stock and Series A Preferred Stock by (i) each person known by us to beneficially own more than five percent (5%) of the outstanding shares of our Common Stock or Series A Preferred Stock, (ii) each of our directors, (iii) each of our named executive officers and (iv) all of our executive officers and directors as a group.

As of July 31, 2006, there were 13,913,056 shares of our Common Stock outstanding and 2,553.6746 shares of our Series A Preferred Stock outstanding. Beneficial ownership has been calculated and presented in accordance with Rule 13d-3 of the Exchange Act.

Unless otherwise indicated below, (i) each stockholder has sole voting and investment power with respect to the shares shown; and (ii) the address for the stockholder is c/o Ascendia Brands, Inc., 100 American Metro Boulevard, Suite 108, Hamilton, New Jersey 08619.

Name and Address of Beneficial Owner	*Shares of Series A Pref Stock (1)*	*Percentage of Series A Pref Stock*	*Shares of Common Stock*	*Percentage of Common Stock*	*Percentage of Voting Power(2)*
Steven M. Bettinger 6421 Congress Avenue Suite 201 Boca Raton, FL 33487	-0-	-0-	3,817,767[3]	27.4%	9.6%
Robert Picow	-0-	-0-	196,049[4]	1.4%	0.5%
Dana Holdings, LLC [5]	1,021.4699	40.0%	-0-	-0-	26.0%
MarNan, LLC	1,021.4699	40.0%	-0-	-0-	26.0%
Franco S. Pettinato	127.6837	5.0%	-0-	-0-	3.2%
Edward J. Doyle 316 Perry Cabin Drive St. Michael s, MD 21663	127.6837	5.0%	-0-	-0-	3.2%
Kenneth D. Taylor 1775 York Avenue, Apt. 29 H New York, NY 10128	-0-	-0-	-0-	-0-	-0-
Francis Ziegler 100 Roebling Road Bernardsville, NJ 07924	-0-	-0-	-0-	-0-	-0-
Joseph A. Falsetti	-0-	-0-	-0-[5]	-0-	-0-
Brian J. Geiger	-0-	-0-	-0-[6]	-0-	-0-
William B. Acheson	-0-	-0-	-0-	-0-	-0-
Elizabeth Houlihan	-0-	-0-	-0-	-0-	-0-
Frederic H. Mack[7]	53.9525	2.1%	1,155,000	8.3%	4.3%
All executive officers and Directors as a group (8 persons)	255.3674	10.0%	4,113,816[3][4]	29.6%	16.8%

(1) The percentages computed in the table are based on 2,553.6746 shares of Series A Preferred Stock outstanding as of July 31, 2006

(2) This column reflects the relative voting power of the holders of the Company s capital stock with respect to matters voted upon by the holders of the Company s Common Stock and Series A Preferred Stock as a single class. Each share of Series A Preferred Stock is entitled to 10,118.1774 votes on most matters.

(3) Includes options to purchase 100,000 shares of Common Stock.

(4) Includes options to purchase 8,334 shares of Common Stock.

(5) Joseph A. Falsetti, the President and Chief Executive Officer of the Company, owns a 48.44 percent interest in, and is the sole manager and sole executive officer of, Dana Holdings, LLC. Mr. Falsetti disclaims beneficial ownership of the shares of Common Stock that are beneficially owned by Dana Holdings LLC.

(6) Brian J. Geiger, the Chief Financial Officer of the Company as of July 31, 2006, owns a 3.125 percent interest in Dana Holdings, LLC and a 3.125 percent interest in MarNan, LLC. Mr. Geiger disclaims beneficial ownership of the shares of Common Stock that are beneficially owned by Dana Holdings, LLC and MarNan, LLC.

(7) Excludes 115,000 shares of Common Stock and 4.9456 shares of Series A Preferred Stock owned by the Irrevocable Trust FBO Hailey Mack (the HM Trust), and 115,000 shares of Common Stock and 4.9456 shares of Series A Preferred Stock owned by the Irrevocable Trust FBO Jason Mack (the JM Trust). As sole trustee. Frederick Mack has sole voting power with respect to the shares owned by the HM Trust and JM Trust. Mr. Mack disclaims beneficial ownership of the shares of Series A Preferred Stock and Common Stock held by the HM Trust and JM Trust.

