Orchard Enterprises, Inc.
Form PREM14A
April 27, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant	x
Filed by a Party other than the Registrant	o

Check the appropriate box:

x	Preliminary Proxy Statement
o	**Confidential, for Use of the Commission Only (as Permitted by Rule 14a-6(e)(2))**
o	Definitive Proxy Statement
o	Definitive Additional Materials
o	Soliciting Material under Rule 14a-12

THE ORCHARD ENTERPRISES, INC.

(Name of Registrant as Specified in Its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

o	No fee required.
x	Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11

(1) Title of each class of securities to which transaction applies:
Common Stock, par value $0.01 per share, of The Orchard Enterprises, Inc. (Common Stock)

(2) Aggregate number of securities to which transaction applies:
3,645,888 shares of Common Stock[(1)]

(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):

The maximum aggregate value of the transaction was determined by multiplying 3,645,882 shares of Common Stock by $2.05 per share, the per share cash merger consideration.[2] In accordance with Exchange Act Rule 0-11(c), the filing fee was determined by multiplying 0.00007130 by the amount of the preceding sentence.

(4) Proposed maximum aggregate value of transaction:
$7,474,070

(5) Total fee paid:
$532.90

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:

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

(3) Filing Party:

(4) Date Filed:

(1) Includes 5,963 shares of Common Stock that are issuable upon conversion of 1,789 shares of The Orchard Enterprises, Inc.'s Series A convertible preferred stock held by non-affiliates of Dimensional Associates, LLC.

(2) Each outstanding and unexercised stock option and stock appreciation right has an exercise price per share greater than $2.05 and, consequently, holders thereof will not receive any cash merger consideration at the effective time of the merger. Nonetheless, pre-merger option and stock appreciation rights holders will receive a contingent right to their portion, if any, of any additional consideration in the event of a resale transaction, as described more fully herein. Because the amount of such additional consideration, if any, is not determinable at this time, it has not been included in the calculation of the maximum aggregate value of the transaction.

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PRELIMINARY PROXY STATEMENT, SUBJECT TO COMPLETION
DATED APRIL 27, 2010

THE ORCHARD ENTERPRISES, INC.
23 East 4th Street, 3rd Floor
New York, New York 10003

To Our Stockholders:

On , 2010, The Orchard Enterprises, Inc. will hold its 2010 Annual Meeting of Stockholders at the offices of Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 10112. The meeting will begin at 10:00 a.m., Eastern Daylight Time. The Board of Directors has fixed the close of business on , 2010 as the record date for the purpose of determining the stockholders entitled to receive notice of and vote at the annual meeting and any adjournment or postponement of the annual meeting.

At the annual meeting, you will be asked to consider and vote upon a proposal to approve and adopt the Agreement and Plan of Merger dated as of March 15, 2010, as amended, among The Orchard Enterprises, Inc., a Delaware corporation, Dimensional Associates, LLC, a New York limited liability company, and Orchard Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Dimensional Associates, and the transactions contemplated thereby. If the merger is completed, the Company s stockholders, other than Dimensional Associates and its affiliates, will have the right to receive, for each share of our common stock they hold at the time of the merger, $2.05 in cash and a contingent right to receive additional consideration, under certain circumstances if Dimensional Associates or The Orchard or any of their affiliates enters into a commitment to sell at least 80% of The Orchard s voting securities or assets within six months of the consummation of the merger.

After careful consideration, our Board of Directors has determined that the merger is advisable and that the terms of the merger are fair to, and in the best interest of, the company and its stockholders and, therefore, has approved the merger agreement and the transactions contemplated thereby, including the merger, and recommends that you vote FOR approval of the merger agreement and the transactions contemplated thereby. This recommendation is based upon the unanimous recommendation of a special committee of the Board of Directors consisting of five independent and disinterested directors.

In addition, you are being asked at the annual meeting (1) to approve an amendment to the Certificate of Designations of our Series A convertible preferred stock, necessary to permit the transactions contemplated by the merger agreement to be effected, (2) to elect seven (7) directors, each for a one (1) year term, until his successor is duly elected and qualified, (3) to ratify the appointment of Marcum LLP as our independent registered public accounting firm for fiscal year 2010 and (4) to approve the adjournment of the annual meeting, if necessary, to permit further solicitation and vote of proxies if there are insufficient votes at the time of the annual meeting to approve the merger and to approve and adopt the merger agreement. Our Board of Directors unanimously recommends that you vote (1) FOR the amendment to our Certificate of Designations, (2) FOR the election of each nominee for director as proposed, (3) FOR the ratification of our independent registered public accounting firm for fiscal year 2010 and (4) FOR the adjournment of the annual meeting, if necessary, to permit further solicitation and vote of proxies if there are insufficient votes at the time of the annual meeting to approve the merger and to approve and adopt the merger agreement. The accompanying notice of annual meeting and proxy statement provide information regarding the

matters to be acted on at the annual meeting, including any adjournment or postponement of the annual meeting. Please read these materials carefully.

YOUR VOTE IS VERY IMPORTANT, regardless of the number of shares you own. We cannot complete the merger unless the holders of a majority of all the outstanding shares of the company s voting securities entitled to vote on the matter, other than voting securities held by Dimensional Associates and its affiliates,

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vote to approve the merger and to approve and adopt the merger agreement. Once you have read the accompanying materials, please take the time to vote on the matters submitted to stockholders at the annual meeting, whether or not you plan to attend the annual meeting. I urge you to vote your shares promptly by using the telephone or Internet or by signing and returning the enclosed proxy card. Voting by proxy will not prevent you from voting your shares in person if you subsequently choose to attend the annual meeting in person. Your vote in person will revoke any proxy previously submitted.

If your shares are held in street name by your broker, bank or other nominee, your broker, bank or other nominee will be unable to vote your shares on the merger proposal or any of the other proposals, other than the ratification of the appointment of our independent registered public accounting firm, without instructions from you. You should instruct your broker, bank or other nominee to vote your shares by following the procedures provided by your broker, bank or other nominee.

Our Board of Directors and management urge you to vote FOR all of the proposals.

Sincerely,

Michael J. Donahue
Chair of the Special Committee and
Chairman of the Board of Directors

Neither the Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger or passed upon the adequacy or accuracy of the disclosure in this document. Any representation to the contrary is a criminal offense.

The proxy statement is dated , 2010, and is first being mailed to stockholders on or about , 2010.

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THE ORCHARD ENTERPRISES, INC.

23 East 4th Street, 3rd Floor
New York, New York 10003

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
To Be Held , 2010

To Our Stockholders:

On , 2010, The Orchard Enterprises, Inc., a Delaware corporation (the Company or Orchard), will hold its 2010 Annual Meeting of Stockholders at the offices of Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 10112. The meeting will begin at 10:00 a.m., Eastern Daylight Time, for the following purposes:

1. To consider and vote on a proposal to approve and adopt the Agreement and Plan of Merger dated as of March 15, 2010, as amended, among The Orchard Enterprises, Inc., a Delaware corporation, Dimensional Associates, LLC, a New York limited liability company, and Orchard Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Dimensional Associates, and to approve the merger and the other transactions contemplated thereby (the Merger Proposal).
2. To approve an amendment to the Certificate of Designations of the Series A convertible preferred stock (the Certificate Amendment Proposal) that would permit The Orchard to consummate the merger as contemplated by the merger agreement, without which amendment the merger consideration that our common stockholders would otherwise receive in the merger would be required to be allocated first to holders of our Series A convertible preferred stock, primarily Dimensional Associates, to satisfy their right to a liquidation preference.
3. To elect the seven (7) nominees named in the attached proxy statement to our Board of Directors to serve a one (1) year term.
4. To ratify the appointment of our independent registered public accounting firm for fiscal year 2010.
5. To approve the adjournment of the annual meeting, if necessary, to permit further solicitation and vote of proxies if there are insufficient votes at the time of the annual meeting to approve the merger and to approve and adopt the merger agreement (the Adjournment Proposal).
6. To transact such other business as may properly come before the meeting or any adjournment or postponement of the meeting.

Only stockholders who owned shares of our common stock or our Series A convertible preferred stock at the close of business on , 2010 will be entitled to notice of, and to vote at, this meeting or any adjournments or postponements of the meeting. A complete list of stockholders entitled to vote at the meeting will be available for examination by any stockholder, for any purpose relating to the meeting, during ordinary business hours at our principal offices located at 23 East 4th Street, 3rd Floor, New York, New York 10003, at least ten days before the meeting.

We urge you to read the accompanying proxy statement carefully as it sets forth details of each proposal to be voted on, including the proposed merger and other important information related to the merger.

Under Delaware law, if the merger is completed, holders of our common stock who do not vote in favor of approval and adoption of the merger agreement will have the right to seek appraisal of the fair value of their shares as determined by the Delaware Court of Chancery. In order to exercise your appraisal rights, you must (i) submit a written demand for an appraisal prior to the stockholder vote on the merger agreement,

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(ii) not vote in favor of approval and adoption of the merger agreement and (iii) comply with other Delaware law procedures explained in the proxy statement.

Your vote is important and we urge you to submit your proxy for voting at the annual meeting on the Internet, by telephone or by completing, signing, dating and returning your proxy card as promptly as possible by mail, whether or not you expect to attend the annual meeting. If you are unable to attend in person and you return your properly executed proxy card in time for the annual meeting, your shares will be voted at the annual meeting in accordance with your instructions as reflected on your proxy. Properly executed proxies that do not contain voting instructions will be voted FOR the approval of the Merger Proposal, FOR the approval of the Certificate Amendment Proposal, FOR each director nominee, FOR the ratification of our independent public accounting firm and FOR approval of the Adjournment Proposal. If your shares are held in street name by your broker, bank or other nominee, only that holder can vote your shares unless you obtain a valid legal proxy from such broker, bank or nominee. You should follow the directions provided by your broker, bank or nominee regarding how to instruct such broker, bank or nominee to vote your shares.

The merger is described in the accompanying proxy statement, which we urge you to read carefully. A copy of the merger agreement and the amendments to the merger agreement are attached as Appendices A, A-1 and A-2 to the proxy statement.

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to be Held , 2010. Our proxy statement is attached. Financial and other information concerning The Orchard is contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2009 filed with the Securities and Exchange Commission (SEC) on March 25, 2010, a copy of which is enclosed with this proxy statement as part of our 2009 Annual Report to Stockholders. This proxy statement and our fiscal 2009 Annual Report are available on our website at *www.theorchard.com/about/investor-relations.* Additionally, and in accordance with SEC rules, registered stockholders may access our proxy materials at www.envisionreports.com/ORCD and beneficial stockholders may access our proxy materials at www.edocumentview.com/ORCD.

Your Board of Directors recommends that you vote in favor of the five proposals outlined in the proxy statement. Please refer to the proxy statement for detailed information on each of the proposals.

By Order of the Board of Directors,

Alexis H. Shapiro
Senior Vice President, General Counsel and Secretary

New York, New York
, 2010

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THE ORCHARD ENTERPRISES, INC.

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Summary Term Sheet

References to The Orchard , the Company , we , our or us in this proxy statement refer to The Orchard Enterprises, Inc. and its subsidiaries unless otherwise indicated by context. The following summary, together with Questions and Answers About the Merger and the Annual Meeting of Stockholders highlights selected information contained in this proxy statement. You should carefully read this entire proxy statement and the other documents to which this proxy statement refers you for a more complete understanding of the matters being considered at the annual meeting. In addition, this proxy statement incorporates by reference important business and financial information about The Orchard. You may obtain the information incorporated by reference into this proxy statement without charge by following the instructions under Where You Can Find More Information .

The Parties to the Merger (Page 53)

The Orchard Enterprises, Inc., a Delaware corporation, controls and distributes more than 1.8 million music and audio recordings and approximately 5,000 titles of video programming through digital stores, such as Amazon, eMusic, Hulu, iTunes, Rhapsody and YouTube, and mobile carriers, such as Orange, Telefonica, Verizon and 3, worldwide.

Dimensional Associates, LLC, a New York limited liability company, which we refer to as Dimensional Associates , is a private equity investment fund sponsored by JDS Capital, L.P.

Orchard Merger Sub., Inc., a Delaware corporation, which we refer to as Merger Sub , is a wholly owned subsidiary of Dimensional Associates. Merger Sub was formed solely for the purpose of entering into the merger agreement and consummating the transactions contemplated by the merger agreement. Merger Sub has not engaged in any business except for activities incident to its incorporation and in connection with the transactions contemplated by the merger agreement.

The Merger and its Effects (Page 54)

You are being asked to vote to approve and adopt the agreement and plan of merger dated as of March 15, 2010, as amended, among The Orchard, Dimensional Associates and Merger Sub, which agreement we refer to as the merger agreement , and to approve the merger and the other transactions contemplated by the merger agreement, which proposal we refer to as the Merger Proposal . Pursuant to the merger agreement, Merger Sub will merge with and into The Orchard, which we refer to as the merger . The Orchard will be the surviving corporation in the merger, which we refer to as the surviving corporation , and will continue to do business as The Orchard Enterprises, Inc. following the merger. Upon completion of the proposed merger, The Orchard will cease to be a publicly traded company and Dimensional Associates will own more than 99% of the outstanding securities of the Company, assuming that none of the current Series A convertible preferred stock holders convert their shares into common stock. As a result, you will no longer have any direct or indirect equity interest in The Orchard or any interest in our future earnings or growth, if any. Following completion of the merger, the registration of our common stock and our reporting obligations with respect to our common stock under the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act , are expected to be terminated. In addition, upon completion of the proposed merger, our shares of common stock will no longer be listed on the Nasdaq Stock Market.

Merger Consideration (Page 54)

Each share of our common stock issued and outstanding immediately prior to the effective time of the merger (other than shares of common stock held by Dimensional Associates, its affiliates or Merger Sub) will be automatically cancelled and converted at the effective time of the merger into the right to receive the following merger consideration: (1) $2.05 in cash, which we refer to as the cash merger consideration , and (2) a contingent right to receive a share of additional merger consideration, which we refer to as the additional consideration .

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The additional consideration will be paid, if on or prior to the six-month anniversary of the consummation of the merger, we, Dimensional Associates or any of our respective affiliates enter into a commitment, which we refer to as a resale transaction , to sell at least 80% of our outstanding voting securities or at least 80% of our assets. The additional consideration will be an amount equal to 15% of the difference between our enterprise value in the resale transaction and our enterprise value immediately prior to the consummation of the merger, as calculated in accordance with the terms of the merger agreement, which amount we refer to as the resale profit . The portion of any additional consideration payable to a holder of our shares and, if applicable, our stock options, restricted stock and stock appreciation rights, will be calculated in accordance with the terms of the merger agreement.

Treatment of Options, Restricted Stock, Stock Appreciation Rights and Warrants (Page 56)

Immediately prior to the effective time of the merger and in accordance with the Amended and Restated Orchard Enterprises, Inc. 2008 Stock Plan, which we refer to as the Company Stock Plan, we will provide that:

each outstanding and unexercised stock option at the effective time of the merger will be cancelled, and the holder of the stock option will be entitled to receive (a) in consideration for the cancellation, a cash payment for each share of our common stock subject to the option, equal to the excess, if any, of the per share cash merger consideration over the option exercise price per share, less any required withholding taxes, and (b) in the event of a resale transaction, a cash payment for each share of our common stock subject to such option equal to the excess, if any, of the per share cash merger consideration plus the per share additional consideration over the option exercise price per share, less any merger consideration amounts already received by the holder for such stock options, and less any required withholding taxes;

each share that is subject to a restricted share award that is outstanding immediately prior to the effective time of the merger will vest and become free of all restrictions at the effective time of the merger, and the holder of the restricted stock award will be entitled to receive the per share cash merger consideration and the per share additional consideration, if any, from us in exchange for each restricted share, less any required withholding taxes;

each outstanding and unexercised stock appreciation right at the effective time of the merger will be cancelled, and the holder of the stock appreciation right will be entitled to receive (a) in consideration for the cancellation, a cash payment for each share of our common stock subject to the stock appreciation right equal to the excess, if any, of the per share cash merger consideration over the stock appreciation right exercise price per share, less any required withholding taxes, and (b) in the event of a resale transaction, a cash payment for each share of our common stock subject to such stock appreciation right equal to the excess, if any, of the per share cash merger consideration plus the per share additional consideration over the stock appreciation right exercise price per share, less any merger consideration amounts already received by the holder for such stock appreciation rights, and less any required withholding taxes; and

each warrant that is outstanding and unexercised at the effective time of the merger will remain outstanding, subject to its terms.

Each outstanding and unexercised stock option and stock appreciation right under the Company Stock Plan has an exercise price greater than $2.05 and, consequently, holders thereof will not receive any cash merger consideration at the effective time of the merger.

Interests of Certain Persons in the Merger (Page 41)

In considering the recommendation of the special committee and our board of directors with respect to the merger agreement, you should be aware that some of our directors and executive officers have interests in the merger that are

different from, or in addition to, the interests of our stockholders generally. These interests include, among others:

- Mr. Stein s employment with Dimensional Associates and its affiliates and his continued ownership of an equity interest in The Orchard after the consummation of the merger;

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the acceleration of and payment for outstanding restricted stock awards held by our officers and directors as a result of the merger;

the continued indemnification and directors and officers liability insurance coverage to be provided by the surviving corporation to The Orchard s current and former officers and directors;

compensation paid to certain directors serving on the special committee; and

a retention arrangement for our senior vice president, general counsel and secretary.

The special committee and our board of directors were aware of these interests and considered them, among other matters, in reaching their decision to approve the merger agreement and recommend that The Orchard s stockholders vote in favor of approving and adopting the merger agreement.

Required Vote for Merger Proposal (Page 53)

The approval of the Merger Proposal will require the affirmative vote of:

(i) the holders of a majority of all of The Orchard s outstanding shares of voting stock as of the record date for the meeting, which vote we refer to as the Company Stockholder Approval ; and

(ii) the holders of a majority of The Orchard s outstanding shares of voting stock as of the record date for the annual meeting, other than shares of voting stock held by Dimensional Associates and its affiliates, which vote we refer to as the Minority Stockholder Approval .

Pursuant to the terms of the merger agreement, Dimensional Associates and its affiliates have agreed to vote their shares in favor of the Merger Proposal. Because Dimensional Associates and its affiliates hold approximately 54% of our voting stock as of the record date for the annual meeting, we expect that the Company Stockholder Approval will be obtained.

Abstentions and broker non-votes in the case of both the Company Stockholder Approval and the Minority Stockholder Approval will have the same effect as votes against the Merger Proposal.

Recommendation of the Special Committee and the Board of Directors (Page 24)

The special committee is a committee of our board of directors that was formed on October 19, 2009. The special committee has authority to establish, monitor and direct the process and procedures related to the review and evaluation of one or more proposals made to The Orchard by Dimensional Associates and any alternative transaction. The special committee had the authority to solicit other proposals, to determine not to proceed with any such proposal or transaction, to reject or approve any such proposal or transaction, or recommend such rejection or approval to the board of directors, and to recommend to the board of directors whether any such proposal or transaction is advisable and is fair to, and in the best interests of, The Orchard and its stockholders. The special committee unanimously determined that the merger, the consideration to be paid in the merger, and the other terms and provisions of the merger agreement are fair to, advisable and in the best interests of The Orchard and its unaffiliated stockholders. The special committee unanimously recommended that the board of directors approve and adopt the merger agreement and determine that the terms and conditions of the merger and the merger agreement are fair to, advisable and in the best interests of The Orchard and its unaffiliated stockholders, and recommend adoption of the merger agreement by the holders of The Orchard s common stock.

Our board of directors, acting upon the unanimous recommendation of the special committee and without the participation (either in the deliberations or voting) of Daniel Stein, a director of ours who is also an executive officer

and a director of Dimensional Associates, recommends that our stockholders vote FOR the Merger Proposal.

Opinion of Fesnak and Associates, LLP (Page 28 and Appendix C)

Fesnak and Associates, LLP (Fesnak), the special committee s financial advisors, delivered a written opinion, dated March 15, 2010, to the special committee that, as of March 15, 2010 and based upon the assumptions and limitations set forth therein, the merger consideration to be offered in the merger to the holders of our common stock (other than shares held by Dimensional Associates and its affiliates) was fair from a financial point of view to such holders.

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The full text of the written opinion of Fesnak, dated March 15, 2010, is attached as Appendix C to this proxy statement. The written opinion of Fesnak sets forth, among other things, the assumptions made, procedures followed, matters considered and limitations on the reviews undertaken in connection with rendering the opinion. Fesnak provided its opinion for the information and assistance of the special committee in connection with its consideration of the merger agreement. The Fesnak opinion is not a recommendation as to how any holder of our common stock should vote with respect to the merger or any other matter.

Restrictions on Solicitation of Other Offers (Page 62)

Until 12:01 a.m., Eastern Daylight Time, on April 22, 2010, referred to as the no-shop period start date , we and our subsidiaries (and our respective representatives) were permitted to:

initiate, solicit and encourage any Acquisition Proposals (as defined under The Merger Agreement Restrictions on Solicitations of Other Offers), including providing access to non-public information pursuant to confidentiality agreements; and

engage or enter into, continue or otherwise participate in any discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in or facilitate any such inquiries, proposals, discussions or negotiations.

From the no-shop period start date until the earlier of the effective time of the merger and the termination of the merger agreement, we and our subsidiaries are required not to (and shall cause our representatives not to), directly or indirectly:

solicit, initiate, induce or take any action for the purpose of encouraging or facilitating the making, submission or announcement of, any proposal that constitutes or could reasonably be expected to lead to an Acquisition Proposal;

engage in negotiations or discussions with any person with respect to an Acquisition Proposal;

furnish any non-public information to any person or afford access to our business, properties, assets, books and records in connection with any proposal that constitutes or could reasonably be expected to lead to an Acquisition Proposal;

approve, endorse or recommend, or propose to approve, endorse or recommend, any Acquisition Proposal;

approve or enter into any letter of intent, agreement in principle, memorandum of understanding or other agreement, contract or arrangement contemplating or otherwise relating to an Acquisition Proposal, or which would require us to terminate the merger agreement or any further discussions or negotiations between us and Dimensional Associates; or

terminate, amend, release or waive any rights under any standstill or other similar agreement between us or any of our subsidiaries and any person, other than Dimensional Associates.

Notwithstanding the restrictions described above, we may:

engage or participate in discussions or negotiations with any person that has made a bona fide Acquisition Proposal that the special committee reasonably determines in good faith constitutes or is reasonably likely to lead to a Superior Proposal (as defined under The Merger Agreement Restrictions on Solicitations of Other Offers); and

furnish to any person that has made a bona fide Acquisition Proposal that the special committee reasonably determines in good faith constitutes or is reasonably likely to lead to a Superior Proposal any non-public information relating to us or any of our subsidiaries pursuant to a confidentiality agreement with terms which are no less favorable to us than those contained in the confidentiality agreement with Dimensional Associates;

provided that, among other things, (1) we have not breached or violated certain provisions in the merger agreement regarding the restrictions on our ability to solicit proposals or offers and the ability of our board of directors to change its recommendation, (2) our board of directors or the special committee determines in good faith that failure to take such action would reasonably be expected to be inconsistent with its fiduciary

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duties under applicable law and (3) we have not entered into any agreement restricting our ability to negotiate, enter into and consummate a transaction with a third party other than such person.

Conditions to the Completion of the Merger (Page 67)

The obligations of The Orchard, Dimensional Associates and Merger Sub to complete the merger depend on a number of conditions being met. These conditions include, without limitation:

receipt of the Company Stockholder Approval;
receipt of the Minority Stockholder Approval;
the approval of the holders of a majority of all of The Orchard s outstanding shares of voting stock as of the record date for the annual meeting with respect to the proposal for an amendment to the Certificate of Designations of the Series A convertible preferred stock to provide that the holders of a majority of the then outstanding shares of Series A convertible preferred stock may consent to the non-application of certain provisions requiring the allocation of the consideration for any transaction constituting a Change of Control Event among the holders of the Series A convertible preferred stock and the common stock, which we refer to as the Certificate Amendment Proposal ;
the approval of the holders of a majority of all of The Orchard s outstanding shares of Series A convertible preferred stock as of the record date for the annual meeting with respect to the Certificate Amendment Proposal;
the absence of any governmental orders that have the effect of making the merger illegal or otherwise preventing the consummation of the merger;
each party s respective representations and warranties in the merger agreement being true and correct as of the closing date of the merger in the manner described in The Merger Agreement Conditions to the Completion of the Merger ;
each party s performance in all material respects of its obligations required to be performed under the merger agreement on or prior to the closing date of the merger;
the absence of a Company Material Adverse Effect (as defined in the merger agreement) since the date of the merger agreement; and
holders of 4% or more of our shares of common stock outstanding as of the record date not having properly exercised their dissenter s rights under Section 262 of the General Corporation Law of the State of Delaware, which we refer to as the DGCL .

Where the law permits, the parties to the merger agreement could choose to waive a condition to its obligation to complete the merger (other than the stockholder approval conditions in the first and second bullets above), although that condition has not been satisfied. We cannot be certain when, or if, the conditions to the merger will be satisfied or waived, or that the merger will be completed.

Termination of the Merger Agreement (Page 68)

The merger agreement may be terminated at any time prior to the effective time of the merger, whether before or after stockholder approval has been obtained:

by mutual written consent of The Orchard (at the direction of the special committee) and Dimensional Associates;
by either us (at the direction of the special committee) or Dimensional Associates, unless the failure of the merger to be consummated by such date was due to the party seeking to terminate breaching in any material respect its obligations under the merger agreement in any manner that is the proximate cause of or resulted in the failure of the condition to the consummation of the merger:
(1) if the merger has not been consummated by the termination date of September 15, 2010 (or, under certain circumstances, by October 15, 2010);
(2)

if the approval of the Merger Proposal by the requisite votes of the stockholders has not been obtained at the stockholders meeting or at any adjournment or postponement thereof; or

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(3) if a governmental entity issues a final, non-appealable order or takes action that permanently restrains, enjoins or otherwise prohibits consummation of the merger;

by us (at the direction the special committee), if:

(1) Dimensional Associates or Merger Sub has breached or failed to perform any of its representations, warranties, covenants or agreements made in the merger agreement, or any such representation and warranty has become untrue after the date of the merger agreement, which breach or failure would cause certain conditions to our obligation to effect the merger not to be satisfied and which cannot be cured by the earlier of September 15, 2010 or within 30 calendar days after receipt of our written notice to Dimensional Associates of such breach;

(2) the special committee approves The Orchard entering into an agreement constituting a superior proposal provided such approval is in accordance with the terms of the merger agreement; or

(3) Dimensional Associates and Merger Sub fail to consummate the merger under certain circumstances; or

by Dimensional Associates, if:

(1) we have breached or failed to perform any of our representations, warranties, covenants or agreements made in the merger agreement, or any such representation and warranty has become untrue after the date of the merger agreement, which breach or failure would cause certain conditions to Dimensional Associates obligation to effect the merger not to be satisfied and which cannot be cured by the earlier of September 15, 2010 or within 30 calendar days after receipt of Dimensional Associates written notice to us of such breach;

(2) our board of directors (or special committee) withdraws, modifies or changes its recommendation to our stockholders that they approve the merger and approve and adopt the merger agreement;

(3) we have failed to comply in any material respect with the restrictions on solicitations of other offers contained in the merger agreement;

(4) we have failed to include in this proxy statement our board of directors recommendation to our stockholders that they approve the merger and approve and adopt the merger agreement; or

(5) we fail to consummate the merger under certain circumstances.

Expense Reimbursement (Page 69)

Upon termination of the merger agreement under specified circumstances, including failure to obtain the requisite stockholder votes in favor of the Merger Proposal, we may be required to reimburse Dimensional Associates for their documented out-of-pocket expenses in connection with the proposed merger up to $350,000.

Share Ownership of Directors and Executive Officers (Page 50)

As of , 2010, the record date for the annual meeting, our directors (other than Mr. Stein) and executive officers had the right to vote, in the aggregate, 437,657 shares of our common stock, which represented approximately 7.2% of the outstanding shares of our common stock on the record date for the meeting. These directors and executive officers have informed us that they intend to vote all of their shares of common stock FOR the approval of the Merger Proposal, FOR the Certificate Amendment Proposal and FOR the Adjournment Proposal.

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Rights of Appraisal (Page 56)

Holders of our common stock who object to the merger may elect to pursue their appraisal rights to receive the judicially determined fair value of their shares, which could be more or less than, or the same as, the per share merger consideration for the common stock, but only if they comply with the procedures required under Delaware law. In order to qualify for these rights, you must (1) not vote in favor of approval and adoption of the merger agreement, nor consent thereto in writing, (2) make a written demand for appraisal prior to the taking of the vote on the approval and adoption of the merger agreement at the annual meeting and (3) otherwise comply with the Delaware law procedures for exercising appraisal rights. For a summary of these Delaware law procedures, see Appraisal Rights . An executed proxy that is not marked AGAINST or ABSTAIN will be voted for approval of the Merger Proposal and will disqualify the stockholder submitting that proxy from demanding appraisal rights. A copy of Section 262 of the DGCL is also attached as Appendix D to this proxy statement. Failure to follow the procedures set forth in Section 262 of the DGCL will result in the loss of appraisal rights.

Market Price of Our Common Stock (Page 73)

On October 14, 2009, the last trading day before Dimensional Associates first presented its acquisition proposal to The Orchard s board of directors, the high and low sales prices of our common stock were $1.50 and $1.35, respectively. The cash merger consideration of $2.05 per share represents a premium of approximately 52% over the closing trading price of $1.35 per share on October 14, 2009. On March 15, 2010, the last trading day before we announced the execution of the merger agreement, the high and low reported sales price of our common stock was $1.66. The cash merger consideration of $2.05 per share represents a premium of approximately 23% over the closing trading price of $1.66 per share on March 15, 2010, and approximately 19% over the average closing prices of our common stock for the 30-trading day period ending on March 15, 2010. On April 23, 2010, the most recent practicable date before the printing of this proxy statement, the high and low reported sales prices of our common stock were $2.01 and $2.00, respectively. You are urged to obtain a current market price quotation for our common stock.

Material United States Federal Income Tax Consequences (Page 43)

The receipt of the per share merger consideration and the per share additional consideration, as applicable, by a U.S. holder will be a taxable transaction for U.S. federal income tax purposes. The amount of gain or loss a U.S. holder recognizes, and the timing and potentially the character of a portion of such gain or loss, depends on the U.S. federal income tax treatment of the right to receive the per share additional consideration, with respect to which there is substantial uncertainty. Any gain realized by a non-U.S. holder as a result of the receipt of the per share merger consideration and the per share additional consideration will generally not be subject to U.S. federal income tax, except in certain situations. Please see the section entitled Material United States Federal Income Tax Consequences of the Merger to our Stockholders below for a more detailed discussion. **Stockholders should consult their tax advisors regarding the U.S. federal income tax considerations relevant to the merger, as well as the effects of state, local, and foreign tax laws.**

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QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE ANNUAL MEETING OF STOCKHOLDERS

The following questions and answers are intended to address briefly some commonly asked questions regarding the merger, the merger agreement and the 2010 annual meeting. These questions and answers may not address all questions that may be important to you as an Orchard stockholder. Please refer to the Summary Term Sheet and the more detailed information contained elsewhere in this proxy statement, the annexes to this proxy statement and the documents referred to or incorporated by reference in this proxy statement, which you should read carefully.

Q: When and where is the annual meeting?

A: The annual meeting of stockholders will be held on , 2010, 10:00 a.m., Eastern Daylight Time, at Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 10112. The approximate date on which this proxy statement and the accompanying proxy card will first be sent or given to stockholders is , 2010.

Q: What matters will be voted on at the annual meeting?

A: At the annual meeting of stockholders, and any postponements or adjournments thereof, you will be asked to consider and vote on the following proposals:

To approve the Merger Proposal;
To approve the Certificate Amendment Proposal;
To elect the seven (7) nominees named in the attached proxy statement to our board of directors to serve a one (1) year term;
To ratify the appointment of our independent registered public accounting firm for fiscal year 2010;
To approve the adjournment of the annual meeting, if necessary, to permit further solicitation and vote of proxies if there are insufficient votes at the time of the annual meeting to approve the Merger Proposal, which we refer to as the Adjournment Proposal ; and
To transact such other business as may properly come before the meeting or any adjournment or postponement of the meeting.

Q: How does the Board of Directors recommend that I vote on the proposals?

A: Our board of directors recommends that you vote FOR the approval of the Merger Proposal, FOR the approval of the Certificate Amendment Proposal, FOR all of the nominees for director, FOR the ratification of the appointment of our independent registered public accounting firm for fiscal year 2010 and FOR the Adjournment Proposal.

Q: Who is entitled to attend and vote at the annual meeting?

A: Stockholders of record holding The Orchard s voting securities as of the close of business on, 2010, the record date for the annual meeting, are entitled to vote at the annual meeting. As of the record date, there were 6,378,252 shares of The Orchard s common stock outstanding and 448,707 shares of Series A convertible preferred stock

outstanding. Every holder of The Orchard s common stock is entitled to one vote for each such share the stockholder held as of the record date and every holder of The Orchard s Series A convertible preferred stock outstanding is entitled to three and one-third (3 1/3) votes per share of our Series A convertible preferred stock held as of the record date.

If you want to attend the annual meeting and your shares are held in street name by your broker, bank or other nominee, you must bring to the annual meeting a proxy from the record holder (your broker, bank or nominee) of the shares authorizing you to vote at the annual meeting.

Q: What constitutes a quorum for the annual meeting?

A: The required quorum for the transaction of business at the annual meeting is a majority of the votes eligible to be cast by holders of shares of our common stock and Series A convertible preferred stock issued and outstanding on the record date voting together as a single class. Shares that are voted FOR , WITHHOLD , ABSTAIN or AGAINST matter are treated as being present at the annual meeting for

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purposes of establishing a quorum. In the event that there are not sufficient votes for a quorum, the annual meeting may be adjourned in order to permit further solicitation of proxies. However, the presence in person or by proxy of Dimensional Associates, our majority stockholder, will assure that a quorum is present at the meeting.

Q: What vote is required to approve the Merger Proposal?

A: The approval of the Merger Proposal will require the affirmative vote of:

(i) the holders of a majority of all of The Orchard s outstanding shares of voting stock as of the record date which vote we refer to as the Company Stockholder Approval ; and

(ii) the holders of a majority of The Orchard s outstanding shares of voting stock as of the record date, other than Dimensional Associates and its affiliates, which vote we refer to as the Minority Stockholder Approval .

Pursuant to the terms of the merger agreement, Dimensional Associates and its affiliates have agreed to vote their shares in favor of the Merger Proposal. Because Dimensional Associates and its affiliates hold approximately 54% of our voting stock as of the record date for the annual meeting, we expect that the Company Stockholder Approval will be obtained.

Abstentions and broker non-votes in the case of both the Company Stockholder Approval and the Minority Stockholder Approval will have the same effect as votes against the approval of the Merger Proposal.

Q: What vote is required to approve the Certificate Amendment Proposal?

A: The affirmative vote of the holders of a majority of our voting stock and the affirmative vote of the holders of a majority of our Series A convertible preferred stock, voting as a separate class, is required for the approval of the Certificate Amendment Proposal. Management of the Company anticipates that Dimensional Associates will vote all of its shares of common stock and Series A convertible preferred stock in favor of this proposal, and in such an event, the approval of the Certificate Amendment Proposal will be assured.

