ASCENDIA BRANDS, INC.
Form DEF 14C
August 20, 2007

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:

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(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"), Series A Junior Participating Preferred Stock, par value $.001 per share (the "Series A Preferred Stock"), Series B Convertible Preferred Stock, par value $.001 per share (the "Series B Preferred Stock"), and Series B-1 Convertible Preferred Stock, par value $.001 per share (the "Series B-1 Preferred Stock", and collectively with the Common Stock, the Series A Preferred Stock and the Series B Preferred Stock, the "Capital Stock"), that by written consent on February 9, 2007, 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 in an aggregate amount greater than 20% of our outstanding shares of Common Stock (the "Transaction"). A description of the securities is contained in this Information Statement. In the written consent, the stockholders also approved the issuance of shares of Common Stock in partial consideration of the purchase price payable in connection with the acquisition of certain brands and brand-related assets from Coty, Inc. (the "Coty Transaction"). The stockholders took these actions solely for the purposes of satisfying any requirements of the American Stock Exchange that require an issuer of listed securities to obtain prior stockholder approval of the Transaction or the Coty 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

Chairman of the Board

August 20, 2007

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), Series A Junior Participating Preferred Stock, par value $.001 per share (the Series A Preferred Stock), Series B Convertible Preferred Stock, par value $.001 per share (the Series B Preferred Stock), and Series B-1 Convertible Preferred Stock, par value $.001 per share (the Series B-1 Preferred Stock , and collectively with the Common Stock, the Series A Preferred Stock and the Series B Preferred 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 February 9, 2007 (the Written Consent).

February 9, 2007 has been fixed as the record date for the determination of stockholders who are entitled to receive this Information Statement. On February 9, 2007, there were 11,744,056 shares of our Common Stock outstanding, 2,347.7745 shares of our Series A Preferred Stock outstanding, 300 shares of our Series B Preferred Stock outstanding and 30 shares of our Series B-1 Preferred Stock outstanding. Each share of Common Stock entitles its holder to one vote, each share of Series A Preferred Stock entitles its holder to 10,118.9046 votes, and, to the extent permitted to vote, each share of Series B Preferred Stock and each share of Series B-1 Preferred Stock entitles its holder to 6,666.66 votes, in each case, on matters submitted to a vote of holders of the Common Stock; *provided, however*, that any holder of the Series B Preferred Stock or Series B-1 Preferred Stock shall not have the right to exercise voting rights with respect to shares of Series B Preferred Stock or Series B-1 Preferred Stock, respectively, to the extent that giving effect to such voting rights would result in such holder s and its affiliates being deemed to beneficially own more than 9.99% of the aggregate number of shares of our Common Stock outstanding after giving effect to such exercise and accordingly, as of the record date, the outstanding shares of Series B Preferred Stock and Series B-1 Preferred Stock entitle its holder to an aggregate of 56,382 votes.

THIS INFORMATION STATEMENT IS FIRST BEING SENT OR GIVEN TO THE HOLDERS OF OUR CAPITAL STOCK ON OR ABOUT AUGUST 20, 2007.

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

ISSUANCE OF SECURITIES

On February 9, 2007, the Company issued and sold $86 million of its secured convertible notes (the Notes) to Prencen Lending LLC (Prencen Lending) and Watershed Capital Partners, L.P. and Watershed Capital Institutional Partners, L.P. (together, Watershed) (the Transaction). $76 million in aggregate principal amount of the Notes were issued to Prencen Lending in exchange for $76 million in principal amount of the Prior Notes (as defined below) pursuant to a Third Amended and Restated Securities Purchase Agreement (the “Prencen Securities Purchase Agreement”) dated as of February 9, 2007, among the Company, Prencen Lending and Prencen LLC (“Prencen”) and $10 million in aggregate principal amount of the Notes were issued by the Company and sold to Watershed (at a premium to the principal amount of the Notes) pursuant to a Securities Purchase Agreement, dated as of February 9, 2007 among the Company and Watershed (the “Watershed Securities Purchase Agreement” and together with the Prencen Securities Purchase Agreement, the “Securities Purchase Agreements”). The Notes that were issued to Watershed had terms and conditions identical to the Notes issued to Prencen Lending, except for the principal amount thereof. Watershed conditioned its agreement to provide funding pursuant to the Second Lien Credit Agreement (as defined below) upon the purchase by Watershed from the Company of $10 million in Notes. The Company used the proceeds from the sale of the Notes to Watershed to fund, in part, the redemption referred to in the next paragraph.

Pursuant to the Prencen Securities Purchase Agreement, the Company redeemed $15 million in principal amount of the Company's senior secured convertible notes (the "Prior Notes"), paid $4,372,077 in accrued interest on the Prior Notes and $6,464,000 in redemption fees, in each case in cash, and the remaining $76 million in principal amount of the Prior Notes was surrendered and cancelled in exchange for the $76 million in principal amount of Notes issued pursuant to the Prencen Securities Purchase Agreement. As noted above, Watershed conditioned its agreement to provide the Second Lien Credit Agreement financing upon its purchase of $10 million in principal amount of Notes directly from the Company. The proceeds of such Note issuance to Watershed (including the premium paid by Watershed to the Company for such Notes) were used by the Company, in part, to fund the redemption of $15 million of the Prior Notes pursuant to the Prencen Securities Purchase Agreement. There are no material differences between the terms of the Prior Notes and the Notes although it was necessary to amend the Prior Notes in order to reflect that the Notes would be held by parties that were not affiliated with Prencen.

The cash proceeds received by the Company from the Credit Agreement (as defined below) financing, the Second Lien Credit Agreement financing and the sale of the Notes to Watershed were $80 million, $50 million and $15.714 million, respectively. After (a) the payment of the $92,138,000 cash portion of the purchase price required to be paid in connection with the purchase by the Company and its wholly owned subsidiaries, Ascendia Brands Co., Inc. and Lander Intangibles Corporation, of the Calgon® and the healing garden® brands and certain brand-related assets from Coty Inc. and certain of its affiliates (the "Coty Transaction"), (b) the payment of $10,324,347 in respect of the repayment and termination of the Company's prior revolving credit facility, (c) the payment to Prencen of $25,836,077 in respect of accrued and unpaid interest on the Prior Notes and in connection with the redemption of $15 million of the Prior Notes as described above, (d) the payment of $3,721,668 in fees to the Company's first and second lien lenders and (e) the payment of $5,306,427 in fees and expenses with respect to professionals, advisors and title related matters, the Company received $8,387,480 of loan proceeds that were allocated to general corporate purposes.

The Notes are secured by a third lien on substantially all of the Company's and its domestic subsidiaries' assets and are guaranteed by all of the Company's subsidiaries. The Notes mature on December 30, 2016 (subject to certain put and call rights described below) and will accrue interest at the rate of 9% per annum, provided that the interest rate on the Notes is subject to increase to up to 13% upon the occurrence or non-occurrence of certain events. Such events include the failure to obtain by June 30, 2007, at a meeting of the Company's stockholders, if required, approval of an amendment to the Company's certificate of incorporation to increase the authorized Common Stock to a number of shares that is no less than such number that would permit the Company to reserve for issuance, as of February 9, 2007, 130% of the maximum number of Conversion Shares (as defined below), shares of Common Stock into which the Series B Preferred Stock and the Series B-1 Preferred Stock may be converted and shares of Common Stock that may be issued upon exercise of certain warrants held by Prencen and Prencen Lending. Upon the occurrence and during the continuance of an event of default under the Notes or actions that would constitute an event of default under the Amended Notes following repayment of the senior secured indebtedness, the interest rate on the Notes would increase to 15%. Events of default include, without limitation, failure of the registration statement required by the Registration Rights Agreement (as defined below) to be declared effective by the SEC on or prior to 60 days after the applicable effectiveness deadline, the suspension from trading of the Common Stock for a period of five consecutive trading days, the Company's failure to pay any amount of principal, interest or other amounts when and as due (or within three business days of the date due under certain circumstances), certain events occur with respect to the Company or its material subsidiaries under bankruptcy laws, a final judgment for the payment of money in excess of $500,000 is rendered against the Company or any of its material subsidiaries under certain circumstances and breaches of covenants relating to the transaction documents. Interest will be capitalized.

Any portion of the balance due under the Notes will be convertible at any time, at the option of the holder(s), into our Common Stock (the Conversion Shares) at a price of $0.42 per share (subject to certain anti-dilution adjustments), provided that a holder 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, such holder and its affiliates would collectively beneficially own more than 9.99% of the aggregate number of shares of our Common Stock outstanding following such conversion. In addition, the Company may require the exchange of up to $40 million in principal amount of the Notes then outstanding for shares of a newly created series of convertible preferred stock on terms acceptable to the Company and the holders of a majority in principal amount of the Notes, for a 15% exchange fee, payable in cash, if necessary to maintain the Company s stockholder equity at the level required pursuant to the continued listing requirements of the American Stock Exchange (the AMEX), on which our Common Stock is listed.

At any time after the eighth anniversary of the issuance of the Notes, the Company may at its option redeem, or any holder may require the Company to redeem, all or any portion of the balance outstanding under the Notes at a premium of 7%. In addition, the Notes are redeemable by the holder(s) of at least a majority in principal amount of the Notes at any time upon the occurrence of an event of default or by any holder upon a change in control of the Company (as defined in the Notes), at a premium of no less than 25% and 20%, respectively.

The Notes rank pari passu with each other and junior to the Credit Agreement (the Credit Agreement) dated as of February 9, 2007, among the Company, its domestic subsidiaries signatory thereto, certain lenders, and Wells Fargo Foothill, Inc. (WFF), as arranger and administrative agent, and the Second Lien Credit Agreement dated as of February 9, 2007 among the Company, its domestic subsidiaries signatory thereto, the lenders signatory thereto, WFF, as collateral agent, and Watershed Administrative, LLC, as administrative agent (the Second Lien Credit Agreement).

At the Closing, the Company entered into a Registration Rights Agreement (the Registration Rights Agreement) in favor of Watershed, Prencen and Prencen Lending with respect to the Conversion Shares, the Warrant Shares (as defined in the Registration Rights Agreement), the Preferred Conversion Shares (as defined in the Registration Rights Agreement) and any of our Common Stock currently held or subsequently acquired by Watershed, 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 by June 30, 2007 (which date has been changed to September 30, 2007) and to use its best efforts to have such registration statement declared effective not later than 60 days thereafter (or 90 days after the filing deadline if the registration statement is subjected to a full review by the United States Securities and Exchange Commission (the SEC)). The Registration Rights Agreement contains certain fees for the failure to comply with such deadlines or to maintain the effectiveness of the registration statement. In addition, Prencen, Prencen Lending and Watershed were granted demand and piggyback registration rights on terms set forth in the Registration Rights Agreement.

On August 2, 2006 the Company issued to Prencen Series A Warrants for 3,053,358 shares of Common Stock at an exercise price of $2.10 per share (the Series A Warrants) and Series B Warrants (the Series B Warrants and together with the Series A Warrants, the Warrants) for up to 3,000,000 shares of Common Stock at exercise prices ranging from $1.15 per share to $1.95 per share, based upon a formula set forth in the Series B Warrants and, based upon such formula, subsequently fixed at 2,000,000 shares of Common Stock at an exercise price of $1.35 per share. 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% of the aggregate number of shares of the Company s Common Stock outstanding following such exercise. The Warrant Shares are the shares of the Company s Common Stock into which the W arran ts ar e exe rcisa ble. The i ssuan ce of the Warrants and the related transactions were described in an Information Statement that was furnished on September 11, 2006 to all stockholders of the Company pursuant to Section 14(c) of the Securities Exchange Act of 1934, as amended (the Exchange Act).

On December 26, 2006 and December 29, 2006, respectively, the Company issued to Prencen 300 shares of its Series B Convertible Preferred Stock and 30 shares of its Series B-1 Convertible Preferred Stock (collectively, the Preferred Stock). Each share of Preferred Stock is convertible into shares of the Company s Common Stock. The Preferred Stock may not be converted if and to the extent that following such conversion, the holder and all affiliates of the holder would collectively beneficially own more than 9.99% of the aggregate number of shares of the Company s Common Stock outstanding following such conversion. The Preferred Conversion Shares are the shares of the Company s Common Stock into which the Preferred Stock is convertible. The issuance of the Preferred Stock and the related transactions were described in an Information Statement that was furnished on August 20, 2007 to all stockholders of the Company pursuant to Section 14(c) of the Exchange Act.

The above description does not purport to be a complete statement of the parties rights and obligations under the Notes, the Securities Purchase Agreements and/or the Registration Rights Agreement and is qualified in its entirety by reference to (i) the Prencen Securities Purchase Agreement, (ii) the Watershed Securities Purchase Agreement, (iii) the Form of Notes and (iv) the Registration Rights Agreement, copies of which are attached hereto as Exhibits B, C, D and E, 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.

On January 17, 2007, the Company and its subsidiaries Ascendia Brands Co., Inc. and Lander Intangibles Corporation entered into an agreement (the “Coty Purchase Agreement”) with Coty Inc. and certain of its affiliates to acquire the Calgon® and the healing garden® brands and certain brand-related assets from Coty. The purchase price paid by the Company for the assets in the Coty Transaction include cash, as described above, a $20 million subordinated note and a number of shares of our Common Stock that is determined by dividing Ten Million Dollars ($10,000,000) by the higher of (x) a factor equal to ninety five percent (95%) of the average closing price of our Common Stock on the thirty (30) trading days immediately following the issuance date of the first public announcement of the Coty Purchase Agreement and (y) $1.00; provided, however, that the minimum number of shares of our Common Stock to be issued in the Coty Transaction shall be five million (5,000,000). Although the number of shares of our Common Stock to be issued in the Coty Transaction exceeds 20% of the number of shares of our Common Stock outstanding on the date that the Coty Purchase Agreement was executed, the number of shares issued would be significantly less than 20% of the number of shares of our Common Stock outstanding on the date that the shares are actually issued as it was anticipated that prior to the date of issuance, the outstanding shares of Series A Preferred Stock would have been converted into shares of our Common Stock.