BROKERS, CUSTODIANS, ETC.

We have asked brokers and other custodians, nominees and fiduciaries to forward this Information Statement to the beneficial owners of our Common Stock and Series A Preferred Stock held of record by such persons and will reimburse such persons for out-of-pocket expenses incurred in forwarding such material.

All information concerning the Company contained in this Information Statement has been furnished by the Company. No person is authorized to make any representation with respect to the matters described in this Information Statement other than those contained in this Information Statement and if given or made must not be relied upon as having been authorized by the Company or any other person. Therefore, if anyone gives you such information, you should not rely on it. This Information Statement is dated September 11, 2006. You should not assume that the information contained in this document is accurate as of any other date unless the information specifically indicates that another date applies.

By order of the Board of Directors

Joseph A. Falsetti

President, Chief Executive Officer

September 11, 2006

EXHIBIT A

WRITTEN CONSENT

OF CERTAIN STOCKHOLDERS

OF

ASCENDIA BRANDS, INC.

The undersigned, being the holders of a majority of the outstanding shares of capital stock of Ascendia Brands, Inc., a Delaware corporation (the Corporation), acting by written consent without a meeting pursuant to Section 228 of the General Corporation Law of the State of Delaware (the DGCL), hereby consent to the adoption of the following resolutions:

WHEREAS, the Board of Directors of the Corporation has determined it to be in the best interests of the Corporation to enter into each of the following documents (collectively, the Transaction Documents): (i) the Second Amended and Restated Securities Purchase Agreement, dated as of June 30, 2006 (the Purchase Agreement), with the buyers listed on the Schedule of Buyers attached thereto (the Purchasers), (ii) the form of Warrant to be delivered by the Corporation pursuant to the terms of the Purchase Agreement, (iii) the form of Note to be delivered by the Corporation pursuant to the terms of the Purchase Agreement; (iv) the form of Amended and Restated Security Agreement by and among the Corporation, certain of its subsidiaries and the Purchasers to secure the obligations of the Corporation under the Transaction Documents (the Security Agreement) and any accompanying UCC financing statements or amendments thereto; (v) the form of Amended and Restated Pledge and Security Agreement by and among the Corporation and the other pledgors named therein, on the one hand, and the Purchasers, on the other hand (the Pledge Agreement); (vi) the form of Irrevocable Transfer Agent Instructions to be delivered by the Corporation to the Corporation s transfer agent; (vii) the form of Amended and Restated Registration Rights Agreement by and among the Corporation and the Purchasers; and (viii) the form of Voting Agreement by and among the Corporation and certain of the stockholders of the Corporation, and to consummate the transactions contemplated thereby; and

WHEREAS, a copy of each of the Transaction Documents has been provided to each of the undersigned stockholders; and

WHEREAS, pursuant to the Purchase Agreement, the Corporation has agreed to issue (i) a new series of senior secured convertible notes of the Corporation in the aggregate principal amount of $91,000,000, in substantially the form attached as Exhibit A to the Purchase Agreement (the Notes), which shall be convertible into shares (the Conversion Shares) of the Corporation s common stock, par value $0.001 (the Common Stock), (ii) warrants, in substantially the form attached as Exhibit B-1 to the Purchase Agreement (the Series A Warrants) to acquire up to 3,053,358 shares of Common Stock (the Series A Warrant Shares), and (iii) warrants, in substantially the form attached as Exhibit B-2 to the Purchase Agreement (the Series B Warrants , and together with the Series A Warrants, the Warrants) to acquire up to 3,000,000 shares of Common Stock (the Series B Warrant Shares , and together with the Series A Warrant Shares, the Warrant Shares); and