Q: What vote is required for the election of directors?

A: The seven (7) nominees for director receiving the highest number of affirmative votes cast at the annual meeting will be elected as a director.

Q: What vote is required to ratify the appointment of the Company s independent registered public accounting firm for the year ending December 31, 2010?

A: The affirmative vote of a majority of the votes cast on the proposal at the annual meeting is necessary for the ratification of our independent registered public accounting firm for the year ending December 31, 2010.

Q: What vote is required to approve the Adjournment Proposal?

A: Approval of the Adjournment Proposal requires the affirmative vote of the holders of a majority of The Orchard s shares of voting stock voting on the matter.

Q: Who is soliciting my vote?

A: The enclosed proxy is being solicited on behalf of our board of directors for use in voting at the annual meeting, including any postponements or adjournments thereof. We are paying for this proxy solicitation. In addition, we have retained Georgeson, Inc., which we refer to as Georgeson to assist in the solicitation. We will pay Georgeson (i) an initial fee of $8,000, (ii) $5.00 per phone call and per telephonic vote and (iii) $1.00 for each vote confirmation, plus out-of-pocket expenses for its assistance. Our directors, officers and employees may also solicit proxies by personal interview, mail, e-mail, telephone, facsimile or by other means of communication. These persons will not be paid additional compensation for their efforts. We will also request brokers and other fiduciaries to forward proxy solicitation material to the beneficial owners of shares of our common stock and the brokers and fiduciaries hold of record. We will reimburse them for their reasonable out-of-pocket expenses.

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Q: What do I need to do now?

A: After you carefully read this proxy statement in its entirety, consider how the merger affects you and then vote or provide voting instructions as described in this proxy statement. Even if you plan to attend the annual meeting, after carefully reading and considering the information contained in this proxy statement, if you hold your shares in your own name as the stockholder of record, please vote your shares by completing, signing, dating and returning the enclosed proxy card; using the telephone number printed on the enclosed proxy card; or using the Internet voting instructions printed on the enclosed proxy card. You can also attend the annual meeting and vote, or change your prior vote, in person. **Do NOT enclose or return your stock certificate(s) with your proxy**. If you hold your shares in street name through a broker, bank or other nominee, then you received this proxy statement from the nominee, along with the nominee s instruction card which includes voting instructions and instructions on how to change your vote.

Q: How do I vote? How can I revoke my vote?

A: You may vote by signing and dating each proxy card you receive and returning it in the enclosed prepaid envelope or as described below if you hold your shares in street name , or you may vote by telephone or electronically through the Internet as described below. If you return your signed proxy card, but do not mark the boxes showing how you wish to vote, your shares will be voted FOR the Merger Proposal, FOR the Certificate Amendment Proposal, FOR each of the director nominees, FOR the proposal ratifying the appointment of our independent public accounting firm and FOR the Adjournment Proposal. You have the right to revoke your proxy at any time before the vote taken at the annual meeting by:

delivering to our corporate secretary at our corporate offices at 23 East 4th Street, 3rd Floor, New York, New York 10003, or by fax to the attention of Alexis H. Shapiro, Secretary, at 866-625-7384, on or before the business day prior to the annual meeting, a written revocation of the proxy or a later dated, signed proxy card;
submitting a valid, later-dated proxy by telephone, via the Internet or by mail until immediately prior to the annual meeting; or
attending the annual meeting and voting in person (attendance at the meeting will not in itself constitute the revocation of a proxy; you must vote in person at the annual meeting).

If you have instructed a broker, bank or other nominee to vote your shares, you may revoke your proxy only by following the directions received from your broker, bank or other nominee to change those instructions.

Q: Can I vote by telephone or through the Internet?

A: If you hold your shares in your name as a stockholder of record, you may vote by telephone or electronically through the Internet by following the instructions included with your proxy card. If your shares are held by your broker, bank or other nominee, often referred to as held in street name , please check your instruction card or contact your broker, bank or nominee to determine whether you will be able to vote by telephone or electronically.

Q: If my shares are held by my broker, bank or other nominee, how do I vote my shares?

A: If your shares are held in a stock brokerage account, by a bank or by another nominee, then the broker, bank or other nominee is considered to be the stockholder of record with respect to those shares. However, you still are considered to be the beneficial owner of those shares, with your shares being held in street name . Street name holders

generally cannot vote their shares directly and must instead instruct the broker, bank or other nominee how to vote their shares. Your broker, bank or other nominee will be permitted to vote your shares for you only if you instruct them how to vote. Therefore, it is important that you promptly follow the directions provided by your broker, bank or other nominee regarding how to instruct them to vote your shares.

Q: If my shares are held by my broker, bank or other nominee,how do I vote my shares? 31

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In addition, because any shares you may hold in street name will be deemed to be held by a different stockholder than any shares you hold of record, shares held in street name will not be combined for voting purposes with shares you hold of record. To be sure your shares are voted, you should instruct your broker, bank or other nominee to vote your shares. Similarly, if you own shares in various registered forms, such as jointly with your spouse, as trustee of a trust or as custodian for a minor, you will receive, and will need to sign and return, a separate proxy card for those shares because they are held in a different form of record ownership. Shares held by a corporation or business entity must be voted by an authorized officer of the entity.

Q: What if I fail to instruct my broker, bank or other nominee how to vote?

A: Without instructions, your broker, bank or other nominee will not vote any of your shares held in street name on any of the proposals, other than the ratification of the appointment of the independent registered public accounting firm. For your shares to be voted on these matters, you must instruct your broker, bank or other nominee to vote your shares. When a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee has not received instructions from the beneficial owner, this is called a broker non-vote .

Q: What do I do if I receive more than one proxy or set of voting instructions?

A: If you receive more than one proxy, it means that you hold shares that are registered in more than one account. To ensure that all of your shares are voted, you will need to submit each proxy you receive.

Q: What happens if I do not vote or abstain from voting?

A: Abstentions and broker non-votes will have the same legal effect as a vote against the Merger Proposal and Certificate Amendment Proposal. Abstentions and broker non-votes are not counted as votes cast with respect to the election of directors, the ratification of our independent public accounting firm or the approval of the Adjournment Proposal. Accordingly, abstentions and broker non-votes will not have an effect on whether a director is elected, the ratification of our independent public accounting firm or the approval of the Adjournment Proposal.

Q: What will an Orchard stockholder receive when the merger occurs?

A: If the Merger is completed, you will receive for each share of our common stock that you own immediately prior to the effective time of the merger (i) $2.05 in cash and (ii) a right to receive, under certain circumstances, additional consideration, unless you exercise and perfect your appraisal rights under Delaware law.

Q: What happens if the merger is not completed?

A: If the Merger Proposal is not approved by our stockholders, or if the merger is not completed for any other reason, our stockholders will not receive any payment for their shares pursuant to the merger agreement. Instead, The Orchard will remain as a public company and our common stock will continue to be registered under the Exchange Act and

listed and traded on the Nasdaq Stock Market. Under specified circumstances, we may be required to reimburse Dimensional Associates for up to $350,000 of its documented out of pocket expenses, as described in The Merger Agreement Expense Reimbursement . In addition, the directors elected at the annual meeting would continue to serve as directors of The Orchard.

Q: When is the merger expected to be completed?

A: We are working toward completing the merger as quickly as possible, and we anticipate that it will be completed in the third quarter of 2010 or as soon as practicable thereafter. In order to complete the merger, we must obtain stockholder approval and the other closing conditions under the merger agreement must be satisfied or waived (as permitted by law and the merger agreement). See The Merger Agreement Conditions to Completion of the Merger .

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Q: Should I send my stock certificate now?

A: No. After the merger is completed, you will be sent a letter of transmittal with detailed written instructions for exchanging your shares of The Orchard s common stock for the merger consideration. If your shares are held in street name by your broker, bank or other nominee you will receive instructions from your broker, bank or other nominee as to how to effect the surrender of your street name shares in exchange for the merger consideration. Please do not send your certificates now.

Q: How can I obtain additional information about The Orchard?

A: We will provide a copy of our Annual Report to Stockholders, which includes our Annual Report on Form 10-K for the year ended December 31, 2009, as filed on March 25, 2010, excluding certain of its exhibits, and other filings, with the SEC, without charge to any stockholder who makes a written or oral request to the Secretary, The Orchard Enterprises, Inc., 23 East 4th Street, New York, New York 10003; telephone (212) 201-9280. Our Annual Report on Form 10-K and other SEC filings also may be accessed on the Internet at *www.sec.gov* or on the Investor Relations page of the Company s website at *www.theorchard.com*. Our website address is provided as an inactive textual reference only. The information provided on our website is not part of this proxy statement and, therefore, is not incorporated by reference. For a more detailed description of the information available, please refer to Where You Can Find More Information .

Q: Who can help answer my questions?

A: If you have additional questions about the merger or the other proposals to be voted on at the annual meeting after reading this proxy statement or need assistance voting your shares, please call our proxy solicitor, Georgeson, toll-free at (800) 509-0957. Banks and brokers should contact Georgeson at (212) 440-9800.

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SPECIAL FACTORS

Background of the Merger

Our board of directors and senior management continually review our long-term strategic plan with the goal of maximizing stockholder value. As part of this ongoing process, the board of directors has also periodically reviewed strategic alternatives.

On November 12, 2008, Daniel Stein, a director of ours and an executive officer and a director of Dimensional Associates, contacted Michael Donahue, our Chairman of the Board, and informed him that Dimensional Associates wanted to solicit parties interested in either acquiring The Orchard or participating in the acquisition by Dimensional Associates of all of our outstanding common stock not then owned by Dimensional Associates. Mr. Stein requested that the board of directors (i) permit management to cooperate with Dimensional Associates, (ii) enter into a non-disclosure agreement to permit Dimensional Associates to share confidential information with interested parties and (iii) authorize management to meet with interested parties. Dimensional Associates retained Canaccord Adams, Inc. as its investment advisor, and Dimensional Associates asked the board of directors for its approval to approach potential interested parties. Mr. Stein further requested that we provide a waiver permitting Dimensional Associates to retain Reed Smith LLP, the Company s regular outside legal counsel at that time, as its legal advisor in this matter. Upon conferring with our general counsel and reviewing our Security Trading Policy and Special Policy on Securities Trading for Directors, Mr. Donahue requested that the board of directors and certain management employees refrain from trading in our securities until such time that a potential transaction was announced or no longer a possibility.

On November 14, 2008, the board of directors determined that it was advisable and in the best interests of The Orchard and our stockholders to form a special committee to consider the unsolicited request of Dimensional Associates, to manage the solicitation process on behalf of The Orchard and to negotiate with Dimensional Associates and any prospective party that becomes interested in a transaction with The Orchard. In appointing members to the special committee, the board of directors considered (a) whether a director has a financial interest in the transaction different from the other stockholders (for example, a director appearing on both sides of a transaction or a director receiving a personal benefit from a transaction not received by the stockholders generally); (b) whether the transaction would entrench management or directors; (c) whether the decisions at issue would have a detrimental impact on the director, but not on The Orchard or our stockholders; (d) whether there is an indirect interest (including being beholden to an individual or entity interested in the transaction) and (e) whether the interest identified is material.

The board of directors determined that each of Messrs. Michael Donahue, Viet Dinh, Nathan Peck and Joel Straka was an independent member of the board of directors and each qualified as independent under NASDAQ rules. Each such director confirmed that he had no financial or other relationship with Dimensional Associates. The board of directors then appointed these four directors to serve on a special committee of the board of directors, which we refer to as the First Special Committee . Upon the formation of the First Special Committee, representatives of Reed Smith discussed the Delaware standards and law applicable to the proposed transactions with Dimensional Associates and explained the directors fiduciary duties under Delaware law.

At a meeting held on November 25, 2008, the First Special Committee resolved to engage Patterson Belknap Webb & Tyler LLP, which we refer to as Patterson Belknap , as its legal adviser and to appoint Mr. Donahue to serve as its Chairman. Patterson Belknap confirmed that it had not previously been engaged to provide services to The Orchard or Dimensional Associates. At the first meeting of the First Special Committee, representatives from Patterson Belknap reviewed the applicable Delaware legal standards, the First Special Committee s fiduciary duties under Delaware law

and the authority of the First Special Committee under the resolutions adopted by the board of directors.

At this meeting, the First Special Committee reviewed The Orchard s strategic alternatives and recent discussions between The Orchard and companies that had expressed interest in a transaction with The Orchard. One strategic buyer, which we refer to as Bidder A , and The Orchard had been engaged in on-and-off discussions about a potential transaction many times over the years, but nothing concrete had emerged from such discussions. The Orchard and Bidder A had entered into a non-disclosure agreement on November 5, 2008, but the discussions had not produced a term sheet or even an outline of a transaction.

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The First Special Committee determined to move forward with potential interested parties on a case-by-case basis. Further, the First Special Committee determined that depending on the type of proposed transaction, the First Special Committee would need to engage its own financial advisor and may need to conduct a formal independent solicitation of interested parties.

On November 19, 2008, we entered into an a non-disclosure agreement with Dimensional Associates pursuant to which Dimensional Associates was permitted (1) to review The Orchard s confidential information and (2) to provide The Orchard s confidential information to interested parties pursuant to a non-disclosure agreement with restrictions substantially identical to the one entered into between us and Dimensional Associates. The First Special Committee further established a process whereby no confidential information of The Orchard would be released to Dimensional Associates without it first having been reviewed and vetted by the First Special Committee.

At the request of Dimensional Associates, The Orchard and the First Special Committee compiled and reviewed financial and operational information about The Orchard to facilitate discussions by Dimensional Associates with Bidder A and other third parties. Our management developed a set of documents describing the core business, ancillary business, organization, infrastructure, competitive marketplace and financial projections, which were provided to Canaccord Adams for use in preparing an Information Memorandum distributed to interested parties. Our management also prepared, and the First Special Committee reviewed, a detailed response to a list of questions submitted by Bidder A on November 20, 2008. This response was provided to Bidder A on December 3, 2008.

Between November 2008 and March 2009, with the assistance of Canaccord Adams, Dimensional Associates contacted 53 potential strategic and financial buyers in addition to Bidder A, and distributed 34 Information Memoranda about The Orchard. We entered into non-disclosure agreements with eleven of these potential buyers, and our management conducted eight face-to-face business diligence meetings. None of these discussions, however, produced any credible offers and, after nearly five months of actively marketing The Orchard, Dimensional Associates and Canaccord Adams terminated the solicitation activities in March 2009.

Through March 2009, The Orchard continued its discussions with Bidder A and provided Bidder A with additional diligence materials. Ultimately, discussions with Bidder A did not produce any proposal. The First Special Committee held four meetings, on November 25, 2008, December 17, 2008, February 18, 2009 and March 13, 2009. The First Special Committee was never presented with any offers for its consideration, and after a period of inactivity, the First Special Committee was dissolved by the board of directors on April 17, 2009.

In September 2009, a representative of Craig-Hallum Capital Group LLC, which we refer to as Craig-Hallum , informed our board that it had identified a party interested in a potential transaction with The Orchard. Craig-Hallum had been introduced to us by Greg Scholl, then our Chief Executive Officer and a director, and had periodically contacted The Orchard about providing investment banking services, but we never engaged Craig-Hallum. On September 15, 2009, we entered into a non-disclosure agreement with Craig-Hallum to permit it to conduct due diligence and to prepare materials in connection with the interested party it had identified. Our management conducted face-to-face business diligence meetings with the interested party, but none of these discussions produced an offer and the interested party terminated discussions in early October 2009.

Going Private Transaction

On October 9, 2009, Mr. Stein contacted each of the independent directors (Mr. Donahue, David Altschul, Viet Dinh, Nathan Peck and Joel Straka) individually to inform them that, as part of its regular, ongoing review of its investments, Dimensional Associates was considering making a proposal to buy the outstanding shares of capital stock of The Orchard not already owned by Dimensional Associates. He further informed each of them that, while no

decisions had been made by Dimensional Associates as to any specific proposal, he wanted to raise the prospect for discussion with the board of directors at the next meeting of the board of directors. On October 13, 2009, the board of directors held a meeting at which, after the transaction of certain regular board business, Mr. Stein, acting in his capacity as a representative of Dimensional Associates, informed the board of directors that, as part of its regular, ongoing review of its investments,

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Dimensional Associates was considering making a proposal to buy the outstanding shares of capital stock of The Orchard not already owned by Dimensional Associates, but provided no specific details as to any proposed structure, price or other terms.

On October 15, 2009, Dimensional Associates delivered to our board of directors a letter in which Dimensional Associates proposed entering into non-binding discussions regarding a potential transaction whereby Dimensional Associates would acquire all of the outstanding shares of our common stock not then owned by Dimensional Associates at a price of $1.68 per share. We refer to the Dimensional Associates proposal as the Dimensional Proposal . Dimensional Associates also presented the board of directors with a form of exclusivity agreement, requiring us to cease, and refrain from initiating, discussions and activities that may lead to a third party proposal to consummate an alternative transaction.

On October 19, 2009, the board of directors (Messrs. Dinh and Peck being unable to attend) determined that it was advisable and in the best interests of The Orchard and our stockholders to form a special committee to review and evaluate the Dimensional Proposal. Following this determination, Mr. Stein and Greg Scholl withdrew from the meeting and did not participate in any further deliberations or voting at this meeting. In appointing members to the special committee, the board of directors considered (a) whether a director has a financial interest in a transaction with Dimensional Associates different from the other stockholders (for example, a director appearing on both sides of a transaction or a director receiving a personal benefit from a transaction not received by the stockholders generally); (b) whether a transaction with Dimensional Associates would entrench management or directors; (c) whether the decisions at issue would have a detrimental impact on the director, but not on The Orchard or our stockholders; (d) whether there is an indirect interest (including being beholden to an individual or entity interested in the transaction) and (e) whether the interest identified is material.

The board of directors determined, and each such director who was present confirmed, that each of Messrs. Donahue, Altschul and Straka is an independent member of the board of directors, and the board of directors appointed each of them to serve on the special committee of the board of directors, which we refer to as the special committee . Representatives of Chadbourne & Parke LLP, our outside legal counsel, which we refer to as Chadbourne , then discussed the Delaware standards and law applicable to the proposed transaction with Dimensional Associates and explained the directors fiduciary duties under Delaware law. At a subsequent meeting of the board held on October 20, 2009 (which included Messrs. Dinh and Peck, but not Mr. Stein), the board of directors determined, and each such director confirmed, that each of Messrs. Dinh and Peck is an independent member of the board of directors, and the board of directors appointed each of them to serve on the special committee.

The special committee held its first meeting on October 22, 2009 and resolved to engage Patterson Belknap as its legal adviser and to appoint Mr. Donahue to serve as its Chairman. Patterson Belknap had served as legal counsel to the First Special Committee until it was dissolved in April 2009 and confirmed that it had not provided services to The Orchard or Dimensional Associates since that date. Representatives from Patterson Belknap reviewed the applicable Delaware legal standards, the special committee s fiduciary duties under Delaware law and the authority of the special committee under the resolutions adopted by the board of directors, including the power of the special committee to reject the Dimensional Proposal in its entirety. At this meeting, the special committee reviewed the basic terms of the Dimensional Proposal, the process and timeline pursuant to which the special committee would evaluate the Dimensional Proposal and whether we should disclose publicly its receipt of the Dimensional Proposal.

On October 22, 2009, legal counsel for The Orchard, including representatives of each of Patterson Belknap and Chadbourne, as well as The Orchard s general counsel, and legal counsel for Dimensional Associates, Sonnenschein Nath & Rosenthal LLP, which we refer to as Sonnenschein , participated in a conference call to discuss the process and timing for consideration of and response by the special committee with respect to the Dimensional Proposal.

On October 22, 2009, Mr. Donahue and Mr. Stein discussed by telephone Mr. Stein s continued management role at The Orchard in light of the Dimensional Proposal and our consideration of whether and when to disclose publicly receipt of the Dimensional Proposal. Mr. Stein had been appointed Interim Chief Executive Officer in September 2009 effective October 1, 2009 to provide for an orderly management transition as a

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result of the announced resignation of Mr. Scholl as President, Chief Executive Officer and director effective November 1, 2009. In connection with the resignation of Mr. Scholl, in September 2009 our board of directors established a committee of the board, designated as the search committee , to identify a permanent replacement for Mr. Scholl as Chief Executive Officer. Mr. Stein was initially appointed a member of the search committee but was removed on October 20, 2009 in light of the Dimensional Proposal.

On October 24, 2009, the special committee held a meeting to discuss the Dimensional Proposal and Mr. Stein s continued management role at The Orchard and determined that due to Mr. Stein s conflicting interests as an executive of both Dimensional Associates and The Orchard, it was not desirable for Mr. Stein to continue to hold the position of Interim Chief Executive Officer of The Orchard while the special committee was negotiating a potential transaction with Dimensional Associates.

Following this meeting of the special committee, all of the members of the special committee held a meeting with Mr. Stein, acting in his capacity as an executive of Dimensional Associates, by telephone to discuss the Dimensional Proposal. Mr. Donahue informed Mr. Stein that the price offered by Dimensional Associates was too low and encouraged Dimensional Associates to increase its offer. Mr. Donahue further informed Mr. Stein that the special committee would be engaging an independent financial advisor to assist it in its review and evaluation. Finally, Mr. Donahue informed Mr. Stein of the special committee s determination regarding his continued role as Interim Chief Executive Officer if Dimensional Associates were interested in pursuing the Dimensional Proposal.

After this discussion with Mr. Stein, the special committee reconvened to continue its discussion of the Dimensional Proposal. The special committee authorized and directed Mr. Donahue to continue his search for firms to serve as the special committee s independent financial advisor.

Later in the day on October 24, 2009, Mr. Stein called Mr. Donahue to inform him that Dimensional Associates would be willing to increase its initial proposed price from $1.68 to $1.84 per share.

On October 27, 2009, in light of the parties desire to continue substantive discussions regarding the Dimensional Proposal and the special committee s determination, Mr. Stein resigned from his position as Interim Chief Executive Officer, and the board of directors appointed Mr. Bradley Navin, then our Executive Vice President and General Manager, as Interim Chief Executive Officer. After his resignation, Mr. Stein remained on the board as a director and chairman of the board s executive, nominating and corporate governance committee.

On October 28, 2009, the special committee engaged Fesnak and Associates, LLP, which we refer to as Fesnak , to be the financial advisor to the special committee. Fesnak had been recommended to the special committee by Patterson Belknap. Mr. Donahue interviewed three firms to be the special committee s financial advisor. Mr. Donahue recommended Fesnak to the special committee because of its competitive fee structure, reputation as a respected valuation firm and its independence from The Orchard and Dimensional Associates. Fesnak confirmed that it had not previously been engaged to provide services to The Orchard or Dimensional Associates and that it had no financial interest in the transaction other than its engagement by the special committee.

On October 30, 2009, we filed a Current Report on Form 8-K with the SEC to report the resignation of Mr. Stein as Interim Chief Executive Officer and the appointment of Mr. Navin as Interim Chief Executive Officer. In connection with the disclosure of the management change, we disclosed receipt of the Dimensional Proposal and the increase in the proposed price offered by Dimensional Associates from $1.68 to $1.84 per share. On November 2, 2009, Dimensional Associates filed an amendment to its Schedule 13D with the SEC to report the Dimensional Proposal and the change in its intent with respect to The Orchard.

From October 22, 2009 through November 7, 2009, the special committee and Dimensional Associates negotiated the terms of an exclusivity agreement and non-disclosure agreement. On October 26, 2009, at the direction of the special committee, Patterson Belknap informed Sonnenschein that the special committee would not agree to the exclusivity and non-solicitation restrictions in the exclusivity agreement because it wanted to facilitate potential third party interest in The Orchard. Dimensional Associates agreed, and the proposed exclusivity agreement was not entered into. On November 7, 2009, the parties entered into a non-disclosure agreement which permitted access by Dimensional Associates to our electronic data room and also

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prohibited Dimensional Associates from communicating with our management without the prior consent of the special committee (except for communications by Mr. Stein with other directors and with management during duly called meetings of the board or any of its committees).

On November 3, 2009, the special committee received the first of five communications from stockholders expressing interest in or concern about the Dimensional Proposal. These shareholder communications included requests for additional information about the special committee's evaluation process, suggestions that the special committee hire an independent financial advisor to value The Orchard and an investment bank to shop The Orchard, and recommendations that The Orchard reject the Dimensional Proposal and remain an independent public company. At a meeting held on November 3, 2009, the special committee established a procedure for communicating with such stockholders so that it could consider their input in its evaluation of the Dimensional Proposal. The special committee responded to four of the stockholders in writing and solicited such holders views of the value of The Orchard. The fifth shareholder communication was rendered moot by our public disclosure announcing the merger agreement. The special committee considered the views of these stockholders as it evaluated the Dimensional Proposal.

Also on November 3, 2009, the special committee was contacted by a minority stockholder, who we refer to as Bidder B , requesting information about the special committee s process and seeking direction about how to propose an alternative transaction.

On November 4, 2009, Mr. Donahue had a telephone meeting with Bidder B during which he explained the special committee s process and encouraged Bidder B to submit a proposal in writing for the special committee s consideration.

Also on November 4, 2009, Mr. Donahue contacted a potential strategic buyer that had previously expressed interested in a potential transaction with The Orchard. We refer to this potential buyer as Bidder C . Mr. Donahue held a further telephone conversation with Bidder C on November 11, during which Bidder C informed Mr. Donahue that it was not interested in pursuing a transaction with The Orchard at that time.

On November 7, 2009, the special committee received a letter from Bidder B, in which he requested to be considered for our Chief Executive Officer position and also stated his desire to propose an alternative transaction. Bidder B was included in a list of candidates to be considered for our Chief Executive Officer position and was vetted by the search committee of the board of directors. Bidder B was ultimately informed on February 22, 2010 that he would not be hired as our Chief Executive Officer.

On November 12, 2009, the special committee held a meeting to discuss the Dimensional Proposal. Representatives of Patterson Belknap and Fesnak attended the meeting. Representatives of Fesnak discussed its valuation methodologies and its analysis of The Orchard, and then answered questions posed by the special committee. Representatives of Patterson Belknap reviewed the fiduciary duties of the directors under applicable Delaware law and confirmed the right of the special committee under its authorizing resolutions to reject the Dimensional Proposal.

On November 18, 2009, Bidder B submitted to the special committee a written indication of interest to lead a group of investors in (1) the acquisition of all of the outstanding shares of our common stock (including those held by Dimensional Associates and its affiliates) for cash consideration in the range of $2.36 to $2.84 per share, (2) the acquisition of all of the outstanding shares of our Series A convertible preferred stock (including those held by Dimensional Associates and its affiliates) for a combination of cash and equity in the surviving entity, and (3) a possible concurrent combination with one or more third party entities in our industry. Bidder B stated that the transaction would be financed by a concurrent capital raise, and it submitted to the special committee letters of support from two investment banks. These investment bank letters were not financing commitment letters, but rather one-page acknowledgements that the investment firms named therein had engaged, and would continue to engage, in

discussions with Bidder B about the proposed transaction. Bidder B requested time to undertake a diligence review of The Orchard.

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On November 23, 2009, Mr. Donahue and Mr. Stein discussed the status of the Dimensional Proposal and the special committee s timeline for finishing its evaluation. Mr. Donahue pressed Mr. Stein to increase the price offered by Dimensional Associates. Mr. Donahue also informed Mr. Stein that the special committee had received an alternative proposal that offered a higher price per share for our common stock than Dimensional Associates had offered and included the acquisition of all of the outstanding shares of Series A convertible preferred stock. Mr. Stein indicated that Dimensional Associates would consider an alternative transaction as long as it provided the holders of the Series A convertible preferred stock with the full value of the liquidation preference of the Series A convertible preferred stock. The Orchard has a contractual obligation to holders of its Series A convertible preferred stock that requires it under certain circumstances including a transaction resulting in a change of control of The Orchard to pay such holders prior to any amounts being paid to the holders of our common stock a liquidation preference in cash equal to the greater of (1) $55.70 per share of Series A convertible preferred stock and (2) such amount per share as would have been payable had each share of Series A preferred stock been converted into common stock immediately prior to such transaction. Prior to this discussion, Dimensional Associates had not indicated that it would consider being a seller of its ownership position in The Orchard. Any third party proposing to acquire all of our outstanding shares of capital stock, including our shares of Series A convertible preferred stock, must satisfy the contractual obligation to pay to the holders of the Series A convertible preferred stock an aggregate amount equal to approximately $24.99 million in cash before any consideration is paid to the holders of our common stock.

At a meeting on November 24, 2009, the special committee reviewed the then current Dimensional Proposal and recent developments in The Orchard s business. Representatives of Patterson Belknap and Fesnak attended this meeting. Representatives of Fesnak discussed its analysis of The Orchard. Representatives of Patterson Belknap reviewed the fiduciary duties of the directors under applicable Delaware law in light of Bidder B s proposal.

The special committee also reviewed the proposal by Bidder B. The cash consideration offered by Bidder B for the shares of the common stock was higher than the Dimensional Proposal, but the special committee noted that the proposed acquisition of the outstanding shares of our Series A convertible preferred stock would require a direct negotiation between Bidder B and Dimensional Associates, as holder of 99% of such stock. Given the necessity of Dimensional Associates agreement to the success of Bidder B s proposed transaction, the special committee requested that Bidder B contact Dimensional Associates directly to determine whether it would sell its position in the Series A convertible preferred stock as proposed. The special committee also directed Mr. Donahue and Patterson Belknap to arrange giving Bidder B access to our electronic data room upon execution of a non-disclosure agreement. We entered into the special committee s standard non-disclosure agreement with Bidder B on November 30, 2009.

Also on November 30, 2009, at the direction of the special committee, Mr. Donahue again contacted Bidder C as well as another potential strategic buyer that had previously expressed interested in a potential transaction with The Orchard. Bidder C informed Mr. Donahue that it was now interested in a potential transaction with The Orchard and would further consider the matter internally. The other potential buyer informed Mr. Donahue that it was not interested in pursuing a transaction at this time.

On December 8, 2009, Mr. Donahue and Mr. Stein further negotiated the material terms of the proposed transaction and discussed the alternative proposal by Bidder B. Mr. Donahue pressed Mr. Stein to increase the price offered by Dimensional Associates.

The special committee was advised by Mr. Stein as follows: On December 10, 2009, Mr. Stein received from Bidder B a preliminary summary of the terms of a proposed transaction involving the acquisition by an investor group led by Bidder B of all of the shares of Series A convertible preferred stock owned by Dimensional Associates. Later that day, Mr. Stein received a call from Bidder B, during which the terms of the proposed transaction for the acquisition of Dimensional Associates shares of The Orchard s Series A convertible preferred stock were discussed. After an

extensive discussion of Bidder B s proposal, Mr. Stein informed Bidder B that Bidder B s proposal was not acceptable to Dimensional Associates due to the fact that (1) it did not contemplate a purchase by Bidder B of Dimensional Associates shares of The Orchard s Series A convertible preferred stock at their full liquidation value and (2) the consideration offered by Bidder B was a combination of cash, a promissory note and equity interests in the surviving entity, which, given the fact that

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Bidder B s proposal was conditioned upon Bidder B s obtaining third party financing for which commitments had not been secured by Bidder B, acceptance by Dimensional Associates of Bidder B s proposal would involve the assumption by Dimensional Associates of unacceptable additional completion and investment risk.

On December 11, 2009, the special committee received a letter from Bidder B withdrawing its proposal to acquire The Orchard. According to the letter, on December 10, 2009, Bidder B contacted Dimensional Associates and proposed acquiring all of the outstanding shares of our Series A convertible preferred stock for a combination of cash, a promissory note and equity in the surviving entity. Bidder B would lead an investor group in taking The Orchard private and simultaneously combining it with another entity in our industry. The transaction would be financed in part by a capital raise held concurrently with the acquisition. Dimensional Associates rejected Bidder B s bid and made a counteroffer. According to the letter, Bidder B rejected the counteroffer by Dimensional Associates because it was neither economically viable nor with solid financial justification .

The special committee held a meeting on December 11, 2009. Representatives of Patterson Belknap attended, and at the invitation of the special committee, Mr. Stein attended a portion of the meeting to describe the discussions between Dimensional Associates and Bidder B. Mr. Stein informed the special committee that Bidder B had proposed to purchase all of the outstanding shares of our Series A convertible preferred stock, but that Bidder B had not provided for the full cash payment of the Series A liquidation preference. Instead, Bidder B offered a combination of cash, debt obligations and equity in the surviving entity. Dimensional Associates made a counteroffer to Bidder B, asking that Bidder B purchase the outstanding Series A convertible preferred stock for an amount in cash equal to its liquidation preference. Bidder B rejected this counteroffer as economically infeasible. Though Dimensional Associates deemed Bidder B s proposal to be economically inadequate, Mr. Stein confirmed that Dimensional Associates would consider selling its position in The Orchard in a transaction that provided for the full cash payment of the liquidation preference as required by the terms of the Series A convertible preferred stock.

After Mr. Stein left the meeting, the special committee directed Mr. Donahue to contact Mr. Stein and inform Dimensional Associates that the special committee would consider a transaction with Dimensional Associates only if it met three conditions: (1) the price offered for the outstanding common stock must be at least in the range of $2.05 to $2.15 per share, subject to Fesnak s confirmation that such price would be fair; (2) the consummation of the merger must be subject to the affirmative vote of a majority of the minority stockholders; and (3) the merger agreement must provide for a go-shop period during which we could continue to solicit third party interest in an alternative transaction.

On December 14, 2009, Mr. Donahue contacted Mr. Stein to inform him of the special committee s conditions. Mr. Stein told Mr. Donahue that Dimensional Associates was not prepared to proceed with the transaction on such terms.

On December 15, 2009, Mr. Stein contacted Mr. Donahue and informed him that Dimensional Associates would agree to increase its offer price from $1.84 to $2.00 per share and that it would accept and support a go-shop period, but that it would not agree to the majority of the minority vote condition. Mr. Stein further confirmed that Dimensional Associates would be a willing seller pursuant to a credible bid that included the purchase of its holdings of our Series A convertible preferred stock at not less than its full liquidation preference.

On December 16, 2009, the special committee held a meeting to discuss the status of negotiations with Dimensional Associates. Mr. Donahue described his discussions with Mr. Stein and outlined the counteroffer made by Dimensional Associates on the previous day. The special committee determined it to be in the best interests of the minority stockholders to require a majority of the minority vote condition in approving the transaction with Dimensional Associates. In addition, the special committee discussed the increased price offered by Dimensional Associates and decided that it must continue to negotiate with Dimensional Associates to increase the price.

Also on December 16, 2009, Mr. Donahue received a call from Bidder C informing him that Bidder C had received corporate clearance to pursue a transaction with The Orchard. Patterson Belknap sent Bidder C the form of non-disclosure agreement on December 18, 2009.

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During the weeks of December 14 and 21, 2009, Mr. Donahue and Mr. Stein continued to discuss the special committee s price and majority of the minority vote conditions. On December 18, 2009, Mr. Stein contacted Mr. Donahue to inform him that the final offer from Dimensional Associates would be $2.10 per share with the go-shop provision but with a simple majority vote, not a majority of the minority vote condition.