Our Common Stock is listed on 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 Transaction may be issued at a discount to the market price of our Common Stock. The Conversion Shares would constitute more than 20% of the number of shares of our Common Stock outstanding and the shares of our Common Stock to be issued in the Coty Transaction would constitute more than 20% of the number of shares of our Common Stock outstanding on the date that the Coty Purchase Agreement was executed. In addition, we obtained prior stockholder approval for the securities to be issued in the Transaction and the Coty Transaction 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 the 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 86.7% of the Company s Series A Preferred Stock, namely Dana Holdings, LLC, MarNan, LLC, Franco S. Pettinato, Edward J. Doyle and Paul Taylor. Edward J. Doyle is a director of the Company, and Franco S. Pettinato is one of its executive officers. Dana Holdings, LLC is an affiliate of Joseph A. Falsetti, a director and executive officer of the Company. As of the date upon which the Written Consent was signed, each share of Series A Preferred Stock was entitled to 10,118.9046 votes, each share of Series B Preferred Stock was entitled to 6,666.66 votes, and each share of Series B-1 Preferred Stock was entitled to 6,666.66 votes, in each case, on most matters (including the approval of the Transaction), with the consequence that the persons signing the Written Consent collectively accounted for 54.5% of the aggregate votes entitled to be cast. Notwithstanding the immediately preceding sentence, any holder of the Series B Preferred Stock or Series B-1 Preferred Stock shall not have the right to exercise voting rights with respect to shares of Series B Preferred Stock or Series B-1 Preferred Stock, respectively, to the extent that giving effect to such voting rights would result in such holder s and its affiliates being deemed to beneficially own more than 9.99% of the aggregate number of shares of our Common Stock outstanding after giving effect to such exercise. (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, Prencen Lending and Watershed have acknowledged and agreed that the Conversion Shares will not 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, to the extent that the Company s authorized capital is insufficient to enable the Company to issue Conversion Shares, they have agreed that the Conversion Shares will not be issued in excess of the amount currently reserved for issuance by the Company and available for issuance under the Company s certificate of incorporation until the approval of an amendment to the Company s certificate of incorporation to increase the number of authorized shares to such amount as is necessary to enable the conversion of the Notes into Conversion Shares).

Issuance of the Conversion 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 August 20, 2007. In accordance with 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 the record date, February 9, 2007, the Company s directors, executive officers and principal stockholders beneficially own, directly or indirectly, in the aggregate, approximately 33.09% of its outstanding Common Stock, 89.68% of its Series A Preferred Stock, 100% of the Series B Preferred Stock and 100% of the Series B-1 Preferred Stock. Each share of Common Stock entitles its holder to one vote, each share of Series A Preferred Stock entitles its holder to 10,118.9046 votes, and, to the extent permitted to vote, each share of Series B Preferred Stock and each share of Series B-1 Preferred Stock entitles its holder to 6,666.66 votes, in each case, on most 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 February 9, 2007, with respect to the beneficial ownership of shares of our Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series B-1 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, Series A Preferred Stock, Series B Preferred Stock or Series B-1 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 February 9, 2007, there were 11,744,056 shares of our Common Stock outstanding, 2,347.7745 shares of our Series A Preferred Stock outstanding, 300 shares of our Series B Preferred Stock outstanding and 30 shares of our Series B-1 Preferred Stock outstanding. Beneficial ownership has been calculated and presented in accordance with Rule 13d-3 of the Exchange Act and, as such, the numbers below are not presented on a fully diluted basis.

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 Series B and B-1 Pref. Stock*	*Percentage of Series B and B-1 Pref. Stock*	*Shares of Common Stock*	*Percentage of Common Stock*	*Percentage of Voting Power(2)*
Dana Holdings, LLC[3]	889.8162	37.90%	-0-	-0-	-0-	-0-	25.32%
MarNan, LLC[4]	778.5889	33.16%	-0-	-0-	-0-	-0-	22.16%
Prencen LLC and Prencen Lending LLC 623 Fifth Avenue 32nd Floor New York, NY 10022	-0-	-0-	330	100.0%	1,178,864[5]	9.99%	3.32%
Watershed Capital Partners, L.P. and Watershed Capital Institutional Partners, L.P. c/o Watershed Asset Management, L.L.C. One Maritime Plaza, Suite 1525 San Francisco, CA 94111	-0-	-0-	-0-	-0-	1,303,445[6]	9.99%	3.52%
Coty Inc. 2 Park Avenue New York, NY 10016	-0-	-0-	-0-	-0-	-0-[7]	-0-	-0-
Frederic H. Mack 2115 Linwood Avenue Suite 110 Fort Lee, NJ 07024[8]	53.9525	2.30%	-0-	-0-	1,155,000	9.79%	4.78%
Robert Enck	127.6837	5.44%	-0-	-0-	-0-	-0-	3.63%

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Name and Address of Beneficial Owner	*Shares of Series A Pref. Stock (1)*	*Percentage of Series A Pref. Stock*	*Shares of Series B and B-1 Pref. Stock*	*Percentage of Series B and B-1 Pref. Stock*	*Shares of Common Stock*	*Percentage of Common Stock*	*Percentage of Voting Power(2)*
Paul C. Taylor c/o Taylor, Colicchio & Silverman, LLP 502 Carnegie Center Suite 103 Princeton, NJ 08540	111.2272	4.74%	-0-	-0-	-0-	-0-	3.16%
Edward J. Doyle 316 Perry Cabin Drive St. Michael s, MD 21663	127.6837	5.44%	-0-	-0-	-0-	-0-	3.63%
Robert Picow	-0-	-0-	-0-	-0-	196,049[9]	1.67%	*
Kenneth D. Taylor 1775 York Avenue Apt. 29 H New York, NY 10128	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Francis Ziegler 100 Roebling Road Bernardsville, NJ 07924	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Joseph A. Falsetti	-0-	-0-	-0-	-0-	-0-[3]	-0-	-0-
John D. Wille	-0-	-0-	-0-	-0-	-0-	-0-	-0-
William B. Acheson	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Franco S. Pettinato	127.6837	5.44%	-0-	-0-	-0-	-0-	3.63%
Elizabeth Houlihan	-0-	-0-	-0-	-0-	-0-	-0-	-0-
All executive officers and directors as a group (9 persons)	255.3674	10.88%	-0-	-0-	196,049[9]	1.67%	7.82%

* Less than one percent

(1) The percentages computed in the table are based on 2,347.7746 shares of Series A Preferred Stock outstanding as of February 9, 2007. The conversion of the Series A Preferred Stock into shares of our Common Stock was approved by the stockholders of the Company at the annual meeting of the stockholders of the Company held on February 14, 2007.

(2) This column reflects the relative voting power of the shares of the Company s Capital Stock listed in the table with respect to matters voted upon by the holders of the Company s Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series B-1 Preferred Stock as a single class. Each share of Series A Preferred Stock is entitled to 10,118.9046 votes on most matters. To the extent permitted to vote, each share of Series B Preferred Stock and Series B-1 Preferred Stock is entitled to 6,666.66 votes on most matters. Accordingly, all voting percentage calculations in this table are based on the assumption that the Series B Preferred Stock and Series B-1 Preferred Stock entitle its holder to an aggregate of 56,382 votes. For purposes of this table, holders of the Notes are deemed to be able to vote the shares of Common Stock that they beneficially own through their ownership of the Notes, even though ownership of the Notes does not entitle the holders of the Notes to vote on matters submitted to the holders of the shares of Common Stock.

(3) Joseph A. Falsetti, previously, the President and Chief Executive Officer of the Company and currently the Chairman of the Board of the Company, owns a 50% percentage 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.

(4) Mark I. Massad is the sole manager and sole executive officer of MarNan, LLC. Mr. Massad disclaims beneficial ownership of the shares of Common Stock that are beneficially owned by MarNan, LLC.

(5) In connection with the Transaction, Prencen Lending acquired a Note in the principal amount of $76,000,000 that is convertible into shares of the Common Stock of the Company, provided that such securities and the warrants, preferred stock and other securities previously acquired by Prencen and Prencen Lending may not be converted into nor exercised for shares of Common Stock to the extent that after giving effect to such conversion or exercise the holder, together with such holder s affiliates, would beneficially own in excess of 9.99% of the shares outstanding immediately after giving effect to the exercise or conversion. The beneficial ownership table assumes that conversion of such securities corresponding to 56,382 shares of Common Stock, together with the 1,122,482 shares of Common Stock held directly, equal to 9.99% of the total outstanding post conversion. If the blocker were not in place, the Note held by Prencen Lending would be initially convertible into 180,952,380 shares of Common Stock, the Series B Preferred Stock held by Prencen would be initially convertible into 2,000,000 shares of Common Stock, the Series B-1 Preferred Stock held by Prencen would be initially convertible into 200,000 shares of Common Stock and the warrants held by Prencen would be exercisable for up to 5,053,358 shares of Common Stock. Prentice Capital Management, L.P. has investment and voting power with respect to the securities held by Prencen and Prencen Lending. Mr. Michael Zimmerman controls Prentice Capital Management, L.P. Each of Prentice Capital Management, L.P. and Mr. Zimmerman disclaims beneficial ownership of any of these securities.

(6) In connection with the Transaction, Watershed Capital Partners, L.P. (WCP) and Watershed Capital Institutional Partners, L.P. (WCIP) acquired Notes in the aggregate principal amount of $2,084,568 and $7,915,432, respectively, that are convertible into 271,712 and 1,031,733 shares, respectively, of the Common Stock of the Company, provided that such securities may not be converted into shares of Common Stock to the extent that after giving effect to such conversion the holder, together with such holder s affiliates, would beneficially own in excess of 9.99% of the shares outstanding immediately after giving effect to the conversion. If the blocker were not in place, the Notes held by WCP and WCIP would be initially convertible into 4,963,257 and 18,846,267 shares, respectively, of Common Stock. WS Partners, L.L.C., as general partner to Watershed, may be deemed to be the beneficial owner of all such Notes and shares beneficially owned by Watershed. Watershed Asset Management, L.L.C., as investment adviser to Watershed, may be deemed to be the beneficial owner of all such Notes and shares beneficially owned by Watershed. Meridee A. Moore, as the Senior Managing Member of both WS Partners, L.L.C. and Watershed Asset Management, L.L.C., may be deemed to be the beneficial owner of all such Notes and shares beneficially owned by Watershed. Each of WS Partners, L.L.C., Watershed Asset Management, L.L.C. and Meridee A. Moore disclaims any beneficial ownership of any such Notes and shares.

(7) In connection with the Coty Transaction, on the thirtieth (30th) day following the closing date of the Coty Transaction, (i) the Company will issue to Coty Inc. a number of shares of our Common Stock determined by dividing Ten Million Dollars ($10,000,000) by the higher of (x) a factor equal to ninety five percent (95%) of the average closing price of our Common Stock on the thirty (30) trading days immediately following the issuance date of the first public announcement of the Asset Purchase Agreement dated as of January 17, 2007 among Coty Inc., certain of its affiliates, the Company, Ascendia Brands Co., Inc. and Lander Intangibles Corporation and the transactions contemplated thereby and (y) $1.00; provided, however, that the minimum number of shares of our Common Stock to be issued to Coty Inc. shall be five million (5,000,000).

(8) 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, Tami J. Mack, the wife of Mr. 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 the JM Trust.

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

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, Series A Preferred Stock, Series B Preferred Stock and Series B-1 Preferred Stock held of record by such persons and will reimburse such persons for out-of-pocket expenses incurred in forwarding such material.

SELECTED HISTORICAL CONSOLIDATED AND/OR COMBINED FINANCIAL DATA OF ASCENDIA BRANDS, INC.

The following selected combined and/or consolidated financial information of Ascendia Brands, Inc. and its subsidiaries for the years ended February 28, 2007, 2006 and 2005 has been derived from the audited historical financial statements included in the Annual Report on Form 10-K for the Fiscal Year Ended February 28, 2007 that was filed by the Company with the SEC on July 16, 2007, a copy of which has been delivered with this Information Statement. The following selected combined and/or consolidated financial information for the period from April 25, 2003 (inception) to February 29, 2004 has been derived from the audited historical financial statements included in Amendment No. 1 to the Annual Report on Form 10-K/A for the Fiscal Year Ended February 28, 2006 that was filed by the Company with the SEC on June 25, 2007. The following selected consolidated financial information for the period ended May 26, 2007 has been derived from the unaudited financial statements included in to the Quarterly Report on Form 10-Q for the Fiscal Quarter ended May 26, 2007 that was filed by the Company with the SEC on July 24, 2007, a copy of which has been delivered with this Information Statement.

($000 s) except per share amounts	For the period from 4/25/2003 (inception) to 2/29/2004 (1)	Year ended 2/28/2005 (1) (3)	(Restated) Year ended 2/28/2006 (1) (2) (3)	Year ended 2/28/2007 (1) (3) (4) (5)	13 Weeks Ended (Restated) 5/27/2006 (1)	13 Weeks Ended 5/26/2007 (4) (5)
Operating Data:						
Net sales	$ 55,046	$ 69,861	$ 79,518	$ 99,642	$ 24,847	$ 41,951
Gross profit	6,803	7,491	5,260	15,165	4,654	12,386
Income (loss) from operations	(1,195)	(2,756)	(8,843)	(10,688)	623	167
Net loss from continuing operations	(1,719)	(3,989)	(11,373)	(80,273)	(2,888)	(6,233)
Net loss from discontinued operations	-	-	(37,540)	(23,330)	(656)	(286)
Net loss	(1,719)	(3,989)	(48,913)	(103,603)	(3,544)	(6,519)
Loss from continuing operations per common share	N/A	N/A	(0.74)	(5.75)	(0.22)	(0.15)
Loss from discontinued operations per common share	N/A	N/A	(2.72)	(1.65)	(0.05)	(0.01)
Net loss per common share	N/A	N/A	(3.46)	(7.40)	(0.27)	(0.16)
Balance Sheet Data (as of the period end):						
Total assets	$ 24,461	$ 24,036	$ 102,946	$ 216,895	$ 101,904	$ 212,265
Current portion of long-term debt	8,203	8,930	32	2000	21	2,000
Long-term debt, less current portion	7,608	6,875	80,000	271,317	81,713	274,732
Other long-term obligations	673	673	967	668	874	691
Stockholders equity (deficit)/members (loss)	(1,815)	(5,830)	8,869	(77,138)	5,419	(83,415)
Cash dividends declared per common share	0	0	0	0	0	0

(1) On May 20, 2005, Hermes Holding Company, Inc., a wholly owned subsidiary of Cenuco, Inc., merged with Hermes Acquisition Company I, LLC (HACI) (the Merger). As a consequence of the Merger, HACI, together with its wholly owned subsidiaries, became wholly owned subsidiaries of Cenuco, Inc. For financial statement purposes, the Merger was treated as a recapitalization of HACI followed by the reverse acquisition of Cenuco, Inc. by HACI. Accordingly the financial position and results of operations of HACI and its predecessor entities are presented above for periods prior to the Merger and the financial position and results of operations of Cenuco have been included thereafter. The Company s name was subsequently changed to Ascendia Brands, Inc. on May 9, 2006.