WHEREAS, contemporaneously with the execution and delivery of the Purchase Agreement, Steven Bettinger, Jodi Bettinger and Prencen, LLC, one of the Purchasers, executed and delivered a Securities Purchase Agreement, dated as of June 30, 2006, whereby Prencen, LLC will acquire 3,322,482 shares of Common Stock (the Bettinger Shares); and

WHEREAS, Section 713(a) of the AMEX Company Guide requires that the Corporation secure stockholder approval of the issuance of securities in any private transaction involving (i) the sale, issuance, or potential issuance by the Corporation of Common Stock (or securities convertible into or exercisable for Common Stock) for less than the greater of book or market value of the Common Stock which together with sales by officers, directors or principal shareholders of the Corporation equals 20% or more of the presently outstanding Common Stock or (ii) the sale, issuance, or potential issuance by the Corporation of Common Stock (or securities convertible into or exercisable for Common Stock) equal to 20% or more of the presently outstanding Common Stock for less than the greater of book or market value of the Common Stock; and

WHEREAS, in the event that any other provision of the AMEX Company Guide requires the Corporation to secure stockholder approval for the issuance of its securities in connection with the Transaction Documents and the transactions contemplated thereby for any other reason, then this Consent shall apply to any such other provision of the AMEX Company Guide; and

WHEREAS, the Board of Directors of the Corporation recommends that the undersigned approve, ratify and confirm the Purchase Agreement, and approve the other Transaction Documents and the transactions contemplated thereby and the Purchase Agreement, including the issuance of the Notes, the Conversion Shares, the Warrants and the Warrant Shares, the sale of the Bettinger Shares and the grant of a security interest in all of the assets of the Corporation to the Purchasers pursuant to the Security Agreement and the Pledge Agreement;

NOW, THEREFORE, BE IT:

RESOLVED, that the approval of the Purchase Agreement by the Board of Directors of the Corporation, and the execution and delivery of the Purchase Agreement by the authorized officers of the Corporation, be, and the same hereby are, approved, ratified and confirmed in all respects; and be it further

RESOLVED, that the form, terms and provisions of the other Transaction Documents, substantially on the terms presented to the undersigned stockholders, and all of the transactions contemplated thereby and by the Purchase Agreement, including the issuance of the Notes, the Conversion Shares, the Warrants and the Warrant Shares, the sale of the Bettinger Shares and the grant of a security interest in all of the assets of the Corporation to the Purchasers pursuant to the Security Agreement and the Pledge Agreement, be, and they hereby are, authorized, approved and adopted, and that the authorized officers of the Corporation be, and each of them hereby is, authorized, in the name and on behalf of the Corporation, to execute and deliver the Transaction Documents and any related documents, instruments or agreements, with such changes therein as such officer or officers executing the same may approve, the execution and delivery thereof to be conclusive evidence that the same shall have been approved hereby; and be it further

RESOLVED, that this Consent shall constitute the requisite stockholder approval of the transactions contemplated by the Transaction Documents pursuant to Section 713(a) of the AMEX Company Guide and, to the extent applicable, any other provision of the AMEX Company Guide; and be it further

RESOLVED, that the Purchasers are the express third party beneficiaries of this Consent and this Consent shall not be amended or modified without their written consent; and be it further

RESOLVED, that the authorized officers of the Corporation be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to take or cause to be taken all such further actions and to execute and deliver or cause to be executed and delivered all such further agreements, documents, instruments, notes, reports, certificates and undertakings, and to incur and pay all such fees and expenses as in their judgment shall be necessary or advisable to carry into effect the purpose and intent of any and all of the foregoing resolutions, and all such acts of such officers taken pursuant to the authority granted herein, or having occurred prior to the date hereof in order to effect such transactions, are hereby approved, adopted, ratified and confirmed in all respects; and be it further

RESOLVED, that for purposes of each of the foregoing resolutions, the authorized officers of the Corporation shall be the President and Chief Executive Officer, the Chief Financial Officer, any Vice President, the Treasurer and the Secretary.

This Consent may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Telecopied signatures on this Consent shall be valid and effective for all purposes.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have duly executed this Written Consent as of the 2nd day of August, 2006.