On December 23, 2009, the special committee held a meeting to discuss the latest offer by Dimensional Associates. Representatives from Patterson Belknap and Fesnak participated in this meeting. Representatives of Patterson Belknap reviewed the majority of the minority vote condition and recent developments under Delaware law regarding such conditions. Representatives of Fesnak discussed its analysis of the valuation of The Orchard. The special committee discussed the revised Dimensional Proposal, including the increased price offered by Dimensional Associates and the legal and practical aspects of the majority of the minority vote condition. The special committee directed Mr. Donahue to push Dimensional Associates to accept the majority of the minority vote condition.

On December 28, 2009, another third party strategic buyer contacted us with an indication of interest in pursuing a transaction and, at the direction of the special committee, we sent the potential buyer the form of non-disclosure agreement approved by the special committee. Following a period of discussion regarding an appropriate form of non-disclosure agreement, including the potential buyer s form of non-disclosure agreement and a revised form of the special committee s form, the potential buyer withdrew its interest without further discussion on January 28, 2010, citing differences in approach.

In a letter to the special committee dated January 7, 2010, Dimensional Associates (a) reaffirmed its interest in acquiring the outstanding shares of our common stock other than those held by it and (b) described certain circumstances under which it would be willing to enter into a transaction with The Orchard, including (1) a price of $2.00 per share for each outstanding share of our common stock not held by it; (2) the consummation of the transaction would be subject to the affirmative vote of a majority of the minority shares; and (3) Dimensional Associates would be reimbursed for its expenses under certain standard termination events, including the failure to receive the majority of the minority vote. The letter stated that if Dimensional Associates did not receive a countersigned copy of the letter on or before January 21, 2010, then it would consider the letter and the revised Dimensional Proposal set forth in the letter to have been fully and finally rejected by the special committee.

On January 8, 2010, Mr. Stein contacted Mr. Donahue to discuss the Dimensional Proposal and the conditions for moving forward with a transaction. Mr. Stein explained that Dimensional Associates was willing to condition the consummation of the transaction on the approval of a majority of the minority holders only if The Orchard would reimburse Dimensional Associates for its documented out-of-pocket expenses if the transaction was not consummated as a result of the failure to obtain the requisite stockholder vote, as well as certain other standard termination events.

On January 12, 2010, the special committee held a meeting to consider the Dimensional Proposal and the letter sent to the special committee. Representatives of Patterson Belknap and Fesnak attended this meeting. The special committee discussed the latest terms of the Dimensional Proposal and the value of The Orchard. Representatives of Patterson Belknap reviewed the conditions of the letter sent by Dimensional Associates. Representatives of Fesnak reviewed its analysis of the valuation of The Orchard in light of the price offered by Dimensional Associates in its letter. The special committee authorized and directed Mr. Donahue to contact Mr. Stein and ask Dimensional Associates to increase its price to $2.10 per share, while keeping Dimensional Associates engaged in the negotiations.

Also on January 12, 2010, Dimensional Associates filed an amendment to its Schedule 13D with the SEC to report that it had delivered the January 7, 2010 letter to the special committee in which it (a) reaffirmed its interest regarding its proposal that was the subject of the October 15, 2009 letter and (b) described the circumstances under which it would be willing to increase its proposed price in any such proposed transaction to $2.00 per share .

On January 13, 2010, Mr. Donahue contacted Mr. Stein and asked him to raise his price to $2.10 per share. Mr. Stein acknowledged that Dimensional Associates had offered $2.10 per share in his conversation

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with Mr. Donahue on December 18, 2009, but he stated that the offer at the time was contingent on, among other things, having a simple majority vote condition, and Dimensional Associates had since withdrawn that offer. Mr. Donahue and Mr. Stein generally discussed the value of The Orchard. Mr. Stein said that Dimensional Associates would consider the special committee s request. Mr. Stein called Mr. Donahue later that day to state that Dimensional Associates would be willing to raise its offer to $2.05 per share, with a majority of the minority vote condition and the go-shop provision, and that it represented Dimensional Associates best and final offer.

On January 14, 2010, the special committee held a meeting to discuss the terms and conditions proposed by Dimensional Associates. Representatives of Patterson Belknap and Fesnak attended this meeting. Representatives of Patterson Belknap reviewed the material terms of the latest Dimensional Proposal and the protections provided to our minority stockholders. Representatives of Fesnak reviewed its analysis of the valuation of The Orchard and the $2.05 per share offer by Dimensional Associates. The special committee determined that Dimensional Associates had agreed to three of the key requirements of the special committee: (1) a price within the desired range; (2) a majority of the minority vote condition; and (3) a go-shop provision. The special committee then authorized and directed Patterson Belknap to negotiate the terms and conditions of a merger agreement with Dimensional Associates based on the material terms agreed to in principle by the parties.

From that day until the merger agreement was executed on March 15, 2010, the parties and their respective representatives negotiated the terms of a definitive merger agreement. Representatives of Sonnenschein had sent representatives of Patterson Belknap and the special committee a proposed draft merger agreement on November 20, 2009. At the time, the special committee determined that it was not in the best interests of The Orchard and our stockholders to begin review and negotiation of the agreement until the parties were in agreement in principle on the key material terms of an agreement. Once those terms had been agreed upon, negotiation of the merger agreement followed.

On January 22, 2010, Patterson Belknap provided a revised draft of the merger agreement to Sonnenschein, and on January 29, 2010, legal representatives from The Orchard, Patterson Belknap, Sonnenschein and Chadbourne discussed open items in the merger agreement. On February 12, 2010, Sonnenschein provided a revised merger agreement to Patterson Belknap, and on February 18, 2010, Mr. Donahue, Mr. Stein and legal representatives of The Orchard, Patterson Belknap, Sonnenschein and Chadbourne held a conference call to discuss open items in the merger agreement. Significant issues discussed during this call included the scope of the representations and warranties of both parties, our right to entertain higher offers after the end of the go-shop period, the nature and amount of expenses to be reimbursed by The Orchard if the transaction is not consummated and the circumstances under which such amounts are reimbursable, and the conditions under which the parties may elect not to consummate the transaction.

On February 19, 2010, Patterson Belknap provided a revised draft of the merger agreement to Sonnenschein, including revisions the parties had agreed to during the call the previous day. The parties then engaged in a series of telephone discussions and written communications from February 26, 2010 to March 15, 2010, during which the parties negotiated a number of issues, including:

Definition of Material Adverse Change;
The status and treatment of outstanding warrants;
Representations and warranties relating to material contracts, tax and intellectual property matters;
The length of the go-shop period, which the special committee had initially requested be 45 days;
The termination events giving rise to a right of reimbursement of expenses for Dimensional Associates;
The amount of the cap on the reimbursement of expenses, which Dimensional Associates had initially requested be set at $650,000; and
The appropriate time frame for the drop-dead termination date.

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On March 4, 2009, the special committee held negotiations with Mr. Stein at our headquarters. The parties resolved open issues regarding the representations and warranties, the amount of the cap on the reimbursement of expenses, the length of the go-shop period and other open items relating to the parties termination rights. During these discussions, at the request of the special committee, Dimensional Associates agreed to include a provision that would require the payment of additional consideration to the current minority stockholders under certain circumstances if Dimensional Associates, The Orchard or any of their affiliates enters into a subsequent transaction to sell 80% of The Orchard or its assets within six months of the consummation of the merger.

After these conversations with Mr. Stein on March 4, 2009, the special committee held a meeting to review the negotiation of the merger agreement. Representatives from Patterson Belknap participated in this meeting and described the status of its negotiations with Sonnenschein on the merger agreement. At this meeting, the special committee also determined to engage Craig-Hallum as its investment banker to solicit third party interest in an alternative transaction and otherwise manage the activities of the special committee in connection with the go-shop provision in the proposed merger agreement. In September 2009, prior to our receipt of the Dimensional Proposal, Craig-Hallum had introduced a potential buyer to us, but we never engaged Craig-Hallum for this or any other purpose. The discussions in September 2009 did not progress, but Craig-Hallum had undertaken certain diligence activities in connection with those discussions.

Mr. Donahue interviewed three firms to be the special committee s investment banker with respect to its go-shop activities. Mr. Donahue recommended Craig-Hallum to the special committee because of its competitive fee structure, perspective on the digital distribution industry and because its knowledge of The Orchard would permit it to begin solicitation activities immediately upon its engagement so that the special committee could fully utilize the go-shop period. Craig-Hallum had confirmed that it had never been engaged to provide services to The Orchard or Dimensional Associates, and that it had no financial interest in the transaction other than its engagement by the special committee.

On February 18, 2010, the board of directors elected Mr. Navin as Chief Executive Officer and a director of The Orchard. Mr. Navin s election was unanimously recommended by the search committee.

On March 15, 2010, the special committee held a special meeting to continue its consideration of the Dimensional Proposal and the draft merger agreement. Representatives of Patterson Belknap and Fesnak participated in the meeting. Representatives of Patterson Belknap reviewed with the special committee the fiduciary duties of the directors under applicable Delaware law, the history of the negotiations with Dimensional Associates and other parties, and the terms of the draft merger agreement. Representatives of Fesnak reviewed with the special committee its financial analyses of The Orchard and the Dimensional Proposal. Fesnak then delivered its oral opinion to the special committee that, as of March 15, 2010, and based upon and subject to the various assumptions and qualifications described in such opinion, the per share merger consideration to be received by holders, other than Dimensional Associates and its affiliates, of the common stock in the merger is fair, from a financial point of view, to such holders.

Then following discussion, the special committee unanimously determined that the merger agreement is fair to and in the best interests of The Orchard and our stockholders, declared advisable the merger, the merger agreement and the transactions contemplated thereby, and recommended that the board of directors approve the merger, the merger agreement and the transactions contemplated thereby, that the board of directors recommend to our stockholders that they vote to approve and adopt the merger agreement, and that our stockholders vote to approve and adopt the merger agreement.

The board of directors thereafter convened and unanimously determined (other than Mr. Stein, who abstained from deliberations and voting on the matter) to adopt the recommendation of the special committee, that the merger is fair to and in the best interests of The Orchard and our stockholders, approved and declared advisable the merger agreement, the merger and the transactions contemplated thereby, resolved that the merger agreement be submitted for consideration by our stockholders at a meeting of stockholders, and recommended that our stockholders vote to approve and adopt the merger agreement.

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On the afternoon of March 15, 2010, The Orchard, Dimensional Associates and The Orchard Merger Sub, Inc., a wholly owned subsidiary of Dimensional Associates, executed the merger agreement, and on the morning of March 16, 2010, we issued a press release and filed a Current Report on Form 8-K with the SEC announcing the execution of the merger agreement. On the afternoon of March 16, 2010, Dimensional Associates filed an amendment to its Schedule 13D with the Securities and Exchange Commission announcing the execution of the merger agreement.

On March 16, 2010, The Orchard, Dimensional Associates and The Orchard Merger Sub executed Amendment No. 1 to the merger agreement, and on March 18, 2010, we filed a Current Report on Form 8-K with the SEC reporting the execution of the amendment to the merger agreement. The amendment clarifies the intention of the parties that the condition to the completion of the merger requiring the merger agreement and the merger to be approved and adopted by holders of a majority of our outstanding voting securities not owned by Dimensional Associates, its affiliates or Merger Sub, is not waivable. On March 18, 2010, Dimensional Associates filed an amendment to its Schedule 13D with the SEC reporting the execution of the amendment to the merger agreement.

On April 14, 2010, the special committee held a meeting at which Patterson Belknap was present. Representatives of Patterson Belknap updated the special committee on the status of a civil action challenging the merger that had been filed in the Delaware Court of Chancery on March 25, 2010. The special committee resolved to engage the Delaware law firm of Morris, Nichols, Arsht & Tunnell LLP, which we refer to as Morris Nichols , as its Delaware legal counsel with respect to the litigation and any action challenging the merger that may be filed in the future in the Delaware Court of Chancery. Patterson Belknap had recommended Morris Nichols to the special committee. Mr. Donahue interviewed two firms to be the special committee s legal counsel in Delaware with respect to the litigation. Mr. Donahue recommended Morris Nichols to the special committee because of its reputation and familiarity with the type of litigation filed in Delaware. Morris Nichols confirmed that it had never been engaged to provide services to The Orchard or Dimensional Associates, and that it had no financial interest in the transaction other than its engagement by the special committee.

Also on April 14, 2010, The Orchard, Dimensional Associates and The Orchard Merger Sub executed Amendment No. 2 to the merger agreement, and on April 15, 2010, we filed a Current Report on Form 8-K with the SEC reporting the execution of the amendment to the merger agreement. The amendment extended the go-shop period in the merger agreement by one week, to 37 days from 30 days, giving us the right to solicit and engage in discussions and negotiations with respect to an alternative transaction through April 21, 2010. The parties agreed to extend the go-shop period to permit Craig-Hallum to complete discussions with two parties that remained interested in a transaction with The Orchard as of the end of the original go-shop period. On April 19, 2010, Dimensional Associates filed an amendment to its Schedule 13D with the SEC reporting the execution of the amendment to the merger agreement.

The merger agreement, as amended, provides that, until 12:01 a.m., New York time, on April 22, 2010, we were allowed to initiate, solicit and encourage any alternative acquisition proposals from third parties, provide non-public information and participate in discussions and negotiate with third parties with respect to acquisition proposals. Upon execution of the merger agreement, we engaged Craig-Hallum to conduct this go-shop process. From March 16th through April 21, 2010, Craig-Hallum contacted 35 potential interested parties, consisting of 23 strategic parties that operate in our industry, including Bidder C, and 12 potential financial buyers that invest in companies in our industry. Four of these potential interested parties entered into non-disclosure agreements with us and were provided access to our electronic data room. In addition, one financial buyer held face-to-face business diligence meetings with our management. None of these discussions, however, produced any offers for an alternative transaction to acquire The Orchard. On April 22, 2010, the go-shop period expired, and we ceased our solicitation activities. The merger agreement permits us to engage or participate in discussions or negotiations with any person that makes a bona fide acquisition proposal in writing that the special committee reasonably determines in good faith (after consultation with

its financial advisor) constitutes or is reasonably likely to lead to a superior proposal, and the special committee will consider each such proposal that is submitted. See The Merger Agreement Restrictions on Solicitations of Other Offers .

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Fairness of the Merger, Recommendation of the Special Committee and the Board of Directors

On March 15, 2010, the special committee determined that the proposed merger and the terms and provisions of the merger agreement were substantively and procedurally fair to and in the best interests of our unaffiliated stockholders and that the merger was advisable. Based on such determinations, the special committee unanimously recommended to the board of directors that the board of directors approve and authorize the merger agreement and the transactions contemplated thereby.

At a meeting of the board of directors held immediately following the special committee s determination, at which all of the directors were present, the board of directors considered the recommendation of the special committee. The board of directors adopted the special committee s analysis and determined that the terms and provisions of the merger agreement and the proposed merger were substantively and procedurally fair to and in the best interests of our unaffiliated stockholders and that the merger was advisable, approved and authorized the merger agreement and recommended that our stockholders adopt the merger agreement. This approval and authorization by the board of directors was unanimous, except that Mr. Stein abstained from deliberations and voting on the matter.

In evaluating the fairness and advisability of the merger agreement and the merger, the special committee considered the following factors, each of which the special committee believes supports its determination as to fairness:

Nature of Challenges. The special committee considered the challenges facing The Orchard, including:

our historical and current financial performance and results of operations, our lack of historical profitability, our prospects and long-term strategy, and our competitive position in our industry;

the outlook for, and conditions facing, the digital distribution industry, including declining growth rates, contracting gross margins and fundamental consolidation and realignment in the industry;

the projected ongoing capital investment necessary to upgrade and maintain our technological infrastructure, and to develop new products and services in order to maintain and increase our market share, and the lack of available sources for such investment; and

our prospects for increasing our size in order to maximize our branding, operating economies and ability to make acquisitions and fund other corporate purposes with equity and debt.

Strategic Alternatives. The special committee believes that the merger is more favorable to our unaffiliated stockholders than the alternatives, including:

remaining as a stand-alone, independent company pursuing the current strategic plan because of the uncertain returns to our stockholders if we remained independent in light of our business, operations, financial condition, strategy and prospects; as well as the risks involved in achieving those returns, the nature of the industry in which The Orchard competes, and general industry and market conditions, both on an historical and on a prospective basis; and

remaining an independent company and pursuing a significant acquisition, seeking strategic partnership arrangements or pursuing a sale to or merger with a company in the same markets, given the potential rewards, risks and uncertainties associated with those alternatives.

Merger Consideration. The special committee concluded that the merger consideration was likely the highest price reasonably attainable for our stockholders in a merger or other acquisition transaction. Though Bidder B offered a higher price per share for our common stock as part of its proposal, it did not offer to cash out the Series A convertible preferred stock at the full value of its liquidation preference as required by the contractual terms of our Series A convertible preferred stock. In addition, Bidder B did not have sufficient cash to consummate the transaction as proposed and would have required third party financing. Though Bidder B submitted letters of support from two investment banks, the special committee determined that these letters were not firm commitments and that Bidder B s financing was uncertain. Therefore, the special committee concluded that the higher price

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for the common stock offered by Bidder B was not reasonably attainable. There will be no liquidation payment to the holders of Series A convertible preferred stock under the merger agreement. The merger consideration to be paid by Dimensional Associates will be all cash, and Dimensional Associates will not require financing to complete the transaction.

Fesnak Opinion. The special committee considered the financial presentation of Fesnak and Fesnak s oral opinion delivered to the special committee (which opinion was subsequently confirmed in writing) to the effect that, as of March 15, 2010 and based upon and subject to the various assumptions, qualifications and limitations set forth in its opinion, the $2.05 per share price was fair to our common stockholders, other than Dimensional Associates and its affiliates, from a financial point of view to such holders, as more fully described under Opinion of the Special Committee s Financial Advisor . The full text of Fesnak s written opinion, which sets forth, among other things, the assumptions made, procedures followed, matters considered and qualifications and limitations of the reviews undertaken by Fesnak in rendering its opinion, is attached as Appendix C to this proxy statement and is incorporated herein by reference. You are urged to, and should, read the Fesnak opinion carefully and in its entirety. The opinion was directed to the special committee and addresses only the fairness, from a financial point of view, of the merger consideration to be received by our common stockholders, other than Dimensional Associates and its affiliates. The opinion does not address any other aspect of the proposed merger nor does it constitute a recommendation to any stockholder as to how such stockholder should vote or act with respect to any matters relating to the merger agreement.

Market Price and Premium. The special committee considered the historical market prices of the common stock and noted that the proposed consideration of $2.05 per share represented a premium of approximately 80% over the $1.14 per share closing price on October 29, 2009, the last trading day prior to the announcement of the Dimensional Proposal, and a premium of approximately 21% over the $1.69 per share average closing price for the ninety trading days immediately prior to the announcement of the Dimensional Proposal.

Lack of Alternative Acquisition Proposals. Based on the discussions between The Orchard and various strategic and financial entities and the views of management, the special committee concluded that it was unlikely that a credible competing offer for The Orchard could be obtained at a price higher than $2.05 per share for the common stock. This conclusion was also supported by the fact that Dimensional Associates and its affiliates own a significant portion of our outstanding capital stock, including 99% of our Series A convertible preferred stock, and therefore any sale of The Orchard to a third party would effectively require the approval of Dimensional Associates. The special committee had been informed that Dimensional Associates would be a willing seller only if it received the full liquidation preference of its Series A convertible preferred stock, approximately $24.89 million, in cash. See Background of the Merger . This conclusion was further supported by the response received by Dimensional Associates in its solicitation activities in 2009 as well as the response received by Craig-Hallum during the go-shop period following the execution of the merger agreement, during which Craig-Hallum contacted 35 prospective strategic and financial buyers, but received interest from only four, and offers from none.

Negotiations Conducted by Special Committee. The special committee considered the fact that the merger agreement and the transactions contemplated thereby were the product of extensive arm s length negotiations between Dimensional Associates and the special committee and that no member of the special committee was employed by or affiliated with The Orchard (except in his capacity as a director) or had any economic interest in Dimensional Associates or its affiliates.

Terms of the Merger Agreement. The special committee also considered the following key terms of the proposed merger agreement:

Go-Shop Provision: The special committee considered that Dimensional Associates had conducted a broad canvass of potential interested parties at the beginning of 2009 but had received no credible offers. The special committee had also contacted and discussed a transaction with potential interested parties throughout the negotiation process. Nonetheless, the special

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committee and the board of directors considered the post-signing go-shop period to be an important confirmation that the merger consideration to be paid by Dimensional Associates was likely the highest price reasonably attainable for our stockholders in a merger or other acquisition transaction.

Additional Consideration. The merger agreement provides that additional consideration will be paid to the stockholders who are unaffiliated with Dimensional Associates, if, on or prior to the six-month anniversary of the consummation of the merger, Dimensional Associates, The Orchard or any of their affiliates enters into a commitment to sell at least 80% of the outstanding voting securities of The Orchard or at least 80% of the assets of The Orchard. The additional consideration would be an amount equal to 15% of the difference between the enterprise value of The Orchard in such resale transaction and the enterprise value of The Orchard immediately prior to the consummation of the merger as calculated in accordance with the terms of the merger agreement.

Ability to Change Recommendation and to Terminate the Merger Agreement. The merger agreement permits (1) the board of directors, after compliance with certain procedural requirements, to change its recommendation in response to a superior proposal or intervening event; and (2) us to terminate the merger agreement if the board of directors changes its recommendation. See The Merger Agreement Restrictions on Change of Recommendation to Stockholders .

Closing Conditions. The completion of the proposed merger is not subject to a financing condition, and there are relatively few closing conditions to the merger and no regulatory approval is necessary to consummate the merger. Accordingly, the special committee believed that there is a high likelihood that the merger will be consummated.

Absence of a Termination or Break up Fee. The merger agreement does not require us to pay a termination or break up fee if the board of directors terminates the merger agreement to enter into an acquisition agreement with respect to a superior proposal, but instead requires us to pay only documented out-of-pocket expenses of Dimensional Associates up to $350,000.

Availability of Appraisal Rights. The special committee also considered the fact that rights of appraisal would be available to our stockholders under Delaware law. See Appraisal Rights .

Required Majority of Minority Vote. The consummation of the merger is conditioned upon a majority of the outstanding shares of common stock not held by Dimensional Associates or its affiliates that are eligible to vote at the stockholders meeting, voting in favor of the approval and adoption of the merger agreement.

The special committee also considered the following potentially negative factors:

Risk of Non-Completion. The special committee considered the risk that the proposed merger might not be completed due to the failure of a condition, such as the condition with respect to a limitation on percentage of dissenting shares, and the effect of the resulting public announcement of termination of the merger agreement on:

the market price of our common stock;

our operating results, particularly in light of the costs incurred in connection with the transaction; and

our ability to attract and retain key personnel.

Transaction Costs. If the merger is not completed, we will be required to pay our fees and expenses associated with the transaction, including the fees and expenses of the special committee s outside legal and financial advisors, as well as, under certain circumstances, reimburse Dimensional Associates for its documented out-of-pocket expenses associated with the transaction up to $350,000.

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Possible Disruption of Business. The special committee considered the possible disruption to our business that may result from the announcement of the transaction and the resulting distraction of our management. The special committee also considered the fact that the merger agreement contains certain limitations regarding the operation of our business during the period between the signing of the merger agreement and the consummation of the proposed merger.

Future Growth. The special committee considered the fact that if the proposed merger is adopted, our unaffiliated common stockholders would not participate in any future growth of The Orchard.

In considering the fairness of the merger to our stockholders, other than Dimensional Associates and its affiliates, the special committee considered whether the $2.05 per share price represented fair value in relation to the following:

implied equity value of our common stock based on multiples of last-twelve-month revenues of selected comparable companies with the addition of a control premium;

implied equity value of our common stock based on multiples of earnings before interest, taxes, depreciation and amortization of selected comparable companies with the addition of a control premium applied to The Orchard s forecasted earnings before interest, taxes, depreciation and amortization, which we refer to as EBITDA ;

implied equity value of our common stock relative to valuation multiples paid in selected precedent transactions;

current and historical market prices for our common stock both with and without the addition of a control premium;

implied equity value of our common stock based on a discounted cash flow analysis of management forecasts of net cash flow assuming The Orchard remains an independent, public company; and

implied equity value of our common stock based on a discounted cash flow analysis of management forecasts of net cash flow assuming an equal sharing between Dimensional Associates and the holders of the common stock of the savings and synergies as a result of the merger.

The cash consideration offered to the holders of our common stock in the merger exceeded the range indicated in each of these analyses other than the implied equity value based on multiples of last-twelve-month revenues of selected comparable companies, which resulted in an implied value of the our common stock equal to $3.90 per share. The special committee considered this valuation to be an outlier because it was not supported by any of the other valuation methodologies.

The special committee did not separately consider net book value, pre-merger going concern value or bankruptcy liquidation value in determining the fairness of the merger to our stockholders. The special committee noted that The Orchard continues to be viable as a going concern and that liquidation was not considered a viable alternative to The Orchard remaining an independent business, or the sale of The Orchard as a going concern.

Although the foregoing discussion sets forth all of the material factors considered by the special committee in reaching their recommendations, it may not include all of the factors considered by the special committee. Each director may have weighed these factors differently and considered additional factors. In view of the variety of factors and the amount of information considered, the special committee did not find it practicable to, and did not, make specific assessments of, quantify or otherwise assign relative weights to the specific factors considered in reaching their recommendations. The recommendations were made after consideration of all of the factors as a whole.

The special committee believes that the proposed merger is procedurally fair to our unaffiliated stockholders because, among other things: (1) the special committee consisted of independent directors with no economic interest or expectation of an economic interest in Dimensional Associates or its affiliates and was appointed by the board of directors to represent solely the interests of our unaffiliated stockholders; (2) the terms and conditions of the merger agreement resulted from extensive arm s length bargaining between the special committee (and its counsel) and Dimensional Associates (and its counsel), with the participation of

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management of The Orchard (and its counsel); and (3) the terms and conditions of the merger agreement include significant procedural protections for the unaffiliated stockholders, including the non-waivable condition that the merger agreement and merger be approved by holders of a majority of our outstanding voting stock other than Dimensional Associates and its affiliates.

The board of directors, after receiving the recommendation of the special committee, adopted the special committee s analysis, and (1) approved, declared advisable and authorized the merger agreement and the transactions contemplated by the merger agreement, including the proposed merger; (2) determined that the proposed merger and the transactions contemplated by the merger agreement are substantively and procedurally fair to and in the best interests of our unaffiliated stockholders; and (3) recommends that our stockholders vote FOR the approval of the merger and the approval and adoption of the merger agreement.

Opinion of the Special Committee s Financial Advisor

The special committee retained Fesnak and Associates, LLP, which we refer to as Fesnak , as its financial advisor in connection with the offer by Dimensional Associates. Fesnak is an accounting, valuation and consulting firm that is regularly engaged in the valuation of businesses and securities in connection with mergers and acquisitions and for corporate and other purposes. Fesnak orally rendered its opinion, which we refer to as the Fesnak Opinion , to the special committee and subsequently confirmed in writing, that as of March 15, 2010, and based upon and subject to the factors and assumptions set forth in the written opinion, the merger consideration to be paid by Dimensional Associates to the holders of our common stock (other than Dimensional Associates and its affiliates), taken in the aggregate, pursuant to the offer was fair from a financial point of view to such holders.

The full text of the Fesnak Opinion, dated March 15, 2010, is attached as Appendix C to this proxy statement. This summary is qualified in its entirety by reference to the full text of the Fesnak Opinion. You are encouraged to, and should, read the Fesnak Opinion in its entirety for a discussion of the assumptions made, procedures followed, factors considered and limitations of the review undertaken by Fesnak in rendering such opinion. Fesnak provided its opinion for the information of and assistance to the special committee in connection with its consideration of the offer by Dimensional Associates and addresses only the fairness from a financial point of view as of the date of the opinion of the merger consideration to be received by the holders of our capital stock (other than Dimensional Associates and its affiliates) pursuant to the merger agreement. The Fesnak Opinion does not in any manner address any other aspects of the merger or the merger agreement. Fesnak expressed no opinion or recommendation to the stockholders as to how to vote at the annual meeting to be held in connection with the merger or what particular course of action should be taken with respect to the contemplated transaction or any other matter.

In connection with rendering its opinion, Fesnak, among other things:

reviewed certain publicly available financial statements and other business and financial information of The Orchard;

reviewed certain audited historical financial statements of The Orchard for the three fiscal years ended December 31, 2008, and the unaudited financial statements for the three quarters ended September 30, 2009;

reviewed certain other financial operating data;

reviewed certain financial forecasts prepared by our management;

discussed the past and current operations and financial condition and the prospects of The Orchard with our management;

reviewed the reported prices and trading activity for our common stock;

compared our financial performance and the prices and trading activity of our common stock with that of certain other publicly traded companies comparable with The Orchard;

reviewed the financial terms, to the extent publicly available, of certain relevant acquisition transactions, known as guideline transactions; and

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reviewed such other information and considered such other factors as Fesnak deemed appropriate. In arriving at its opinion, Fesnak assumed and relied on, without independent verification, the accuracy and completeness of the information that was publicly available or supplied or otherwise made available to Fesnak by us. With respect to the financial forecasts Fesnak assumed that they had been reasonably prepared on bases reflecting the best currently available estimates and judgments of our management of the future financial performance of The Orchard. In addition, Fesnak assumed that the merger will be consummated in accordance with the terms set forth in the merger agreement without any waiver, amendment or delay of any terms or conditions.

Fesnak was not engaged as a legal, tax or regulatory advisor to the special committee. Fesnak was engaged to be financial advisor only and has relied on, without independent verification, the assessment of The Orchard and its legal, tax, and regulatory advisors with respect to legal, tax, and regulatory matters. Fesnak did not make any independent valuation or appraisal of the assets or liabilities of The Orchard, nor was Fesnak furnished with any such appraisals. The Fesnak Opinion was necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to Fesnak as of, the date of the opinion. Events occurring after the date of the opinion may affect the opinion and the assumptions used in preparing it, and Fesnak did not undertake any obligation to update, revise or reaffirm the opinion.

The Fesnak Opinion does not address the relative merits of the merger as compared with any other alternative business transaction, or other alternatives, or whether or not such alternatives could be achieved. In arriving at its opinion, Fesnak was not authorized to solicit, and did not solicit, interest from any party with respect to the acquisition, business combination or other extraordinary transaction involving The Orchard, nor did Fesnak negotiate with any party with respect to the possible acquisition, business combination or other extraordinary transaction involving The Orchard.

The following is a summary of the material financial analyses used by Fesnak in connection with providing its opinion to the special committee.

Comparable Public Company Analysis

Fesnak compared certain financial information for The Orchard to corresponding financial information, ratios and public market multiples for a sample of publicly traded companies selected based on their involvement in the digital media services industry, size, profitability, leverage, growth prospects, market position and risk. After discussions with The Orchard s management and its own analysis, Fesnak selected the following nine publicly traded companies to serve as comparables:

Glue Mobile Inc.
EDGAR Online, Inc.
Limelight Networks, Inc.
Salary.Com, Inc.
WebMediaBrands Inc.
Image Entertainment, Inc.
RealNetworks Inc.
Internap Network Services Corporation
LiveWire Mobile, Inc.

Fesnak analyzed publicly available information for the comparable companies, including market and financial data from such companies public filings with the SEC. Fesnak used this information to formulate valuation multiples which were applied to the appropriate revenue and earnings streams for The Orchard. None of the comparable

companies is identical to The Orchard. As a result, in evaluating the comparable companies, Fesnak made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters.

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Fesnak calculated and compared various financial multiples and ratios using closing market share prices and other publicly available historical financial data for the selected companies, based on results as of September 30, 2009 (and December 31, 2009 when available) and stock prices as of March 10, 2010. Because we had a loss from operations and negative EBITDA for the twelve months ended September 30, 2009, Fesnak calculated market value of invested capital , which we refer to as MVIC, and applied the MVIC to revenue multiples for the last twelve months for the nine comparable companies to The Orchard s revenues, rather than more commonly used income multiples, such as MVIC to EBITDA. However, because the MVIC to EBITDA ratio is instructive, Fesnak also decided to apply the comparable companies MVIC to EBITDA multiples to The Orchard s forecasted EBITDA for 2010. The multiples calculated by Fesnak for the comparable companies are as follows:

	Industry Multiples				
Selected Pricing Multiple	Low	High	Mean	Median	Selected
MVIC/Revenues	0.31	1.83	0.82	0.64	0.60
MVIC/EBITDA	3.41	41.35	18.61	11.08	10.00

Fesnak selected a multiple of 0.60 for the MVIC to Revenue calculation, which approximates the median, because our financial results are in line with the comparable companies except for the liquidity ratios, which were below the public comparables. Fesnak selected a multiple of 10.00 for the MVIC to EBITDA calculation, which is slightly below the median, because these multiples represent the historical performance of the comparable companies but they are being applied to forecasted performance for The Orchard since we had negative EBITDA during the period of analysis.

In order to calculate a residual value available to the holders of our common stock, Fesnak made several adjustments to the analysis, including (i) adding back $4.5 million of cash that was on the balance sheet of The Orchard but had been excluded from the calculation because cash was excluded from the MVIC multiples calculated for the comparable companies, (ii) the application of a 20% control premium in order to determine equity value on a controlling interest basis, and (iii) the subtraction of approximately $24.99 million from the overall value, representing the liquidation preference of our outstanding Series A convertible preferred stock.

Based on the multiples and adjustments described above, Fesnak calculated an equity value ranging from $1.58 per share of common stock, using the MVIC to EBITDA multiple, to $3.90 per share, using the MVIC to Revenue multiple. Fesnak considered the MVIC to Revenue calculation of $3.90 to be an outlier because of its significant difference from each of the other valuation metrics utilized.

Selected Relevant Transactions Analysis

Fesnak also analyzed certain information relating to the following transactions, which were selected because the target companies operate in the digital media services industry, as well as the size of the target companies and the availability of information about the transactions. Fesnak derived valuation multiples from the acquisition prices of these target companies and then applied such multiples to The Orchard.

Target	Acquirer	Acquisition Date	Consideration
Visual Connection, a.s.	KIT Digital, Inc.	October 2008	$4.3 million
Audible, Inc.	Amazon.com, Inc.	March 2008	$277.4 million
Vyvx Ads Business (Level 3 Communications Inc.)	DG Fast Channel Inc.	June 2008	$129 million

Applied Graphics Technologies Inc.	Digital Generation Systems, Inc.	June 2004	$14.1 million
Good Times Entertainment	GAIAM, Inc.	September 2005	$34.4 million
Movielink, LLC	Blockbuster, Inc.	August 2007	$7 million
Creatas, LLC	Jupitermedia Corp.	March 2005	$60.4 million
Trusonic Inc.	Fluid Media Networks, Inc.	October 2007	$6 million
Ringtone.com, LLC	New Motion, Inc.	June 2008	$8.6 million
AMV Holding Limited	Mandalay Media, Inc.	October 2008	$22.5 million

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Fesnak calculated multiples of MVIC to last-twelve-month revenue for the ten guideline transactions and applied a selected multiple based on these transactions to the revenues reported by the Company for the twelve-month period ended September 30, 2009. The multiples for the guideline transactions are as follows:

	Industry Multiples				
Selected Pricing Multiple	Low	High	Mean	Median	Selected
MVIC/Revenues	0.24	3.54	1.44	1.12	0.60

Fesnak selected a multiple of 0.60 for this MVIC to Revenue calculation, which was between the low and the median. The lower than median revenue multiple was selected because (i) several of the guideline companies had positive EBITDA, which The Orchard did not, (ii) most of the selected transactions occurred prior to the economic recession, when valuation multiples for such transactions were higher, (iii) transactions for the guideline companies that had negative EBITDA had a 0.85 median multiple and transactions with negative EBITDA and greater than $10 million in revenues had a 0.42 median multiple, and (iv) The Orchard had negative working capital.