(2) On November 16, 2005, the Company acquired certain brands and brand related assets from Playtex, Inc. for approximately $58.0 million. Sales and expenses of the acquired Playtex products and amortization of related acquired intangible assets are reflected above from that date forward.

(3) In February 2007, the Company committed to the sale of its wireless subsidiary and as a result this operation has been presented as a discontinued operation. Subsequent to year end, the Company made a determination that a sale was no longer likely and decided to liquidate the wireless operation. The total loss from discontinued operations was $23.3 million and $37.5 million, respectively, for the years ended February 28, 2007 and 2006. There was no loss from discontinued operations for the year ended February 28, 2005 or for the period from April 25, 2003 (inception) to February 29, 2004. For the year ended February 28, 2007, the loss from discontinued operations consisted of the write-off of goodwill of $14.6 million, the write-off of the carrying value of net assets of $5.4 million (primarily software technology) and the loss from operations of $3.3 million. For the year ended February 28, 2006, loss from discontinued operations consisted of the write-off of goodwill of $35.1 million and the loss from operations of $2.4 million.

(4) In August 2006, the Company completed the issuance of secured notes with a beneficial conversion option and other embedded derivatives As a result of this financing arrangement, a compound derivative was identified and bifurcated and the related liability recorded as required under FASB No. 133 and EITF 00-19. This resulted in a $6.8 million loss being recorded in interest and other expense on August 2, 2006. The value of the compound derivative liability was adjusted as of August 26, 2006, resulting in a reduction of interest and other expense for the period between August 2 and August 26, 2006 of $11.2 million.

(5) On February 9, 2007, the Company acquired the Calgon and the healing garden brands and brand related assets from Coty Inc. and certain of its affiliates. Sales and expenses of the acquired Coty products and amortization of related intangible assets are reflected from that date forward.

INCORPORATION BY REFERENCE

The SEC allows us to provide information to you by incorporating by reference the information we file with the SEC, which means that we can disclose important information about us to you by referring in this Information Statement to the documents we file with the SEC. Under the SEC s regulations, any statement contained in a document incorporated by reference in this Information Statement is automatically updated and superseded by any information contained in this Information Statement, or in any subsequently filed document which is also incorporated or deemed to be incorporated herein modifies or supersedes such statement.

We incorporate by reference the documents listed below:

Annual Report on Form 10-K for the Fiscal Year ended February 28, 2007 filed with the SEC on July 16, 2007

Quarterly Report on Form 10-Q for the Fiscal Quarter ended May 26, 2007 filed with the SEC on July 24, 2007

We are delivering with this Information Statement a copy of our Annual Report on Form 10-K for the fiscal year ended February 28, 2007, filed with the SEC on July 16, 2007, and the Quarterly Report on Form 10-Q for the fiscal quarter ended May 26, 2007, filed with the SEC on July 24, 2007. Upon request, we will provide copies of the exhibits to the Annual Report on Form 10-K for the fiscal year ended February 28, 2007 at no additional cost. All requests for copies should be directed to our Corporate Secretary, Ascendia Brands, Inc., 100 American Metro Boulevard, Suite 108, Hamilton, New Jersey 08619. You should rely only on the information incorporated by reference or provided in this Information Statement. We have not authorized anyone else to provide you with different information. You should not assume that the information in this Information Statement is accurate as of any date other than the date on the front of such documents.

By order of the Board of Directors

Joseph A. Falsetti

Chairman of the Board

August 20, 2007

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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, hereby consent to the adoption of the following resolutions:

WHEREAS, the Board of Directors of the Corporation has approved and authorized the Corporation to enter into each of the following documents (collectively, the Transaction Documents): (i) the form of the Third Amended and Restated Securities Purchase Agreement (the Prencen Purchase Agreement) by and among the Corporation, Prencen LLC (Prencen) and Prencen Lending LLC (Prencen Lending); (ii) the form of the Securities Purchase Agreement (the Watershed Purchase Agreement) by and between the Corporation and Watershed Asset Management, L.L.C. (Watershed); (iii) the form of Note to be delivered by the Corporation to Prencen Lending pursuant to the Prencen Purchase Agreement; (iv) the form of Note to be delivered by the Corporation to Watershed pursuant to the Watershed Purchase Agreement; (v) the form of Security Agreement among the Corporation and its subsidiaries in favor of Wells Fargo Foothill, Inc., as collateral agent (the Collateral Agent), for the benefit of Prencen Lending and Watershed (the Security Agreement) and any accompanying UCC financing statements or amendments thereto; (vi) the form of Irrevocable Transfer Agent Instructions to be delivered by the Corporation to the Corporation s transfer agent; (vii) the form of Registration Rights Agreement by and among the Corporation, Prencen, Prencen Lending and Watershed; 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 Prencen Purchase Agreement, the Corporation has agreed to redeem and/or prepay $15,000,000 in aggregate principal amount of its outstanding senior secured convertible notes of the Corporation issued to Prencen Lending as of August 2, 2006, and to exchange $76,000,000 in aggregate principal amount of such senior secured convertible notes for a new series of secured convertible notes of the Corporation in the aggregate principal amount of $76,000,000, in substantially the form attached as Exhibit A to the Prencen Purchase Agreement (the Prencen Note), which shall be convertible into shares (the Prencen Conversion Shares) of the Corporation s common stock, par value $0.001 per share (the Common Stock), and to issue the Prencen Note to Prencen Lending; and

WHEREAS, pursuant to the Watershed Purchase Agreement, the Corporation has agreed to issue a new series of secured convertible notes of the Corporation in the aggregate principal amount of up to $10,000,000, in substantially the form attached as Exhibit A to the Watershed Purchase Agreement (the Watershed Note), which shall be convertible into shares (the Watershed Conversion Shares) of the Corporation s Common Stock, and to issue the Watershed Note to Watershed; 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 the Transaction Documents and the transactions contemplated thereby, including the terms and issuance of the Prencen Note and the Watershed Note and the grant of a security interest in all of the assets of the Corporation to the Collateral Agent for the benefit of Prencen Lending and Watershed pursuant to the Security Agreement;

NOW, THEREFORE, BE IT:

RESOLVED, that the form, terms and provisions of the Transaction Documents, substantially on the terms presented to the undersigned stockholders, and all of the transactions contemplated thereby, including the terms and issuance of the Prencen Note and the Watershed Note and the issuance of the Prencen Conversion Shares and the Watershed Conversion Shares (subject to the provisions of the Certificate of Incorporation of the Corporation, applicable law and the rules and regulations of the American Stock Exchange), and the grant of a security interest in all of the assets of the Corporation to the Collateral Agent for the benefit of Prencen Lending and Watershed pursuant to the Security 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 Prencen, Prencen Lending and Watershed 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 9th day of February, 2007.

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: Manager

/s/ Franco S. Pettinato

Franco S. Pettinato

/s/ Edward J. Doyle

Edward J. Doyle

/s/ Paul Taylor

Paul Taylor

EXHIBIT B

THIRD AMENDED AND RESTATED SECURITIES PURCHASE AGREEMENT

THIRD AMENDED AND RESTATED SECURITIES PURCHASE AGREEMENT (the **Agreement**), dated as of February 9, 2007, by and among Ascendia Brands, Inc. (f/k/a Cenuco, Inc.), a Delaware corporation, with headquarters located at 100 American Metro Boulevard, 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 the Buyers entered into that certain Second Amended and Restated Securities Purchase Agreement, dated as of June 30, 2006 (as amended from time to time in accordance with its terms, the **Original Securities Purchase Agreement**), whereby the Company, among other things, issued (i) a Senior Secured Convertible Note (the **Original Note**), (ii) warrants a copy of which is attached hereto as Exhibit A-1 (the **Series A Warrants**), to acquire up to that number of additional shares of the Company s common stock, par value $0.001 (the **Common Stock**) set forth opposite such applicable Buyer s name in column (4) of the Schedule of Buyers (as exercised, collectively, the **Series A Warrant Shares**) and (iii) warrants, a copy of which is attached hereto as Exhibit A-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**).

B. Contemporaneously with the execution and delivery of the Original Securities Purchase Agreement, Steven Bettinger, Jodi Bettinger and Prencen LLC, a Delaware limited liability company (**Prencen**), executed and delivered that certain Securities Purchase Agreement, dated as of June 30, 2006 (the **Bettinger Agreement**), whereby Prencen acquired an aggregate of Three Million, Three Hundred and Twenty Two Thousand, Four Hundred and Eighty Two (3,322,482) shares of Common Stock (the **Original Bettinger Shares** and such number of Original Bettinger Shares held by Prencen or its affiliates as of the Closing Date (as defined below), the **Bettinger Shares**).

C. The Company and the Buyers entered into that certain Amendment and Exchange Agreement, dated as of December 27, 2006 (the **Common Exchange Agreement**), whereby, among other things, Prencen and the Company exchanged certain shares of Common Stock held by Prencen (the **Initial Common Shares**) for 300 shares of a new series of convertible preferred stock of the Company designated as Series B Convertible Preferred Stock, the terms of which are set forth in the certificate of designations filed with the Secretary of State of Delaware on December 27, 2006 for such series of preferred shares (the **Series B Certificate of Designations**) (together with any convertible preferred shares issued in replacement thereof in accordance with the terms thereof, the **Series B Preferred Stock**), which Series B Preferred Stock is convertible into shares of Common Stock (the shares into which such Series B Preferred Stock may be converted, the **Series B Preferred Conversion Shares**) in accordance with the terms of the Series B Certificate of Designations.

D. The Company and the Buyers entered into that certain Amendment No. 1 to the Amendment and Exchange Agreement, dated as of December 29, 2006 (the **Amendment to Common Exchange Agreement**), whereby, among other things, Prencen and the Company exchanged certain shares of Common Stock (the **Additional Common Shares** , and together with the Initial Common Shares, the **Common Shares**) held by Prencen for 30 shares of a new series of convertible preferred stock of the Company designated as Series B-1 Convertible Preferred Stock, the terms of which are set forth in the certificate of designations filed with the Secretary of State of Delaware on December 29, 2006 for such series of preferred shares (the **Series B-1 Certificate of Designations** and together with the Series B Certificate of Designations, the **Certificates of Designations** and each a **Certificate of Designations**) (together with any convertible preferred shares issued in replacement thereof in accordance with the terms thereof, the **Series B-1 Preferred Stock** and together with the Series B Preferred Stock, the **Preferred Stock**), which Series B-1 Preferred Stock is convertible into shares of Common Stock (the shares into which such Series B-1 Preferred Stock may be converted, the **Series B-1 Preferred Conversion Shares** and together with the Series B Preferred Conversion Shares, the **Preferred Conversion Shares**) in accordance with the terms of the Series B-1 Certificate of Designations.

E. The Company and the Buyers entered into that certain Amendment Agreement, dated as of December 30, 2006 (the **Note Amendment Agreement**), whereby, among other things, (i) the Company amended and restated the Original Note as an Amended and Restated Senior Secured Convertible Note (the **Amended Note**) and (ii) Prencen Lending LLC, a Delaware limited liability company (**Prencen Lending**), waived certain Existing Events of Default (as defined in the Note Amendment Agreement).

F. The Company has authorized a new series of secured convertible notes of the Company, in substantially the form attached hereto as <u>Exhibit B</u> (such notes issued hereunder, the **Notes** and each a **Note**), which shall be convertible into Common Stock in accordance with the terms of such Notes (the Common Stock received upon such conversion, collectively, the **Note Conversion Shares** and together with the Preferred Conversion Shares, the **Conversion Shares**).

G. In accordance with Section 9(b) of the Amended Note, which permits the Company to redeem up to $20 million in principal amount of the Amended Note in an Acquisition Redemption (as defined in the Amended Note) for the Acquisition Redemption Price (as defined in the Amended Note), the Company and the Buyers have agreed, upon the terms and conditions set forth herein, that (i) $21,464,000 (the **Acquisition Principal Payoff Amount**) shall be paid by the Company to Prencen Lending on the Closing Date in cash by wire transfer of immediately available funds in accordance with Prencen Lending s written wire instructions delivered to the Company on or prior to the Closing Date in consideration of the redemption of $15 million of principal amount of the Amended Note and (ii) the Amended Note shall be cancelled and the Company shall issue a new Note to Prencen Lending hereunder on the Closing Date, which shall reflect, among other things, the new outstanding principal amount of $76,000,000 (the **Acquisition Remaining Principal Amount**).

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H. In accordance with Section 2 of the Amended Note, the Company shall pay on the Closing Date to Prencen Lending, in cash by wire transfer of immediately available funds in accordance with Prencen Lending s written wire instructions delivered to the Company on or prior to the Closing Date, all accrued but unpaid interest on the Amended Note during the period commencing on August 2, 2006 and ending on the Closing Date in the amount of $4,372,077 (the **Acquisition Interest Payoff Amount** , and together with the Acquisition Principal Payoff Amount, the **Acquisition Payoff Amount**).

I. Contemporaneously with the execution and delivery of this Agreement, the Company is executing and delivering that certain Securities Purchase Agreement (the **Other Securities Purchase Agreement**), by and among the Company, Watershed Capital Partners, L.P. (**WCP**) and Watershed Capital Institutional Partners, L.P. (together with WCP, **Watershed**), whereby the Company has agreed on the Closing Date to sell, and Watershed has agreed to purchase, upon the terms and conditions stated in the Other Securities Purchase Agreement, $10,000,000 in principal amount of additional Notes (the **Other Notes** and together with the Notes, the **Aggregate Notes**), which shall be convertible into Common Stock in accordance with the terms of such Other Notes (the Common Stock received upon such conversion, collectively, the **Other Conversion Shares**). The terms and provisions of the Notes and the Other Notes are substantially identical.

J. Contemporaneously with the execution and delivery of this Agreement, the parties hereto and Watershed are executing and delivering a Registration Rights Agreement, substantially in the form attached hereto as <u>Exhibit C</u> (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 Other Conversion Shares, the Warrant Shares and the Bettinger Shares and certain shares held by affiliates of the Investors (as defined in the Registration Rights Agreement) under the Securities Act of 1933, as amended (the **1933 Act**) and the rules and regulations promulgated thereunder, and applicable state securities laws. Upon the execution of the Registration Rights Agreement by the parties thereto, the Second Amended and Restated Registration Rights Agreement, by and among the Company and the Buyers, dated as of June 30, 2006 (as amended by the Common Exchange Agreement, the Amendment to Common Exchange Agreement and the Note Amendment Agreement) shall be cancelled and shall have no further force or effect.

K. 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 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. The issuance of the Notes pursuant to this Agreement in exchange for the surrender (and cancellation) of the Amended Note is being made in reliance upon the exemption from registration provided by Section 3(a)(9) of the 1933 Act.