/s/ Steven M. Bettinger

Steven M. Bettinger

DANA HOLDINGS, LLC

By: /s/ Joseph A. Falsetti

Name: Joseph A. Falsetti

Title: Manager

MARNAN, LLC

By: /s/ Mark I. Massad

Name: Mark I. Massad

Title:

/s/ Franco S. Pettinato

Franco S. Pettinato

/s/ Edward J. Doyle

Edward J. Doyle

/s/ Robert Enck

Robert Enck

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EXHIBIT B

SECOND AMENDED AND RESTATED SECURITIES PURCHASE AGREEMENT

SECOND AMENDED AND RESTATED SECURITIES PURCHASE AGREEMENT (the **Agreement**), dated as of June 30, 2006, by and among Ascendia Brands, Inc. (f/k/a Cenuco, Inc.), a Delaware corporation, with headquarters located at American Metro Center, 240 Princeton Avenue, Suite 108, Hamilton, NJ 08619 (the **Company**), and the investors listed on the Schedule of Buyers attached hereto (individually, a **Buyer** and collectively, the **Buyers**).

WHEREAS:

A. The Company and certain Buyers (the **Original Note Buyers**) entered into that certain Securities Purchase Agreement, dated as of October 10, 2005, which was subsequently amended and restated in that certain Amended and Restated Securities Purchase Agreement (the **Original Note Agreement**), dated November 16, 2005 (the **Original Note Agreement Date**) with respect to the potential acquisition by the Original Note Buyers of (i) secured convertible notes (the **Original Notes**), which were to be convertible into shares of the Company s common stock, par value $0.001 (the **Common Stock**) and (ii) certain warrants (the **Original Note Warrants**).

B. The Company and certain Buyers (the **Original Preferred Buyers**) entered into that certain Securities Purchase Agreement, dated as of October 10, 2005, which was subsequently amended and restated in that certain Amended and Restated Securities Purchase Agreement (the **Original Preferred Agreement**), dated November 16, 2005 (the **Original Preferred Agreement Date**) with respect to the potential acquisition by the Original Preferred Buyers of (i) Series B Junior Participating Convertible Preferred Stock, par value $0.001 per share, which were to be convertible into shares of Common Stock, and (ii) certain warrants (the **Original Preferred Warrants**).

C. On the Original Note Agreement Date, the Company and certain of its subsidiaries entered into temporary financing arrangements with certain of the Original Note Buyers, as secured lenders (the **Bridge Lenders**), and as more fully set forth in a Bridge Term Loan Agreement (the **Bridge Agreement**) by and among the Company, Lander Intangibles Corporation, Hermes Acquisition Company I LLC, and Lander Co., Inc., as borrowers (collectively, the **Bridge Borrowers**), and their subsidiaries signatory thereto (together with the Bridge Borrowers, the **Bridge Loan Parties**), Prencen Lending LLC, a Delaware limited liability company (**Prentice Lending**), as agent for the Lenders (in such capacity, the **Bridge Agent**), and the Bridge Lenders, as lenders, and certain other securi ty and ancillary documents related thereto (the **Bridge Facility**), pursuant to which the Original Note Buyers made available to the Bridge Borrowers a $80 million secured term loan.

D. Prentice Lending acquired the Obligations (as defined in the Bridge Facility) owed by the Company to Highgate House Funds, Ltd. (a Bridge Lender) (**Highgate**) under the Bridge Facility, such that Prentice Lending now owns all of the Obligations under the Bridge Facility.

E. On May 15, 2006, the Bridge Facility matured. Prentice Lending, certain of the Original Note Buyers and the Company agreed in recognition of the foregoing (i) to forgo any short-term extensions of the Bridge Facility, (ii) to extend the Company s Obligations (as defined in the Bridge Agreement), as secured by Collateral (as defined in the Bridge Agreement), through the Company s issuance of Notes (as defined below) hereunder as an amendment and restatement of the outstanding Obligations pursuant to the Bridge Facility, which provides a longer maturity date for such Obligations and the right to convert such Obligations into equity, (iii) to the Company s payment to Prentice Lending of the Obligations (excluding any outstanding principal amounts, but including accrued and unpaid interest and any other amounts payable as of the Closing Date) pursuant t o the Bridge Agreement (the **Outstanding Interest Amount**) and (iv) to ratify and confirm the security interests granted to secure such Obligations in accordance with

the Bridge Agreement and the Security Documents (as defined below).