In order to calculate a residual value available to the holders of our common stock, Fesnak made several adjustments to the analysis, including the subtraction of approximately $24.99 million from the overall value, representing the liquidation preference of our outstanding Series A convertible preferred stock.

Based on the multiples and modifications described above, Fesnak calculated an equity value of $1.89 per share of common stock.

Historical Trading and Selected Price Analysis

Fesnak reviewed the recent stock price performance of our common stock. The closing stock price of our common stock on March 12, 2010, prior to the announcement of the signing of the merger agreement but after the announcement of the $2.00 per share offer by Dimensional Associates for the outstanding shares of common stock not held by it, was $1.70 per share. Adding a control premium of 20% to such price resulted in an approximate price of $2.04 per common share.

Discounted Cash Flows Analysis

Based on cash flow forecasts provided by our management in November 2009, Fesnak performed a discounted cash flow analysis of The Orchard using the present value of forecasted cash flows to be generated for fiscal years ending December 31, 2010 through 2014 and the value of The Orchard at the end of such period, or the terminal value.

Our management provided Fesnak with base case , worst case and aggressive case forecasts of net cash flows for each of these years as described under Certain Financial Projections Additional Cash Flow Projections , which were updated by Fesnak with management input. Fesnak considered two scenarios using the discounted cash flow method. The first scenario assumes The Orchard would remain an independent public company and that it would continue to take advantage of its net operating tax loss carryforwards. The second scenario assumes that Dimensional Associates would (i) acquire the remaining common shares, integrate the operations of The Orchard with its other digital media assets, thereby creating synergies and cost savings, (ii) share these post-merger savings equally with our pre-merger holders of common stock other than Dimensional Associates and its affiliates, and (iii) be unable to take full advantage of our net operating tax loss carryforwards because of limitations as a result of certain changes in ownership.

For each scenario, a sensitivity analysis was also performed using management s base case, worst case and aggressive case scenarios. However, in calculating the per share value, Fesnak utilized only the aggressive case scenario because it represents the highest potential value that The Orchard would be expected to achieve in the forecast period.

The discounted cash flow technique has two value components. The first equals the sum of the present value of the cash flows over the forecast period. The second the residual value, or terminal value equals the present value of the forecasted cash flow in the terminal year, capitalized into perpetuity using a capitalization rate derived from the discount rate. The residual value reflects the ongoing potential of the business.

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Available cash flows are typically equal to the sum of net income plus non-cash charges such as depreciation and amortization, less capital expenditures and working capital requirements. A company s cost of capital, or discount rate, is equal to the weighted average of its after-tax cost of debt and equity. This rate represents a rate of return that could be expected by an investor given the risk associated with the investment. Fesnak concluded that the appropriate discount rate, based on the weighted average cost of capital of The Orchard was 20% as of the fairness opinion date.

The discounted cash flow analysis completed by Fesnak under the first scenario, which assumes The Orchard would remain a public company and that it would continue to take advantage of its net operating tax loss carryforwards, resulted in an implied value of $1.05 per share of our common stock. The discounted cash flow analysis completed by Fesnak under the second scenario, which assumes a sharing of the savings and synergies resulting from integration of the operations of The Orchard with the other digital media assets of Dimensional Associates, resulted in an implied value of $1.37 per share of our common stock.

General

In connection with the review of the merger by the special committee, Fesnak performed a variety of financial and comparative analyses for purposes of rendering its opinion. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to a partial analysis or summary description. In arriving at its opinion, Fesnak considered the results of all of its analyses and believes that selecting any portion of its analyses, without considering all analyses as a whole, would create an incomplete view of the process underlying its analyses and opinion. In addition, Fesnak may have deemed various assumptions more or less probable than other assumptions. As a result, the ranges of valuations resulting from any particular analysis described above should not be taken to be the view of Fesnak of the actual value of The Orchard.

Fesnak conducted the analyses described above solely as part of its analysis of the fairness of the merger consideration to be received by holders of shares of our common stock, other than Dimensional Associates and its affiliates, pursuant to the merger agreement from a financial point of view to such holders and in connection with the delivery of its opinion to the special committee. These analyses do not purport to be appraisals or to reflect the prices at which shares of our common stock might actually trade on an open market.

The merger consideration to be paid pursuant to the merger agreement was determined through arm s-length negotiations between the special committee and Dimensional Associates and was recommended by the special committee for approval by the board of directors of The Orchard and was approved by our board of directors and Dimensional Associates. Fesnak provided advice to the special committee during these negotiations. Fesnak did not, however, recommend any specific merger consideration to the special committee or that any specific merger consideration constituted the only appropriate merger consideration for the merger.

The Fesnak Opinion and its presentation to the special committee was one of many factors taken into consideration by the special committee in deciding to recommend that the board of directors approve, adopt and authorize the merger agreement. Consequently, the analyses described above should not be viewed as determinative of the opinion of the special committee with respect to the consideration to be received by our stockholders pursuant to the merger agreement or of whether the special committee would have been willing to agree to a different merger consideration. The foregoing summary describes the material analyses performed by Fesnak but does not purport to be a complete description of the analyses performed by Fesnak.

The special committee retained Fesnak as its financial advisor because of its reputation in accounting, valuation and consulting and because of its independence from The Orchard and Dimensional Associates. Fesnak provided the special committee with financial advisory services and a fairness opinion in connection with the merger, and as

compensation for its services in connection with the merger, we agreed to pay Fesnak a fee of approximately $150,000, $96,000 of which was paid upon delivery of the Fesnak Opinion. We also agreed to reimburse Fesnak for certain expenses incurred by Fesnak and to indemnify Fesnak and related parties against certain liabilities and expenses arising out of the special committee s engagement of Fesnak.

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Purpose and Reasons for the Merger for Dimensional Associates, Merger Sub and Certain of their Affiliates

Under applicable SEC rules, Dimensional Associates and Merger Sub are deemed to be engaged in a going private transaction with respect to the proposed merger. Therefore, Dimensional Associates, Merger Sub and certain of their affiliates, namely JDS Capital, L.P., JDS Capital Management, LLC, Joseph D. Samberg and Daniel C. Stein, which we refer to collectively as the Dimensional Affiliates , are required to express their reasons for the merger to our unaffiliated stockholders, as defined in Rule 13e-3 under the Exchange Act. Merger Sub, Dimensional Associates and the Dimensional Affiliates are making the statements included in this section solely for the purpose of complying with the requirements of Rule 13e-3 and related rules under the Exchange Act.

For Merger Sub, Dimensional Associates and the Dimensional Affiliates, the primary purpose for the merger is to increase Dimensional s ownership of our common stock from its current position of approximately 42% to over 99% (with the remaining shares of our common stock being owned by Mr. Stein), so that we can be operated as a privately held, majority owned company by Dimensional Associates. Dimensional Associates and Merger Sub will achieve this purpose by way of the merger of Merger Sub with and into The Orchard, pursuant to which all of the shares of our common stock not already owned by Dimensional Associates and its affiliates will be cancelled in exchange for $2.05 per share in cash and a contingent right to receive additional consideration, under certain circumstances if Dimensional Associates or The Orchard or any of their affiliates enters into a commitment to sell at least 80% of our voting securities or assets within six months of the consummation of the merger. Dimensional Associates and the Dimensional Affiliates will benefit from any future earnings and growth of The Orchard after the merger, and Dimensional Associates and the Dimensional Affiliates will bear the risks of its investment in The Orchard. Our non-continuing stockholders will not benefit from any future earnings and growth of The Orchard after the merger, and they will not bear the risk of investment in The Orchard. Dimensional Associates, Merger Sub and the Dimensional Affiliates believe that structuring the transaction as a merger is preferable to other transaction structures because it will enable Dimensional Associates to acquire all of the outstanding shares of our common stock (other than those held by Dimensional Associates and its affiliates) at the same time and also provides an opportunity to the non-continuing stockholders to receive cash for their investment at a fair value for their shares. Dimensional Associates, Merger Sub and the Dimensional Affiliates also believe that the proposed merger will provide additional means to enhance stockholder value for the continuing stockholders after the merger, including improved profitability due to the elimination of the expenses associated with public company reporting and compliance and increased flexibility and responsiveness in management of the business to achieve growth and respond to competition without the restrictions of quarterly earnings comparisons.

Position of Dimensional Associates and Merger Sub as to the Fairness of the Merger

Under applicable SEC rules, Dimensional Associates and Merger Sub are deemed to be engaged in a going private transaction with respect to the proposed merger and therefore are required to express their beliefs as to the fairness of the merger to our unaffiliated stockholders. Dimensional Associates and Merger Sub are making the statements included in this section solely for the purpose of complying with the requirements of Rule 13e-3 and related rules under the Exchange Act. Dimensional Associates and Merger Sub s views as to the fairness of the proposed merger should not be construed as a recommendation to any of our stockholders as to how that stockholder should vote on the proposal to approve the merger and to approve and adopt the merger agreement and the other transactions contemplated thereby. Dimensional Associates and its affiliates have interests in the proposed merger that are different from, and in addition to, those of our other stockholders. These interests are described under Interests of

Certain Persons in the Merger .

Our stockholders, other than Dimensional Associates and its affiliates, were represented by the special committee, which negotiated the terms and conditions of the merger agreement on their behalf, with the assistance of the special committee s independent financial and legal advisors. Accordingly, neither Dimensional Associates nor Merger Sub undertook any independent evaluation of the fairness of the proposed merger to our unaffiliated stockholders or engaged a financial advisor for such purposes. Dimensional Associates and Merger Sub did not participate in the deliberations of the special committee regarding, or receive advice from the special committee s legal or financial advisors as to, the fairness of the proposed merger.

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Merger Sub and Dimensional Associates do, however, believe that the proposed merger and the merger agreement are substantively and procedurally fair to our unaffiliated stockholders, based on the following factors:

the merger consideration of $2.05 per share represents a premium of (1) approximately 80% over the $1.14 per share closing price on October 29, 2009, the last trading day prior to the announcement of the Dimensional Proposal, (2) approximately 21% over the $1.69 per share average closing price for the ninety trading days immediately prior to the announcement of the Dimensional Proposal, (3) approximately 23% over the $1.66 per share closing price on March 15, 2010, the last trading day before we announced the execution of the merger agreement, and (4) approximately 19% over the average closing prices of our common stock for the 30-trading day period ending on March 15, 2010;
the merger will provide consideration to our non-continuing stockholders for a minimum amount in cash, thus eliminating any uncertainty in valuing the minimum merger consideration to be received;
our board of directors established a special committee of independent and disinterested directors, consisting solely of directors who are not current officers, employees or controlling stockholders of The Orchard and are not affiliated with Dimensional Associates or Merger Sub, to negotiate with Dimensional Associates and Merger Sub, and to determine if and under what conditions we would enter into a merger agreement with Dimensional Associates;
the special committee had no obligation to recommend the approval of the Merger Proposal or any other transaction;
the special committee was deliberative in its process, analyzing, evaluating and negotiating the terms of the proposed merger, its members and their representatives took active and direct roles in the negotiations with respect to the merger, including considering the transaction at numerous special committee meetings;
the special committee retained independent financial and legal advisors, each of which is experienced in transactions similar to the proposed merger;
the members of the special committee unanimously determined that the merger agreement and the merger are fair to, advisable to and in the best interests of The Orchard and its unaffiliated stockholders;
our board of directors unanimously (other than Mr. Stein, who abstained from deliberations and voting on the matter) determined that the merger, the merger agreement and the other transactions contemplated thereby are fair to, advisable to and in the best interests of The Orchard and its unaffiliated stockholders;
the $2.05 per share cash merger consideration and the other terms and conditions of the merger agreement resulted from extensive negotiations between the special committee and its advisors and Dimensional Associates and Merger Sub and their advisors;
the merger agreement requires the approval not only by the holders of a majority of the outstanding shares of our voting stock but also by the holders of a majority of the outstanding shares of our voting stock that are held by persons other than Dimensional Associates and its affiliates;
prior to the go-shop period expiration on April 22, 2010, the merger agreement permitted the special committee to initiate, solicit, encourage and enter into and maintain discussions or negotiations with respect to alternative proposals;
after the go-shop period expiration on April 22, 2010, the merger agreement permits the special committee, under certain circumstances, to furnish information to and conduct negotiations with third parties regarding other acquisition proposals;
the merger agreement permits (1) our board of directors (at the direction of the special committee), after compliance with certain procedural requirements, to change its recommendation in response to

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a superior proposal or certain other intervening events and (2) Dimensional Associates, to terminate the merger agreement if our board of directors changes its recommendation, as described further under The Merger Agreement Restrictions on Change of Recommendation to Stockholders ; and

the availability of dissenters rights under Section 262 of the DGCL to holders of shares of our common stock who exercise such rights of dissent from the merger and comply with all of the required procedures under Section 262 of the DGCL, entitling stockholders who dispute the fairness of the merger consideration to seek appraisal and payment of the fair value of their shares, which may be more than, less than, or the same as the amount such stockholders would have received under the merger agreement.

In arriving at the $2.05 per share cash merger consideration, Dimensional Associates and Merger Sub did not consider the liquidation value of The Orchard because they considered The Orchard to be a viable, going concern and therefore did not consider liquidation value to be a relevant valuation method. Further, Dimensional Associates and Merger Sub did not consider net book value, which is an accounting concept, as a factor because they believe that net book value is not a material indicator of the value of The Orchard as a going concern but rather is indicative of historical costs. In addition, Dimensional Associates and Merger Sub did not consider firm offers made by unaffiliated persons during the last two years, as, to their knowledge, no such offers were made during the last two years.

While Mr. Stein is currently one of our directors, because of his interest in the proposed merger he did not participate in our board of directors or the special committee s evaluation, deliberation or approval of the proposed merger, or its approval and adoption of the merger agreement and the other transactions contemplated thereby. For these reasons, Dimensional Associates and Merger Sub do not believe that their interests in the proposed merger influenced the decision of the special committee or our board of directors with respect to the merger or the merger agreement and the transactions contemplated thereby.

The foregoing discussion of the information and factors considered and given weight by Dimensional Associates and Merger Sub in connection with the fairness of the proposed merger and the merger agreement is not intended to be exhaustive but is believed to include all material factors considered by Dimensional Associates and Merger Sub. Merger Sub and Dimensional Associates did not find it practicable to, and did not, quantify or otherwise attach relative weights to the foregoing factors in reaching its position as to the fairness of the proposed merger and the merger agreement. Rather, the fairness determinations were made after consideration of all of the foregoing factors as a whole. Dimensional Associates and Merger Sub believe that the foregoing factors provide a reasonable basis for their belief that the proposed merger is fair to our unaffiliated stockholders.

Plans for The Orchard After the Merger

It is expected that, upon consummation of the proposed merger, The Orchard s business and other operations will be conducted in substantially the same manner as they are currently being conducted, except that the directors of Dimensional Associates will become the directors of the surviving corporation and our common stock will cease to be publicly traded. While Dimensional Associates does not have any current plans to effectuate any extraordinary transactions with respect to The Orchard, including by way of its merger or sale or other disposition of a material amount of its assets, following the consummation of the proposed merger, the management and/or board of directors of the surviving corporation will continue to assess the assets, capital structure, operations, business and personnel of The Orchard and, as a result, may implement changes they believe are appropriate to enhance the business and operations of the surviving corporation at any time following the merger. Following the consummation of the merger, the registration of our common stock and our reporting obligation under the Exchange Act with respect to our common stock will be terminated upon application to the SEC. In addition, upon consummation of the merger, our common stock will no longer be listed on any exchange or quotation system, including the Nasdaq Global Market, and price quotations will no longer be available. The surviving corporation will not be subject to the obligations and

constraints, and the related direct and indirect costs, associated with having publicly traded equity securities, but may experience positive effects on its profitability, due to elimination of the expenses associated with public company reporting, and increased flexibility in its operations.

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Financing of the Merger

Dimensional Associates estimates that the total amount of funds required to purchase all of the outstanding shares of our common stock not currently owned by it or its affiliates, to pay the amounts owed to the holders of options and restricted stock awards under the Company Stock Plan, and to pay Dimensional s and Merger Sub s estimated fees and expenses of the merger, will be approximately $7.9 million. Dimensional Associates will fund the aggregate merger consideration and associated fees and expenses of Dimensional Associates and Merger Sub through the use of working capital on hand.

Certain Financial Projections

The Orchard does not, as a matter of course, publicly disclose financial projections as to future financial performance, earnings or other results and is especially cautious of making financial forecasts for extended periods because of unpredictability of the underlying assumptions and estimates. However, in connection with the evaluation of a possible transaction involving The Orchard, we provided Dimensional Associates (and other interested bidders), the board of directors, the special committee and their respective advisors certain non-public financial forecasts that were prepared by our management and not for public disclosure.

A summary of these financial projections is being included in this document not to influence your decision whether to vote for or against the proposal to adopt the merger agreement, but because these financial forecasts were made available to Dimensional Associates (and other interested bidders), the board of directors, the special committee and their respective advisors. The inclusion of this information should not be regarded as an indication that our board of directors, the special committee, their respective advisors or any other person considered, or now considers, such financial projections to be material or to be a reliable prediction of actual future results. Our management s internal financial forecasts, upon which the financial projections were based, are subjective in many respects. There can be no assurance that these financial projections will be realized or that actual results will not be significantly higher or lower than forecasted. The financial forecasts cover multiple years and such information by its nature becomes subject to greater uncertainty with each successive year. As a result, the inclusion of the financial projections in this proxy statement should not be relied on as necessarily predictive of actual future events.

In addition, the financial projections were prepared solely for internal use in assessing strategic direction and other management decisions and to provide performance targets for management (including for purposes of performance based compensation), and not with a view toward public disclosure or toward complying with generally accepted accounting principles, which we refer to as GAAP, the published guidelines of the SEC regarding projections and the use of non-GAAP measures or the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of prospective financial information. The financial projections included below were prepared by, and are the responsibility of, our management. Neither our independent registered public accounting firm, nor any other independent registered public accounting firm, have compiled, examined or performed any procedures with respect to the financial forecasts contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability. The report of the independent registered public accounting firm, which is incorporated by reference in this proxy statement, relates to The Orchard s historical financial information. It does not extend to the financial projections and should not be read to do so.

These financial projections were based on numerous variables and assumptions that are inherently uncertain and may be beyond the control of The Orchard. Important factors that may affect actual results and cause these financial projections to not be achieved include, but are not limited to, risks and uncertainties relating to The Orchard s business (including its ability to achieve strategic goals, objectives and targets over the applicable periods), industry

performance, general business and economic conditions and other factors described under Special Note Regarding Forward-Looking Statements . In addition, the projections do not reflect revised prospects for The Orchard s business, changes in general business or economic conditions, or any other transaction or event that has occurred or that may occur and that was not anticipated at the time the financial projections were prepared in December 2009. Accordingly, there can be no assurance that these financial projections will be realized or that The Orchard s future financial results will not materially vary from these financial projections.

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No one has made or makes any representation to any stockholder or anyone else regarding the information included in the financial projections set forth below. Readers of this proxy statement are cautioned not to rely on the projected financial information. We have not updated and do not intend to update, or otherwise revise the financial projections to reflect circumstances existing after the date when made or to reflect the occurrence of future events, even in the event that any or all of the assumptions are shown to be in error. The Orchard has made no representation to Dimensional Associates, Merger Sub or any other person in the merger agreement or otherwise, concerning these financial projections.

The financial projections are forward-looking statements. For information on factors that may cause The Orchard s future financial results to materially vary, see Special Note Regarding Forward-Looking Statements .

The following is a summary of the financial projections prepared by management of The Orchard and provided to Dimensional Associates (and other interested bidders), the board of directors, the special committee and their respective advisors. These financial projections are called the base case scenario :

Base Case Scenario

	2010	2011	2012
Revenue	$71,566,622	$82,558,045	$94,651,209
Cost of Goods	53,602,205	63,074,346	72,313,523
Gross Margin	17,964,417	19,483,699	22,337,685
Gross Margin %	25.1 %	23.6 %	23.6 %
Operating Expenses	17,578,840	18,457,782	19,446,416
Operating Profit Excluding One-Time and Transition Costs	775,577	1,025,917	2,891,269
One-Time and Transition Costs	390,000		
Operating Profit Including One-Time and Transition Costs	385,577	1,025,917	2,891,269
Net Profit	305,577	945,917	2,811,269
EBITDA	2,223,343	3,773,445	4,595,885

In addition to these financial projections, The Orchard provided Dimensional Associates (and other interested bidders), the board of directors, the special committee and their respective advisors with a set of financial projections called the worst case scenario (a sensitivity case that reflects a lower rate of growth of The Orchard s core products and services in the fiscal years 2010, 2011 and 2012 and lower growth than the base case scenario financial projections summarized above in terms of revenue from planned new products and services and therefore lower Gross Margin, EBITDA and Operating Profit) and a set of financial projections called the aggressive case scenario (a sensitivity case which reflects faster growth of The Orchard s core products and services in the fiscal years 2010, 2011 and 2012 and incremental growth above the base case scenario financial projections summarized above in terms of revenue from planned new products and services and therefore higher Gross Margin, EBITDA and Operating Profit).

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The following are summaries of the worst case scenario and aggressive case scenario:

Worst Case Scenario

	2010	2011	2012
Revenue	$65,466,622	$75,548,481	$86,578,560
Cost of Goods	49,058,486	57,945,683	66,492,334
Gross Margin	16,408,136	17,602,798	20,086,226
Gross Margin %	25.1 %	23.3 %	23.2 %
Operating Expenses	17,031,754	17,883,341	18,777,508
Operating Profit Excluding One-Time and Transition Costs	(233,618)	(280,543)	1,308,717
One-Time and Transition Costs	390,000		
Operating Profit Including One-Time and Transition Costs	(623,618)	(280,543)	1,308,717
Net Profit	(703,618)	(360,543)	1,228,717
EBITDA	1,214,148	2,466,985	3,013,333

Aggressive Case Scenario

	2010	2011	2012
Revenue	$76,566,622	$88,319,598	$100,684,343
Cost of Goods	57,347,121	67,476,173	76,922,838
Gross Margin	19,219,501	20,843,425	23,761,505
Gross Margin %	25.1 %	23.6 %	23.6 %
Operating Expenses	17,578,840	18,457,782	19,446,416
Operating Profit Excluding One-Time and Transition Costs	2,030,661	2,385,643	4,315,089
One-Time and Transition Costs	390,000		
Operating Profit Including One-Time and Transition Costs	1,640,661	2,385,643	4,315,089
Net Profit	1,560,661	2,305,643	4,235,089
EBITDA	3,478,427	5,133,171	6,019,704

Additional Cash Flow Projections

In November 2009, management of The Orchard provided Fesnak with base case , worst case and aggressive case forecasts of cash flows for the fiscal years ending December 31, 2010 through 2014, which are summarized below. These forecasts were not provided to Dimensional Associates or other interested bidders. In connection with its discounted cash flow analysis, Fesnak updated these projections with management input. As a result, the cash flow projections summarized below may not be the same as the cash flow projections utilized by Fesnak and included in their materials presented to the special committee in connection with the Fesnak Opinion, which are filed as an exhibit to the Transaction Statement on Schedule 13E-3 filed with the SEC with respect to the proposed merger. These cash flow projections are forward-looking statements. For information on factors that may cause The Orchard's future financial results to materially vary, see Special Note Regarding Forward-Looking Statements .

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Base Case Scenario

	2010	2011	2012	2013	2014
Revenue	$72,566,839	$83,711,878	$95,974,056	$105,571,462	$114,017,179
Cost of Sales	54,683,467	63,955,875	73,324,179	81,078,883	87,565,193
Gross Margin	17,883,372	19,756,003	22,649,877	24,492,579	26,451,985
Operating Expenses	17,786,027	18,202,828	19,177,807	19,944,919	20,742,716
Stock Based Compensation	(1,100,000)	(1,100,000)	(1,100,000)	(1,100,000)	(1,100,000)
Adjusted Operating Expenses	16,686,027	17,102,828	18,077,807	18,844,919	19,642,716
Pretax Income	1,197,345	2,653,175	4,572,070	5,647,660	6,809,269
Income Taxes @40%				572,540	2,563,708
Net Income	1,197,345	2,653,175	4,572,070	5,075,120	4,245,562
Less (Add):					
Capital Expenditures	843,000	579,000	540,000	500,000	500,000
Depreciation	(769,000)	(758,000)	(682,000)	(668,360)	(654,993)
Amortization	(930,425)	(930,425)	(930,425)	(930,425)	(875,942)
Changes to Working Capital	110,668	111,450	122,622	95,974	84,457
Net Cash Flow	1,943,102	3,651,150	5,521,874	6,077,931	5,192,039
Years to Discount	0.50	1.50	2.50	3.50	4.50
Discount Factors 17%	0.92	0.79	0.68	0.58	0.49
Present Value of Cash Flows	$1,796,398	$2,885,034	$3,729,253	$3,508,369	$2,561,543

	Net Operating Losses
As of December 31, 2009	$10,596,250
2010	797,345
As of December 31, 2010	9,946,455
2011	2,253,175
As of December 31, 2011	7,840,830
2012	4,172,070
As of December 31, 2012	3,816,310
2013	5,247,660
As of December 31, 2013	$(1,283,799)

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Worst Case Scenario

	2010	2011	2012	2013	2014
Revenue	$65,966,839	$76,125,732	$87,240,088	$95,964,097	$103,641,225
Cost of Sales	49,346,494	58,388,436	67,000,388	73,700,426	79,596,460
Gross Margin	16,620,345	17,737,296	20,239,700	22,263,670	24,044,764
Operating Expenses	17,520,128	17,923,634	18,819,816	19,572,609	20,355,513
Stock Based Compensation	(1,100,000)	(1,100,000)	(1,100,000)	(1,100,000)	(1,100,000)
Adjusted Operating Expenses	16,420,128	16,823,634	17,719,816	18,472,609	19,255,513
Pretax Income	200,217	913,662	2,519,884	3,791,062	4,789,251
Income Taxes @40%					(388,950)
Net Income	200,217	913,662	2,519,884	3,791,062	5,178,201
Less (Add):					
Capital Expenditures	843,000	579,000	540,000	500,000	500,000
Depreciation	(769,000)	(758,000)	(682,000)	(668,360)	(654,993)
Amortization	(930,425)	(930,425)	(930,425)	(930,425)	(875,942)
Changes to Working Capital	44,668	101,589	111,144	87,240	76,771
Net Cash Flow	1,011,974	1,921,498	3,481,166	4,802,607	6,132,364
Years to Discount	0.50	1.50	2.50	3.50	4.50
Discount Factors 17%	0.92	0.79	0.68	0.58	0.49
Present Value of Cash Flows	$935,570	$1,518,312	$2,351,040	$2,772,213	$3,025,461

	Net Operating Losses
As of December 31, 2009	$10,596,250
2010	(199,783)
As of December 31, 2010	10,943,583
2011	513,662
As of December 31, 2011	10,577,472
2012	2,119,884
As of December 31, 2012	8,605,138
2013	3,391,062
As of December 31, 2013	5,361,626
2014	4,389,251
As of December 31, 2014	$1,174,408

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Aggressive Case Scenario

	2010	2011	2012	2013	2014
Revenue	$77,566,839	$89,473,349	$101,999,618	$112,199,580	$121,175,546
Cost of Sales	58,330,263	68,357,639	77,927,708	86,169,277	93,062,819
Gross Margin	19,236,576	21,115,710	24,071,910	26,030,303	28,112,727
Operating Expenses	17,786,027	18,202,828	19,177,807	19,944,919	20,742,716
Stock Based Compensation	(1,100,000)	(1,100,000)	(1,100,000)	(1,100,000)	(1,100,000)
Adjusted Operating Expenses	16,686,027	17,102,828	18,077,807	18,844,919	19,642,716
Pretax Income	2,550,549	4,012,882	5,994,103	7,185,383	8,470,011
Income Taxes @40%			186,474	2,714,153	3,228,004
Net Income	2,550,549	4,012,882	5,807,629	4,471,230	5,242,006
Less (Add):					
Capital Expenditures	843,000	579,000	540,000	500,000	500,000
Depreciation	(769,000)	(758,000)	(682,000)	(668,360)	(654,993)
Amortization	(930,425)	(930,425)	(930,425)	(930,425)	(875,942)
Changes to Working Capital	160,668	119,065	125,263	102,000	89,760
Net Cash Flow	3,246,306	5,003,243	6,754,792	5,468,016	6,183,181
Years to Discount	0.50	1.50	2.50	3.50	4.50
Discount Factors 17%	0.92	0.79	0.68	0.58	0.49
Present Value of Cash Flows	$3,001,211	$3,953,418	$4,561,916	$3,156,307	$3,050,532

	Net Operating Losses
As of December 31, 2009	$10,596,250
2010	2,150,549
As of December 31, 2010	8,593,251
2011	3,612,882
As of December 31, 2011	5,127,919
2012	5,594,103
As of December 31, 2012	$(318,634)

In addition to these financial projections, The Orchard provided the board of directors, the special committee and their respective advisors with base case forecast of cash flow for 2010. The best case forecast of cash flow for 2010 was not furnished to Dimensional Associates or other interested bidders and is accordingly not included herein.

Interests of Certain Persons in the Merger

In considering the recommendation of the special committee and our board of directors with respect to the merger agreement, you should be aware that some of our directors and executive officers have interests in the merger that are different from, or in addition to, the interests of our stockholders generally, as more fully described below. The special committee and our board of directors were aware of these interests and considered them, among other matters, in reaching their decision to approve the merger agreement and recommend that The Orchard s stockholders vote in favor of approving the merger and approving and adopting the merger agreement.

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Daniel C. Stein

Daniel C. Stein, an executive officer and a director of Dimensional Associates and a director and the sole officer of Merger Sub, has been a member of The Orchard s board of directors since 2007. Mr. Stein will continue to own an equity interest in the surviving corporation after consummation of the merger. See Important Information Regarding Merger Sub , Important Information Regarding Dimensional Associates and Certain of its Affiliates and Historical Relationship Between Dimensional Associates and The Orchard .

Treatment of Awards Under the Amended and Restated Orchard Enterprises, Inc. 2008 Stock Plan

As of April 14, 2010, there were approximately 109,401 outstanding restricted share awards subject to vesting criteria that were held by our directors and executive officers. The merger agreement provides that prior to the effective time of the merger and in accordance with the Company Stock Plan, we will provide that that each share that is subject to a restricted share award that is outstanding immediately prior to the effective time of the merger will vest and become free of all restrictions at the effective time of the merger, and at the effective time of the merger the holder will be entitled to receive the per share cash merger consideration and the per share additional consideration, if any, in exchange for each restricted share, less any required withholding taxes.

The following table identifies, for each of our directors and executive officers holding restricted share awards, the aggregate number of shares of common stock of the Company underlying unvested restricted share awards as of April 14, 2010, and the pre-tax value of such restricted share awards that will become fully vested in connection with the merger as calculated by multiplying $2.05 by the number of shares of common stock underlying such restricted share awards. In the event of a resale transaction, the holders of the restricted share awards will also be entitled to receive a share of the additional consideration, if any.

Name	Aggregate Number of Shares Subject to Unvested Restricted Share Awards	Value of Unvested Restricted Share Awards
Executive Officers		
Bradley Navin	8,474	$ 17,371.70
Nathan Fong	11,114	22,783.70
Steve Haase	7,086	14,526.30
Alexis Shapiro		
Non-Employee Directors		
David Altschul	12,926	$ 26,498.30
Viet Dinh	12,926	26,498.30
Michael Donahue	18,097	37,098.85
Nathan Peck	12,926	26,498.30
Daniel Stein	12,926	26,498.30
Joel Straka	12,926	26,498.30

In addition, certain of our directors and executive officers were granted stock option awards under the Company Stock Plan. The exercise price per share of each of the stock options granted by these awards is greater than $2.05, the per share cash merger consideration to be paid to stockholders pursuant to the merger agreement. These stock options will be cancelled immediately prior to the effective time of the merger in accordance with the merger agreement. In the event of a resale transaction, the holders of the stock options will be entitled to receive the portion of the per share additional consideration that is the excess, if any, of the per share cash merger consideration plus the per share additional consideration over the option exercise price per share, less any merger consideration amounts already received by the holder for such stock options, and less any required withholding taxes. See The Merger Agreement Treatment of Options, Restricted Stock, Stock Appreciation Rights and Warrants .

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Directors and Officers Insurance

The merger agreement provides that for six years from the effective time of the merger, the surviving corporation must maintain in effect The Orchard s current directors and officers liability insurance covering acts or omissions occurring at or prior to the effective time of the merger of those persons who are currently covered by our directors and officers liability insurance policy. Alternatively, the surviving corporation must maintain in effect for six years from the effective time of the merger directors and officers insurance with benefits and levels of coverage at least as favorable as provided in our existing policies, or use reasonable best efforts to purchase comparable insurance for such six year period. If the aggregate annual premium for such insurance exceeds 200% of the current annual premium, then the surviving corporation must obtain a policy with the greatest coverage available for a cost not exceeding such amount. See The Merger Agreement Indemnification and Insurance .

Compensation Paid to Members of the Special Committee

Mr. Donahue received $80,000 for his service as chairman of both the special committee and the search committee of the board of directors. Each of Messrs. Altschul, Dinh, Peck and Straka received $15,000 for their service on the special committee.

Retention Agreement with Alexis Shapiro

On April 26, 2010, The Orchard entered into a letter agreement with Alexis H. Shapiro, Executive Vice President, General Counsel and Secretary, which provides for Ms. Shapiro's continued employment in that position with The Orchard following the consummation of the merger until December 31, 2010, except in the event of a termination for cause (as defined in the letter agreement). Ms. Shapiro's employment will be on the same terms and conditions, at the same base salary and with the same employee benefits in effect immediately prior to the consummation of the merger, except that The Orchard may change (1) her employee benefits to the same extent that employee benefits are changed for other similarly-situated employees and (2) her duties and responsibilities to the extent it deems necessary to reflect the structure and operations of The Orchard.