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

M. The Aggregate Notes will rank junior to the Permitted Senior Indebtedness (as defined in the Notes) and will be secured by a perfected security interest in all of the assets of the Company and the stock and assets of each of the Company s subsidiaries, pursuant to the terms of (i) a security agreement, in the form attached hereto as Exhibit D (as amended or modified

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from time to time in accordance with its terms, the **Security Agreement**), and (iii) the guarantees of certain domestic Subsidiaries of the Company, in the form attached hereto as Exhibit E-1 (as amended or modified from time to time in accordance with its terms, the **Domestic Guarantees**) and the guarantee of a certain foreign Subsidiary of the Company, in the form attached hereto as Exhibit E-2 (as amended or modified from time to time in accordance with its terms, the **Canadian Guarantee** , and together with the Domestic Guarantees, the **Guarantees** , and the Guarantees, together with the Security Agreement, and any ancillary documents related thereto, collectively the **Security Documents**).

N. Contemporaneously with the execution and delivery of this Agreement, the Buyers are executing and delivering that certain Intercreditor Agreement, by and among the Buyers, the Other Buyers and the agent for those certain lenders under the WFF Facility (as defined in the Notes) and the Watershed Facility (as defined in the Notes) and the other parties thereto, in the form attached hereto as Exhibit F (as amended or modified from time to time in accordance with its terms, the **Intercreditor Agreement**), which, among other things, delineates certain restrictions on the Buyer s and the Other Buyer s rights and remedies under the Notes and the Other Notes.

O. On January 17, 2007, Coty B.V., a Dutch *besloten vennootschap* (**Coty BV**), Coty Canada Inc., a Canadian corporation (**Coty Canada**), Coty S.A.S., a French *société par actions simplifiée* (**Coty SA**), Coty Inc., a Delaware corporation (**Coty, Inc.**), Coty US LLC, a Delaware limited liability company (**Coty US** , and together with Coty BV, Coty Canada, Coty SA and Coty Inc., **Coty**) and the Company, as guarantor, and certain of its subsidiaries, as purchasers, entered into that certain Asset Purchase Agreement (the **Coty Purchase Agreement**), whereby (i) on or about the Closing Date (as defined below), the Company shall (x) execute and deliver that certain Registration Rights Agreement, dated as of the Closing Date, by and among the Company and Coty, Inc. (the **Coty Registration Rights Agreement**) and (y) issue to Coty, Inc. that certain promissory note with an initial principal amount of $20,000,000 (the **Coty Note**) and (ii) following the Earn-Out Period (as defined in the Coty Purchase Agreement), subject to the satisfaction of certain terms and conditions as set forth in the Coty Purchase Agreement, the Company may be required to (x) pay an additional Cash Amount (as defined in the Coty Purchase Agreement) to Coty, Inc. and (y) either (A) issue an additional promissory note in the principal amount of the In- Kind Amount (as defined in the Coty Purchase Agreement) to Coty, Inc. or (B) increase the outstanding principal amount of the Coty Note by an amount equal to the In-Kind Amount (collectively, the **Coty Earn Out Payment**).

NOW, THEREFORE, the Second Amended and Restated Securities Purchase Agreement is hereby amended and restated in its entirety and the Company and each Buyer hereby agree as follows:

1. SURRENDER AND ISSUANCE OF NOTES; REDEMPTION; WAIVER; CONSENT.

(a) Notes; Redemption. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, and the contemporaneous purchase by Watershed of the Other Notes pursuant to the Other Securities Purchase Agreement, on the Closing Date (as

defined below), (i) the Company shall issue, sell and deliver to each applicable Buyer, and each such Buyer severally, but not jointly, agrees to accept and purchase, a principal amount of Notes as is set forth opposite such Buyer s name in column (3) on the Schedule of Buyers, (ii) Prencen Lending shall surrender to the Company at the Closing (as defined below) contemplated by this Agreement, the Amended Note issued to Prencen Lending and (iii) the Company shall deliver the Acquisition Payoff Amountto Prencen Lending in cash by wire transfer of immediately available funds in accordance with Prencen Lending s written wire instructions delivered to the Company on or prior to the Closing Date (collectively, the **Closing**).

(b) Waiver. Prencen Lending hereby acknowledges that effective as of December 30, 2006, Prencen Lending waived the Existing Events of Default (as defined in the Note Amendment Agreement). The Buyers hereby acknowledge that effective as of December 27, 2006, the Buyers waived the right to receive the Outstanding Registration Delay Payments (as defined in the Common Exchange Agreement); provided, however, that such waiver shall only apply to the Outstanding Registration Delay Payments and shall not apply to any Registration Delay Payments (as defined in the Registration Rights Agreement) incurred after the Closing Date. Prencen hereby agrees that notwithstanding the provisions of Section 2 of the Warrants currently held by Prencen, the Exercise Price (as defined in the Warrants) of the Warrants shall not be adjusted solely as a result of the issuance on the Closing Date of the Notes hereunder and the Other Notes pursuant to the Other Securities Purchase Agreement.

(c) Consent. The Buyers hereby consent to (i) the terms, conditions and amendments set forth in this Agreement and the other Transaction Documents, (ii) the consummation of the transactions contemplated hereby, in each case, as required by the terms of the Amended Note and (iii) the consummation of the transactions contemplated by the WFF Facility and the Watershed Facility.

(d) Closing. The date and time of the Closing (the **Closing Date**) shall (x) 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 Buyers 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 and (y) occur simultaneously with the Closing as defined in the Other Securities Purchase Agreement.

(e) Termination of Original Documents. Effective as of the Closing Date, the documents listed on Appendix I attached hereto and any and all other documents and agreements related thereto other than any voting agreements, transfer agent instructions or consents executed therewith, shall in each case be terminated in full and shall be null and void (collectively, the **Terminated Documents**), except that the waiver contained in Section 2(c) of the Amendment Agreement, dated as December 30, 2006, by and among Ascendia Brands, Inc., Prencen LLC and Prencen Lending LLC shall not be terminated. Effective as of the Closing Date, Prencen Lending hereby consents to the filing by or on behalf of the Company and its Subsidiaries of UCC-3 Termination Statements solely with respect to termination of the UCC Financing Statements filed in connection with the Terminated Documents. Effective as of the Closing Date, Prencen Lending hereby consents to the filing by or on behalf of the Company and its Subsidiaries and authorizes the Company to file instruments to terminate the effectiveness of the Terminated Documents, including, without limitation, mortgage releases, re-assignments or

releases of trademarks, copyrights and patents as are necessary to release, as of record, the security interests previously recorded with respect to the Terminated Documents or otherwise relating to the Terminated Documents, but in each case, at the sole cost and expense of the Company.

(f) Issuance of Warrants and Preferred Shares. For the avoidance of doubt, the Warrants and Preferred Shares were issued previously and are not being issued hereunder.

2. BUYER S REPRESENTATIONS AND WARRANTIES.

Each Buyer represents and warrants to the Company with respect to only itself (and solely with respect to the Securities purchased by such Buyer) that as of the Closing Date:

(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 has acquired the Preferred Shares and the Warrants, (ii) upon conversion (if applicable) of the Notes will acquire the Note Conversion Shares, (iii) upon conversion (if applicable) of the Preferred Shares will acquire the Preferred Conversion Shares and (iii) upon exercise (if applicable) 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 or has acquired, as applicable, the Securities hereunder in the ordinary course 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 that 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 informed investment decision with respect to its acquisition of the Securities.

(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 Investor (as defined in the Registration Rights Agreement) 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 Investor provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144(k) 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.

(h) Legends. Such Buyer understands that the certificates or other instruments representing the Notes, Preferred Shares 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

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STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION 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 OR RULE 144(K) UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING

ARRANGEMENT SECURED BY THE SECURITIES.

Such Buyer understands (and the Company agrees) that upon the request of the holders of 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, including an opinion of counsel in a generally acceptable form, 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 the Transaction 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 that 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 or thereunder.

(k) Receipt of Documents. Such Buyer and/or its counsel acknowledges that, to the extent such Buyer and/or its counsel has deemed necessary, such Buyer and/or its counsel has 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 Annual Report on Form 10-K for the fiscal year ended February 28, 2006; (iv) the Company s Quarterly Report on Form 10-QSB for the fiscal quarters ended September 30, 2004, December 31, 2004 and March 31, 2005; (v) the Company s Quarterly Report on Form 10-Q for the fiscal quarters ended May 28, 2005, August 27, 2005, November 26, 2005, May 27, 2006, August 26, 2006 and November 25, 2006; (vi) Amendment No. 1 to the Company s Quarterly Report on Form 10- Q for the fiscal quarters ended May 28, 2005, August 27, 2005 and November 26, 2005; and (vii) Amendment No. 2 to the Company s Quarterly Report on Form 10-Q for the fiscal quarter ended November 26, 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 itself and 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, except that the Buyers are relying on the accuracy of the representations and warranties made by Company herein.

(m) Organization; Domicile. Such Buyer is organized in that jurisdiction specified below its address on the Schedule of Buyers.

(n) Remaining Fees and Expenses Such Buyer acknowledges that except for the payment of the Legal Expense Amount (as defined below) on the Closing Date and any amounts to be paid on the Closing Date as set forth in Section 1 hereof, as of the Closing, there will be no fees, expenses or other amounts accrued, outstanding or payable by the Company to such Buyer or any of its Affiliates as of the Closing Date with respect to any of the Preferred Shares, the Preferred Conversion Shares, the Bettinger Shares, the Warrants and the Warrant Shares or arising under the Original Securities Purchase Agreement as amended on or prior to the Closing Date or any Terminated Document or any other equity securities owned by the Buyers and/or any of their Affiliates.

(o) Note Obligations. Prencen Lending acknowledges that it is must comply with the terms of the Notes and fulfill its obligations thereunder.

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 (after giving effect to the Acquisition (as defined in the Notes) (the **Acquisition**)) to each of the Buyers (except for such representations and warranties that are not true and correct as of the date hereof solely by virtue of the Stockholder Approval (as defined below) not being obtained as of the Closing Date and the amendments to the Certificate of Incorporation (as defined in Section 3(r)) of the Company not having been filed with the Secretary of State of Delaware to effectuate the amendments specified in clauses (x) and (y) of Section 4(p)(ii) below as of the Closing Date):

(a) Organization and Qualification. 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). Each of the Company s Subsidiaries are, directly or indirectly, wholly owned by the Company and no other Person owns any stock, membership interest, or any equity interest in such Subsidiary or any option, warrant or other similar interest with respect thereto.

(b) Authorization; Enforcement; Validity. Each of the Company and its Subsidiaries has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Other Securities Purchase Agreement, the Notes, the Other Notes, the Preferred Shares, the Warrants, the Registration Rights Agreement, the Voting Agreements (as defined in Section 7(n)), the Security Documents, the Irrevocable Transfer Agent Instructions (as defined in Section 5(b)), the Intercreditor Agreement, the Intercompany Subordination Agreement and each of the other agreements entered into by the parties thereto in connection with the transactions contemplated hereby and thereby (collectively, the **Transaction Documents**) and to issue the Notes in accordance with the terms hereof and thereof. The execution and delivery of the Transaction Documents by the Company and/or its Subsidiaries, as applicable, and the consummation by the Company and/or its Subsidiaries, as applicable, of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Notes, the Preferred Shares 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 and the Preferred Shares, the transfer of the Bettinger Shares and the reservation for issuance and issuance of the Warrant Shares issuable upon exercise of the Warrants, 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 any 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 and the agreements and documents relating to the Acquisition (as defined in the Notes) have been duly executed and delivered by the Company and/or its Subsidiaries, as applicable, and constitute the legal, valid and binding obligations of the Company and/or its Subsidiaries, as applicable, enforceable against each of them in accordance

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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. To the Company s knowledge, the Voting Agreements constitute the legal, valid and binding obligations of the parties thereto, enforceable against them 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, the Other Notes, the Preferred Shares and the Warrants are or were, as the case may be, 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 thereto and the Bettinger Shares and the Preferred Shares are fully paid and nonassessable. Subject to obtaining the Stockholder Approval (as defined below) and the filing with the Secretary of State of Delaware of an amendment to the Certificate of Incorporation to increase the number of authorized shares as contemplated by the Stockholder Approval, the Company shall have reserved from its duly authorized (but unissued) capital stock not less than the sum of (i) 130% of the maximum number of shares of Common Stock issuable upon conversion of the Aggregate Notes (assuming for purposes hereof, that the Aggregate Notes are convertible at the Conversion Rate (as defined in the Aggregate Notes) and without taking into account any limitations on the conversion of the Aggregate Notes set forth in the Aggregate Notes), (ii) 130% of the maximum number of shares of Common Stock issuable upon conversion of the Preferred Shares (assuming for purposes hereof, that the Preferred Shares are convertible at the Conversion Rate (as defined in the applicable Certificate of Designations) and without taking into account any limitations on the conversion of the Preferred Shares set forth in the applicable Certificate of Designations), (iii) 130% of the maximum number of shares of Common Stock issuable upon exercise of the Warrants (without taking into account any limitations on the exercise of the Warrants set forth in the Warrants) and (iv) 105% of the maximum number of shares of Common Stock or other equity of the Company issuable in connection with all other options, warrants, convertible securities and other instruments that are convertible or exercisable into such Common Stock and other equity of the Company. Upon issuance or conversion in accordance with the Notes or the applicable Certificate of Designations 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 clauses (b), (c) and (e) of 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/or its Subsidiaries, as applicable, and the consummation by the Company and/or its Subsidiaries, as applicable, of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes, the Other Notes, the Preferred Shares, the Warrants, and reservation for issuance of the Conversion Shares, the Other Conversion Shares and the Warrant Shares) will not (i) result in a violation of the Certificate of Incorporation of the Company or any of its Subsidiaries, any capital stock of the Company or

Bylaws (as defined in Section 3(r)) or the certificates of designations of the Company or the constitutive documents of any of its Subsidiaries, including without limitation, the Certificates of Designations, or (ii) conflict with, or constitute a default (or an event that 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 material agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party (including, without limitation, any right of any executive officer to terminate his or her employment agreement and/or receive any severance payments or give rights to any payment obligation other than listing fees to be paid to the Principal Market (as defined below)), or (iii) result in a violation of any material law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and the rules and regulations of the American Stock Exchange (the **Principal Market**) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected.