F. The Company and certain Original Note Buyers desire to amend and restate the terms of the Original Note Agreement and the Bridge Agreement to reflect the modifications to the terms thereof and to consolidate such agreements into this Agreement. The Company and certain Original Preferred Buyers desire to terminate, as of the Closing Date, (i) the Original Preferred Agreement and (ii) that certain Amended and Restated Registration Rights Agreement, by and among the Original Preferred Buyers, dated as of the Original Preferred Date (the **Original Preferred Registration Rights Agreement**).

G. The Company has also authorized a new series of senior secured convertible notes of the Company, in substantially the form attached hereto as Exhibit A (the **Notes**), which shall be convertible into Common Stock in accordance with the terms of such Notes, and is being issued as an amendment and restatement of the outstanding Obligations pursuant to the Bridge Facility.

H. Certain Original Note Buyers wish to amend and restate the Bridge Facility and the Original Note Agreement and purchase, and the Company wishes to amend and restate the Bridge Facility and the Original Note Agreement and sell at the Closing (as defined below), upon the terms and conditions stated in this Agreement, (i) that aggregate principal amount of the Notes set forth opposite such Buyer s name in column (3) on the Schedule of Buyers attached hereto (which aggregate amount for all Buyers shall be $91,000,000) (as converted, collectively, the **Conversion Shares**), (ii) warrants, in substantially the form attached hereto as Exhibit B-1 (the **Series A Warrants**), to acquire up to that number of additional shares of Common Stock set forth opposite such applicable Buyer s name in column (4) of the Schedule of Buyer s (as exercised, collectively, the **Series A Warrant Shares**) and (iii) warrants, in substantially the form attached hereto as Exhibit B-2 (the **Series B Warrants** , and together with the Series A Warrants, the **Warrants**), to acquire up to that number of additional shares of Common Stock set forth opposite such applicable Buyer s name in column (5) of the Schedule of Buyers (as exercised, collectively, the **Series B Warrant Shares** , and together with the Series A Warrant Shares, the **Warrant Shares**).

I. Contemporaneously with the execution and delivery of this Agreement, Steven Bettinger, Jodi Bettinger and Prencen, LLC, a Delaware limited liability company (**Prentice**), are executing and delivering that certain Securities Purchase Agreement, dated as of the date hereof (the **Bettinger Agreement**), whereby Prentice shall acquire an aggregate of Three Million, Three Hundred and Twenty Two Thousand, Four Hundred and Eighty Two (3,322,482) shares of Common Stock (the **Bettinger Shares**).

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J. The Company and each Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(2) of the Securities Act of 1933, as amended (the **1933 Act**), and Rule 506 of Regulation D (**Regulation D**) as promulgated by the United States Securities and Exchange Commission (the **SEC**) under the 1933 Act.

K. Contemporaneously with the execution and delivery of this Agreement, the parties hereto are executing and delivering an Amended and Restated Registration Rights Agreement, substantially in the form attached hereto as Exhibit C (as amended or modified from time to time in accordance with its terms, the **Registration Rights Agreement**), pursuant to which the Company has agreed to provide certain registration rights with respect to the Conversion Shares, the Warrant Shares and the Bettinger Shares and certain shares held by affiliates of the Buyers under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws. The Registration Rights Agreement amends and restates the terms and conditions of that certain Amended and Restated Investor Registration Rights Agreement, by and among the Company and the Original Note Buyers, dated as of the Original Note Date.

L. The Notes, the Conversion Shares, the Warrants, the Warrant Shares and the Bettinger Shares are collectively referred to herein as the **Securities** .