Material United States Federal Income Tax Consequences of the Merger to our Stockholders

The following is a summary of the material U.S. federal income tax considerations relevant to holders of our common stock, which in this section we refer to as the Shares , whose Shares will be converted into the right to receive the per share merger consideration and the per share additional consideration in the merger and who will not own (actually or constructively) any Shares after the merger. This summary is based upon existing U.S. federal income tax law, which is subject to change or differing interpretations (possibly with retroactive effect). This summary does not address all aspects of U.S. federal income taxation which may be relevant to particular stockholders in light of their individual investment circumstances, such as stockholders subject to special tax rules (*e.g.*, financial institutions, insurance companies, controlled foreign corporations, broker-dealers and tax-exempt organizations) or to stockholders who acquired Shares in connection with stock option, stock purchase or restricted stock plans or in other compensatory transactions, or as part of a straddle, hedge, conversion, constructive sale or other integrated security transaction for U.S. federal income tax purposes, all of whom may be subject to tax rules that differ significantly from those discussed below.

This summary is limited to our stockholders who hold their Shares as capital assets (generally, property held for investment) under the Internal Revenue Code of 1986, as amended, which we refer to as the Code . **You are urged to consult your tax advisor regarding the U.S. federal income tax considerations relevant to the merger, as well as the effects of state, local, and foreign tax laws.**

For purposes of this summary, a U.S. holder is a beneficial owner of Shares that is, for U.S. federal income tax purposes, (i) an individual who is a citizen or resident of the United States; (ii) a corporation or other entity taxable as a corporation that is created in, or organized under the law of, the United States or any state or political subdivision thereof; (iii) an estate, the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; or (iv) a trust, (A) the administration of which is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust or (B) that has otherwise elected to be treated as U.S. person under the Code.

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A non-U.S. holder is a beneficial owner (other than a partnership) of Shares that is not a U.S. holder.

If a partnership holds Shares, the tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the partnership. **If you are a partner of a partnership that holds Shares, you should consult your tax advisor regarding the tax considerations relevant to the merger.**

This discussion is for general information only and should not be construed as tax advice. It is a summary and does not purport to be a comprehensive analysis or description of all potential U.S. federal income tax consequences of the merger. We urge you to consult your tax advisor regarding the U.S. federal income tax considerations relevant to the merger, as well as the effects of state, local, and foreign tax laws.

U.S. Holders

The receipt of the per share merger consideration and the per share additional consideration, as applicable, by a U.S. holder will be a taxable transaction for U.S. federal income tax purposes. The amount of gain or loss a U.S. holder recognizes, and the timing and potentially the character of a portion of such gain or loss, depends on the U.S. federal income tax treatment of the right to receive the per share additional consideration, with respect to which there is substantial uncertainty.

The right to receive the per share merger consideration and the per share additional consideration may be treated as either a closed transaction or an open transaction for U.S. federal income tax purposes. The installment method of reporting any gain attributable to the right to receive the per share additional consideration will not be available because the Shares are traded on an established securities market. The following sections discuss the U.S. federal income tax consequences if the receipt of the merger consideration is treated as an open transaction or as a closed transaction. There is no authority directly addressing whether contingent payment rights with characteristics similar to the right to receive per share additional consideration should be taxed as open transactions or closed transactions, and such question is inherently factual in nature. **Accordingly, you are urged to consult your tax advisors regarding this issue.** The right to receive per share additional consideration also may be treated as a debt instrument for U.S. federal income tax purposes. However, as such treatment is unlikely, the discussion below does not address the tax consequences of such a characterization. **We urge you to consult your tax advisor with respect to the proper characterization of the right to receive the per share additional consideration.**

Treatment as Open Transaction

Receipt of the merger consideration would generally be treated as an open transaction if the value of the right to receive the per share additional consideration cannot be reasonably ascertained. If the receipt of the merger consideration is treated as an open transaction for U.S. federal income tax purposes, a U.S. holder generally should recognize capital gain or loss for U.S. federal income tax purposes upon consummation of the merger in an amount equal to the difference, if any, between the amount of cash received and such U.S. holder s adjusted tax basis in the Shares converted into the right to receive the merger consideration pursuant to the merger. Gain or loss recognized in the transaction must be determined separately for each identifiable block of Shares converted pursuant to the merger (*i.e.*, Shares acquired at the same cost in a single transaction). Any such capital gain or loss should be long-term if the Shares were held for more than one year prior to such disposition. The deductibility of capital losses is subject to certain limitations.

If the transaction is treated as an open transaction for U.S. federal income tax purposes, the right to receive the per share additional consideration would not be taken into account in determining the holder s taxable gain upon receipt of

the merger consideration, and a U.S. holder would take no tax basis in the right to receive the per share additional consideration, but would be subject to tax as the per share additional consideration is paid or deemed paid in accordance with the U.S. holder s regular method of accounting. A portion of such payments would be treated as interest income under Section 483 of the Code (as described below) and the balance, in general, as capital gain. It is the position of the Internal Revenue Service, as reflected in Treasury Regulations, that only in rare and extraordinary cases is the value of property so uncertain as to warrant open transaction treatment.

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Treatment as Closed Transaction

If the value of the right to receive the per share additional consideration can be reasonably ascertained , the transaction generally should be treated as a closed transaction for U.S. federal income tax purposes, and gain or loss would be determined upon consummation of the merger in the same manner as if the transaction were an open transaction , except that a U.S. holder would take into account the fair market value of the right to receive the per share additional consideration, determined on the date of the consummation of the merger, as an additional amount realized for purposes of calculating gain or loss with respect to the disposition of Shares. It is possible that the trading value of the Shares would be considered along with other factors in determining whether the value of the right to receive the per share additional consideration is reasonably ascertainable.

If the transaction is treated as a closed transaction for U.S. federal income tax purposes, a U.S. holder s initial tax basis in the right to receive the per share additional consideration will equal its fair market value on the date of the consummation of the merger. The holding period of the right to receive the per share additional consideration will begin on the day following the date of the consummation of the merger.

Future Contingent Cash Consideration Payments

Treatment as Open Transaction. If the transaction is treated as an open transaction , a payment in the future to a U.S. holder of a right to receive the per share additional consideration should be treated as a payment under a contract for the sale or exchange of Shares to which Section 483 of the Code applies. Under Section 483, a portion of the payment made pursuant to a right to receive per share additional consideration will be treated as interest, which will be ordinary income to the U.S. holder of a right to receive per share additional consideration. The interest amount will equal the excess of the amount received over the present value of the right to receive per share additional consideration at the consummation of the merger, calculated using the applicable federal rate as the discount rate. The applicable federal rate is a rate reflecting an average of market yields on Treasury debt obligations for different ranges of maturities that is published monthly by the Internal Revenue Service. The U.S. holder of a right to receive per share additional consideration must include in its taxable income interest pursuant to Section 483 of the Code using such U.S. holder s regular method of accounting (such amount being taken into account when paid, in the case of a cash method holder, and, when fixed, in the case of an accrual method holder). The portion of the payment pursuant to a right to receive per share additional consideration that is not treated as interest under Section 483 of the Code should be treated as gain from the sale of a capital asset, as discussed above.

Treatment as Closed Transaction. **If the transaction is treated as a closed transaction , there is no authority directly on point with respect to the treatment of contingent payment rights similar to the per share additional consideration. You should therefore consult your tax advisor as to the taxation of such payments**. Under such a characterization, a portion of the per share additional consideration payment would likely be treated as a non-taxable return of a U.S. holder s adjusted tax basis in the right to receive the per share additional consideration. To the extent that a payment is not treated as such, it may be treated as either (i) a payment with respect to a sale of a capital asset, (ii) income taxed at ordinary rates, or (iii) a dividend. Additionally, it is possible that, were a payment to be treated as being with respect to the sale of a capital asset, a portion of such payment would constitute imputed interest under Section 483 of the Code (as described above).

Due to the legal and factual uncertainty regarding the valuation and tax treatment of the right to receive per share additional consideration, you are urged to consult your tax advisors concerning the recognition of gain, if any, resulting from the right to receive the per share additional consideration in the merger.

Non-U.S. Holders

Any gain realized by a non-U.S. holder pursuant to the merger generally will not be subject to U.S. federal income tax unless:

the gain is effectively connected with a U.S. trade or business of such non-U.S. holder (and, if an applicable tax treaty so provides, is also attributable to a permanent establishment or a fixed base in the United States maintained by such non-U.S. holder), in which case the non-U.S. holder generally

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will be taxed on its net gain derived from the merger at regular graduated U.S. federal income tax rates, except that if the non-U.S. holder is a foreign corporation, an additional branch profits tax may apply to its earnings and profits which are effectively connected to the U.S. trade or business for the taxable year at the rate of 30% (or such lower rate as may be specified by an applicable tax treaty); or

the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of the merger and certain other conditions are met, in which case the non-U.S. holder may be subject to a 30% tax on the non-U.S. holder s net gain realized, which may be offset by U.S. source capital losses of the non-U.S. holder, if any.

Generally, if payments are made to a non-U.S. holder with respect to the per share additional consideration, we expect to cause the paying agent to withhold and pay over to the U.S. Treasury tax equal to 30% of the portion of any such payments treated as imputed interest (as discussed above). A non-U.S. holder that provides a properly completed Form W-8BEN may qualify for no withholding or a reduced rate of holding on such payments to the extent provided in an income tax treaty between the United States and the non-U.S. holder s country of residence. In addition, because the portion of any payment with respect to per share additional consideration treated as imputed interest could possibly be treated as portfolio interest that is exempt from the U.S. withholding tax, **non-U.S. holders with respect to whom withholding occurs should consult their own tax advisors about the advisability of applying for a refund of withheld amounts**.

If payments are made to a non-U.S. holder with respect to the per share additional consideration, the payments are effectively connected with the non-U.S. holder s conduct of a trade or business within the United States and the non-U.S. holder properly certifies this fact on Form W-8ECI or a successor form, then no tax withholding would be made and such effectively connected gain would be taxed as described in the first bullet above.

Information Reporting and Backup Withholding

Information reporting to the Internal Revenue Service generally will be required with respect to payments of the per share merger consideration and the per share additional consideration to stockholders other than corporations and other exempt recipients. In addition, under the backup withholding provisions of the U.S. federal income tax laws, the paying agent may be required to withhold a portion of the amount of payments made to certain holders pursuant to the merger, as applicable, and possibly a portion of the amount of any per share additional consideration. In order to prevent U.S. federal income tax backup withholding with respect to payments, a U.S. holder must provide the paying agent with such holder s correct taxpayer identification number and certify that such holder is not subject to backup withholding by completing the Form W-9 in the letter of transmittal to be sent to our stockholders in connection with the merger. Certain holders (including, among others, all corporations and certain foreign individuals and entities) may not be subject to backup withholding. If a holder does not provide its correct taxpayer identification number or fails to provide the certifications described above, the Internal Revenue Service may impose a penalty on the holder, and payments to the holder pursuant to the merger, as well as payments pursuant to the right to receive per share additional consideration, may be subject to backup withholding. All U.S. holders should complete and sign the Form W-9 included in the letter of transmittal to provide the information necessary to avoid backup withholding. Foreign stockholders should complete and sign the appropriate Form W-8 (a copy of which may be obtained from the paying agent) in order to avoid backup withholding. **Such stockholders should consult a tax advisor to determine which Form W-8 is appropriate.**

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a holder s U.S. federal income tax liability, if any, provided the required information is timely furnished to the Internal Revenue Service.

The discussion set forth above is included for general information only. Each beneficial owner of shares of our

common stock should consult his, her or its own tax advisor with respect to the specific tax consequences of the merger to him, her or it, including the application and effect of state, local and foreign tax laws.

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Fees and Expenses of the Merger

Except as described below, under the merger agreement, each of the parties will bear all fees and expenses that it incurs in connection with the merger and the merger agreement, whether or not the transaction is consummated.

We estimate that we will incur, and will be responsible for paying, transaction-related fees and expenses, consisting primarily of financial, legal, accounting and other advisory fees, SEC filing fees and other related charges for both the company and the special committee totaling approximately $840,000. This amount includes the following estimated fees and expenses:

Description	Amount to Be Paid
SEC filing fee	$ 550
Printing, proxy solicitation and mailing expenses	40,000
Financial, legal, accounting and other advisory fees	625,000
Directors and officers insurance deductible	150,000
Miscellaneous	24,450
Total	$ 840,000

In addition, it is expected that Dimensional Associates and Merger Sub will incur approximately $350,000 of legal and other advisory fees. If the merger agreement is terminated under certain circumstances, described under The Merger Agreement Expense Reimbursement , we have agreed to pay Dimensional Associates for its reasonable documented out-of-pocket expenses incurred in connection with the merger agreement up to $350,000 in the aggregate.

Provisions for Non-Continuing Stockholders

No provision has been made to grant the non-continuing stockholders access to the corporate files of The Orchard, Merger Sub or Dimensional Associates or any of their respective affiliates, or to obtain counsel or appraisal services at the expense of The Orchard or any other such party.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This proxy statement contains forward-looking statements within the meaning of the federal securities laws. These statements relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from those expressed or implied by the forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as may , likely , will , should , expect , plan , anticipa estimate , predict , potential , continue or the negative of these terms or other comparable terminology. These forward-looking statements are subject to a number of risks that could cause them to differ from our expectations. These include, but are not limited to, risks relating to:

Our financial condition and results of operations, including expectations and projections relating to our future performance and ability to achieve profitability;

Satisfaction of the conditions of the pending merger with Dimensional Associates, including the approval by a majority vote of our stockholders who are unaffiliated with Dimensional Associates;

The costs and expenses associated with the pending merger;

Contractual restrictions on the conduct of our business included in the merger agreement, and the potential loss of key personnel, disruption of our sales and operations or any impact on our relationships with third parties as a result of the pending merger;

Any delay in consummating the proposed merger with Dimensional Associates or the failure to consummate the transaction;

The outcome of, or expenses associated with, any litigation which may arise in connection with the pending merger with Dimensional Associates;

Our ability to capitalize on our business strategy, including shifting our revenue to a more diversified revenue mix, including physical distribution;

Our ability to take advantage of opportunities for revenue expansion, including through acquisitions, delivery of video content, organic growth in distribution and revenue growth from higher margin owned and controlled content;

Ongoing growth in our industry, particularly gaining market share in the growing digital music and mobile distribution markets, as well as the developing market for digital delivery of video;

Our ability to continue to acquire digital rights and market our value-added services to content owners;

Complexities involved in the payment and collection of royalties for digital distribution of copyrighted material and risks associated with availability of indemnities to protect us from liability for copyright infringement;

Distribution of our music and video content;

Evolving digital entertainment services which offer variable or other forms of pricing which may reduce the cost per download per track;

Music and video piracy;

Rapidly evolving and changing competitive and industry conditions in the digital media industry, including potentially significant additional competition for digital distribution;

The impact of the general economic recession and other market and economic challenges on our business; and

Our ability to maintain the listing of our common stock on the Nasdaq Stock Market.

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You should not place undue reliance on these forward-looking statements, which are based on our current views and assumptions. In evaluating these statements, you should specifically consider various factors, including the foregoing risks and those outlined under Item 1A. Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2009. Many of these factors are beyond our control. Our forward-looking statements represent estimates and assumptions only as of the date of this proxy statement. Except as required by law, we undertake no obligation to update any forward-looking statement to reflect events or circumstances occurring after the date hereof.

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THE ANNUAL MEETING

This proxy statement is furnished in connection with the solicitation of proxies by our board of directors in connection with the annual meeting of our stockholders.

Date, Time and Place of the Annual Meeting

We will hold the annual meeting at the offices of Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 10112, at 10:00 a.m., local time, on , 2010.

Purpose of the Annual Meeting

At the annual meeting, we will ask the holders of our common stock and Series A convertible preferred stock to (i) approve the Merger Proposal, (ii) approve the Certificate Amendment Proposal, (iii) elect seven (7) directors, (iv) ratify the appointment of Marcum LLP as our independent registered public accounting firm and (v) approve the Adjournment Proposal.

Record Date; Shares Entitled to Vote; Quorum

Only holders of record of our common stock and Series A convertible preferred stock at the close of business on , 2010, the record date, are entitled to notice of, and to vote at, the annual meeting. On the record date, there were 6,378,252 shares of our common stock and 448,707 shares of our Series A convertible preferred stock issued and outstanding, of which 2,709,276 shares of our common stock and 446,918 shares of our Series A convertible preferred stock were held by Dimensional Associates. Each holder of shares of common stock is entitled to one (1) vote per share and each holder of shares of our Series A convertible preferred stock is entitled to three and one-third (3 1/3) votes per share on each proposal presented in this proxy statement. There is no cumulative voting in the election of directors.

The required quorum for the transaction of business at the annual meeting is a majority of the votes eligible to be cast by holders of shares of our common stock and Series A convertible preferred stock issued and outstanding on the record date voting together as a single class. Shares that are voted FOR , WITHHOLD , ABSTAIN or AGAINST matter are treated as being present at the annual meeting for purposes of establishing a quorum. In the event that there are not sufficient votes for a quorum, the Annual Meeting may be adjourned in order to permit further solicitation of proxies. However, the presence in person or by proxy of Dimensional Associates, our majority stockholder, will assure that a quorum is present at the meeting.

Vote Required

The approval of the Merger Proposal requires the affirmative vote of (i) the holders of a majority of all of The Orchard s outstanding shares of voting stock as of the record date, which vote we refer to as the Company Stockholder Approval, and (ii) the holders of a majority of the outstanding shares of The Orchard s outstanding shares of voting stock as of the record date, other than Dimensional Associates and its affiliates, which vote we refer to as the Minority Stockholder Approval. Approval of the Merger Proposal is a condition to the completion of the merger.

Abstentions and broker non-votes in the case of both the Company Stockholder Approval and the Minority Stockholder Approval will have the same effect as votes against the approval of the Merger Proposal.

Pursuant to the terms of the merger agreement, Dimensional Associates and its affiliates have agreed to vote their shares in favor of the Merger Proposal. Because Dimensional Associates and its affiliates hold approximately 54% of our voting stock as of the record date of the annual meeting, we expect that the Company Stockholder Approval will be obtained.

In addition, as of the record date, our directors and executive officers (other than Mr. Stein) had the right to vote, in the aggregate, 437,657 shares of our common stock, which represented approximately 7.2% of the outstanding shares of our common stock on the record date for the meeting. These directors and executive officers have informed us that they intend to vote all of their shares of common stock FOR the approval of the Merger Proposal.

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The approval of the Certificate Amendment Proposal requires the affirmative vote of (i) the holders of a majority of all of The Orchard s outstanding shares of voting stock and (ii) the holders of a majority of the outstanding shares of The Orchard s Series A convertible preferred stock, voting as a separate class. Approval of the Certificate Amendment Proposal is a condition to the completion of the merger. If the Merger Proposal is not approved, this proposal will not be presented at the meeting.

Because Dimensional Associates and its affiliates hold approximately 54% of The Orchard s voting stock and 99% of the outstanding shares of The Orchard s Series A convertible preferred stock, we expect that approval of the Certificate Amendment Proposal will be obtained if it is presented at the meeting.

The seven (7) nominees for directors receiving the highest number of affirmative votes cast will be elected as a director.

Ratification of our independent registered public accounting firm requires the affirmative vote of the holders of a majority of The Orchard s shares of voting stock voting on the matter.

Approval of the Adjournment Proposal requires the affirmative vote of the holders of a majority of The Orchard s shares of voting stock voting on the matter.

Voting of Proxies

If your shares are registered in your name, you may cause your shares to be voted by returning a signed proxy card or voting in person at the meeting. Additionally, you may submit a proxy authorizing the voting of your shares via the Internet at *www.investorvote.com/orcd* or by telephone by calling 1-800-652-8683.

You must have the enclosed proxy card available, and follow the instructions on the proxy card, in order to submit a proxy via the Internet or telephone.

If your shares are registered in your name and you plan to attend the annual meeting and wish to vote in person, you will be given a ballot at the meeting. If your shares are registered in your name, you are encouraged to submit a proxy even if you plan to attend the annual meeting in person.

Voting instructions are included on your proxy card. All shares represented by properly executed proxies received in time for the annual meeting will be voted at the annual meeting in accordance with the instructions of the stockholder. Properly executed proxies that do not contain voting instructions will be voted FOR the approval of the Merger Proposal, FOR the approval of the Certificate Amendment Proposal, FOR each director nominee, FOR the ratification of our independent public accounting firm and FOR approval of the Adjournment Proposal.

If your shares are held in street name through a broker, bank or other nominee, you may provide voting instructions by completing and returning the voting form provided by your broker, bank or nominee or via the Internet or by telephone through your broker, bank or nominee if such a service is provided. To provide voting instructions via the Internet or telephone, you should follow the instructions on the voting form provided by your broker, bank or nominee. If you plan to attend the annual meeting, you will need a proxy from your broker, bank or nominee in order to be given a ballot to vote the shares. If you do not return your broker s, bank s or nominee s voting form, provide voting instructions via the Internet or telephone through your broker, bank or nominee, if possible, or attend the annual meeting and vote in person with a proxy from your broker, bank or nominee, it will have the same effect as if you voted AGAINST approval of the Merger Proposal and AGAINST the Certificate Amendment Proposal and

AGAINST the Adjournment Proposal. Failure to return your broker s, bank s or nominee s voting form, provide voting instructions via the Internet or telephone through your broker, bank or nominee, if possible, or attend the annual meeting and vote in person with a proxy from your broker, bank or nominee, will not affect the outcome of the other proposals.

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Revocability of Proxies

Any proxy you give pursuant to this solicitation may be revoked by you at any time before it is voted. Proxies may be revoked as follows:

If you have sent a proxy directly to The Orchard you may revoke it by:

delivering to our corporate secretary at our corporate offices at 23 East 4th Street, 3rd Floor, New York, New York 10003, or by fax to the attention of Alexis H. Shapiro, Secretary, at 866-625-7384, on or before the business day prior to the annual meeting, a written revocation of the proxy or a later dated, signed proxy card;
submitting a valid, later-dated proxy by telephone, via the Internet or by mail until immediately prior to the annual meeting; or
attending the annual meeting and voting in person (attendance at the meeting will not in itself constitute the revocation of a proxy; you must vote in person at the annual meeting).

If you have instructed a broker, bank or nominee to vote your shares, you may revoke your proxy only by following the directions received from your broker, bank or nominee to change those instructions.

Attendance at the Annual Meeting

Admission to the meeting is limited to stockholders and their proxies and seating will be limited. Each stockholder may be asked to present valid picture identification such as a driver s license or passport. Please note that if you hold your shares through a broker, bank or other nominee in street name , you will need to provide a copy of a brokerage or bank statement reflecting your stock ownership as of the record date to be admitted to the meeting. Cameras, recording devices and other electronic devices will not be permitted at the meeting.

Rights of Stockholders Who Object to the Merger

Our stockholders are entitled to appraisal rights under Section 262 of the DGCL in connection with the merger. This means that you are entitled to have the value of your shares determined by the Delaware Court of Chancery and to receive payment based on that valuation. The ultimate amount you receive as a dissenting stockholder in an appraisal proceeding may be more than, the same as or less than the amount you would have received under the merger agreement.

To exercise your appraisal rights, you must submit a written demand for appraisal to The Orchard before the vote is taken on the merger agreement and you must not vote in favor of the adoption of the merger agreement. Your failure to follow exactly the procedures specified under Delaware law will result in the loss of your appraisal rights. See Appraisal Rights and the text of the Delaware appraisal rights statute reproduced in its entirety as Appendix D.

Solicitation of Proxies

This proxy solicitation is being made and paid for by The Orchard on behalf of its board of directors. In addition, we have retained Georgeson to assist in the solicitation. We will pay Georgeson (i) an initial fee of $8,000, (ii) $5.00 per phone call and per telephonic vote and (iii) $1.00 for each vote confirmation, plus out-of-pocket expenses for its assistance. Our directors, executive officers and employees may also solicit proxies by personal interview, mail, e-mail, telephone, facsimile or other means of communication. These persons will not be paid additional compensation for their efforts. We will also request brokers and other fiduciaries to forward proxy solicitation

material to the beneficial owners of shares of our common stock that the brokers and fiduciaries hold of record. We will reimburse them for their reasonable out-of-pocket expenses. In addition, we will indemnify Georgeson against any losses arising out of that firm s proxy soliciting services on our behalf.

Other Business

We are not currently aware of any business to be acted upon at the annual meeting other than the matters discussed in this proxy statement.

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APPROVAL AND ADOPTION OF THE MERGER AGREEMENT

Proposal

You are being asked to consider and vote upon a proposal to approve and adopt the Agreement and Plan of Merger dated as of March 15, 2010, as amended, among The Orchard, Dimensional Associates and Merger Sub, and the transactions contemplated thereby. If the merger is completed, the Company s stockholders, other than Dimensional Associates and its affiliates, will have the right to receive, for each share of our common stock they hold at the time of the merger, $2.05 in cash and a contingent right to receive additional consideration, under certain circumstances post-closing if Dimensional Associates or The Orchard or any of their affiliates enters into a commitment to sell at least 80% of The Orchard s voting securities or assets within six months of the consummation of the merger.

The Orchard Enterprises, Inc., a Delaware corporation, controls and distributes more than 1.8 million music and audio recordings and approximately 5,000 titles of video programming through digital stores, such as Amazon, eMusic, Hulu, iTunes, Rhapsody and YouTube, and mobile carriers, such as Orange, Telefonica, Verizon and 3, worldwide.

Dimensional Associates, LLC, a New York limited liability company, is a private equity investment fund sponsored by JDS Capital, L.P.

Orchard Merger Sub., Inc., a Delaware corporation, is a wholly owned subsidiary of Dimensional Associates. Merger Sub was formed solely for the purpose of entering into the merger agreement and consummating the transactions contemplated by the merger agreement. Merger Sub has not engaged in any business except for activities incident to its incorporation and in connection with the transactions contemplated by the merger agreement.

Vote Required

The approval of the Merger Proposal will require the affirmative vote of:

- the holders of a majority of all of our outstanding shares of voting stock as of the record date which vote we refer to as the Company Stockholder Approval ; and
- the holders of a majority of our outstanding shares of voting stock as of the record date, other than Dimensional Associates and its affiliates, which vote we refer to as the Minority Stockholder Approval .

Pursuant to the terms of the merger agreement, Dimensional Associates and its affiliates have agreed to vote their shares in favor of the Merger Proposal. Because Dimensional Associates and its affiliates hold approximately 54% of our voting stock as of the record date of the annual meeting, we expect that the Company Stockholder Approval will be obtained.

Abstentions and broker non-votes in the case of both the Company Stockholder Approval and the Minority Stockholder Approval will have the same effect as votes against the approval of the Merger Proposal.

Recommendation of the Board

The special committee unanimously determined that the merger, the consideration to be paid in the merger, and the

other terms and provisions of the merger agreement are fair to, advisable and in the best interests of The Orchard and its stockholders, other than Dimensional and its affiliates. The special committee recommended that the board of directors approve and adopt the merger agreement and determine that the terms and conditions of the merger and the merger agreement are fair to, advisable and in the best interests of The Orchard and its stockholders, other than Dimensional and its affiliates, and recommend adoption of the merger agreement by the holders of The Orchard s common stock.

Our board of directors, acting upon the unanimous recommendation of the special committee, unanimously (other than Daniel Stein, a director of ours who is also an executive officer and a director of Dimensional Associates, who abstained from deliberations and voting on the matter) recommends that our stockholders vote FOR the Merger Proposal.

THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR APPROVAL OF THE MERGER PROPOSAL.

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THE MERGER AGREEMENT

The following is a summary of the material terms and provisions of the merger agreement, but does not purport to describe all of the terms and provisions of the merger agreement. The following summary is qualified in its entirety by reference to the complete text of the merger agreement and the amendments to the merger agreement, which are attached as Appendices A, A-1 and A-2 to this proxy statement and incorporated into this proxy statement by reference. We urge you to read the full text of the merger agreement because it is the legal document that governs the merger.

The merger agreement and this summary of its terms and provisions have been included to provide you with information regarding the terms and provisions of the merger agreement. Factual disclosures about us, Dimensional Associates or Merger Sub contained in this proxy statement or in our public reports filed with the SEC may supplement, update or modify the factual disclosures about us, Dimensional Associates or Merger Sub contained in the merger agreement. In your review of the representations and warranties contained in the merger agreement and described in this summary it is important to bear in mind that the representations and warranties have been negotiated with the principal purpose of establishing the circumstances in which a party to the merger agreement may have the right not to close the merger if the representations and warranties of the other party prove to be untrue due to a change in circumstance or otherwise, and allocates risk between the parties to the merger agreement, rather than establishing matters as facts. The representations and warranties may also be subject to a contractual standard of materiality different from those generally applicable to stockholders and in some cases have been qualified in a number of important respects, including through the use of negotiated exceptions for certain matters disclosed by each party to the other parties.

The Merger

Under the merger agreement, Merger Sub, a wholly owned subsidiary of Dimensional Associates, will merge with and into us. After the merger, we will continue as the surviving corporation.

Following the merger, the directors of Merger Sub will be the initial directors of the surviving corporation until their successors are duly elected or appointed and qualified or their earlier death, resignation or removal.

At the effective time of the merger, our certificate of incorporation will be amended and restated as provided in the merger agreement and will be the certificate of incorporation of the surviving corporation, until amended as provided by the certificate of incorporation or applicable law. Our bylaws as in effect at the effective time of the merger will be the bylaws of the surviving corporation, until amended as provided by the bylaws or applicable law.

Effective Time

The merger will be effective at the time, which we refer to as the effective time of the merger, when the certificate of merger is filed with the Secretary of State of the State of Delaware (or at such later time as is agreed upon by the parties to the merger agreement and specified in the certificate of merger). Unless otherwise mutually agreed by the parties to the merger agreement, the closing of the merger will take place on the first business day after the satisfaction or waiver of the closing conditions stated in the merger agreement (other than those conditions that by their nature are to be satisfied at the closing, but subject to the fulfillment or waiver of such conditions) or as otherwise agreed by the parties.

Merger Consideration

Other than the excluded shares described below, each share of our common stock issued and outstanding immediately prior to the effective time of the merger will be automatically cancelled and converted at the effective time of the merger into the right to receive the following merger consideration: (1) $2.05 in cash, which we refer to as the cash merger consideration ; and (2) a contingent right to receive a share of additional merger consideration, which we refer to as the additional consideration .

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The additional consideration will be paid, if, on or prior to the six-month anniversary of the consummation of the merger, we, Dimensional Associates or any of our respective affiliates enter into a commitment, which we refer to as a resale transaction, to sell at least 80% of our outstanding voting securities or at least 80% of our assets. The additional consideration will be an amount equal to 15% of the difference between our enterprise value in the resale transaction and our enterprise value, immediately prior to the consummation of the merger as calculated in accordance with the terms of the merger agreement, which amount we refer to as the resale profit . The portion of any additional consideration payable to a holder of our shares will be calculated in accordance with the terms of the merger agreement.

The following shares will be excluded shares and will receive the following treatment in the merger:

shares owned by Dimensional Associates and any of its affiliates will remain outstanding;
shares owned by Merger Sub and by us (including treasury shares) or any of our wholly owned subsidiaries will be cancelled without payment of any consideration;
shares subject to options, restricted stock awards, stock appreciation rights and warrants will have the treatments described under Treatment of Options, Restricted Stock, Stock Appreciation Rights and Warrants below; and
shares held by any of our stockholders who are entitled to and who have properly exercised and not withdrawn a demand for, or lost their right to, appraisal rights under Delaware law will have the right to receive the payment described under Appraisal Rights below.

In addition, following the merger, each share of our Series A convertible preferred stock will remain outstanding.

If we change the number of shares or securities convertible or exchangeable into or exercisable for shares issued and outstanding prior to the effective time of the merger as a result of a reclassification, stock split (including a reverse stock split), stock dividend or distribution, recapitalization, merger, issuer tender or exchange offer, or other similar transaction, the merger consideration will be equitably adjusted to reflect the change.

Payment Procedures

Dimensional Associates will select a paying agent (with the prior approval of the special committee of our board of directors) to receive the aggregate merger consideration for the benefit of the holders of shares of our common stock. At the effective time of the merger, Dimensional Associates will deposit with the paying agent an amount in cash equal to the aggregate cash merger consideration. If any cash amounts in respect of the additional consideration is to be paid, Dimensional Associates will pay to the paying agent, for the benefit of, and distribution to, our pre-merger stockholders and, if applicable, our pre-merger option and stock appreciation rights holders, an amount in cash equal to the aggregate cash amount payable in respect of the additional consideration.

Immediately after the effective time of the merger, Dimensional Associates or the surviving corporation will cause the paying agent to mail to each stockholder of record, other than holders of excluded shares, a letter of transmittal, instructions advising how to surrender or exchange certificates or book-entry shares for the merger consideration, and information describing the holder s contingent rights to receive his, her or its share of the additional consideration.

Upon surrender of a certificate or book-entry shares to the paying agent in accordance with the terms of the letter of transmittal, together with a signed letter of transmittal, and any other documents specified in the letter of transmittal or required by the paying agent, the holder of the certificate or book-entry shares will receive in exchange a cash amount for each share surrendered equal to the merger consideration. The paying agent will reduce the amount of any merger consideration paid to the holder by any applicable withholding taxes and no interest will be paid or accrued with respect to the merger consideration. The certificate or book-entry shares so surrendered will be cancelled. YOU

SHOULD NOT FORWARD YOUR STOCK CERTIFICATES TO THE PAYING AGENT WITHOUT A LETTER OF TRANSMITTAL, AND YOU SHOULD *NOT* RETURN YOUR STOCK CERTIFICATES WITH THE ENCLOSED PROXY.

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In the event of a transfer of ownership of shares that is not registered in our transfer records, payment may be issued to the transferee upon surrender of the certificate formerly representing such shares to the paying agent, accompanied by all documents evidencing the transfer and evidencing that any applicable stock transfer taxes have been paid or are not applicable.

At the effective time of the merger, we will close our stock transfer books. After that time, there will be no further transfer of shares of our common stock that were outstanding immediately prior to the effective time of the merger, except for shares owned by Dimensional Associates or its affiliates.

Any cash deposited with the paying agent (including the proceeds of any investments thereof and any amount of additional consideration deposited) that remains unclaimed for one year after the effective time of the merger will be delivered to the surviving corporation. Subject to any applicable unclaimed property laws, after that time, any holder of shares will be entitled to look only to the surviving corporation for payment of the cash merger consideration and the additional consideration, if any, upon surrender of its certificates or book-entry shares.

If a certificate has been lost, stolen or destroyed, the paying agent will deliver the merger consideration in exchange for the lost, stolen or destroyed certificate only upon the making of an affidavit of loss and, if required by Dimensional Associates or the surviving corporation, the posting of a bond as indemnity against any claim that may be made against Dimensional Associates or the surviving corporation with respect to the lost certificate.

Appraisal Rights

Shares of our common stock issued and outstanding immediately prior to the effective time of the merger that are held by any holder who has perfected a demand for appraisal rights with respect to such shares will not be converted into the right to receive the merger consideration. Instead such stockholder will only be entitled to payment of the appraised value of such shares in accordance with the DGCL. At the effective time of the merger, all such shares will automatically be cancelled and will cease to exist or be outstanding, and each holder will cease to have any rights with respect to the shares, except for rights granted under Section 262 of the DGCL. In the event a stockholder withdraws or loses (through failure to perfect or otherwise) the right to appraisal under the DGCL, then the rights of such holder will be deemed to have been converted at the effective time of the merger into the right to receive the merger consideration described above. Dimensional Associates has the right to participate in all negotiations and proceedings with respect to demands for appraisal under the DGCL. We may not, without Dimensional Associates prior written consent, voluntarily make any payment with respect to, or settle or offer to settle, or approve any withdrawal of any demands for appraisal.