(e) Consents. Other than the Stockholder Approval, the filing of an amendment to the Certificate of Incorporation to increase the number of authorized shares of Common Stock as contemplated by the Stockholder Approval or the listing application with the Principal Market, neither the Company nor any of its Subsidiaries is required to obtain any consent, authorization or order of, or make any application to or filing or registration with, any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case in accordance with the terms hereof or thereof. Except as provided in the first sentence of Section 3(e), all consents, authorizations, orders, filings and registrations which the Company and/or its Subsidiaries, as applicable, are required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the Closing Date, and the Company and its Subsidiaries are unaware of any facts or circumstances which might prevent the Company from obtaining or effecting any of the consents, authorizations, orders, registrations, applications or filings pursuant to the preceding sentence. Except as set forth on Schedule 3(e), the Company is not in violation of the listing requirements of the Principal Market and has no knowledge of any facts which could reasonably lead to delisting or suspension of the Common Stock in the foreseeable future.

(f) Acknowledgment Regarding Buyer s Purchase of Securities. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm s length purchaser with respect to the Transaction Documents to which it is a party and the transactions contemplated hereby and thereby and that no Buyer is (i) an officer or director of the Company, (ii) an affiliate of the Company or any of its Subsidiaries (as defined in Rule 144) or (iii) to the knowledge of the Company, a beneficial owner of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the **1934 Act**)). The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer s purchase of the Securities. The Company further represents to each Buyer that the Company s decision to enter into the Transaction Documents and the transactions contemplated thereby has been based solely on the independent evaluation by the Company and its representatives.

(g) No General Solicitation; Placement Agent s Fees. Neither the Company, nor any of its Subsidiaries or affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent s fees, financial advisory fees, or brokers commissions (other than for persons engaged by any Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, attorney s fees and out-of-pocket expenses) arising in connection with any such claim. Except as set forth on Schedule 3(g), neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the sale of the Securities.

(h) No Integrated Offering. None of the Company, its Subsidiaries, any of their respective affiliates, and/or any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of any of the Securities under the 1933 Act or cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the 1933 Act in a manner that would require registration of the Securities under the 1933 Act or any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated. Except for the transactions contemplated by the Registration Rights Agreement and the Coty Registration Rights Agreement, none of the Company, its Subsidiaries, their affiliates and any Person acting on their behalf has taken any action or steps that could or would require registration of any of the Securities under the 1933 Act or cause the offering of the Securities to be integrated with other offerings.

(i) Dilutive Effect. The Company understands and acknowledges that (i) the number of Conversion Shares issuable upon conversion of the Notes and the Preferred Shares, and, the Warrant Shares issuable upon exercise of the Warrants, will increase in certain circumstances and (ii) the Company s board of directors determined that the transactions contemplated by the Transaction Documents are in the best interests of the Company s stockholders. The Company further acknowledges that its obligation to issue Note Conversion Shares upon conversion of all or a portion of the Notes in accordance with this Agreement and the Notes, its obligation to issue the Preferred Conversion Shares upon conversion of the Preferred Shares in accordance with the Certificates of Designations and its obligation to issue the Warrant Shares upon exercise of the Warrants in accordance with the Warrants is, in each case, absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(j) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti- takeover provision under the Certificate of Incorporation or the laws of the jurisdiction of its formation which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement and/or the other Transaction

Documents, including, without limitation, the Company s issuance of the Securities and any Buyer s ownership of the Securities. The Company has not adopted a stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

(k) SEC Documents; Financial Statements. Except as set forth on Schedule 3(k), during the two (2) years prior to the date hereof, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the **SEC Documents**). The Company has delivered to the Buyers or their respective representatives true, correct and complete copies of the SEC Documents not available on the EDGAR system. Except as set forth on Schedule 3(k), as of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Except as set forth on Schedule 3(k), as of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year- end audit adjustments). No other information provided by or on behalf of the Company to the Buyers that is not included in the SEC Documents, including, without limitation, information referred to in Section 2(e) of this Agreement, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made.

(l) Absence of Certain Changes. Except as disclosed in Schedule 3(l), since February 28, 2006, there has been no material adverse change and no material adverse development in the business, assets, properties, operations, condition (financial or otherwise), results of operations of the Company or its Subsidiaries. Except as disclosed in Schedule 3(l), since February 28, 2006, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, in excess of $100,000 outside of the ordinary course of business or (iii) had capital expenditures, individually, in excess of $100,000, or in the aggregate, in excess of $250,000 (other than the Acquisition). Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any knowledge of any fact which would reasonably lead a creditor to do so. The Company and its Subsidiaries, individually and on a

consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent (as defined below). For purposes of this Section 3(l), **Insolvent** means, with respect to any Person (i) the present fair saleable value of such Person s assets is less than the amount required to pay such Person s total Indebtedness (as defined in Section 3(s)), (ii) such Person is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (iii) such Person intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature or (iv) such Person has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

(m) No Undisclosed Events, Liabilities, Developments or Circumstances. No event, liability, development or circumstance has occurred or exists, with respect to the Company, its Subsidiaries or their respective businesses, operations or financial condition, that would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced.

(n) Conduct of Business; Regulatory Permits. Neither the Company nor its Subsidiaries is in violation of any term of or in default under its Certificate of Incorporation, any certificate of designation, preferences or rights of any other outstanding series of preferred stock of the Company or Bylaws or their organizational charter or certificate of incorporation or bylaws or other constitutive documents, respectively. Neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or its Subsidiaries, and the Company covenants that neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which could not, individually or in the aggregate, have a Material Adverse Effect. Without limiting the generality of the foregoing, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market, except as set forth on Schedule 3(n), and has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future. During the two (2) years prior to the date hereof, (i) the Common Stock has been designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) except as set forth on Schedule 3(n), the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Company and its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(o) Foreign Corrupt Practices. Neither the Company nor any of its Subsidiaries nor any director, officer, agent, employee or other Person acting on behalf of the Company or any of its Subsidiaries has, in the course of its actions for, or on behalf of, the Company or any of its Subsidiaries (i) used any funds for any unlawful contribution, gift,

entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(p) Sarbanes-Oxley Act. The Company is in compliance, in all material respects, with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the SEC thereunder that are effective as of the date hereof.

(q) Transactions With Affiliates. Except as set forth in the SEC Documents filed at least ten (10) days prior to the date hereof and other than as disclosed on Schedule 3(q), none of the officers, directors or employees of the Company or any of its Subsidiaries or, to the knowledge of the Company or any of its Subsidiaries, any Material Stockholder (as defined below) is presently (directly or indirectly) a party to any transaction with the Company or any of its Subsidiaries (other than for ordinary course services as employees, officers or directors), including any contract, agreement or other arrangement providing for any financing, the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director or employee or any Material Stockholder or any corporation, partnership, trust or other entity in which any such officer, director, or employee or Material Stockholder has a substantial interest or is an officer, director, affiliate, trustee, stockholder or partner. For the purpose of the Agreement, a **Material Stockholder** as of any given date, means, to the knowledge of the Company, any stockholder of the Company that, together with any such stockholder s affiliates, holds Common Stock, Options and/or Convertible Securities (as defined below), which in the aggregate represent at least 5% of the outstanding Common Stock of the Company (as determined on an as-converted basis).

(r) Equity Capitalization. As of the date hereof, the authorized capital stock of the Company consists of (i) 225,000,000 shares of Common Stock, of which as of the date hereof, 11,744,056 are issued and outstanding, 2,235,669 shares will be reserved for issuance upon the exercise of warrants granted or to be granted under the Company s 2000 Employee Performance Equity Plan and 1,982,544 shares are reserved for issuance pursuant to securities (other than the Aggregate Notes, Preferred Shares and the Warrants) exercisable or exchangeable for, or convertible into, shares of Common Stock, (ii) 2,347.7745 shares of Series A Junior Participating Preferred Stock, par value $0.001 per share (the **Series A Preferred Stock**) all of which, as of the date hereof, are issued and outstanding, (iii) 300 shares of Series B Preferred Stock, all of which, as of the date hereof, are issued and outstanding, and (iv) 30 shares of Series B-1 Preferred Stock, all of which, as of the date hereof, are issued and outstanding. All of such outstanding shares have been, or upon issuance will be, validly issued and are fully paid and nonassessable. Except as disclosed in Schedule 3(r): (i) none of the Company s nor any of its Subsidiaries capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances; (ii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional capital stock of the

Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its Subsidiaries; (iii) there are no outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness (except for the Permitted Senior Indebtedness) of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound; (iv) other than with respect to the Permitted Senior Indebtedness, there are no financing statements securing obligations in any material amounts, either singly or in the aggregate, filed in connection with the Company or any of its Subsidiaries; (v) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act (except pursuant to the Registration Rights Agreement and the Coty Registration Rights Agreement); (vi) there are no outstanding securities or instruments of the Company or any of its Subsidiaries that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (vii) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; (viii) the Company does not have any stock appreciation rights or phantom stock plans or agreements or any similar plan or agreement; and (ix) the Company and its Subsidiaries have no liabilities or obligations required to be disclosed in the SEC Documents but not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company s or its Subsidiaries respective businesses and which, individually or in the aggregate, do not or would not have a Material Adverse Effect. The Company has furnished to the Buyers true, correct and complete copies of the Company s Certificate of Incorporation, as amended and as in effect on the date hereof (the **Certificate of Incorporation**), and the Company s Bylaws, as amended and as in effect on the date hereof (the **Bylaws**), the constitutive documents for each of the Company s Subsidiaries and the terms of all securities convertible into, or exercisable or exchangeable for, shares of Common Stock and the material rights of the holders thereof in respect of the Company and its Subsidiaries. Upon consummation of the transactions contemplated by the Transaction Documents (as defined herein and in the Other Securities Purchase Agreement), the capitalization of the Company shall be as set forth on Schedule 3(r-2). Except for the Warrants, none of the options or warrants listed in Schedule 3(r-2) contain any anti dilution protection other than anti-dilution protection related to stock splits, stock dividends, reverse stock splits, recapitalizations and reorganizations (for the avoidance of doubt, such anti-dilution protections do not include any issuance-price based anti-dilution protections).

(s) Indebtedness and Other Contracts. Except as set forth on Schedule 3(s), neither the Company nor any of its Subsidiaries (i) has any outstanding Indebtedness (other than Permitted Senior Indebtedness, the Coty Note and the Company s Contingent Obligation to pay the Coty Earn Out Payment in accordance with the Coty Purchase Agreement), (ii) is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect, (iii) is in violation of any term of or in default under any contract, agreement or instrument relating to any Indebtedness or (iv) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company s officers, has or is expected to have a Material Adverse Effect. Schedule 3(s) lists all such outstanding Indebtedness. For purposes of this Agreement: (x) **Indebtedness** of any

Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, capital leases in accordance with generally accepted accounting principles) (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; (y) **Contingent Obligation** means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; and (z) **Person** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity, and/or a government or any department or agency thereof.

(t) Absence of Litigation. Except as set forth in Schedule 3(t), there is no action, suit, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, government agency, self-regulatory organization or body or other Person pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company s Subsidiaries or any of the Company s or its Subsidiaries officers or directors, whether of a civil or criminal nature or otherwise, except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(u) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary for the businesses in which the Company and its Subsidiaries are engaged. Neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for and neither the Company nor any such Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(v) Employee Relations. Except as set forth on Schedule 3(v), neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. Except as set forth on Schedule 3(v), no executive officer of the Company or any of its Subsidiaries (as defined in Rule 501(f) of the 1933 Act) has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer s employment with the Company or any such Subsidiary. No executive officer of the Company or any of its Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters.

(ii) The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(w) Title. The Company and its Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except Permitted Liens (as defined in the Notes) and such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and any of its Subsidiaries. Any real property and facilities held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

(x) Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate rights or licenses to use all U.S. trademarks, service marks and all applications and registrations therefor, trade names, patents, patent rights, copyrights, original works of authorship, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property (including without limitation the intellectual property acquired pursuant to the Acquisition) rights (**Intellectual Property Rights**) necessary to conduct their respective businesses as now conducted. Except as set forth on Schedule 3(x), all of the Company s registered, or applied for, U.S. Intellectual Property Rights are valid, subsisting, unexpired (where registered) and enforceable and have not been abandoned or adjudged invalid or unenforceable, in whole or in part except as could not be reasonably expected to result in a Material Adverse Effect. The Company does not have any knowledge of any infringement by the Company or its Subsidiaries of Intellectual Property Rights of others, except as set forth on Schedule 3(t). Except as set forth on Schedule 3(t), there is no claim, action or proceeding being made or brought, or to the knowledge of the Company, being threatened, against the Company or any of its Subsidiaries regarding its Intellectual Property Rights. The Company is unaware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company and its Subsidiaries have taken reasonable security measures to protect the value of all of their Intellectual Property Rights.

(y) Environmental Laws. Except as set forth on Schedule 3(y), the Company and its Subsidiaries (i) are in compliance with any and all Environmental Laws (as hereinafter defined), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term **Environmental Laws** means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, **Hazardous Materials**) into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(z) Subsidiary Rights. The Company and/or one or more of its wholly owned Subsidiaries has the unrestricted right to vote (other than as restricted by the security documents of the Permitted Senior Indebtedness), and (subject to limitations imposed by applicable law and restrictions under the Permitted Senior Indebtedness) to receive dividends and distributions on, all of the capital securities and/or equity interests of its Subsidiaries.

(aa) Tax Status. The Company and each of its Subsidiaries (i) has made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply and all such returns, reports and declarations are accurate and complete. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

(bb) Internal Accounting and Disclosure Controls. The Company and each of its Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management s general or specific authorization and (iv) the recorded accounting of assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth on Schedule 3(bb), the Company maintains disclosure controls and procedures (as such term is defined in

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Rule 13a-14 under the 1934 Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to the Company s management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. During the twelve months prior to the date hereof neither the Company nor any of its Subsidiaries have received any notice or correspondence from any accountant relating to any potential material weakness in any part of the system of internal accounting controls of the Company or any of its Subsidiaries.

(cc) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between (x) the Company or any of its Subsidiaries and (y) an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise would be reasonably likely to have a Material Adverse Effect.

(dd) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an investment company, a company controlled by an investment company or an affiliated person of, or promoter or principal underwriter for, an investment company as such terms are defined in the Investment Company Act of 1940, as amended.

(ee) Ranking of Notes. Except as set forth on Schedule (ee) and for Permitted Senior Indebtedness (as defined in the Notes) (and such other indebtedness as permitted by such Permitted Senior Indebtedness to rank senior to the Notes), no Indebtedness of the Company is senior to or ranks *pari passu* with the Aggregate Notes in right of payment, whether with respect of payment of redemptions, interest, damages or upon liquidation or dissolution or otherwise.