M. The Notes will rank senior to all outstanding and future indebtedness of the Company, subject to Permitted Senior Indebtedness (as defined in the Notes), and will be secured by a first priority, perfected security interest in all of the assets of the Company and the stock and assets of each of the Company s subsidiaries, as evidenced by (i) an amended and restated pledge agreement, in the form attached hereto as Exhibit J (as amended or modified from time to time in accordance with its terms, the **Amended Pledge Agreement**), which amends and restates that certain pledge agreement, dated as of the Original Note Agreement Date, by and among the Company and the Bridge Agent (the **Original Pledge Agreement**), (ii) an amended and restated security agreement, in the form attached hereto as Exhibit K (as amended or modi fied from time to time in accordance with its terms, the **Amended Security Agreement**), which amends and restates that certain Security Agreement, dated as of the Original Note Agreement Date, by and among the Company and the Bridge Agent (the **Original Security Agreement**), (iii) the amended and restated guarantees of certain Subsidiaries of the Company, in the form attached hereto as Exhibit L-1 (as amended or modified from time to time in accordance with its terms, the **Amended Guarantees**) and (iv) the guarantees of certain subsidiaries of the Company in the form attached hereto as Exhibit L-2 (as amended or modified from time to time in accordance with its terms, the **Additional Guarantees** , and together with the Amended Guarantees, the **Guarantees** , and together with the Amended Pledge Agreement, the Amended Security Agreement, the New Mortgage (as defined below) and any ancillary documents related theret o, collectively the **Security Documents**). The Company and the Buyers acknowledge that both the guarantee and pledge agreement from MarNan, LLC, a New Jersey limited liability company (**MarNan**) and Dana Holdings, LLC, a New Jersey limited liability company (**Dana**), to the Bridge Lenders in connection with the Bridge Facility (the **MarNan and Dana Agreements**) shall be terminated on the Closing Date.

NOW, THEREFORE, the Original Note Agreement and the Bridge Agreement are each amended, restated and consolidated in their entirety and the Company and each Buyer hereby agree as follows:

1. ACQUISITION OF NOTES AND WARRANTS; TERMINATION OF AGREEMENTS.

(a) Notes and Warrants. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, on the Closing Date (as defined below), in exchange for the amendment and restatement of the obligations under the Bridge Facility and the Buyer s payment of the Cash Purchase Price (as defined below) and the Company s payment of the Outstanding Interest Amount and the fees set forth in Section 4(g) hereof, the Company shall issue, sell and deliver to each applicable Buyer, and each applicable Buyer severally, but not jointly, agrees to accept and purchase, (x) a principal amount of Notes as is set forth opposite such applicable Buyer s name in column (3) on the Schedule of Buyers, (y) the Series A Warrants to acquire up to that number of Series A Warrant Shares as is set forth opposite such applica ble Buyer s name in column (4) on the Schedule of Buyers, and (z) the Series B Warrants to acquire up to that number of Series B Warrant Shares as is set forth opposite such applicable Buyer s name in column (5) on the Schedule of Buyers (the **Closing**).

(b) Termination of Agreements. On the Closing Date, the Original Preferred Buyers and the Company hereby agree that the Original Preferred Agreement, the Original Preferred Registration Rights Agreement and the MarNan and Dana Agreements shall be terminated and shall be null and void and of no further force and effect.

(c) Closing. The date and time of the Closing (the **Closing Date**) shall be 10:00 a.m., New York City time, on the date hereof (or such later date as is mutually agreed to by the Company and the Required Holders (as defined in the Note)) after notification of satisfaction (or waiver) of the conditions to the Closing set forth in Sections

6 and 7 below at the offices of Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022.

(d) Purchase Price. The aggregate purchase price for the Securities to be purchased by each Buyer at the Closing (the **Purchase Price**) shall equal (i) the cash amount set forth opposite such Buyer s name in column (6) on the Schedule of Buyers to be paid at the Closing (the **Cash Purchase Price**), and (ii) the outstanding obligations under the Bridge Facility after the Company s payment of the Outstanding Interest Amount.