These rights in general are discussed more fully under Appraisal Rights below.

Treatment of Options, Restricted Stock, Stock Appreciation Rights and Warrants

Immediately prior to the effective time of the merger and in accordance with the Company Stock Plan, we will provide that:

each stock option granted under the Company Stock Plan that is outstanding and unexercised at the effective time of the merger will be cancelled, and the holder thereof will be entitled to receive (a) at the effective time of the merger from us, or as soon as practicable thereafter from the surviving corporation, in consideration for the cancellation, a

cash payment for each share of our common stock subject to such option, equal to the excess, if any, of the per share cash merger consideration over the option exercise price, less any required withholding taxes, and (b) in the event of a resale transaction, as soon as practicable following receipt by the paying agent of the additional consideration, a cash payment for each share of our common stock subject to such option equal to the excess, if any, of the per share cash merger consideration plus the per share additional consideration over the option exercise price per share, less any merger consideration amounts already received by the holder for such stock options, and less any required withholding taxes;

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each share that is subject to a restricted share award that is outstanding immediately prior to the effective time of the merger will vest and become free of all restrictions at the effective time of the merger, and at the effective time of the merger the holder will be entitled to receive the per share cash merger consideration and the per share additional consideration, if any, from us in exchange for each restricted share, less any required withholding taxes;
each stock appreciation right granted under the Company Stock Plan that is outstanding and unexercised at the effective time of the merger will be cancelled, and the holder will be entitled to receive (a) at the effective time of the merger from us, or as soon as practicable thereafter from the surviving corporation, in consideration for the cancellation, a cash payment for each share of our common stock subject to such stock appreciation right equal to the excess, if any, of the per share cash merger consideration over the stock appreciation right exercise price, less any required withholding taxes, and (b) in the event of a resale transaction, as soon as practicable following receipt by the paying agent of the additional consideration, a cash payment for each share of our common stock subject to such stock appreciation right equal to the excess, if any, of the per share cash merger consideration plus the per share additional consideration over the stock appreciation right exercise price per share, less any merger consideration amounts already received by the holder for such stock appreciation rights, and less any required withholding taxes; and
each warrant that is outstanding and unexercised at the effective time of the merger will remain outstanding, subject to its terms.

Each outstanding and unexercised stock option and stock appreciation right has an exercise price greater than $2.05 and, consequently, holders thereof will not receive any cash merger consideration at the effective time of the merger.

Representations and Warranties

The merger agreement contains representations and warranties made by The Orchard and by Dimensional Associates and Merger Sub to and solely for the benefit of each other party. The assertions embodied in those representations and warranties may be qualified by information contained in confidential disclosure schedules we provided in connection with signing the merger agreement that modify, qualify and create exceptions to the representations and warranties contained in the merger agreement.

Accordingly, you should not rely on the representations and warranties as characterizations of the actual state of facts, because (a) they were made only as of the date of the merger agreement or a prior specified date, (b) in some cases they are subject to qualifications with respect to materiality and knowledge, (c) they are modified in important part by the associated disclosure schedule and (d) in the case of our representations and warranties, are also qualified by certain disclosure in the registration statements, reports and proxy statements filed or furnished by us with or to the SEC since December 31, 2007 and prior to the date of the merger agreement. The disclosure schedule contains information that has been included in our prior public disclosures, as well as non-public information. Moreover, information concerning the subject matter of the representations and warranties may have changed since the date of the merger agreement, which subsequent information may or may not be fully reflected in our public disclosures.

We make various representations and warranties in the merger agreement that are subject, in some cases, to exceptions and qualifications (including exceptions that would not reasonably be expected to constitute a Company Material Adverse Change). See Definition of Company Material Adverse Change below. Our representations and warranties relate to, among other things:

due organization, good standing and qualification, and corporate power with respect to us and our subsidiaries;
capitalization and certain related matters;
our corporate authority to enter into, and carry out the obligations under, the merger agreement and enforceability of the merger agreement;

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board of directors and special committee approvals and actions taken by the special committee of our board of directors regarding the fairness of the merger transaction including consideration of the opinion of its financial advisor;

the absence of conflicts with, or defaults under, our organizational documents, other contracts and applicable laws as a result of the merger;

required regulatory filings and consents and governmental approvals;

our filings with the SEC and our financial statements;

the absence of certain undisclosed liabilities;

the conduct of our business (including of our subsidiaries) in the ordinary course of business consistent with past practice since September 30, 2009 and the absence of any change, event, condition, development or occurrence since September 30, 2009 that constitutes a Company Material Adverse Change;

the absence of certain events or changes, including any event or change constituting a Company Material Adverse Change and any changes to our capital stock, accounting principles or tax elections or tax accounting methods;

compliance with laws and compliance with, and adequacy of, permits;

tax matters;

material contracts and restrictive contracts;

real and personal property;

intellectual property matters;

litigation and other legal proceedings;

employee benefit and labor matters; and

absence of brokers and finders fees in connection with the merger agreement.

The merger agreement also contains various representations and warranties made by Dimensional Associates and Merger Sub that are subject, in some cases, to exceptions and qualifications. The representations and warranties of Dimensional Associates and Merger Sub relate to, among other things:

their due organization, good standing and qualification;

their limited liability company and corporate authority to enter into, and carry out the obligations under, the merger agreement and enforceability of the merger agreement;

the absence of conflicts with, or defaults under, their organizational documents, other contracts and applicable law as a result of the merger;

required regulatory filings and consents and governmental approvals;

litigation and other legal proceedings;

the sufficiency of funds to pay in cash the aggregate merger consideration, cash payments payable to holders of outstanding stock options, restricted stock and stock appreciation rights and other amounts required to be paid in accordance with the merger agreement;

the capitalization of Merger Sub and Dimensional Associates ownership of Merger Sub;

the absence of brokers and finders fees in connection with the merger agreement;

the solvency of Dimensional Associates and the surviving corporation following the merger;

the absence of certain agreements, arrangements or understandings (i) pursuant to which any of our stockholders would be entitled to receive consideration of a different amount or nature than the per

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share merger consideration to be received in the merger, (ii) pursuant to which any of our stockholders agrees to vote to approve the merger or the merger agreement or to vote against any superior proposal, and (iii) with respect to the compensation or equity arrangements for any of our current employees following the effective time;

acknowledgment of no representations and warranties by us other than our representations and warranties contained in the merger agreement; and

non-reliance on estimates, projections, forecasts, forward-looking statements and business plans provided by us.

The representations and warranties of the parties will not survive consummation of the merger.

Definition of Company Material Adverse Change

Many of the representations and warranties made by us in the merger agreement and certain conditions to performance by Dimensional Associates and Merger Sub of their obligations under the merger agreement are qualified by reference to whether the item in question would constitute a Company Material Adverse Change . The merger agreement provides that a Company Material Adverse Change means any fact, circumstance, change, occurrence or effect that, individually or in the aggregate with all other facts, circumstances, changes, occurrences or effects, is or would reasonably be expected to be materially adverse to the condition (financial or otherwise), assets, liabilities, business or results of operations of The Orchard and our subsidiaries, taken as a whole.

However, any fact, circumstance, change, occurrence or effect arising or resulting from any of the following, in and of itself or themselves, will not constitute, and will not be taken into account in determining whether a Company Material Adverse Change has occurred or may occur:

any fact, circumstance, change, occurrence or effect generally affecting (a) any industry in which we and our subsidiaries operate or in which our products or services are used or distributed, or (b) the economy, credit or financial or capital markets in the United States or elsewhere in the world, including changes in interest or exchange rates;

any fact, circumstance, change, occurrence or effect resulting from the public disclosure or performance of the merger agreement, any action taken by us, Dimensional Associates or Merger Sub pursuant to and in accordance with the merger agreement or any action or omission of ours or our subsidiaries taken with the prior consent of Dimensional Associates, or the consummation of the transactions contemplated by the merger agreement, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, distributors, partners, employees or regulators, or any litigation arising from allegations of breach of fiduciary duty or violation of law relating to the merger agreement or the transactions contemplated by the merger agreement;

any change in the market price or trading volume of our securities;

a material worsening of current conditions caused by an act of terrorism or war (whether or not declared) occurring after the date of the merger agreement, or any material escalation or worsening of any such acts of terrorism or war (whether or not declared); or

any changes, events, occurrences or effects, arising out of, resulting from or attributable to (a) the adoption, implementation, repeal, modification, interpretation or change of law, in applicable regulations of any governmental entity, in generally accepted accounting principles or in accounting standards, or (b) any changes in general legal, regulatory or political conditions, or, in the case of (a) or (b), the intention to do any of the foregoing that is publicly announced by any governmental entity;

provided that, with respect to the first, fourth and fifth bullets above, if such fact, circumstance, change, occurrence or effect results in the termination of our business relationship with either (a) iTunes, or (b) any of our 2009 top five digital revenue generating content providers, such fact, circumstance, change, occurrence or effect will constitute a Company Material Adverse Change for all purposes under the merger agreement.

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Covenants Relating to the Conduct of Our Business

We have agreed in the merger agreement that, from the date of the merger agreement until the effective time of the merger, except as expressly contemplated by the merger agreement or required by law, we will, and will cause our subsidiaries to:

conduct our respective businesses in all material respects in the ordinary course of business consistent with past practice;
use commercially reasonable efforts to preserve intact our respective present business organizations, maintain our respective rights and franchises and preserve our respective existing significant business relationships; and
take no action that would adversely affect or delay in any material respect the ability of Dimensional Associates, Merger Sub or us to obtain any necessary consents or approvals for the transactions contemplated in the merger agreement.

We have also agreed in the merger agreement that, from the date of the merger agreement until the earlier of the effective time of the merger or the termination of the merger agreement, subject to certain agreed upon exceptions and except as expressly contemplated by the merger agreement or required by law or consented to in writing by Dimensional Associates (which consent will not be unreasonably withheld or delayed), we will not, and will cause our subsidiaries not to:

enter into, renew or amend any material real property lease or material operating lease for personal property;
sell, lease, license, mortgage, pledge, encumber or otherwise dispose of any properties or assets except for property or assets that are not material, individually or in the aggregate, to our business, or in the ordinary course of business consistent with past practice;
sell, transfer or lease any properties or assets to, or enter into any contract, arrangement or understanding with or on behalf of, any officer, director or employee of ours, any of our subsidiaries, any affiliate of any of them, or any business entity in which we, any subsidiary or any affiliate of any of them, or any relative of any such person, has any material direct or indirect interest;
grant any exclusive rights with respect to any material intellectual property owned by or licensed to us or divest any material intellectual property owned by or licensed to us;
incur, assume, prepay, guarantee, endorse or otherwise become liable for any indebtedness, other than in connection with the financing of trade payables in the ordinary course of business consistent with past practice;
make or change any material tax election, make any material changes in tax accounting methods, or settle or compromise any material tax liability;
file any material tax return (other than tax returns filed in the ordinary course of business consistent with past practice) or extend the period for assessment or collection of any material taxes without first consulting with Dimensional Associates;
make any changes in financial accounting methods, principles or practices, except as may be required under generally accepted accounting principles or by law;
revalue in any material respect any of its assets except as may be required under generally accepted accounting principles or by law;
terminate, amend or modify in any material respect, or waive or release any material provision of, or assign any material rights under, certain of our material contracts (other than in the ordinary course of business consistent with past practice);

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enter into any contract that contains any non-competition, exclusivity or most favored nations or similar terms or restrictions on us or our business, except for such terms or restrictions that would not restrict our business or assets and our subsidiaries in any material respect following completion of the merger and are entered into in the ordinary course of business consistent with past practice;

enter into any agreement limiting in any material respect our rights or the rights of any of our subsidiaries to (a) sell any products or services, (b) engage in any line of business, or (c) compete with or obtain products or services from any person or limiting the rights of any person to provide products or services to us or any of our subsidiaries (other than in the ordinary course of business consistent with past practice);

engage in the conduct of any material new line of business or discontinue any material existing line of business;

take any action that results in any of its representations and warranties set forth in the merger agreement being or becoming untrue or any of the conditions to the merger set forth in the merger agreement not being satisfied;

authorize for issuance, issue, deliver, sell, pledge or otherwise encumber any of our capital stock or rights to acquire such securities, or enter into any other agreements or commitments of any character obligating us to issue any such securities or rights, or enter into any amendment of any term of any of our currently outstanding capital stock or rights to acquire such securities (other than issuances required upon the exercise or conversion of stock options, restricted shares, warrants or Series A convertible preferred stock existing on the date of the merger agreement);

combine, split or reclassify any capital stock or issue or authorize the issuance of any other securities in substitution for any capital stock, other than dividends and distributions made by any subsidiary of ours to us or another subsidiary in the ordinary course of business consistent with past practice;

pay, declare or establish a record date for any dividend or make any other distribution, or redeem, purchase or otherwise acquire any of our securities or any securities of our subsidiaries, other than (a) dividends paid by any of our subsidiaries to us or any other subsidiary and (b) the acceptance of shares of our common stock as payment for the exercise price of stock options or for withholding taxes incurred in connection with the exercise of stock options or the vesting of restricted shares, in each case in accordance with the terms of the applicable award agreements and the Company Stock Plan;

adopt or implement any stockholder rights plan, poison pill or other anti-takeover plan, arrangement or mechanism that, in each case, is applicable to Dimensional Associates and/or Merger Sub;

cause, permit or propose to adopt any amendments to our organizational documents other than as expressly contemplated by the merger agreement;

other than in the ordinary course of business consistent with past practice, as required by applicable law or required pursuant to the terms of any plan, program, contract arrangement or agreement existing on the date of the merger agreement;

grant any increase in the compensation or benefits payable by us or any of our subsidiaries to any officer, employee, consultant, current or former director of ours or any of our subsidiaries;

adopt, enter into or amend any company stock plan;

increase, reprice or accelerate the payment or vesting of the amounts, benefits or rights payable or accrued or to become payable or accrued under any company stock plan;

enter into or amend any severance, termination or bonus agreement or grant any severance, termination pay or bonus to any officer, director, consultant or employee of ours or any of our subsidiaries;

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enter into or amend any employment, change in control, retention or any similar agreement or any collective bargaining agreement, or grant any retention pay to any officer, director, consultant or employee of ours or any of our subsidiaries;

pay or award any pension or retirement allowance;

grant, issue, accelerate, amend or change the period for the exercise of, or vesting of, any stock option or restricted share or any other right to acquire shares or other securities of ours or otherwise authorize cash payments in exchange for any of the foregoing, except as provided in the merger agreement;

commence, settle, compromise, pay, discharge or satisfy any pending or threatened proceeding, claim, liability, or obligation by or against us or any subsidiary which requires a payment in excess of $50,000 in any single instance or in excess of $250,000 in the aggregate; or

agree (in writing or otherwise) to take any of the foregoing actions.

Restrictions on Solicitations of Other Offers

Until 12:01 a.m., Eastern Daylight Time, on April 22, 2010, referred to as the no-shop period start date , we and our subsidiaries (and our respective representatives) were permitted to:

initiate, solicit and encourage any Acquisition Proposals (as defined below), including providing access to non-public information pursuant to confidentiality agreements, provided that we promptly make available to Dimensional Associates and Merger Sub any such information to the extent not previously made available to Dimensional Associates or Merger Sub; and

engage or enter into, continue or otherwise participate in any discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in or facilitate any such inquiries, proposals, discussions or negotiations.

From the no-shop period start date until the earlier of the effective time of the merger and the termination of the merger agreement, we and our subsidiaries are required not to (and shall cause our representatives not to), directly or indirectly:

solicit, initiate, induce or take any action for the purpose of encouraging or facilitating the making, submission or announcement of, any proposal that constitutes or could reasonably be expected to lead to an Acquisition Proposal;

engage in negotiations or discussions with any person with respect to an Acquisition Proposal;

furnish any non-public information to any person or afford access to our business, properties, assets, books and records in connection with any proposal that constitutes or could reasonably be expected to lead to an Acquisition Proposal;

approve, endorse or recommend, or propose to approve, endorse or recommend, any Acquisition Proposal;

approve or enter into any letter of intent, agreement in principle, memorandum of understanding or other agreement, contract or arrangement contemplating or otherwise relating to an Acquisition Proposal, or which would require us to terminate the merger agreement or any further discussions or negotiations between us and Dimensional Associates; or

terminate, amend, release or waive any rights under any standstill or other similar agreement between us or any of our subsidiaries and any person, other than Dimensional Associates.

Notwithstanding the restrictions described above, we may:

engage or participate in discussions or negotiations with any person that has made (and not withdrawn) a bona fide Acquisition Proposal in writing that the special committee reasonably determines in good faith (after consultation with its financial advisor) constitutes or is reasonably likely to lead to a Superior Proposal (as defined below); and

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furnish to any person that has made (and not withdrawn) a bona fide Acquisition Proposal in writing that the special committee reasonably determines in good faith (after consultation with its financial advisor) constitutes or is reasonably likely to lead to a Superior Proposal any non-public information relating to us or any of our subsidiaries pursuant to a confidentiality agreement with terms which are no less favorable to us than those contained in the confidentiality agreement with Dimensional Associates;

provided that (1) we have not breached or violated the provisions in the merger agreement regarding the restrictions on our ability to solicit proposals or offers, the ability of our board of directors to change its recommendation and related provisions described above, (2) our board of directors or the special committee determines in good faith (after receiving the advice of its outside legal counsel) that failure to take such action would reasonably be expected to be inconsistent with its fiduciary duties under applicable law, (3) we have not entered into any exclusivity agreement or other agreement restricting our ability to negotiate, enter into and consummate a transaction with a third party other than such person, (4) we notify Dimensional Associates of the identity of the person and the material terms and conditions of such Acquisition Proposal at least 48 hours prior to engaging or participating in any discussions or negotiations, or furnishing any non-public information concerning an Acquisition Proposal, and (5) we provide Dimensional Associates with certain information and documents regarding the Acquisition Proposal at the same time we provide it to others and keep Dimensional Associates reasonably informed on a prompt basis of the status and details regarding any Acquisition Proposal, request or inquiry and any amendments or revisions thereto.

An Acquisition Proposal means any offer, proposal or any third party indication of interest or intent relating to any transaction or series of related transactions involving:

any purchase or acquisition by any person or group (as defined under Section 13(d) of the Exchange Act) of more than a 20% interest in our total outstanding voting securities or any tender offer or exchange offer that, if consummated, would result in any person or group beneficially owning 20% or more of our total outstanding voting securities;

any sale, lease (other than in the ordinary course of business consistent with past practice), exchange, transfer, license (other than in the ordinary course of business consistent with past practice), acquisition or disposition of more than 20% of our assets and the assets of our subsidiaries, taken as a whole;

any merger, consolidation, business combination or similar transaction that, if consummated, would result in a person or group beneficially owning 20% or more of our total outstanding voting securities or the transfer, acquisition or disposition of more than 20% of our assets and the assets of our subsidiaries, taken as a whole; or

any combination of the foregoing, in each case other than the transactions contemplated by the merger agreement, which transactions will not be considered an Acquisition Proposal.

A Superior Proposal means a bona fide written offer made by a third party to acquire, directly or indirectly, pursuant to a tender offer, exchange offer, merger, consolidation or other business combination, (a) all or substantially all of our assets or (b) all of our outstanding capital stock, in either case on terms that the special committee has reasonably concluded in good faith, after consultation with its outside legal counsel and its financial advisor, and taking into account all of the terms and conditions of such proposal (including the likelihood and timing of consummation of the proposal), all appropriate legal, financial, regulatory and other aspects of such proposal and any changes to the terms of the merger agreement made by Dimensional Associates, to be more favorable from a financial point of view to our stockholders, other than Dimensional Associates and its affiliates, than the merger, which is reasonably capable of being consummated on the terms proposed as determined by the special committee.

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Stockholders Meeting

We have agreed to take all reasonable action to call, give notice of, convene and hold a meeting of our stockholders as promptly as reasonably practicable after the execution of the merger agreement, to approve the merger, and to approve and adopt the merger agreement.

We have agreed to prepare and file with the SEC a proxy statement with respect to the stockholders meeting and to cooperate with Dimensional Associates and Merger Sub in the preparation and filing with the SEC of a Schedule 13E-3.

Restrictions on Change of Recommendation to Stockholders

Our board of directors has (upon the unanimous recommendation of the special committee) unanimously resolved (other than Mr. Stein, who abstained from deliberations and voting on the matter) to recommend that our stockholders approve the merger and approve and adopt the merger agreement.

We have agreed that our board of directors (or a committee thereof) may not, except under certain circumstances set forth below, withhold, withdraw, amend or modify (or publicly propose to withhold, withdraw, amend or modify) in a manner adverse to Dimensional Associates or Merger Sub our board of directors recommendation that our stockholders approve the merger and approve and adopt the merger agreement, which we refer to as a Board Recommendation Change. Notwithstanding these restrictions but subject to our obligations to provide certain information to and to negotiate in good faith with Dimensional Associates and to take certain actions in connection with Superior Proposals as described below, at any time prior to obtaining the requisite stockholder approvals, our board of directors may effect a Board Recommendation Change or, in the case of the first bullet below, approve or recommend (or publicly propose to approve or recommend) an Acquisition Proposal to our stockholders if:

we have received an Acquisition Proposal that constitutes a Superior Proposal (other than as a result of a breach or violation of the provisions of the merger agreement regarding restrictions on our ability to solicit proposals or offers), the special committee determines in good faith (after receiving the advice of its outside legal counsel and after considering in good faith any counter-offer or proposal made by Dimensional Associates) that a failure to effect a board recommendation change would reasonably be expected to be inconsistent with its fiduciary duties under applicable law, prior to effecting the board recommendation change, the special committee has given Dimensional Associates at least two business days notice and the opportunity to meet with the special committee and its outside legal counsel to discuss in good faith a modification of the terms and conditions of the merger agreement, and Dimensional Associates has not made, within two business days after receipt of our written notice a counter-offer or proposal that the special committee reasonably determines in good faith, after consultation with its financial advisor and outside legal counsel, is at least as favorable to our stockholders as such Superior Proposal; or
other than in response to a Superior Proposal, the special committee determines in good faith (after receiving the advice of its outside legal counsel) that failure to effect a board recommendation change would reasonably be expected to be inconsistent with its fiduciary duties to our stockholders under applicable law, and prior to effecting such Board Recommendation Change, the special committee has given Dimensional Associates at least two business days notice thereof and the opportunity to meet with the special committee and its outside legal counsel to discuss in good faith the purported basis for the proposed Board Recommendation Change, Dimensional Associates reaction and any possible modification of the terms and conditions of the merger agreement in response.

Notwithstanding the occurrence of a Board Recommendation Change, the merger agreement and our obligations thereunder will not terminate except in accordance with the termination provisions of the merger agreement described below under Termination of the Merger Agreement and until the merger agreement is terminated in accordance with

those provisions, our board of directors will be obligated to submit the approval of the merger and the approval and adoption of the merger agreement and the transactions contemplated by the merger agreement to our stockholders at the stockholders meeting.

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In order to enter into an acquisition agreement with respect to a Superior Proposal, we must terminate the merger agreement in accordance with the terms of the merger agreement. See Termination of the Merger Agreement and Expense Reimbursement below.

Notwithstanding these restrictions, subject to certain conditions, our board of directors (or a committee thereof) may make certain disclosures contemplated by the securities laws or other applicable laws.

Other Actions; Notification

Dimensional Associates has agreed to use all commercially reasonable efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under the merger agreement and applicable law (in each case with the consultation and consent of the special committee, which shall not be unreasonably withheld, conditioned or delayed) to consummate and make effective the merger and the other transactions contemplated by the merger agreement, as soon as practicable, including preparing and filing as promptly as reasonably practicable all documentation to effect all necessary notices, reports and other filings, and to obtain as promptly as reasonably practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party or any governmental entity in order to consummate the merger or any of the other transactions contemplated by the merger agreement. Dimensional Associates is not required to, in connection with receipt of any regulatory approval, take any action that materially and adversely affects the benefits to Dimensional Associates and its subsidiaries, including to us and our subsidiaries, taken as a whole, that Dimensional Associates reasonably expected to derive from consummation of the merger, which we refer to as an adverse condition .

Dimensional Associates has agreed to vote (or consent with respect to) or cause to be voted (or a consent to be given with respect to) any shares of Merger Sub s common stock beneficially owned by it or with respect to which it has the power to cause to be voted (or to provide a consent), in favor of the approval of the merger and the approval and adoption of the merger agreement and at any meeting of stockholders of Merger Sub at which the merger agreement is submitted for approval and adoption and at all adjournments or postponements thereof (or, if applicable, by any action of stockholders of Merger Sub by consent in lieu of a meeting). Dimensional Associates has also agreed to vote or cause to be voted any shares of our common stock and Series A convertible preferred stock beneficially owned by it or any of its subsidiaries or with respect to which it or any of its subsidiaries has the power to cause to be voted, in each case as of the date of the merger agreement, in favor of the approval of the merger and the approval and adoption of the merger agreement at any meeting of our stockholders at which the merger agreement is submitted for approval and adoption and at all adjournments or postponements thereof. With respect to such shares and Series A convertible preferred stock, Dimensional Associates agrees that any action to approve and adopt the merger agreement will be made only at a duly convened meeting of our stockholders for such purpose and that neither Dimensional Associates, nor any of its subsidiaries may act by written consent in lieu of a meeting to approve and adopt the merger agreement or the transactions contemplated hereby.

If any state takeover statute or similar statute or regulation is or becomes applicable to the merger or the other transactions contemplated by the merger agreement, we and our board of directors have agreed to grant such approvals and take such actions as are necessary so that the transactions may be consummated as promptly as reasonably practicable on the terms contemplated by the merger agreement and otherwise act to eliminate or minimize the effects of such statute or regulation on the transactions.

We (at the direction of the special committee) and Dimensional Associates have agreed to furnish the other with all information concerning ourselves or itself, our or its subsidiaries, managers, managing members or directors, as

applicable, officers and members or stockholders, as applicable, and such other matters as may be reasonably necessary or advisable in connection with this proxy statement, the Schedule 13E-3 or any other statement, filing, notice or application made by or on behalf of Dimensional Associates, us or any of our or their respective subsidiaries to any third party and/or any governmental entity in connection with the merger and the transactions contemplated by the merger agreement.

Subject to applicable law and the instructions of any governmental entity, we, Dimensional Associates and the special committee have agreed to keep the other apprised of the status of matters relating to completion of the transactions contemplated in the merger agreement, including promptly furnishing the other with copies of written notices or other written communications received by Dimensional Associates, us or the

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special committee, as the case may be, or any of our or its subsidiaries (as applicable), from any third party and/or any governmental entity with respect to the merger and the other transactions contemplated by the merger agreement. We have agreed to give prompt notice to the special committee and Dimensional Associates of any change, fact or condition that constitutes a Company Material Adverse Change to us, and Dimensional Associates and the special committee have agreed to give prompt notice to the others of any failure of any condition to any party s obligations to effect the merger.

Indemnification and Insurance

The merger agreement provides that from and after the effective time of the merger, Dimensional Associates will, or will cause the surviving corporation to indemnify and hold harmless each present and former director and officer of ours and our subsidiaries at the effective time of the merger against any costs or expenses (including reasonable attorneys fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, arising out of matters existing or occurring at or prior to the effective time of the merger, to the fullest extent that we would have been permitted under Delaware law, our certificate of incorporation and by-laws or any indemnification agreements to indemnify such person, including the advancement of expenses as incurred.

Prior to the effective time of the merger, we have agreed to cause, and if we are unable to do so, Dimensional Associates has agreed to cause, the surviving corporation to, obtain and fully pay the premium for the extension of the directors and officers liability coverage of our existing directors and officers insurance policies, and our existing fiduciary liability insurance policies for a period of not less than six years from the effective time of the merger. If we and the surviving corporation fail to obtain such policies as of the effective time of the merger, the surviving corporation will, and Dimensional Associates will cause the surviving corporation to, continue to maintain in effect for a period of at least six years from the effective time of the merger, directors and officers insurance with benefits and levels of coverage at least as favorable as provided in our existing policies, or use reasonable best efforts to purchase comparable insurance for such six year period; provided, however, that if the aggregate annual premiums for such insurance exceeds 200% of the current annual premium, then the surviving corporation must obtain a policy with the greatest coverage available for a cost not exceeding such amount.

Under the merger agreement, if Dimensional Associates or the surviving corporation or any of their successors or assigns consolidates with or merges into any other person or entity and is not the surviving corporation of such consolidation or merger, or transfers all or substantially all of its properties and assets to another person or entity, then, the surviving corporation will cause proper provision to be made so that the successors and assigns of Dimensional Associates or the surviving corporation assume all of the obligations to provide indemnification and insurance described above.

Employee Matters

In general, each of our employees as of the effective time of the merger will be immediately eligible to participate, without any waiting time, in new post-merger employee benefit plans offered by Dimensional Associates and its subsidiaries in which such employees may be eligible to participate after the effective time of the merger. In addition, Dimensional Associates has agreed to waive pre-existing conditions and to recognize the service of our employees prior to the merger for all purposes (including for purposes of any eligibility, vesting, entitlement to benefits and benefit accrual) in connection with any employee benefit plan maintained by Dimensional Associates or its subsidiaries, which is made available following the merger by Dimensional Associates or its subsidiaries, except that an employee will not be entitled to a duplication of benefits. Our employees as of the effective time of the merger will

also receive credit for any co-payments and deductibles paid prior to the effective time of the merger under the analogous pre-merger employee benefit plan in satisfying any applicable deductible or out-of-pocket requirements under any post-merger employee benefit plans in which such employees may be eligible to participate after the effective time of the merger.

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Other Covenants

The merger agreement contains additional agreements between us, Dimensional Associates and Merger Sub relating to, among other things:

the filing of this proxy statement and the Rule 13e-3 transaction statement on Schedule 13E-3 with the SEC (and cooperation in response to any comments from the SEC with respect to either statement);
coordination of press releases and other public announcements or filings relating to the merger;
the payment of fees and expenses;
notification of certain matters;
delivery of certain tax certificates;
the continuation of the special committee of our board of directors at all times prior to the earlier of the closing of the merger or the termination of the merger agreement; and
actions to cause the disposition of our equity securities pursuant to the transactions contemplated by the merger agreement to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Conditions to the Completion of the Merger

The obligations of The Orchard, Dimensional Associates and Merger Sub to consummate the merger are subject to the satisfaction or, to the extent permissible under applicable law, waiver (other than with respect to the first bullet, which is not waivable) of the following conditions on or prior to the effective date of the merger:

the affirmative vote to approve the merger and to approve and adopt the merger agreement at a stockholders meeting duly called and held for such purpose by:
(1) holders holding at least a majority of our outstanding capital stock entitled to vote; and
(2) holders holding a majority of our outstanding capital stock entitled to vote, other than our capital stock held by Dimensional Associates or its affiliates;
the absence of any law or order that restrains, enjoins or otherwise prohibits the consummation of the merger; and
the absence of any suit, action or proceeding seeking, or any law or order enacted by a governmental entity applicable to the merger that results in, or may result in, an adverse condition.

In addition to the conditions for all parties to the merger agreement, the obligations of Dimensional Associates and Merger Sub to complete the merger are subject to the satisfaction or, to the extent permissible under applicable law, waiver of the following conditions at or prior to the effective time of the merger:

our representations and warranties made in the merger agreement must be true and correct in all material respects (except those representations qualified as to materiality or Company Material Adverse Change, which must be true and correct in all respects) on and as of the date of the merger agreement and as of the closing date of the merger as if made on and as of the closing date (or, if given as of a specific date, at and as of such date);
our performance, in all material respects, of all obligations required to be performed by us in the merger agreement at or prior to the closing date;
the receipt of a certificate signed on our behalf by one of our executive officers certifying that all of the conditions with respect to our representations and warranties and obligations under the merger agreement described above have been satisfied;
the receipt of all specified consents and approvals without the imposition of a term, condition or consequence the acceptance of which would constitute or may result in an adverse condition;

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the aggregate number of shares of our common stock at the effective time of the merger, the holders of which have properly exercised dissenter s rights under applicable law, does not equal 4% or more of the shares of common stock outstanding as of the record date for the stockholders meeting relating to the merger;

no event or circumstance has occurred that constitutes a Company Material Adverse Change; and

we have delivered to Dimensional Associates stockholder records (including stockholder registers and share transfer ledgers) and certificates reflecting current ownership of all issued and outstanding shares of capital stock of each subsidiary.

In addition to the conditions for all parties to the merger agreement, our obligation to complete the merger is subject to the satisfaction or, to the extent permissible under applicable law, waiver (at the direction of the special committee) of the following conditions at or prior to the closing date of the merger:

the representations and warranties made by Dimensional Associates and Merger Sub in the merger agreement must be true and correct in all material respects (except those representations qualified as to materiality, which must be true and correct in all respects) on and as of the date of the merger agreement and as of the closing date of the merger as if made on and as of the closing date (or, if given as of a specific date, at and as of such date);

the performance by Dimensional Associates and Merger Sub, in all material respects, of all obligations required to be performed by them under the merger agreement at or prior to the closing date of the merger; and

the receipt of a certificate signed by an executive officer of Dimensional Associates and by an executive officer of Merger Sub certifying that all of the conditions with respect to the representations and warranties and obligations of Dimensional Associates and Merger Sub under the merger agreement described above have been satisfied.