(ff) Transfer Taxes. On the Closing Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(gg) Acknowledgement Regarding Buyers Trading Activity. It is understood and acknowledged by the Company (i) that none of the Buyers have been asked by the Company or its Subsidiaries to agree, nor has any Buyer agreed with the Company or its Subsidiaries, to desist from purchasing or selling, long and/or short, securities of the Company, or derivative securities based on securities issued by the Company or to hold the Securities for any specified term; (ii) that any Buyer, and counterparties in derivative transactions to which any such Buyer is a party, directly or indirectly, presently may have a short position in the Common Stock, and (iii) that each Buyer shall not be deemed to have any affiliation with or control over any arm s length counterparty in any derivative transaction. The Company further understands and acknowledges that (a) one or more Buyers may engage in hedging and/or trading activities at various times during the period that the Securities are outstanding, including, without limitation,

during the periods that the value of the Conversion Shares and the Warrant Shares deliverable with respect to Securities are being determined and (b) such hedging and/or trading activities, if any, can reduce the value of the existing shareholders equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted. The Company acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the Notes, the Preferred Shares, the Warrants or any of the documents executed in connection herewith.

(hh) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and to the Company s knowledge no one acting on behalf of any such Person has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any person any compensation for soliciting another to purchase any other securities of the Company.

(ii) U.S. Real Property Holding Corporation. The Company is not, nor has ever been, a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Buyer s request.

(jj) Disclosure. All disclosure provided to the Buyers regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Schedules to this Agreement, furnished by or on behalf of the Company is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. Each press release issued by the Company and/or its Subsidiaries during the twelve (12) months preceding the date of this Agreement did not at the time of release contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed.

(kk) No Event of Default. The Company represents and warrants to the Investor that no default or Event of Default (as defined in the Note) shall have occurred and be continuing as of the date hereof. Notwithstanding anything herein or in any Transaction Document, as amended, to the contrary, no default or Event of Default shall be deemed to have occurred and be continuing as of the date hereof solely by virtue of the Stockholder Approval not being obtained as of the Closing Date and the amendments to the Certificate of Incorporation of the Company not having been filed with the Secretary of State of Delaware to effectuate the amendments specified in clauses (x) and (y) of Section 4(p)(ii) below as of the Closing Date. No default or event of default shall have occurred and be continuing as of the date hereof under any Transaction Documents after giving effect to the issuance of the Aggregate Notes.

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(ll) Holding Period. For the purposes of Rule 144, the Company acknowledges that (x) the holding period of the Note may be tacked onto the holding period of the Amended Note, (y) the holding period of the Series B Preferred Shares and the shares of Common Stock issuable upon conversion of the Series B Preferred Shares may be tacked onto the holding period of the Common Shares (as defined in the Common Exchange Agreement) exchanged in connection with the Common Exchange Agreement, and (z) the holding period of the Series B-1 Preferred Shares and the shares of Common Stock issuable upon conversion of the Series B-1 Preferred Shares may be tacked onto the holding period of the Common Shares (as defined in the Amendment to Common Exchange Agreement) exchanged in connection with the Amendment to Common Exchange Agreement, and, in each case, so long as the Company receives a legal opinion in a generally acceptable form in connection with a resale of the shares of Common Stock issuable upon conversion of the Preferred Shares and/or Notes, as applicable, in reliance upon Rule 144, the Company agrees not to take a position contrary to this Section 2(ll).

(mm) Acquisition. Contemporaneously with the Closing, the Company and its Subsidiaries are consummating the Acquisition.

4. COVENANTS.

(a) Reasonable Best Efforts. Each Buyer shall use its reasonable best efforts to satisfy each of the conditions under clauses (a) through (e) of Section 6 of this Agreement. The Company shall use its reasonable best efforts to cause each of the conditions in Section 7 hereof to be satisfied.

(b) Form D and Blue Sky. The Company agrees to file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to each Buyer promptly after such filing. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Notes and Note Conversion Shares for sale to the Buyers at such Closing pursuant to this Agreement under applicable laws including without limitation securities or Blue Sky laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to such Closing Date. The Company shall make all filings and reports relating to the offer and sale of the Securities including without limitation those required under applicable securities or Blue Sky laws of the states of the United States following the Closing Date.

(c) Reporting Status. Until the date on which the Investors shall have sold all the Conversion Shares and Warrant Shares, and none of the Notes, the Preferred Shares or Warrants are outstanding (the **Reporting Period**), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination, and from and after the date the Company is eligible to register the Conversion Shares and the Warrant Shares for resale by the Buyers on Form S-3, the Company shall take all actions necessary to maintain its eligibility to register the Conversion Shares and the

Warrant Shares for resale by the Buyers on Form S-3.

(d) [Intentionally omitted]

(e) Financial Information. The Company agrees to send the following to each Investor during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports and Quarterly Reports on Form 10-K, 10-KSB, 10-Q or 10-QSB, any interim reports or any consolidated balance sheets, income statements, stockholders equity statements and/or cash flow statements for any period other than annual, any Current Reports on Form 8 K (including any press releases filed) and any registration statements (other than on Form S 8) or amendments filed pursuant to the 1933 Act, (ii) on the same day as the release thereof, facsimile copies of all press releases not filed through the EDGAR system issued by the Company or any of its Subsidiaries, and (iii) copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders. As used herein, **Business Day** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(f) Listing. The Company shall promptly secure the listing of all of the Registrable Securities (as defined in the Registration Rights Agreement) upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed (subject to official notice of issuance) and shall maintain such listing of all Registrable Securities from time to time issuable under the terms of the Transaction Documents. The Company shall maintain the Common Stock s authorization for quotation on the Principal Market. Neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on the Principal Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f).

(g) Fees. The Company shall reimburse Prencen or its designee(s) (in addition to any other expense amounts paid to any Buyer prior to the date of this Agreement) for all reasonable costs and expenses incurred in connection with the transactions contemplated by the Transaction Documents (including all reasonable legal fees and disbursements in connection therewith, documentation and the negotiation of the Transaction Documents, due diligence in connection therewith and the Closing contemplated by this Agreement), which amount shall be paid by the Company to Schulte Roth & Zabel LLP on the Closing Date (the **Legal Expense Amount**). The Company shall be responsible for the payment of any placement agent s fees, financial advisory fees, or broker s commissions (other than for Persons engaged by any Buyer or any of its affiliates) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorney s fees and out-of-pocket expenses) arising in connection with any claim against a Buyer relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.

(h) Pledge of Securities. The Company acknowledges and agrees that the Securities may be pledged by an Investor in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Investor 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 or otherwise. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by an Investor.

(i) Additional Registration Statements. Until the sixtieth (60th) day following the Initial Effective Date (as defined in the Registration Rights Agreement), the Company shall not, except to the extent permitted under the Registration Rights Agreement and the Coty Registration Rights Agreement, file a registration statement under the 1933 Act, other than (i) a registration statement on Form S-8 and (ii) a registration statement relating solely to the issuance of certain warrants (and their underlying shares of Common Stock) with an exercise price of $1.50 per share, to be issued by the Company to all of the existing holders of the Company s Common Stock (other than Prencen) and Class A Junior Participating Preferred Stock, which warrants (x) shall be exercisable in the aggregate for a number of shares of Common Stock equal to the aggregate number of shares of Common Stock and Series A Preferred Stock (assuming such shares of Class A Junior Participating Preferred Stock are converted on a one to one basis) outstanding on the date of this Agreement and (y) shall only be exercisable to the extent the Authorized Share Increase Event (as defined below) has occurred (the **Existing Stockholder Warrants**), relating to securities that are not the Securities or the Securities (as defined in the Other Securities Purchase Agreement).

(j) Disclosure of Transactions and Other Material Information.

(i) On or before 5:30 p.m., New York City time, on the fourth Business Day following the date of this Agreement, the Company shall issue a press release and file a Current Report on Form 8-K describing the terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and, to the extent not included in prior SEC filings of the Company, attaching the material Transaction Documents (including, without limitation, this Agreement, the form of the Notes, the form of the Registration Rights Agreement, the form of Voting Agreement and the form of Security Documents) as exhibits to such filing (including all attachments, the **8-K Filing**). From and after the filing of the 8-K Filing, except as permitted by Section 4(j)(ii) below and, in such case, from and after the Disclosure Date (as defined below), no Buyer shall be in possession of any material, nonpublic information received from the Company, any of its Subsidiaries or any of its respective officers, directors, employees or agents, that was not disclosed in the 8-K Filing or other public filings by the Company with the SEC. The Company shall not, and shall cause each of its Subsidiaries and its and each of their respective officers, directors, employees and agents, not to, provide any Buyer with any material, nonpublic information regarding the Company or any of its Subsidiaries from and after the filing of the 8-K Filing with the SEC without the express written consent of such Buyer. If a Buyer has, or reasonably believes it has, received any such material, nonpublic information regarding the Company or any of its Subsidiaries, it shall provide the Company with written notice thereof. The Company shall, within five (5) Trading Days of receipt of such notice, make public disclosure of such material, nonpublic information. In the event of a breach of the foregoing covenant by the Company, any of its Subsidiaries, or any of its

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or their respective officers, directors, employees and agents, in addition to any other remedy provided herein or in the Transaction Documents, a Buyer shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such material, nonpublic information without the prior approval by the Company, its Subsidiaries, or any of its or their respective officers, directors, employees or agents. No Buyer shall have any liability to the Company, its Subsidiaries, or any of its or their respective officers, directors, employees, stockholders or agents for any such disclosure provided such disclosure is accurate in all material respects. Subject to the foregoing, neither the Company, its Subsidiaries nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of any Buyer, to make any press release or other public disclosure with respect to such transactions (x) in substantial conformity with the 8- K Filing and contemporaneously therewith and (y) as is required by applicable law and regulations (provided that in such case each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of any applicable Buyer, neither the Company nor any of its Subsidiaries or their affiliates shall disclose the name of such Buyer in any filing, announcement, release or otherwise unless required by law. Notwithstanding the foregoing, (I) in the event that Prencen or Prencen Lending is deemed a director by deputization by virtue of the rights set forth in Section 4(q), the restrictions set forth in this Section 4(j) shall not apply to the provision of information in the ordinary course to such director and the rights of Prencen and its affiliates to disclose any material non-public information received by such director as set forth in this Section 4(j)(i) shall not apply and (II) in the event any Buyer receives material non-public information it solicited from any employee, officer, director, consultant, attorney, accountant or representative of the Company or any of its Subsidiaries the rights of such Buyer and its affiliates to disclose any material non-public information received thereby as set forth in this Section 4(j)(i) shall not apply.

(ii) In the event the Company desires to obtain the consent of the Buyers to any transaction in accordance with Section 4(l) (a **Consent Request Transaction**) and the Company has made a good faith determination that the matters relating to such Consent Request Transaction constitute material non-public information, the Company shall submit a written request (the **Material Event Notice**) to the person designated on the Schedule of Buyers for such Buyer, or such other person as such Buyer shall designate in writing to the Company (the **Material Notice Recipient**) requesting permission to deliver any such request (a **Consent Request Notice**). Until the earlier to occur of (x) the date on which the Material Notice Recipient gives written notice to the Company authorizing the delivery of such Consent Request Notice to the Buyer (the **Material Event Notice Acceptance**) or (y) the date on which the material non-public information which is the subject of the Consent Request Notice is publicly disclosed in a filing with the SEC, the Company shall be relieved of any obligation imposed by this Agreement or any other Transaction Document to deliver the Consent Request Notice to the Buyer, such Buyer shall be deemed to have waived the Buyer s rights hereunder to receive such Consent Request Notice and the Buyer shall be deemed to have consented to such Consent Request Transaction, until the earlier to occur of (I) the date the Material Notice Recipient delivers such Material Event Notice Acceptance to the Company and (II) the date the Consent Request Transaction has been consummated. Notwithstanding anything in any Transaction Document to the contrary, the Company covenants and agrees that it shall not provide the material non-public information which is the subject of the Consent Request Notice

to any Buyer until the earlier to occur of (x) such time as the Material Event Notice Acceptance is received by the Company or (y) the material non-public information which is the subject of the Consent Request Notice has been disclosed in a filing with the SEC. The Company shall, within five (5) Trading Days (as defined in the Note) of the earlier to occur of (i) the consummation of the transactions contemplated by the Material Event Notice and (ii) the date the transaction contemplated by the Consent Request Notice is withdrawn or terminated, make public disclosure of any material non-public information provided to any Buyer in connection with the Consent Request Notice (the **Disclosure Date**). In the event of a breach of the foregoing covenant by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees and agents, in addition to any other remedy provided herein or in the Transaction Documents, a Buyer shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such material, nonpublic information without the prior approval by the Company, its Subsidiaries, or any of its or their respective officers, directors, employees or agents. No Buyer shall have any liability to the Company, its Subsidiaries, or any of its or their respective officers, directors, employees, stockholders or agents for any such disclosure.

(k) <u>Additional Notes; Variable Securities; Dilutive Issuances</u>.

(i) So long as any Buyer beneficially owns any Securities, the Company will not, (a) without the prior written consent of the holders of a majority in principal amount of the Aggregate Notes, issue any Notes (other than to the Buyers as contemplated hereby or pursuant to the Other Securities Purchase Agreement) or (b) issue any other securities that would cause a breach or default under the Aggregate Notes.

(ii) For so long as (x) at least $5,000,000 in aggregate principal amount of the Aggregate Notes are outstanding or (y) at least 25% of the Series A Warrants are outstanding, the Company shall not, without the prior written consent of the holders of a majority in principal amount of the Aggregate Notes, in any manner, issue or sell any rights, warrants or options to subscribe for or purchase Common Stock or directly or indirectly convertible into or exchangeable or exercisable for Common Stock at a conversion, exchange or exercise price which varies or may vary after issuance with the market price of the Common Stock, including by way of one or more reset(s) to any fixed price unless the conversion, exchange or exercise price of any such security cannot be less than the then applicable Conversion Price (as defined in the Notes) with respect to the Common Stock into which any Notes are convertible or the then applicable Exercise Price (as defined in the Warrants) with respect to the Common Stock into which any Warrant is exercisable.

(iii) For so long as any Notes or Warrants remain outstanding, the Company shall not, in any manner, enter into or affect any dilutive issuance if the effect of such dilutive issuance is to cause the Company to be required to issue upon conversion of any Note or exercise of any Warrant any shares of Common Stock in excess of that number of shares of Common Stock which the Company may issue upon conversion of the Notes and exercise of the Warrants, other than the issuance and exercise of the Existing Stockholder Warrants.