(e) Form of Payment. On the Closing Date, (i) each applicable Buyer shall pay its Purchase Price to the Company for the Securities to be issued and sold to such Buyer at the Closing by wire transfer of immediately available funds in accordance with the Company s written wire instructions and (ii) the Company shall deliver to each applicable Buyer (A) the Notes (in the principal amounts as such Buyer shall request) which such Buyer is entitled to receive hereunder, and (B) the Warrants (in the amounts as such Buyer shall request) which such Buyer is purchasing, in each case duly executed on behalf of the Company and registered in the name of such Buyer or its designee.

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2. BUYER S REPRESENTATIONS AND WARRANTIES.

Each Buyer, and solely with respect to Section 2(n) hereof, the Bridge Agent, represents and warrants with respect to only itself (and solely with respect to the Securities purchased by such Buyer) that:

(a) Organization; Authority. Such Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) No Public Sale or Distribution. Such Buyer (i) is acquiring the Notes and the Warrants, (ii) upon conversion of the Notes will acquire the Conversion Shares, and (iii) upon exercise of the Warrants, as applicable, will acquire the Warrant Shares, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act; provided, however, that by making the representations herein, such Buyer does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act. Such Buyer is acquiring the Securities hereunder in the ordinary cou rse of its business. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities.

(c) Accredited Investor Status. Such Buyer is an accredited investor as that term is defined in Rule 501(a) of Regulation D.

(d) Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Buyer s compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

(e) Information. Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities which have been requested by such Buyer. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer s right to rely on the

Company s representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an infor med investment decision with respect to its acquisition of the Securities.

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(f) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) Transfer or Resale. Such Buyer understands that except as provided in the Registration Rights Agreement: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Buyer shall have delivered to the Company an opinion of counsel, in a generally acceptable form, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Buyer provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act, as amended, (or a successor rule thereto) (collectively, **Rule 144**); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person (as defined in Section 3(s)) through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. The Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities and such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document (as defined in Section 3(b)), including, without limitation, this Section 2(g).

(h) Legends. Such Buyer understands that the certificates or other instruments representing the Notes and the Warrants and, until such time as the resale of the Conversion Shares and the Warrant Shares have been registered under the 1933 Act as contemplated by the Registration Rights Agreement, the stock certificates representing the Conversion Shares and the Warrant Shares, except as set forth below, shall bear any legend as required by the blue sky laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

[NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE [CONVERTIBLE] [EXERCISABLE] HAVE BEEN][THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION

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STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN

OPINION OF COUNSEL, IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR (II) UNLESS SOLD PURSUANT TO RULE 144(K) UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE 1933 ACT IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Securities upon which it is stamped, if, unless otherwise required by state securities laws, (i) such Securities are registered for resale under the 1933 Act, (ii) in connection with a sale, assignment or other transfer, such holder provides the Company with an opinion of counsel, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the 1933 Act, or (iii) such holder provides the Company with reasonable assurance that the Securities can be sold, assigned or transferred pursuant to Rule 144.

(i) Validity; Enforcement. The Transaction Documents to which such Buyer is a party, have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors rights and remedies.

(j) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement, the Registration Rights Agreement and the Security Documents to which such Buyer is a party, and the consummation by such Buyer of the transactions contemplated hereby and thereby, will not (i) result in a violation of the organizational documents of such Buyer or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

(k) Receipt of Documents. Such Buyer and its counsel has received and read in their entirety: (i) this Agreement and each representation, warranty and covenant set forth herein, and the other Transaction Documents (as defined below); (ii) the Company s Annual Report on Form 10-KSB for the fiscal year ended June 30, 2004; (iii) the Company s Quarterly Report on Form 10-QSB for the fiscal quarters ended September 30, 2004, December 31, 2004 and March 31, 2005; and (v) the Company s Quarterly Report on Form 10-Q for the fiscal quarters ended May 28, 2005 and August 27, 2005.