Termination of the Merger Agreement

The merger agreement may be terminated at any time prior to the effective time of the merger, whether before or after stockholder approval has been obtained:

by mutual written consent of The Orchard (at the direction of the special committee) and Dimensional Associates;

by either us (at the direction of the special committee) or Dimensional Associates, unless the failure of the merger to be consummated by such date was due to the party seeking to terminate breaching in any material respect its obligations under the merger agreement in any manner that is the proximate cause of or resulted in the failure of a condition to the consummation of the merger:

(1) if the merger has not been consummated by the termination date of September 15, 2010 (or, if additional time is needed to forestall any action by any governmental authority to restrain, enjoin or prohibit the merger, this date may be extended upon written notice prior to September 1, 2010 to a date not beyond October 15, 2010);

(2) if the approval of the merger and the approval and adoption of the merger agreement and by the stockholders has not been obtained at the stockholders meeting or at any adjournment or postponement thereof; or

(3) if any governmental entity has issued or has enacted, issued, promulgated, enforced or entered any law, statute, rule, ordinance, regulation, judgment, order, writ, injunction, stipulation or decree that is in effect and restrains, enjoins or otherwise prohibits consummation of the merger and such order has become final and non-appealable;

by us (at the direction our special committee), provided, that we are not in material breach of any of our covenants or agreements contained in the merger agreement:

(1) if Dimensional Associates or Merger Sub has breached or failed to perform any of its representations, warranties, covenants or agreements made in the merger agreement, or any such

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representation and warranty has become untrue after the date of the merger agreement, which breach or failure would cause certain conditions to our obligation to effect the merger set forth in Conditions to the Completion of the Merger , not to be satisfied or which shall not have been cured by the earlier of September 15, 2010 (as may be extended by either party as described in clause (1) of the second bullet under Termination of the Merger Agreement) or within 30 calendar days after receipt of our written notice to Dimensional Associates of such breach;

(2) if the special committee effects a Board Recommendation Change in accordance with the terms of the merger agreement; or

(3) if all of the conditions to the obligations of Dimensional Associates and Merger Sub to effect the merger (other than conditions which are to be satisfied upon the closing of the merger) have been satisfied, and Dimensional Associates and Merger Sub have failed to consummate the merger within two business days following the date the closing should have occurred and we stood ready and willing to consummate the merger; provided, that during the two business day period, no party may terminate the merger agreement by reason of the termination date having passed; or

by Dimensional Associates, provided, that Dimensional Associates is not in material breach of any of its covenants or agreements contained in the merger agreement:

(1) if we have breached or failed to perform any of our representations, warranties, covenants or agreements made in the merger agreement, or any such representation and warranty has become untrue after the date of the merger agreement, which breach or failure would cause certain conditions to our obligation to effect the merger set forth in Conditions to the Completion of the Merger , not to be satisfied or which shall not have been cured by the earlier of September 15, 2010 (as may be extended by either party as described in clause (1) of the second bullet under Termination of the Merger Agreement) or within 30 calendar days after receipt of Dimensional Associates written notice to us of such breach;

(2) if our board of directors (or special committee) has made a Board Recommendation Change (or publicly proposes to make a Board Recommendation Change);

(3) if we have failed to comply in any material respect with the restrictions on solicitations of other offers contained in the merger agreement (including our approving, recommending or entering into any proposed acquisition agreement in connection with or relating to any Acquisition Proposal in violation of the merger agreement);

(4) if we have failed to include in this proxy statement our board of directors recommendation to our stockholders that they approve the merger and approve and adopt the merger agreement; or

(5) if all of the conditions to our obligations to effect the merger (other than conditions which are to be satisfied upon the closing of the merger) have been satisfied, and we have failed to consummate the merger within two business days following the date the closing should have occurred and Dimensional Associates and Merger Sub stood ready and willing to consummate the merger; provided, that during the two business day period, no party may terminate the merger agreement by reason of the termination date having passed.

Expense Reimbursement

Except as provided below, under the merger agreement, each of the parties will bear all fees and expenses it incurs in connection with the merger and the merger agreement.

We have agreed to reimburse Dimensional Associates for its reasonable, documented out-of-pocket expenses incurred in connection with the merger agreement up to $350,000, if the merger agreement is terminated:

by either us or Dimensional Associates because our stockholders failed to approve the merger and to approve and adopt the merger agreement at the stockholders meeting as described in clause (2) of

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the second bullet under Termination of the Merger Agreement (or is terminated by us due to any governmental entity issuing any law, statute, rule, ordinance, regulation, judgment, order, writ, injunction, stipulation or decree as described in clause (3) of the second bullet under Termination of the Merger Agreement at a time when the merger agreement was terminable by Dimensional Associates due to such failure of our stockholders to approve the merger and to approve and adopt the merger agreement at the stockholders meeting as described in clause (2) of the second bullet under Termination of the Merger Agreement); or

by either us or Dimensional Associates because the merger was not consummated by the termination date as described in clause (1) of the second bullet under Termination of the Merger Agreement , and (a) all closing conditions required for us to consummate the merger have been satisfied by the termination date, except for those conditions that by their nature are to be satisfied at the closing of the merger, (b) Dimensional Associates and Merger Sub were ready and willing to consummate the merger at that time, and (c) we failed to satisfy a closing condition that was solely in our control by that date when all of the other closing conditions required for Dimensional Associates and Merger Sub to consummate the merger that are not solely within our control had been satisfied on that date, except for those conditions that by their nature are to be satisfied by actions taken at the closing of the merger and those conditions the failure of which to be satisfied was caused by or resulted from our action or inaction; or

by Dimensional Associates under the termination provisions described in the fourth bullet under Termination of the Merger Agreement (or by us because our stockholders failed to approve the merger and to approve and adopt the merger agreement at the stockholders meeting as described in clause (2) of the second bullet under Termination of the Merger Agreement or the special committee effects a Board Recommendation Change as described in clause (2) of the third bullet under Termination of the Merger Agreement at a time when the merger agreement was terminable by Dimensional Associates under the termination provisions described in the fourth bullet under Termination of the Merger Agreement).

Amendment and Waiver

Subject to applicable law, the parties to the merger agreement may modify or amend the merger agreement at any time by a written agreement executed and delivered by duly authorized officers of the respective parties, provided that after approval of the merger by our stockholders, there can be no amendment to the merger agreement that would require further approval of our stockholders under applicable law or any applicable listing and corporate governance rules and regulations applicable to us (including Nasdaq or any other trading market on which our common stock is then listed or quoted) unless such further stockholder approval has first been obtained.

The conditions to each of the parties obligations to consummate the merger are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permissible under applicable law (except with respect to the condition described in the first bullet under Conditions to the Completion of the Merger above, which condition may not be waived).

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IMPORTANT INFORMATION REGARDING THE ORCHARD

Summarized Financial Data

Set forth below is summarized financial data as of December 31, 2008 and 2009 relating to The Orchard. The financial data has been derived from the audited financial statements contained in The Orchard s Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (the 2009 10-K). This data should be read in conjunction with the audited consolidated financial statements and other financial information contained in the 2009 10-K, including the notes thereto, incorporated by reference into this proxy statement. More comprehensive financial information is included in the 2009 10-K, including management s discussion and analysis of financial condition and results of operations, and other documents we file with the SEC, and the following summary is qualified in its entirety by reference to the 2009 10-K and other documents and all of the financial information and notes contained in those documents. See Where You Can Find More Information .

	Years Ended December 31,	
	2008	2009
Consolidated Statement of Operations Data		
Revenues (including amounts from related parties of $4,531,245 in 2008 and $3,357,460 in 2009)	$57,355,916	$62,271,481
Cost of revenues (including amounts to related parties of $31,933 in 2008 and $36,034 in 2009)	$40,272,293	$45,830,481
Gross profit	$17,083,623	$16,441,000
Loss from operations	$(2,675,296)	$(18,181,668)
Net loss	$(2,254,583)	$(17,791,866)
Loss per share basic and diluted	$(0.36)	$(2.88)
Weighted average shares outstanding basic and diluted	6,267,972	6,182,323
Consolidated Balance Sheet Data at Fiscal Year End		
Current assets	$20,931,710	$19,720,342
Non-current assets	$37,147,792	$22,499,494
Total assets	$58,079,502	$42,219,836
Current liabilities	$21,422,982	$22,570,029
Total liabilities	$21,422,982	$22,570,029
Redeemable preferred stock:		
Series A convertible preferred stock, $0.01 par value 448,833 shares designated; 448,707 shares issued and outstanding and liquidation preference of $24,992,980 as of December 31, 2008 and 2009	$7,015,276	$7,015,276
Total stockholders equity	$29,641,244	$12,634,531

Book Value Per Share

Our net book value per share as of December 31, 2009 was $1.98.

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Transactions in Common Stock

Repurchases of Common Stock

The following table shows purchases of common stock during the past two years effected by The Orchard.

Quarter	Total Number of Shares Purchased	Range of Prices Paid per share		Average Price Paid per Share
April 1, 2008 to September 30, 2008		$		$
October 1, 2008 to December 31, 2008	19,091 (a)	2.22	5.21	4.35
January 1, 2009 to March 31, 2009				
April 1, 2009 to June 30, 2009	2,506 (b)	2.50		2.50
July 1, 2009 to September 30, 2009	1,490 (b)	1.60	1.90	1.80
October 1, 2009 to December 31, 2009	1,578 (b)	1.20	1.90	1.61
January 1, 2010 to April 23, 2010				
Total	24,665			

(a) Represents 9,976 shares of common stock withheld by us for the satisfaction of withholding tax upon the vesting of restricted stock awards under the Company Stock Plan and 9,115 shares of common withheld by us for the satisfaction of withholding tax upon the vesting of deferred stock awards under deferred stock award agreements with an officer.

(b) Represents shares of common stock withheld by us for the satisfaction of withholding tax upon the vesting of restricted stock awards under the Company Stock Plan.

Purchases by Dimensional Associates and Daniel Stein

Neither Dimensional Associates nor Mr. Stein has made any purchases of The Orchard s common stock during the past two years. As a non-employee director of The Orchard, during 2008 and 2009 Mr. Stein received grants of stock awards under The Orchard s Non-Executive Directors Compensation Program, portions of which vest on the date of this year s annual meeting. See Election of Directors Director Compensation .

Purchases by Merger Sub

Merger Sub has not made any purchases of our common stock during the past two years.

Transactions During the Past Sixty Days

There have been no transactions in shares of our common stock during the past sixty days by us, any of our officers or directors, Dimensional Associates, Merger Sub, any of Merger Sub s officers or directors, or any associate or majority-owned subsidiary of the foregoing. If the merger is not consummated, each of The Orchard s non-employee directors will be eligible to receive a grant of restricted stock with respect to 2010 under The Orchard s Non-Executive Directors Compensation Program on the date of the annual meeting or, if adjourned, such later adjourned date. See Election of Directors Director Compensation .

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Market Price of our Common Stock and Dividend Information

The Orchard s common stock is quoted on the Nasdaq Global Market under the symbol ORCD . The following table presents the high and low sales prices for our common stock, as reported on the Nasdaq Global Market for the periods indicated.

	High	Low
2008:		
First quarter	$ 7.40	$ 3.08
Second quarter	$ 6.23	$ 4.50
Third quarter	$ 6.23	$ 3.01
Fourth quarter	$ 3.65	$ 1.06
2009:		
First quarter	$ 2.33	$ 1.14
Second quarter	$ 3.49	$ 1.29
Third quarter	$ 2.10	$ 1.33
Fourth quarter	$ 1.83	$ 1.05
2010:		
First quarter (through April 23, 2010)	$ 2.06	$ 1.60

On October 14, 2009, the last trading day before Dimensional Associates first presented its acquisition proposal to The Orchard s board of directors, the high and low sales prices of our common stock were $1.50 and $1.35, respectively. The cash merger consideration of $2.05 per share represents a premium of approximately 52% over the closing trading price of $1.35 per share on October 14, 2009. On March 15, 2010, the last trading day before we announced the execution of the merger agreement, the high and low reported sales price of our common stock was $1.66. The cash merger consideration of $2.05 per share represents a premium of approximately 23% over the closing trading price of $1.66 per share on March 15, 2010, and approximately 19% over the average closing prices of our common stock for the 30-trading day period ending on March 15, 2010. On April 23, 2010, the most recent practicable date before the printing of this proxy statement, the high and low reported sales prices of our common stock were $2.01 and $2.00, respectively. You are urged to obtain a current market price quotation for our common stock.

The Orchard has never declared or paid any cash dividends on our common stock. We currently intend to retain our future earnings, if any, for future growth and development of our business and do not anticipate paying any cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of our board or directors and will depend on our results of operations, financial conditions, contractual and legal restrictions and other factors the board deems relevant. Our secured revolving credit facility contains a covenant prohibiting us from paying any dividends.

Description of Business

The information under the Part I, Item 1. Business of our 2009 10-K is incorporated herein by reference.

Description of Property

The information under the Part I, Item 2. Properties of our 2009 10-K is incorporated herein by reference.

Legal Proceedings

The information under the Part I, Item 3. Legal Proceedings of our 2009 10-K is incorporated herein by reference. See also the description of the pending litigation relating to the merger under Special Factors Background of the Merger above.

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IMPORTANT INFORMATION REGARDING MERGER SUB

Merger Sub is a Delaware corporation and is wholly owned by Dimensional Associates. Merger Sub was formed solely for purposes of entering into the merger agreement and consummating the merger and the other transactions contemplated by the merger agreement. Merger Sub has not conducted any activities to date other than activities incidental to its formation and in connection with the transactions contemplated by the merger agreement.

Mr. Stein and Mr. Joseph D. Samberg are the sole directors of Merger Sub, and Mr. Stein is Merger Sub s sole officer, serving as its President, Secretary and Treasurer. The present principal occupation, and the name and principal business of the corporation in which such occupation or employment is conducted, and the five-year employment history of these individuals are set forth below:

Name	Age	Principal Occupation	Director Since	Term Expires
Daniel C. Stein	40	Executive Officer and Director of Dimensional Associates, LLC	2010	2011
Joseph D. Samberg	39	Managing Member of JDS Capital Management, LLC	2010	2011

For information concerning the five year employment history of Mr. Stein, see Election of Directors Nominees .

Joseph D. Samberg is the Managing Member of JDS Capital Management, LLC and a director and member of Dimensional Associates. The principal business of these entities is to invest in public and private debt and equity securities. Mr. Samberg has held these positions with JDS Capital Management, LLC and Dimensional Associates since 1996 and 2003, respectively. The principal business address for each of JDS Capital Management, LLC and Dimensional Associates is 1091 Boston Post Road, Rye, New York 10580.

During the last five years, neither the Merger Sub nor any of its directors nor its officer has been (i) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) a party to any judicial or administrative proceeding (except for matters that were dismissed without sanction or settlement) that resulted in a judgment or decree or final order enjoining the person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws.

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IMPORTANT INFORMATION REGARDING DIMENSIONAL ASSOCIATES AND CERTAIN OF ITS AFFILIATES

Dimensional Associates, LLC, is a New York limited liability company principally engaged in the business of investing in private equity securities.

JDS Capital, L.P., is a Delaware limited partnership principally engaged in the business of investing in private, public and distressed debt and equity securities.

JDS Capital Management, LLC, is a Delaware limited liability company principally engaged in the business of serving as the sole ultimate general partner of JDS Capital, L.P.

Joseph D. Samberg, a citizen of the United States, has a direct minority membership interest in Dimensional Associates and is managing member of JDS Capital Management, LLC. Additional information regarding Mr. Samberg can be found above under Important Information Regarding Merger Sub .

Daniel C. Stein, a citizen of the United States, is an executive officer and director of Dimensional Associates. Additional information regarding Mr. Stein can be found above under Important Information Regarding Merger Sub and below under Election of Directors Nominees .

The business address for each of Dimensional Associates, JDS Capital, L.P., JDS Capital Management, LLC, Joseph D. Samberg and Daniel C. Stein is 1091 Boston Post Road, Rye, NY 10580 and the telephone number for each at that address is (914) 921-3030.

During the last five years, none of the persons or entities described above has been (a) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (b) a party to any judicial or administrative proceeding (except for matters that were dismissed without sanction or settlement) that resulted in a judgment or decree or final order enjoining the person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws.

HISTORICAL RELATIONSHIP BETWEEN DIMENSIONAL ASSOCIATES AND THE ORCHARD

On November 13, 2007, we completed a business combination, which we refer to as the Original Merger , through the merger of our wholly owned acquisition subsidiary with and into the former The Orchard Enterprises Inc. (a New York corporation now called Orchard Enterprises NY, Inc.). Dimensional was the majority stockholder, holding approximately 85% of the voting securities, of The Orchard Enterprises, Inc. immediately prior to the Original Merger, and upon completion of the Original Merger, Dimensional became the majority holder of the surviving company, holding approximately 46% of our outstanding common stock and approximately 99% of our outstanding Series A Preferred Stock, representing an aggregate of approximately 56.8% of our voting securities.

As contemplated by the Original Merger, upon consummation of the merger, The Orchard had the one-time right to designate four members of our board of directors to serve until the next succeeding annual meeting of our

stockholders. The members of our board designated by The Orchard were Daniel C. Stein, Greg Scholl, Michael J. Donahue and Viet D. Dinh. Mr. Stein continues to serve as a director on our board and is an executive officer and a director of Dimensional Associates. Mr. Scholl ceased his affiliation with Dimensional Associates at the time of his appointment to be a director and chief executive officer of The Orchard, and he resigned from these positions at The Orchard effective November 1, 2009. Mr. Donahue and Mr. Dinh continue to serve as directors on our board and are members of the special committee. Each has been re-elected to our board by our stockholders twice since their original designation by Dimensional Associates, including by a majority of the stockholders other than Dimensional Associates and its affiliates in 2008. The independence of the members of the special committee is discussed above under Special Factors Background of the Merger .

Dimensional Associates is the controlling stockholder of The Orchard and currently owns approximately 42% of the Company s outstanding common stock and approximately 99% of the Company s outstanding Series A convertible preferred stock, representing an aggregate of approximately 53.4% of our voting securities.

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APPRAISAL RIGHTS

If you do not vote for the adoption of the merger agreement at the annual meeting and otherwise comply with the applicable statutory procedures of Section 262 of the General Corporation Law of the State of Delaware, or the DGCL, summarized herein, you may be entitled to appraisal rights under Section 262 of the DGCL. In order to exercise and perfect appraisal rights, a record holder of our common stock must follow the steps summarized below properly and in a timely manner.

Section 262 of the DGCL is reprinted in its entirety as Appendix D to this proxy statement. Set forth below is a summary description of Section 262 of the DGCL. The following summary describes the material aspects of Section 262 of the DGCL, and the law relating to appraisal rights and is qualified in its entirety by reference to Appendix D. All references in Section 262 of the DGCL and this summary to stockholder are to the record holder of the shares of our common stock immediately prior to the effective time of the merger as to which appraisal rights are asserted. Failure to comply strictly with the procedures set forth in Section 262 of the DGCL will result in the loss of appraisal rights.

Under the DGCL, holders of our common stock who follow the procedures set forth in Section 262 will be entitled to have their shares appraised by the Delaware Court of Chancery, or the Delaware Court, and to receive payment in cash of the fair value of those shares, exclusive of any element of value arising from the accomplishment or expectation of the merger.

Under Section 262, where a merger agreement relating to a proposed merger is to be submitted for adoption at a meeting of stockholders, as in the case of the annual meeting, the corporation, not less than 20 days prior to such meeting, must notify each of its stockholders who was a stockholder on the record date with respect to such shares for which appraisal rights are available, that appraisal rights are so available, and must include in each such notice a copy of Section 262. This proxy statement constitutes such notice to the holders of our common stock and Section 262 is attached to this proxy statement as Appendix D. Any stockholder who wishes to exercise such appraisal rights or who wishes to preserve his right to do so should review the following discussion and Appendix D carefully, because failure to timely and properly comply with the procedures specified will result in the loss of appraisal rights under the DGCL.

If you wish to exercise appraisal rights you must not vote for the adoption of the merger agreement and must deliver to The Orchard, before the vote on the Merger Proposal, a written demand for appraisal of your shares of our common stock. If you sign and return a proxy card or vote by submitting a proxy by telephone or through the Internet, without expressly directing that your shares of our common stock be voted against the Merger Proposal, you will effectively waive your appraisal rights because such shares represented by the proxy will be voted for the Merger Proposal. Accordingly, if you desire to exercise and perfect appraisal rights with respect to any of your shares of common stock, you must either refrain from executing and returning the enclosed proxy card and from voting in person or by submitting a proxy by telephone or through the Internet, in favor of the Merger Proposal or check either the against or the abstain box next to the Merger Proposal on such card or vote in person or by submitting a proxy by telephone or through the Internet, against the Merger Proposal or register an abstention with respect thereto. A vote or proxy against the Merger Proposal will not, in and of itself, constitute a demand for appraisal.

A demand for appraisal will be sufficient if it reasonably informs The Orchard of the identity of the stockholder and that such stockholder intends thereby to demand appraisal of such stockholder s shares of common stock. This written demand for appraisal must be separate from any proxy or vote abstaining from or voting against the Merger Proposal. If you wish to exercise your appraisal rights you must be the record holder of such shares of our common stock on the date the written demand for appraisal is made and you must continue to hold such shares through the effective time of

the merger. Accordingly, a stockholder who is the record holder of shares of common stock on the date the written demand for appraisal is made, but who thereafter transfers such shares prior to the effective time of the merger, will lose any right to appraisal in respect of such shares.

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Only a holder of record of shares of our common stock is entitled to assert appraisal rights for such shares of our common stock registered in that holder s name. A demand for appraisal should be executed by or on behalf of the holder of record, fully and correctly, as the holder s name appears on the stock certificates and must state that such person intends thereby to demand appraisal of his, her or its shares. If the shares are owned of record in a fiduciary capacity, such as by a trustee, guardian or custodian, execution of the demand for appraisal should be made in that capacity, and if the shares are owned of record by more than one person, as in a joint tenancy or tenancy in common, the demand should be executed by or on behalf of all joint owners. An authorized agent, including one for two or more joint owners, may execute the demand for appraisal on behalf of a holder of record; however, the agent must identify the record owner or owners and expressly disclose the fact that, in executing the demand, he or she is acting as agent for such owner or owners.

A record holder such as a broker who holds shares as nominee for several beneficial owners may exercise appraisal rights with respect to the shares of our common stock held for one or more beneficial owners while not exercising such rights with respect to the shares held for other beneficial owners; in such case, the written demand should set forth the number of shares as to which appraisal is sought. Where the number of shares of our common stock is not expressly stated, the demand will be presumed to cover all shares held in the name of the record owner. If you hold your shares in brokerage accounts or other nominee forms and wish to exercise your appraisal rights, you are urged to consult with your broker to determine the appropriate procedures for the making of a demand for appraisal.

All written demands for appraisal of shares must be mailed or delivered to: The Orchard Enterprises, Inc., 23 East 4th Street, 3rd Floor, New York, New York, 10003, Attention: Secretary, or should be delivered to the Secretary at the annual meeting, prior to the vote on the Merger Proposal.

Within ten days after the effective time of the merger, we will notify each stockholder who properly asserted appraisal rights under Section 262 and has not voted for the Merger Proposal of the effective time of the merger. Within 120 days after the effective time of the merger, but not thereafter, we or any stockholder who has complied with the statutory requirements summarized above may commence an appraisal proceeding by filing a petition in the Delaware Court demanding a determination of the fair value of the shares held by such stockholder. If no such petition is filed, appraisal rights will be lost for all stockholders who had previously demanded appraisal of their shares. We are not under any obligation, and we have no present intention, to file a petition with respect to appraisal of the value of the shares. Accordingly, if you wish to exercise your appraisal rights, you should regard it as your obligation to take all steps necessary to perfect your appraisal rights in the manner prescribed in Section 262.

Within 120 days after the effective time of the merger, any stockholder who has complied with the provisions of Section 262 will be entitled, upon written request, to receive from us a statement setting forth the aggregate number of shares of our common stock not voted in favor of the Merger Proposal and with respect to which demands for appraisal were received by us, and the number of holders of such shares. Such statement must be mailed within ten days after the written request therefor has been received by us or within ten days after expiration of the period for delivery of appraisal demands, whichever is later. A person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person s own name, file an appraisal petition or request from us the statement described in this paragraph.

If a petition for an appraisal is timely filed and a copy thereof served upon us, we will then be obligated, within 20 days, to file with the Delaware Register in Chancery a duly verified list containing the names and addresses of the stockholders who have demanded appraisal of their shares and with whom agreements as to the value of their shares have not been reached. After notice to the stockholders as required by the Delaware Court, the Delaware Court is empowered to conduct a hearing on such petition to determine those stockholders who have complied with Section 262 and who have become entitled to appraisal rights thereunder. The Delaware Court may require the stockholders

who demanded appraisal rights of our shares of common stock to submit their stock certificates to the Register in Chancery for notation thereon of the pendency of the appraisal proceeding; and if any stockholder fails to comply with such direction, the Delaware Court may dismiss the proceedings as to such stockholder.

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After the Delaware Court determines which stockholders are entitled to appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Delaware Court, including any rules specifically governing appraisal proceedings. Through such proceeding the Delaware Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Delaware Court shall take into account all relevant factors. Unless the Delaware Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. If you are considering seeking appraisal, you should be aware that the fair value of your shares as determined under Section 262 could be more than, the same as or less than the consideration you are entitled to receive pursuant to the merger agreement if you did not seek appraisal of your shares and that investment banking opinions as to the fairness from a financial point of view of the consideration payable in a merger are not necessarily opinions as to fair value under Section 262. In determining fair value of shares, the Delaware Court will take into account all relevant factors. In *Weinberger v. UOP, Inc.*, the Delaware Supreme Court has stated that such factors include market value, asset value, dividends, earnings prospects, the nature of the enterprise and any other facts which were known or which could be ascertained as of the date of the merger which throw any light on future prospects of the merged corporation . In *Weinberger*, the Delaware Supreme Court stated, among other things, that proof of value by any techniques or methods generally considered acceptable in the financial community and otherwise admissible in court should be considered in an appraisal proceeding. In addition, the Delaware Court has decided that the statutory appraisal remedy, depending on factual circumstances, may or may not be a dissenter s exclusive remedy.

The Delaware Court will direct the payment of the fair value of the shares of our common stock who have perfected appraisal rights, together with interest, if any. The Delaware Court will determine the amount of interest, if any, to be paid on the amounts to be received by persons whose shares of our common stock have been appraised. The costs of the action (which do not include attorneys or expert fees or expenses) may be determined by the Delaware Court and taxed upon the parties as the Delaware Court deems equitable. The Delaware Court may also order that all or a portion of the expenses incurred by any stockholder in connection with an appraisal, including without limitation reasonable attorneys fees and the fees and expenses of experts utilized in the appraisal proceeding, be charged *pro rata* against the value of all of the shares entitled to appraisal. In the absence of such determination or assessment, each party bears its own expenses.

Any stockholder who has duly demanded and perfected an appraisal in compliance with Section 262 will not, after the effective time of the merger, be entitled to vote his or her shares for any purpose or be entitled to the payment of dividends or other distributions thereon, except dividends or other distributions payable to holders of record of shares of our common stock as of a date prior to the effective time of the merger.

At any time within 60 days after the effective time of the merger, any stockholder will have the right to withdraw his or her demand for appraisal and to accept the cash payment for his or her shares pursuant to the merger agreement. After this period, a stockholder may withdraw his or her demand for appraisal only with our written consent. If no petition for appraisal is filed with the Delaware Court within 120 days after the effective time of the merger, a stockholder s right to appraisal will cease and he or she will be entitled to receive the cash payment for his or her shares pursuant to the merger agreement, as if he or she had not demanded appraisal of his or her shares. No petition timely filed in the Delaware Court demanding appraisal will be dismissed as to any stockholder without the approval of the Delaware Court, and such approval may be conditioned on such terms as the Delaware Court deems just; provided, however, that any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party may withdraw his, her or its demand for appraisal and accept the merger consideration offered pursuant to the merger agreement within 60 days after the effective date of the merger.

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If you properly demand appraisal of your shares of our common stock under Section 262 and you fail to perfect, or effectively withdraw or lose, your right to appraisal, as provided in the DGCL, your shares will be converted into the right to receive the consideration receivable with respect to such shares in accordance with the merger agreement. You will fail to perfect, or effectively lose or withdraw, your right to appraisal if, among other things, no petition for appraisal is filed within 120 days after the effective time of the merger, or if you deliver to us a written withdrawal of your demand for appraisal. Any such attempt to withdraw an appraisal demand more than 60 days after the effective time of the merger will require our written approval.

If you desire to exercise your appraisal rights, you must not vote for the Merger Proposal and must strictly comply with the procedures set forth in Section 262 of the DGCL.

Failure to take any required step in connection with the exercise of appraisal rights will result in the termination or waiver of such rights.

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APPROVAL OF AMENDMENT TO CERTIFICATE OF DESIGNATIONS OF SERIES A CONVERTIBLE PREFERRED STOCK

Proposal

Assuming the Merger Proposal is approved by The Orchard s stockholders, The Orchard is proposing to amend the certificate of designations of the Series A convertible preferred stock, which is part of the certificate of incorporation, to provide that the holders of a majority of the then outstanding shares of Series A convertible preferred stock may consent to the non-application of certain provisions requiring the allocation of the consideration for any transaction constituting a Change of Control Event among the holders of the Series A convertible preferred stock and the common stock. The form of certificate of amendment to the certificate of designations of the Series A convertible preferred stock is attached as Appendix B to this proxy statement. If the Merger Proposal is not adopted, this proposal will not be presented at the meeting.

Section 2(c) of the Series A convertible preferred stock Certificate of Designations is proposed to be amended to read as follows (amendments in italics):

(c) Payments and Distributions Upon Change of Control Event. *Except with the prior vote or written consent of the holders of at least a majority of the then outstanding Series A Preferred Stock*, for so long as any shares of Series A Preferred Stock remain outstanding, the Corporation shall not enter into or otherwise effect any transaction (or series of transactions) constituting a Change of Control Event (as defined below) unless (i) with respect to a Change of Control Event involving the sale or exclusive license of all or substantially all of the Corporation s assets or intellectual property (pursuant to a single transaction or a series of transactions) the Corporation shall as promptly as practicable thereafter liquidate, dissolve and wind up the Corporation and distribute the assets of the Corporation (whether in cash, securities or other property) to the Corporation s stockholders in accordance with Subsections 2(a) and 2(b) and (ii) with respect to a Change of Control Event involving a transaction in which the stockholders of the Corporation will receive consideration from an unrelated third party, the agreement governing such transaction (or series of transactions) provides that the consideration payable to the stockholders of the Corporation (whether in cash, securities or other property) shall be allocated among them in accordance with Subsections 2(a) and 2(b).

In the judgment of our board of directors, the amendment to the Series A convertible preferred stock Certificate of Designations is necessary and desirable because it is necessary for the merger and the other transactions contemplated by the merger agreement to proceed.

Vote Required

The adoption of the amendment to the Certificate of Designations will require the affirmative vote of:

(i) the holders of a majority of all of The Orchard s outstanding shares of voting stock; and

(ii) the holders of a majority of the outstanding shares of The Orchard s Series A convertible preferred stock on the record date, voting separately as a class.

Abstentions and broker non-votes will have the same effect as a vote against the amendment to the Series A convertible preferred stock Certificate of Designations.

Recommendation of the Board

The board of directors of The Orchard believes that it is in the best interests of The Orchard that the stockholders approve the proposal to amend amendment to the Series A convertible preferred stock Certificate of Designations.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR APPROVAL OF THE ADOPTION OF THE CERTIFICATE AMENDMENT PROPOSAL.

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ELECTION OF DIRECTORS

Our board of directors currently consists of seven (7) members. The term of all of our directors will expire at the Annual Meeting. All of our current directors will be standing for re-election.

The board has nominated David Altschul, Viet Dinh, Michael Donahue, Bradley Navin, Nathan Peck, Daniel Stein and Joel Straka for re-election as directors. Please see Nominees for information concerning the nominees to serve as our directors. If any nominee declines to serve or becomes unable to stand for re-election for any reason (although the board knows of no reason to anticipate that this will occur), the board may reduce the size of the board, designate a substitute or leave an additional vacancy unfilled. If a substitute is designated, proxies voting on the original director nominee will be cast for the substituted nominee.

All of the directors elected at the Annual Meeting will serve a one-year term expiring at the next annual meeting of stockholders.

Nominees

Listed below are our Company s seven nominees for election as directors at the Annual Meeting.

Name	Age	Position(s)
David Altschul	63	Director
Viet Dinh	42	Director
Michael Donahue	51	Chairman of the Board and Director
Bradley Navin	39	Director and Chief Executive officer
Nathan Peck	56	Director
Daniel Stein	40	Director
Joel Straka	42	Director

David Altschul has served as a member of our board since February 2006. Since January 2004, Mr. Altschul has been a partner in Altschul & Olin, LLP, a law firm, where his practice is primarily focused upon representing individuals and companies in the worldwide music industry. From January 2003 to December 2003, Mr. Altschul practiced law as a sole practitioner. From March 2002 to July 2002, Mr. Altschul served as an independent consultant to the Record Industry Association of America. From November 1980 to December 2001, Mr. Altschul was employed in various positions for Warner Bros. Records, including serving as General Counsel from 1986 to 1995 and as both Vice Chairman and General Counsel from 1995 to 2001. Mr. Altschul has a B.A. degree from Amherst College and a J.D. degree from Yale Law School. Mr. Altschul has over 30 years of work experience in, and knowledge of, the music industry, including many years as an executive with a major label. In addition, Mr. Altschul served on the Board of Digital Music Group, Inc. prior to the merger with The Orchard Enterprises, Inc. and provides valuable insight into the Company s history and prior business practices and a level of continuity for management and the members of the board. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

Viet Dinh has served as a member of our board since November 2007. Mr. Dinh has been a Professor of Law and Co-Director of Asian Law and Policy Studies at Georgetown University Law School since 1996. He served as Assistant Attorney General of the United States for Legal Policy from 2001 to 2003. Mr. Dinh specializes in constitutional law, corporations law, and the law and economics of development. Mr. Dinh is a founder and has been a

principal at Bancroft Associates PLLC, a law and public policy consulting firm, since June 2003. He serves on the Board of Directors of News Corporation (NYSE: NWS), M&F Worldwide (NYSE: MFW) and two privately held ventures, Deerland Enzymes, Inc. and Bioptics, Inc. On September 16, 2008, Mr. Dinh was appointed by President George W. Bush to serve as a member of the Board of Directors of the Vietnam Education Foundation. Mr. Dinh has an A.B. degree in government and economics from Harvard College and a J.D. degree from Harvard Law School. Mr. Dinh s experience on the board of directors of two other public companies, including as chair of a nominating and corporate governance committee and member of a compensation committee, along with his experience as a professor of law at Georgetown University Law School and Assistant Attorney General of the United States for Legal Policy provides him with extensive knowledge of a number of important areas, including leadership, executive compensation,

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compliance and governance. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

Michael Donahue has served as a member of our board since November 2007 and became Chairman of the Board in June 2008. Since March 2005, Mr. Donahue has served as an independent advisor to firms in the information and technology industries. He served as executive chairman of Expensewatch.com from 2006 to March 2007. In 2005, Mr. Donahue completed a twenty-year career with KPMG LLP, KPMG Consulting and BearingPoint. During his tenure with KPMG and its successors, he most recently served as Group Executive Vice President and Chief Operating Officer (2001 to 2005) and Managing Partner, Technology Solutions (1997 to 2001). He also served on the Board of Directors of KPMG LLP from 1998 to 2001. Mr. Donahue currently serves on the boards of directors of Air Products and Chemicals, Inc. (NYSE: APD) and GSI Commerce, Inc. (NASDAQ: GSIC). From 2000 to 2008, Mr. Donahue served on the Board of Directors of Arbinet, Inc. (NASDAQ: ARBX). Mr. Donahue has degrees in economics and history from the University of Pennsylvania. Mr. Donahue s management experience and his experience in the technology services industry provides insight about the challenges we face due to rapidly changing IT capabilities. He also brings global perspective from his leadership positions and experience in international enterprises and transactions. His service on the boards of other public companies provides valuable insight on corporate governance. He also has mergers and acquisitions experience in the U.S. and globally. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

Bradley Navin was elected as a member of our board in February 2010 in connection with his appointment as our Chief Executive Officer. From October 2009 to February 2010, Mr. Navin was our Interim Chief Executive officer. Prior to October 2009, he was Executive Vice President and General Manager of the Company since April 2008, and prior thereto was Vice President, Global Licensing & Sales of the Company since its acquisition of Orchard NY in November 2007. Prior to November 2007, Mr. Navin was Vice President of Licensing & Operations for Orchard NY, which he joined in 2004. From 1999 to 2004, Mr. Navin was VP, Music & Programming at Digital Club Network, and the Executive Director of the New York Nightlife Association in 1999. Mr. Navin was an artist manager with Invasion Group management from 1997 to 1999. Prior to that, Mr. Navin worked for booking agency Artist & Audience Entertainment (1995 to 1997), where he was instrumental in helping to break new artists. Mr. Navin holds a B.A. degree from Loyola College in Maryland. As a result of Mr. Navin s six years with us, as well as his service in senior positions of other companies in the music industry, he has extensive management and leadership experience and a deep knowledge of the music industry, the digital marketplace, as well as other complex operation issues that face digital distributors. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

Nathan Peck has served as a member of our board since June 2008. Mr. Peck has been a Senior Lecturer at The Johnson Graduate School of Management, Cornell University since 2005. From 1999 to 2005, Mr. Peck served as Executive Vice President and Chief Administrative Officer of KPMG Consulting (subsequently BearingPoint). Mr. Peck served as the Financial Services Consulting Co-Practice Leader and Bank Consulting Practice Leader for KPMG Consulting from 1997 to 1999 and 1995 to 1997, respectively. From 1992 to 1995, Mr. Peck was Senior Vice President and Managing Director for Bankers Trust Company. Mr. Peck is an alumnus of McKinsey & Company, is a certified public accountant and earned M.B.A. and B.A. degrees from Cornell University. Mr. Peck has extensive experience in business, corporate finance, financial reporting and strategic planning through his positions at KPMG Consulting, Bankers Trust Company and McKinsey & Company, as well as his position as a Senior Lecturer at The Johnson Graduate School of Management. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

Daniel C. Stein has served as a member of our board since November 2007. Mr. Stein serves as President of JDS Capital Management, Inc., an investment firm based in New York that invests in private and public debt and equity,

and he has held this position since 2003. Mr. Stein served as our Interim Chief Executive Officer during the month of October 2009. In addition, Mr. Stein has served as chief executive officer of eMusic.com, one of our customers, since March 2009 and prior to that served as interim chief executive officer of eMusic.com from October 2008. Mr. Stein also serves as an executive officer and a director of Dimensional Associates, the majority stockholder of the Company, and he was a director of Orchard

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NY from April 2003 until its acquisition by the Company in November 2007. From May 2001 through October 2002, Mr. Stein was the chief executive officer of TTR Technologies, a company that specialized in copy-protection technologies whose assets were sold to Macrovision (MVSN). From 2000 to 2001, Mr. Stein was President of Javu Technologies, which licenses software and services to corporations that store, manage, deliver or repurpose video assets. From 1999 to May 2000, Mr. Stein was president, chief operating officer and a director of the Wedding List Company, an Internet company with retail outlets specializing in the wedding gift and registry business. Mr. Stein has a B.S. degree from Cornell University. Mr. Stein s experience working with a number of companies as a member of a private equity firm, as well as his experience in senior positions (including chief executive officer) in internet based companies gives him a wide range of experience in a number of industries, including the digital music industry, and a knowledge of the digital marketplace. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

Joel Straka has served as a member of our board since June 2008. Mr. Straka has been analyzing investment opportunities for Essex Equity Capital Management, LLC since early 2010. From 2002 to 2008, Mr. Straka served as an investment banker at Goldman, Sachs & Co. covering consumer products and retail companies. From 1994 to 2000, Mr. Straka served as a corporate attorney with Cravath, Swaine & Moore. Mr. Straka received an M.B.A. degree from Columbia Business School, a J.D. degree from the University of Virginia School of Law and an A.B. degree from Harvard College. Mr. Straka s experience as a corporate attorney and investment banker provides him with extensive knowledge of a number of important areas, including finance, valuation and risk assessment. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

Director Independence

Our board consists of seven (7) directors. Our board has determined that each of the directors, other than Bradley Navin, our Chief Executive Officer, and Daniel Stein, who is affiliated with our majority stockholder, Dimensional Associates, and a significant customer of ours, eMusic.com, are independent directors as defined by the applicable listing standards of the Nasdaq Global Market.