(iv) For so long as any Notes remain outstanding, without the prior written consent of the holders of a majority in principal amount of the Aggregate Notes, the Company shall not, in any manner, enter into or affect any issuance (including without limitation the issuance of options, stock, equity, warrants, and convertible securities) if the effect of such issuance is to cause the Company to be required to issue upon conversion or exercise of any option, warrant, convertible security or other instrument any shares of Common Stock or other Company equity in excess of (x) that number of shares of Common Stock or Company equity that the Company may issue upon conversion and/or exercise thereof without breaching the Company s obligations under the rules or regulations of the Principal Market, unless the conversion and/or exercise of any portion of such option, warrant or convertible security is conditioned upon receipt of the necessary approvals under the rules and regulations of the Principal Market or (y) the authorized but unissued shares of Common Stock and/or other applicable equity of the Company (after considering all other outstanding instruments that may be converted into or exercised for such Common Stock or equity), unless the conversion or exercise of any portion of such option, warrant or convertible security in excess of the authorized but unissued shares of common stock is conditioned upon the approval and filing of an amendment to the Company s Certificate of Incorporation to increase the number of authorized shares to permit such conversion or exercise; provided that the Company shall issue shares of Common Stock in connection with any such issuance only to the extent that Company has reserved all of the shares required to be reserved pursuant to Section 4(m) below.

(l) <u>Corporate Existence; Acquisitions</u>. So long as any Buyer beneficially owns any Securities, without the prior written consent of the holders of a majority in principal amount of the Aggregate Notes, the Company shall not be party to any Fundamental Transaction (as defined in the Notes) unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Notes, the Certificates of Designations and the Warrants. From and after the repayment in full of the Permitted Senior Indebtedness (as defined in the Notes), other than in connection with one or more unrelated Acquisition Transactions (as defined below) for aggregate gross purchase prices not in excess of $10 million, for so long as (x) at least $5,000,000 in aggregate principal amount of the Aggregate Notes are outstanding or (y) at least 25% of the Series A Warrants are outstanding, without the prior written consent of the holders of a majority in principal amount of the Aggregate Notes, the Company shall not acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets or stock of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof or otherwise acquire or agree to acquire any equity interest therein or any assets outside the ordinary course of business (each, an **Acquisition Transaction**).

(m) <u>Reservation of Shares</u>. After the Company has obtained the Stockholder Approval and filed with the Secretary of State of Delaware an amendment to the Certificate of Incorporation to increase the number of authorized shares of Common Stock as contemplated by the Stockholder Approval, which shall be filed no later than the first (1st) Business Day after the Company has obtained the Stockholder Approval, the Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than (i) 130% of the maximum number of shares of Common Stock issuable upon conversion of the Aggregate Notes (assuming for purposes hereof, that the Aggregate Notes are convertible at the Conversion Rate (as defined in the Aggregate Notes) and without taking into account any limitations on the conversion of the Aggregate Notes set forth in the Aggregate Notes), (ii) 130% of the maximum number of shares of Common Stock issuable upon conversion of the Preferred Shares (assuming

for purposes hereof, that the Preferred Shares are convertible at the Conversion Rate (as defined in the applicable Certificate of Designations) and without taking into account any limitations on the conversion of the Preferred Shares set forth in the applicable Certificate of Designations), (iii) 130% of the maximum number of shares of Common Stock issuable upon exercise of the Warrants (without taking into account any limitations on the exercise of the Warrants set forth in the Warrants) and (iv) 105% of the maximum number of shares of Common Stock or other equity of the Company issuable in connection with all other options, warrants, convertible securities and other instruments that are convertible or exercisable into such Common Stock and other equity of the Company.

(n) Conduct of Business. The business of the Company and its Subsidiaries shall not be conducted in violation of any law, ordinance or regulation of any governmental entity, except where such violations would not result, either individually or in the aggregate, in a Material Adverse Effect.

(o) Additional Issuances of Securities.

(i) For purposes of this Section 4(o), the following definitions shall apply.

(1) **Equity/Convertible Securities** means (x) any stock, equity securities or securities (other than Options) convertible into or exercisable or exchangeable for shares of Common Stock or other equity of the Company or any of its Subsidiaries and/or (y) any debt, loans, debentures, bonds or similar indebtedness (collectively, **Financing Debt**), but only if such Financing Debt is issued with or in connection with (including by way of related transactions) any Equity/Convertible Securities described in the preceding clause (x) and/or Options.

(2) **Options** means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Equity/Convertible Securities.

(3) **Common Stock Equivalents** means, collectively, Options and Equity/Convertible Securities.

(ii) From the date hereof until the date that is thirty (30) Trading Days after the Initial Effective Date (the **Trigger Date**), the Company will not, without the consent of the holders of a majority in principal amount of the Aggregate Notes, directly or indirectly, offer, sell, grant any option to purchase, or otherwise dispose of (or announce any offer, sale, grant or any option to purchase or other disposition of) any of its or its Subsidiaries Common Stock Equivalents, equity or equity equivalent securities, including without limitation any debt, preferred stock or other instrument or security that is, at any time during its life and under any circumstances, convertible into or exchangeable or exercisable for shares of Common Stock or Common Stock Equivalents (any such offer, sale, grant, disposition or announcement being referred to as a **Subsequent Placement**).

(iii) From the Trigger Date until the date on which none of the Aggregate Notes are outstanding, the Company will not, directly or indirectly, effect any Subsequent Placement unless the Company shall have first complied with this Section 4(o)(iii).

(1) The Company shall deliver to each Buyer (or any assignee thereof) who then holds Notes a written notice (the **Offer Notice**) of any proposed or intended issuance or sale (the **Offer**) of the Common Stock Equivalents being offered (the **Offered Securities**) in a Subsequent Placement, which Offer Notice shall (w) identify and describe the Offered Securities, (x) describe the price and other terms upon which they are to be issued or sold, and the number or amount of the Offered Securities to be issued or sold, (y) identify the persons or entities (if known) to which or with which the Offered Securities are to be offered, issued or sold and (z) offer to issue and sell to such Buyers and the Other Buyers all of the Offered Securities, allocated among such Buyers and Other Buyers (**Other Buyers** means, the then current holders of the Watershed Notes (as defined in the Notes)) (a) based on such Buyer s or Other Buyer s pro rata portion of the aggregate principal amount of the Aggregate Notes then held by such Persons (the **Basic Amount**), and (b) with respect to each Buyer that elects (in its sole and absolute discretion) to purchase its Basic Amount, any additional portion of the Offered Securities attributable to the Basic Amounts of other Buyers and Other Buyers as such Buyer shall indicate it will purchase or acquire should the other Buyers or Other Buyers subscribe for less than their Basic Amounts (the **Undersubscription Amount**), which process shall be repeated until the Buyers and Other Buyers shall have an opportunity to subscribe for any remaining Undersubscription Amount.

(2) To accept an Offer, in whole or in part, such Buyer must deliver a written notice to the Company prior to the end of the tenth (10^{th}) Business Day after such Buyer s receipt of the Offer Notice (the **Offer Period**), setting forth the portion of such Buyer s Basic Amount that such Buyer elects to purchase and, if such Buyer shall elect to purchase all of its Basic Amount, that portion of the Undersubscription Amount, if any, that such Buyer elects to purchase (in either case, the **Notice of Acceptance**). If the Basic Amounts subscribed for by all the Buyers and the Other Buyers are less than the total of all of the Basic Amounts hereunder and under the Other Securities Purchase Agreement, then each Buyer who has set forth an Undersubscription Amount in its Notice of Acceptance shall be entitled to purchase, in addition to the Basic Amounts subscribed for, the Undersubscription Amount it has subscribed for; provided, however, that if the Undersubscription Amounts subscribed for exceed the difference between the total of all the Basic Amounts and the Basic Amounts subscribed for hereunder and under the Other Securities Purchase Agreement (the **Available Undersubscription Amount**), each Buyer who has subscribed for any Undersubscription Amount shall be entitled to purchase only that portion of the Available Undersubscription Amount as the Basic Amount of such Buyer bears to the total Basic Amounts of all Buyers and the Other Buyers that have subscribed for Undersubscription Amounts, subject to rounding by the Company to the extent its deems reasonably necessary.

(3) The Company shall have ten (10) Business Days from the expiration of the Offer Period above to (i) offer, issue or sell all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by the Buyers or the Other Buyers (the **Refused Securities**), but only to the offerees described in the Offer Notice (if so described therein) and only upon terms and conditions (including, without limitation, unit prices and interest rates) that are not more favorable to the

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acquiring person or persons or less favorable to the Company than those set forth in the Offer Notice and (ii) publicly announce (a) the execution of such Subsequent Placement Agreement (as defined below), and (b) either (x) the consummation of the transactions contemplated by such Subsequent Placement Agreement or (y) the termination of such Subsequent Placement Agreement, which shall be filed with the SEC on a Current Report on Form 8-K with such Subsequent Placement Agreement and any documents contemplated therein filed as exhibits thereto.

(4) In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 4(o)(iii)(3) above), then each Buyer may, at its sole option and in its sole discretion, reduce the number or amount of the Offered Securities that it was otherwise committed to purchase to an amount that shall be not less than the number or amount of the Offered Securities that such Buyer elected to purchase pursuant to Section 4(o)(iii)(2) above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Company actually proposes to issue or sell (including Offered Securities to be issued or sold to Buyers and Other Buyers pursuant to Section 4(o)(iii)(2) above prior to such

reduction) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any Buyer so elects to reduce the number or amount of Offered Securities specified that it was otherwise committed to purchase, the Company may not issue or sell more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the Buyers in accordance with Section 4(o)(iii)(1) above.

(5) Upon the closing of the issuance or sale of all or less than all of the Refused Securities (if applicable), the Buyers shall acquire from the Company, and the Company shall issue to the Buyers, the number or amount of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 4(o)(iii)(3) above if the Buyers have so elected, upon the terms and conditions specified in the Offer. The purchase by the Buyers of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and the Buyers of a purchase agreement and other documents relating to such Offered Securities reasonably satisfactory in form and substance to the Buyers and their respective counsel.

(6) Any Offered Securities not acquired by the Buyers or the Other Buyers or other persons in accordance with Section 4(o)(iii)(3) above may not be offered, issued or sold until they are again offered to the Buyers under the procedures specified in this Section 4(o).

(7) The Company and the Buyers agree that if any Buyer elects to participate in the Offer, (x) neither the securities purchase agreement (the **Subsequent Placement Agreement**) with respect to such Offer nor any other transaction documents related thereto (collectively, the **Subsequent Placement Documents**) shall include any term or provisions (i) whereby any Buyer shall be required to agree to any restrictions in trading as to any securities of the Company owned by such Buyer prior to such Subsequent Placement or (ii) that is different (other than as to quantity and price) from the terms or provisions of the Subsequent Placement Documents of any other Buyer or Other Buyer or third party offeree (if any), and (y) any registration rights set forth in such Subsequent Placement Documents shall be similar in all material respects to the registration rights contained in the Registration Rights Agreement.

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(8) Notwithstanding anything to the contrary in this Section 4(o) and unless otherwise agreed to by the Buyers, the Company shall either confirm in writing to the Buyers that the transaction with respect to the Subsequent Placement has been abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case in such a manner such that the Buyers will not be in possession of material non-public information, by the twelfth (12^{th}) Business Day following delivery of the Offer Notice. If by the twelfth (12^{th}) Business Day following delivery of the Offer Notice no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by the Buyers, such transaction shall be deemed to have been abandoned and the Buyers shall not be deemed to be in possession of any material, non- public information with respect to the Company. Should the Company decide to pursue such transaction with respect to the Offered Securities, the Company shall provide each Buyer with another Offer Notice and each Buyer will again have the right of participation set forth in this Section 4(o)(iii). The Company shall not be permitted to deliver more than one such Offer Notice to the Buyers in any 60 day period.

(9) The restrictions contained in subsections (ii) and (iii) of this Section 4(o) shall not apply in connection with the issuance of any Excluded Securities (as defined in the Notes) or the issuance of the Existing Stockholder Warrants. For the avoidance of doubt, the rights of each holder of any Aggregate Note under this Section 4(o) shall be transferable with the transfer of all or a portion of such Aggregate Note.

(10) For the avoidance of doubt, this Section 4(o) may not be waived or amended except by the written consent of all of holders of the Aggregate Notes. To the extent Section 4(o)(ii) is waived to allow a Subsequent Placement prior to the Trigger Date, the provisions of Section 4(o)(iii) shall apply *mutatis mutandis* to all holders of the Aggregate Notes (and any transferee of a holder of Aggregate Notes) in connection with such Subsequent Placement.

(p) Stockholder Approval.

(i) Transaction Stockholder Approval. The Company shall prepare and file with the SEC, as promptly as practicable after the Closing Date, but in no event later than the date ten (10) calendar days after the Closing Date, an information statement (the **Transaction Information Statement**), in a form reasonably acceptable to the Buyers and Schulte Roth & Zabel LLP, at the expense of the Company, not to exceed $5,000, informing the stockholders of the Company of the receipt of the consents of the holders of a majority of the outstanding voting securities of the Company in the form attached hereto as Exhibit G (the **Transaction Stockholder Consent**) approving the transaction resolutions (the **Transaction Resolutions**) that approve the transactions contemplated hereby, pursuant to this Agreement and pursuant to the Other Securities Purchase Agreement, including, without limitation, the issuance and terms of the

Aggregate Notes (including the conversion of the Notes into Common Stock) and the approval of such transactions pursuant to applicable law and the rules and regulations of the Principal Market. In addition to the foregoing, if otherwise required by applicable law, rule or regulation, the Company shall prepare and file with the SEC a preliminary proxy statement with respect to a special or annual meeting of the stockholders of the Company (the **Transaction Stockholder Meeting**), which shall be called as promptly as practicable after the date hereof, but in no event later than April 30, 2007 (the **Transaction Stockholder Meeting Deadline**) soliciting each such stockholder s affirmative vote for approval of, to the extent not previously adopted, the Transaction Resolutions (such affirmative approval being referred to herein as the **Transaction Stockholder Approval** and the date such approval is obtained, the **Transaction Stockholder Approval Date**), and the Company shall use its reasonable best efforts to solicit its stockholders approval of such Transaction Resolutions and to cause the Board of Directors of the Company to recommend to the stockholders that they approve the Transaction Resolutions. The Company shall be obligated to seek to obtain the Transaction Stockholder Approval by the Transaction Stockholder Meeting Deadline. If, despite the Company s reasonable best efforts, the Transaction Stockholder Approval is not obtained on or prior to the Transaction Stockholder Meeting Deadline, the Company shall cause an additional Transaction Stockholder Meeting to be held every six (6) month period thereafter until the second anniversary of the Closing Date, whereafter such Transaction Stockholder Meeting shall only be required to occur at the annual meeting of the Company held that year and each year thereafter until Transaction Stockholder Approval is obtained, provided that if the Board does not recommend to the stockholders that they approve the Transaction Resolutions at any such Transaction Stockholder Meeting and the Transaction Stockholder Approval is not obtained, the Company shall cause an additional Transaction Stockholder Meeting to be held each calendar quarter thereafter until such Transaction Stockholder Approval is obtained.