(l) No Legal Advice From the Company. Such Buyer acknowledges that it had the opportunity to review this Agreement and the transactions contemplated by this Agreement with its own legal counsel and investment and tax advisors. Such Buyer is relying solely on such counsel and advisors and not on any statements or representations of the Company or any of its representatives or agents for legal, tax or investment advice with respect to this investment, the transactions contemplated by this Agreement or the securities laws of any jurisdiction.

(m) Residency. Such Buyer is a resident of that jurisdiction specified below its address on the Schedule of Buyers.

(n) Bridge Facility; Termination Authority. As of the date hereof, Prencen Lending owns 100% of the Obligations and jointly in its capacity as the Bridge Lender and the Bridge Agent has the authority to terminate the MarNan and Dana Agreements and to execute and deliver this Agreement and the other Transaction Documents to which it is a party.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants as of the date of execution hereof and as of the Closing Date to each of the Buyers:

(a) Organization and Qualification. Except as set forth on Schedule 3(a), the Company and its **Subsidiaries** (which for purposes of this Agreement means any joint venture or any entity in which the Company, directly or indirectly, owns capital stock or holds an equity or similar interest) are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authorization to own their properties and to carry on their business as now being conducted. Each of the Company and its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect. The Company is not required to qualify as a foreign corporation in any jurisdiction. As used in this Agreement, **Material Adverse Effect** means any material adverse effect on the business, assets, operations, results of operations, condition (financial or otherwise) of the Company, its Subsidiaries, individually or taken as a whole, or on the transactions contemplated hereby or in the other Transaction Documents. The Company has no Subsidiaries, except as set forth on Schedule 3(a).

(b) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Notes, the Warrants, the Registration Rights Agreement, the Security Documents, the Irrevocable Transfer Agent Instructions (as defined in Section 5(b)), and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by this Agreement (collectively, the **Transaction Documents**) and to issue the Securities in

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accordance with the terms hereof and thereof. The execution and delivery of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Notes and the Warrants, the transactions contemplated by the Bettinger Agreement, the reservation for issuance and the issuance of the Conversion Shares issuable upon conversion of the Notes, the transfer of the Bettinger Shares, the reservation for issuance and issuance of the Warrant Shares issuable upon exercise of the Warrants, and the reaffirmation of the prior grant of the security interest in the Collateral (as defined in the Security Documents) have been duly authorized by the Company s board of directors and (other than the filing with the SEC of one or more Registration Statements in accordance with the requirements of the Registration Rights Agreement and an y other filings as may be required by any state securities agencies) no further filing, consent, or authorization is required by the Company, its board of directors or its stockholders. This Agreement and the other Transaction Documents of even date herewith have been duly executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors rights and remedies.

(c) Issuance of Securities. The issuance of the Notes and the Warrants are duly authorized and upon issuance in accordance with the terms of the Transaction Documents shall be free from all taxes, liens and charges

with respect to the issue thereof and the Bettinger Shares are fully paid and nonassessable. As of the Closing, the Company shall have reserved from its duly authorized capital stock not less than the sum of (i) 130% of the maximum number of shares of Common Stock issuable upon conversion of the Notes (assuming for purposes hereof, that the Notes are convertible at the Conversion Price (as defined in the Notes) and without taking into account any limitations on the conversion of the Notes set forth in the Notes), and (ii) 130% of the maximum number of shares of Common Stock issuable upon exercise of the Warrants (witho ut taking into account any limitations on the exercise of the Warrants set forth in the Warrants). Upon issuance or conversion in accordance with the Notes or exercise in accordance with the Warrants, as the case may be, the Conversion Shares and the Warrant Shares, respectively, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Assuming that the representations and warranties of the Buyers set forth in Section 2 herein are true, the offer and issuance by the Company of the Securities being sold by it are exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes, the Warrants, and reservation for issuance of the Conversion Shares and the Warrant Shares) will not (i) result in a violation of the Certificate of Incorporation (as defined in Section 3(r)) of the Company or any of its Subsidiaries, any capital stock of the Company or Bylaws (as defined in Section 3(r)) or the certificate of designations of