During a portion of the year ended December 31, 2009, Greg Scholl also served as member of the board. Mr. Scholl was not deemed an independent director as defined by the applicable listing standards of the Nasdaq Global Market.

Attendance at Board Meetings and Board Committees

Our board of directors conducts its business through its meetings and through meetings of certain committees of the board of directors. The Company is a controlled company under the applicable listing standards of the Nasdaq Global Market because more than 50% of the voting power is held by Dimensional Associates. A controlled company is not required to have a majority of its board of directors composed of independent directors. Director nominees are not required to be selected or recommended for the board s selection by a majority of independent directors or a nominating committee composed solely of independent directors, nor do the Nasdaq Global Market listing standards require a controlled company to certify adoption of a formal written charter or board resolution, as applicable, addressing the nominations process. A controlled company is also exempt from Nasdaq Global Market requirements regarding the determination of officer compensation by a majority of independent directors or a compensation committee composed solely of independent directors. A controlled company is required to have an audit committee composed of at least three directors, who are independent as defined under the rules of both the SEC and the Nasdaq Global Market. The Nasdaq Global Market further requires that all members of the audit committee have the ability to read and understand fundamental financial statements and that at least one member of the audit committee possess financial sophistication. The independent directors must also meet at least twice a year in meetings at which only they

are present.

We comply voluntarily with the listing standards of the Nasdaq Global Market that otherwise do not apply to controlled companies, except that our Executive, Nominating and Corporate Governance Committee is not composed entirely of independent directors.

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Our board currently has three (3) standing committees: the Audit Committee, the Compensation Committee, and the Executive, Nominating and Corporate Governance Committee. During 2009, our board of directors met ten (10) times, the Audit Committee met nine (9) times, the Compensation Committee met eight (8) times and the Executive, Nominating and Corporate Governance Committee met five (5) times. All of the incumbent directors attended at least 75% of the meetings of our board of directors and each committee on which he served. The directors are encouraged to attend the annual meeting of stockholders. All incumbent directors attended the 2009 Annual Meeting of Stockholders. From time to time, the board may act through special committees delegated with specific authority by the board. In 2008, the board established the First Special Committee and in 2009, the board established the search committee and the special committee. The First Special Committee met two (2) times, the search committee met two (2) times and the current special committee met ten (10) times.

Audit Committee. The Audit Committee currently consists of Messrs. Peck (Chairman), Donahue and Straka. The Audit Committee is responsible for reviewing and monitoring our corporate accounting and financial reporting processes, the periodic public release of financial results and the periodic filing of financial reports with the SEC, and selecting the independent registered public accounting firm to audit our consolidated financial statements, including approving their compensation and monitoring their qualifications, independence and performance. Our board has determined that each member of the Audit Committee is independent under the applicable listing standards of the Nasdaq Global Market, and that Mr. Peck qualifies as an audit committee financial expert under Item 407(d)(5) of Regulation S-K promulgated by the SEC. Mr. Peck qualifies as an audit committee financial expert by virtue of his experience with KPMG Audit. In addition, Mr. Peck is a certified public accountant. The Audit Committee has a written charter, which is available on our website at *www.theorchard.com/about/investor-relations* by clicking on the link Highlights under the heading Corporate Governance . The Report of the Audit Committee of the board of directors is included in this proxy statement.

Compensation Committee. The Compensation Committee currently consists of Messrs. Dinh (Chairman) and Straka. Both members are independent directors under the applicable listing standards of the Nasdaq Global Market. The Compensation Committee is responsible for determining salaries, incentives and other forms of compensation for our Company s executive officers and compensation for non-employee directors, as well as administering the Company Stock Plan and other incentive compensation and employee benefit plans of the Company. The Compensation Committee has a written charter, which is available on our website at *www.theorchard.com/about/investor-relations* by clicking on the link Highlights under the heading Corporate Governance .

Executive, Nominating and Corporate Governance Committee. The Executive, Nominating and Corporate Governance Committee currently consists of Messrs. Stein (Chairman), Altschul, Dinh and Donahue. All such members, other than Mr. Stein, are independent directors under the applicable listing standards of the Nasdaq Global Market. The Executive, Nominating and Corporate Governance Committee is responsible for developing and recommending board member selection criteria, identifying and recruiting prospective board candidates, recommending nominees for election to the board, considering committee member qualifications, recommending corporate governance principles to the board, and providing oversight in the evaluation of the board and each committee. The Executive, Nominating and Corporate Governance Committee also considers nominees proposed by stockholders. It further is responsible for monitoring the progress and status of management s efforts to acquire additional music catalogs and reviewing and approving the terms of all substantive content acquisition and long-term licensing contracts as well as reviewing and approving any new international expansion plans and proposed capital expenditures over a certain threshold. The Executive, Nominating and Corporate Governance Committee has a written charter, which is available on our website at *www.theorchard.com/about/investor-relations* by clicking on the link Highlights under the heading Corporate Governance .

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First Special Committee. On November 14, 2008, the board formed a special committee of independent and disinterested directors to review and evaluate a proposal by Dimensional Associates to solicit parties interested in either acquiring The Orchard or participating in the acquisition by Dimensional Associates of all of our outstanding common stock not then owned by Dimensional Associates. The First Special Committee was dissolved by the board of directors on April 17, 2009. See Special Factors Recommendation of the Special Committee and of our Board of Directors .

Search Committee. In connection with the resignation of Greg Scholl as President and Chief Executive Officer and as a member of the board of directors on September 25, 2009, the board formed a search committee to identify qualified candidates to serve as the Company s chief executive officer and appointed Michael Donahue to head the committee. The other members of the search committee were Viet Dinh, Nathan Peck, Daniel Stein and Joel Straka. On February 17, 2010, the board elected Bradley Navin as Chief Executive Officer and a director of The Orchard effective February 18, 2010. Mr. Navin s election was unanimously recommended by the search committee and the committee was dissolved.

Special Committee. On October 19, 2009, the board formed a special committee of independent and disinterested directors to review and evaluate a proposal by Dimensional Associates to enter into non-binding discussions with the Company regarding a potential transaction through which Dimensional would acquire all of the outstanding shares of common stock of the Company not currently owned by Dimensional. See Special Factors Fairness of the Merger, Recommendation of the Special Committee and of our Board of Directors .

Consideration of Director Nominees

Nominations. Our board believes that the Executive, Nominating and Corporate Governance Committee, a majority of the members of which are independent directors of the Company, can adequately identify appropriate candidates to the board. The Executive, Nominating and Corporate Governance Committee will consider any future nominees for director nominated by the Company s stockholders.

Stockholder Nominees. The Executive, Nominating and Corporate Governance Committee considers properly submitted stockholder nominations for candidates for membership on the board as described below under Identifying and Evaluating Nominees for Directors . Under our bylaws, as amended, a stockholder seeking to propose a nominee for board membership must deliver notice (within the time frame and in the manner as specified under STOCKHOLDER PROPOSALS TO BE PRESENTED AT NEXT ANNUAL MEETING) to our Secretary. The stockholder s notice must set forth, as to each proposed nominee, the following: (a) the name, age, business address and residence address of such person; (b) the principal occupation or employment of such person; (c) the class and number of shares of the corporation that are beneficially owned by such person; (d) a description of all arrangements or understandings between the nominating stockholder and such nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder; and (e) any other information relating to such person that is required to be disclosed in solicitations of proxies for elections of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including without limitation such person s written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected). In addition, the stockholder s notice must set forth, as to such stockholder, the information described under STOCKHOLDER PROPOSALS TO BE PRESENTED AT NEXT ANNUAL MEETING . The presiding officer of the meeting may refuse to acknowledge any stockholder nomination not made in compliance with the foregoing procedure.

Director Qualifications. While the Executive, Nominating and Corporate Governance Committee has not established formal procedures, specific minimum qualifications or a formal diversity policy for the evaluation of director candidates, the candidates for board membership should have the highest professional and personal ethics and values, and conduct themselves consistent with the Company s Code of Business Conduct. Additionally, candidates and nominees must ultimately reflect a board that is composed of directors who (i) have broad, relevant and diverse experience, (ii) are predominantly independent, (iii) are of high integrity, (iv) have qualifications that will increase overall board effectiveness and (v) meet other requirements as may be required by applicable rules, such as financial literacy or financial expertise with respect to Audit Committee members.

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Identifying and Evaluating Nominees for Directors. Typically, any new candidates for nomination to the board are suggested by existing directors or our executive officers, although candidates may also come to our attention through stockholders, professional search firms or other persons. The Executive, Nominating and Corporate Governance Committee of the board will carefully review the qualifications of any candidates who have been properly brought to its attention. Such a review may, in the Committee s discretion, include a review solely of information provided to the Committee or it may also include discussion with persons familiar with the candidate, an interview with the candidate or other actions that the Committee deems proper. In the case of new director candidates, the questions of independence and financial expertise are important to determine what roles can be performed by the candidate, and the Executive, Nominating and Corporate Governance Committee determines whether the candidate will meet independence standards set forth in the SEC rules and regulations and the applicable listing standards of the Nasdaq Global Market, and the level of the candidate s financial expertise. In the case of incumbent directors whose terms of service are set to expire, the Executive, Nominating and Corporate Governance Committee reviews such directors overall service to our Company during their terms, including attendance at meetings, level of participation, quality of performance, and whether the director continues to meet the independence standards set forth in the applicable SEC rules and regulations and the applicable listing standards of the Nasdaq Global Market. The Committee shall consider the suitability of each candidate, including the current members of the board, in light of the current size and composition of the board. In evaluating the qualifications of the candidates, the Committee considers many factors, including character, integrity, reputation, business judgment, independence, relevant business and industry expertise, diversity of experience, geographic location of the candidate, length of service and other criteria. The Committee evaluates such factors, among others, and does not assign any particular weighting or priority to any of these factors. Candidates properly recommended by stockholders are evaluated by the Executive, Nominating and Corporate Governance Committee using the same criteria as other candidates. Candidates are first screened by the Executive, Nominating and Corporate Governance Committee, and if approved by the Executive, Nominating and Corporate Governance Committee, they are then screened by other members of the board. The full board approves the final nomination(s) based on recommendations from the Executive, Nominating and Corporate Governance Committee. The Chairman of the Board, acting on behalf of the full board, will extend the formal invitation to become a nominee of the board. Qualified candidates for membership on the board will be considered without regard to race, color, religion, sex, national origin, age, medical condition or disability, sexual orientation, veteran status or any other characteristic protected by law.

Code of Business Conduct

Our Company is committed to maintaining the highest standards of business conduct and ethics. We have adopted a Code of Business Conduct for our directors, officers and other employees. The Code of Business Conduct reflects our values and the business practices and principles of behavior that support this commitment. The Code of Business Conduct is available on our website at *www.theorchard.com/about/ investor-relations* by clicking on the link Highlights under the heading Corporate Governance . We will post any amendment to the Code, as well as any waivers that are required to be disclosed by the rules of the SEC or Nasdaq, on our website.

Communications with the Board by Stockholders

We maintain a process for stockholder communication with the board. Stockholders wishing to communicate with our board, a committee of the board or an individual board member concerning our Company may do so by writing to the board, the committee or to the particular board member, and mailing the correspondence to: Attention: Board of Directors, c/o Secretary, The Orchard Enterprises, Inc., 23 East 4th Street, 3rd Floor, New York, New York 10003. The envelope should indicate that it contains a stockholder communication. Any such communication must state the number of shares beneficially owned by the stockholder making the communication. All such stockholder

communications will be forwarded to the director or directors to whom the communications are addressed unless the Secretary determines that the communication is a business solicitation or advertisement, or requests general information about our Company.

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Director Compensation

On March 13, 2009, the Compensation Committee recommended, and the board adopted a revised Non-Executive Directors Compensation Program (the 2009 DCP), effective June 2, 2009, upon stockholder approval of the proposed amendments to the Company Stock Plan. Under the 2009 DCP each director who was not also an employee was entitled to receive a fee of $40,000 per year, with an additional annual fee of $3,000 payable to each committee chairman. The directors do not receive any separate fees for attendance at board or committee meetings. Our directors are reimbursed for reasonable out-of-pocket expenses incurred in attending meetings of the board or the committees thereof, and for other expenses reasonably incurred in their capacity as directors.

In addition, under the 2009 DCP, each non-employee director received a restricted stock award for a number of shares of common stock having a value of $50,000 based on the closing price of our common stock on the date of grant, with the initial grant on June 2, 2009 vesting one-half on the date of grant and one-half on the subsequent annual meeting date (provided that such director continues to serve until the time of such future annual meetings). The Chairman of the Board also received an additional restricted stock award with a grant date value of $20,000 determined on the same basis and vesting in the same manner. These grants to non-employee directors were made pursuant to the terms of the Company Stock Plan.

Prior to the adoption of the 2009 DCP, each director who was not also an employee was compensated in the same amount and manner as set forth in the 2009 DCP, except that each director who was not also an employee received a grant of options on June 4, 2008 to purchase a number of shares of common stock equal to $50,000 divided by an amount equal to one-third of the closing price of our common stock on the grant date. This division by one-third was intended to approximate the share-based compensation expense attributable to such options under the Trinomial Lattice Method, which we use for accounting purposes under Financial Accounting Standards Board Accounting Standards Codification Topic 718, Compensation Stock Compensation (ASC Topic 718) (formerly Statement of Financial Accounting Standards No. 123 (Revised), Share-Based Payment (SFAS No. 123R)). These options had an exercise price per share equal to the closing price of our common stock on the date of grant and a term of 10 years, with the initial grant on June 4, 2008 vesting one-third on the date of grant and one-third on each of the subsequent two annual meeting dates (provided that such director continues to serve until the time of such future annual meetings). These grants to non-employee directors were made pursuant to the terms of the Company Stock Plan.

In addition, in 2009 the board approved additional payments of $80,000 to Mr. Donahue for his service as chairman of both the search committee and the special committee, as well as an additional payment of $15,000 for each of David Altschul, Viet Dinh, Nathan Peck and Joel Straka for their service on the special committee.

The following table summarizes compensation paid to those who served as non-employee directors during any portion of the year ended December 31, 2009.

Name	Fees Earned or Paid in Cash ($)	Stock Awards ($)[1]	Total Compensation ($)
David Altschul	55,000	50,000	105,000
Viet Dinh	58,000	50,000	108,000
Michael Donahue	123,000	70,000	193,000
Nathan Peck	58,000	50,000	108,000

Daniel Stein	43,000 (2)	50,000	93,000 (2)
Joel Straka	55,000	50,000	105,000

(1) Represents the aggregate grant date fair value of the restricted stock grants to non-employee directors in 2009, under the Company Stock Plan, computed in accordance with ASC Topic 718 (formerly SFAS No. 123R). The estimated fair value of the restricted stock was calculated based on the closing price of our common stock on the date of grant. For additional information on the valuation assumptions used to estimate the fair value of the stock awards, refer to Note 3 and Note 14 to our consolidated

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financial statements in our Annual Report on Form 10-K for the year ended December 31, 2009. This amount represents the grant date fair value of the restricted stock grants and may not correspond to the actual value that may be recognized by each director.

(2) This amount does not include $16,666 earned by Mr. Stein in connection with his service as Interim Chief Executive Officer of the Company. Mr. Stein s compensation for his role as an executive officer of the Company is disclosed below in the summary compensation table for our named executive officers.

Vote Required

The seven (7) nominees for director receiving the highest number of affirmative votes cast will be elected as a director.

Recommendation of the Board

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE ELECTION OF EACH OF THE NOMINEES LISTED ABOVE.

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RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Audit Committee of the board has selected Marcum LLP as our independent registered public accounting firm for the year ending December 31, 2010. Marcum LLP is an independent registered public accounting firm and has audited The Orchard s consolidated financial statements for the years ended December 31, 2008 and 2009.

The board is asking the stockholders to ratify the selection of Marcum LLP as our independent registered public accounting firm for 2010. Although not required by law, by rules of Nasdaq or by our bylaws, the board is submitting the selection of Marcum LLP to the stockholders for ratification as a matter of good corporate practice. Even if the selection is ratified, our Audit Committee in its discretion may select a different independent registered public accounting firm at any time during the year if it determines that such a change would be in the best interests of The Orchard and its stockholders.

Representatives of Marcum LLP are expected to be present at the annual meeting. They will have an opportunity to make a statement if they desire to do so and will be available to respond to appropriate questions from The Orchard s stockholders.

Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Registered Public Accounting Firm

To help ensure the independence of the independent registered public accounting firm, our Audit Committee has adopted a policy requiring the Audit Committee s pre-approval of all audit and non-audit services to be performed for us by our independent registered public accounting firm. The Audit Committee has reviewed all services provided by Marcum LLP, and has concluded that the provision of such services was compatible with maintaining Marcum LLP s independence in conducting its auditing functions.

Fee Information

The following table presents fees for audit, audit-related, tax and other services rendered by Marcum LLP, our independent registered public accounting firm, for the years ended December 31, 2008 and 2009:

Service Category	2008[(a)]	2009[(b)]
Audit Fees	$ 376,734	$ 390,247
Audit-Related Fees	315,000	
Tax Fees		
All Other Fees	21,075	
Total	$ 712,809	$ 390,247

(a) Of the $712,809, $279,084 was paid in 2009.

(b) Of the $390,247, $203,865 was paid in 2010.

In the above table, in accordance with the SEC s definitions and rules, Audit Fees are fees for professional services for the audit of a company s financial statements included in the annual report on Form 10-K, for the review of a

company s interim financial statements included in the quarterly reports on Form 10-Q, and for services that are normally provided by the independent registered public accounting firm in connection with statutory and regulatory filings or engagements; Audit-Related Fees are fees for assurance and related services that are reasonably related to the performance of the audit or review of a company s financial statements; and Tax Fees are fees for tax compliance, tax advice and tax planning. For 2008 and 2009, All Other Fees represented fees related to the review of the Company s compliance with the Sarbanes-Oxley Act.

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Vote Required

The affirmative vote of a majority of the votes cast on the matter is required for approval of this proposal.

Recommendation of the Board

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE RATIFICATION OF THE APPOINTMENT OF MARCUM LLP AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE YEAR ENDING DECEMBER 31, 2010.

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REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

The Audit Committee is primarily responsible for assisting the board of directors in fulfilling its oversight responsibility by reviewing the financial information that will be provided to stockholders and others, appointing and reviewing the work performed by the independent registered public accounting firm, evaluating the Company s accounting policies and its system of internal controls that management has established, and reviewing with management significant financial transactions including any related-party transactions, the reasonableness of significant judgments made by management and the clarity of disclosures made in the financial statements. Management is responsible for the Company s financial reporting process, including the preparation of its consolidated financial statements in conformity with accounting principles generally accepted in the United States of America, and its system of internal controls. The Company s independent registered public accounting firm is responsible for auditing those consolidated financial statements in accordance with auditing standards generally accepted in the United States and expressing its opinion as to whether the consolidated financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Company in conformity with accounting principles generally accepted in the United States of America. The Audit Committee does not prepare financial statements or perform audits, and its members are not auditors or certifiers of the Company s financial statements.

The Audit Committee reviewed and discussed the audited consolidated financial statements included in the Company s 2009 Annual Report on Form 10-K with management, including a discussion of the quality, not just the acceptability, of the accounting principles used by the Company, the reasonableness of significant management judgments and estimates made in the accounting process, and the clarity and completeness of disclosures in the consolidated financial statements. The Audit Committee also met with the Company s management to discuss their review of the Company s disclosure controls and procedures and internal accounting and financial controls in connection with the preparation and filing of the 2009 Annual Report on Form 10-K and received notice that each of the Company s Chief Executive Officer and Chief Financial Officer signed the certificates required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002.

The Audit Committee discussed with Marcum LLP, the Company s independent registered public accounting firm, the overall scope of work for its 2009 audit. The Audit Committee reviewed and discussed the audited financial statements for the year ended December 31, 2009 with Marcum LLP, and met with representatives of the firm, with and without management present, to discuss the results of its audit work, its evaluations of the Company s internal controls, and its assessment of the overall quality of the Company s financial reporting. The Audit Committee has also discussed with Marcum LLP the matters required to be discussed by the Statements on Auditing Standards No. 61, as amended (AICPA, Professional Standards, Vol. 1 AU Section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T.

The Audit Committee has also received and reviewed the written disclosures and the letter from Marcum LLP as required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent registered public accounting firm s communications with the Audit Committee concerning independence, and has discussed with Marcum LLP its independence.

Based on the reviews and discussions referred to above, the Audit Committee recommended to the board of directors that the consolidated financial statements referred to above be included in the Company s Annual Report on Form 10-K for the year ended December 31, 2009. The Audit Committee also selected Marcum LLP to audit the Company s

consolidated financial statements for the year ending December 31, 2010.

The Audit Committee has relied, without independent verification, on management s representations that the consolidated financial statements for 2009 are complete, free of material misstatement and prepared in accordance with accounting principles generally accepted in the United States, and on the opinion and representations made by Marcum LLP in its report on the Company s consolidated financial statements, including its representations that Marcum LLP is independent and the audit was performed in accordance with auditing standards generally accepted in the United States. The Audit Committee s oversight does not provide assurance that management s and Marcum LLP s opinion and representations referred to above are correct.

Respectfully,
THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS
Nathan Peck, (Chairman)
Michael Donahue
Joel Straka

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APPROVAL OF ADJOURNMENT OF ANNUAL MEETING

The meeting may be adjourned or postponed for the purpose of soliciting additional proxies if there are insufficient votes at the time of the annual meeting to approve the Merger Proposal. Any adjournment may be made without notice, other than by an announcement made at the meeting of the time, date and place of the adjourned meeting. Approval of the Adjournment Proposal requires the affirmative vote of the holders of a majority of The Orchard s shares of voting stock voting on the matter. Any signed proxies received by us in which no voting instructions are provided on this matter will be voted FOR the Adjournment Proposal. In addition, when any meeting is convened, the presiding officer, if directed by our board of directors, may adjourn the meeting if (a) no quorum is present for the transaction of business or (b) our board of directors determines that adjournment is necessary or appropriate for any reason, including to enable the stockholders to consider fully information which our board of directors determines has not been made sufficiently or timely available to stockholders or otherwise to exercise effectively their voting rights. Any adjournment or postponement of the meeting for the purpose of soliciting additional proxies will allow our stockholders who have already sent in their proxies to revoke them at any time prior to their use at the meeting as adjourned or postponed.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR THE ADJOURNMENT PROPOSAL.

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EQUITY COMPENSATION PLAN INFORMATION

The following table provides information as of December 31, 2009 about shares of our common stock that may be issued upon the exercise of options, warrants and rights under all of our existing equity compensation plans, namely the Company Stock Plan, and the number of shares available for future issuance.

	Number of Securities to Be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights ($)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))	
	(a)	(b)	(c)	
Equity compensation plans approved by security holders	489,611	5.96	608,151	(1)
Equity compensation plans not approved by security holders				
Total	489,611	5.96	608,151	(1)

(1) The Company Stock Plan provides for future annual increases in the number of shares available for issuance of 400,000 shares for 2010 and on the first day of each fiscal year thereafter in an amount equal to the lesser of:

250,000 shares;

5% of the number of shares of our common stock outstanding on that day; or

such other lesser amount as our board of directors may determine.

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STOCK OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information known to us with respect to the beneficial ownership of our common stock as of April 19, 2010 by (i) each person that we know is the beneficial owner of more than 5% of our common stock, (ii) each director and nominee for director, (iii) each of the named executive officers named in the Summary Compensation Table below, and (iv) all named executive officers and directors as a group. We have relied exclusively upon information provided to us by our directors and named executive officers and copies of documents sent to us that have been filed with the SEC by others for purposes of determining the number of shares each person beneficially owns. Beneficial ownership is determined in accordance with the rules and regulations of the SEC and generally includes those persons who have voting or dispositive power with respect to the securities. Except as otherwise indicated, and subject to applicable community property laws, the persons named in the table have sole voting and dispositive power with respect to all shares of our common stock beneficially owned by them. For each individual and group included in the table below, percentage ownership is calculated by dividing the number of shares beneficially owned by such person or group by the sum of (i) the 6,378,252 shares of common stock outstanding on April 19, 2010, (ii) the shares of common stock into which the shares of the Company s Series A Preferred Stock held by such individual or group outstanding on April 19, 2010 were convertible, and (iii) the number of shares of common stock that such person or group had the right to acquire on or within 60 days after April 19, 2010. The address for each stockholder listed in the table below is c/o The Orchard Enterprises, Inc., 23 East 4th Street, 3rd Floor, New York, New York 10003, unless otherwise specified.

Name	Amount and Nature of Beneficial Ownership[1]	Percent of Common Stock Outstanding
Dimensional Associates, LLC[2]	4,199,002	53.4 %
Daniel Stein[3]	4,256,843	53.7
David Altschul[4]	67,841	1.1
Viet Dinh[5]	61,841	*
Michael Donahue[6]	73,461	1.2
Nathan Peck[7]	57,841	*
Joel Straka[7]	57,841	*
Nathan Fong[8]	60,227	*
Bradley Navin[9]	36,241	*
Steve Haase[10]	58,605	*
Greg Scholl[11]	164,017	2.6
Daniel Pifer[12]	18,226	*
All current directors and executive officers as a group (10 persons)	4,730,741	58.4 %

* Represents less than 1% of the outstanding shares of common stock.

(1) To our knowledge, except as indicated in the footnotes to this table, the persons named in the table have sole voting and dispositive power with respect to all shares of common stock shown as beneficially owned by them, subject to community property laws where applicable.

(2) Includes 2,709,276 shares of common stock and 446,918 shares of Series A convertible preferred stock (which are convertible into 1,489,726 shares of common stock) owned by Dimensional Associates, LLC. JDS Capital, L.P.

holds a majority membership interest in and is the manager of Dimensional Associates. JDS Capital Management, LLC is the general partner of JDS Capital, L.P. Joseph D. Samberg has a direct minority membership interest in Dimensional Associates and is managing member of JDS Capital Management, LLC. The address of the principal business and office of Dimensional Associates, JDS Capital, L.P., JDS Capital Management, LLC and Joseph D. Samberg is 1091 Boston Post Road, Rye, New York 10580.

(3) Includes (i) 2,709,276 shares of common stock and 446,918 shares of Series A convertible preferred stock (which are convertible into 1,489,726 shares of common stock) owned by Dimensional Associates, LLC, of which Mr. Stein is a director; (ii) 29,051 shares of common stock, of which 12,928 shares are scheduled to vest on the date of the annual meeting; and (iii) 28,790 shares of common stock issuable

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upon exercise of stock options that are exercisable on or within 60 days of April 19, 2010, of which 9,597 are scheduled to vest at the annual meeting.

(4) Includes 29,051 shares of common stock and 38,790 shares of common stock issuable upon exercise of stock options that are exercisable on or within 60 days of April 19, 2010, of which 9,597 are scheduled to vest at the annual meeting.

(5) Includes 29,051 shares of common stock and 32,790 shares of common stock issuable upon exercise of stock options that are exercisable on or within 60 days of April 19, 2010, of which 9,597 are scheduled to vest at the annual meeting.

(6) Includes 40,671 shares of common stock and 32,790 shares of common stock issuable upon exercise of stock options that are exercisable on or within 60 days of April 19, 2010, of which 9,597 are scheduled to vest at the annual meeting.

(7) Includes 29,051 shares of common stock and 28,790 shares of common stock issuable upon exercise of stock options that are exercisable on or within 60 days of April 19, 2010, of which 9,597 are scheduled to vest at the annual meeting.

(8) Includes 35,233 shares of common stock and 24,994 shares of common stock issuable upon exercise of stock options that are exercisable on or within 60 days of April 19, 2010.

(9) Includes 28,333 shares of common stock and 7,908 shares of common stock issuable upon exercise of stock options that are exercisable on or within 60 days of April 19, 2010.

(10) Includes 51,113 shares of common stock and 7,492 shares of common stock issuable upon exercise of stock options that are exercisable on or within 60 days of April 19, 2010.

(11) Includes 159,794 shares of common stock (of which 5,000 shares are held by his wife) and 1,267 shares of Series A convertible preferred stock (which are convertible into 4,223 shares of common stock). Mr. Scholl resigned as the Company s Chief Executive Officer effective November 1, 2009.

(12) Mr. Pifer resigned from his position as Executive Vice President, Operations and Technology on December 15, 2009.

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COMPENSATION OF EXECUTIVE OFFICERS

Executive Officers

The following sets forth certain information regarding our executive officers.

Name	Age	Position(s)
Bradley Navin	39	Chief Executive Officer
Nathan Fong	46	Executive Vice President and Chief Financial Officer
Steve Haase	35	Executive Vice President, Business Development
Alexis H. Shapiro	42	Senior Vice President, General Counsel and Secretary

For information concerning Mr. Navin, see Election of Directors .

Nathan Fong joined The Orchard as Chief Financial Officer in February 2008 and was designated Executive Vice President and Chief Financial Officer in April 2008. From 2007 until he joined The Orchard in February 2008, Mr. Fong served as Chief Financial Officer for In-Demand Networks. From 2004 2007, he served as Chief Financial Officer, Rodale International, Rodale, Inc. From 2003 2004, Mr. Fong was Senior Vice President, Chief Financial Officer for Discovery Networks International, Discovery Communications, Inc. From 1997 2003, Mr. Fong served as Regional Vice President, Asia Pacific and later Divisional Vice President of Finance and Administration for Twentieth Century Fox International. Mr. Fong has a B.A. degree in accounting from Michigan State University and an M.B.A. degree from the University of Rochester and is a certified public accountant.

Steve Haase has been Executive Vice President, Business Development of the Company since January 2009, was Senior Vice President, Business Development of the Company from April 2008 to December 2008, and prior thereto was Vice President of Business Development of the Company since its acquisition of Orchard NY in November 2007. Mr. Haase is responsible for the Company s digital music and video service sales relationships worldwide. Prior to that, Mr. Haase was Vice President of Business Development of Orchard NY from April 2003. From 1997 until April 2003, he served as General Manager of Orchard NY overseeing virtually all departments, including content management, distribution, artist and label relations, operations and technology. From June until November 1997, Mr. Haase served as Head of A&R at Sol 3 Records, where he worked with emerging artists distributed by BMG and Warner Bros. Mr. Haase serves as a member of the Advisory Board of Music Intelligence Solutions. Mr. Haase holds a B.A. degree from Catholic University in Washington, D.C.

Alexis H. Shapiro has been Senior Vice President, General Counsel and Secretary of the Company since February 2009. Ms. Shapiro was previously Senior Counsel of the Company from May 2008 to February 2009. Prior to joining the Company, Ms. Shapiro was with the law firm of Pryor Cashman LLP since April 2000. Ms. Shapiro holds a B.A. degree from Smith College and a J.D. degree from Boston College Law School.

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Summary Compensation Table

The following table summarizes the compensation of our named executive officers for the year ended December 31, 2009. Our named executive officers include our Chief Executive Officer, any other person who served as our principal executive officer at any time during 2009, our other two most highly compensated been included as one of the two most highly compensated executive officers if they had been an executive officer on December 31, 2009.

Name	Year	Salary ($)	Bonus ($)	Stock Awards ($)[1]	Option Awards ($)[2]	Non-Equity Incentive Plan Compensation ($)[3]	Total Compensation ($)
Bradley Navin[4]	2009	203,748					203,748
Chief Executive Officer	2008	160,000	18,333	118,336			