(ii) Additional Stockholder Approval. The Company shall prepare and file with the SEC, as promptly as practicable after the date of the conversion of the Series A Preferred Stock of the Company into Common Stock, but in no event later than the date that is twenty (20) calendar days after the Closing Date, an information statement (the **Additional Information Statement**), in a form reasonably acceptable to the Buyers and Schulte Roth & Zabel LLP, at the expense of the Company, not to exceed $5,000, informing the stockholders of the Company of the receipt of the consents of the holders of a majority of the outstanding voting securities of the Company, in form and substance reasonably satisfactory to the Buyers, approving the authorized share resolutions (the **Additional Resolutions** and collectively with the Transaction Resolutions, the **Resolutions**) that approve (x) the increase in the authorized shares of Common Stock of the Company from 225,000,000 shares to a number of shares of Common Stock that is no less than such number of shares of Common Stock that would permit the Company to reserve as of the date hereof from the authorized shares of Common Stock of the Company the Required Registration Amount (as defined in the Registration Rights Agreement) of Common Stock of the Company, (y) the amendment of the Certificate of Incorporation of the Company to provide that the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the outstanding voting securities of the Company, in accordance with applicable law and the rules and regulations of the Principal Market (the occurrence of (x) and (y), the (**Authorized Share Increase Event**), and (z) the amendment of the Certificate of Incorporation of the Company to eliminate Article VII thereof. In addition to the foregoing, if otherwise required by applicable law, rule or regulation, the Company shall prepare and file with the SEC a preliminary proxy statement with respect to a special or annual meeting of the stockholders of the Company (the **Additional Stockholder Meeting**), which shall be called as promptly as practicable after the date of the conversion of the Series A Preferred Stock of the Company into Common Stock, but in no event later than April 30, 2007 (the **Additional Stockholder Meeting Deadline**) soliciting each such stockholder s affirmative vote for approval of, to the extent not previously adopted, the Additional Resolutions (such affirmative approval being referred to herein as the **Additional Stockholder Approval** and the date such approval is obtained, the **Additional Stockholder Approval Date** and the Additional Stockholder Approval and the Transaction Stockholder Approval are collectively referred to as the **Stockholder Approval**), and the Company shall use its reasonable best efforts to solicit its stockholders approval of such Additional Resolutions and to cause the Board of Directors of the Company to recommend to the stockholders that they approve the Additional Resolutions. The Company shall be obligated to seek to obtain the Additional Stockholder Approval by the Additional Stockholder Meeting Deadline. If, despite the Company s reasonable best efforts, the Additional Stockholder Approval is not obtained on or prior to the Additional Stockholder Meeting Deadline, the Company shall cause an additional Additional Stockholder Meeting to be held every six (6) month period thereafter until the second anniversary of the Closing Date, whereafter such Additional Stockholder Meeting shall only be required to occur at the annual meeting of the Company held that year and each year thereafter until Additional Stockholder Approval is obtained, provided that if the Board does not recommend to the stockholders that they approve the Additional Resolutions at any such Additional Stockholder Meeting and the Additional Stockholder Approval is not obtained, the Company shall cause an additional Additional Stockholder Meeting to be held each calendar quarter thereafter until such Additional Stockholder Approval is obtained.

(iii) Stockholder Approval Waiver; Amendment. Notwithstanding anything in this Section 4(p) to the contrary, this Section 4(p) may only be waived or amended by the written consent of holders of all of the Aggregate Notes.

(q) Nomination of Prencen Director. For so long as Prencen or any of its affiliates owns (x) at least $5,000,000 in aggregate principal amount of the Notes outstanding, (y) at least $5,000,000 of stated value of any preferred stock of the Company or (z) at least 25% of the Series A Warrants purchased by Prencen or its affiliates, as applicable, and subject to limitations, if any, imposed by stock exchange rules in effect from time to time, the Company agrees to cause one (1) person designated by Prencen (the **Prencen Director**) to be nominated for election at every meeting of the stockholders of the Company called with respect to the election of members of the board of directors of the Company, and at every adjournment or postponement thereof, and on every action or approval by written consent of the stockholders or the board of directors with respect to the election of members of the board of directors of the Company so that at any time there shall be one (1) director designated by Prencen on the board of directors of the Company. Should a person designated pursuant to this Section 4(q) be unwilling or unable to serve, or otherwise cease to serve, the Company shall cause one (1) person designated by Prencen to replace such member on the board of directors. If Prencen desires to remove any person designated by Prencen pursuant to this Section 4(q), the Company shall cooperate with and shall support such removal and any vacancy shall be filled in accordance with the preceding sentence.

(r) Size of Board of Directors. Promptly following the Closing Date, the Company shall cause the Board of Directors of the Company to consist of seven (7) members. Thereafter, for so long as any Notes or Warrants remain outstanding and subject to the provisions of Section 4(q), the Company, with the unanimous approval of all members of the Board of Directors of the Company, may increase the size of the Board of Directors of the Company to consist of no more than nine (9) members provided that one (1) of such additional directors is a Prencen Director.

5. REGISTER; TRANSFER AGENT INSTRUCTIONS.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Notes, the Preferred Shares and the Warrants in which the Company shall record the name and address of the Person in whose name the Notes, the Preferred Shares and the Warrants have been issued (including the name and address of each transferee), the principal amount of the Notes, the number of Preferred Shares outstanding, the number of Conversion Shares issuable upon conversion of the Notes and the Preferred Shares and Warrant Shares issuable upon exercise of the Warrants held by such Person. The Company shall keep the register open and available at all times during business hours for inspection of any holder of any Aggregate Note or its legal representatives.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent, and any subsequent transfer agent, to issue certificates or credit shares to the applicable participant accounts at The Depository Trust Company (**DTC**), registered in the name of each Buyer or its respective nominee(s), for the Conversion Shares, and the Warrant Shares in such amounts as specified from time to time by each Buyer to the Company upon conversion of the Notes and Preferred Shares or exercise of the Warrants in the form of Exhibit H attached hereto (the **Irrevocable Transfer Agent Instructions**). The Company warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5(b), and stop transfer instructions to give effect to Section 2(g) hereof, will be given by the Company to its transfer agent with respect to the Securities, and that the Securities shall otherwise be freely transferable on the books and records of the Company, as applicable, and to the extent provided in this Agreement and the other Transaction Documents. If a Buyer effects a sale, assignment or transfer of the Securities in accordance with Section 2(g), the Company shall permit the transfer and shall promptly instruct its transfer agent to issue one or more certificates or credit shares to the applicable participant accounts at DTC in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment. In the event that such sale, assignment or transfer involves Conversion Shares or Warrant Shares sold, assigned or transferred pursuant to an effective registration statement or pursuant to Rule 144, the transfer agent shall issue such Securities to the Buyer, assignee or transferee, as the case

may be, without any restrictive legend. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that a Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

(c) Pledges. 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, 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, including without limitation Section 2(g).

6. CONDITIONS TO THE COMPANY S OBLIGATION TO SELL.

The obligation of the Company hereunder to sell the Notes to Prencen Lending at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company s sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(a) Such Buyer shall have executed each of this Agreement, the Registration Rights Agreement, the Security Agreement, the Intercreditor Agreement and the Intercompany Subordination Agreement and delivered the same to the Company.

(b) Prencen Lending shall have delivered to the Company the Amended Note for cancellation.

(c) Prencen Lending shall have delivered to the Company any stock certificates with respect to Subsidiaries of the Company held by Prencen Lending or for such certificates that cannot be located, certificates of lost certificate affidavit and indemnity in form and substance reasonably satisfactory to the Company and each such Subsidiary.

(d) Prencen Lending and Prencen shall have executed the Intercreditor Agreement (as defined in the Security Agreement) and delivered the same to the Company, Prencen and the Agent (as defined in the Security Agreement).

(e) The representations and warranties of such Buyer shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects) as of the Closing Date (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

(f) The Buyers shall have delivered the instruments necessary to terminate effectiveness of the Terminated Documents, including, without limitation, mortgage releases, re-assignments or releases of trademarks, copyrights and patents as are necessary to release, as of record, the security interests previously recorded with respect to the Terminated Documents.

(g) Concurrently with the Closing herewith, the transactions contemplated by the Other Securities Purchase Agreement shall be consummated.

7. CONDITIONS TO EACH BUYER S OBLIGATION TO PURCHASE.

The obligation of Prencen Lending hereunder to purchase the Notes at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Buyer s sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) The Company and each Subsidiary, as applicable, shall have duly executed and delivered to such Buyer (i) each of the Transaction Documents and (ii) the Notes being acquired by such Buyer at the Closing pursuant to this Agreement (in such principal amounts as is set forth across from such Buyer s name in column (3) of the Schedule of Buyers), if any.

(b) Concurrently with the Closing herewith, (i) the transactions contemplated by the Other Securities Purchase Agreement and (ii) the Acquisition shall be consummated.

(c) The Company shall have delivered to Prencen Lending the Acquisition Payoff Amount by wire transfer of immediately available funds pursuant to the wire instructions provided by Prencen Lending.

(d) The Company shall have delivered to Schulte Roth & Zabel LLP the Legal Expense Amount by wire transfer of immediately available funds pursuant to the wire instructions provided by Schulte Roth & Zabel LLP.

(e) Such Buyer shall have received the opinion of Kramer Levin Naftalis & Frankel LLP the Company s outside counsel, dated as of the Closing Date, in substantially the form of Exhibit I attached hereto.

(f) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, in the form of Exhibit H attached hereto, which instructions shall have been delivered to and acknowledged in writing by the Company s transfer agent.

(g) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company and each of its Subsidiaries in each such entity s jurisdiction of formation issued by the Secretary of State (or equivalent) of such jurisdiction of formation as of a date within ten (10) days of the Closing Date.

(h) The Company shall have delivered to such Buyer a certified copy of the Certificate of Incorporation as certified by the Secretary of State of the State of Delaware within ten (10) days of the Closing Date.

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(i) The Company shall have delivered to such Buyer a certificate, executed by the Secretary of the Company and dated as of the Closing Date, as to (x) the resolutions consistent with Section 3(b) as adopted by the Company s board of directors in a form reasonably acceptable to such Buyer, (y) the Certificate of Incorporation and (z) the Bylaws, each as in effect at the Closing, in the form attached hereto as Exhibit J.

(j) The representations and warranties of the Company shall be true and correct as of the date when made and as of the Closing Date as though made at that time (except (x) for representations and warranties that shall not be true and correct as of the date when made and/or as of the Closing Date as though made at that time, in each case solely by virtue of the Stockholder Approval not being obtained as of the date when made and/or as of the Closing Date and the amendments to the Certificate of Incorporation of the Company not having been filed with the Secretary of State of Delaware to effectuate the amendments specified in clauses (x) and (y) of Section 4(p)(ii) as of the date when made and/or as of the Closing Date and (y) for representations and warranties that speak as of a specific date) and the Company and each of its Subsidiaries shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company and each of its Subsidiaries at or prior to the Closing Date (except for any breach of any such covenants or agreements solely by virtue of the Stockholder Approval not being obtained at or prior to the Closing Date and the amendments to the Certificate of Incorporation of the Company not having been filed with the Secretary of State of Delaware to effectuate the amendments specified in clauses (x) and (y) of Section 4(p)(ii) at or prior to the Closing Date). Such Buyer shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form attached hereto as Exhibit K.

(k) The Company shall have delivered to such Buyer a letter from the Company s transfer agent certifying the number of shares of Common Stock outstanding as of a date within five days of the Closing Date.

(l) The Common Stock (i) shall be designated for quotation or listed on the Principal Market and (ii) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (x) in writing by the SEC or the Principal Market or (y) by falling below the minimum maintenance requirements of the Principal Market.

(m) Other than the Stockholder Approval, the Company shall have obtained all governmental, regulatory and/or third party consents and approvals, if any, necessary for the issuance of the Securities.

(n) The Company shall have delivered to such Buyer (i) the Transaction Stockholder Consent executed by holders of a majority of the outstanding voting securities of the Company (the **Stockholders**) in the form attached hereto as Exhibit G and (ii) duly executed voting agreements of the Stockholders, in the form attached hereto as Exhibit L (the **Voting Agreements**), whereby the Stockholders shall agree to vote in favor of the Resolutions and to vote in favor of one Person designated by Prencen to serve on the board of directors of the Company as and to the extent provided in Section 4(q).

(o) Watershed shall have executed the Intercreditor Agreement and delivered the same to the Company, Prencen Lending and the agent thereto.

(p) The Company shall have delivered to such Buyer such other documents relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

8. TERMINATION.

In the event that the Closing shall not have occurred with respect to a Buyer on or before fifteen (15) Business Days from the date hereof due to the Company s or such Buyer s failure to satisfy the conditions set forth in Sections 6 and 7 above (and the nonbreaching party s failure to waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date without liability of any party to any other party; provided, however, if this Agreement is terminated pursuant to this Section 8, the Company shall remain obligated to reimburse the non-breaching Buyers for the expenses described in Section 4(g) above.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(b) Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

(e) Entire Agreement; Amendments. This Agreement and the other Transaction Documents supersede all other prior oral or written agreements between the Buyers, the Company, their affiliates and Persons acting on their behalf with respect to the matters discussed herein, and this Agreement, the other Transaction Documents and the instruments referenced herein and therein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company, the holders of at least a majority in aggregate principal amount of the Notes and the holders of at least a majority in aggregate principal amount of the Aggregate Notes, and any amendment to this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable. No provision hereof may be waived (except to the extent such provisions call for the consent of the Required Holders or holders of at least a majority in aggregate principal amount of the Notes or Aggregate Notes, in which case such provision may be waived with the consent of the Required Holders or holders of at least a majority in aggregate principal amount of the Notes or Aggregate Notes, as applicable) other than by an instrument in writing signed by the party against whom enforcement is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Aggregate Notes then outstanding. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any Transaction Document unless the same consideration also is offered to all of the parties to such particular Transaction Document. The Company has not, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents, which have been provided to the Other Buyers. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to the Company, its Subsidiaries or otherwise.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically

generated and kept on file by the sending party); or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

Ascendia Brands, Inc.

100 American Metro Boulevard
Suite 108
Hamilton, NJ 08619
Telephone: (609) 219-0930
Facsimile: (609) 890-8458